

# PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 3270, 3280, 3290 AND 3300]

### Child Care Facilities

The Department of Public Welfare (Department), under the authority of Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1087), proposes to amend Chapters 3270, 3280 and 3290 and delete Chapter 3300 to read as set forth in Annex A.

#### *Purpose*

The child care facility regulations in Chapters 3270, 3280, 3290 and 3300 provide standards to aid in protecting the health, safety and rights of children and to reduce risks to children in child day care centers, group child day care homes and family child day care homes (FDCH). The regulations identify the minimum level of compliance necessary to obtain the Department's certificate of compliance to operate a child care center or group child day care home or certificate of registration to operate an FDCH.

The proposed rulemaking is needed to update the minimum standards for child care facilities. The current regulations were published at 22 Pa.B. 1651 (April 4, 1992) and have not been amended since. The regulations need to be updated to reference the current laws that directly impact the operation of child care facilities, to incorporate the Department's statements of policy issued since 1992, to implement changes in recommended health and safety practices, to clarify minimum standards and to reflect best practice in the field of child care.

#### *Requirements*

*Chapter 3300 (relating to specialized day care services for children with disabilities)*

The Department proposes to delete Chapter 3300 and amend Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes) to include requirements related to providing care to a child with special needs. Chapter 3300 solely addresses child care provided to children with special needs; however, the equal opportunity provisions of the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) endorse inclusive, nonexclusionary practices. By amending Chapters 3270, 3280 and 3290 to address care for a child with special needs, the Department is clarifying that every child care facility is expected to make reasonable accommodation to enroll and provide care for children with special needs and to work with other persons who provide support services to the child and the child's family.

The Department proposes amending Chapters 3270, 3280 and 3290 to promote inclusion of children with special needs in all child care facilities and comply with the ADA philosophy.

*§§ 3270.17, 3280.16 and 3290.15 (relating to service to child with a disability)*

The proposed rulemaking requires the facility operator to make reasonable accommodation to provide care to a child with special needs and to permit service providers to work with the child onsite. The proposed rulemaking requires a facility operator to make facility staff aware of

early intervention and special education services. The Department will provide information and materials to facilities regarding community resources for children with special needs to share with staff and parents.

*§§ 3270.133, 3280.133 and 3290.133 (relating to child medication and special diets)*

The Department proposes to amend Chapters 3270, 3280 and 3290 to require a facility to make reasonable accommodation to administer a prescribed medication or special diet to a child with special needs. The current regulations state a facility is not required to administer medications or special diets. Refusal to administer medication may violate the ADA.

*§§ 3270.4, 3280.4 and 3290.4 (relating to definitions)*

*Child with special needs*—The Department proposes to delete the use of the phrase “child with a disability” to use and define the phrase “child with special needs.” The proposed definition includes a child who has been assessed as having a special need and receives early intervention or special education services; has a formal behavioral plan determined by a physician, psychiatrist or psychologist; or has a chronic health condition diagnosed by a medical professional that requires specialized health and related services. The amendment updates the regulations to reflect current practice related to services to a child with special needs.

*Age level*—The Department proposes to amend the definitions of “preschool child” and “young school-age child” so that a child in kindergarten is considered a young school-age child. The Department's current regulations define “preschool child” as a child from 37 months of age through the date the child enters 1st grade of a public or private school system. The Department's current regulations define “young school-age child” as a child from the 1st grade through the 3rd grade of a public or private school system.

School-age child care programs are established to meet the unique needs of children who need child care before and after school hours, including kindergarten children. Many school-age programs are located in school buildings. Other school-age programs transport children from school to the child care facility. The fact that a kindergarten child is a preschool child under the Department's regulations creates a disincentive for a school-age child care program to enroll a kindergarten child.

The Department's regulations permit a child day care center or group child day care home in which care is provided exclusively to school-age children to comply with fewer requirements than a facility that provides care for children of all age levels (see §§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs)). In addition, a school-age child care program located in a school building is further exempt from physical site requirements in accordance with section 776.1 of the Public School Code of 1949 (24 P. S. § 7-776.1), regarding child day-care centers in school buildings. A facility that enrolls a kindergarten child cannot be considered a school-age program because the facility is not providing care exclusively to school-age children. As a result, the facility must comply with Chapters 3270 and 3280 and will incur higher costs.

The Department's regulations require a staff:child ratio for preschool children of 1:10 and a ratio for young school-age children of 1:12. When a kindergarten child is included in a group of young school-age children, the stricter preschool ratio must be maintained at a higher cost.

The Department's regulations regarding transportation of children state the driver may not be counted in the staff:child ratio when preschool children are transported, but may be counted in the ratio when only school-age children are being transported (see §§ 3270.173(b) and (c) and 3280.173(b) and (c) (relating to transportation ratios)). When a kindergarten child is being transported, the facility cannot count the driver as part of the staff:child ratio and must provide more staff on the vehicle to meet the preschool staff:child ratio of 1:10 rather than the young school-age ratio of 1:12. The cost of transporting a kindergarten child is therefore higher than the cost of transporting a school-age child.

By changing the definition of "young school-age child" to include children in kindergarten, a school-age child care facility will be able to enroll a kindergarten child without incurring the higher costs of providing care to a preschool child. This amendment will facilitate before- and after-school care for kindergarten children.

*§§ 3270.119, 3280.119 and 3290.118 (relating to program plan)*

The Department proposes requiring that a program plan be prepared for each child in care. Chapter 3300 requires program plans for a child with special needs. This requirement is not included in Chapters 3270, 3280 and 3290. Extending the requirement to each child in care will produce a minimum level of program planning that facilitates each child's healthy and safe development.

*§§ 3270.11, 3280.11 and 3290.11 (relating to application for and issuance of a certificate of compliance)*

The Department proposes requiring a legal entity or a legal entity's representative to participate in precertification orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance or registration. The Department will provide the precertification orientation training at different locations in this Commonwealth at no charge to the legal entity. A legal entity that opens more than one child care facility within 12 months following participation in the training is not required to repeat the training. The Department currently offers precertification orientation training to prospective individuals who want to operate child care facilities. Participation in the orientation training is voluntary. The Department's certification staff find that individuals who attend orientation training are better prepared to operate a child care facility and comply with minimum health and safety standards. Mandating attendance at precertification orientation training will afford additional protection for the health and safety of children in care.

*§ 3290.31 (relating to age and training)*

The Department currently does not require a minimum level of education for an FDCH operator. The Department proposes to increase the minimum qualifications of the FDCH operator by requiring that the operator have a high school diploma or general educational development certificate (GED) at the time of renewal of a certificate of registration. This will afford an FDCH operator who does not have a high school diploma or GED at initial registration a 2-year period in which to obtain a high school diploma or GED.

A study conducted in 2002 in this Commonwealth revealed that 97% of FDCH operators had a high school diploma or GED. By requiring an FDCH operator to have a high school diploma or GED at the time of certificate renewal, the Department is requiring a minimum level of literacy sufficient to comply with the regulations and operate a small business. This will increase the health and safety of FDCHs and also will put into regulation what already is the minimum educational background of most FDCH operators.

The Department proposes to permit a current FDCH operator who does not have a high school diploma or GED to continue to operate a facility that is registered as of the effective date of the final-form rulemaking.

*§§ 3270.102, 3270.233, 3280.102, 3280.215, 3290.102 and 3290.212*

The Department proposes that the surface covering under outdoor play equipment that requires embedded mounting must meet the guidelines for loose-fill or unitary playground protective surface covering established by the United States Consumer Product Safety Commission (CPSC). The "Handbook for Public Playground Safety" published by the CPSC provides standards for loose-fill and unitary surface coverings that reflect the fall height of the equipment and the type or depth of surface covering required to protect from injury if a child falls from the highest point of the equipment. The standards are available on the CPSC website at [www.cpsc.gov/cpscpub/pubs/325.pdf](http://www.cpsc.gov/cpscpub/pubs/325.pdf). The Department's current statements of policy in §§ 3270.102a, 3280.102a and 3290.102a (relating to condition of play equipment—statement of policy) require the same standard for unitary surface covering. The current requirement for 6 inches of loose-fill material is not related to the height of the play equipment and does not meet minimum health and safety standards. Incorporating the CPSC standards in the regulations will afford more protection for children. In recognition of the possible cost to the provider, the Department proposes to permit a 2-year period following the effective date of the final-form rulemaking to comply with the regulations.

The Department proposes to amend Chapters 3270 and 3280 to prohibit the use of children's products and toys determined hazardous by the CPSC. The current regulations do not prohibit the use of children's products or toys that have been determined unsafe for children and have been recalled. Hazardous products that have been recalled present a risk to the health and safety of children in care. Information regarding product recalls is available on the CPSC website. A facility can subscribe to product recall alerts on the CPSC website at [www.cpsc.gov/cpsclist.asp](http://www.cpsc.gov/cpsclist.asp). The Department will provide information to facilities regarding how to receive the alerts. The Department will enforce the regulations by requiring a facility to self-certify at the time of certificate renewal that there are no recalled children's products or toys in the facility. Requiring facilities to remove hazardous products from child care facilities protects the health and safety of children.

*§§ 3270.120, 3280.120 and 3290.119 (relating to infant sleep position).*

The Department proposes to amend Chapters 3270, 3280 and 3290 by requiring that infants shall be placed on their backs to sleep unless there is a medical reason an infant should not sleep in this position. The American

Academy of Pediatrics (AAP) policy on Sudden Infant Death Syndrome (SIDS) prevention recommends that infants be placed on their backs to sleep. This will reduce the risk of SIDS deaths in child care facilities.

*§§ 3270.131, 3280.131 and 3290.131 (relating to health assessment information)*

The Department proposes to amend the regulations regarding child health assessments and screenings by deleting the requirement to adhere to the AAP recommendations. The Department proposes timelines for a facility to obtain initial and updated child health reports. The current regulations make a facility responsible for updated child health assessments and health screening information that complies with the AAP recommendations. If the facility does not comply, the Department cites the facility for noncompliance with the regulation. A child's parent makes health care decisions for the child and pays for health care provided to the child. This is outside the facility's control. Parents may incur added costs to comply with the AAP schedule if their insurance plan does not cover all the examinations included in the AAP schedule. In addition, some physicians charge parents to complete the health report required by regulation. In some areas of this Commonwealth, facilities report that parents must wait months for well-child appointments and cannot meet the AAP timelines. The Department proposes to amend the regulations to provide less stringent timelines for updated health reports. The Department also proposes amendments regarding the information that must be included in the health report to include information needed to respond to a medical emergency and to control the spread of disease in a group setting.

The Department proposes to amend the immunization requirements to match the Department of Health (DOH) regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings), regarding immunizations in child care facilities. The DOH regulation requires child care facilities to comply with the immunization schedule recommended by the Advisory Committee on Immunization Practices, requires exclusion of a child who is not immunized and requires facilities to comply with the annual immunization reporting requirement in 28 Pa. Code § 27.77.

*§§ 3270.201—3270.210, 3280.201—3280.209 and 3290.201—3290.208*

The Department proposes to amend Chapters 3270, 3280 and 3290 by deleting the regulations regarding night care. The requirements regarding night care apply to child care provided from 7 p.m. to 7 a.m. The same minimum health and safety standards should apply during all hours of care.

*§§ 3270.241 and 3280.221 (relating to requirements specific to school-age programs).*

The Department proposes amending the school-age requirements to include proposed §§ 3270.27 and 3280.26 (relating to emergency plan), proposed amendments regarding hazardous toys in §§ 3270.102(g) and 3280.102(g) (relating to condition of play equipment) and proposed §§ 3270.119(g) and 3280.119(g). School-age facilities are currently subject to §§ 3270.21a and 3280.20a (relating to emergency plan-statement of policy).

The Department also proposes to amend the requirements specific to school-age programs to require that staff persons in a school-age facility shall have immediate access to a working telephone on the facility premises. Staff working in some school-age facilities in school

buildings do not have access to a telephone. The telephone may be located in an office that is locked after school hours. In the event of an emergency, staff may be unable to access the telephone to call for help. Ensuring access to a telephone will increase safety for children in school-age facilities.

In addition to the proposed amendments previously detailed, the Department proposes to amend Chapters 3270, 3280 and 3290 to incorporate existing statements of policy regarding emergency plan, posting the inspection summary, Department access, overpopulation of indoor child care space, supervision of children, water activity and release of children. The Department also proposes amendments reflecting current Commonwealth laws regarding a certificate of occupancy, child safety restraints in vehicles and the prohibition against transporting children in 11-15 passenger vans.

#### *Affected Individuals and Organizations*

Children are directly impacted by the proposed rulemaking. The minimum health and safety standards in Chapters 3270, 3280 and 3290 protect children who attend more than 9,000 certified and registered child care facilities in this Commonwealth. Parents also are impacted by the proposed rulemaking. Parents want their children to be safe in child care facilities. At the same time, the cost of child care is of concern to parents and directly impacts the choices that parents make regarding child care. The proposed rulemaking may result in decreased costs to parents due to the decreased costs associated with providing updated child health reports to the facility. The proposed rulemaking also will facilitate inclusion of children with special needs in child care facilities.

Child care facilities and staff also are affected by the proposed rulemaking. The proposed rulemaking may increase costs to some facilities. The Department provides 120 days for facilities to assess and plan for increased costs. In addition, a facility has 2 years to comply with the requirements regarding playground surfacing. The delay in implementation of the final-form rulemaking will afford the Department time to provide information and tools to assist in understanding and complying with the final-form rulemaking to facilities. The proposed amendments regarding staff health appraisals and tuberculosis testing will decrease costs to facilities and staff.

#### *Accomplishments and Benefits*

The child care service regulations were last published in April 1992. Since 1992, many changes have occurred that affect the regulations and operation of a child care facility. The Department published 11 statements of policy clarifying or interpreting the regulations, including statements of policy regarding emergency plans, supervision of children, Syrup of Ipecac, release of children, posting inspection summaries, Departmental access and swimming pool accessibility. Laws that impact operating a child care facility have changed regarding certificate of occupancy, vehicle safety, childhood immunizations and the ADA. New research has resulted in changes to recommendations regarding health and safety practices regarding SIDS prevention, playground safety and tuberculosis testing. In addition, the Department has noted areas in which facilities have difficulty complying with requirements, examined the reasons for noncompliance and, when possible, proposed amendments that will assist facilities to comply with the regulations and continue to ensure minimum health and safety at a facility.

The Department is proposing amendments for child care facilities to improve health and safety standards for

all children in care, facilitate inclusion of children with special needs, incorporate current statements of policy and correct regulatory language to accurately reflect laws that impact facility operation.

#### *Fiscal Impact*

##### *Kindergarten child as young school-age child*

The Department establishes daily reimbursement rates for facilities that participate in the child care subsidy program. The reimbursement rates are established by age level and are different for each county. The reimbursement rate for a preschool child is generally higher than the rate for a school-age child because the cost of complying with the requirements related to caring for a preschool child are higher than the costs of caring for a school-age child.

The proposed amendments to the definition of "young school-age child" to include a kindergarten child will also change the reimbursement rate for a kindergarten child from the preschool rate to the lower school-age rate. The daily reimbursement rate for a school-age child ranges from 10¢ to \$12.40 less than the reimbursement rate for a preschool child across 45 counties.

While the reimbursement rate may decrease, the cost of caring for a kindergarten child will also decrease. The cost of complying with the requirements applicable to a young school-age child is less than the cost of caring for a preschool child. The staff:child ratio for preschool children is 1:10 and the ratio for young school-age children is 1:12. In addition, a school-age facility will be able to enroll a kindergarten child and maintain its status as a school-age facility that is permitted to comply with the less stringent requirements for school-age programs. A facility that transports kindergarten and school-age children will be able to count the driver in the staff:child ratio and will no longer have to supply one or more additional staff persons on the vehicle to comply with ratio requirements related to transporting preschool children. The decrease in the daily reimbursement rate will be offset by lowered operating costs.

##### *Precertification orientation*

Precertification orientation may create costs to an individual who wants to apply for a certificate of compliance or registration. The training will require a full day, including travel and training time. The individual's costs will vary depending on the distance the individual must travel to participate in training. Using the Commonwealth mileage rate, an individual who travels 200 miles round trip would incur a travel cost of \$97.

For individuals currently operating or working in child care facilities, attendance at orientation training would be part of their job and they would be paid for the time to attend the training.

An individual who operates an FDCH or group child day care home and who wants to open a new facility may have to arrange for staff to work at the facility while the individual attends orientation training. According to the Department of Labor and Industry (L & I), the average wage for a child care worker is \$8.50 per hour. If substitute staff must be hired to cover an 8-hour shift, the estimated cost is \$68.

An individual who is employed outside the child care field and who wants to open a facility may miss a day of work to attend orientation training and may lose wages for that day. Based on L & I's statistics regarding the average state wage, the individual may lose \$147 in wages to attend orientation training.

##### *Ventilation required at 82°F*

The current regulation requires that when the indoor temperature exceeds 85°F in a child care space, a means of mechanical air circulation must be operating. Many facilities already have a means of ventilation in place. Ventilation may be provided through using a fan. If a facility has to purchase a fan, the cost of a fan will vary depending on the type of fan (that is, standing fan, window fan, wall fan or ceiling fan). The estimated costs would be anywhere from \$15 to \$100 depending upon the type of fan purchased.

##### *Disposable, nonporous gloves in first aid kit*

The addition of disposable, nonporous gloves to the first aid kit represents increased cost to a facility. The use of gloves is a universal precaution to prevent the spread of disease transmitted from body fluids. The cost of a box of 100 gloves ranges from \$2.99 to \$8.99. The rate at which the gloves are used to administer first aid is unknown. The health and safety protection afforded to children and staff by using gloves outweighs the cost.

##### *Protective surfacing under outdoor play equipment*

The proposed amendments regarding surface covering under outdoor embedded play equipment will result in increased costs for facilities where the surface covering does not meet the CPSC guidelines. The current regulations require at least 6 inches of loose-fill material under equipment. If the facility must modify the protective surface to comply with the regulations, the cost will depend upon the fall height from the equipment, the type of surface covering used and the size of the area that must be covered.

A facility that has a unitary surface covering that currently meets the requirements in the Department's statements of policy will be in compliance with the amended regulations.

##### *Program plan*

Facilities will incur added costs in preparing a program plan for each child twice a year. The current regulations in Chapter 3300 requires that each child with special needs must have a program plan that is reviewed every 3 months and rewritten annually. The proposed amendment regarding program plan requires that each child must have a program plan developed at initial attendance and the plan must be reviewed every 6 months. The Department estimates that on average, an initial program plan may take 1 hour to develop and that each review may take 1/2 hour. The Department does not have data on the average annual number of new enrollments at a facility. The child care center director, group child day care home primary staff person or FDCH operator is responsible for program plan reviews. The Department estimates the average costs of preparing program plan reviews to be as follows: child care center—\$832; group child day care home—\$199.68; and FDCH—\$99.84.

##### *Staff health*

Staff persons will save money from the decreased requirements for staff health appraisals. By amending the requirement for annual health appraisals to biannual health appraisals, each staff person will save \$75 to \$150 per year. In addition, eliminating the requirement for biannual tuberculosis testing will save each staff person an additional \$25 to \$75 every 2 years.

Paperwork Requirements

Sections 3270.119, 3280.119 and 3290.118 will result in increased paperwork. The plan must be developed at the time of initial attendance and updated every 6 months. The program plan must include documented observation of the child's development. The Department will develop tools to assist the provider in completing the program plan and observation.

The proposed rulemaking requires that each child day care center and group child day care home must certify that no hazardous equipment is on the premises. The Department will develop the certification document. The form will take no more than 10 minutes for the facility to complete.

Effective Date

This proposed rulemaking will be effective 120 calendar days after publication of the final-form rulemaking in the Pennsylvania Bulletin. The Department is providing an additional 2 years beyond the effective date of the final-form rulemaking for facility operators to comply with the amended regulations regarding protective surface covering under outdoor play equipment.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Jennifer Lau, Bureau of Certification Services, Office of Child Development, Department of Public Welfare, 1401 North Seventh Street, P. O. Box 2675, Harrisburg, PA 17105, jlau@state.pa.us within 30 calendar days after the date of publication of this proposed rulemaking in the Pennsylvania Bulletin. Reference Regulation No. 14-506 when submitting comments.

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

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 23, 2006, 2003, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Children and Youth and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

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

ESTELLE B. RICHMAN, Secretary

Fiscal Note: 14-506. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE
PART V. CHILDREN, YOUTH AND FAMILIES
MANUAL

Subpart D. NONRESIDENTIAL AGENCIES, FACILITIES AND SERVICES

ARTICLE I. LICENSING/APPROVAL

CHAPTER 3270. CHILD DAY CARE CENTERS

GENERAL PROVISIONS

§ 3270.4. Definitions.

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

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ACIP—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

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[Age-appropriate child health assessment—A written report assessing a child's health status. The report is signed by a physician or a CRNP and includes the child's health history, the child's physical examination and a plan for treatment of health problems identified in the health assessment.]

Age level—The grouping category appropriate for the child's age.

(i) Infant—A child from birth [through 12 months] to 1 year of age.

(ii) Young toddler—A child from [13 through 24 months] 1 to 2 years of age.

(iii) Older toddler—A child from [25 through 36 months] 2 to 3 years of age.

(iv) Preschool child—A child from [37 months of age through] 3 years of age to the date the child enters [1st grade of] kindergarten in a public or private school system.

(v) Young school-age child—A child [from the 1st grade through the 3rd] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) Older school-age child—A child [from] who attends the 4th grade of a public or private school system through 15 years of age.

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Child with [a disability] special needs—A child who [does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis to function in an adaptive manner. Examples of a child with a disability include a child who has:

(i) A developmental delay.

(ii) A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy

or another condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.

(iii) Mental retardation associated with sociocultural or psychosocial disadvantage.

(iv) A genetic disorder or physiological condition usually associated with mental retardation.

(v) Problems of social or emotional adjustment.

(vi) A physical disability such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap. ] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or an Individualized Family Service Plan.

(ii) A formal behavioral plan that has been determined by a licensed physician, psychiatrist or licensed psychologist.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

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**Inspection summary**—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

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**GENERAL REQUIREMENTS**

§ 3270.11. Application for and issuance of a certificate of compliance.

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(b) A legal entity or a representative of the legal entity shall participate in a pre-certification orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance. The precertification orientation does not count toward the annual minimum of 6 hours of child care training required in § 3270.31(e) (relating to age and training).

(c) Application for a certificate of compliance shall be submitted to the appropriate regional day care office in accordance with Chapter 20 (relating to the licensure or approval of facilities and agencies).

[ (c) ] (d) \* \* \*

[ (d) ] (e) \* \* \*

[ (e) ] (f) \* \* \*

[ (f) ] (g) \* \* \*

[ (g) ] (h) A facility whose certificate of compliance is current as of [ April 4, 1992, ] \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*) will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3270.15. [ Firesafety approval ] Certificate of occupancy.

A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements of the Department of Labor and Industry [ at ] in 34 Pa. Code [ Chapter 54 (relating to Group B educational) or local authorities in Scranton, Pittsburgh or Philadelphia ] § 403.23 (relating to child day care facilities).

§ 3270.17. Service to a child with [ a disability ] special needs.

[ A facility serving a child with a disability as defined in § 3270.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities). ]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213).

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's Individualized Education Program, Individualized Family Service Plan, formal behavioral plan or program plan as defined in § 3270.119 (relating to program plan).

(c) The operator is responsible to make staff persons aware of community resources for the family of a child with possible special needs.

(1) When the director believes a child may need an assessment due to developmental, behavioral or health concerns, the director shall inform the child's parent of the concern and provide information to the parent regarding resources for referral and assistance.

(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the director. The director shall inform the child's parent of the staff person's concern and provide information to the parent regarding resources for referral and assistance.

§ 3270.24. Departmental access.

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(c) An agent of the Department will inspect for compliance with this chapter in all areas of the facility premises that are accessible to children.

§ 3270.25. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance and a copy of the applicable regulations under which the facility is certified shall be posted in a conspicuous location used by parents, with instructions for contacting the appropriate regional day care office posted at the same location.

(b) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of compliance in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the Department

ment verifies that each regulatory noncompliance item cited on the inspection summary has been corrected.

**§ 3270.27. Emergency plan.**

(a) The facility shall have an emergency plan that provides for:

- (1) Shelter of children during an emergency.
- (2) Evacuation of children from the facility.
- (3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.
- (4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emer-

gency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan to the county emergency management agency.

**FACILITY PERSONS**

**§ 3270.31. Age and training.**

\* \* \* \* \*

(d) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential, as it applies to the staff qualifications in this chapter, is equivalent to [ one of the following:

(1) Fifteen ] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[ (2) Thirty credit hours from an accredited college or university in early childhood education or child development. ]

\* \* \* \* \*

**STAFF-CHILD RATIO**

**§ 3270.52. Mixed age level.**

When children are grouped in mixed age levels, [ the following child group sizes and ratios of staff persons apply: ] the age of the youngest child in the group determines the staff:child ratio and maximum group size in accordance with the requirements in § 3270.51 (relating to similar age level).

[ Mixed Age Levels	Staff	Children	Maximum Group Size*	Total Number of Staff Required for the Maximum Group Size
Infant/young or older toddler	1	4	8	2
Infant/preschool	1	4	8	2
Young toddler/ preschool	1	5	10	2
Older toddler/ preschool	1	6	12	2
Preschool/young or older school-age	1	10	20	2

\*No more than 50% of each group may be of the older age level. ]

**PHYSICAL SITE**

**§ 3270.61. Measurement and use of indoor child care space.**

\* \* \* \* \*

(h) The capacity established for an indoor space may not be exceeded except [ at ] in the following situations:

(1) At naptime, when toddler or preschool children are resting on rest equipment described in § 3270.106 (relating to rest equipment)[ . ] if the following conditions are met:

- [ (1) ] (i) \* \* \*
- [ (2) ] (ii) \* \* \*

(2) When older toddler, preschool or school-age children are participating in a program activity if the following conditions are met:

(i) The capacity of the indoor child care space may be exceeded for no more than two separate 1/2 hour time periods daily.

(ii) Each time period shall be designated on the facility's schedule of daily activities.

(iii) The space may not be occupied by children of the infant or young toddler age levels during a time period when the capacity is exceeded.

(iv) The number of children present in the space may not be more than twice the measured capacity of the space.

(3) When a meal is served in a space designated and measured as indoor child care space if the following conditions are met:

(i) The capacity of a space may be exceeded when children are eating for no more than 1 hour daily.

(ii) The meal time shall be designated on the facility's schedule of daily activities.

(iii) The number of children present in the space may not be more than twice the measured capacity of the space.

(i) The total number of children receiving child day care services at the facility at any one time may not exceed the maximum capacity stated on the facility's certificate of compliance.

§ 3270.70. Indoor temperature.

\* \* \* \* \*

(b) If the indoor temperature exceeds [ 85° ] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3270.75. First-aid kit.

\* \* \* \* \*

(c) A first-aid kit [ shall ] must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [ Syrup of Ipecac ] disposable, nonporous gloves. [ Instructions for use of the Syrup of Ipecac shall be included as described at § 3270.133(9) (relating to child medication and special diets). ]

(d) One first-aid kit per child care group [ shall ] must accompany children and facility persons on excursions from the facility. Each first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at subsection (c).

\* \* \* \* \*

§ 3270.82. Toilet areas.

\* \* \* \* \*

(f) Toilets and training chairs may not be located in an area used for cooking or eating. [ If the toilet area is not on the same floor as the child care space, an adult shall accompany toddler and preschool children going to and from the toilet area. ]

\* \* \* \* \*

EQUIPMENT

§ 3270.102. Condition of play equipment.

\* \* \* \* \*

(c) Outdoor equipment that requires embedded mounting [ shall ] must be mounted over [ at least 6 inches of loose-filled, impact-absorbing materials, ] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

\* \* \* \* \*

(g) Children's equipment and toys described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility and may not be on the premises at the facility.

§ 3270.104. Furniture.

(a) Furniture [ shall ] must be durable, safe, easily cleaned and appropriate for the child's size, age and [ disability ] special needs.

\* \* \* \* \*

PROGRAM

§ 3270.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises.

(1) Each staff person shall be assigned the responsibility for supervision of specific children. The staff person shall know the names and whereabouts of the children in his assigned group. The staff person shall be physically present with the children in his group on the facility premises and on facility excursions off the facility premises.

(2) The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3270.51—3270.54.

\* \* \* \* \*

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3270.115. Water activity.

(a) *Swimming.*

\* \* \* \* \*

(3) An aboveground swimming pool which is not in use [ shall ] must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

\* \* \* \* \*

§ 3270.117. Release of children.

(a) A child shall be released only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

\* \* \* \* \*

§ 3270.119. Program plan.

(a) The director or group supervisor shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs must incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.

(b) The child's program plan must include the following:

(1) A documented observation of the child's development.



(2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The director shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.

(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3270.111 (relating to daily activities), including involvement of a specialist who may be helping to support the child and family.

(c) The director or group supervisor shall review the child's program plan according to the following schedule:

(1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.

(2) For a school-age child, the plan shall be reviewed at least every 12 months.

(3) For a child with special needs, the program plan shall also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.

(d) The director or group supervisor shall revise the plan as needed to meet the needs of the child at each review.

(e) The director or group supervisor shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:

(1) The child's parent.

(2) Other staff persons who supervise the child at the facility.

(3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.

(4) The child if the child is a school-age child.

(f) The director or group supervisor shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an opportunity to sign each program plan and receive a copy of each dated and signed program plan.

(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.

§ 3270.120. Infant sleep position.

Infants shall be placed on their backs to sleep unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

PROCEDURES FOR ADMISSION

§ 3270.122. Admission interview.

A child shall be interviewed or observed by the operator and when possible shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much about the service being planned as he can understand. If the parent indicates that the child has a

[disability or handicapping condition] special need, the operator shall discuss the condition with the parent, refer to § 3270.4 (relating to definitions), and comply with §§ 3270.17, 3270.124 and 3270.131 (relating to service to a child with [a disability] special needs; emergency contact information; and health [assessment] information).

§ 3270.124. Emergency contact information.

\* \* \* \* \*

(b) Emergency contact information [shall] must include the following:

\* \* \* \* \*

(5) Information on the [disability of the child] child's special needs, as specified by the child's parent [or], physician, physician's assistant or CRNP, which is needed in an emergency situation.

\* \* \* \* \*

CHILD HEALTH

§ 3270.131. Health [assessment] information.

(a) [An] The operator shall require the parent of an enrolled child, including a child, a foster child and a relative of an operator or a facility person, [shall have an age-appropriate] to provide an initial health report [on record at the facility] no later than 60 days following [enrollment] the first day of attendance at the facility.

(1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) Guidelines for Health Supervision. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report shall include the following information:

(1) A review of the child's [previous] health history.

(2) [The results of a physical examination] A list of the child's allergies.

(3) [An assessment of the child's growth patterns] A list of the child's current medication and the reason for the medication.

(4) [The physician's or CRNP's] An assessment of [a disability or a] an acute or chronic health problem or special need and recommendations for treatment or services.

(5) A review of the child's immunized status according to recommendations of the [AAP] ACIP. [The Department will provide the AAP guidelines upon request.]

\* \* \* \* \*

(7) [A review of age-appropriate screenings according to the standards of the AAP.] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(e) [The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the DOH regulation upon request.] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physi-

cian, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3270.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) to facilitate administration of medication or a special diet prescribed by a physician, physician's assistant or CRNP for a child with special needs. Facility persons are not required to administer [child] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have special needs. [If child] When medication or special diets are administered, the following requirements apply:

\* \* \* \* \*

[ (9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered. ]

§ 3270.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

\* \* \* \* \*

(3) If disposable diapers are provided by a parent or by a facility, a soiled diaper shall be discarded [in one of the following ways] by immediately placing the diaper into a plastic-lined, hands-free covered can. [The diaper shall be:

(i) immediately placed into a lined outdoor trash container.

(ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible.]

\* \* \* \* \*

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3270.151. Health assessment.

(a) A facility person providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment conducted within [3] 12 months prior to providing initial service in a child care setting and every [year] 24 months

thereafter. A health assessment is valid for [ 12 ] 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report shall be written and signed by a physician, **physician's assistant** or CRNP. The signature [ shall ] must include the individual's professional title.

(c) The health assessment [ shall ] must include the following:

\* \* \* \* \*

(2) Tuberculosis screening by the Mantoux method at initial employment [ and subsequently at least once every 2 years ]. Subsequent tuberculosis screening is not required unless directed by a physician, physician's assistant, CRNP, the Department of Health or a local health department.

\* \* \* \* \*

**TRANSPORTATION**

**§ 3270.175. Safety restraints.**

(a) A child [ 4 ] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

\* \* \* \* \*

**§ 3270.176. Vehicles.**

\* \* \* \* \*

(f) The facility may not transport a child in an 11-15 passenger van in accordance with the requirements of 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

**CHILD RECORDS**

**§ 3270.182. Content of records.**

A child's record shall contain the following information:

(1) Initial and subsequent health [ assessments ] reports.

\* \* \* \* \*

**[ NIGHT CARE ]**

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 3270.201—3270.210, which appears at 55 Pa. Code pages 3270-54 to 3270-56, serial pages (204590) to (204592).)

- § 3270.201. (Reserved).
- § 3270.202. (Reserved).
- § 3270.203. (Reserved).
- § 3270.204. (Reserved).
- § 3270.205. (Reserved).
- § 3270.206. (Reserved).
- § 3270.207. (Reserved).
- § 3270.208. (Reserved).
- § 3270.209. (Reserved).
- § 3270.210. (Reserved).

**SPECIAL EXCEPTIONS**

**§ 3270.233. Play surfaces.**

(a) A facility certified by the Department as of [ April 4, 1992, ] is exempt from the requirement to provide an impact-absorbing ground cover, as described in

§ 3270.102(c) (relating to condition of play equipment) ] \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) has until \_\_\_\_\_ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.) to comply with the protective surface requirement described in § 3270.102(c) (relating to condition of play equipment).

(b) A facility certified by the Department as of [ April 4, 1992, ] \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) which has a play surface not in compliance with § 3270.102(e) [ is exempt from the requirement unless the surface is replaced ] has until \_\_\_\_\_ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.) to comply with the requirement described in § 3270.102(e).

**SCHOOL-AGE PROGRAMS**

**§ 3270.241. Requirements specific to school-age programs.**

\* \* \* \* \*

(b) A facility or a space in a facility in which care is provided exclusively to school-age children shall comply only with the following sections:

\* \* \* \* \*

(2) *General requirements.* Sections 3270.11—[ 3270.26 ] 3270.27 (relating to general requirements).

\* \* \* \* \*

(7) *Equipment.* Sections 3270.101, 3270.102(a)—(c) and (g), 3270.104, 3270.107 and 3270.108.

(8) *Program.* Sections 3270.111, 3270.113, 3270.115(a) and (b), 3270.116 [ and ], 3270.118 and 3270.119.

\* \* \* \* \*

(10) *Child health.* Sections 3270.131—3270.134(a) and 3270.136—3270.138. An equivalent [ age-appropriate ] health [ assessment ] report completed by a school is acceptable as documentation of child health for a school-age child.

\* \* \* \* \*

(17) **Staff persons shall have immediate access to a working telephone on the facility premises.**

**CHAPTER 3280. GROUP CHILD DAY CARE HOMES**

**GENERAL PROVISIONS**

**§ 3280.4. Definitions.**

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

**ACIP**—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

\* \* \* \* \*

[ *Age-appropriate child health assessment*—A written report assessing a child's health status. The report is signed by a physician or a CRNP and includes the child's health history, the child's physi-

cal examination and a plan for treatment of health problems identified in the health assessment. ]

Age level—The grouping category appropriate for the child's age.

(i) Infant—A child from birth [ through 12 months ] to 1 year of age.

(ii) Young toddler—A child from [ 13 through 24 months ] 1 to 2 years of age.

(iii) Older toddler—A child from [ 25 through 36 months ] 2 to 3 years of age.

(iv) Preschool child—A child from [ 37 months of age through ] 3 years of age to the date the child enters [ first grade of ] kindergarten in a public or private school system.

(v) Young school-age child—A child [ from the first grade through the 3rd ] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) Older school-age child—A child [ from ] who attends the 4th grade of a public or [ private ] private school system through 15 years of age.

\* \* \* \* \*

Child with [ a disability ] special needs—A child who [ does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis in order to function in an adaptive manner. Examples of a child with a disability include a child who has:

(i) A developmental delay.

(ii) A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy or another condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.

(iii) Mental retardation associated with sociocultural or psychosocial disadvantage.

(iv) A genetic disorder or physiological condition usually associated with mental retardation.

(v) Problems of social or emotional adjustment.

(vi) A physical disability such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap. ] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or an Individualized Family Service Plan.

(ii) A formal behavioral plan that has been determined by a licensed physician, psychiatrist, or licensed psychologist.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

\* \* \* \* \*

Inspection summary—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

\* \* \* \* \*

GENERAL REQUIREMENTS

§ 3280.11. Application for and issuance of a certificate of compliance.

\* \* \* \* \*

(b) A legal entity or a representative of the legal entity shall participate in a pre-certification orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance. The precertification orientation does not count toward the annual minimum of 6 hours of child care training required in § 3280.31(e) (relating to age and training).

(c) Application for a certificate of compliance shall be submitted to the appropriate regional day care office in accordance with Chapter 20 (relating to the licensure or approval of facilities and agencies).

[ (c) ] (d) \* \* \*

[ (d) ] (e) \* \* \*

[ (e) ] (f) \* \* \*

[ (f) ] (g) \* \* \*

[ (g) ] (h) A facility whose certificate of compliance is current as of [ April 4, 1992, ] \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) will not be inspected under this chapter until the current certificate of compliance is due to be renewed or when a regulatory violation is alleged and the Department responds to the alleged violation with an inspection.

§ 3280.15. [ Firesafety approval ] Certificate of occupancy.

A certificate of compliance will not be granted by the Department until the legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements of the Department of Labor and Industry [ at ] in 34 Pa. Code [ Chapter 54 or 56 (relating to Group B educational; and division C-3 small group habitation) or local authorities in Scranton, Pittsburgh or Philadelphia ] § 403.23 (relating to child day care facilities).

\* \* \* \* \*

§ 3280.16. Service to a child with [ a disability ] special needs.

[ A facility serving a child with a disability as defined in § 3280.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities). ]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213).

(b) The operator shall permit an adult individual who provides specialized services to a child with special needs to provide those services on the facility premises as specified in the child's Indi-

vidualized Education Program, Individualized Family Service Plan, formal behavioral plan or program plan as defined in § 3280.119 (relating to program plan).

(c) The operator is responsible to make staff persons aware of community resources for the family of a child with possible special needs.

(1) When a primary staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the primary staff person shall inform the child's parent of the concern and shall provide information to the parent regarding resources for referral and assistance.

(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the primary staff person. The primary staff person shall inform the child's parent of the staff person's concern and shall provide information to the parent regarding resources for referral and assistance.

§ 3280.23. Departmental access.

\* \* \* \* \*

(c) An agent of the Department will inspect compliance with this chapter in all areas of the facility premises that are accessible to children.

§ 3280.24. Availability of certificate of compliance and applicable regulations.

(a) The facility's current certificate of compliance and a copy of the applicable regulations under which the facility is certified shall be posted in a conspicuous location used by parents, with instructions for contacting the appropriate regional day care office posted at the same location.

(b) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of compliance in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the Department verifies that each noncompliance item noted on the inspection summary has been corrected.

§ 3280.26 Emergency plan.

(a) The facility shall have an emergency plan that provides for:

- (1) Shelter of children during an emergency.
- (2) Evacuation of children from the facility.

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emergency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan to the county emergency management agency.

FACILITY PERSONS

§ 3280.31. Age and training.

\* \* \* \* \*

(d) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential, as it applies to the staff qualifications in this chapter, is equivalent to [ one of the following:

(1) Fifteen ] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[ (2) Thirty credit hours from an accredited college or university in early childhood education or child development. ]

\* \* \* \* \*

STAFF-CHILD RATIO

§ 3280.52. Ratio requirements.

\* \* \* \* \*

(c) When children are grouped in mixed age levels, [ the following child group sizes and ratios of staff persons apply:

	<i>Staff</i>	<i>Children</i>	<i>Maximum Group Size</i>	<i>Total Number of Staff Required for the Maximum Group Size</i>
Infant/young or older toddler	1	4	12	3
Young toddler/older toddler	1	5	12	3
Older toddler/ preschool	1	6	12	2
Preschool/young school-age	1	10	12	2
Young school- age/older school-age	1	12	12	1 ]

the age of the youngest child in the group determines the staff:child ratio and maximum group size in accordance with the requirements at subsection (b).

PHYSICAL SITE

§ 3280.61. Measurement and use of indoor child care space.

\* \* \* \* \*

(h) The capacity established for an indoor space may not be exceeded except in the following situations:

(1) At naptime, when toddler or preschool children are resting on rest equipment described in § 3280.105 (relating to rest equipment) if the following conditions are met:

(i) The capacity is determined by the requirement for placement of rest equipment described in § 3280.105(f).

(ii) The capacity may be exceeded for no longer than 2 1/2 consecutive hours and no more than twice in a program day.

(2) When older toddler, preschool or school-age children are participating in a program activity if the following conditions are met:

(i) The capacity of the indoor child care space may be exceeded for no more than two separate 1/2 hour time periods daily.

(ii) Each time period shall be designated on the facility's schedule of daily activities.

(iii) The space may not be occupied by children of the infant or young toddler age levels during a time period when the capacity is exceeded.

(iv) The number of children present in the space may not be more than twice the measured capacity of the space.

(3) When a meal is served in a space designated and measured as indoor child care space if the following conditions are met:

(i) The capacity of a space may be exceeded when children are eating for no more than 1 hour daily.

(ii) The meal time shall be designated on the facility's schedule of daily activities.

(iii) The number of children present in the space may not be more than twice the measured capacity of the space.

§ 3280.70. Indoor temperature.

\* \* \* \* \*

(b) If the indoor temperature exceeds [ 85° ] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3280.75. First-aid kit.

\* \* \* \* \*

(c) A first-aid kit shall contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [ Syrup of Ipecac ] disposable, nonporous gloves. [ Instructions for use of the Syrup of Ipecac shall be included as described at § 3270.133(9) (relating to child medication and special diets). ]

(d) One first-aid kit per child care group [ shall ] must accompany children and facility persons on excursions from the facility. Each first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at subsection (c).

EQUIPMENT

§ 3280.102. Condition of play equipment.

\* \* \* \* \*

(c) Outdoor equipment that requires embedded mounting shall be mounted over [ at least 6 inches of loose-filled, impact-absorbing materials, ] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

\* \* \* \* \*

(f) Children's equipment and toys described as hazardous by the United States Consumer Product Safety Commission may not be used by children at the facility and may not be on the premises at the facility.

§ 3280.108. Furniture.

(a) Furniture [ shall ] must be durable, safe, easily cleaned and appropriate for the child's size, age and [ disability ] special needs.

\* \* \* \* \*

PROGRAM

§ 3280.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises.

(1) Each staff person shall be assigned the responsibility for supervision of specific children. The staff person shall know the names and whereabouts of the children in his assigned group. The staff person shall be physically present with the children in his group on the facility premises and on facility excursions off the facility premises.

(2) The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in §§ 3280.51—3280.54.

\* \* \* \* \*

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3280.115. Water activity.

(a) *Swimming.*

\* \* \* \* \*

(3) An aboveground swimming pool which is not in use [ shall ] must be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

\* \* \* \* \*

§ 3280.117. Release of children.

(a) A child shall be released only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

\* \* \* \* \*

§ 3280.119 Program plan.

(a) The primary staff person shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs must incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.

(b) The child's program plan must include the following:

- (1) A documented observation of the child's development.
- (2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The director shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.

(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3280.111 (relating to daily activities), including involvement of a specialist who may be helping to support the child and family.

(c) The primary staff person shall review the child's program plan according to the following schedule:

- (1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.
- (2) For a school-age child, the plan shall be reviewed at least every 12 months.
- (3) For a child with special needs, the program plan must also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.

(d) The primary staff person shall revise the plan as needed to meet the needs of the child at each review.

(e) The primary staff person shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:

- (1) The child's parent.
- (2) Other staff persons who supervise the child at the facility.
- (3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.
- (4) The child if the child is a school-age child.

(f) The primary staff person shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an opportunity to sign each program plan and receive a copy of each dated and signed program plan.

(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.

§ 3280.120. Infant sleep position.

Infants shall be placed on their backs to sleep unless a there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

PROCEDURES FOR ADMISSION

§ 3280.122. Admission interview.

A child shall be interviewed or observed by the operator and, when possible, shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much as he can understand about the service being planned. If the parent indicates that the child has [ a disability or handicapping condition ] special needs, the operator shall discuss the condition with the parent, refer to § 3280.4 (relating to definitions), and comply with §§ 3280.16, 3280.124 and 3280.131 (relating to service to a child with [ a disability ] special needs; emergency contact information; and health [ assessment ] information).

§ 3280.124. Emergency contact information.

\* \* \* \* \*

(b) Emergency contact information [ shall ] must include the following:

\* \* \* \* \*

(5) Information on the [ disability of the child ] child's special needs, as specified by the child's parent [ or ], physician, physician's assistant or CRNP, which is needed in an emergency situation.

\* \* \* \* \*

CHILD HEALTH

§ 3280.131. Health [ assessment ] information.

(a) [ An ] The operator shall require the parent of an enrolled child, including a child, a foster child and a relative of an operator or a facility person, [ shall have an age-appropriate ] to provide an initial health report [ on record at the facility ] no later than 60 days following [ enrollment ] the first day of attendance at the facility.

(1) The initial health report for an infant must be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler must be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child must be dated in accordance with the requirements for medical examinations for school attendance at in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) *Guidelines for Health Supervision*. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report shall include the following information:

(1) A review of the child's [previous] health history.

(2) [The results of a physical examination] A list of the child's allergies.

(3) [An assessment of the child's growth patterns] A list of the child's current medication and the reason for the medication.

(4) [The physician's or CRNP's] An assessment of [a disability or a] an acute or chronic health problem or special needs and recommendations for treatment or services.

(5) A review of the child's immunized status according to recommendations of the [AAP] ACIP. [The Department will provide the AAP guidelines upon request.]

\* \* \* \* \*

(7) [A review of age-appropriate screenings according to the standards of the AAP.] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(e) [The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the DOH regulation upon request.] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days

following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3280.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) to facilitate administration of medication or a special diet prescribed by a physician, physician's assistant or CRNP for a child with special needs. Facility persons are not required to administer [child] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have special needs. [If child] When medication or special diets are administered, the following requirements apply:

\* \* \* \* \*

[ (9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered. ]

§ 3280.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

\* \* \* \* \*



(3) If disposable diapers are provided by a facility or a parent, a soiled diaper shall be discarded [ in one of the following ways ] by immediately placing the diaper into a plastic-lined, hands-free covered can. [ The diaper shall be:

(i) immediately placed into a lined outdoor trash container.

(ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible. ]

\* \* \* \* \*

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3280.151. Health assessment.

(a) A facility person providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment conducted within [ 3 ] 12 months prior to providing initial service in a child care setting and every [ year ] 24 months thereafter. A health assessment is valid for [ 12 ] 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report shall be written and signed by a physician, physician's assistant or CRNP. The signature [ shall ] must include the individual's professional title.

(c) The health assessment [ shall ] must include the following:

\* \* \* \* \*

(2) Tuberculosis screening by the Mantoux method at initial employment [ and subsequently at least once every 2 years ]. Subsequent tuberculosis screening is not required unless directed by a physician, physician's assistant, CRNP, Department of Health or local health department.

\* \* \* \* \*

TRANSPORTATION

§ 3280.175. Safety restraints.

(a) A child [ 4 ] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

\* \* \* \* \*

§ 3280.176. Vehicles.

\* \* \* \* \*

(f) The facility may not transport a child in an 11-15 passenger van in accordance with 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

CHILD RECORDS

§ 3280.182. Content of records.

A child's record [ shall ] must contain the following information:

(1) Initial and subsequent health [ assessments ] reports.

\* \* \* \* \*

[ NIGHT CARE ]

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 3280.201—3280.209, which appears at 55 Pa. Code pages 3280-49 and 3280-50, serial pages (204645) and (204646).)

§§ 3280.201—3280.209.

SPECIAL EXCEPTIONS

§ 3280.215. Play surfaces.

(a) A facility certified by the Department as of [ April 4, 1992, ] is exempt from the requirement to provide an impact-absorbing ground cover, as described at § 3280.102(c) (relating to condition of play equipment) [ Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking. ] has until [ Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking. ] to comply with the protective surface requirement described in § 3280.102(c) (relating to condition of play equipment).

(b) A facility certified by the Department as of [ April 4, 1992, ] [ Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking. ] which has a play surface not in compliance with § 3280.102(e) [ is exempt from the requirement unless the surface is replaced ] has until [ Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking. ] to comply with § 3280.102(e).

SCHOOL-AGE PROGRAMS

§ 3280.221. Requirements specific to school-age programs.

\* \* \* \* \*

(b) A facility or a space in a facility in which care is provided exclusively to school-age children shall comply only with the following:

\* \* \* \* \*

(2) General requirements. Sections 3280.11—[ 3280.25 ] 3280.26 (relating to general requirements).

\* \* \* \* \*

(7) Equipment. Sections 3280.101, 3280.102(a)—(c) and (g), 3280.107 and 3280.108.

(8) Program. Sections 3280.111, 3280.113, 3280.115(a) and (b), 3280.116 [ and ], 3280.118 and 3280.119.

\* \* \* \* \*

(10) Child health. Sections 3280.131—3280.134(a) and 3280.136—3280.138. An equivalent [ age-appropriate ] health [ assessment ] report completed by a school is acceptable as documentation of child health for a school-age child.

\* \* \* \* \*

(17) Staff persons shall have immediate access to a working telephone on the facility premises.

CHAPTER 3290. FAMILY CHILD DAY CARE HOMES  
GENERAL PROVISIONS

§ 3290.4. Definitions.

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

**ACIP**—The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, United States Department of Health and Human Services.

\* \* \* \* \*

**[Age-appropriate child health assessment]**—A written report assessing a child's health status. The report is signed by a physician or a nurse practitioner and includes the child's health history, the child's physical examination and a plan for treatment of health problems identified in the health assessment. ]

**Age level**—The grouping category appropriate for the child's age.

(i) **Infant**—A child from birth [ through 12 months ] to 1 year of age.

(ii) **Young toddler**—A child from [ 13 through 24 months ] 1 to 2 years of age.

(iii) **Older toddler**—A child from [ 25 through 36 months ] 2 to 3 years of age.

(iv) **Preschool child**—A child from [ 37 months of age through ] 3 years of age to the date the child enters [ first grade of ] kindergarten in a public or private school system.

(v) **Young school-age child**—A child [ from the first grade through the 3rd ] who attends kindergarten to the date the child enters the 4th grade of a public or private school system.

(vi) **Older school-age child**—A child [ from ] who attends the 4th grade of a public or private school system through 15 years of age.

\* \* \* \* \*

**Child with [ a disability ] special needs**—A child who [ does not function according to age-appropriate expectations in the areas of emotional, cognitive, communicative, perceptual-motor, physical or social development and requires special adaptations, program adjustments and related services on a regular basis to function in an adaptive manner. Examples of a child with a disability include a child who has:

- (i) A developmental delay.
- (ii) A neurologically-based condition, such as mental retardation, cerebral palsy, autism, epilepsy or other condition closely related to mental retardation or requiring treatment similar to that required by mentally retarded children.
- (iii) Mental retardation associated with sociocultural or psychosocial disadvantage.
- (iv) A genetic disorder or physiological condition usually associated with mental retardation.
- (v) Problems of social or emotional adjustment.

(vi) A physical disability, such as visual impairment, hearing impairment, speech or language impairment, or a physical handicap. ] has one or more of the following:

(i) A disability or developmental delay identified on an Individualized Education Program or an Individualized Family Service Plan.

(ii) A formal behavioral plan that has been determined by a licensed physician, psychiatrist, or licensed psychologist.

(iii) A chronic health condition diagnosed by a licensed physician, physician's assistant or CRNP that requires health and related services of a type or amount beyond that required by children generally.

\* \* \* \* \*

**Inspection summary**—A document prepared by an agent of the Department describing each regulatory noncompliance item confirmed as a result of a facility inspection.

\* \* \* \* \*

**Legal entity**—A person, [ society, ] corporation[ , governing authority ] or partnership that is legally responsible for the administration of [ one ] the facility [ or several facilities, or one type of facility or several types of facilities ].

\* \* \* \* \*

GENERAL REQUIREMENTS

§ 3290.11. Application for and issuance of a certificate of registration.

\* \* \* \* \*

(b) [ An individual ] A legal entity desiring to apply for a certificate of registration shall request application documents from the appropriate regional office of the Department.

(c) A legal entity or a representative of the legal entity shall participate in a precertification orientation training provided by the Department within 12 months prior to issuance of a certificate of compliance. The precertification orientation does not count toward the biennial minimum of 12 clock hours of child care training required in § 3290.31(f) (relating to age and training).

[ (c) ] (d) Prior to providing child day care at any one time to more than three children unrelated to the operator, [ an individual ] the legal entity shall apply for and shall be issued a certificate of registration.

[ (d) An individual ] (e) A legal entity seeking to operate a facility shall apply to the appropriate regional office on a form approved by the Department. The [ applicant ] legal entity shall be required to submit information specified by the registration law and this chapter.

[ (e) ] (f) The [ applicant ] legal entity applying for a certificate of registration shall certify, in writing, compliance with the registration law and this chapter.

[ (f) ] (g) \* \* \*

[ (g) ] (h) \* \* \*

(1) A certificate of registration is issued to a specific [operator] legal entity at a specific location. A certificate of registration is not transferrable.

(2) A certificate of registration is void without notice if there is a change in the legal entity[, the operator] or the location of the facility.

(3) If a facility is to be operated at a new location or by a new legal entity [or operator], the [operator] legal entity shall advise the appropriate regional office at least 30 days in advance of the change.

[ (h) ] (i) \* \* \* \* \*

[ (i) ] (j) If a certificate of registration lapses, the [applicant] legal entity shall file an original application and the supplemental information required by the Department.

[ (j) ] (k) Prior to expiration of a current certificate of registration, the [operator] legal entity will receive notice from the Department regarding renewal of the certificate.

[ (k) An operator ] (l) A legal entity desiring to renew a certificate of registration shall submit a correct, completed application and other required materials to the appropriate regional office of the Department prior to the expiration of the current certificate of registration.

[ (l) ] (m) \* \* \* \* \*

[ (m) ] (n) An operator whose facility's certificate of registration is current as of [ April 4, 1992, ] \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) will not be required to certify compliance with this chapter until renewal of the certificate of registration or until the Department inspects in response to an alleged regulatory violation, whichever occurs first.

§ 3290.14. [ Firesafety approval ] Certificate of occupancy.

A certificate of registration will not be granted by the Department until the [operator] legal entity provides a certificate of occupancy as proof of compliance with the applicable requirements in 34 Pa. Code [ Chapter 56 (relating to division C-3 small group habitation) or local authorities in Scranton, Pittsburgh or Philadelphia ] § 403.23 (relating to child day care facilities).

\* \* \* \* \*

§ 3290.15. Service to a child with [ a disability ] special needs.

[ A facility serving a child with a disability as defined in § 3290.4 (relating to definitions) shall also comply with applicable sections of Chapter 3300 (relating to specialized day care service for children with disabilities). ]

(a) The operator shall make reasonable accommodation to include a child with special needs in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213).

(b) The operator shall permit an adult individual who provides specialized services to a child with

special needs to provide those services on the facility premises as specified in the child's Individualized Education Program, Individualized Family Service Plan, formal behavioral plan or program plan as defined in § 3290.118 (relating to program plan).

(c) The operator is responsible to make staff persons aware of community resources for the family of a child with possible special needs.

(1) When the operator believes a child may need an assessment due to developmental, behavioral or health concerns, the operator shall inform the child's parent of the concern and provide information to the parent regarding resources for referral and assistance.

(2) When a staff person believes a child may need an assessment due to developmental, behavioral or health concerns, the staff person shall inform the operator. The operator shall inform the child's parent of the staff person's concern and provide information to the parent regarding resources for referral and assistance.

§ 3290.21. Departmental access.

\* \* \* \* \*

(c) An agent of the Department will inspect for compliance with this chapter in all areas of the facility premises that are accessible to children.

§ 3290.22. Availability of certificate of compliance and applicable regulations.

\* \* \* \* \*

(c) The operator shall post a copy of each inspection summary issued by the Department next to the facility's certificate of registration in a conspicuous location used by parents. The inspection summary shall remain posted until an agent of the Department verifies that each noncompliance item noted on the inspection summary has been corrected.

§ 3290.24 Emergency plan.

(a) The facility shall have an emergency plan that provides for:

(1) Shelter of children during an emergency.

(2) Evacuation of children from the facility.

(3) A method for facility persons to contact parents as soon as reasonably possible when an emergency situation arises.

(4) A method for facility persons to inform parents that the emergency has ended and to provide instruction as to how parents can safely be reunited with their children.

(b) The operator shall review the emergency plan at least annually and update the plan as needed. Each review and update of the emergency plan shall be documented in writing and kept on file at the facility.

(c) Each facility person shall receive training regarding the emergency plan at the time of initial employment, on an annual basis and at the time of each plan update. The date of each training and the name of each facility person who received the training shall be documented in writing and kept on file at the facility.

(d) The emergency plan shall be posted in the facility at a conspicuous location.

(e) The operator shall provide to the parent of each enrolled child a letter explaining the emergency procedures described in subsection (a). The operator shall also provide to the parent of each enrolled child a letter explaining any subsequent update to the plan.

(f) The operator shall send a copy of the emergency plan and subsequent plan to the county emergency management agency.

FACILITY PERSONS

§ 3290.31. Age and training.

(a) The operator shall [ be ] have the following qualifications:

(1) Be 18 years of age or older.

(2) Have a high school diploma or a general educational development certificate and submit proof to the appropriate regional office of the Department at the time of registration renewal.

\* \* \* \* \*

(e) A Child Development Associate (CDA) credential or a Certified Childcare Professional (CCP) credential is equivalent to [ one of the following:

(1) Fifteen ] 9 credit hours from an accredited college or university in early childhood education or child development and 1 year of experience with children.

[ (2) Thirty credit hours from an accredited college or university in early childhood education or child development. ]

\* \* \* \* \*

PYSICAL SITE

§ 3290.68. Indoor temperature.

\* \* \* \* \*

(b) If the indoor temperature exceeds [ 85° ] 82°F in a child care space, a means of mechanical air circulation shall be operating.

§ 3290.73. First-aid kit.

\* \* \* \* \*

(c) A first-aid kit [ shall ] must contain the following: soap, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, scissors and [ Syrup of Ipecac ] disposable, nonporous gloves. [ Instructions for use of the Syrup of Ipecac shall be included as described at § 3290.133 (relating to child medication and special diets). ]

(d) One first-aid kit [ shall ] must accompany children and facility person on excursions from the facility. The first aid kit taken on an excursion must contain a bottle of water in addition to the items specified at (c).

EQUIPMENT

§ 3290.102. Condition of play equipment.

\* \* \* \* \*

(c) Outdoor equipment that requires embedded mounting [ shall ] must be mounted over [ at least 6 inches of loose-filled impact-absorbing materials, ] a loose-fill or unitary playground protective surface covering that meets the recommendations of the United States Consumer Product Safety Commission. The equipment must be anchored firmly and be in good repair.

\* \* \* \* \*

PROGRAM

§ 3270.113. Supervision of children.

(a) Children on the facility premises and on facility excursions off the premises shall be supervised by a staff person at all times. Outdoor play space used by the facility is considered part of the facility premises. The requirement for supervision on and off the facility premises includes compliance with the staff:child ratio requirements in § 3290.52 (relating to ratio requirements).

\* \* \* \* \*

(e) A facility person may not restrain a child by using bonds, ties or straps to restrict a child's movement or by enclosing the child in a confined space, closet or locked room. The prohibition against restraining a child does not apply to the use of adaptive equipment prescribed for a child with special needs.

§ 3290.115. Water activity.

(a) Swimming or wading.

\* \* \* \* \*

(2) An aboveground swimming pool which is not in use shall be made inaccessible to children in accordance with the swimming pool barrier guidelines of the United States Consumer Product Safety Commission.

\* \* \* \* \*

§ 3290.116. Release of children.

(a) A child shall be released from care only to the child's parent or to an individual designated in writing by the enrolling parent. A child shall be released to either parent unless a court order on file at the facility states otherwise.

\* \* \* \* \*

§ 3290.118 Program plan.

(a) The operator shall develop a program plan specific to the child no later than 60 days following the child's first day of attendance at the facility. The program plan for a child with special needs shall incorporate the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan if that plan is reviewed and implemented within the 60 days.

(b) The child's program plan must include the following:

(1) A documented observation of the child's development.

(2) If applicable, identification of the child's unique needs and recommendations, plans or referrals as appropriate. The operator shall inform the parent of the possible special needs of the child and provide information to the parent regarding resources for referral and assistance.

(3) A plan to facilitate the child's continued development and participation in the daily activities described in § 3290.111 (relating to daily activities) including involvement of specialist who may be helping to support the child and family.

(c) The operator shall review the child's program plan according to the following schedule:

(1) For an infant, toddler or preschool child, the plan shall be reviewed at least every 6 months.

(2) For a school-age child, the plan shall be reviewed at least every 12 months.

(3) For a child with special needs, the program plan shall also be reviewed according to the schedule specified in the Individualized Education Program, Individualized Family Service Plan or formal behavioral plan.

(d) The operator shall revise the plan as needed to meet the needs of the child at each review.

(e) The operator shall provide to the following individuals an opportunity to provide input into the development of the child's initial program plan and each review of the child's program plan:

- (1) The child's parent.
- (2) Other staff persons who supervise the child at the facility.
- (3) Other individuals who provide early intervention or special education services, treatment, therapy or other specialized services to the child.
- (4) The child if the child is a school-age child.

(f) The operator shall date and sign the child's initial program plan and each reviewed or updated program plan. The child's parent shall be given an opportunity to sign each program plan and will receive a copy of each dated and signed program plan.

(g) A signed and dated copy of the child's initial program plan and each reviewed or updated program plan shall be placed in the child's facility record.

**§ 3290.119. Infant sleep position.**

Infants shall be placed on their backs to sleep unless there is a medical reason an infant should not sleep in this position. The medical reason shall be documented in a statement signed by a physician, physician's assistant or CRNP and placed in the child's record at the facility.

**PROCEDURES FOR ADMISSION**

**§ 3290.122. Admission interview.**

A child shall be interviewed or observed by the operator and when possible shall have the opportunity to visit the facility prior to being admitted for care. The child shall be told as much about the service being planned as the child can understand. If the parent indicates that the child has a [disability or handicapping condition] special need, the operator shall discuss the condition with the parent, refer to § 3290.4 (relating to definitions), and

comply with §§ 3290.15, 3290.124 and 3290.131 (relating to service to a child with [a disability] special needs; emergency contact information; and health [assessment] information).

**§ 3290.124. Emergency contact information.**

\* \* \* \* \*

(b) Emergency contact information [shall] must include the following:

\* \* \* \* \*

(5) Information on the [disability of the child] child's special needs, as specified by the child's parent [or], physician, physician's assistant or CRNP, which is needed in an emergency situation.

\* \* \* \* \*

**CHILD HEALTH**

**§ 3290.131. Health [assessment] information.**

(a) [An] The operator shall require the parent of an enrolled child [shall have an age-appropriate] to provide an initial health report [on record at the facility] no later than 60 days following [enrollment] the first day of attendance at the facility.

(1) The initial health report for an infant shall be dated no more than 3 months prior to the first day of attendance at the facility.

(2) The initial health report for a young toddler shall be dated no more than 6 months prior to the first day of attendance at the facility.

(3) The initial health report for an older toddler or preschool child shall be dated no more than 1 year prior to the first day of attendance at the facility.

(4) The initial health report for a school-age child shall be dated in accordance with the requirements for medical examinations for school attendance in 28 Pa. Code § 23.2 (relating to medical examinations).

(b) [An age-appropriate health assessment shall be conducted according to the recommended schedule for routine health supervision as referenced in the most current edition of the American Academy of Pediatrics (AAP) *Report of the Committee on Infectious Diseases*. This publication can be obtained from the American Academy of Pediatrics, 141 Northwest Point Boulevard, Post Office Box 927, Elk Grove Village, Illinois 60007.] The operator shall require the parent to provide an updated health report in accordance with the following schedules:

(1) At least every 6 months for an infant or young toddler.

(2) At least every 12 months for an older toddler or preschool child.

(c) A health [assessment shall be conducted and a] report [shall] must be written and signed by a physician, physician's assistant or a CRNP. The signature [shall] must include the individual's professional title.

(d) The health report [shall] must include the following information:

- (1) A review of the child's [ previous ] health history.
- (2) [ The results of a physical examination ] A list of the child's allergies.
- (3) [ An assessment of the child's growth patterns ] A list of the child's current medication and the reason for the medication.
- (4) [ The physician's CRNP's ] An assessment of [ a disability or a ] an acute or chronic health problem or special needs and recommendations for treatment or services.
- (5) A review of the child's immunized status according to recommendations of the [ AAP ] ACIP. [ The Department will provide the AAP guidelines upon request. ]

\* \* \* \* \*

(7) [ A review of age-appropriate screenings according to the standards of the AAP. ] A statement that the child is able to participate in child care and appears to be free from contagious or communicable disease.

(e) [ The operator shall comply with the Department of Health (DOH) regulation at 28 Pa. Code § 27.121a (Reserved) and shall implement dismissal policies in accordance with that section. The Department will provide the Department of Health regulation upon request. ] The facility may not accept or retain an infant 2 months of age or older, a toddler or a preschool child at the facility for more than 60 days following the first day of attendance at the facility unless the parent provides written verification from a physician, physician's assistant, CRNP, the Department of Health or a local health department of the dates (month, day and year) the child was administered immunizations in accordance with the recommendations of the ACIP.

(1) The facility shall require the parent to provide updated written verification from a physician, CRNP, the Department of Health or a local health department of ongoing vaccines administered to an infant, toddler or preschool child in accordance with the schedule recommended by the ACIP.

(2) Exemption from immunization must be documented as follows:

(i) Exemption from immunization for religious belief or strong personal objection equated to a religious belief shall be documented by a written, signed and dated statement from the child's parent or guardian. The statement shall be kept in the child's record.

(ii) Exemption from immunization for reasons of medical need must be documented by a written, signed and dated statement from the child's physician, physician's assistant or CRNP. The statement shall be kept in the child's record.

(3) The facility shall implement dismissal policies in accordance with the Department of Health regulation in 28 Pa. Code § 27.77 (relating to immunization requirements for children in child care group settings).

(4) The facility shall comply with the annual immunization reporting requirements in accordance with the Department of Health regulation in 28 Pa. Code § 27.77.

§ 3290.133. Child medication and special diets.

The operator shall make reasonable accommodation in accordance with the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) to facilitate administration of medication or a special diet prescribed by a physician, physician's assistant or CRNP for a child with special needs. Facility persons are not required to administer [ child ] medication or special diets which are requested or required by a parent, a physician, a physician's assistant or a CRNP to a child who does not have special needs. [ If child ] When medication or special diets are administered, the following requirements apply:

\* \* \* \* \*

[ (9) A staff person who administers Syrup of Ipecac shall request case-specific instruction for administration from a poison control center or a physician. The staff person shall record in the child's file the date and time instruction was received, the name of the individual who issued the instruction, the content of the information and the time, date and amount of Syrup of Ipecac administered. ]

§ 3290.135. Diapering requirements.

(a) When children are diapered, the facility shall use disposable diapers, a diaper service or arrange with the parent to provide a daily diaper supply.

\* \* \* \* \*

(3) If disposable diapers are provided by a facility or a parent, a soiled diaper shall be discarded [ in one of the following ways ] by immediately placing the diaper into a plastic-lined, hands-free covered can [ The diaper shall be:

(i) immediately placed into a lined outdoor trash container.

(ii) Placed in an individual, tied bag and discarded indoors until outdoor disposal is possible. ]

\* \* \* \* \*

(e) A staff person shall check a child's diaper at least every 2 hours and whenever the child indicates discomfort or exhibits behavior that suggests a soiled diaper. A staff person shall change a child's diaper when the diaper is soiled.

ADULT HEALTH

§ 3290.151. Health assessment.

(a) A facility person [ shall provide the Department with a satisfactory initial health assessment. A health assessment shall be submitted ] providing direct care who comes into contact with the children or who works with food preparation shall have a health assessment on file at the facility.

(1) The operator shall submit a health assessment to the Department prior to issuance of an initial or renewal certificate of registration.

(2) A health assessment is valid for 24 months following the date of signature, if the person does not contract a communicable disease or develop a medical problem.

(b) A health assessment shall be conducted and a report [shall be] written and signed by a physician, physician's assistant or CRNP. The signature [shall] must include the individual's professional title.

(c) The health assessment [shall] must include the following:

\* \* \* \* \*

(2) Tuberculosis screening by the Mantoux method at initial employment [and subsequently at least once every 2 years]. Subsequent tuberculosis screening is not required unless directed by a physician, CRNP, the Department of Health or a local health department.

\* \* \* \* \*

TRANSPORTATION

§ 3290.173. Safety restraints.

(a) A child [4] 7 years of age or younger shall be transported in accordance with the requirements for parents and guardians as stated in 75 Pa.C.S. § 4581 (relating to restraint systems).

\* \* \* \* \*

§ 3290.174. Vehicles.

\* \* \* \* \*

(f) The facility may not transport a child in an 11-15 passenger van in accordance with 67 Pa. Code Chapter 171 (relating to school buses and school vehicles).

CHILD RECORDS

§ 3290.182. Content of records.

A child's record [shall] must contain the following information:

(1) Initial and subsequent health [assessments] reports.

\* \* \* \* \*

[ NIGHT CARE ]

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 3290.201—3290.208, which appears at 55 Pa. Code pages 3290-35 and 3290-36, serial pages (204685)—(204686).)

§§ 3290.201—3290.208.

SPECIAL EXCEPTIONS

§ 3290.212. Play surfaces.

(a) A facility registered by the Department as of [April 4, 1992, is exempted from the requirement to provide an impact-absorbing ground cover,] \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) has until \_\_\_\_\_ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.) to

comply with the protective surface requirement as described at § 3290.102(c) (relating to condition of play equipment).

(b) A facility registered by the Department as of [April 4, 1992] \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) which has a play surface or play surface not in compliance with § 3920.102(e) [is exempt from the requirement unless the surface is replaced] has until \_\_\_\_\_ (Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposed rulemaking.) to comply with § 3290.102(e).

§ 3290.213. Age and training.

The operator of a facility registered by the Department as of \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) is permanently qualified as an operator at the currently registered family day care home.

CHAPTER 3300. (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 3300.1—3300.4, 3300.11—3300.13, 3300.31—3300.36, 3300.51—3300.54, 3300.71, 3300.101, 3300.102, 3300.111—3300.113, 3300.121, 3300.131, 3300.161 and 3300.171, which appears at 55 Pa. Code pages 3300-1 to 3300-15, serial pages (253095) to (253096) and (252719) to (252731).)

- §§ 3300.1—3300.4. (Reserved).
§§ 3300.11—3300.13. (Reserved).
§§ 3300.31—3300.36. (Reserved).
§§ 3300.51—3300.54. (Reserved).
§ 3300.71. (Reserved).
§ 3300.101. (Reserved).
§ 3300.102. (Reserved).
§§ 3300.111—3300.113. (Reserved).
§ 3300.121. (Reserved).
§ 3300.131. (Reserved).
§ 3300.161. (Reserved).
§ 3300.171. (Reserved).

[Pa.B. Doc. No. 06-979. Filed for public inspection June 2, 2006, 9:00 a.m.]

FISH AND BOAT COMMISSION

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

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 63, 65 and 69. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2007.

### B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposal is available on the Commission's website at [www.fish.state.pa.us](http://www.fish.state.pa.us).

### C. Statutory Authority

The proposed amendments to §§ 61.1, 61.2, 63.3, 65.26, 69.12 and 69.12a are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 63.20 (relating to permits for the protection and management of trout and salmon) is published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish). The proposed amendments to §§ 65.4a, 65.7, 65.9 and 65.24 and proposed § 65.12 (relating to Regional Opening Day of Trout Season Program) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

### D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

### E. Summary of Proposals

(1) *Sections 61.1 and 65.26.* Recently, a question arose as to which waters the extended season applies. Section 61.1 (relating to Commonwealth inland waters) states that the extended season applies to "streams listed as approved trout waters and all waters downstream of streams listed as approved trout waters, plus lakes and ponds." Section 65.26 (relating to extended trout season), on the other hand, states that the extended season is in effect on "approved trout waters and downstream areas, plus lakes and ponds." The wording of these sections does not reflect that lakes and ponds themselves can be approved trout waters or that lakes and ponds can be waters downstream of approved trout waters. Therefore, the Commission proposes that these sections be amended to provide that the extended season applies to approved trout waters and all waters downstream of approved trout waters. The Commission proposes that these sections be amended to read as set forth in Annex A.

(2) *Section 63.20.* Under § 63.20(e), a trout/salmon permit is required when persons fish in streams or rivers that are approved trout waters or their tributaries during the 2-week period that begins on the first Saturday after April 11. However, this 2-week period does not cover the period when the Commission is actively stocking trout. Therefore, the Commission proposes that § 63.20 be amended to provide that a trout/salmon permit is required when persons fish in streams and rivers that are approved trout waters or their tributaries from March 1 through May 31. This period more accurately reflects the period during which the majority of the Commission's stocking occurs. In addition, the requirement is consistent with the Commission's thinking that trout are the primary species being targeted by anglers during that time period. The Commission accordingly proposes that § 63.20 be amended to read as set forth in Annex A.

(3) *Sections 65.12 and 61.1, 61.2, 63.3, 65.4a, 65.7, 65.9, 65.24, 69.12 and 69.12a.* Under the current regulations for Commonwealth inland waters, the opening day of the regular trout season occurs on the first Saturday after April 11. Considering the fact that differences exist

in climate across this Commonwealth, the time frame for providing optimum conditions for trout angling during the spring is earlier in portions of southern Pennsylvania, particularly in southeastern Pennsylvania. For example, in southeastern Pennsylvania, air temperatures tend to be warmer earlier in the spring as compared with other regions of this Commonwealth. These warmer temperatures also provide conditions better suited for trout angling at an earlier time in the spring in this region of this Commonwealth. However, these same warming conditions also can limit trout angling opportunities by mid-spring on many southeastern Pennsylvania waters. The combination of a mid-April opening day and the potential for these waters to become too warm for trout angling by mid-May constricts the amount of time that trout angling can be provided. The Commission therefore proposes the establishment of an earlier opening day in this region of this Commonwealth to address this problem.

Another issue that an earlier opening day in southeastern Pennsylvania will address is the growing concerns with the movement of stocked trout prior to opening day as well as the fact that some fish die between the time of stocking and opening day. A southeast regional opening day will provide the opportunity to stock trout in southeastern Pennsylvania earlier for the earlier opening day and shift the stocking to the other regions for the later opening day. This will effectively help to shorten the times between stocking and opening day throughout this Commonwealth.

The Commission reviewed several alternative boundaries for the southeast regional opening day and proposes to utilize the alternative that covers the following 18 counties: Adams, Berks, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill and York. This alternative includes the stream sections and lakes set forth in the lists that follow this preamble.

To provide for an earlier opening day in southeastern Pennsylvania, the Commission proposes to add a special regulations program entitled Regional Opening Day of Trout Season Program in § 65.12. The Regional Opening Day of Trout Season Program will allow the Executive Director, with the approval of the Commission, to designate waters in certain regions as waters subject to the Regional Opening Day of Trout Season regulations. The opening day of trout season for these waters will be the first Saturday after March 28, 2 weeks earlier than the current opening day. The Commission proposes § 65.12 to read as set forth in Annex A.

The Commission also proposes that trout stocked lakes in this region that are currently managed under § 65.10 (relating to Early Season Trout Stocked Waters Program) will be managed under the new regional opening day regulation. These waters are designated with an asterisk in the list following this preamble.

The waters that the Commission proposes to be selected initially for inclusion in this program are located in southeastern Pennsylvania. This program, however, may be extended in the future to waters in other parts of the Commonwealth where conditions support their inclusion in the program.

With the creation of a regional opening day, § 61.1 and § 63.3 (relating to fishing in approved trout waters) must be amended to reflect that it is unlawful to fish in approved trout waters regulated under the Regional



Opening Day of Trout Season Program from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after March 28. This proposed prohibition is in addition to the current prohibition against fishing in approved trout waters regulated under § 61.1 from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after April 11. The creation of a regional opening day also requires minor amendments to §§ 61.1, 61.2, 65.4a, 65.7, 65.9, 65.24, 69.12 and 69.12a to clarify that the opening day that is referred to in those sections is the opening day of the regular trout season (that is, the first Saturday after April 11). The Commission proposes that these sections be amended to read as set forth in Annex A.

#### F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

#### G. Fiscal Impact

The proposed rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions. However, the Commission will incur relatively nominal costs to print and post new signs for waters included in the Regional Opening Day of Trout Season Program. The proposed rulemaking will impose no new costs on the private sector or the general public.

#### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

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

**Fiscal Note:** 48A-183. (1) Fish Fund; (2) Implementing Year 2006-07 is \$5,000; (3) 1st Succeeding Year 2007-08 is \$0; 2nd Succeeding Year 2008-09 is \$0; 3rd Succeeding Year 2009-10 is \$0; 4th Succeeding Year 2010-11 is \$0; 5th Succeeding Year 2011-12 is \$0; (4) 2005-06 Program—\$0; 2004-05 Program—\$0; 2003-04 Program—\$0; (7) General Government Operations; (8) recommends adoption.

### Streams proposed for inclusion in the Regional Opening Day of Trout Season Program (18-County Option)

Bold are crossover sections or streams

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Antietam Creek East Branch	2	Adams	Franklin		4.225
Bermudian Creek	2	Adams			3.081
Bermudian Creek	4	Adams			1.220
Carbaugh Run	3	Adams	Franklin		1.367
Conewago Creek	3	Adams			2.485
Conewago Creek	5	Adams			6.649
Conococheague Creek	2	Adams	Franklin		3.902
Latimore Creek	2	Adams			5.654
Marsh Creek	2	Adams			5.704
Marsh Creek Ltl.	2	Adams			2.361
Marsh Creek Ltl.	3	Adams			4.847
Middle Creek	2	Adams			5.903
Opossum Creek	2	Adams			8.264
Toms Creek	2	Adams			4.753
Antietam Creek	2	Berks			1.864
Antietam Creek	4	Berks			2.485
Furnace Creek	2	Berks			2.734
Hay Creek	2	Berks			2.361
Hay Creek	3	Berks			3.977
Kistler Creek	2	Berks	Lehigh		2.479
Lehigh Creek Ltl.	2	Berks	Lehigh		3.231
Maiden Creek	1	Berks			2.485
Maiden Creek	2	Berks			2.299
Manatawny Creek	2	Berks			7.394
Manatawny Creek	4	Berks			3.169

PROPOSED RULEMAKING

2711

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Mill Creek	2	Berks	Lebanon		1.988
Mill Creek	2	Berks			5.654
Mill Creek	3	Berks			3.045
Muddy Creek Ltl.	2	Berks	Lancaster		3.480
Northkill Creek	3	Berks			5.903
Ontelaunee Creek	2	Berks	Lehigh		9.383
Perkiomen Creek	3	Berks	Montgomery		3.728
Pine Creek	2	Berks			4.163
Rock Run	2	Berks	Lancaster		3.418
Sacony Creek	2	Berks			3.293
Sacony Creek	3	Berks			1.491
Spring Creek	2	Berks			2.175
Swamp Creek	2	Berks	Lancaster		3.200
Swatara Creek Ltl.	2	Berks			5.095
Tulpehocken Creek	2	Berks	Lebanon		12.179
UNT Pine Creek (Eckville)	2	Berks			0.932
Willow Creek	3	Berks			1.901
Wyomissing Creek	2	Berks			2.591
Delaware Canal	5	Bucks			8.575
Neshaminy Creek	2	Bucks			1.932
Neshaminy Creek	4	Bucks			1.040
Perkiomen Creek East Branch	2	Bucks			3.915
Unami Creek	2	Bucks			3.293
<b>Lizard Creek</b>	2	Carbon	Schuylkill		2.361
<b>Lizard Creek</b>	4	Carbon			7.084
<b>Mahoning Creek</b>	2	Carbon	Schuylkill		2.983
<b>Mahoning Creek</b>	3	Carbon			7.705
Beaver Creek	2	Chester			2.983
Brandywine Creek East Branch	2	Chester			5.220
Brandywine Creek West Branch	3	Chester			3.790
Buck Run	2	Chester			3.604
Elk Creek Bg.	1	Chester			4.660
Elk Creek East Branch	2	Chester			2.423
French Creek	2	Chester			8.388
French Creek	4	Chester			7.146
Pickering Creek	2	Chester			2.051
Pocopson Creek	2	Chester			4.536
Valley Creek West	2	Chester			2.113
White Clay Creek	1	Chester			1.181
White Clay Creek East Branch	2	Chester			7.767
White Clay Creek East Branch	3	Chester			2.548
White Clay Creek M. Branch	2	Chester			5.654
Green Spring Creek	3	Cumberland			0.994
Middle Spring Creek	2	Cumberland	Franklin		5.779

## PROPOSED RULEMAKING

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Mountain Creek	3	Cumberland			3.169
Mountain Creek	5	Cumberland			4.785
Spring Creek Bg.	3	Cumberland			1.056
Spring Creek Bg.	4	Cumberland			1.305
Yellow Breeches Creek	2	Cumberland			14.602
Yellow Breeches Creek	4	Cumberland	York		27.713
Armstrong Creek	2	Dauphin			7.394
Clark Creek	2	Dauphin			7.021
Clark Creek	3	Dauphin			5.965
Clark Creek	5	Dauphin			9.321
<b>Mahantango Creek</b>	3	Dauphin	Schuylkill	Northumberland	21.089
Manada Creek	3	Dauphin			8.451
Pine Creek	4	Dauphin	Schuylkill		3.790
Powell Creek	1	Dauphin			6.841
Powell Creek	3	Dauphin			6.071
Powell Creek South Fork	2	Dauphin			2.485
Rattling Creek	1	Dauphin			2.113
Rattling Creek West Branch	2	Dauphin			2.299
Stony Creek	3	Dauphin			6.835
Wiconisco Creek	2	Dauphin			13.266
Wiconisco Creek	4	Dauphin			1.603
Chester Creek	4	Delaware			4.474
Chester Creek West Branch	2	Delaware			4.101
Darby Creek	2	Delaware			6.400
Darby Creek	3	Delaware			5.468
Darby Creek Ltl.	2	Delaware			0.808
Ithan Creek	2	Delaware			1.864
Ridley Creek	2	Delaware			3.107
Antietam Creek East Branch	4	Franklin			1.630
Antietam Creek West Branch	2	Franklin			4.287
Antietam Creek West Branch	3	Franklin			6.649
Buck Run	3	Franklin			1.988
Conococheague Creek	3	Franklin			13.049
Conococheague Creek	4	Franklin			5.903
Conocochge Creek West Branch	2	Franklin			14.726
Conocochge Creek West Branch	3	Franklin			15.037
Conodoguinnet Creek	2	Franklin			7.270
Cove Creek Ltl.	2	Franklin			6.705
Dennis Creek	2	Franklin			2.858
Falling Spring Branch	5	Franklin			0.761
Rowe Run	2	Franklin			1.864
<b>Blacklog Creek</b>	2	Huntingdon	Juniata		21.499
<b>Tuscarora Creek</b>	2	Huntingdon	Juniata		16.528
Big Run	2	Juniata			2.051
Cocolamus Creek	3	Juniata			9.942
Delaware Creek	2	Juniata			4.660

PROPOSED RULEMAKING

2713

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Horning Run	2	Juniata			3.355
Horse Valley Run	2	Juniata	Perry		6.276
Laurel Run	2	Juniata	Perry		3.977
<b>Licking Creek East</b>	4	Juniata			5.344
<b>Licking Creek East</b>	5	Juniata			9.258
Lost Creek	3	Juniata			8.513
Beaver Creek Bg.	2	Lancaster			4.971
Beaver Creek Ltl.	2	Lancaster			4.381
Bowery Run	2	Lancaster			2.051
Chickies Creek Ltl.	2	Lancaster			3.418
Climbers Run	2	Lancaster			1.491
Cocalico Creek Ltl.	2	Lancaster			4.225
Conestoga Creek Ltl.	2	Lancaster			2.791
Conowingo Creek	2	Lancaster			8.078
Conoy Creek	2	Lancaster			2.610
Constg. Creek Ltl. West Branch	2	Lancaster			1.939
Donegal Creek	2	Lancaster			2.361
Fishing Creek	2	Lancaster			7.891
Hammer Creek	4	Lancaster			2.548
Hammer Creek	6	Lancaster			3.852
Hammer Creek	2	Lancaster	Lebanon		2.392
Indian Run	2	Lancaster			1.864
Meetinghouse Creek	2	Lancaster			2.237
Middle Creek	2	Lancaster			8.699
Muddy Run	2	Lancaster			2.672
Octoraro Creek West Branch	2	Lancaster			4.474
Octoraro Creek West Branch	4	Lancaster			1.118
Pequea Creek	2	Lancaster			4.412
Stewart Run	2	Lancaster			2.485
Swarr Run	2	Lancaster			2.485
Trout Run	2	Lancaster			0.746
Bachman Run	2	Lebanon			3.604
Conewago Creek	2	Lebanon			4.660
Indiantown Run	2	Lebanon			1.367
Quittapahilla Creek	3	Lebanon			2.858
Quittapahilla Creek	6	Lebanon			0.932
Quittapahilla Creek	8	Lebanon			5.717
Snitz Creek	2	Lebanon			4.225
Trout Run	2	Lebanon			3.107
Cedar Creek	3	Lehigh			1.243
Coplay Creek	2	Lehigh			5.592
Jordan Creek	2	Lehigh			9.507
Jordan Creek	4	Lehigh			6.835
Jordan Creek	6	Lehigh			5.530
Lehigh Canal	8	Lehigh	Northampton		3.424
Lehigh Creek Ltl.	4	Lehigh			4.903
Lehigh Creek Ltl.	7	Lehigh			2.063

## PROPOSED RULEMAKING

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Lehigh Creek Ltl.	9	Lehigh			4.269
Monocacy Creek	9	Lehigh	Northampton		2.113
Saucon Creek South Branch	2	Lehigh			1.553
Swabia Creek	2	Lehigh			5.282
Switzer Creek	2	Lehigh			3.480
Trout Creek Bg.	2	Lehigh			6.400
<b>Licking Creek East</b>	2	Mifflin			2.672
Kepner Creek	2	Montgomery			0.994
Mill Creek	2	Montgomery			2.485
Pennypack Creek	4	Montgomery	Philadelphia		9.134
Skippack Creek	2	Montgomery			8.196
Stony Creek	2	Montgomery			3.293
Unami Creek	4	Montgomery			2.051
Unami Creek	5	Montgomery			1.740
Wissahickon Creek	2	Montgomery			2.983
Bushkill Creek	2	Northampton			8.699
Bushkill Creek	5	Northampton			1.740
Bushkill Creek	7	Northampton			2.920
Bushkill Creek Ltl.	2	Northampton			1.864
Bushkill Creek Ltl.	4	Northampton			3.418
Hokendauqua Creek	2	Northampton			8.016
Hokendauqua Creek	4	Northampton			3.231
Hokendauqua Creek	5	Northampton			1.988
Indian Creek	2	Northampton			5.282
Jacoby Creek	2	Northampton			2.237
Lehigh Canal	5	Northampton			3.790
Martins Creek	1	Northampton			4.735
Martins Creek	3	Northampton			2.703
Monocacy Creek	3	Northampton			2.423
Monocacy Creek	5	Northampton			2.361
Monocacy Creek	8	Northampton			0.994
Saucon Creek	4	Northampton			2.485
Bixler Run	2	Perry			4.225
Buffalo Creek	2	Perry			17.523
Buffalo Creek Ltl.	2	Perry			4.722
Buffalo Creek Ltl.	3	Perry			3.418
Bull Run	3	Perry			2.423
Fishing Creek	2	Perry			5.965
Fowler hollow Run	2	Perry			1.802
Juniata Creek Ltl.	2	Perry			9.445
McCabe Run	2	Perry			5.220
Montour Creek	2	Perry			3.728
Panther Creek	2	Perry			2.858
Raccoon Creek	2	Perry			8.202
Sherman Creek	2	Perry			14.602
Shultz Creek	2	Perry			3.977
Wissahickon Creek	4	Philadelphia			5.530
Bear Creek	2	Schuylkill			3.107

PROPOSED RULEMAKING

2715

<i>Water Name</i>	<i>Section</i>	<i>County 1</i>	<i>County 2</i>	<i>County 3</i>	<i>Length (miles)</i>
Beaver Creek	2	Schuylkill			1.616
Catawissa Creek Ltl.	2	Schuylkill			5.282
Cold Run	2	Schuylkill			2.175
Deep Creek	3	Schuylkill			9.445
Deep Creek	4	Schuylkill			7.208
Locust Creek	2	Schuylkill			6.524
Locust Creek	3	Schuylkill			0.684
Mahanoy Creek Ltl.	2	Schuylkill			3.852
<b>Mahantango Creek</b>	2	Schuylkill			5.269
Pine Creek	2	Schuylkill			2.423
Pine Creek	2	Schuylkill			7.214
Pine Creek	3	Schuylkill			9.258
Pine Creek	3	Schuylkill			3.293
Red Creek	2	Schuylkill			2.796
Schuylkill R. Ltl.	2	Schuylkill			3.355
Schuylkill R. Ltl.	7	Schuylkill	Berks		1.118
Swatara Creek Ltl. Lower	2	Schuylkill			7.954
Swatara Creek Ltl. Upper	2	Schuylkill			6.214
<b>Mahantango Creek West Branch</b>	2	Snyder	Juniata		4.474
Bald Eagle Creek	2	York			2.485
Beaver Creek	2	York			2.858
Blymire hw Run	2	York			1.429
Codorus Creek	2	York			3.480
Codorus Creek East Branch	2	York			2.610
Codorus Creek East Branch	3	York			3.107
Codorus Creek South Branch	5	York			2.113
Deer Creek	2	York			2.672
Fishing Creek	2	York			5.592
Fishing Creek	2	York			4.225
Fishing Creek	3	York	Lancaster		1.429
Leibs Creek	2	York			2.051
Muddy Creek	1	York			1.926
Muddy Creek	4	York			2.672
Muddy Creek North Branch	2	York			2.734
Muddy Creek North Branch	4	York			3.666
Muddy Creek South Branch	2	York			2.423
Otter Creek	2	York			5.592
Otter Creek	3	York			4.039
Sawmill Run	2	York			0.808
Total Sections	249			Total Miles	1147.874

**Lakes proposed for inclusion in the Regional Opening Day of Trout Season Program (18-County Option)**

<i>Water Name</i>	<i>County</i>	<i>Area (Acres)</i>
Waynesboro RS	Adams	22.97
Antietam Lake*	Berks	13.59
Scotts Run Lake*	Berks	22.48
Levittown Lake*	Bucks	19.76

<i>Water Name</i>	<i>County</i>	<i>Area (Acres)</i>
Lake Luxembourg*	Bucks	165.98
Childrens Lake	Cumberland	8.89
Doubling Gap Lake	Cumberland	4.00
Fuller Lake	Cumberland	1.73
Laurel Lake*	Cumberland	24.95
Middletown RS	Dauphin	11.11
Letterkenny RS	Franklin	54.09
Muddy Run Rec. Lake*	Lancaster	97.81
Lions Lake	Lebanon	6.99
Marquette Lake	Lebanon	15.07
Stovers Dam*	Lebanon	25.93
Leaser Lake*	Lehigh	117.08
Deep Creek Dam*	Montgomery	24.95
Loch Alsh RS	Montgomery	5.43
Minsi Lake*	Northampton	122.02
Locust Lake	Schuylkill	51.87
Neifert Creek F. C. RS	Schuylkill	5.93
Pumping Station Dam	Schuylkill	8.89
Rabbit Run RS	Schuylkill	4.94
Whipoorwill Dam	Schuylkill	5.19
Sheppard Myers Dam	York	46.93

\* These lakes are currently managed under § 65.10.

**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 creel limits apply to inland waters of this Commonwealth and the Youghiogeny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)	Regular Season: 8 a.m. first Saturday after April 11[ , ] to midnight Labor Day	7 inches	5[ —Streams, lakes and ponds ] (combined species) except areas with special regulations
	Extended Season: <b>[ Streams listed as approved ] Approved</b> trout waters and all waters downstream of <b>[ streams listed as ] approved</b> trout waters <b>[ plus lakes and ponds ]</b>  <b>[ January 1—last day of February and ] 12:01 a.m.</b> day after Labor Day to midnight[ , ] last day of February of the following year.	7 inches	3 (combined species) <b>except areas with special regulations</b>

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *			
BASS—Largemouth and Smallmouth and Spotted Lakes:	January 1 to midnight the day before [ <b>opening day of trout season in April</b> ] first Saturday after April 11 and November 1 to midnight December 31**	15 inches	4 (combined species from all habitats)
	12:01 a.m. the [ <b>opening day of trout season in April</b> ] first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
	12:01 a.m. the first Saturday after June 11 to midnight October 31	12 inches	6 (combined species)
BASS—Largemouth and Smallmouth and Spotted Rivers and Streams*:	January 1 to midnight the day before the [ <b>opening day of trout season in April</b> ] first Saturday after April 11 and October 1 to midnight December 31**	15 inches	4 (combined species)
	12:01 a.m. the [ <b>opening day of trout season in April</b> ] first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
	12:01 a.m. the first Saturday after June 11 to midnight September 30	12 inches	6 (combined species)
* * * * *			

\* \* \* \* \*

**\*\* Note: [ Approved trout waters are closed to fishing from March 1 to opening day of regular trout season in April unless included in the Early Season Trout Stocked Waters Program. See § 65.10 (relating to Early Season Trout Stocked Waters Program). ] Approved trout waters are closed to all fishing from March 1 to the first Saturday after April 11 unless included in the Early Season Trout Stocked Waters Program (see § 65.10 (relating to Early Season Trout Stocked Waters Program)) or in the Regional Opening Day of Trout Season Program (see § 65.12 (relating to Regional Opening Day of Trout Season Program)). Waters included in the Early Season Trout Stocked Waters Program are closed to all fishing from April 1 to the first Saturday after April 11. Waters included in the Regional Opening Day of Trout Season Program are closed to all fishing from March 1 to the first Saturday after March 28.**

\* \* \* \* \*

**§ 61.2. Delaware River and River Estuary.**

\* \* \* \* \*

(d) The following seasons, sizes and creel limits apply to the Delaware River and to 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	North of I-84: Open year-round	12 inches	5 (combined species)
	South of I-84: January 1 to midnight the day before the [ <b>opening day of trout season in April</b> ] first <b>Saturday after April 11</b> and October 1 to midnight December 31	12 inches	5 (combined species)
	12:01 a.m. the [ <b>opening day of trout season in April</b> ] first <b>Saturday after April 11</b> to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only	
	12:01 a.m. the first Saturday after June 11 to midnight September 30	12 inches	5 (combined species)
* * * * *			

\* A special no-kill artificial lures only season is in effect on the West Branch of the Delaware River from October 1 to midnight[ , ] on the Friday before the [ **opening day of trout season** ] first **Saturday after April 11**. See § 65.24.

\* \* \* \* \*

**CHAPTER 63. GENERAL FISHING REGULATIONS**

**§ 63.3. Fishing in approved trout waters.**

It is unlawful to fish in approved trout waters **regulated under § 61.1 (relating to Commonwealth inland waters) from 12:01 a.m. on March 1 to 8 a.m. on [ the opening day of trout season in April ] the first Saturday after April 11 and in approved trout waters regulated under § 65.12 (relating to Regional Opening Day of Trout Season Program) from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after March 28.** As used in this subpart, the term “approved trout waters” means designated waters that contain significant portions that are open to public fishing and are stocked with trout. A listing of approved 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 approved trout waters, and additions or deletions will be published in the *Pennsylvania Bulletin*.

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

\* \* \* \* \*

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

\* \* \* \* \*

(2) The person fishes in streams or rivers that are approved trout waters as defined in § 63.3 (relating to fishing in approved trout waters) or their tributaries during the period from [ **8 a.m. on the first Saturday after April 11 until 12:01 a.m. on the first Saturday in May** ] **12:01 a.m. on March 1 until midnight May 31.**

\* \* \* \* \*

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.4a. All-tackle trophy trout.**

\* \* \* \* \*

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

\* \* \* \* \*

(3) The daily creel limit is two trout-combined species from 8 a.m. on the [ **opening day of trout season in April** ] **first Saturday after April 11** until midnight Labor Day, except during the period from the day after Labor Day to the opening day of regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation.

\* \* \* \* \*

**§ 65.7. Trophy Trout Program.**

\* \* \* \* \*

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

\* \* \* \* \*

(5) The daily creel limit is two trout—combined species—except during the period from the day after Labor Day to 8 a.m. of the [ **opening day of regular trout season** ] **first Saturday after April 11** of the following year, when no trout may be killed or had in possession on the waters under regulation.

\* \* \* \* \*

**§ 65.9. Big bass special regulations.**

\* \* \* \* \*

(b) It is unlawful to take, catch, kill or possess a largemouth, smallmouth or spotted bass on or in designated “Big Bass Regulation” 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 is taken.

<i>Seasons</i>	<i>Size (in)</i>	<i>Creel Limit</i>
<i>Lakes:</i> January 1 to midnight the day before the [ <b>opening day of trout season in April</b> ] <b>first Saturday after April 11</b> and 12:01 a.m. the first Saturday after June 11 to midnight December 31	15	4 (combined species)
12:01 a.m. the [ <b>opening day of trout season in April</b> ] <b>first Saturday after April 11</b> to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
<i>Rivers and Streams:</i> January 1 to midnight the day before the [ <b>opening day of trout season in April</b> ] <b>first Saturday after April 11</b> and October 1 to midnight December 31	18	2 (combined species)
12:01 a.m. the [ <b>opening day of trout season in April</b> ] <b>first Saturday after April 11</b> to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
12:01 a.m. the first Saturday after June 11 to midnight September 30	15	4 (combined species)

\* \* \* \* \*

**§ 65.12. Regional Opening Day of Trout Season Program.**

(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 Program. The designation of waters as part of the Regional Opening Day of Trout Season Program shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as part of the Regional Opening Day of Trout Season Program except in compliance with the following seasons, sizes and creel limits:

SEASONS	MINIMUM SIZE	DAILY LIMIT
Regular Season: 8 a.m. first Saturday after March 28 to midnight Labor Day	7 inches	5 (combined species)
Extended Season:  Approved trout waters and all waters downstream of approved trout waters  12:01 a.m. day after Labor Day to midnight last day of February of the following year.	7 inches	3 (combined species)

(c) It is unlawful to take, catch, kill or possess trout except during the seasons specified in this section. It is not a violation of this section if a trout caught out of season from waters where fishing for other species is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(d) It is unlawful to take, catch, kill or possess trout of less than the minimum size specified in this section. It is not a violation of this section if an undersized trout taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(e) It is unlawful to take, catch or kill more than 1 day's limit of any species of trout as specified in this section during 1 calendar day. It is unlawful to possess more than 1 day's limit of any species of trout as specified in this section except under the following circumstances:

(1) A person may possess any number of lawfully caught trout at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may possess, while transporting trout from the place where caught to his residence, a number of trout equal to no more than two times the daily creel limit for trout. In prosecutions for violations of this section, it shall be a rebuttable presumption that a person transporting trout from a fishing site caught all of the trout during 1 calendar day.

(3) A trout will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) Any trout caught that is not to be counted in the creel limit shall be immediately released unharmed to the waters from which taken. Except as otherwise provided in §§ 53.24 or 63.40 (relating to tournament and fishing derby permits; and fishing tournaments and fishing derbies), a trout placed on a stringer or confined by any type of container, structure or device or not returned immediately to the water will be considered as part of the daily creel or possession limits. Trout returned to the water shall be handled carefully and be returned unharmed to the waters from which taken.

(5) Trout may be given to another person, but the trout shall be counted in the donor's creel limit and neither donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

**§ 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>
	* * * * *	
Crawford and Erie	Conneaut Creek E. Branch Conneaut Creek M. Branch Conneaut Creek W. Branch Conneaut Creek Mud Run Stone Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the [ <b>opening day of trout season in April</b> ] first <b>Saturday after April 11.</b>  Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Crawford	Crazy Run	<p>Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the <b>[ opening day of trout season in April ] first Saturday after April 11.</b></p> <p>Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.</p>
* * * * *		
Erie	E. Branch Conneaut Creek Marsh Run Temple Run Turkey Creek	<p>Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the <b>[ opening day of trout season in April ] first Saturday after April 11.</b></p> <p>Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.</p>
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River).	<p>Trout (all species)—no closed season. <b>[ Creel limits: Regular inland season—5. Day after Labor Day to opening day of next regular inland season—3 (combined species) ] Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day.</b> 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.</p>
* * * * *		
Luzerne	Harveys Lake	<p>During the period from the <b>[ opening day of trout season ] the first Saturday after April 11</b> through midnight March 31, the daily creel limit for trout (combined species) is 3, only one of which may exceed 18 inches in length. Fishing is prohibited from April 1 through 8 a.m. of the <b>[ opening day of regular trout season ] first Saturday after April 11.</b></p> <p>Warmwater/coolwater species, except as provided in this section-Inland regulations apply.</p>

PROPOSED RULEMAKING

County	Name of Water	Special Regulations
Mercer	Shenango River from the dam downstream to SR 3025, a distance of 1.5 miles	Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit— <b>[ Opening day of trout season in April ] First Saturday after April 11</b> until Labor Day: <b>[ five ] 5</b> trout per day; day after Labor Day to midnight, March 31 of the following year— <b>[ three ] 3</b> trout per day. Inland regulations apply to warmwater/coolwater species.
* * * * *		
Somerset, Fayette, Westmoreland and Allegheny	<p>Youghiogheny River from confluence with Casselman River downstream to the confluence with Ramcat Run</p> <p>Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river.</p> <p>Youghiogheny River from Reservoir downstream to confluence with Casselman River.</p>	<p><b>[ No closed season on trout. Daily limit opening day of trout season to Labor Day—5 trout; day after Labor Day to succeeding opening day of trout season—3 trout per day ] Trout (all species)—no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day.</b> Inland regulations apply to warmwater/coolwater species.</p> <p>Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—<b>[ Opening day of trout season in April ] First Saturday after April 11</b> until Labor Day—<b>[ five ] 5</b> trout per day; day after Labor day to midnight, March 31 of following year: <b>[ three ] 3</b> trout per day. Inland regulations apply to warmwater/coolwater species.</p>
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 <b>[ opening day of regular trout season ] first Saturday after April 11</b> through midnight Labor Day, except during the period from the day after Labor Day to the <b>[ opening day of regular trout season ] first Saturday after April 11</b> of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply.
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. March 1 to 8 a.m. <b>[ opening day of trout season ] first Saturday after April 11.</b>
* * * * *		

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
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 <b>[ opening day of trout season ] first Saturday after April 11.</b> During the no-harvest artificial lures only season: <ol style="list-style-type: none"> <li>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.</li> <li>2. The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.</li> <li>3. The daily creel limit for trout is 0.</li> </ol>

\* \* \* \* \*

**§ 65.26. Extended trout seasons.**

(a) *General rule.* The extended trout season is in effect from the day after Labor Day until the last day of February of the following year on approved trout waters and **all waters** downstream **[ areas, plus lake and ponds ] of approved trout waters.** A creel limit of three trout per day and a minimum size limit of 7 inches applies during this season.

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**§ 69.12. Seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries.**

\* \* \* \* \*

(d) It is unlawful to fish in or along any Lake Erie tributary stream or the Water Works Ponds at Presque Isle State Park from 12:01 a.m. on the Friday before the **[ opening day of trout season ] first Saturday after April 11** until 8 a.m. on the **[ opening day of trout season in April ] first Saturday after April 11.**

(e) It is unlawful to possess trout or salmon in or along any Lake Erie tributary stream or the Water Works Ponds at Presque Isle State Park from 12:01 a.m. on the Friday before the **[ opening day of trout season ] first Saturday after April 11** until 8 a.m. on the **[ opening day of trout season in April ] first Saturday after April 11.**

(f) Subject to the provisions of subsections (d) and (e), 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 <b>[ opening day of trout season in April ] first Saturday after April 11</b> and first Saturday after June 11 until December 31  <b>[ Opening day of trout season in April ] First Saturday after April 11</b> until first Saturday after June 11.*	15 inches  20 inches	4 (combined species)  1
	* * * * *		

\* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to seasons for fishing tournaments)) for bass on Lake Erie, Lake Erie tributaries or Presque Isle Bay during the period from **[ opening day of trout season in April ] the first Saturday after April 11** until the first Saturday after June 11.

§ 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 trout season in April** ] **first Saturday after April 11 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 and Elk Creek north of Route 5.

\* \* \* \* \*

[Pa.B. Doc. No. 06-980. Filed for public inspection June 2, 2006, 9:00 a.m.]

[58 PA. CODE CH. 79]  
Reptiles and Amphibians

The Fish and Boat Commission (Commission) proposes to add §§ 79.8, 79.11 and 79.12 (relating to artificial propagation and dealers of live aquatic animals; introduction; and color morphs). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking updates and improves the Commission's reptile and amphibian regulations to provide for the greater protection and management of these resources.

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2007.

B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at [www.fish.state.pa.us](http://www.fish.state.pa.us).

C. *Statutory Authority*

Proposed §§ 79.8, 79.11 and 79.12 are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's regulations pertaining to reptiles and amphibians. The specific purpose of the proposed regulations is described in more detail under the summary of proposals.

On two occasions, the Commission has published proposed rulemakings soliciting public comments regarding its proposed reptile and amphibians regulations. The first proposed rulemaking was published at 35 Pa.B. 5683 (October 15, 2005). The second proposed rulemaking was published at 36 Pa.B. 1220 (March 18, 2006). Upon closer review of the proposed regulations in the second proposed rulemaking, the Commission determined that several issues require additional clarification. They are artificial propagation and dealers of live aquatic animals, introduction and color morphs.

(*Editor's Note:* The rescission of Chapter 77 was included in the proposal published at 36 Pa.B. 1220).

E. *Summary of Proposals*

(1) *Section 79.8:* Although the second proposed rulemaking broadly addresses artificial propagation of reptiles and amphibians, it does not address the more

specific issue of closed system propagation. Closed systems are designed to prevent release or escape of animals from the system. Closed system propagation, primarily in the context of fin fish, is already addressed in Chapter 71 (relating to propagation and introduction of fish into Commonwealth waters), and the proposed closed system provisions pertaining to reptiles and amphibians in § 79.8 resemble the provisions in Chapter 71. Under the proposed regulation, the Commission will maintain two lists of species of reptiles and amphibians that are approved for artificial propagation—one containing species approved for open systems and another containing species approved for closed systems. Currently, bullfrogs and green frogs are on the list of species approved for open system propagation under Chapter 71 and will be approved for open system propagation under proposed Chapter 79. Commission staff do not intend to recommend other native species of reptiles and amphibians for open system propagation. A list of species approved for closed system propagation will include all nonnative species except those specifically prohibited by the Commission and color morphs of certain native species. The list of color morphs will be developed with input from commercial propagators and hobby breeders.

(2) *Section 79.11:* Although the introduction of nonnative species is addressed in the second proposed rulemaking, the introduction of native species is not. Like propagation, introduction of native species is already addressed in the broad context of Chapter 71. However, for purposes of completeness, provisions dealing with the introduction of native species of reptiles and amphibians should be included in the proposed Chapter 79. Proposed § 79.11 provides that as a general rule, native species of reptiles and amphibians may be introduced onto lands and into waters of this Commonwealth only when the Commission has approved the native species for introduction. Similar to propagation, the Commission will maintain a list of native species that it has approved for introduction. There is an exception to the general rule that allows a person who lawfully catches and possesses a reptile or amphibian in this Commonwealth to reintroduce that animal into the wild if certain conditions are met.

(3) *Section 79.12:* The Commission has determined that the provisions of § 79.12 as in the second proposed rulemaking should be modified to clarify that color morphs of native species designated by the Commission may be artificially propagated provided they are not taken from the wild and they are propagated in a closed system meeting the requirements of § 79.8.

The Commission proposes to add these sections as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will increase paperwork slightly in that the Commission will maintain two separate lists of species of reptiles and amphibians that are

approved for artificial propagation—one containing species approved for open systems and another containing species approved for closed systems. The Commission already maintains a list of species approved for open system propagation under Chapter 71, which contains two frog species. The Commission will now maintain separate lists for reptiles and amphibians.

The proposed rulemaking will create no new paperwork requirements in that the requirement for registration with the Department of Agriculture (Department) as an artificial propagator or as a dealer of live aquatic animals is in 3 Pa.C.S. Chapter 42 (relating to Aquaculture Development Law) (act), not the Commission's proposed regulations. Under section 4220 of the act (relating to registration for artificial propagation), the Department may register applicants for artificial propagation upon receipt of a written application and payment of a registration fee of \$150. Section 4222 of the act (relating to registration for dealers of live aquatic animals) provides that the Department may register applicants wishing to become dealers of live aquatic animals upon receipt of a written application and payment of a registration fee of \$50.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public. As previously described, the act requires persons wishing to become artificial propagators or dealers of live reptiles and amphibians to register with the Department.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

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

**Fiscal Note:** 48A-184. Nonfiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 79. REPTILES AND AMPHIBIANS**

*(Editor's Note: The following text is new and is printed in regular type to enhance readability.)*

**§ 79.8. Artificial propagation and dealers of live aquatic animals.**

(a) *General.* Except for hobby breeders and pet stores as defined in 3 Pa.C.S. Chapter 42 (relating to aquaculture development), it is unlawful to artificially propagate or deal in live reptiles and amphibians without

being registered with the Department of Agriculture (Department) under 3 Pa.C.S. Chapter 42. It is unlawful for anyone, regardless of whether or not registered, to artificially propagate reptiles and amphibians except those species, subspecies and color morphs that the Commission has approved for artificial propagation in this Commonwealth in accordance with this section.

(b) *Approved lists.* The Bureau of Fisheries will maintain lists of species, subspecies and color morphs for which the Department may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Bureau of Fisheries will maintain two separate lists—one that the Commission has approved for artificial propagation in an open system and one that the Commission has approved for artificial propagation in a closed system or a system with discharges rendered incapable of containing self-perpetuating living organisms. The Director of the Bureau of Fisheries may update or modify the lists of approved species, subspecies and color morphs by adding species, subspecies or color morphs to or deleting species, subspecies or color morphs from the lists as necessary for the protection and management of reptiles and amphibians in this Commonwealth. The Commission will provide the lists to the Department on or before January 31 each year and whenever the Commission updates or modifies the lists. Copies of the lists of approved species, subspecies and color morphs are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, Pennsylvania 16823.

(c) *Open systems.* Reptiles and amphibians may be artificially propagated or held by dealers in an open system only when the Commission has approved the species, subspecies or color morphs for artificial propagation in an open system.

(d) *Closed systems or systems with discharges rendered incapable of containing self-perpetuating living organisms.*

(1) Reptiles and amphibians may be artificially propagated or held by dealers in a closed system or in a system with discharges rendered incapable of containing self-perpetuating living organisms that meets the requirements of this subsection only when the Commission has approved the species, subspecies or color morphs for artificial propagation in a closed system or a system with discharges rendered incapable of containing self-perpetuating living organisms.

(2) To artificially propagate or deal in live reptiles and amphibians in a closed system, an applicant for registration shall certify that all of the following conditions are met:

(i) The closed system will be housed indoors in a structure enclosed by solid walls, floor and roof. For purposes of this paragraph, a wall, floor or roof will be considered "solid" if it is constructed and maintained to prevent unauthorized human or animal intrusions into the closed system facility and to prevent release or escape of live reptiles or amphibians from the closed system.

(ii) If water will be used in normal operations, no discharge will be allowed onto the lands or into the waters of this Commonwealth.



(iii) Water will be added to the system only for making up evaporative loss, cleaning, harvesting or consumption.

(iv) No live reptiles or amphibians or live reptile or amphibian eggs will be permitted to escape. Accidental escape, spillage or loss of live reptiles or amphibians including their eggs will be contained within the facility in a manner that prevents the reptiles and amphibians or their eggs from escaping onto the lands or into the waters of this Commonwealth.

(3) To artificially propagate or deal in live reptiles and amphibians in a system with discharges rendered incapable of containing self-perpetuating living organisms, an applicant for registration shall certify that one of the following conditions is met:

(i) Discharged water will be subject to treatment processes that will destroy living organisms.

(ii) Water will be discharged in a manner that living organisms cannot survive.

(4) The Commission may request from the Department a list of registered propagators and dealers that hold reptiles and amphibians in closed systems or systems with discharges rendered incapable of containing self-perpetuating living organisms. The Commission, in its discretion, may inspect these systems to ensure that they are designed and constructed in a manner to prevent escape of live reptiles or amphibians or their live eggs onto lands or into the waters of this Commonwealth or so that their discharges are rendered incapable of containing live amphibians or reptiles or their eggs. In addition, the Commission, in its discretion, may inspect these systems at any time to ensure compliance with this subsection, and the Commission may issue an order to suspend operations of any of these systems when an inspection discloses that it is not in compliance with this subsection.

(5) The Commission will invite the Department's Aquaculture Advisory Committee or a subcommittee thereof to draft and periodically update construction guidelines for closed system propagators and dealers to help them ensure closed systems prevent escape of reptiles and amphibians onto the lands or into the waters of this Commonwealth. These guidelines will assist registered propagators and dealers in the design, construction and maintenance of closed systems and will assist the Commission in inspecting these systems.

(6) It is unlawful for an operator of a system described in this subsection to allow live reptiles or amphibians to escape onto lands or into the waters of this Commonwealth.

(7) A registered operator of any system described in this subsection shall develop, maintain and make available for immediate inspection by the Commission and the Department upon request a written plan for containing or treating discharged animals in the event of a closed system failure.

(8) A registered operator of any system described in this subsection shall notify both the Commission's Director of the Bureau of Fisheries and the Department's Aquaculture Coordinator immediately in the event of an escape or a discharge failure that is likely to contain viable living organisms.

### § 79.11. Introduction.

(a) *Nonnative species.* It is unlawful to introduce any species of reptile or amphibian into the natural environment of this Commonwealth if that species is not native to this Commonwealth. Persons who import nonnative reptiles or amphibians into this Commonwealth shall institute appropriate safeguards to prevent their introduction into the environment of this Commonwealth.

(b) *Native species.*

(1) *General rule.* Except as otherwise provided in this subsection, native species of reptiles and amphibians may be introduced into the natural environment of this Commonwealth only when the Commission has approved the native species for introduction. Except as otherwise provided in this subsection, it is unlawful to introduce or facilitate the introduction of native species of reptiles and amphibians except those native species that the Commission has approved for introduction. The Commission will maintain a list of native species that the Commission has approved for introduction. The Director of the Bureau of Fisheries may update or modify the list of approved species by adding species to or deleting species from the list as necessary for the protection and management of reptiles and amphibians in this Commonwealth. Copies of the list of approved species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, PA 16823.

(2) *Exception.* A person who lawfully catches and possesses a reptile or amphibian in accordance with § 79.3 (relating to season and daily possession limits) may reintroduce that reptile or amphibian into the natural environment of this Commonwealth as long as the following conditions are met:

(i) The person other than a Commission-recognized rehabilitator releases the reptile or amphibian to the point of capture. If the point of capture is unknown, a Commission-recognized rehabilitator may release the animal to appropriate habitat.

(ii) The person other than a Commission-recognized rehabilitator releases the reptile or amphibian within 30 days of capture. A Commission-recognized rehabilitator may release the animal more than 30 days after capture.

(iii) The person releases the reptile or amphibian during the period, May 1 through Labor Day.

(iv) The reptile or amphibian is in good health.

### § 79.12. Color morphs.

For purposes of this chapter, it is presumed that color morphs of certain native species that are held in captivity were not taken from the wild. Therefore, the Commission has determined that color morphs of certain native species are exempt from the requirements of this chapter as provided in this section. The Commission will publish in the *Pennsylvania Bulletin* a list of color morphs of native species to which the following provisions apply:

(1) Color morphs of native species designated by the Commission are not subject to the possession limits of § 79.3 (relating to season and daily possession limits) provided they are not taken from the wild.

(2) Color morphs of native species designated by the Commission may be artificially propagated provided they are not taken from the wild and they are propagated in a closed system meeting the requirements of § 79.8 (relating to artificial propagation and dealers of live aquatic animals).

(3) Color morphs of native species designated by the Commission may be sold provided they are not taken from the wild.

[Pa.B. Doc. No. 06-981. Filed for public inspection June 2, 2006, 9:00 a.m.]

## GAME COMMISSION

[58 PA. CODE CH. 143]

### Hunting and Furtaker Licenses; Mentored Youth Hunting Program

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 18, 2006, meeting, proposed to add Chapter 143, Subchapter M (relating to mentored youth hunting program license exemption) to create, define and implement the Mentored Youth Hunting Program (MYHP) within this Commonwealth.

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

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

The proposed rulemaking was made public at the April 18, 2006, meeting of the Commission. Comments can be sent, until June 6, 2006, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

#### 1. *Purpose and Authority*

Due to today's complex society and all of the competing interests youths have to choose from, it is difficult for our sporting men and women to expose youngsters to the joys of hunting. On December 22, 2005, Governor Rendell signed into law House Bill 1690 to provide a way for parents to better combat these challenges. In effect, this statutory amendment authorized the Commission to create, define and implement a concept aptly named the MYHP.

The mission of the MYHP is to create and expanded youth opportunities while maintaining safety afield. The MYHP provides youngsters a chance to develop the love of hunting early and allow that passion to grow as they do. The MYHP promotes the culture and development of the type of one-on-one training, and hands on experience that will help protect our hunting future as well as increase hunting safety through the intimate counseling provided by dedicated mentors. Youths who might otherwise never experience hunting will now have the chance to taste the thrills of past generations as they carry this Commonwealth's hunting heritage into our future. The MYHP may not benefit all youths, however, it does provide a vehicle into the hunting fraternity for many youngsters whose parents feel are mentally, emotionally and physically ready for the rigors of hunting.

It was only with the dedicated assistance of various sportsmen's organizations that the MYHP was even possible. Indeed, the MYHP concept was initially developed and promoted by the determination of organizations such as the National Wild Turkey Federation, Pennsylvania Federation of Sportsmen's Clubs, United Bowhunters of Pennsylvania, Central Counties Concerned Sportsmen, National Rifle Association, Quality Deer Management

Association, Rocky Mountain Elk Foundation, Big Bothers/Big Sisters Pass It On Program and the U.S. Sportsmen's Alliance.

In a world in which everyone seems to have less and less time, and we never seem to place the proper value on the truly important things, there can be no greater way to instill values, provide the ideal time and place to teach conservation, respect, ethics and responsibilities that we all have as caretakers of our streams and forests, than by adopting the MYHP in this Commonwealth. Therefore, after consideration of the relevant issues, the Commission is proposing to add Subchapter M to create, define and implement the MYHP within this Commonwealth.

Section 2701(a) of the code (relating to license requirements) states that "Except in defense of person or property or pursuant to exemptions authorized by the commission for implementing a mentored youth hunting program, every person, prior to engaging in any of the privileges granted by this title, shall first obtain the applicable license subject to any conditions or other requirements imposed by this title." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The addition of Subchapter M was proposed under this authority.

#### 2. *Regulatory Requirements*

The proposed rulemaking will add Subchapter M to create, define and implement the MYHP within this Commonwealth.

#### 3. *Persons Affected*

Persons wishing to engage in mentored youth hunting opportunities or those in the vicinity of persons engaging in mentored youth hunting activities will be affected by the proposed rulemaking.

#### 4. *Cost and Paperwork Requirements*

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

#### 5. *Effective Date*

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

#### 6. *Contact Person*

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

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-230. No fiscal impact; (8) recommends adoption.

## Annex A

## TITLE 58. RECREATION

## PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTKER  
LICENSESSubchapter M. MENTORED YOUTH HUNTING  
PROGRAM LICENSE EXEMPTION

- Sec.  
143.241. Purpose and scope.  
143.242. Definitions.  
143.243. General.  
143.244. Safety.  
143.245. Liability.  
143.246. Unlawful acts.  
143.247. Penalties.

(*Editor's Note:* The following text is new and is printed in regular type to enhance readability.)

**§ 143.241. Purpose and scope.**

(a) The purpose of this subchapter is to define and implement the Mentored Youth Hunting Program.

(b) The Mentored Youth Hunting Program is intended to provide mentors who are dedicated to promoting and sharing this Commonwealth's hunting heritage with interested youths, the opportunity to provide these younger unlicensed youths with one-on-one, hands-on experience and in-field training on the mechanical, ethical, safety, responsibility and enjoyment aspects of the hunting experience.

**§ 143.242. Definitions.**

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

*Lawful hunting device*—Any firearm or implement that is lawful to be possessed during the current season and used to harvest the particular species hunted.

*Mentor*—A licensed person, 21 years of age or older who is serving as a trusted counselor to a mentored youth while engaged in hunting or related activities.

*Mentored youth*—An unlicensed person, under 12 years of age who is accompanied by a mentor while engaged in hunting or related activities.

*Stationary*—The state or condition where a person is still, fixed in place or static, indicated by a cessation of all forward, backward or lateral movement, whether in the standing, kneeling, sitting or prone position.

**§ 143.243. General.**

(a) A mentor shall possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions) prior to engaging in any mentored youth hunting activities.

(b) A mentored youth's hunting eligibility is restricted to the following species: squirrel, woodchuck and wild turkey (spring gobbler season only) beginning in the 2006-2007 hunting license year.

(i) Beginning in the 2007-2008 hunting license year, antlered deer will be included in the mentored youth hunts.

(ii) Mentored youth hunters shall comply with the same antler requirements as junior license holders.

(c) A mentored youth's hunting eligibility is further constrained by all applicable hunting seasons, daily limits, field possession limits and season limits provided in § 139.4 (relating to seasons and bag limits for the license year).

(d) A mentored youth is eligible to hunt during any special youth hunting seasons that apply to any species specified in subsection (b).

(e) A mentored youth shall tag and report all big game harvested in the manner provided for in section 2323(b) of the act (relating to killings by persons without license).

**§ 143.244. Safety.**

While engaged in mentored youth hunting activities:

(1) A mentored youth shall be stationary and within arms reach of the mentor, subject to his immediate control, at all times while in possession of any lawful hunting device.

(2) A mentor may not accompany more than one youth, including junior hunters, at any given time.

(3) A mentor and mentored youth may not collectively possess more than one lawful hunting device at any given time.

(4) A mentor and mentored youth shall both comply with section 2524 of the act (relating to protective material required) and with any regulations promulgated by the Commission relating to protective material.

**§ 143.245. Liability.**

A mentor is responsible and accountable for all actions of the mentored youth occurring while engaged in mentored youth hunting activities. A mentor who causes or allows a mentored youth to engage in an unlawful act shall be punishable as the principal offender as provided in section 924 of the act (relating to liability for actions of others) or with any regulations promulgated by the Commission.

**§ 143.246. Unlawful acts.**

It is unlawful while engaged in mentored youth hunting activities for:

(1) A mentor not to possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

(2) A mentor to permit a mentored youth to possess any lawful hunting device except while in a stationary position and within arms reach of the mentor.

(3) A mentor to permit a mentored youth to take or attempt to take any species of game or wildlife not otherwise authorized by this subchapter.

(4) A mentor to accompany more than one youth, including junior hunters, at any given time.

(5) A mentor or mentored youth to collectively possess more than one lawful hunting device at any given time.

(6) A mentor or mentored youth to fail to comply with section 2524 of the act (relating to protective material required) or any regulations promulgated by the Commission relating to protective material.

(7) A mentor or mentored youth to violate any other provision of this subchapter.

**§ 143.247. Penalties.**

A person violating this subchapter shall, upon conviction, be sentenced to pay the fine prescribed in the act.

[Pa.B. Doc. No. 06-982. Filed for public inspection June 2, 2006, 9:00 a.m.]

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