

Notice of Proposed Rulemaking

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapter 53 Commission Property

Preamble

The Fish and Boat Commission (Commission) proposes to amend Chapter 53 (relating to Commission property). 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 upon publication in the *Pennsylvania Bulletin*.

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.

C. *Statutory Authority*

The proposed amendments to § 53.11 (relating to off-highway vehicles and snowmobiles) are published under the statutory authority of section 741 of the code (relating to control of property).

D. *Purpose and Background*

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

E. *Summary of Proposal*

Section 53.11(c) of the Commission's regulations currently allows persons who are exempt from the fishing license requirement under section 2709(b) of the code (relating to exemptions from license requirements) and persons who are deprived of the use of a leg or both legs in a manner that significantly limits mobility to apply for a permit to use an off-road motorized vehicle on Commission property for the purpose of gaining access to fishing or boating opportunities. A recent review of this section and the Commission's application disclosed that both are in need of updating so that they meet current requirements of the Americans with Disabilities Act (ADA) and U.S. Department of Justice regulations implementing the requirements of the ADA. In addition, to give the Commission more flexibility in adapting to future changes in the law, the Commission proposes removing certain language from the regulation and instead relying on the application form and the conditions stated in the permit. The Commission also proposes housekeeping changes to subsection (a).

The Commission proposes to amend § 53.11 to read as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose 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 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. 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

John A. Arway
Executive Director

Annex A

Regulation No. 48A-280

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart A. General Provisions

CHAPTER 53. COMMISSION PROPERTY

§ 53.11. Off-highway vehicles **[and]**, snowmobiles, **and mobility devices**.

(a) *General rule.* Except as provided in subsection (c), the use of off-road motorized vehicles[, **including trail bikes, Tote Gotes, all terrain vehicles (ATVs), air cushioned vehicles, track vehicles, hydrofoils and the like,**] is prohibited on Commission-owned or -controlled property.

As used in this subsection, the term, “off-road motorized vehicle,” means a motorized vehicle specifically designed for this use. The term includes but is not limited to trail bikes, Tote Gotes, all terrain vehicles (ATVs), air cushioned vehicles, track vehicles and hydrofoils. It does not include a vehicle licensed or registered for on-road use, such as a 4 by 4 sport utility vehicle and the like.

(b) *Snowmobiles.* * * *

(c) *Persons with disabilities.*

(1) *Motorized wheelchairs.* * * *

(2) *Other [motorized vehicles] power-driven mobility devices.* The Executive Director or a designee may permit persons **[exempt from the fishing license requirement under section 2709(b) of the code (relating to exemptions from license requirements) and persons who are deprived of the use of a leg or both legs in a manner that significantly limits mobility] who have a disability for which they need to use other power-driven mobility devices (OPDMD)**

to use **[an off-road motorized vehicle]** them on Commission property for the purpose of gaining access to fishing or boating opportunities under the following conditions:

(i) The person applies in writing for permission **on the form provided by the Commission** **[stating the nature of the disability, the description of the vehicle and the areas for which use is proposed. The application should be sent to]** **and sends the application to:** Director, Bureau of Law Enforcement, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. **[The application shall include a statement from a physician or a chiropractor licensed to practice in this Commonwealth describing the disability and certifying that the applicant meets the requirements of this section.]**

(ii) **[The vehicle is operated by the person with a disability or a person identified in the application to operate the vehicle for the person with disability.]** **The person who has received permission under subparagraph (i) complies with the written conditions of the permit.**

(iii) **[The person agrees that he will be responsible for the operation of the vehicle, the suitability of the site for the operation, and for damages caused by operation of the vehicle.]** **For purposes of this paragraph, the term, OPDMD, is defined as any mobility device, other than a wheelchair, powered by battery, fuel or other engine that is used by persons with a mobility disability for the purpose of locomotion. This term includes golf carts, electronic personal assistance mobility devices such as the Segway or any mobility device designed to operate in areas without defined pedestrian routes, regardless of whether it is designed primarily for use by persons with a mobility disability.**

[(iv) The person acknowledges that the Commission does not represent that Commission properties, except those specifically marked and designated for access by persons with disabilities, are suitable for any such use.

(d) As used in this section, the term, “off-road motorized vehicle,” means a motorized vehicle specifically designed for this use. The term does not include a vehicle licensed or registered for on-road use, such as a 4 by 4 sport utility vehicle and the like.]