

## Notice of Proposed Rulemaking

### COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

#### Title 58. Recreation Part II. Fish and Boat Commission Chapters 51 and 101 General Provisions Boating

## Preamble

The Fish and Boat Commission (Commission) proposes to amend Chapters 51 and 101 (relating to administrative provisions; and boating accidents). 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, 2009.

#### B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, 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*

The proposed amendments to §51.9 (relating to release of documents and records) is published under the statutory authority of section 504 of the Act of February 14, 2008 (P.L. 6, No. 3)

(Right-to-Know Law) and section 506 of The Administrative Code (71 P.S. §186). The proposed amendment to §101.6 (relating to investigation reports by commission officers) is published under the statutory authority of section 506 of The Administrative Code (71 P.S. §186).

D. *Purpose and Background*

The proposed rulemaking is designed to update the Commission's regulations to be consistent with the new Right-to-Know Law and to consolidate its regulations relating to records. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Act 3 of 2008 has substantially changed the current Right-to-Know Law. Under the new law, which will apply to requests received after January 1, 2009, an agency may promulgate regulations and policies necessary for the agency to implement the statute. Section 51.9 of the Commission's regulations currently provides for the release of Commission documents and records. However, this section must be amended to be consistent with the provisions of the new Right-to-Know Law.

The changes to §51.9 that are necessitated by Act 3 of 2008 include allowing requests for records to come via electronic mail and changing the recipient of the request from the Executive Director to the Director of the Bureau of Administration, who will act as the Commission's Open Records Officer under the new Right-to-Know Law. Act 3 of 2008 provides that most fees charged under the Right-to-Know Law for reproduction of records will now be set for all Commonwealth agencies by the newly created Office of Open Records.

In addition to and separate from the Right-to-Know Law requests, the Commission receives requests for documents through subpoenas. Section 101.6(d) of the Commission's regulations provides for a \$0.50 per page reproduction fee for responses to subpoena requests for investigative

reports by Commission officers. The Commission receives subpoenas for a number of documents other than investigative reports. Accordingly, the Commission proposes to add new subsection (d) to §51.9 to cover reproduction costs for all subpoena requests and to remove that provision from §101.6.

The Commission proposes that §§ 51.9 and 101.6 be amended to read as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements because the Commission is currently required to respond to Right-to-Know Law requests and subpoenas.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. With one exception, the proposed rulemaking will impose no new costs on the private sector or the general public as the Commission currently has a reproduction fee for both Right-to-Know Law requests and subpoena requests. With respect to requests for records made by subpoena, the proposed rulemaking imposes a \$1.00 per page charge for color copies and a \$1.00 per document charge on electronic media plus \$2.00 per diskette or compact disc, and a charge of \$1 per page up to \$5 per document for certified copies of documents. The impact of these proposed charges will be nominal.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Pennsylvania 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.fishandboat.com/regcomments](http://www.fishandboat.com/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.

For the Pennsylvania Fish and Boat Commission

Douglas J. Austen, Ph.D.  
Executive Director

## **Annex A**

### **Regulation No. 48A-206**

#### **Title 58. Recreation**

#### **Part II. Fish and Boat Commission**

##### ***Subpart A. General Provisions***

##### **CHAPTER 51. ADMINISTRATIVE PROVISIONS**

§ 51.9. Release of documents and records.

(a) Consistent with [the act of June 21, 1957 (P. L. 390, No. 212), as amended by the act of June 29, 2002 (P. L. 663, No. 100)] the act of February 14, 2008 (P.L. 6, No. 3), [and commonly] known as the Right-to-Know Law [(65 P. S. § § 66.1—66.9)], and [section] sections 324 and 5503 of the code (relating to Commission records; and accident reports),

the Commission will make public records contained in its files available to requesters for inspection and duplication during the Commission' s regular business hours of 8 a.m. to 4 p.m., Monday through Friday (excluding Commonwealth holidays).

(b) Requests for release of public records contained in Commission files shall be made in writing and submitted to: **[Executive Director] Director, Bureau of Administration,**

Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. Written requests for release of public records may be sent by mail or by

means of facsimile **or by e-mail**, or they may be delivered in person during the

Commission' s regular business hours. The Commission will not accept anonymous[,] **or** oral **[or e-mail]** requests.

(c) **[If a photocopier or reproduction device under the control of the Commission is used to duplicate information released under this section, the] The** requester will be charged **[25¢ per letter or legal size page for the copies] the fee prescribed by the Office of Open**

**Records for the reproduction and release of documents on paper or in electronic media.** **[If the Commission copies oversize pages (in excess of legal size), the charge will be \$1 per page or the actual cost of duplication, whichever is greater. If the Commission copies**

documents to electronic media (such as, computer diskette), the requester will be charged \$1 per document copied (if 1 megabyte or less in size) plus \$2 per diskette. For electronic documents of more than 1 megabyte in size, the requester will be charged \$3 per document plus \$10 or the cost of the media on which the document is stored, whichever is greater.]

The Commission will charge \$1 per page up to \$5 per document for certified copies. If the Commission mails copies of documents duplicated under this section to the requester, the requester will be charged the actual cost of postage or shipping. All charges shall be payable by check or money order made payable to ' ' Pennsylvania Fish and Boat Commission.' ' The Commission may require a requester to prepay fees if the fees are expected to exceed \$100. The Commission may waive copy charges and mailing charges for good cause or in the public interest. **[When the total copying and mailing charges for a request are \$10 or less, the Commission ordinarily will waive collection.]**

**(d) Subpoenas. Requests for records made by subpoena, in addition to collection of subpoena fees, are subject to a reproduction charge of \$0.50 per page for black and white copies and \$1.00 per page for color copies. Copies provided on electronic media shall be charge at \$1.00 per document, plus \$2.00 per diskette or compact disc. The Commission**

will charge \$1 per page up to \$5 per document for certified copies requested pursuant to a subpoena.

***Subpart C. Boating***

CHAPTER 101. BOATING ACCIDENTS

§ 101.6. Investigation reports by Commission officers.

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**[(d) The Commission may, in addition to collection of subpoena fees, charge a reproduction fee of 50¢ per page.]**