

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS

[28 PA. CODE CH. 717]

Standards for Drug and Alcohol Recovery House Licensure

In accordance with section 2313-A of The Administrative Code of 1929 (Administrative Code) (71 P.S. § 613.13), the Department of Drug and Alcohol Programs (Department) adds Chapter 717 (relating to Standards for Drug and Alcohol Recovery House Licensure) to read as set forth in Annex A.

Statutory Authority

This final-omitted rulemaking is issued under the authority provided in section 2313-A of the Administrative Code which states that the Department shall promulgate final-omitted regulations for the licensure or certification of drug and alcohol recovery houses that receive funds or referrals from the Department, or a Federal, State or other county agency.

Purpose

The purpose of this final-omitted rulemaking is to establish requirements for drug and alcohol recovery house licensure by the Department. Nationally, amid an opioid epidemic, the treatment community has seen a recent influx of unscrupulous individuals who seek to enrich themselves by exploiting those in recovery. Without codified recovery housing standards or protections, there are unknown numbers of unregulated, substandard houses providing low-quality to no supportive services, committing insurance fraud and exploiting vulnerable populations. Without adequate supports, individuals with substance use disorder (SUD) are at greater risk of relapse, increasing their chance of overdose and death. This final-omitted rulemaking establishes the procedures for issuance of a drug and alcohol recovery house license and provides standards for the licensure of a drug and alcohol recovery house under subarticle B of Article XXIII-A of the Administrative Code (71 P.S. §§ 613.11—613.18).

This final-omitted rulemaking adds §§ 717.1—717.33.

Background

A drug and alcohol recovery house is defined as “[h]ousing for individuals recovering from drug or alcohol addiction, which provides those individuals with a safe and supportive drug and alcohol-free environment that may include peer support and other recovery support services” in section 2311-A of the Administrative Code (71 P.S. § 613.11). Recovery houses are not SUD treatment facilities. Rather, recovery houses provide support to individuals who are receiving outpatient treatment for, or in recovery from, SUD who may benefit from supportive housing, a substance-free environment and peer camaraderie.

Provisional data from the United States (U.S.) Centers for Disease Control and Prevention (CDC) report that over 81,000 U.S. drug overdose deaths occurred in the 12-month period ending in May 2020, the highest number of overdose deaths ever recorded in a 12-month period (<https://www.cdc.gov/media/releases/2020/p1218-overdose->

<https://www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html>). This Commonwealth ranks fifth for rate of age-adjusted overdose deaths in 2019, with 35.6 overdose deaths per 100,000 population (<https://www.cdc.gov/drugoverdose/data/statedeaths/drug-overdose-death-2019.html>). The U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) estimated that in 2016-2017, 7.22% of this Commonwealth’s adult population met the Diagnostic and Statistical Manual of Mental Disorders criteria for SUD (<https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHsaePercentsExcelCSVs2017/NSDUHsaePercents2017.pdf>). Applying this estimate to U.S. Census Bureau estimates (July 2018) for the population in this Commonwealth suggests that over 700,000 adults suffer from SUD. In a recent report, the U.S. Surgeon General estimated that “[o]nly about 12.2 percent of adults who need treatment for substance use disorder receive any type of specialty treatment” (<https://addiction.surgeongeneral.gov/sites/default/files/surgeon-generals-report.pdf>). It is unknown how many of those individuals who undergo treatment for SUD also seek housing from a drug and alcohol recovery house; however, safe, stable housing and a supportive peer community have continually been identified as top needs for individuals to sustain their recovery journey (https://www.thenationalcouncil.org/wp-content/uploads/2017/05/Recovery-Housing-Issue-Brief_May-2017.pdf).

From 2014 to 2016, as recommended by House Bill 1298 of the 2013 Session, the Department convened a Certified Drug and Alcohol Recovery Housing Taskforce comprised of key stakeholders. This Taskforce provided the Department with recommended regulatory language for drug and alcohol recovery houses. The Department used this language as a starting point for its own regulatory draft.

The Pennsylvania General Assembly enacted the act of December 19, 2017 (P.L. 1187, No. 59) (Act 59 of 2017) to add subarticle XXIII-A(b) to the Administrative Code (71 P.S. §§ 613.11—613.18) to govern the licensure or certification of drug and alcohol recovery houses. The statutory and regulatory requirements for compliance are the same regardless of whether drug and alcohol recovery houses are licensed or certified. The Department chose to use the term “licensure” for this final-omitted rulemaking of drug and alcohol recovery houses. The Department already licenses treatment facilities for individuals who have SUD. Although drug and alcohol recovery houses are not treatment facilities, the Department wants to maintain consistency in the processes for the application, inspection and approval of all the entities it regulates. In addition, there are private organizations such as the National Association of Recovery Residences (NARR) and its affiliate, the Pennsylvania Association of Recovery Residences (PARR), that certify drug and alcohol recovery houses for compliance with their standards. Several stakeholders have asked whether certification by NARR or PARR is sufficient to meet the regulatory requirements for licensure. While NARR, PARR and other similar organizations provide valuable resources to their members, their standards do not meet all statutory or regulatory requirements for licensure. The Department’s use of the term “licensure” will reduce this confusion between compliance with this final-omitted rulemaking and other standards within the drug and alcohol recovery house community. Section 2313-A identifies twelve specific areas the Department must include in this final-omitted rule-

making for the licensure of drug and alcohol recovery houses. The Department addressed those areas in the following sections:

- § 717.22(b)(2) (relating to beginning of residency) requires drug and alcohol recovery houses to have a policy that ensures that residents are informed of house rules, residency requirements and lease agreements.

- § 717.16 (relating to fiscal management) requires drug and alcohol recovery houses to have policies and procedures for management of funds received and expended in accordance with standard accounting practices, including funds received from or managed on behalf of residents.

- § 717.17(b)(7) (relating to personnel management) requires drug and alcohol recovery houses to have policies regarding criminal background checks for operators and employees.

- § 717.25(b)(5) (relating to financial transactions) requires drug and alcohol recovery houses to have a policy that no owner, employee, house officer or related individual shall directly or indirectly solicit or accept a commission, fee or anything of monetary or material value from residents, other related individuals, third party entities or referral sources, beyond specified rent established in writing at the time of residency.

- § 717.30 (relating to safety and emergency procedures) requires drug and alcohol recovery houses to have policies and procedures addressing the safety and protection of residents.

- § 717.28(1) (relating to resident requirements) requires drug and alcohol recovery houses to have policies that promote recovery by requiring resident participation in treatment, self-help groups or other recovery supports.

- § 717.28(2) requires drug and alcohol recovery houses to have policies requiring abstinence from alcohol and illicit drugs.

- § 717.24 (relating to medication control and self-administration) requires drug and alcohol recovery houses to have procedures regarding appropriate use and security of medication.

- § 717.30(c) and (d) require drug and alcohol recovery houses to maintain the property in which the house is located, including the installation of functioning smoke detectors, carbon monoxide detectors and fire extinguishers and compliance with local fire codes.

- § 717.25(b)(1) requires drug and alcohol recovery houses to have policies and procedures which prohibit an owner, house administrator or employee from requiring a resident to sign any document for the purpose of relinquishing the resident's public assistance benefits, including, but not limited to, medical assistance benefits, cash assistance and Supplemental Nutrition Assistance Program benefits.

- § 717.32 (relating to complaints about drug and alcohol recovery houses) provides the Department's policies and procedures for managing complaints.

- § 717.27 (relating to notification to family member or emergency contact) requires drug and alcohol recovery houses to notify a family member or other emergency contact designated by the resident under certain circumstances, including death due to an overdose.

Applicants will submit policies and procedures as attachments to the online licensing application. Staff, within the Department's Division of Licensing Operations, Bureau of Program Licensure, will review and approve

each applicant's policies and procedures that comply with regulatory requirements. During licensing inspections, staff, within the Department's Recovery House Licensing Section, Bureau of Program Licensure, will determine whether the drug and alcohol recovery house licensee, staff and volunteers are following approved policies and procedures. Department staff will raise any questions or concerns relating to policies and procedures during the licensing or inspection processes. This process gives licensees the flexibility to set their own standards to meet the needs of their residents while the Department can review and oversee their implementation to protect the health and safety of residents in this Commonwealth seeking drug and alcohol recovery housing as part of their recovery journey.

In addition to these requirements, section 2318-A of the Administrative Code (71 P.S. § 613.18) states that, "In order to receive and maintain licensure or certification, a drug and alcohol recovery house must be in compliance with all Federal, State and local laws, including, but not limited to, the Americans with Disabilities Act of 1990 (Pub.L. No. 101-336). Failure to comply or remain in compliance shall result in loss of licensure or certification and removal from the registry" of licensed drug and alcohol recovery houses on the Department's web site. The Department included this provision in § 717.29 (relating to physical plant standards).

The Department distributed a draft of the regulation to a listserv on May 14, 2019, with a request for written comments, suggestions and objections by June 13, 2019. At the time of distribution, the listserv was comprised of 430 individuals including recovery house operators, drug and alcohol and recovery organizations, advocates, public officials and others who had contacted the Department with interest in receiving updates on the recovery house licensure process. The Department received a total of 62 letters and e-mails representing 154 unique comments. These comments represented feedback from a broad spectrum of stakeholders, including current recovery house owners, local health or human services departments, or both, treatment providers and provider associations, State Representatives, Single County Authorities, and others.

The final-omitted regulatory package was originally submitted to the Independent Regulatory Review Commission (IRRC) on March 1, 2021, and withdrawn and resubmitted on March 15, 2021, to include additional forms. In response to comments submitted to IRRC and the Department from the regulatory community and those involved in the regulatory review process, the Department withdrew the regulation on April 9, 2021, to thoroughly review and address these concerns, and resubmitted on June 14, 2021. IRRC considered and disapproved the regulation at the July 15, 2021, public hearing. On August 24, 2021, the Department received IRRC's disapproval order which cited concerns regarding statutory authority; possible conflict with statute; consistency with the intent of the General Assembly; economic and fiscal impacts of the regulation; protection of the public health, safety and welfare; clarity and lack of ambiguity; reasonableness; implementation procedures and timetable for compliance; and compliance with the provisions in the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

Requirements

The following is a list of requirements for this final-omitted rulemaking, as well as a summary of the major comments received from the public and the Department's responses.

The most frequent comment that the Department received on the final-omitted regulation was the overall cost to comply to the standards. While the intention of Act 59 of 2017 is to set baseline standards for drug and alcohol recovery houses and provide protections for residents, several commentators suggested that some recovery houses would be unable to meet the standards in the regulation and operate without additional funding and referrals from the government. Several commentators added that recovery houses would have to increase rent to cover expenses, which would be difficult for residents.

Five commentators stated that recovery houses which already comply with other standards, such as NARR or Oxford House International, should already be sufficiently compliant for licensure through the Department. One commentator asked whether the Department would consider a waiver system for inspections if the house is certified or inspected by Single County Authorities.

Ten commentators stated that the regulation should not be placed within Chapter 709 (relating to standards for licensure of freestanding treatment facilities) because it could lead to discriminatory zoning. Fourteen commentators asked why “drug and alcohol recovery house services” was listed with residential treatment and rehabilitation services and short-term detoxification under “Inpatient nonhospital activity.” Two commentators asked for clarification regarding what the term “drug and alcohol recovery house services” means.

Three commentators stated that permitting public entities to make referrals only to licensed recovery houses would limit options for individuals in need.

Response

The Department understands that there will be both upfront and ongoing costs to comply with the standards for drug and alcohol recovery house licensure, and that many of these costs may lead to increases in the residents’ rent. Prospective residents deciding between licensed and unlicensed recovery houses will benefit from the staff training requirements, physical plant, safety and ethical standards, and support for all forms of drug and alcohol treatment, including medication-assisted treatment, that comes with a recovery house licensed by the Department. Licensed recovery houses will see revenue in the form of government funding, increased referrals and publicity for meeting the licensing standards. Furthermore, since the original draft of the regulation was distributed to stakeholders in May 2019, the Department has significantly reduced costs by removing requirements for fire escapes and annual financial audits.

The Department is aware that other organizations, such as NARR and Oxford House International, already hold certain recovery housing communities to particular quality standards and some of these organizations have their own certification programs. Not all of the provisions required by Act 59 of 2017, however, are required for certification by these organizations and programs. Therefore, drug and alcohol recovery houses certified by these organizations are not necessarily compliant with statutory and regulatory requirements for licensure.

The Department does not want to create any confusion nor give the impression that recovery houses are treatment facilities. The Department has moved the regulation out of Chapter 709 and into Chapter 717 (relating to Standards for Drug and Alcohol Recovery House Licensure). Housing in a drug and alcohol recovery house is no longer listed as an inpatient nonhospital activity. Because the Department is creating a new chapter, it is

adding §§ 717.4, 717.5 and 717.7—717.13, relating to regulatory exceptions, the inspection and licensure process, and appeals. These new sections are substantially similar to existing §§ 709.4, 709.5 and 709.12—709.18 that are applicable to freestanding drug and alcohol treatment facilities. The Department revised those existing sections in adding them to Chapter 717 to apply specifically to drug and alcohol recovery houses and for consistency with the *Pennsylvania Code and Bulletin Style Manual, Fifth Edition*.

There is no data to suggest that permitting referrals by public agencies only to licensed recovery houses will limit options to individuals in need. With roughly 600 recovery house operators already expressing interest in licensure, plus an unknown number of additional licensees, the Department expects there will be significant capacity for licensed recovery houses. Furthermore, neither the law nor the regulation precludes entities from providing information about housing options outside of licensed recovery houses to individuals in need.

§ 717.1. Scope

The Department adds this section to establish the scope for Chapter 717 regarding standards for drug and alcohol recovery house licensure. This includes scope standards and procedures for issuance of a drug and alcohol recovery house license.

§ 717.2. Legal base

The Department adds this section to define the legal authority of the Department to license drug and alcohol recovery houses, which is established under section 2312-A of the Administrative Code (71 P.S. § 613.12).

§ 717.3. Definitions

The Department adds this section to provide definitions for the purpose of this chapter. The first version circulated for stakeholder comments contained definitions of “license” and “licensee.”

Four original commentators asked for a definition of “volunteer.”

Four original commentators asked for a definition of “hours of operation.”

Six original commentators asked for a definition of a “provisional license.”

IRRC suggested adding definitions of “full license,” “illicit drug” and “provisional license.”

Response

The Department adds definitions of “full license,” “illicit,” “drug” and “provisional license” to this section in response to IRRC’s recommendations. The Department also added a definition of “drug and alcohol recovery house” to this section because it removed the definition from § 701.1. The Department adds a definition of “volunteer.”

The only mention of “hours of operation” in the original draft regulation was in § 717.18 (relating to training). The Department has removed the requirement that at least one person trained in CPR be onsite during the recovery house’s hours of operation, so this definition is no longer necessary.

The provisional licensure process is described in § 717.8 (relating to provisional licensure).

§ 717.4. Exceptions

The Department adds this section to describe the process by which it may grant exceptions of extensions of

time to this chapter because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.4 (relating to exceptions) to apply to drug and alcohol recovery houses and for consistency with the *Pennsylvania Code and Bulletin Style Manual, Fifth Edition*. In response to IRRC's concerns about ambiguity, the Department deleted the amendment to the similar provision in § 701.11 (relating to exceptions to this part).

§ 717.5. *Revocation of exceptions*

The Department adds this section to describe the process by which it may revoke an exception granted under this chapter because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.5 (relating to revocation of exceptions) to apply to drug and alcohol recovery houses and for consistency with the *Pennsylvania Code and Bulletin Style Manual, Fifth Edition*. In response to IRRC's concerns about ambiguity, the Department deleted the amendment to the similar provision in § 701.12 (relating to revocation of exceptions).

§ 717.6. *Application and renewal*

The Department adds this section to specify the licensing application and renewal process, including required policies, procedures, and fees.

One commentator asked if the licensee would have a timeframe to develop a manual of policies and procedures if not available at the time of application.

Two commentators asked if the application fee would be per house or per organization for an organization that operates multiples recovery houses.

One commentator stated that all drug and alcohol recovery houses owned by a single operator should be licensed if an operator opts to pursue licensure for at least one of their houses to avoid confusion whether the house may accept public funding or referrals.

Two commentators asked how often a license renewal is required.

One commentator asked if there would be a capacity-based application fee based on the number of beds.

One commentator stated that the application fee of \$250 is too high.

Response

As described in this section, the licensee is required to submit a copy of all policies and procedures at the time of application.

The application fee is per house, not per organization. The Department has clarified this in subsections (a) and (b) by stating that initial and renewed licenses must submit an application, policies and procedures, and application fee "for each drug and alcohol recovery house."

The Department will not require a drug and alcohol recovery house operator to license all of their houses if they only want to license one or several. To avoid confusion about which houses may accept public funding and referrals, the Department will include street address locations in the registry it will maintain on its web site under section 2315-A of the Administrative Code (71 P.S. § 613.15).

Renewal of a full license is annual, in accordance with section 2314-A(a) of the Administrative Code (71 P.S. § 613.14(a)).

There will not be an occupancy-based application fee based on the number of beds.

The Department determined that a \$250 application fee is appropriate and reasonable in comparison to fees required by other states and national organizations.

The Department will assess an additional fee of \$100 if a provisional license is issued due to a violation cited as a result of a complaint investigation. The Department may waive or reduce this fee when the licensee addresses the violation by implementing an approved plan of correction.

§ 717.7. *Full licensure*

The Department adds this section to describe the process by which the Department issues a license to a drug and alcohol recovery house because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.12 (relating to full licensure) to apply to drug and alcohol recovery houses and for consistency with the *Pennsylvania Code and Bulletin Style Manual, Fifth Edition*. The full license shall expire 1 year following the date it is issued.

§ 717.8. *Provisional licensure*

The Department adds this section to describe the process by which the Department issues a provisional license to a drug and alcohol recovery house because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.13 (relating to provisional licensure) to apply to drug and alcohol recovery houses and for consistency with the *Pennsylvania Code and Bulletin Style Manual, Fifth Edition*. The Department will assess a fee of \$250 for each issuance of a provisional license, and will issue a full license upon compliance with this section and receipt of the \$250 renewal fee.

§ 717.9. *Restriction on license*

The Department adds this section to establish the restrictions on the license and the situations in which the licensee shall notify the Department because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.14 (relating to restriction on licensure) to apply to drug and alcohol recovery houses.

§ 717.10. *Right to enter and inspect*

The Department adds this section to establish the Department's right to enter, visit and inspect a drug and alcohol recovery house license or applying for a license because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.15 (relating to right to enter and inspect) to apply to drug and alcohol recovery houses.

§ 717.11. *Notification of deficiencies*

The Department adds this section to describe the process by which the Department notifies the applicant or licensee of noncompliance with regulations because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.16 (relating to notification of deficiencies) to apply to drug and alcohol recovery houses and for consistency with the *Pennsylvania Code and Bulletin Style Manual, Fifth Edition*. After an inspection, the Department will discuss all deficiencies with the applicant or licensee during an exit interview, followed by written notice of deficiencies by means of a

follow-up e-mail. The applicant or licensee has 15 working days to submit a plan to correct noncompliance. The Department will renew a license upon approving a plan of correction. The Department will issue a license to an applicant once it has verified that the applicant has corrected all noncompliance. The Department will use a method of verification appropriate to the deficiency, such as an additional inspection or submission of photographs or documentation to show that the deficiency has been corrected.

§ 717.12. *Refusal or revocation of license*

The Department adds this section to describe the reasons and process for refusal or revocation of a license because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.17 (relating to refusal or revocation of license) to apply to drug and alcohol recovery houses.

§ 717.13. *Hearings*

The Department adds this section to describe the process for hearings because the existing process for treatment facilities will not apply to drug and alcohol recovery houses. The Department is updating the existing provisions in § 709.18 (relating to hearings) to apply to drug and alcohol recovery houses and for consistency with the *Pennsylvania Code and Bulletin Style Manual, Fifth Edition*.

§ 717.14. *Fines*

The Department adds this section to explain the Department's policy for imposing fines on the operators of unlicensed recovery houses in accordance with section 2316-A(a) of the Administrative Code (71 P.S. § 613.16(a)).

Section 2314A(c)(1)(iii) of the Administrative Code states that the Department shall establish "a fee for investigation of complaints."

This section will become effective 180 days after publication of this final-omitted rulemaking to avoid disruption of services for drug and alcohol recovery houses that currently receive funds and referrals from public sources. This time period should allow currently operating drug and alcohol recovery houses the opportunity to submit applications and obtain licenses. Because the Department is applying this effective date to all drug and alcohol recovery houses, it is not exercising its discretion under section 2314-A(b) of the Administrative Code to deem existing drug and alcohol recovery houses that have previously been inspected and that document compliance with this final-omitted rulemaking within 180 days after promulgation of this final-form rulemaking as licensed. Instead, all drug and recovery houses must submit applications and obtain licenses in compliance with this final-form rulemaking within 180 days. Two commentators asked how the Department defined whether a recovery house "requires a license," as any house that requires a license but operates without one will be fined.

Response

As specified in section 2313-A of the Administrative Code, "any recovery house that receives funds or referrals from the Department, or a Federal, State or other county agency" will require a license.

§ 717.15. *House manager*

The Department adds this section to specify the responsibilities and training requirements of drug and alcohol recovery house managers.

One commentator noted that peer-operated homes that are eligible for certification by the NARR may not have a house manager. Another commentator asked for clarification on whether the president of an Oxford House would qualify as a house manager. Another commentator asked whether there are any education or work experience requirements to be a house manager.

Two commentators stated that a change in a house manager can be a frequent occurrence and notifying the Department each time would be burdensome.

Two commentators suggested that the Department add a timeframe for the house manager to complete training after being hired. Two commentators stated that 12 hours of training annually would be financially burdensome.

One commentator suggested renaming several of the training areas as follows: "Substance abuse trends" to "Trends in drug use and misuse;" "Disease of addiction" to "Substance use disorders;" "Principles of Alcoholics Anonymous and Narcotics Anonymous" to "Peer support or mutual aid groups;" and "Medication control and self-administration" to "Best practices for medication control and self-administration."

Response

The Department has determined that each licensee must designate a house manager who is responsible for overall management of the drug and alcohol recovery house. The Department permits the licensee to decide the criteria to designate a house manager responsible for obtaining the trainings and performing the duties outlined in this section. These criteria may include specific education or work experience requirements, if the licensee desires. In the self-governing, democratically-run Oxford House model, the president is charged with moderating discussion during regular business meetings. A licensee of an Oxford House may choose to have the president serve as house manager if the licensee desires.

The Department recognizes that while house managers may change frequently, it is important for the Department to maintain accurate contact information records for each recovery house for communication purposes. For the Department to maintain accurate records for each house, this final-omitted rulemaking now requires that the licensee notify the Department of any changes in house manager within 30 calendar days.

The Department agrees with both suggestions regarding training and revised this final-omitted rulemaking to require 6 hours of training within 6 months of hiring and annually thereafter.

The Department agrees with the suggested renaming of training areas and has revised this final-omitted rulemaking accordingly.

§ 717.16. *Fiscal management*

The Department adds this section to specify the licensee's requirements to develop and implement policies and procedures for management of all funds received and expended by the drug and alcohol recovery house.

The Department received 16 comments stating concern that an annual financial audit is too costly. One commentator suggested that audits should only be required for larger recovery houses (for example, houses with ten or more residents).

One commentator suggested that the annual audit be conducted either randomly, or at a specific time each year.

Response

Section 2313-A(2) of the Administrative Code requires that this final-omitted rulemaking include policies and procedures for management of funds received and expended by the recovery house. In the regulation submitted to IRRC in June 2021, the Department had required an annual financial audit to ensure that this Commonwealth's most vulnerable populations were protected from financial exploitation, and that a licensee receiving State or Federal funds and public referrals was appropriately managing their finances. In response to comments about the cost associated with an annual audit, the Department changed the regulation to require an audit of the drug and alcohol recovery house's operations every 2 years. In IRRC's disapproval order to the Department, however, the Commission expressed continued concern that a biennial audit imposes a significant cost and is not within the Department's statutory authority.

In response, the Department revised this section to remove the requirement for an audit. Instead, the Department will require drug and alcohol recovery houses to maintain itemized records and documentation of revenues and expenditures in accordance with the statutory requirement of section 2313-A(2) of the Administrative Code that the regulations include policies and procedures for management of all funds in accordance with standard accounting practices, including funds received from or managed on behalf of residents of the drug and alcohol recovery house. In the event of a complaint about fiscal management from residents or members of the public, the Department will pursue further investigation into the documentation.

§ 717.17. *Personnel management*

The Department adds this section to specify the licensee's requirement to develop and implement written policies and procedures related to employing drug and alcohol recovery house staff and volunteers, including requirements for what information must be maintained in personnel records.

Five commentators asked what aspects of the Pennsylvania State Police Criminal history record check would disqualify an individual from being hired or volunteering, particularly because many individuals who work in recovery houses may have a criminal history.

Three commentators stated that criminal background checks were costly and that requiring them prior to hiring is unreasonable. One commentator asked who pays for the background check.

Two commentators stated that inflexible policies on relapse are not a best practice in supporting individuals in recovery.

Two commentators noted that a requirement for annual staff written performance reviews was too intensive.

Response

Section 2333(3) of the Administrative Code requires that the regulations for drug and alcohol recovery houses include "policies regarding criminal background checks for operators and employees of the drug and alcohol recovery house." Neither the statute nor the regulation requires that the results of a background check disqualify a staff person or volunteer. The Commonwealth courts have held that automatic disqualification of an applicant based solely on a past criminal conviction is unconstitutional. *See, e.g., Nixon v. Dept of Pub. Welfare*, 839 A.2d 277 (Pa. 2003); *Warren County Human Servs. v. State Civil Serv. Comm'n (Roberts)*, 844 A.2d 70 (Pa. Commw. 2004); *Peake v. Com.*, 132 A.3d 506 (Pa. Commw. 2015).

The Department gives discretion to each licensee to develop a policy regarding the results of a background check. Licensees should consider all factors that an applicant presents, including past criminal convictions and steps at rehabilitation, and make decisions about the applicant's suitability for the specific position, consistent with the Criminal History Record Information Act, specifically 18 Pa.C.S. § 9125 (relating to use of records for employment). The Department understands that background checks may delay hiring of staff. According to the Pennsylvania Access to Criminal History (PATCH) web site, 85% of "No Record" certificates are returned immediately to the requestor online. There is no fee for obtaining a Pennsylvania State Police background check for volunteers. It is the responsibility of the licensee to pay for the background checks of staff.

The provision related to relapse refers to recovering staff and volunteers, not residents. The Department agrees with the commentators that inflexible policies on relapse are not a best practice in supporting individuals in recovery and encourages licensees to develop thoughtful policies and procedures in this area.

The Department agrees that annual staff written performance reviews was unnecessarily burdensome and has removed the requirement from this section.

§ 717.18. *Training*

The Department adds this section to specify the licensee's requirement to develop written staff development policies and procedures, as well as training requirements for staff and volunteers.

Eleven commentators stated that the training requirements were unrealistic and unduly burdensome. Three commentators stated that time requirement for trainings should be condensed. One commentator stated that the cardiopulmonary resuscitation (CPR) training requirement was unnecessary, as houses may adequately rely on emergency medical services.

Four commentators suggested including an additional training requirement for naloxone administration and recognizing the signs of an overdose.

One commentator suggested that trainings should be completed earlier than 1 year after hiring due to staff turnover.

Response

In response to the comments about burdensome training requirements, the Department deleted the time requirements for 6 hours of HIV/AIDs training and 4 hours of tuberculosis and sexually transmitted disease training as well as the requirement for "other health-related disease topics" trainings. The Department deleted the requirement that one person trained in CPR and first aid must be onsite during the recovery house's hours of operation. CPR training, however, is still required for staff persons and volunteers due to the increased risk of overdose in this population.

The Department adds "training on overdose reversal medication" as part of "first aid training."

The Department shortened the time for staff and volunteers to complete the required training from 1 year to 90 days.

§ 717.19. *Resident rights*

The Department adds this section to describe what must be included in the licensee's policies and procedures on resident rights.

Two commentators suggested that residents should have to disclose their biological sex if their gender identity does not align with their sex assigned at birth. The reason is that fellow residents who have previously experienced trauma may be uncomfortable sharing a living space with a transgender individual.

Response

The specific provision in this final-omitted rulemaking is related to the licensee developing and implementing written policies and procedures on resident rights, which must include, among other things, that “the licensee may not discriminate against a resident on the basis of age, race, sex, religion, ethnic origin, economic status, sexual orientation or gender identity or expression or disability.” A wide range of situations may arise to the level of the house manager and licensee that could be perceived as threatening the comfort, safety and protection of all residents in the house. While a licensee may or may not have the means to provide for an LGBTQIA-friendly physical plant, such as single bedrooms and all-gender bathrooms, all residents must understand that the licensee may not discriminate against a resident, staff person or volunteer on the basis of gender identity. If there is discomfort among residents due to any range of situations, including a resident’s gender identity, the licensee must resolve it on a case-by-case basis in accordance with applicable policies and procedures.

§ 717.20. *Resident records*

The Department adds this section to specify contents and storage requirements for resident records.

One commentator asked for clarification of the term “standardized record form.”

Five commentators asked for more details about what information is required in the “medical history” record.

Response

The Department has deleted the requirement to obtain a “standardized record form” at the beginning of residency.

The Department has deleted the mention of a “medical and drug or alcohol history” in this section and now provides additional detail in § 717.22(b)(3). Medical history refers to “medical information provided by the resident, including allergies, asthma, seizure disorder, diabetes, pacemaker, and other medical conditions that the resident chooses to have the house record.”

§ 717.21. *Resident roster*

The Department adds this section to specify the contents and storage requirements for the drug and alcohol recovery house’s resident roster. The resident roster must identify the date of each resident’s beginning and end of residency or completion of residency by meeting a resident’s treatment, personal or financial goals or social-emotional or other needs. This information must be stored in a locked cabinet or in a protected digital data system, and must be maintained for each resident for at least 4 years following their ending or completion of residency.

§ 717.22. *Beginning of residency*

The Department adds this section to specify policy and procedure requirements for beginning of residency.

One commentator requested that the Department add inclusion criteria for establishing a waitlist as part of this final-omitted rulemaking.

One commentator suggested that each new admitted resident sign a contract stating that the resident must follow treatment recommendations, undergo mandatory and random drug screens, follow a plan if they relapse, and other items as deemed appropriate.

Response

Licensees may establish their own criteria for a waitlist as part of the policies and procedures for their recovery house.

As part of the process of beginning residency, residents must undergo orientation to “drug and alcohol recovery house rules” under subsection (b)(2)(i). If the licensee sets specific rules, these may be part of the resident document signed within 24 hours of arrival.

§ 717.23. *Notification of decision to end residency*

The Department adds this section to specify requirements for notifying residents of a licensee’s decision to end their residency. A licensee’s decision to end residency should be based on criteria under § 717.22(a)(3) (relating to beginning of residency). A resident may also decide to end their residency without providing a reason to the licensee.

Two commentators were concerned about the legal ramifications of using the term “eviction.”

One commentator stated that a timeframe for ending a residency should be detailed in the policy because many residents may be far from their original hometowns. Two commentators suggested that ending residency should be immediate if the individual relapses.

Response

The Department deletes the term “eviction” throughout this final-omitted rulemaking and replaced with “ending residency.”

The Department updates subsection (a) to require that a notice of ending residency “include the reason and a timeframe.”

§ 717.24. *Medication control and self-administration*

The Department adds this section to specify requirements for policies and procedures on the use of prescription and over-the-counter medications by residents.

Four commentators asked if the policies and procedures on the use of prescription and over-the-counter medications would include specific language requiring admission of individuals who receive medication-assisted treatment (MAT).

Two commentators stated that residents will administer their own medications, as there is no way for the recovery house to track this information.

Response

Licensed recovery houses that receive funds or referrals from the Department, or a Federal, State or other county agency may not discriminate against individuals who receive MAT or any other form of treatment. Under § 717.19(a)(6) (relating to residents rights), “Residents may attend a treatment facility of their choice outside of the drug and alcohol recovery house. The licensee may not require a resident to attend or prohibit a resident from attending a specific treatment facility.”

This final-omitted rulemaking does not prohibit residents from administering their own medications. The licensee must “develop and implement written policies and procedures on the use of prescription and over-the-counter medications by residents,” which included both

“self-administration and drug and alcohol recovery house tracking of medication for residents who take medication.” To eliminate confusion, the Department deletes the requirement that drug and alcohol recovery houses develop and implement policies and procedures for tracking medication.

§ 717.25. *Financial transactions*

The Department adds this section to require policies and procedures for resident fee collection by drug and alcohol recovery house staff. This section also describes requirements for recovery house licensees that assist a resident in financial matters, while affording the resident protection from financial exploitation.

One commentator requested a provision about residents forfeiting their security deposits if they break house rules or leave the house without following proper protocols.

Response

The Department adds the word “due” to subsection (a)(2): “Documentation that the drug and alcohol recovery house returned all deposits due to the resident when the resident departed the drug and alcohol recovery house, signed and dated by the licensee and resident.”

§ 717.26. *Complaint management*

The Department adds this section to describe requirements for policies and procedures to manage complaints from residents, family members, and community members.

Two commentators suggested that community members filing a complaint may be problematic because not all communities are welcoming to recovery houses.

Response

The Department understands that not all communities and neighbors may be welcoming to recovery houses. A mechanism is still needed, however, for both the recovery house as well as the Department to receive any complaints from residents, family members and community members. Clear policies and procedures will be important to ensure that complaints are managed properly.

§ 717.27. *Notification to family member or emergency contact*

The Department adds this section to require licensees to develop policies and procedures for notifying the resident’s emergency contact of the resident’s hospitalization or death.

Two commentators suggested an additional policy be required to notify a resident’s emergency contact if the resident moves out or is absent for a prolonged period of time.

Response

There are a wide range of situations in which it may be appropriate for recovery house staff to notify a resident’s emergency contacts. The Department has clarified this requirement to say, “The licensee shall develop and implement written policies and procedures that specify the circumstances, including the resident’s hospitalization or death, for notifying the resident’s emergency contact.” The Department also requires the licensee to attempt to notify the resident’s emergency contact when the resident decides to end residency or does not return at the expected time in accordance with the act of June 30, 2021 (P.L. 186, No. 35), which added section 2319-A to the Administrative Code (71 P.S. § 613.19) and is commonly referred to as Justin’s Law.

§ 717.28. *Resident requirements*

The Department adds this section to require licensees to develop policies and procedures to require resident participation in treatment and abstention from use and sale of alcohol and illicit drugs. The drug and alcohol recovery house should develop policies and procedures that support attendance and participation in treatment and compliance with any clinical treatment plans and recommendations during residency.

§ 717.29. *Physical plant standards*

The Department adds this section to describe physical plant requirements for drug and alcohol recovery house licensure including compliance with the Americans with Disabilities Act of 1990 (Pub.L. No. 101-336), conditions of buildings and grounds, furnishings, bedrooms, bathroom, kitchens, and heating and cooling systems.

One commentator asked whether a mechanical dryer or paper towels are required in bathrooms and hand towels are not sufficient.

Two commentators stated the square footage requirements may reduce capacity.

Two commentators stated that fire-retardant mattresses would be cost-prohibitive.

Response

This final-omitted rulemaking now states that the licensee shall provide either individual towels, paper towels or a mechanical dryer in each bathroom.

The Department understands that square footage requirements may reduce the maximum occupancy for the recovery house. These requirements, however, are consistent with current regulations for residential facilities and comparable to other states with regulations for recovery houses to ensure health and safety of residents.

Since 2007, all mattresses manufactured and sold in the United States must meet minimum flammability standards developed by the U.S. Consumer Product Safety Commission (<https://www.cpsc.gov/Business—Manufacturing/Business-Education/Business-Guidance/Mattresses>). The Department does not agree that fire-retardant mattresses are excessively cost-prohibitive due to the range of mattress brands and models available.

§ 717.30. *Safety and emergency procedures*

The Department adds this section to specify requirements for safety and emergency procedures of the drug and alcohol recovery house, including evacuation of residents and staff, requirements for exits, and fire safety procedures.

Fourteen commentators stated that installing fire escapes would be too expensive. Nine commentators stated that it would not be possible to have two exits on every floor. Commentators who contacted the Department after the initial submission of the regulation stated that it would prohibit common activities, such as residents using laundry facilities in a home’s basement.

Ten commentators stated that certain renovations, such as exterior fire escapes, may not be permitted in certain townships.

Response

The Department understands that fire exit installation is costly. While the risk of a fire may be relatively low, the consequences of a fire can be devastating. According to the U.S. Fire Administration, the relative risk of dying in a fire in this Commonwealth is slightly higher than that

of the U.S. general population (https://www.usfa.fema.gov/data/statistics/fire_death_rates.html). Furthermore, several research studies have reported that a higher number of residents in a home is one of the factors that increases a risk for house fire the most—similar to smoking, having young children in the house, and having a building in poor condition. The purpose of providing regulations for recovery houses is to create standards for the safety and protection of this vulnerable population in this Commonwealth. Therefore, the Department believes it is necessary to require two exits in the event of a fire. The regulation initially submitted required a minimum of two exits on every floor to which the residents have access. In response to comments received after the regulation was initially submitted, the Department changed this final-omitted rulemaking to require a minimum of two exits on every floor where there is a resident bedroom. The Department also changed this final-omitted rulemaking to require that fire exit equipment must be securely affixed to the house. Retractable or drop-down fire ladders, fire escapes or other types of exits that are attached to the house in at least one point will meet this requirement.

If there is a situation in which required renovations are in direct conflict with local requirements, the Department will consider waiver requests on a case-by-case basis.

A recovery house must have at least one portable fire extinguisher with a minimum of an ABC rating for every 2,000 square feet of space and fraction of it on each floor. A floor with 2,000 square feet or less would need one fire extinguisher. A floor with 2,001 square feet would need two fire extinguishers: one for the 2,000 square feet of space and an additional fire extinguisher for the additional fraction of space in excess of 2,000 square feet.

§ 717.31. Unusual incidents

The Department adds this section to specify requirements for policies and procedures to respond to and document unusual incidents that occur at the drug and alcohol recovery house. Unusual incidents involving physical or sexual assault by a staff, a volunteer or a resident must be documented regardless of whether they occur on or off site of the recovery house.

One commentator stated that reporting the use or sale of illicit drugs on the premises as an “unusual incident” was too strong and recommended changing this provision to “continued” or “repeated use.”

One commentator stated that an unusual incident report should also be filed with a contracting entity, such as a Single County Authority, if applicable.

IRRC asked which contagious diseases must be reported to the CDC and whether the Department will require reporting under the Disease Prevention and Control Law of 1955 (35 P.S. §§ 521.1—521.21).

Response

The Department gives discretion to the licensee to determine its own policies and procedures for responding to the provision of use of illicit drugs on the premises of the recovery house. The only unusual incidents that must be reported to the Department, however, include assault, death or serious injury, natural disaster, an event that requires the presence of first responders or disease outbreak. See § 717.31(c).

This final-omitted rulemaking requires only that the Department as the licensing agency receive unusual incident reports. A licensee may include additional reporting to Single County Authorities in its policies.

In response to IRRC’s comments, the Department adds subsection (d), which requires reporting to other agencies as required by applicable law, including the Disease Prevention and Control Law of 1955. The diseases that must be reported to the CDC are listed on the CDC web site at <https://ndc.services.cdc.gov/>. The Department will provide notice to licensees if it learns that they must access that list of reportable diseases elsewhere.

§ 717.32. Complaints about drug and alcohol recovery houses

The Department adds this section to describe how the Department will accept and manage complaints about drug and alcohol recovery houses from individuals. The Department will accept and investigate anonymous complaints. The Department will honor requests by complainants who provide their names and contact information to remain anonymous to the extent it is able. The Department may have to provide that information if it is required by law, such as in response to a subpoena or as ordered by a court. Any complaints that allege a direct threat to the health or safety of a resident will be investigated by the Department within 2 business days.

§ 717.33. Drug and alcohol recovery house registry

The Department adds this section to describe how the Department will create and maintain its registry of licensed drug and alcohol recovery houses. As required by section 2315-A of the Administrative Code, the registry shall be updated annually, though the Department will update more frequently, including timely removal of drug and alcohol recovery houses with revoked licenses. The public will be able to view the name, address, contact information, maximum occupancy, licensure status and any other information the Department determines is in the public interest. If an entity operates more than one drug and alcohol recovery license but does not license all of them, the registry will clearly identify licensed houses.

Affected Individuals and Organizations

This final-omitted rulemaking affects persons, businesses, and organizations that operate drug and alcohol recovery houses. However, this final-omitted rulemaking applies only to those drug and alcohol recovery houses that receive or wish to receive funds or referrals from the Department, or a Federal, State or county agency. In 2018, the Department created an online listserv for recovery houses. Approximately 600 individuals have stated through the listserv their intent to seek licensure, with some individuals operating several houses.

Accomplishments and Benefits

The final-omitted rulemaking establishes the minimum requirements for licensure of recovery houses in this Commonwealth that receive funds or referrals from the Department, or a Federal, State or other county agency. These requirements will increase the quality and accountability of recovery houses and the services they provide and improve the health and safety of individuals on their path to recovery.

Fiscal Impact

Drug and alcohol recovery houses will pay a license application or renewal fee of \$250 per house. They may incur additional costs to meet standards for compliance with the physical plant requirements in this final-omitted rulemaking. These costs will vary based upon the current status of the residence. Drug and alcohol recovery houses will also need to obtain the services of an independent certified public accountant to audit activities of management of funds in accordance with standard accounting

practices every 2 years. According to the National Council of Nonprofits, “it is not unusual for an independent audit to cost \$10,000” (<https://www.councilofnonprofits.org/nonprofit-audit-guide/what-is-independent-audit>).

The Department estimates it will incur approximately \$341,411 in annual administrative costs during the first year, and \$323,411 during subsequent years, to implement this final-omitted rulemaking. Administrative costs include hiring two Drug and Alcohol Licensing Specialists and one Drug and Alcohol Licensing Specialist Supervisor, as well as costs associated with operation and fixed assets, which includes workstations, computers, software, telephones and lease space. If each of the approximately 600 parties who stated interest through the listserv files one or more applications, the \$250 application fee will generate at least \$150,000 in revenue. Remaining personnel costs will be covered by State funds, as well as a Federal block grant awarded to the Department.

Paperwork Requirements

The licensee of a drug and alcohol recovery house must obtain the services of an independent certified public accountant for a financial audit of the drug and alcohol recovery house’s operations every 2 years. Recordkeeping of personnel files must include application/resume for employment, a Pennsylvania State Police criminal history record check, any disciplinary actions and documentation of training. Recordkeeping of resident files must include a consent to residency form, referrals (if applicable) and beginning of residency documentation (criteria for residency, signed orientation paperwork, and basic personal, medical, and emergency contact information). Resident records must be maintained for at least 4 years following the ending or completion of residency. Licensees will have to develop and maintain policies and procedures as required by this final-omitted rulemaking. Furthermore, the regulated community must maintain a resident roster that identifies each beginning and end of residency, and completion of residency.

The Department will have additional paperwork, including a recovery house licensing checklist, a drug and alcohol recovery house licensing application, a license renewal form and a provisional license form. For payment of the \$250 application, renewal and provisional license fee, an online credit card payment system will be available for licensees.

Public Comment

Although this final-omitted rulemaking is being adopted without publication as a proposed rulemaking, interested persons are invited to submit written comments, suggestions or objections regarding this final-omitted rulemaking to Jordan Lewis, Policy Director, Department of Drug and Alcohol Programs, 2601 North 3rd Street, Harrisburg, PA 17110, (717) 736-7466, jorlewis@pa.gov. Comments will be reviewed and considered for any subsequent revision of this final-omitted rulemaking.

Sunset Date

There is no sunset date for this final-omitted rulemaking.

Effective Date

This final-omitted rulemaking will take effect upon publication in the *Pennsylvania Bulletin*, with the exception of § 717.14, which shall take effect 180 days after publication in the *Pennsylvania Bulletin*.

Contact Person

The agency contacts are Jordan Lewis, Policy Director, Department of Drug and Alcohol Programs, 2601 North 3rd Street, Harrisburg, PA 17110, (717) 736-7466, jorlewis@pa.gov; and Jodi Skiles, Bureau Director, Program Licensure, 2601 North 3rd Street, Harrisburg, PA 17110, (717) 736-7454, joskiles@pa.gov.

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on March 1, 2021, the Department originally submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Human Services Committee and Senate Health and Human Services Committee (Committees). On March 15, 2021, the Department withdrew and resubmitted the final-omitted rulemaking. The Department again withdrew the final-omitted rulemaking on April 9, 2021.

Under section 5.1(c) of the Regulatory Review Act, on June 14, 2021, the Department resubmitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Committees. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506). IRRC met on August 24, 2021, at which time the regulation was disapproved. IRRC issued its disapproval order on September 4, 2021.

Under section 7(c) of the Regulatory Review Act (71 P.S. § 745.7(c)), on October 1, 2021, the Department delivered to IRRC and the Committees a revised final-omitted rulemaking and report in response to IRRC’s disapproval order. Under section 7(c.1) of the Regulatory Review Act (71 P.S. § 745.7(c.1)), IRRC met on October 21, 2021, and approved the final-omitted rulemaking. Under section 7.1(d) of the Regulatory Review Act (71 P.S. § 745.7(d)), the final-omitted rulemaking was deemed approved by the committees on November 4, 2021.

Findings

The Department finds that:

(1) Under section 204(3) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204(3)) referred to as the Commonwealth Documents Law, a final-omitted rulemaking is allowed when procedures specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202), are “impracticable, unnecessary or contrary to the public interest.”

(2) Section 613.13 of the Administrative Code authorizes the Department to promulgate final-omitted regulations for the licensure of drug and alcohol recovery houses in this Commonwealth.

(3) The adoption of this final-omitted regulation is necessary and appropriate for the licensure of recovery houses in this Commonwealth.

Order

The Department, acting under authorizing statute, orders that:

(a) The regulations of the Department, 28 Pa. Code, are amended by adding §§ 717.1—717.33 to read as set forth in Annex A.

(b) The Department shall submit a copy of this final-omitted regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Department shall submit this final-omitted regulation to IRRC and the House Human Services and Senate Health and Human Services Committees as required by law.

(d) The Secretary of the Department shall certify this final-omitted regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-omitted regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*, with the exception of § 717.14, that shall take effect 180 days after publication in the *Pennsylvania Bulletin*.

JENNIFER S. SMITH,
Secretary

(*Editor's Note:* See 51 Pa.B. 7019 (November 6, 2021) for IRRC's approval order.)

Fiscal Note: 74-4. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART V. DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS

CHAPTER 717. STANDARDS FOR DRUG AND ALCOHOL RECOVERY HOUSE LICENSURE

| | |
|---------|---|
| Sec. | |
| 717.1. | Scope. |
| 717.2. | Legal base. |
| 717.3. | Definitions. |
| 717.4. | Exceptions. |
| 717.5. | Revocation of exceptions. |
| 717.6. | Application and renewal. |
| 717.7. | Full licensure. |
| 717.8. | Provisional licensure. |
| 717.9. | Restriction on license. |
| 717.10. | Right to enter and inspect. |
| 717.11. | Notification of deficiencies. |
| 717.12. | Refusal or revocation of license. |
| 717.13. | Hearings. |
| 717.14. | Fines. |
| 717.15. | House manager. |
| 717.16. | Fiscal management. |
| 717.17. | Personnel management. |
| 717.18. | Training. |
| 717.19. | Resident rights. |
| 717.20. | Resident records. |
| 717.21. | Resident roster. |
| 717.22. | Beginning of residency. |
| 717.23. | Notification of decision to end residency. |
| 717.24. | Medication control and self-administration. |
| 717.25. | Financial transactions. |
| 717.26. | Complaint management. |
| 717.27. | Notification to family member or emergency contact. |
| 717.28. | Resident requirements. |
| 717.29. | Physical plant standards. |
| 717.30. | Safety and emergency procedures. |
| 717.31. | Unusual incidents. |
| 717.32. | Complaints about drug and alcohol recovery houses. |
| 717.33. | Drug and alcohol recovery house registry. |

§ 717.1. Scope.

(a) This chapter establishes the procedures for the issuance of a drug and alcohol recovery house license.

(b) This chapter provides standards for the licensure of a drug and alcohol recovery house under subarticle B of Article XXIII-A of The Administrative Code of 1929 (71 P.S. §§ 613.11—613.18).

§ 717.2. Legal base.

The authority of the Department to license drug and alcohol recovery houses is established under section 2312-A of The Administrative Code of 1929 (71 P.S. § 613.12).

§ 717.3. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

Drug—As defined in section 2 of the Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-102).

Drug and alcohol recovery house—As defined in section 2311-A of The Administrative Code of 1929 (71 P.S. § 613.11).

Full license—A certificate issued by the Department when it has found a licensee in compliance with the requirements of this chapter.

Illicit—Unlawful for the person to possess under the laws of the Commonwealth of Pennsylvania.

License—A full or provisional certificate which indicates the Department has found a drug and alcohol recovery house to be in full or substantial compliance with the standards established under this chapter.

Licensee—A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a drug and alcohol recovery house to which the Department has issued a license.

Provisional license—A certificate issued by the Department when it has found the licensee in substantial but not complete compliance with the requirements of this chapter.

Volunteer—A person who assists in implementing daily program activities under the supervision of a project staff person or house manager without promise, expectation or receipt of compensation for services rendered.

§ 717.4. Exceptions.

(a) The Department may in its discretion grant exceptions or extensions of time to this chapter upon a showing by a drug and alcohol recovery house that it meets the policy objectives of this chapter. The Department will not grant an exception that violates any statute.

(b) A drug and alcohol recovery house shall submit all requests for exceptions in writing.

§ 717.5. Revocation of exceptions.

(a) The Department may revoke an exception granted under this chapter. The Department will provide a written notice of revocation that states the reason for the revocation and a specific date when the revocation will take effect.

(b) The Department will allow at least 30 days between the mailing date of the notice of revocation and the date of termination of an exception.

(c) A drug and alcohol recovery house may file a written appeal within 30 days of the mailing date of the notice of revocation of the exception.

§ 717.6. Application and renewal.

(a) An applicant for an initial license shall submit to the Department all of the following for each drug and alcohol recovery house:

(1) An application on a form prescribed by the Department.

(2) A copy of all policies and procedures required under §§ 717.17—717.19, 717.22, 717.24—717.28, 717.30 and 717.31.

(3) An application fee of \$250.

(b) A licensee applying for renewal of a license shall submit to the Department all of the following for each drug and alcohol recovery house:

(1) An application on a form prescribed by the Department.

(2) A copy of all policies and procedures required under §§ 717.17—717.19, 717.22, 717.24—717.28, 717.30 and 717.31 that have been revised since the previous application.

(3) A renewal fee of \$250.

(c) The Department will assess a fee of \$250 in addition to the fees in subsections (a) and (b) for each issuance of a provisional license under § 717.8 (relating to provisional licensure).

(d) The Department will assess a fee of \$100 in addition to the fees in subsections (a), (b) and (c) for issuance of a provisional license under § 717.8 based on a violation cited as a result of a complaint investigation. The Department may waive or reduce the fee under this subsection when the licensee fully implements an approved plan of correction.

(e) The Department will not issue or renew a license until the applicant or licensee has completed and submitted all forms, documents, and fees required under this section.

§ 717.7. Full licensure.

(a) The Department will issue a full license to operate the drug and alcohol recovery house when it determines, after an on-site inspection by an authorized representative of the Department, that the applicant or licensee has met the requirements for licensure under this chapter.

(b) The Department will issue a full license to an applicant or licensee and will indicate the name of the drug and alcohol recovery house, the address and the date of issuance.

(c) The full license shall expire 1 year following the date it is issued.

(d) The drug and alcohol recovery house shall display the current license in a public and conspicuous place in the drug and alcohol recovery house.

§ 717.8. Provisional licensure.

(a) The Department will issue a provisional license, valid for a specific time period of no more than 6 months when the Department finds that a drug and alcohol recovery house:

(1) has substantially, but not completely, complied with applicable requirements for licensure.

(2) is complying with a course of correction approved by the Department; and

(3) has existing deficiencies that will not adversely alter the health, welfare or safety of the residents.

(b) Within 15 working days of receipt of the deficiency report, the applicant or licensee shall submit a plan to correct deficiencies noted during the site visits.

(c) The Department will not renew a provisional license more than three times.

(d) The Department will issue a full license upon compliance with this part and receipt of the \$250 renewal fee.

(e) The drug and alcohol recovery house shall display the current license in a public and conspicuous place in the drug and alcohol recovery house.

§ 717.9. Restriction on license.

(a) A license applies to the licensee, the named drug and alcohol recovery house and the premises designated in the license and is not transferable prior to proper and timely notification as provided under subsection (b).

(b) The licensee, using Department forms, shall notify the Department within 90 days of the occurrence of any of the following conditions:

(1) Change in ownership.

(2) Change in name of the drug and alcohol recovery house.

(3) Change in location of the drug and alcohol recovery house.

(4) Change in maximum occupancy.

(5) Closing of the drug and alcohol recovery house.

(c) Failure to notify the Department as required under subsection (b) will result in automatic expiration of the license.

§ 717.10. Right to enter and inspect.

(a) An authorized representative of the Department has the right to enter, visit and inspect a drug and alcohol recovery house licensed or applying for a license under this chapter.

(b) The authorized Department representative shall have full and free access to the records of the drug and alcohol recovery house and its residents.

(c) The authorized Department representative has the right to interview residents as part of the visitation and inspection process.

§ 717.11. Notification of deficiencies.

(a) The Department will provide written notice to the applicant or licensee of any noncompliance with regulations, along with instructions for the applicant or licensee to submit and complete a plan to correct the noncompliance.

(b) The applicant or licensee shall complete and submit the plan to correct the noncompliance in accordance with the instructions to the Department within 15 working days after the site visit.

(c) The Department will not renew a license until it has approved a plan of action. The Department will not issue a license to an applicant until the applicant has corrected all noncompliance.

§ 717.12. Refusal or revocation of license.

(a) The Department may revoke or refuse to issue a license for any of the following reasons:

(1) Failure to comply with a directive issued by the Department.

(2) Violation of, or noncompliance with, this chapter.

(3) Failure to comply with a plan of correction approved by the Department, unless the Department approves an extension or modification of the plan of correction.

(4) Gross incompetence, negligence or misconduct in the operation of the drug and alcohol recovery house.

(5) Fraud, deceit, misrepresentation or bribery in obtaining or attempting to obtain a license.

(6) Lending, borrowing or using the license of another drug and alcohol recovery house.

(7) Knowingly aiding or abetting the improper granting of a license.

(8) Mistreating or abusing residents at the drug and alcohol recovery house.

(9) Continued noncompliance in disregard of this part.

(10) Operating a drug and alcohol recovery house that, by nature of its physical condition, endangers the health and safety of the public.

(b) If the Department proposes to revoke or refuse to issue a license, it will give written notice to the applicant or licensee by certified mail, stating the following:

(1) The reasons for the proposed action.

(2) The specific time period for the drug and alcohol recovery house to correct deficiencies.

(c) If the drug and alcohol recovery house does not correct the deficiencies within the specified time, the Department will officially notify the applicant or licensee that it shall show cause why its license should not be denied or revoked under 1 Pa. Code § 35.14 (relating to orders to show cause), and that it has a right to a hearing authorized by the Department on this question. The applicant or licensee shall file a written request within 30 days of receipt of the show cause order.

(d) Subsection (c) supplements 1 Pa. Code § 35.14.

§ 717.13. Hearings.

(a) The Department will convene and conduct a show cause hearing for a drug and alcohol recovery house under 1 Pa. Code § 35.37 (relating to answers to orders to show cause) and this chapter.

(b) An administrative hearing held under this section will be conducted under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(c) The Department may institute legal proceedings to enforce compliance with this chapter.

(d) This section supplements 1 Pa. Code Part II.

§ 717.14. Fines.

(a) The Department will impose fines on the operator of an unlicensed recovery house in accordance with section 2316-A(a) of The Administrative Code of 1929 (71 P.S. § 613.16(a)).

(b) For purposes of a violation under section 2316-A(a) of The Administrative Code of 1929, each day of operating a drug and alcohol recovery house that requires a license without a current license shall constitute a separate violation.

§ 717.15. House manager.

(a) The licensee shall designate a house manager to be the administrator of the drug and alcohol recovery house who is responsible for the management of the drug and alcohol recovery house, staff and volunteers.

(b) The licensee shall identify the house manager in the application submitted to the Department and shall notify the Department in writing any time the house manager changes within 30 days.

(c) The house manager shall complete at least 6 hours of training in one or more of the following areas within 6 months of becoming house manager, and annually thereafter:

(1) Fiscal policy.

(2) Administration.

(3) Program planning.

(4) Quality assurance.

(5) Program licensure.

(6) Personnel management.

(7) Confidentiality.

(8) Ethics.

(9) Trends in drug use and misuse.

(10) Developmental psychology.

(11) Interaction of addiction and mental illness.

(12) Cultural awareness.

(13) Sexual harassment.

(14) Relapse prevention.

(15) Substance use disorders.

(16) Peer support or mutual aid groups.

(17) Best practices for medication control and self-administration.

(18) Infection control.

§ 717.16. Fiscal management.

The licensee shall develop and implement written policies and procedures for management of all funds received and expended by the drug and alcohol recovery house in accordance with standard accounting practices, including an itemized record and documentation of all revenues and expenditures.

§ 717.17. Personnel management.

(a) The licensee shall develop and implement written personnel policies and procedures in compliance with State and Federal employment laws, including:

(1) The Pennsylvania Human Relations Act (43 P.S. §§ 951—963).

(2) Title VII of the Civil Rights Act of 1964, (Pub.L. No. 88-352).

(3) Title I of the Americans with Disabilities Act of 1990, (Pub.L. No. 101-336).

(4) The Age Discrimination in Employment Act of 1967, (29 U.S.C.A. §§ 621—634).

(b) The written policies and procedures must include all of the following:

(1) Use of volunteers.

(2) Rules of conduct.

(3) Supervision of staff.

(4) Orientation of new employees.

(5) Prohibition on providing or using alcohol or illicit drugs on the premises of the drug and alcohol recovery house, including consequences for a violation of the policy.

(6) Relapse of recovering staff and volunteers, including consequences for a violation of the policy.

(7) Completion of a Pennsylvania State Police criminal history record check for the house manager, all staff and volunteers before engaging in work at the drug and alcohol recovery house.

(c) The licensee shall maintain a personnel record for the house manager and each staff person and volunteer, which must include all of the following:

(1) Application or resume.

(2) A Pennsylvania State Police criminal history record check.

(3) Disciplinary actions.

(4) A written job description for each drug and alcohol recovery house position.

(5) Documentation of training.

§ 717.18. Training.

(a) The licensee shall develop and implement written staff development policies and procedures that identify the person responsible and the time frames for completion of all of the following:

(1) An assessment of training needs for each staff person and volunteer.

(2) A plan for addressing those needs.

(3) A mechanism to collect feedback on completed training.

(b) The licensee shall conduct and document an evaluation of the training plan annually.

(c) In addition to training identified and provided under subsection (a), staff persons and volunteers shall complete all of the following within 90 days of becoming an employee or volunteer:

(1) Cardiopulmonary resuscitation (CPR) certification.

(2) First aid training, including training on overdose reversal medication.

(3) HIV/AIDS, tuberculosis and sexually transmitted diseases training using a Department approved curriculum.

(4) Fire prevention and emergency preparedness, including use of a fire extinguisher.

§ 717.19. Resident rights.

(a) The licensee shall develop and implement written policies and procedures on resident rights which must include all of the following:

(1) Residents shall retain all civil rights that have not been specifically curtailed by separate judicial or administrative determination by the appropriate legal authority.

(2) The licensee may not discriminate against a resident on the basis of age, race, sex, religion, ethnic origin, economic status, disability, sexual orientation or gender identity or expression.

(3) Residents have the right to inspect their own records.

(4) Residents have the right to request the correction of information in their records on the basis that it is inaccurate, irrelevant, outdated or incomplete.

(5) Residents have the right to submit a rebuttal to information in their records.

(6) Residents may attend a treatment facility of their choice outside of the drug and alcohol recovery house. The licensee may not require a resident to attend or prohibit a resident from attending a specific treatment facility.

(b) The licensee shall obtain written acknowledgement by residents that they have received notice of their rights.

§ 717.20. Resident records.

(a) The licensee shall maintain an individual record for each resident which must include all of the following:

(1) All records obtained under § 717.22 (relating to beginning of residency).

(2) Consent to residency form.

(3) Referrals to and from the drug and alcohol recovery house, if applicable.

(b) The licensee shall keep hard copy resident records in a locked cabinet and secure digital resident records on a protected data system.

(c) The licensee shall maintain resident records, regardless of format, for at least 4 years following the ending or completion of residency.

(d) If the licensee discontinues operation of a drug and alcohol recovery house, it shall notify the Department where it will store resident records.

§ 717.21. Resident roster.

(a) The licensee shall maintain a resident roster that identifies the date of each resident's beginning and end or completion of residency.

(b) The licensee shall maintain the information in subsection (a) on the resident roster for each resident for at least 4 years following the ending or completion of residency.

(c) The licensee shall store physical copies of the resident roster in a locked cabinet or secure digital copies of the resident roster in a protected data system.

(d) A licensee that discontinues operation of a drug and alcohol recovery house shall notify the Department where it will store the resident roster.

§ 717.22. Beginning of residency.

(a) The licensee shall develop and implement written policies and procedures for beginning of residency which include all of the following:

(1) Residency criteria.

(2) Requirements for completion of residency by meeting a resident's treatment, personal or financial goals or social-emotional or other needs.

(3) Criteria for ending residency before completion under paragraph (2), including a timeline.

(b) The licensee shall complete all of the following documentation, which must be signed by the resident, within 24 hours of arrival:

(1) Disclosure to the resident of criteria for beginning and ending residency.

(2) Resident orientation to the drug and alcohol recovery house which must include all of the following:

(i) Drug and alcohol recovery house rules, including a method to record residents' expected return time to the drug and alcohol recovery house.

(ii) Fee schedule including any lease agreement.

(iii) Supports provided by the drug and alcohol recovery house, as well as referrals to other essential services as needed.

(iv) Financial policies and procedures.

(v) The location of posted emergency procedures and contact information for the house manager and the Department.

(vi) Medication control and self-administration policies.

(3) Basic personal data including:

(i) Name.

(ii) Birth date.

(iii) Demographic information.

(iv) Medical information provided by the resident, including allergies, asthma, seizure disorder, diabetes, pacemaker and other medical conditions that the resident chooses to have in the house record.

(v) Drug and alcohol history.

(vi) Medical contact information.

(vii) Emergency contact.

(4) Consent to residency.

(5) Disclosure to the resident of the recovery house's policies and procedures for situations when recovery house staff may notify the resident's emergency contact.

§ 717.23. Notification of decision to end residency.

(a) The licensee shall notify the resident in writing of a decision to end residency. The notice must include the reason and a timeframe for ending residency.

(b) The resident shall have an opportunity to request the licensee reconsider a decision to end residency before the decision to end residency takes effect.

(c) The resident may decide to end residency without providing a reason to the licensee.

§ 717.24. Medication control and self-administration.

The licensee shall develop and implement written policies and procedures on the use of prescription and over-the-counter medications by residents, which must include all of the following:

(1) Self-administration of medication for residents who take medication.

(2) Safe storage of medication by the drug and alcohol recovery house and residents and procedures to address loss, theft, abandonment or misuse of medications. The policy must provide that controlled substances stored at the drug and alcohol recovery house will be kept in a locked container.

(3) Safe disposal of unused, expired or abandoned medication, in accordance with Federal and State regulations.

(4) Emergency procedures if an adverse medication reaction or overdose occurs on premises. The licensee shall have and make available overdose reversal medication on the premises of the drug and alcohol recovery house at all times.

(5) Prohibition on sharing prescription medication.

§ 717.25. Financial transactions.

(a) The licensee shall develop and implement written policies and procedures to maintain a complete record of collection of fees, payments and deposits between the licensee, the drug and alcohol recovery house or its employees and the resident or on behalf of the resident in accordance with standard accounting practices. The record must include all of the following:

(1) All fee deposits, resident fees and other monetary transactions between the drug and alcohol recovery house and the resident.

(2) Documentation that the drug and alcohol recovery house returned all deposits due to the resident when the resident departed the drug and alcohol recovery house, signed and dated by the licensee and resident.

(b) The licensee shall develop and implement written policies and procedures that prohibit the licensee, staff,

volunteers or contractors of the drug and alcohol recovery house from all of the following:

(1) Requiring a resident to sign a document relinquishing the resident's public assistance benefits, including medical assistance benefits, cash assistance, Supplemental Security Income and Supplemental Nutrition Assistance Program benefits.

(2) Requiring a resident to surrender cash or sign over a paycheck.

(3) Borrowing money from a resident or lending money to a resident.

(4) Buying property from a resident or selling property to a resident.

(5) Directly or indirectly soliciting or accepting a commission, fee or anything of monetary or material value from residents, other related individuals, third-party entities or referral sources, beyond specified rent established in writing at the time of residency.

(c) Residents maintain the right to manage their own personal finances.

(d) A licensee may assist a resident in managing the resident's finances, budgeting and spending. The following apply:

(1) The licensee shall keep a record of financial transactions in accordance with standard accounting practices, including the dates, amounts of deposits, amounts of withdrawals and the current balance.

(2) The licensee shall disburse resident funds during normal business hours within 24 hours of the resident's request.

(3) The licensee shall obtain a written receipt from the resident for cash disbursements at the time of disbursement.

(4) The licensee shall only use resident funds and property for the resident's benefit.

(5) The licensee may not commingle resident funds and house funds.

(6) If the licensee is holding more than \$200 for a resident for more than 2 consecutive months, the licensee shall notify the resident and offer assistance in establishing an interest-bearing account in the resident's name at a local Federally-insured financial institution. This does not include security deposits.

(7) The licensee, staff, volunteers or contractors shall not be assigned power of attorney or guardianship of a resident or a resident's estate.

(8) The licensee shall maintain a copy of the itemized account in the resident's record.

(9) The licensee shall provide the resident the opportunity to review their own financial record upon request during normal business hours.

(e) The licensee shall establish a written agreement with a resident before assisting in managing the resident's finances. The following apply:

(1) The licensee and resident shall sign the agreement.

(2) The agreement must include all of the following:

(i) The financial assistance provided by the licensee.

(ii) The right of the resident to at least 30 days advance notice, in writing, of the licensee's request to change the agreement.

(iii) The right of the resident to rescind the agreement in writing.

(3) The licensee shall maintain a copy of the financial management services agreement in the resident's record.

§ 717.26. Complaint management.

The licensee shall develop and implement written policies and procedures for managing complaints from residents, family members and community members, which must include procedures for informing residents, family members and community members of the complaint process, including the ability to file a complaint with the Department.

§ 717.27. Notification to family member or emergency contact.

(a) The licensee shall develop and implement written policies and procedures that specify the methods and circumstances, including the resident's hospitalization or death, for notifying the resident's emergency contact with the resident's consent. The resident may revoke consent to provide notice to the emergency contact.

(b) The licensee shall make at least one attempt to notify the resident's emergency contact in accordance with subsection (a) immediately and in no event more than 12 hours after the resident decides to end residency or does not return to the drug and alcohol recovery house as expected. This subsection shall not apply if the licensee knows or has reason to know of allegations of domestic abuse on the resident by the emergency contact.

§ 717.28. Resident requirements.

The licensee shall develop and implement written policies and procedures that:

(1) promote and require that residents participate in treatment, self-help groups or other drug and alcohol recovery supports; and

(2) require that residents abstain from use and sale of alcohol and illicit drugs, and provide consequences for failure to abstain.

§ 717.29. Physical plant standards.

(a) *Compliance with applicable laws.*

The licensee shall follow applicable Federal, State and local laws and ordinances, including the Americans with Disabilities Act of 1990 (Pub.L. No. 101-336).

(b) *Building interior, exterior and grounds.*

(1) The licensee shall do all of the following:

(i) Keep the interior, exterior, and grounds or yard of the drug and alcohol recovery house clean, safe, sanitary and in good repair and free of hazards at all times.

(ii) Store all trash in noncombustible, covered containers that prevent the penetration of insects and rodents and remove all trash at least once each week.

(iii) Keep the drug and alcohol recovery house free of rodent and insect infestation.

(iv) Limit smoking to designated outside smoking areas.

(v) Keep exterior exits, stairs and walkways lighted at night.

(c) *Living rooms and lounges.*

(1) The licensee shall:

(i) provide at least one living room or lounge for the free and informal use by residents, their families and invited guests; and

(ii) maintain furnishings in a state of good repair.

(d) *Sleeping accommodations.*

(1) Each drug and alcohol recovery house bedroom must have all of the following:

(i) A bed in good repair with a solid foundation and fire-retardant mattress for each resident.

(ii) A pillow, sheets and other bedding in good condition and appropriate for the temperature in the drug and alcohol recovery house for each resident.

(iii) A storage area for clothing for each resident.

(iv) At least 60 square feet of floor space per resident measured wall to wall in each shared bedroom.

(v) At least 50 square feet of floor space per resident measured wall to wall in each shared bedroom with bunk beds. Bunk beds must meet all of the following requirements:

(A) Provide enough space in between each bed and the ceiling to allow a resident to sit up in bed.

(B) Be equipped with a securely attached ladder capable of supporting a resident.

(C) Be equipped with securely attached railings on each open side and open end of the bunk.

(vi) At least 70 square feet of floor space measured wall to wall in each single bedroom.

(vii) Direct access to a corridor or external exit.

(viii) Ventilation by operable windows or have mechanical ventilation.

(ix) A window with a source of natural light.

(2) A bedroom may not:

(i) be used as a means of egress from or access to another part of the drug and alcohol recovery house unless the bedroom is used as an exit under § 717.30(b)(2) (relating to safety and emergency procedures); or

(ii) contain the sole egress to a stairway or basement.

(3) Notwithstanding requirements in paragraph (1) and (2), bedrooms located in a basement must have all of the following:

(i) Wall, floor and ceiling coverings such as tile, linoleum, paneling or dry wall.

(ii) A protective fire wall between the bedroom and a furnace.

(iii) A direct means of egress from the basement to the outside.

(e) *Bathrooms.* The licensee shall do all of the following:

(1) Provide bathrooms to accommodate residents, staff, volunteers and guests.

(2) Provide a sink, a wall mirror, a soap dispenser and either individual towels, paper towels, or a mechanical dryer in each bathroom.

(3) Have hot and cold water under pressure. Hot water temperature may not exceed 120°F.

(4) Provide privacy in toilets by doors, and in showers and bathtubs by partitions, doors or curtains. There must be slip-resistant surfaces in all bathtubs and showers.

(5) Ventilate toilet and wash rooms by exhaust fan or window.

(6) Provide toilet paper at each toilet at all times.

(7) Maintain each bathroom in a functional, clean and sanitary manner at all times.

(f) *Kitchens.* The licensee shall do all of the following:

(1) Provide a kitchen area with capacity for residents to safely store food items and prepare meals. The kitchen area must include refrigerator, sink, stove, oven and cabinet space in a good state of repair.

(2) Ensure that storage areas for foods are free of food particles, dust and dirt.

(3) Ensure that refrigerators maintain cold food at or below 40°F and freezers maintain frozen food at or below 0°F.

(4) Ensure that food items are stored off the floor.

(g) *Heating and cooling.* The licensee:

(1) shall maintain an indoor temperature in the drug and alcohol recovery house between 65°F and 90°F at all times; and

(2) may not use or permit portable space heaters.

§ 717.30. Safety and emergency procedures.

(a) *Policies and procedures.* The licensee shall develop and implement written policies and procedures for staff and residents to follow in an emergency which must include provisions for all of the following:

(1) The evacuation and transfer of residents, staff and volunteers to a safe location.

(2) Assignments of staff and volunteers during emergencies.

(3) The evacuation and transfer of residents impaired by alcohol or other drugs.

(4) Notification to the Department within 48 hours of a fire, other disaster or situation which affects the continuation of operations.

(b) *Exits.* The licensee shall do all of the following:

(1) Ensure that stairways, hallways and exits from rooms and from the drug and alcohol recovery house are unobstructed.

(2) Maintain a minimum of two unobstructed exits that are separated by a minimum distance of 15 feet on every floor that contains resident bedrooms. Equipment such as ladders and escapes located above the ground floor must be securely affixed to the house. Rooms, including resident bedrooms, that contain an exit must be unlocked and accessible to all residents in the event of an emergency.

(3) Maintain each ramp, interior stairway and outside steps exceeding two steps with a well-secured handrail and maintain each porch that has over an 18-inch drop with a well-secured railing.

(4) Clearly indicate exits.

(5) Light interior exits and stairs at all times.

(c) *Smoke and carbon monoxide detectors.*

(1) The licensee shall do all of the following:

(i) Maintain at least one operable, automatic smoke detector on each floor, including the basement and attic.

(ii) Maintain a smoke detector within 15 feet of each bedroom door on floors with resident bedrooms.

(iii) Repair inoperable smoke detectors within 48 hours.

(iv) Maintain carbon monoxide detectors in drug and alcohol recovery houses that have heating systems in which carbon monoxide is a byproduct of the heating system and in drug and alcohol recovery houses with attached garages. The carbon monoxide detector must be located within 15 feet of the carbon monoxide source, audible to drug and alcohol recovery house residents and maintained in an operable state.

(v) Inspect, test and document that all smoke detectors and carbon monoxide detectors are functional monthly.

(2) Each smoke detector and carbon monoxide detector must be of a type approved by the Department of Labor and Industry or by the Underwriters Laboratories and must provide both an audible and visual alerts.

(d) *Fire extinguishers.* The licensee shall do all of the following:

(1) Maintain at least one portable fire extinguisher with a minimum of an ABC rating for every 2,000 square feet of space and fraction of it on each floor.

(2) Maintain at least one portable fire extinguisher with a minimum of an ABC rating in each kitchen in addition to the fire extinguishers required under paragraph (1). The extinguisher in the kitchen must be located near an exit and away from the cooking area.

(3) Ensure fire extinguishers are inspected and approved annually by the local fire department or fire extinguisher company. The date of the inspection must be indicated on the extinguisher or inspection tag; the licensee shall replace or repair a fire extinguisher found to be inoperable within 48 hours.

§ 717.31. Unusual incidents.

(a) The licensee shall develop and implement written policies and procedures to respond to all of the following unusual incidents:

(1) Physical assault or sexual assault by staff, a volunteer or a resident on or off the premises.

(2) Provision or use of illicit drugs on the premises.

(3) Death or serious injury due to trauma, suicide, medication error or unusual circumstances while residing at the drug and alcohol recovery house.

(4) Significant disruption due to disaster such as fire, storm, flood or other occurrence which closes the drug and alcohol recovery house for more than 1 day.

(5) Theft, burglary, break-in or similar incident at the drug and alcohol recovery house.

(6) Event at the drug and alcohol recovery house requiring the presence of police, fire or ambulance personnel.

(7) Fire or structural damage to the drug and alcohol recovery house.

(8) Outbreak of a contagious disease requiring Centers for Disease Control (CDC) notification.

(b) The licensee shall develop and implement written unusual incident policies and procedures which must include all of the following:

- (1) Documentation of the unusual incident.
- (2) Prompt review and identification of the direct and indirect causes of the unusual incident.
- (3) Implementation of a timely and appropriate plan of correction, when indicated.
- (4) Ongoing monitoring of the plan of correction.
- (c) The licensee shall file a written unusual incident report with the Department within 3 business days following an unusual incident involving:
 - (1) Physical or sexual assault by staff, a volunteer or a resident.
 - (2) Death or serious injury due to trauma, suicide, medication error or unusual circumstances.
 - (3) Fire, storm, flood or other occurrence that results in the closure of the drug and alcohol recovery house or the relocation of residents for more than 1 day.
 - (4) An event at the drug and alcohol recovery house requiring the presence of police, fire or ambulance personnel.
 - (5) Outbreak of a contagious disease requiring CDC notification.
 - (d) The licensee shall make reports to other boards and agencies as required by applicable law, including section 4(b) of the Disease Prevention and Control Law of 1955 (35 P.S. § 521.4).

§ 717.32. Complaints about drug and alcohol recovery houses.

- (a) The Department will accept complaints from any individual about drug and alcohol recovery houses that have or are required to have licenses.
- (b) An individual who submits a complaint may request to remain anonymous. The Department will disclose the individual's identity as required under law.
- (c) The Department:
 - (1) Will investigate complaints that allege a violation of subarticle B of Article XXIII-A of The Administrative Code of 1929 (71 P.S. §§ 613.11—613.18) or this chapter.
 - (2) May refer complaints that do not allege a violation of subarticle B of Article XXIII-A of The Administrative Code of 1929 (71 P.S. §§ 613.11—613.18) or this chapter to another Federal, State, or local agency or entity within 2 business days.
 - (3) Will report complaints that allege abuse, neglect or a criminal violation to law enforcement within 2 business days.
 - (d) The Department will assess complaints under subsection (c)(1) based on the degree of risk to residents' health or safety. The following apply:
 - (1) The Department will begin an investigation of a complaint that alleges a direct threat to the health or safety of a resident within 2 business days.
 - (2) The Department will begin an investigation of a complaint that does not allege a direct threat to the health or safety of a resident within 5 business days.
 - (e) The Department may conduct an announced or unannounced onsite inspection of any complaint under subsection (c)(1).

(f) The Department will provide a summary of its findings of an investigation of a complaint under subsection (c)(1) to the individual who made the complaint.

§ 717.33. Drug and alcohol recovery house registry.

- (a) The Department will create on its website and update at least annually a registry of licensed drug and alcohol recovery houses.
 - (b) The registry will include, for each licensed drug and alcohol recovery House, all of the following:
 - (1) The name of the licensee.
 - (2) The name of the drug and alcohol recovery house.
 - (3) The street address of the drug and alcohol recovery house.
 - (4) The contact information listed in the drug and alcohol recovery house's application under § 717.6 (relating to application and renewal).
 - (5) The drug and alcohol recovery house's maximum occupancy.
 - (6) Any other information the Department determines is in the public interest.
 - (c) The registry will:
 - (1) List whether each drug and alcohol recovery house has a full license, a provisional license, or is operating pending appeal of the revocation of its license.
 - (2) Contain a notice that not all drug and alcohol recovery houses must be licensed and that some licensees may operate both licensed and unlicensed drug and alcohol recovery houses.

[Pa.B. Doc. No. 21-2058. Filed for public inspection December 10, 2021, 9:00 a.m.]

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 111]

Special Rules of Administrative Practice and Procedure Before the Workers' Compensation Appeal Board

The Workers' Compensation Appeal Board (Board) amends 34 Pa. Code Chapter 111, Subchapter B (relating to appeals), to streamline the disposition of appeals to the Board, as set forth in Annex A.

Statutory Authority

The Board promulgates these amendments under the authority contained in section 435(c) of the Workers' Compensation Act (act) (77 P.S. § 991(c)), which directs the Board to establish rules of procedure "...which are reasonably calculated to expedite the hearing and determination of appeals to the board and to insure full payment of compensation when due." Furthermore, section 506 of the Administrative Code of 1929 (71 P.S. § 186) provides authority for the promulgation of rules and regulations for departmental administrative boards, stating: "the several departmental administrative boards and commissions, are hereby empowered to prescribe rules and regulations, not inconsistent with law, for the government of their respective departments, boards, or commissions. . .[and] the distribution and performance of their business. . ."

Background

The Board is a departmental administrative board under section 401 of the act (77 P.S. § 701). The Board is established under sections 202, 207.1, 503 and 2208 of the Administrative Code of 1929 (71 P.S. §§ 62, 67.1, 183 and 568). The Board voted to adopt the proposed amendments on October 27, 2020. On August 6, 2021, the Board voted to adopt the final-form amendments in Annex A, which were unchanged from those in the proposed rulemaking.

The Board's regulations currently require oral argument in all appeals and cross appeals unless the parties agree to submission on briefs. See §§ 111.13(b) and 111.17(a) (relating to processing of appeals and cross appeals; and oral argument). Moreover, these regulations currently require the petitioner's brief to be filed at or before the date of the oral argument, while the respondent's brief is due 30 days after oral argument. See § 111.16(a) and (b) (relating to briefs: content and form and time for filing). The petitioner generally is the party seeking to review a ruling or decision by a workers' compensation judge, while the respondent is the party or parties in whose favor the matter was decided by the judge. See § 111.3(a) (relating to definitions) regarding the definitions of petitioner and respondent.

The current briefing and oral argument requirements significantly delay the consideration and disposition of appeals. Oral arguments are scheduled more frequently in major population areas and less frequently in other areas. As a result, there is greater delay in processing appeals from petitioners in less-populated areas where oral arguments are only held two or three times a year. Consequently, the appeal is not placed in line for decision until after the oral argument and the receipt of briefs. Under current practice, the Board's rules further permit oral request for extensions of the petitioner's brief at oral argument, § 111.16(c), thereby facilitating additional delay in case processing. A decrease in time to process an appeal will benefit all parties within the workers' compensation system. The average time for the Board to issue a decision was approximately 11.36 months in 2018, 12.28 months in 2019 and 11.20 months in 2020. Although timeliness has improved over the last several years, adjudication times can be shortened. A delay in issuing decisions can exact financial hardship on claimants and is at odds with the timeliness dictates of the act.

The present requirement for in-person oral argument in every case increases the Board's travel, lodging and meal expenses, as well as the parties' expenses to the extent that they or their attorneys must attend the arguments. Prior to the novel coronavirus (COVID-19) pandemic, the Board conducted six argument sessions a year in Philadelphia, Pittsburgh, Harrisburg and Scranton, and three argument sessions in Erie. Most of these sessions are for multiple days. The Board's travel costs for Fiscal Year 2018-2019, the last full year prior to the COVID-19 pandemic, totaled \$60,000, some of which can be greatly reduced, but more so, considerable in-office time can be saved by both Commissioners and litigant attorneys by allowing for electronic/virtual hearings in addition to in-person hearings. The developments in communication and computer technology, and the experience using that technology during the pandemic, have reduced the need for the Board members to meet in-person to hear arguments, discuss pending cases or circulate decisions for signature.

Compliance with Executive Order 1996-1

The Board engaged in extensive public and stakeholder outreach during the drafting process. In 2017, the Depart-

ment of Labor and Industry (Department) sought stakeholder input as to a proposal to amend the regulations to (1) require both parties' briefs to be submitted before making a decision to schedule oral argument and use the briefs, not oral argument, to start the internal appellate review process; and (2) make oral arguments discretionary with the Board where necessary to address novel or complex legal issues, as is the practice in other Commonwealth appellate courts. Stakeholder input was solicited through the Workers' Compensation Committee of the Pennsylvania Bar Association and more widely from insurance carriers, attorneys, third-party administrators and self-insured employers through the Workers' Compensation Automation and Integration System (WCAIS), which is the enterprise vehicle by which all workers' compensation claims are filed, adjudicated, appealed and managed. Every workers' compensation employer, insurer (or self-insurer) and legal practitioner has access to and routinely uses WCAIS. In addition, the Department posted a general notice of the proposed rulemaking and the rationale for it on its web site, for which interested persons and organizations could submit comments, and also posted notice on the WCAIS home page for all WCAIS users. More than 50 comments were received, the vast majority of them in favor of these changes. The Workers' Compensation Rules Committee (established in 1978 by the Secretary of the Department of Labor and Industry for the purpose of obtaining comment on procedural rules governing the practice of workers' compensation) convened to provide input to the proposed oral argument procedures and approved the proposed rulemaking. The proposed rulemaking was presented to and discussed with the Pennsylvania Workers' Compensation Advisory Council established under section 447 of the act (77 P.S. § 1000.3).

In 2019, following additional coordination with key stakeholders, the Board determined that the humanitarian purposes of the act were better served by continuing to offer oral argument in every appeal, unless waived by the parties. In addition, the Board wishes to make better use of telecommunications to further streamline the appeal process. Accordingly, the amendments provide for oral argument, unless waived, at the earliest possible date following the close of the briefing schedule and authorize oral argument or by telephonic or electronic means. The proposed rulemaking was presented to members of the Pennsylvania Workers' Compensation Advisory Council for review and comment on March 23, 2020. The Deputy Secretary for Compensation and Insurance coordinated the proposed regulatory amendments with members of the Workers' Compensation Rules Committee on April 24, 2020. The Board voted to adopt the proposed rulemaking on October 27, 2020.

The proposed rulemaking was published at 51 Pa.B. 1019 (February 27, 2021). As a result, one written comment was received from Neil Dombrowski, Esquire, of The Dombrowski Group, as co-chair of the Pennsylvania Defense Institute Worker's Compensation Section. By correspondence dated April 28, 2021, the Independent Regulatory Review Commission (IRRC) advised that it had no objections, comments or recommendations to the proposed regulation.

On August 6, 2021, the Board voted to adopt the final-form amendments in Appendix A, which were unchanged from those in the proposed rulemaking.

Purpose

This final-form rulemaking ensures that oral argument will be conducted after briefs are submitted, rendering argument more meaningful for the parties, as the Board

will have a better understanding of the issues at the time of argument. This final-form rulemaking permits arguments to be conducted either by telephone or other electronic means or in person, giving the Board the flexibility to timely schedule arguments regardless of the location of the parties. These changes will streamline the processing and disposition of appeals, reduce the time for decision in some cases, and achieve travel and time cost savings to both the Board and the parties.

Affected Persons

The persons affected by this final-form rulemaking include the Board's members and staff, attorneys practicing before the Board and parties to appeals filed with the Board. The parties in workers' compensation cases include injured employees, possibly their dependents in the case of a fatal injury, self-insured employers, employers typically represented by workers' compensation insurance companies and the Department's Bureau of Workers' Compensation representing special funds created under the act (77 P.S. §§ 101—1304).

Fiscal Impact

This final-form rulemaking is designed to reduce costs, through reduced travel costs and litigation expenses, and will not result in increased costs to the public or private sectors. Because the workers' compensation system is funded through assessments on workers' compensation insurance carriers and self-insured employers, any savings realized in the administration of the system may result in savings to the regulated community through lowered assessments. See section 446 of the act (77 P.S. § 1000.2) regarding creating the Workers' Compensation Administration Fund and providing for maintenance of the fund through an annual assessment.

Summary of Final-Form Rulemaking

§ 111.13. *Processing of appeals and cross appeals*

The minor final-form amendment to this section clarifies that the Board will issue a briefing schedule upon receipt of an appeal or cross appeal.

§ 111.16. *Briefs: content and form and time of filing*

The final-form amendments to this section address the time for filing briefs. This section is amended to require that the petitioner's brief be filed within 30 days of the acknowledgement of receipt of appeal by the Board, unless subsequent or cross appeals are filed. In the case of subsequent or cross appeals, the Board will issue a revised briefing schedule. The respondent's brief will be due 30 days after service of the petitioner's brief, or the due date of petitioner's brief, unless there are subsequent or cross appeals. A request for an extension of time to file a brief must indicate the other parties' position as to the request. This section is also amended to permit the Board to direct the filing of a supplemental brief.

The final-form amendments require that briefs filed with the Board include a summary of the argument, not to exceed one page.

§ 111.17. *Oral argument*

The final-form amendments to this section specifically authorize oral argument to be conducted by telephone or other electronic means. This section is amended to provide that argument will be scheduled following the close of the briefing schedule.

§ 111.18. *Decisions of the Board*

This section is amended to delete current subsection (b), which consists of an obsolete reference to section 441 of the Administrative Code of 1929 (71 P.S. § 151). Section 441 regarding the Workmen's Compensation Ap-

peal Board was repealed under the act of November 9, 2006 (P.L. 1362, No. 147) and replaced by section 401.2 of the act (77 P.S. § 710.1) regarding the Workers' Compensation Appeal Board.

Responses to Comments

The Board received one public comment regarding the proposed rulemaking. On behalf of the Pennsylvania Defense Institute Workers' Compensation Section, Neil Dombrowski, Esquire of The Dombrowski Group commented that an additional amendment should be added to § 111.17, to provide a specific rule permitting requests for en banc argument before the Board. However, the Board notes that en banc argument is currently permitted, and has been held by the Board at its discretion, under existing subsection (g) of § 111.17, which states that "[o]ral argument may be conducted before one or more members of the Board." As such, the Board does not believe that any further amendment to add a specific rule relating to en banc argument is required or necessary at this time.

IRRC advised that it had no objections, comments or recommendations to the proposed rulemaking.

Based on the comments received, the Board made no changes to the proposed amendments in this final-form rulemaking.

Reporting, Record-keeping and Paperwork Requirements

This final-form rulemaking does not require any new forms, and thus does not impose any additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community. The existing forms used by the Board to acknowledge appeals, notify parties of briefing requirements, and oral argument may require minor modification since briefs are due before any oral argument and oral argument may be conducted by teleconference or other electronic means.

Sunset Date

A sunset date is not appropriate for this final-form rulemaking. The Board will periodically monitor this final-form rulemaking and submit amendments as needed.

Effective Date

The final-form amendments to §§ 111.16(a), (b), (b.1) and (c), and 111.17(c) and (d), will be effective upon publication of a notice of effective date by the Secretary of the Department in the *Pennsylvania Bulletin*, following completion of the required system changes, which are necessary to accommodate these new procedures, to the Department's electronic appellate filing and notification process in WCAIS. The remainder of this final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

Persons who require additional information about this final-form rulemaking may submit inquiries to Kelly K. Smith, Acting Chief Counsel, 651 Boas Street, Harrisburg, PA 17121, fax (717) 787-1303, kellysmith@pa.gov.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 16, 2021, the Board submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 1019 (February 27, 2021), to IRRC and the Chairpersons of the House and Senate Labor and Industry Committees for review and comment.

Under Section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate

Labor and Industry Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC. IRRC had no objections, comments or recommendations. The House and Senate Labor and Industry Committees did not comment.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on October 20, 2021, this final-form rulemaking was deemed approved by the House and Senate Labor and Industry Committees. Under sections 5(g) and 5.1(e) of the Regulatory Review Act, IRRC met on October 20, 2021, and approved this final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations in 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the efficient administration and adjudication of workers' compensation appeals under the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 111, Subchapter B, are amended by amending §§ 111.13 and 111.16—111.18 to read as set forth in Annex A.

(b) The Board shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for approval as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC and the Legislative Standing Committees as required by law.

(d) The Board shall certify this final-form rulemaking, as approved for legality and form, and shall deposit it with the Legislative Reference Bureau as required by law.

(e) Except as provided in paragraph (f), this final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

(f) The final-form amendments to §§ 111.16(a), (b), (b.1) and (c) and 111.17(c) and (d), will be effective upon publication of a notice of effective date by the Secretary of the Department in the *Pennsylvania Bulletin*, following completion of the required system changes, which are necessary to accommodate these new procedures, to the Department's electronic appellate filing and notification process in WCAIS.

ALFONSO FRIONI, Jr., Esq.,
Chairperson
Workers' Compensation Appeal Board

Fiscal Note: 12-105. (1) Worker's Compensation Administration Fund; (2) Implementing Year 2021-22 is \$1,475,000; (3) 1st Succeeding Year 2022-23 through 5th succeeding Year 2026-27 are \$0; (4) 2020-21 Program—\$3,013,867.90; 2019-20 Program—\$2,954,095; 2018-19 Program—\$2,925,834; (8) recommends adoption. The 2021-22 appropriation is able to absorb this increase.

Annex A

TITLE 34. LABOR AND INDUSTRY PART VII. WORKERS' COMPENSATION APPEAL BOARD

CHAPTER 111. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE BEFORE THE WORKERS' COMPENSATION APPEAL BOARD

Subchapter B. APPEALS

§ 111.13. Processing of appeals and cross appeals.

(a) Upon receipt of an appeal or a cross appeal, the Board will acknowledge receipt to all parties.

(b) The Board will, in addition to acknowledging receipt of the appeal or the cross appeal, establish a briefing schedule and indicate that the appeal and the cross appeal will be scheduled for oral argument unless all parties agree to submission of the case on only briefs or record.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.31 (relating to service by the agency)

§ 111.16. Briefs: content and form and time for filing.

(a) A brief on behalf of a petitioner shall be filed with the Board within 30 days of the date of the Board's acknowledgment of receipt of the appeal as set forth in § 111.13 (relating to processing of appeals and cross appeals) In the event subsequent appeals or cross appeals are filed, the Board will issue revised briefing schedules.

(b) A brief on behalf of a respondent shall be filed with the Board within 30 days after service of the petitioner's brief, or where petitioner fails to timely file a brief, within 30 days of the date the petitioner's brief was to be filed. In the event subsequent appeals or cross appeals are filed, the Board will issue a revised briefing schedule.

(b.1) The Board may direct the filing of a supplemental brief.

(c) Upon written request of a party directed to the Board, and with notice to all parties, the Board may extend the time for filing of the party's brief only for good cause shown. A party shall file a request to extend the time for filing a brief before the date set for filing that party's brief. The request shall indicate the position of the other parties with respect to the request.

(d) Briefs not filed with the Board in accordance with the schedule in this section or as modified by the Board under subsection (c) will not be considered and will result in disposition of the appeal without further notice or consideration of the brief of the party failing to comply with these deadlines or schedule.

(e) Briefs, except as otherwise allowed, shall consist of the following items, separately and distinctly set forth:

(1) A short statement of the questions involved.

(2) A statement of the facts by the petitioner, or counterstatement of the facts by the respondent.

(2.1) A summary of the argument, not to exceed one page.

(3) The argument.

(4) A short conclusion setting forth the precise relief sought.

(5) A proof of service as specified in § 111.1(e) (relating to filing, service and proof of service) insofar as applicable.

(f) (Reserved)

(g) Briefs shall be served on all parties.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 31.15, 33.37, 35.212 and 35.221 and also supersede 1 Pa. Code Chapter 35, Subchapter F (relating to briefs).

§ 111.17. Oral argument.

(a) The Board will schedule oral argument in every appeal or cross appeal unless all parties to the appeal or the cross appeal, upon receiving the acknowledgment of appeal or cross appeal, indicate that no oral argument is requested, or that it is waived.

(b) The Board will hear oral argument on appeals and cross appeals according to a schedule prepared in advance for each calendar year. Oral argument may be conducted in Harrisburg, Philadelphia and Pittsburgh or other locations in this Commonwealth, or by telephonic or electronic means, as the Board may determine.

(c) Oral argument will be scheduled at the earliest possible date following the close of the briefing schedule.

(d) The Board will notify parties of the scheduling of oral argument as far in advance as possible of the argument date.

(e) Oral argument shall consist of a presentation, including rebuttal, if necessary, by the petitioner and respondent.

(f) A petitioner or respondent represented by counsel need not be present at oral argument.

(g) Oral argument may be conducted before one or more members of the Board.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 33.51, 35.204, 35.214 and 35.221.

§ 111.18. Decisions of the Board.

(a) The decision of the Board on an appeal and a cross appeal shall be issued as promptly as possible following oral argument or the receipt of briefs, whichever occurs later.

(b) (Reserved)

(c) Decisions of the Board will be served on all parties and the judge from whose decision the appeal was taken.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.13, 31.14, 35.201—35.207 and 35.226.

[Pa.B. Doc. No. 21-2059. Filed for public inspection December 10, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61, 63, 65, 67 AND 69]

Fishing

The Fish and Boat Commission (Commission) amends Chapters 61, 63, 65, 67 and 69. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code). The amendments will establish a single, Statewide opening day for the regular season for trout.

A. Effective Date

This final-form rulemaking will go into effect on January 1, 2022.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission’s web site at www.fishandboat.com.

C. Statutory Authority

The amendments to §§ 63.3, 65.5, 65.6, 65.12, 65.14, 65.15, 65.19 and 65.20 are published under the statutory authority of 30 Pa.C.S. § 2102(a) (relating to rules and regulations). The amendments to §§ 61.1, 61.2 and 69.12a are published under the statutory authority of 30 Pa.C.S. § 2102(b). The amendment to § 67.2 (relating to refuge areas) is published under the statutory authority of 30 Pa.C.S. § 2306(a) (relating to refuge areas). The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of 30 Pa.C.S. § 2307(a) (relating to waters limited to specific purposes). The amendment to § 63.20 (relating to permits for the protection and management of trout and salmon) is published under the statutory authority of 30 Pa.C.S. § 2904(a) (relating to permits for the protection and management of particular fish). The amendment to § 65.26 (relating to extended trout season) is published under the statutory authority of 30 Pa.C.S. § 2102(b) and 2307(a).

Additionally, amendments to these sections are published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P.S. § 186).

D. Purpose and Background

The specific purpose and background of the amendments are described in more detail under the summary of changes.

E. Summary of Changes

Under § 61.1 (relating to Commonwealth inland waters), the opening day of the regular season for trout begins at 8 a.m. on the first Saturday after April 11 and continues through midnight of Labor Day. This regulation was in place for all of this Commonwealth’s inland waters for many years and is a well-known, much anticipated tradition. However, on January 1, 2007, a new regulation went into effect under § 65.12 (relating to regional opening day of trout season). This regulation created a separate opening day for southeastern and southcentral counties where trout season opens at 8 a.m. on the first Saturday after March 28 and continues through midnight of Labor Day.

In late winter 2020, the novel coronavirus (COVID-19) pandemic reached this Commonwealth and on March 16, 2020, the Commonwealth eliminated most activities that were not considered essential for health and safety. Subsequently, there was substantial concern within the Commission that traditional stocking practices with large numbers of volunteers in close contact and traditional opening day crowds could lead to increased risk of virus transmission. As such, the decision was made to greatly accelerate trout stocking, eliminate the use of volunteers, deploy Commission staff from throughout the agency to perform the stockings, and announce the opening day without warning at 8 a.m. on Tuesday, April 7, 2020. This unheralded opening was designed to reduce crowding, and a single, Statewide opening day was employed to reduce cross-boundary travel between the Statewide and regional

opening day zones. In addition, public travel restrictions required more anglers to fish closer to home than they would under normal circumstances.

Planning for the 2021 trout stocking season began in early fall of 2020 in anticipation that COVID-19 restrictions and concerns about virus transmission may still be in effect. At the January 2021 quarterly Commissioners meeting, a single, Statewide opening day was established for 2021.

After experiencing 2 consecutive years of a single, Statewide opening day, staff identified an opportunity to further consider the efficacy of the current Commission regulations that provide for a regional opening day of trout season. An ad hoc committee with representatives from the bureaus of Fisheries; Hatcheries; Law Enforcement; Outreach, Education and Marketing; Administration; Policy and Planning; the Field Operations Deputy Executive Director; and Office of Chief Counsel for review was formed. The committee reviewed the history and summary of opening day designations for trout season. Following that review, the committee recommended the elimination of the regional opening day of trout season and a return to the more traditional single, Statewide opener. Staff believe that a single opening day simplifies regulations, reduces confusion among the angling public, lessens landowner issues in border counties, gives Statewide anglers at least an extra week of fishing opportunity and better allows businesses to plan for any sales surge.

The elimination of a regional opening day also requires minor amendments to various sections referencing trout season. As such, staff recommend reformatting the dates in regulations relating to trout season for clarification and simplification. Finally, consistent with the act of July 10, 2020 (P.L. 604, No. 56) staff recommend that any reference in the regulations to the trout/salmon permit be changed to trout permit.

During the public comment period, the Commission discovered the need for the following modifications to be reflected in this final-form rulemaking to effect the original intent of the proposed change: (1) For ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)—“(see Chapter 65)” is restored to the daily limit column pertaining to the extended season within the chart in § 61.1; (2) For ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)—“[and all waters downstream of stocked trout waters]” is removed from the seasons column pertaining to the extended season within the chart in § 61.1; and (3) The following language is restored to § 65.26, item (a) *General Rule*—“**except Class A wild trout streams where the creel limit is 0 and areas with special regulations.**” These changes do not change the intent of the proposed rulemakings previously published.

As a result of this final-form rulemaking, the Commission formally abandons the proposed amendments published at 51 Pa.B. 3140 (June 5, 2021).

The Commission therefore amends §§ 61.1, 61.2, 63.3, 63.20, 65.5, 65.6, 65.12, 65.14, 65.15, 65.19, 65.20, 65.24, 65.26, 67.2 and 69.12a to read as set forth in Annex A.

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 5672 (September 4, 2021). The Commission received a total of 23 public comments regarding the proposal: 16 support the proposal, 1 opposes the proposal and 6 comments do not pertain to 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), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided, and a total of 23 comments were received: 16 supported the proposal, 1 opposed the proposal and 6 comments did not pertain to the proposal.

(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, 63, 65, 67 and 69, are amended by amending §§ 61.1, 61.2, 63.3, 63.20, 65.5, 65.6, 65.12, 65.14, 65.15, 65.19, 65.20, 65.24, 65.26, 67.2 and 69.12a to read as set forth at Annex A, with ellipses referring to the existing text of the regulations.

(Editor's Note: See 51 Pa.B. 7697 (December 11, 2021) and 51 Pa.B. 7703 (December 11, 2021) for additional amendments to § 65.24.)

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

(C) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on January 1, 2022.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-318 remains valid for the final adoption of the subject regulations.

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.

* * * * *

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

| SPECIES | SEASONS | MINIMUM SIZE | DAILY LIMIT |
|---|--|--------------|--|
| ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon) | Regular Season: 8 a.m. first Saturday in April to midnight Labor Day | 7 inches | 5 (combined species) except areas with special regulations |
| | Extended Season: Stocked trout waters 12:01 a.m. day after Labor Day to midnight the third Monday in February of the following year. | 7 inches | 3 (combined species), except Class A wild trout streams, where the daily limit is 0, and areas with special regulations (see Chapter 65 (relating to special fishing regulations)) |
| * * * * * | | | |

§ 61.2. Delaware River, West Branch Delaware River and River Estuary.

(e) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

| SPECIES | SEASONS | MINIMUM SIZE | DAILY LIMIT |
|-----------|---|--|---|
| TROUT | 8 a.m., the opening day of the regular season for trout to midnight, October 15 | North of I-84: 14 inches | North of I-84: 1 (combined species) |
| | | South of I-84: no minimum | South of I-84: 5 (combined species) |
| | | West Branch Delaware River:* 12 inches | West Branch Delaware River:* 2 (combined species) |
| * * * * * | | | |

* A special no-kill artificial lures only season is in effect on the West Branch of the Delaware River from October 16 to midnight on the Friday before the opening day of the regular season for trout.

See § 65.24 (relating to miscellaneous special regulations).

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.3. Fishing in stocked trout waters.

It is unlawful to fish in stocked trout waters regulated under § 61.1 (relating to Commonwealth inland waters) from 12:01 a.m. on the third Monday in February to 8 a.m. on the opening day of the regular season for trout. As used in this subpart, the term “stocked trout waters” means waters that are stocked with adult trout by the Commission. A listing of stocked trout waters is published in the Commission’s “Summary of Fishing Regulations and Laws,” which is available from the Commission at Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. The Executive Director or a designee may, from time to time, supplement or modify the list of stocked trout waters, and additions or deletions will be published in the *Pennsylvania Bulletin*.

§ 63.20. Permits for the protection and management of trout.

(a) *Finding.* The Commission finds under section 2904 of the code (relating to permits for the protection and management of particular fish) that it is necessary for the protection and management of trout in the waters of this Commonwealth that persons who fish for trout have a permit for that activity.

(b) *Permit required.* It is unlawful for a person required by Chapter 27 of the code (relating to fishing licenses) to procure a fishing license to fish for trout unless that person has first procured a valid trout permit or a combination trout permit and Lake Erie permit.

(c) *Exceptions.*

(1) The Commission will issue a trout permit without fee to disabled veterans who possess a free fishing license under section 2707 of the code (relating to disabled veterans).

(2) A person who is exempt from the fishing license requirements of Chapter 27 of the code or who is issued an institutional fishing license under section 2708 of the code (relating to institutional licenses) is exempt from this section.

(3) A person who purchased a senior resident lifetime fishing license and a trout permit or a combination trout permit and Lake Erie permit prior to January 1, 2015, shall be exempt from the requirements of this section.

(4) A trout permit is not required to fish for trout on free fishing days designated by the Commission under section 2709(d) of the code (relating to exemptions from license requirements).

(5) A trout permit is not required to fish for trout on Class A regulated fishing lakes. A trout permit is not required to fish for trout on designated Class B regulated fishing lakes that have the following characteristics:

(i) The lake is a natural pond or impoundment located wholly on private property and constructed and maintained wholly with private funds.

(ii) The lake is operated by a private club or organization.

(iii) The lake is not open for fishing by the general public, and fishing is restricted to members only.

(iv) The trout/salmon population of the lake is composed entirely of trout or salmon stocked from private

resources and contains no trout or salmon stocked by the Commission, the United States Government or cooperative nurseries recognized by the Commission.

(d) *Fish for trout or salmon.* A person fishes for trout or salmon when one of the following applies:

(1) The person fishes in waters under special trout regulations designated under those sections of Chapter 65 (relating to special fishing regulations) that require a trout permit, wilderness trout streams or their tributaries or Class A wild trout waters or their tributaries.

(2) The person fishes in streams or rivers that are stocked trout waters as defined in § 63.3 (relating to fishing in stocked trout waters) or their tributaries during the period from 12:01 a.m. on the third Monday in February until midnight May 31.

(3) The person takes, kills or possess, while in the act of fishing, a trout or salmon on or in waters of this Commonwealth or boundary waters.

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.5. Catch and release artificial lures only.

(a) The Executive Director, with the approval of the Commission, may designate waters as catch and release. The designation of waters as catch and release shall be effective when the waters are posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in areas designated and posted catch and release except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only constructed of metal, plastic, rubber or wood or with flies and streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Use or possession of any other lures or substances is prohibited.

(2) No trout may be killed or had in possession.

(3) Open to fishing year-round.

(4) Wading is permitted unless otherwise posted.

(5) Taking of bait fish or fish bait is prohibited.

(6) A current trout permit is required.

(c) Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in effect for the water from which taken, provided that the boat angler floats through the catch and release area without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the catch and release area.

§ 65.6. Delayed harvest artificial lures only areas.

(a) The Executive Director, with the approval of the Commission, may designate waters as delayed harvest, artificial lures only areas. The designation of waters as delayed harvest, artificial lures only areas shall be effective when the waters are posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted delayed harvest, artificial lures only areas except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only constructed of metal, plastic, rubber or wood or with flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear.

(2) The use or possession of any natural bait, bait fish, fish bait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

(3) Minimum size is: 9 inches, caught on, or in possession on, the waters under regulation.

(4) The daily creel limit is: three combined species except during the period after Labor Day and before June 15 when the daily limit shall be zero trout combined species, caught on or in possession on the waters under regulation.

(5) Taking of bait fish or fish bait is prohibited.

(6) A current trout permit is required.

(c) Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the delayed harvest artificial lures only area without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the delayed harvest artificial lures only area.

§ 65.12. Regional opening day of trout season.

(a) The Executive Director, with the approval of the Commission, may designate waters in certain regions as part of the regional opening day of trout season. The designation of waters as part of the regional opening day of trout season shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) (Reserved).

(c) (Reserved).

(d) (Reserved).

(e) (Reserved).

§ 65.14. Catch and release fly-fishing only.

(a) The Executive Director, with the approval of the Commission, may designate waters as catch and release fly-fishing only. The designation of waters as catch and release fly-fishing only shall be effective when the waters are posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated and posted as catch and release fly-fishing only except in compliance with the following requirements:

(1) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials so long as all flies are constructed in a normal fashion with components wound on or about the hook or hooks. Use or possession of any other lures or substances is prohibited.

(2) Fishing shall be done with tackle which is limited to fly rods, fly reels and fly line with leader material or monofilament line attached. Spinning, spincast and casting rods and reels are prohibited.

(3) No trout may be killed or had in possession.

(4) Open to fishing year-round.

(5) Taking of baitfish or fishbait is prohibited.

(6) Wading is permitted unless otherwise posted.

(7) A current trout permit is required.

(c) Notwithstanding the requirements of this section an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the catch and release fly-fishing only area without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the catch and release fly-fishing only area.

§ 65.15. Catch and release all-tackle.

(a) The Executive Director, with the approval of the Commission, may designate waters as catch and release all-tackle. The designation of waters as catch and release all-tackle shall be effective when the waters are posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated and posted catch and release all-tackle except in compliance with the following requirements:

- (1) There are no tackle restrictions.
- (2) No trout may be killed or had in possession.
- (3) Open to fishing year-round; there is no closed season.

(4) A current trout permit is required.

(c) Notwithstanding the requirements of this section, an angler in a boat may possess fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the catch and release all-tackle area without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the catch and release all-tackle area.

§ 65.19. Stocked trout waters open to year-round fishing.

(a) The Executive Director, with the approval of the Commission, may designate waters as stocked trout waters open to year-round fishing. The designation of waters as stocked trout waters open to year-round fishing shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as stocked trout waters open to year-round fishing except in compliance with the following seasons and size and creel limits. It is not a violation of this section if a trout is immediately returned unharmed to the waters from which it is taken.

| SPECIES | SEASONS | MINIMUM SIZE | DAILY LIMIT |
|---|--|---|----------------------|
| ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon) | Regular Season: 8 a.m. of the opening day of the regular season for trout to midnight Labor Day | 7 inches | 5 (combined species) |
| | Extended Season: 12:01 a.m. day after Labor Day to midnight the third Monday in February of the following year | 7 inches | 3 (combined species) |
| | 12:01 a.m. the third Monday in February to 8 a.m. the opening day of the regular season for trout | NO HARVEST—Catch and immediate release only | |

(c) It is unlawful to fish in rivers and streams designated as stocked trout waters open to year-round fishing without a current trout permit. A trout permit is not required to fish in lakes and ponds that have been designated as stocked trout waters open to year-round fishing unless the person takes, kills or possesses, while in the act of fishing, a trout or salmon on or in these waters.

§ 65.20. Mentored Youth Fishing Day Program.

(a) The Executive Director may annually designate Mentored Youth Fishing Days. As part of the designation, the Executive Director will identify the species, waters, dates, creel and minimum size limits and other applicable limitations. The designation will be effective upon publication of a notice in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as part of the Mentored Youth Fishing Day Program except in compliance with the following requirements when participating in the Mentored Youth Fishing Day Program:

- (1) Anglers shall adhere to the limitations as established by the Executive Director by notice in the *Pennsylvania Bulletin*.
- (2) An angler 16 years of age or older shall be accompanied by a youth, less than 16 years of age, who has

obtained a mentored youth permit or a voluntary youth fishing license from the Commission.

(3) A youth angler shall obtain a mentored youth permit or a voluntary youth fishing license from the Commission and be accompanied by an angler 16 years of age or older.

(4) A current trout permit is required for an angler 16 years of age or older when participating in a Mentored Youth Fishing Day Program that relates to trout.

(c) Notwithstanding the requirements of this section, an angler in a boat may possess fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the water designated as part of the Mentored Youth Fishing Day Program without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the water designated as part of the Mentored Youth Fishing Day Program.

§ 65.24. Miscellaneous special regulations.

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

RULES AND REGULATIONS

| <i>County</i> | <i>Name of Water</i> | <i>Special Regulations</i> |
|---|--|--|
| * * * * * | | |
| Centre and Mifflin | Penns Creek, from the confluence of Elk Creek downstream 7 miles to 600 meters downstream of Swift Run | Open to fishing year-round. All tackle types are permitted. From 8 a.m. on the opening day of the regular season for trout through Labor Day—the daily creel limit for trout is 2 (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed. From the day after Labor Day until 8 a.m. on the opening day of the regular season for trout, no trout may be killed or possessed. Inland regulations apply to all other species. This miscellaneous special regulation will remain in effect until further notice. |
| * * * * * | | |
| Huntingdon | Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River). | Trout (all species)—no closed season. Daily limit: opening day of the regular season for trout until Labor Day—5 trout per day; day after Labor Day to opening day of the regular season for trout of the following year—3 trout per day. Size limits: Inland rules apply. Smelt may be taken from shore or by wading by means of dip nets not to exceed 20 inches in diameter or 20 inches square. The daily limit per person is the greater of 1 gallon of smelt by volume or 200 smelt by number. |
| * * * * * | | |
| Luzerne | Harveys Lake | During the period from the opening day of the regular season for trout through midnight the third Monday in February, the daily creel limit for trout (combined species) is 3, only one of which may exceed 18 inches in length. Warmwater/coolwater species, except as provided in this section—Inland regulations apply. |
| * * * * * | | |
| Somerset, Fayette, Westmoreland and Allegheny | Youghiogheny River from confluence with Casselman River downstream to the confluence with Ramcat Run Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river. | Trout (all species)—no closed season. Daily limit: opening day of the regular season for trout until Labor Day—5 trout per day; day after Labor Day to opening day of the regular season for trout of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species. |
| Warren | Allegheny River—8.75 miles downstream from the outflow of the Allegheny Reservoir to the confluence with Conewago Creek | Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from 8 a.m. on the opening day of the regular season for trout through midnight Labor Day, except during the period from the day after Labor Day to the opening day of the regular season for trout of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply. |

| County | Name of Water | Special Regulations |
|------------|---|---|
| * * * * * | | |
| Washington | Little Chartiers Creek from Canonsburg Lake Dam approximately 1/2 mile downstream to mouth of Chartiers Creek | Fishing is prohibited from 12:01 a.m. the third Monday in February to 8 a.m. the opening day of the regular season for trout. |
| Wayne | West Branch Delaware River | Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October 16 until midnight of the Friday before the opening day of the regular season for trout. During the no-harvest artificial lures only season: 1. Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood, or flies or |
| | | streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Use or possession of any other lures or substances is prohibited. 2. The daily creel limit for trout is 0. |
| * * * * * | | |

§ 65.26. Extended trout season.

(a) *General rule.* The extended trout season is in effect from the day after Labor Day until the third Monday in February of the following year on stocked trout waters. A creel limit of three trout per day and a minimum size limit of 7 inches apply during this season, except Class A wild trout streams where the creel limit is 0 and areas with special regulations.

* * * * *

CHAPTER 67. NURSERY WATER

§ 67.2. Refuge areas.

* * * * *

(b) Refuge areas are closed to public fishing except during the period from June 15 until the third Monday in February of the following year.

* * * * *

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.12a. Special regulations applicable to Lake Erie tributary streams.

* * * * *

(c) From 12:01 a.m. on the day after Labor Day, until the opening day of the regular season for trout of the following year, all Lake Erie tributary streams are closed to fishing from 10 p.m. until 5 a.m. on the following day except for Walnut Creek north of Manchester Road Bridge and Elk Creek north of Route 5.

* * * * *

[Pa.B. Doc. No. 21-2060. Filed for public inspection December 10, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61, 63, 65 AND 69]

Fishing

The Fish and Boat Commission (Commission) amends Chapters 61, 63, 65 and 69. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code). The amendments will simplify regulations pertaining to black bass, while improving their management and optimizing the fishery for this species group.

A. Effective Date

This final-form rulemaking will go into effect on January 1, 2022.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The amendments to §§ 61.1, 61.2 and 69.12 (relating to Commonwealth inland waters; Delaware River, West Branch Delaware River and River Estuary; and seasons, sizes, and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) are published under the statutory authority of 30 Pa.C.S. § 2102(b) (relating to rules and regulations). The amendments to §§ 63.43 and 65.9 (relating to fishing for bass during spring season; and big bass) are published under the statutory authority of 30 Pa.C.S. § 2102(a). The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of 30 Pa.C.S. § 2307(a) (relating to waters limited to specific purposes).

Additionally, amendments to these sections are published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P.S. § 186).

D. Purpose and Background

The specific purpose and background of the amendments are described in more detail under the summary of changes.

E. Summary of Changes

Commission staff have identified an opportunity to simplify regulations pertaining to black bass (that is, largemouth bass, smallmouth bass, and spotted bass) while improving upon black bass management and optimizing the fishery for that species group. A modification to black bass regulations pertaining to the start and end of seasons, creel and minimum size limits, and uniformity among resources categories (that is, lakes, rivers and streams) would allow anglers to interpret regulations more easily. As such, amendments to §§ 61.1, 65.9, 65.24 and 69.12 are warranted.

Current Commonwealth inland waters angling regulations require catch and immediate release of black bass from 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11. Black bass seasons defined in Commonwealth inland waters regulations are also incorporated in other special regulations or watershed-specific regulations, or both, requiring changes to multiple regulations specific to the management of black bass throughout this Commonwealth. Additionally, black bass daily creel and minimum size limits are not consistent among lakes, rivers and streams, which can lead to regulatory confusion by anglers.

For these reasons, Commission staff recommend amendments to Commonwealth inland waters regulations specific to black bass. In doing so, amendments to seasons as defined in big bass regulations, miscellaneous special regulations and Lake Erie basin regulations are also warranted to establish regulatory consistency. This slight modification to seasons is expected to have minimal impact to both general angling for black bass as well as tournaments. Additionally, aligning black bass daily creel and minimum size limits for waters managed under the Commonwealth inland waters regulations eliminates regulatory complexity, while continuing to provide adequate protection to the resource.

During the public comment period, the Commission discovered the need for the following modifications to be reflected in this final-form rulemaking: (1) The row for American Shad has been included in the table for § 61.1 to reflect the removal of an asterisks—"AMERICAN SHAD[*]**," (2) The row for Hickory Shad has been included in the table for § 61.1 to reflect the removal of an asterisks—"HICKORY SHAD[*]**," and (3) The row for River Herring has been included in the table for § 61.1 to reflect the removal of an asterisks—"RIVER HERRING (alewife and blueback herring)[*]**."

The Commission therefore amends §§ 61.1, 61.2, 63.43, 65.9, 65.24 and 69.12 to read as set forth in Annex A.

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 5679 (September 4, 2021). The Commission received a total of two public comments regarding the proposal: both comments did not pertain to 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), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided, and a total of two comments were received: both comments did not pertain to the proposal.

(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, 63, 65 and 69, are amended by amending §§ 61.1, 61.2, 63.43, 65.9, 65.24 and 69.12 to read as set forth at Annex A, with ellipses referring to the existing text of the regulations.

(*Editor's Note:* See 51 Pa.B. 7691 (December 11, 2021) for additional amendments to §§ 61.1 and 61.2.)

(*Editor's Note:* See 51 Pa.B. 7691 (December 11, 2021) and 51 Pa.B. 7703 (December 11, 2021) for additional amendments to § 65.24.)

(*Editor's Note:* See 51 Pa.B. 7704 (December 11, 2021) for additional amendments to § 69.12.)

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

(C) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on January 1, 2022.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-320 remains valid for the final adoption of the subject regulation.

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.

* * * * *

| <i>SPECIES</i> | <i>SEASONS</i> | <i>MINIMUM SIZE</i> | <i>DAILY LIMIT</i> |
|--|--|--|----------------------|
| * * * * * | | | |
| AMERICAN EEL | Open year-round | 9 inches | 25 |
| BASS—Largemouth and Smallmouth and Spotted | January 1 to midnight the day before the second Saturday in April and October 1 to midnight December 31* | 15 inches | 4 (combined species) |
| | 12:01 a.m. the second Saturday in April to 12:01 a.m. the second Saturday in June | NO HARVEST—Catch and immediate release only (No Tournaments Permitted) | |
| | 12:01 a.m. the second Saturday in June to midnight September 30 | 12 inches | 6 (combined species) |
| AMERICAN SHAD** | Open year-round | No minimum | 3 |
| HICKORY SHAD** | Closed year-round | No minimum | 0 |
| GIZZARD SHAD | Open year-round | No minimum | 50 |
| RIVER HERRING (alewife and blueback herring)** | Open year-round | No minimum | 50 |
| * * * * * | | | |

* Note: Stocked trout waters are closed to all fishing from the third Monday in February to the second Saturday in April.

** Note: Unlawful to take, catch or kill American shad, hickory shad and river herring (alewife and blueback herring) in Susquehanna River and its tributaries. See § 61.4 and 61.7 (relating to Conowingo Reservoir; and Susquehanna River and tributaries).

§ 61.2. Delaware River, West Branch Delaware River and River Estuary.

* * * * *

(e) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

| <i>SPECIES</i> | <i>SEASONS</i> | <i>MINIMUM SIZE</i> | <i>DAILY LIMIT</i> |
|----------------------------------|--|---|----------------------|
| * * * * * | | | |
| BASS Largemouth Smallmouth | January 1 to midnight the day before the second Saturday in April and 12:01 a.m. the second Saturday in June to midnight December 31 | 12 inches | 5 (combined species) |
| | 12:01 a.m. the second Saturday in April to 12:01 a.m. the second Saturday in June | NO HARVEST—Catch and immediate release only | |
| * * * * * | | | |

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.43. Fishing for bass during spring season.

(a) During the period from 12:01 a.m. on the second Saturday in April until 12:01 a.m. on the second Saturday in June:

* * * * *

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.9. Big bass.

* * * * *

(b) It is unlawful to take, catch, kill or possess a largemouth, smallmouth or spotted bass on or in designated “big bass” waters except in compliance with the following seasons and size and creel limits. It is not a violation of this section if the bass is immediately returned unharmed to the waters from which it was taken.

| <i>Seasons</i> | <i>Size (in)</i> | <i>Creel Limit</i> |
|---|---|----------------------|
| <i>Lakes:</i> January 1 to midnight the day before the second Saturday in April and 12:01 a.m. the second Saturday in June to midnight December 31 | 15 | 4 (combined species) |
| 12:01 a.m. the second Saturday in April to 12:01 a.m. the second Saturday in June | NO HARVEST—Catch and immediate release only | |
| <i>Rivers and Streams:</i> January 1 to midnight the day before the second Saturday in April and October 1 to midnight December 31 | 18 | 2 (combined species) |
| 12:01 a.m. the second Saturday in April to 12:01 a.m. the second Saturday in June | NO HARVEST—Catch and immediate release only | |
| 12:01 a.m. the second Saturday in June to midnight September 30 | 15 | 4 (combined species) |

* * * * *

§ 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 Regulations</i> |
|--|--|--|
| * * * * * | | |
| Clarion | Beaver Creek Ponds | Closed to fishing from 12:01 a.m. January 1 to 12:01 a.m. the second Saturday in June of each year. Bass—15 inch minimum size limit and a 2 bass daily creel limit for the total project area. Panfish (combined species) 10 fish daily creel limit for the total project area. Other species-inland regulations apply. |
| * * * * * | | |
| Cumberland, Dauphin, Juniata, Lancaster, Northumberland, Perry, Snyder, York | Susquehanna River (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam, including all tributaries to a point 1/2 mile upstream from the confluence | <p>Bass (Smallmouth and Largemouth)—No harvest year-round—catch and immediate release only.</p> <p>From 12:01 a.m. the second Saturday in April to 12:01 a.m. the second Saturday in June—No Bass tournaments.</p> <p>Remainder of the year—Catch-measure-immediate release tournaments only.</p> <p>It is unlawful for an angler to repeatedly cast into a clearly visible bass spawning nest or bed in an effort to catch or take bass. A bass caught and immediately returned unharmed to the waters from which taken will not be considered a violation of this section.</p> |

| <i>County</i> | <i>Name of Water</i> | <i>Special Regulations</i> |
|-------------------------|---|--|
| Dauphin, Juniata, Perry | Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth, including all tributaries to a point 1/2 mile upstream from the confluence | <p>Bass (Smallmouth and Largemouth)—No harvest year-round—catch and immediate release only.</p> <p>From 12:01 a.m. the second Saturday in April to 12:01 a.m. the second Saturday in June—No Bass tournaments.</p> <p>Remainder of the year—Catch-measure-immediate release tournaments only.</p> <p>It is unlawful for an angler to repeatedly cast into a clearly visible bass spawning nest or bed in an effort to catch or take bass. A bass caught and immediately returned unharmed to the waters from which taken will not be considered a violation of this section.</p> |
| * * * * * | | |

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.12. Seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters.

* * * * *

(f) Except as otherwise provided in subsection (d) and (e) and this subpart, the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

| <i>SPECIES</i> | <i>SEASONS</i> | <i>MINIMUM SIZE</i> | <i>DAILY LIMIT</i> |
|-------------------------------|--|---------------------|----------------------|
| * * * * * | | | |
| BASS Largemouth Smallmouth | January 1 to second Saturday in April and second Saturday in June until December 31. | 15 inches | 4 (combined species) |
| | Second Saturday in April until second Saturday in June.* | 20 inches | 1 |
| * * * * * | | | |

* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to fishing tournaments and fishing derbies)) for bass on Lake Erie, Lake Erie tributaries or Presque Isle Bay during the period from the second Saturday in April until the second Saturday in June.

* * * * *

[Pa.B. Doc. No. 21-2061. Filed for public inspection December 10, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

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 Fish and Boat Code). The amendments update the harvest requirements

relating to all-tackle trophy trout slot limit and artificial lures only trout slot limit regulations.

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission’s web site at www.fishandboat.com.

C. Statutory Authority

The addition of §§ 65.4c and 65.4d (relating to all-tackle trout slot limit; and artificial lures only trout slot limit) are published under the statutory authority of 30 Pa.C.S. § 2102(a) (relating to rules and regulations) and section 506 of The Administrative Code of 1929 (71 P.S. § 186).

D. Purpose and Background

The specific purpose and background of the amendments are described in more detail under the summary of changes.

E. Summary of Changes

To address landowner and angler feedback, increase the abundance of large wild brown trout in the population, and provide the opportunity to use all tackle types and harvest some trout, a new miscellaneous special regulation regarding slot limit was established on Penns Creek, Section 03, beginning January 1, 2014, in § 65.24 (relating to miscellaneous special regulations). The slot limit regulation allows for year-round fishing, use of all tackle types, and the harvest of two trout per day that are at least 7 inches but less than 12 inches in length, from the opening day of trout season through Labor Day, with no harvest permitted the remainder of the year.

Penns Creek, Section 03, provided a unique opportunity to evaluate a new special regulation on a productive limestone stream. The Penns Creek trout population was monitored before and after implementation of the slot limit regulation. Results of the monitoring revealed a substantial increase in the electrofishing catch rates of larger brown trout (greater than or equal to 16 inches in length) during the slot limit regulation implementation period (2014–2019). These results suggest that the slot limit regulation likely played an important role in the increased electrofishing catch of large brown trout in Section 03. In addition to fishery independent monitoring, staff conducted an angler use, harvest and opinion survey to evaluate the social aspects of the regulation change and estimate angler harvest in 2019. Results documented low harvest of trout during the survey and high angler support for continuance of the slot limit regulation. Despite low angler harvest under the current slot limit regulation, this regulation provides the opportunity for anglers to harvest intermediate-sized trout if desired, which was an important social consideration when the regulation was originally implemented.

Given the success of the experimental slot limit regulation program on Penns Creek, Section 03, and potential opportunities to utilize this regulation at other suitable wild trout waters in the future, staff recommend that the Commission establish a new special regulation program to be known as trout slot limit. The trout slot limit will have two subprograms: the all-tackle trout slot limit program and the artificial lures only trout slot limit program. These subprograms will provide the Commission with the ability to select the most appropriate tackle option to achieve biological and social objectives for each water considered for inclusion in the program and provide an opportunity to evaluate the effects of different terminal tackle types.

During the public comment period, the Commission discovered the need for a grammatical revision to § 65.4d(b)(2) to preserve the original intent. Accordingly, the semi-colon after “only” is removed.

The Commission therefore adds §§ 65.4c and 65.4d to read as set forth in Annex A.

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 5683 (September 4, 2021). The Commission received a total of five public comments regarding the proposal: three support the proposal, and two comments did not pertain to 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), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided, and a total of five comments were received: three supported the proposal, and two comments did not pertain to the proposal.

(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 adding §§ 65.4c and 65.4d to read as set forth in Annex A.

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

(C) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-317 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.4c. All-tackle trout slot limit.

(a) The Executive Director, with the approval of the Commission, may designate waters as all-tackle trout slot limit. The designation of waters as all-tackle trout slot limit shall be effective when the waters are posted after publication of a notice of the designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted all-tackle trout slot limit areas except in compliance with all of the following requirements:

- (1) Open to fishing year-round.
- (2) All tackle types are permitted.

(3) From 8 a.m. on the opening day of the regular season for trout through Labor Day, the daily creel limit of trout is two (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed.

(4) From the day after Labor Day until 8 a.m. on the opening day of the regular season for trout, no trout may be killed or possessed.

- (5) A current trout permit is required.

(c) This section applies to trout only. Inland regulations apply to all other species.

§ 65.4d. Artificial lures only trout slot limit.

(a) The Executive Director, with the approval of the Commission, may designate waters as artificial lures only trout slot limit. The designation of waters as artificial lures only trout slot limit shall be effective when the waters are posted after publication of a notice of the designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted artificial lures only trout slot limit areas except in compliance with all of the following requirements.

- (1) Open to fishing year-round.

(2) Fishing may be done with artificial lures only constructed of metal, plastic, rubber or wood; or with flies and streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly-fishing gear. Use or possession of other lures or substances is prohibited.

(3) From 8 a.m. on the opening day of the regular season for trout through Labor Day, the daily creel limit of trout is two (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed.

(4) From the day after Labor Day until 8 a.m. on the opening day of the regular season for trout, no trout may be killed or possessed.

- (5) Taking of baitfish or fishbait is prohibited.

- (6) A current trout permit is required.

(c) Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the artificial lures only trout slot limit area without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the artificial lures only trout slot limit area.

[Pa.B. Doc. No. 21-2062. Filed for public inspection December 10, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

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 Fish and Boat Code) (code). The amendment removes Leaser Lake from the Commission's list of waters managed under miscellaneous special regulations.

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

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

D. Purpose and Background

The specific purpose and background of the amendment is described in more detail under the summary of changes.

E. Summary of Changes

Leaser Lake, a 117-acre impoundment owned by the Commonwealth and managed by the Commission, is located in Lynn Township, Lehigh County, approximately 20 miles west-northwest of the City of Allentown. The dam impounds two unnamed tributaries to Ontelaunee Creek at river mile 0.38 upstream from its confluence with Ontelaunee Creek. This reservoir was completely dewatered in 2009 to complete dam and spillway repairs and modifications per Department of Environmental Protection dam safety standards. Following completion of these repairs and modifications, refill occurred in 2013 and the Commission resumed annual adult trout stocking to provide immediate angling opportunities. Additionally, the Commission stocked the lake from 2013 through 2020, with select fish species to establish a high quality, warmwater and coolwater fishery.

Since 2013, Leaser Lake has been managed with miscellaneous special regulations in § 65.24 that allow for the harvest of trout under Commonwealth Inland Waters angling regulations, but no harvest of other fish species. The intent of these temporary regulations is to facilitate rapid development of the warmwater and coolwater fish populations in the absence of harvest, and once re-established, the lake would be recommended for removal from the special regulation and moved to one or more of the Commission's existing regulation programs.

The black bass and panfish populations were evaluated from 2016 through 2020 to monitor progress towards development of a high quality, warmwater and coolwater fishery. Sportfish abundance and population size structure have steadily improved to levels where populations can now sustain limited harvest. As such, it is recom-

mended that Leaser Lake be removed from miscellaneous special regulations in favor of management with the Commission's existing warmwater regulation programs that allow for limited harvest of warmwater and coolwater fish. Upon removal of this regulation, Leaser Lake may be proposed for designation into § 65.9 (relating to big bass) or § 65.11 (relating to panfish enhancement), or both. Additionally, Leaser Lake may be considered for inclusion in § 65.19 (relating to stocked trout waters open to year-round fishing). To facilitate transition of Leaser Lake to the big bass, panfish enhancement or stocked trout waters open to year-round fishing programs, this water must first be removed from the miscellaneous special regulations. Other fish species will be managed by angling regulations under § 61.1 (relating to Commonwealth inland waters).

The Commission therefore amends § 65.24 to read as set forth in the proposed rulemaking published at 51 Pa.B. 3139 (June 5, 2021).

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 3139. The Commission did not receive any public comments regarding the proposal.

Findings

The Commission finds that:

- (1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided, and the Commission did not receive any public comments.
- (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 51 Pa.B. 3139.

(*Editor's Note:* See 51 Pa.B. 7691 (December 11, 2021) and 51 Pa.B. 7697 (December 11, 2021) for additional amendments to § 65.24.)

(B) The Executive Director will submit this order and 51 Pa.B. 3139 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 51 Pa.B. 3139 and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-312 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-2063. Filed for public inspection December 10, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Sport Fishing and Angling

The Fish and Boat Commission (Commission) amends Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code). The amendment will simplify regulations pertaining to the Lake Erie basin while improving salmonid management and improving the fishery for that species group.

A. Effective Date

This final-form rulemaking will go into effect on January 1, 2022.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The amendment to § 69.12 (relating to seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) is published under the statutory authority of 30 Pa.C.S. § 2102(b) (relating to rules and regulations) and section 506 of The Administrative Code of 1929 (71 P.S. § 186).

D. Purpose and Background

The specific purpose and background of the amendment is described in more detail under the summary of changes.

E. Summary of Changes

The Commission has identified an opportunity to simplify regulations pertaining to the Lake Erie basin while improving upon salmonid management and optimizing the fishery for that species group. A modification to regulations applied to trout and salmon to align with a proposed amendment to § 61.1 (relating to Commonwealth inland waters) regulations pertaining to the start of the trout season would allow anglers to more easily identify when fishing and harvest are permitted. Current regulations prohibit fishing and possession of trout and salmon from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11. If the proposed amendments to the Commonwealth inland waters regulations were to be adopted, it would result in one Statewide opening day of regular season for trout on the first Saturday in April. To better align these regulations to those of the Lake Erie basin § 69.12 could be amended to prohibit fishing and possession of trout and salmon from 12:01 a.m. on the Friday

before the first Saturday in April until 8 a.m. on the opening day of regular season for trout (that is, the first Saturday in April).

In addition to regulation simplification and alignment, a modification to the daily creel and minimum size limits for rainbow trout (steelhead) and a modification to the minimum size limits for lake trout would potentially enhance angling opportunities for those species. Current daily creel limits allow for the harvest of five fish (only two of which may be lake trout) greater than or equal to 9 inches in total length from 8 a.m. on the first Saturday after April 11 through Labor Day. Lake Erie and its tributaries generate hundreds of thousands of angler trips for steelhead resulting in millions of dollars of economic benefit to local economies around Lake Erie. As such, a lower daily creel and increased minimum size limits for rainbow trout and increased minimum size limits for lake trout, would reduce the potential for overharvest and prohibit harvest of intermediate-sized rainbow trout and lake trout while further promoting the trophy component of the fishery.

In summary, Commission staff recommend amendments to the Lake Erie basin angling regulations pertaining to salmonids for regulatory consistency and simplicity by aligning the trout and salmon seasons with the proposed amendment to the Commonwealth inland waters regulations, and modifying the daily creel and minimum size limits for rainbow trout and the minimum size limits for lake trout to optimize those fisheries. It should be noted that amending the daily creel limit of rainbow trout from five to three and minimum size limit from 9 inches to 15 inches from 8 a.m. on the opening day of the regular season for trout and salmon through Labor Day will not impact the creel or size limit for brown trout, a popular put-and-take fishery during the months of April and May. Additionally, an increase in the minimum size of lake trout from 9 inches to 15 inches provides further protection to the population which is consistent with ongoing multijurisdictional rehabilitation efforts in Lake Erie.

During the public comment period, the Commission discovered the need for the following modifications to be reflected in this final-form rulemaking to effect the original intent of the proposed change: (1) For RAINBOW TROUT and SALMON—“(combined species)” is added to the daily limit column within the table in § 69.12; (2) The first asterisks in the table for § 69.12 is updated to remove the language “[first Saturday after April 11 until the first Saturday after June 11]” and is replaced with “**second Saturday in April until the second Saturday in June.**”; and (4) An additional asterisk has been added to the table in § 69.12 to provide clarity—“*****The daily limit for all species of trout and salmon (combined) is 5 from 8 a.m. the opening day of the regular season for trout until midnight Labor Day. The daily limit for all species of trout and salmon (combined) is 3 per day from 12:01 a.m. the day after Labor Day until 12:01 a.m. on the Friday before the opening day of the regular season for trout.**”

Finally, following consideration of public comments, the Commission has decided to keep the daily creel limit for lake trout at two per day. The table has been updated to reflect this two per day creel limit.

The Commission therefore amends § 69.12 to read as set forth in Annex A.

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 5685 (September 4, 2021). The Commission received a total of 36 public comments regarding the proposal: 3 support the entire proposal, 1 supports the portion of the proposal pertaining to rainbow trout, 1 supports the portion of the proposal pertaining to lake trout, 5 oppose the entire proposal, 1 opposes the portion of the proposal pertaining to rainbow trout, 12 oppose the portion of the proposal pertaining to lake trout and 13 do not pertain to 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), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided, and a total of 36 comments were received: 3 supported the entire proposal, 1 supported the portion of the proposal pertaining to rainbow trout, 1 supported the portion of the proposal pertaining to lake trout, 5 opposed the entire proposal, 1 opposed the portion of the proposal pertaining to rainbow trout, 12 opposed the portion of the proposal pertaining to lake trout and 13 comments did not pertain to the proposal.

(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 69, are amended by amending § 69.12 to read as set forth at Annex A, with ellipses referring to the existing text of the regulations.

(Editor’s Note: See 51 Pa.B. 7697 (December 11, 2021) for additional amendments to § 69.12.)

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

(C) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on January 1, 2022.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-319 remains valid for the final adoption of the subject regulation.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING
CHAPTER 69. FISHING IN LAKE ERIE AND
BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.12. Seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters.

* * * * *

(d) It is unlawful to fish in or along any Lake Erie tributary stream from 12:01 a.m. on the Friday before the opening day of the regular season for trout until 8 a.m. on the opening day of the regular season for trout.

(e) It is unlawful to possess trout or salmon in or along any Lake Erie tributary stream from 12:01 a.m. on the Friday before the opening day of the regular season for trout until 8 a.m. on the opening day of the regular season for trout.

(f) Except as otherwise provided in subsections (d) and (e) and this subpart, the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

| <i>Species</i> | <i>Seasons</i> | <i>Minimum Size</i> | <i>Daily Limit</i> |
|-------------------------------|---|---------------------|----------------------|
| * * * * * | | | |
| BASS Largemouth Smallmouth | January 1 to first Saturday after April 11 and first Saturday after June 11 until December 31. | 15 inches | 4 (combined species) |
| | First Saturday after April 11 until first Saturday after June 11.* | 20 inches | 1 |
| BROOK and BROWN TROUT*** | 8 a.m. the opening day of the regular season for trout until midnight Labor Day. | 9 inches | 5 (combined species) |
| | 12:01 a.m. the day after Labor Day until 12:01 a.m. on the Friday before the opening day of the regular season for trout. | 15 inches | 3 (combined species) |
| RAINBOW TROUT and SALMON*** | 8 a.m. the opening day of the regular season for trout until 12:01 a.m. the Friday before the opening day of the regular season for trout the following year. | 15 inches | 3 (combined species) |
| LAKE TROUT*** | 8 a.m. the opening day of the regular season for trout until 12:01 a.m. the Friday before the opening day of the regular season for trout the following year. | 15 inches | 2 |
| STURGEON | No open season | ENDANGERED SPECIES | |
| * * * * * | | | |

* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to fishing tournaments and fishing derbies)) for bass on Lake Erie, Lake Erie tributaries or Presque Isle Bay during the period from the second Saturday in April until the second Saturday in June.

** See § 69.12b (relating to Lake Erie walleye and yellow perch adaptive management for establishing daily limits). After the Executive Director establishes the daily limit for the year, the information will be posted on the Commission's web site and available from any Commission office.

*** The daily limit for all species of trout and salmon (combined) is 5 from 8 a.m. the opening day of the regular season for trout until midnight Labor Day. The daily limit for all species of trout and salmon (combined) is 3 per day from 12:01 a.m. the day after Labor Day until 12:01 a.m. on the Friday before the opening day of the regular season for trout.

[Pa.B. Doc. No. 21-2064. Filed for public inspection December 10, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

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 Fish and Boat Code) (code). The amendment updates the Commission's regulations pertaining to Blue Marsh Lake, located in Berks County.

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The amendment to § 111.6 (relating to Berks County) is published under the statutory authority of section 5124(a) of the code (relating to particular areas of water).

D. Purpose and Background

The specific purpose and background of the amendment is described in more detail under the summary of changes.

E. Summary of Changes

Blue Marsh Lake is a 1,148-acre flood control project managed by the United States Army Corps of Engineers (USACOE) in Berks County. Section 111.6 states that a boat may not tow more than one water-skier (that is, person) on Blue Marsh Lake. This regulation was promulgated shortly after the Blue Marsh Recreation Area was established to address a perceived safety issue relating to boats with multiple towlines. According to definitions contained in § 109.4 (relating to waterskiing, aquaplaning, kiteskiing and similar activities), the term "waterski" is defined as "a device used by a person to be towed through or on water behind a boat. The term includes conventional water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattresses, parasails, kite skis and similar devices." Some of these devices are designed to carry more than one person.

In the fall of 2019, the USACOE requested a change to § 111.6 citing that it does not serve the intended purpose, causes confusion among boaters and unnecessarily limits recreational boating opportunities. The USACOE recently requested the Boating Advisory Board reconsider their request to amend § 111.6 with the intent to limit the number of devices towed by a boat—rather than the number of persons—to no more than one. The USACOE stated that with the popularity of inflatable towed devices designed to carry more than one person, this amendment will eliminate confusion among the boating public and increase recreational boating opportunities. It is also anticipated that the amendment will result in more effective and efficient law enforcement efforts on the lake. The number of persons being towed on a device is limited by the boat's persons capacity.

The Commission therefore amends § 111.6 to read as set forth in the proposed rulemaking published at 51 Pa.B. 5687 (September 4, 2021).

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 5687. The Commission received a total of ten public comments regarding the proposal: eight support the proposal, and two comments did not pertain to 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), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided and a total of ten comments were received: eight supported the proposal and two comments did not pertain to the proposal.

(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, is amended by amending § 111.6 to read as set forth at 51 Pa.B. 5687.

(B) The Executive Director will submit this order and 51 Pa.B. 5687 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 51 Pa.B. 5687 and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-315 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-2065. Filed for public inspection December 10, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

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 Fish and Boat Code) (code). The amendment updates the Commission's regulations pertaining to Shenango River Lake, located in Mercer County.

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

The amendment to § 111.43 (relating to Mercer County) is published under the statutory authority of section 5124(a) of the code (relating to particular areas of water).

D. *Purpose and Background*

The specific purpose and background of the amendment is described in more detail under the summary of changes.

E. *Summary of Changes*

Shenango River Lake is a 3,560-acre flood control project managed by the United States Army Corps of Engineers (USACE) in Mercer County. This busy boating destination is regulated by § 111.43. Shenango River Lake has several specific regulations that deviate from the Statewide recreational boating regulations when boating on project waters. Specifically, subsection (a)(1) states that "the use of motors in excess of 10 horsepower are prohibited in the area west of the Penn Central Railroad (Levittsburg) causeway to the Ohio line."

Recently USACE leadership has changed their local policy/regulation adopting a 20 horsepower restriction west of the causeway. They have petitioned the Commission to make the same change to § 111.43 so Waterways Conservation Officers can continue to assist in enforcement. The proposed amendment was approved by the Boating Advisory Board at their June 23, 2020, meeting.

The Commission therefore amends § 111.43 to read as set forth in the proposed rulemaking published at 51 Pa.B. 6049 (September 18, 2021).

F. *Paperwork*

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

A notice of proposed rulemaking was published at 51 Pa.B. 6049. The Commission did not receive any public comments regarding the proposal.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided, and the Commission did not receive any public comments.

(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, is amended by amending § 111.43 to read as set forth at 51 Pa.B. 6049.

(B) The Executive Director will submit this order and 51 Pa.B. 6049 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 51 Pa.B. 6049 and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-316 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-2066. Filed for public inspection December 10, 2021, 9:00 a.m.]

