

PART II. FISH AND BOAT COMMISSION

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Cross References

This part cited in 17 Pa. Code § 11.204 (relating to application of Fish and Boat Commission rules and Game Commission rules); and 17 Pa. Code § 11.219 (relating to boating).

Subpart A. GENERAL PROVISIONS

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Authority

The provisions of this Subpart A issued under The Fish Law of 1959 (30 P.S. §§ 1—312) (Repealed), unless otherwise noted.

Source

The provisions of this Subpart A adopted May 23, 1980, effective January 1, 1981, 10 Pa.B. 2051, unless otherwise noted.

CHAPTER 51. ADMINISTRATIVE PROVISIONS

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Authority

The provisions of this Chapter 51 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 322, 741, 901, 929, 2102, 2106, 2305—2307, 2703, 2711, 2903 and 2911, unless otherwise noted.

Source

The provisions of this Chapter 51 amended January 23, 1981, effective January 24, 1981, 11 Pa.B. 422, unless otherwise noted. Immediately preceding text appears at serial page (56056).

Subchapter A. PRELIMINARY PROVISIONS

- Sec.
- 51.1. Statutory authority.
 - 51.2. Commission offices.
 - 51.3. [Reserved].
 - 51.4. Definitions.
 - 51.5. Correction of regulations.
 - 51.6. Petitions or requests for regulations.
 - 51.7. Public comments at Commission meetings.
 - 51.8. Counties where the use of the field acknowledgement of guilt is authorized.
 - 51.9. Release of documents and records.
 - 51.10. Representation as issuing agent.

§ 51.1. Statutory authority.

This chapter is promulgated under the code.

Source

The provisions of this § 51.1 amended January 6, 1984, effective January 7, 1984, 14 Pa.B. 46. Immediately preceding text appears at serial page (82211).

§ 51.2. Commission offices.

- (a) The address of the principal office of the Commission is:
 - Pennsylvania Fish and Boat Commission
 - Post Office Box 1673
 - Harrisburg, Pennsylvania 17105-1673.
- (b) The addresses of the Bureau of Fisheries and the Bureau of Property and Facilities Management of the Commission are as follows:
 - Pennsylvania Fish and Boat Commission
 - Bureau of Fisheries
 - 450 Robinson Lane
 - Bellefonte, Pennsylvania 16823
 - Pennsylvania Fish and Boat Commission
 - Bureau of Property and Facilities Management
 - 450 Robinson Lane
 - Bellefonte, Pennsylvania 16823
- (c) The address of the Boat Registration Division of the Bureau of Boating is:
 - Pennsylvania Fish and Boat Commission
 - Boat Registration Division
 - Post Office Box 1852
 - Harrisburg, Pennsylvania 17105-1852

Source

The provisions of this § 51.2 amended January 6, 1984, effective January 7, 1984, 14 Pa.B. 46; amended December 14, 1990, effective December 15, 1990, 20 Pa.B. 6179; amended February 12, 1993, effective February 13, 1993, 23 Pa.B. 739. Immediately preceding text appears at serial pages (155686) and (161205).

§ 51.3. [Reserved].**§ 51.4. Definitions.**

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

Code—30 Pa.C.S. (relating to the Fish and Boat Code).

Commission—The Fish and Boat Commission.

Executive Director—The Executive Director of the Commission.

Source

The provisions of this § 51.4 adopted October 16, 1981, effective October 17, 1981, 11 Pa.B. 46; amended January 6, 1984, effective January 7, 1984, 14 Pa.B. 46; amended December 14, 1990, effective December 15, 1990, 20 Pa.B. 6179; amended February 12, 1993, effective February 13, 1993, 23 Pa.B. 739. Immediately preceding text appears at serial page (161205).

§ 51.5. Correction of regulations.

If the Executive Director or the staff of the Commission discovers an error or omission in the text of Commission regulations as published in the *Pennsylvania Code* or *Pennsylvania Bulletin*, the Executive Director is authorized to take immediate corrective action on behalf of the Commission, including, if necessary, the issuance of orders or notices required to make the necessary corrections.

Authority

The provisions of this § 51.5 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 2102 and 5122—5124.

Source

The provisions of this § 51.5 adopted March 13, 1987, effective March 14, 1987, 17 Pa.B. 1084.

§ 51.6. Petitions or requests for regulations.

(a) *Form.* Petitions or requests for regulations addressed to the Commission shall be submitted in the format set forth in 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations).

(b) *Initial staff review.*

(1) The staff will review every petition for regulations to ensure that:

(i) It is complete as required by 1 Pa. Code § 35.18.

(ii) The petition requests an action within the authority or jurisdiction of the Commission.

(iii) The petition does not conflict with applicable Commonwealth or Federal law.

(2) If the staff determines the petition is not acceptable for one of the reasons set forth in paragraph (1), it will return the petition to the petitioner together with a statement of the reason why it is not acceptable.

(c) *Oral presentation.* A petitioner will be given the opportunity to make a 5-minute oral presentation on a petition that the staff determines is appropriate for further consideration. The oral presentation will be scheduled for the next meeting of the Commission occurring more than 30 days after completion of the initial staff review.

(d) *Commission determination.* After the oral presentation, the Commission will determine whether or not to accept the petition for further review. The Commission may refuse to accept the petition when one or more of the following conditions exist:

(1) The Commission has within the previous 3 years considered the issue addressed by the petition or request.

(2) The action requested by the petitioner concerns a matter in litigation.

(3) The action is not appropriate for rulemaking by the Commission.

(4) The petition involves an issue previously considered by the Commission and it does not contain information which is new or sufficiently different to warrant reconsideration. If a petition does present new or sufficiently different information, this information must have been unavailable at the time of the Commission's previous decision.

(e) *Staff report.* If the Commission accepts the petition, the staff has 180 days to prepare a report evaluating the petition and containing the staff's recommendations for disposition. The staff may request additional time to evaluate a petition. Upon completion of the staff report, it will be sent to the petitioner who may, within 30 days, submit written comments, objections or suggestions concerning the staff report. The staff may append their response to the petitioner's comments when forwarding the report and the comments to the Boating Advisory Board, in cases of petitions for boating regulations, or the Commission, in cases of other regulations.

(f) *Boating regulations.* For boating regulations, the staff will submit the petition, the staff report, the petitioner's response, if any, and the staff response, if any, to the Boating Advisory Board for review and consideration at its next regular meeting occurring more than 30 days after the file is deemed complete. The Boating Advisory Board shall review the materials and provide advice and recommendations to the Commission as provided in section 5121(c) of the code (relating to promulgation).

(g) *Commission action.* The staff shall submit the petition, the staff report, the petitioner's response, if any, the staff response, if any and, in the case of boating regulations, the advice and opinions of the Boating Advisory Board to the Commission for consideration as part of the agenda of the next regular meeting occur-

ring more than 30 days after the file is deemed complete. The Commission will determine what action to undertake with respect to the petition at a public meeting.

Authority

The provisions of this § 51.6 issued under section 10 of the Sunshine Act (65 P. S. § 280); and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 51.6 adopted October 14, 1994, effective October 15, 1994, 24 Pa.B. 5231; amended March 27, 1998, effective March 28, 1998, 28 Pa.B. 1521. Immediately preceding text appears at serial pages (216383) to (216385).

§ 51.7. Public comments at Commission meetings.

(a) *General rules.* The Commission may provide a brief public comment period of no more than 15 minutes duration at the conclusion of each public meeting. The Commission may limit comments to matters that are related to fishing, boating and other matters within the Commission's jurisdiction that are not repetitive or duplicative of other comments. Individual comments during the public comment period may not exceed 3 minutes in duration.

(b) *Consideration of agenda items.* The Commission ordinarily does not permit public comments during the course of its meetings when it considers agenda items or other matters before the Commission. The Commission president or other presiding officer may invite brief public comments on items other than regulatory actions when he determines that allowing the comments will be useful in the best interests of the Commission. Since regulatory actions ordinarily involve the opportunity for public comment, the Commission will not accept public comments on them during public meetings except in cases when the president or other presiding officer finds either that the regulations are being considered for approval without a formal public comment period or that extraordinary circumstances justify receipt of additional public comments.

Authority

The provisions of this § 51.7 issued under section 10 of the Sunshine Act (65 P. S. § 280); and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 51.7 adopted October 14, 1994, effective October 15, 1994, 24 Pa.B. 5231.

§ 51.8. Counties where the use of the field acknowledgment of guilt is authorized.

Under section 925(d) of the code (relating to acknowledgment of guilt and receipts for payment), the field acknowledgment of guilt may be used in Philadelphia County.

Authority

The provisions of this § 51.8 issued under the Fish and Boat Code, 30 Pa.C.S. § 925.

Source

The provisions of this § 51.8 adopted February 4, 2000, effective February 5, 2000, 30 Pa.B. 634.

§ 51.9. Release of documents and records.

(a) Consistent with the Right-to Know Law (65 P. S. §§ 67.101—67.3104), and 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 must be made in writing and submitted to: 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 requests.

(c) The requester will be charged the fee prescribed by the Office of Open Records for the reproduction and release of documents on paper or in electronic media. 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.

(d) 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 per page for color copies. Copies provided on electronic media will be charge at \$1 per document, plus \$2 per diskette or compact disc. The Commission will charge \$1 per page up to \$5 per document for certified copies requested under a subpoena.

Authority

The provisions of this § 51.9 issued under sections 3 and 8(a) of the Right to Know Law (65 P. S. §§ 66.3 and 66.8(a)); and section 506 of The Administrative Code of 1929 (71 P. S. § 186); amended under section 504 of the Right-to-Know Law (65 P. S. § 67.504) and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 51.9 adopted September 29, 2000, effective September 30, 2000, 30 Pa.B. 5013; amended November 21, 2003, effective November 22, 2003, 33 Pa.B. 5704; amended December 5, 2008, effective January 1, 2009, 38 Pa.B. 6614. Immediately preceding text appears at serial pages (301458) to (301459).

§ 51.10. Representation as issuing agent.

It is unlawful for persons to perform the functions of or to represent themselves as fishing license issuing agents or issuing agents for temporary boat registrations without being appointed or designated as such by the Commission.

Authority

The provisions of this § 51.10 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 2711(c) and 5304(d.1).

Source

The provisions of this § 51.10 adopted March 14, 2003, effective March 15, 2003, 33 Pa.B. 1348.

Subchapter B. ADMINISTRATION OF LIMITED POLICE POWERS BY WATERWAYS CONSERVATION OFFICER

Sec.

- 51.11. General.
- 51.12. Policies.
- 51.13. Procedures.
- 51.14. [Reserved].

§ 51.11. General.

(a) The primary responsibility of a waterways conservation officer is the enforcement of the code and this part. Section 901(a)(12) of the code (relating to powers and duties of waterways patrolmen and deputies) authorizes waterways conservation officers, when acting within the scope of their employment, to pursue, apprehend or arrest a person suspected of violating 18 Pa.C.S. (relating to the Crimes Code) or another offense classified as a misdemeanor or felony.

(b) This subchapter sets forth the Commission's policies and procedures on administration of police powers by waterways conservation officers. These policies and procedures are intended to serve as internal operating guidelines for waterways conservation officers. These policies and procedures will not be construed to detract from the authority granted by section 901(a)(12) of the code or to invalidate or otherwise affect the validity of an arrest, prosecution or other law enforcement actions undertaken by a waterways conservation officer. These policies and procedures confer no rights on persons charged with offenses by waterways conservation officers.

Source

The provisions of this § 51.11 amended September 6, 1991, effective September 7, 1991, 21 Pa.B. 3990. Immediately preceding text appears at serial page (153730).

§ 51.12. Policies.

(a) It is the policy of the Commission that a waterways conservation officer should arrest or take other appropriate enforcement actions with respect to a violation of 18 Pa.C.S. (relating to the Crimes Code) or other offenses classified as misdemeanors or felonies only when the offense occurs in the officer's presence while performing normal Commission law enforcement duties, and there is no officer present whose primary duty is enforcement of applicable State laws.

(b) It is the policy of the Commission that a waterways conservation officer should become involved in enforcement of violations described in section 901(a)(2) of the code (relating to powers and duties of waterways patrolmen and deputies) only to the degree necessary to protect life and property.

(c) The public may not be encouraged to believe that waterways conservation officer carries out general law enforcement work in parts of this Commonwealth

that are some distance from police services. Complaints received shall be relayed to the proper enforcement agency, and the complainant so advised.

Source

The provisions of this § 51.12 amended September 6, 1991, effective September 7, 1991, 21 Pa.B. 3990. Immediately preceding text appears at serial page (153730).

§ 51.13. Procedures.

(a) As soon as possible after taking action with respect to an offense described in section 901(a)(12) of the code (relating to powers and duties of waterways patrolmen and deputies), the officer will take reasonable steps to notify the law enforcement agency with primary jurisdiction over the offense so that it may initiate necessary further action.

(b) A waterways conservation officer involved in enforcement actions with respect to offenses described in section 901(a)(12) of the code shall secure and maintain onsite information and evidence as deemed appropriate.

(c) A waterways conservation officer involved in enforcement actions with respect to offenses described in section 901(a)(12) of the code shall file reports with supervisors that the Bureau of Law Enforcement requires.

(d) The Bureau of Law Enforcement shall annually report to the Commission's Law Enforcement Committee on the number and types of law enforcement actions undertaken under section 901(a)(12) of the code in the preceding year.

Source

The provisions of this § 51.13 amended through February 4, 1983 effective January 1, 1983, 13 Pa.B. 614; amended September 6, 1991, effective September 7, 1991, 21 Pa.B. 3990. Immediately preceding text appears at serial pages (153730) to (153731).

Notes of Decisions

Although this section grants police authority to waterways conservation officers (WCO) they are not policemen entitled to bargaining rights. *Keller v. Labor Relations Board*, 593 A.2d 4, 6 (Pa. Cmwlth. 1991).

§ 51.14. [Reserved].

Source

The provisions of this § 51.14 reserved September 6, 1991, effective September 7, 1991, 21 Pa.B. 3990. Immediately preceding text appears at serial pages (153731) to (153732).

**Subchapter C. SUSPENSION, DENIAL OR REVOCATION OF
LICENSES, PERMITS, REGISTRATIONS OR PRIVILEGES**

| | |
|--------|----------------------------------|
| Sec. | |
| 51.21. | Scope. |
| 51.22. | Initiation of proceedings. |
| 51.23. | Order to show cause. |
| 51.24. | Answer to order to show cause. |
| 51.25. | Demand for or waiver of hearing. |
| 51.26. | Procedure in lieu of hearing. |
| 51.27. | Hearings. |
| 51.28. | Report of the presiding officer. |
| 51.29. | Final action. |

Authority

The provisions of this Subchapter C issued under the Fish and Boat Code, 30 Pa.C.S. § 928, unless otherwise noted.

Source

The provisions of this Subchapter C adopted October 16, 1981, effective October 17, 1981, 11 Pa.B. 3553, unless otherwise noted.

Cross References

This subchapter cited in 58 Pa. Code § 51.122 (relating to permits); 58 Pa. Code § 63.41 (relating to recognition of charter boat and fishing guide operations); 58 Pa. Code § 69.26 (relating to reports); and 58 Pa. Code § 71.7 (relating to triploid grass carp).

§ 51.21. Scope.

(a) This subchapter, adopted under section 928 of the code (relating to revocation, suspension or denial of license, permit or registration), sets forth the procedures to be followed by the Commission in suspending, denying or revoking licenses, permits, special licenses and boat registration issued under the authority of the code, to persons convicted of offenses under the code. For purposes of this subchapter, a person will be deemed to be convicted of an offense under the code if he voluntarily acknowledges guilt under section 925 of the code (relating to acknowledgment of guilt and receipts for payment).

(b) Except as otherwise specifically provided in this subchapter, 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) will apply to proceedings hereunder. This subsection supplements 1 Pa. Code § 31.1 (relating to scope of part).

§ 51.22. Initiation of proceedings.

(a) When an officer of the Commission or other officer authorized to enforce the code believes that a violator of the code—one who has been convicted or acknowledged guilt for an offense thereunder—should be subject to suspension, or revocation of a license, special license, permit, registration or privilege, the

officer shall submit a report outlining the facts and circumstances of the violation and other surrounding or relevant facts to the Director of the Law Enforcement Bureau. When a deputy waterways conservation officer or waterways conservation officer initiates the proceedings, the report shall be submitted through normal law enforcement channels. Each reviewer of the report shall add a recommendation as to disposition.

(b) The Director of the Law Enforcement Bureau will review the report together with the members of the Commission staff as the Executive Director shall designate for this purpose. The Director will report to the Executive Director, as to whether or not the staff recommends further action.

Source

The provisions of this § 51.22 amended December 14, 1990, effective December 15, 1990, 20 Pa.B. 6179. Immediately preceding text appears at serial page (116083).

Cross References

This section cited in 58 Pa. Code § 51.27 (relating to hearings).

§ 51.23. Order to show cause.

(a) If, after review of the staff report, the Executive Director determines that revocation/suspension proceedings should go forward, he will cause the violator to be served with an order to show cause on a form prescribed by the Director, which form shall be in substantial compliance with 1 Pa. Code § 35.14 (relating to orders to show cause).

(b) Service of the order to show cause shall be by certified or registered mail. Service is complete upon delivery of the mail. If the mail is returned by the postal authorities with a notation that the violator refused to accept the mail or that the mail was unclaimed, the Commission will serve the order to show cause by ordinary mail with the return address of the Commission appearing thereon. Service by ordinary mail is complete if the mail is not returned to the Commission within 15 days after mailing. Other documents served by the agency shall be served by first class mail in accordance with 1 Pa. Code § 33.31 (relating to service by the agency).

Source

The provisions of this § 51.23 amended June 25, 1999, effective June 26, 1999, 29 Pa.B. 3210. Immediately preceding text appears at serial page (216389).

§ 51.24. Answer to order to show cause.

A respondent shall file a written answer to an order to show cause. The answer shall be received at the Harrisburg office of the Commission no later than 20 days after the respondent received the order. The answer shall be in compliance with 1 Pa. Code § 35.37 (relating to answers to orders to show cause). A respondent

failing to file a timely answer that conforms with 1 Pa. Code § 35.37 will be deemed in default, and relevant facts stated in the order to show cause be deemed admitted.

§ 51.25. Demand for or waiver of hearing.

(a) A respondent shall submit a timely demand for hearing with the answer to the order to show cause. The demand shall be in writing and shall be accompanied by a nonrefundable filing fee of \$35 in the form of a money order, certified check or bank cashier's check made payable to "Pennsylvania Fish and Boat Commission." A hearing will not be conducted nor a demand deemed filed until the complete filing fee is received by the Commission in the form specified and within the time frame designated. Failure to file a demand for a hearing or to submit the filing fee in the amount and form specified within the time limit set for filing an answer will be deemed a waiver of the right to hearing. The Commission will return to the respondent any filing fee that it receives that does not comply with this subsection.

(b) A respondent may choose to waive a hearing and submit written comments, objections or matters in mitigation or extenuation with regard to the proposed suspension, denial or revocation.

(c) If a respondent demands a hearing and subsequently fails to appear at the hearing after being given written notice of the date and time, the respondent's failure to appear will be deemed a waiver of the right to a hearing, and a hearing will not be conducted and the filing fee will not be refunded.

(d) Subsection (a) supplements 1 Pa. Code §§ 33.21 and 33.22 (relating to filing fees; and mode of payment of fees).

Source

The provisions of this § 51.25 amended December 7, 2001, effective December 8, 2001, 31 Pa.B. 6669. Immediately preceding text appears at serial page (257194).

§ 51.26. Procedure in lieu of hearing.

(a) When for any reason a hearing is not held with regard to a proposed suspension, denial or revocation of a license, permit, registration or privilege granted under the code, the entire written file on the case shall be submitted to the Commission's Law Enforcement Committee, which shall review the matter and make a final determination as to its disposition. The action of the Law Enforcement Committee is considered the final agency action.

(b) Subsection (a) supersedes 1 Pa. Code § 35.226 (relating to final orders).

§ 51.27. Hearings.

(a) If a respondent demands a hearing, the Executive Director will appoint a presiding officer to conduct the hearing on behalf of the Commission. The presiding officer may be an employe of the Commission who had not reviewed the

proposed revocation action after proceedings were initiated under § 51.22 (relating to initiation of proceedings). This subsection supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers).

(b) Hearings will be conducted at the Harrisburg office of the Commission or at another location in the Harrisburg area as the Executive Director may designate. Respondents will be given at least 10 days written notice of the date and time of the hearing.

(c) The burden of proof to justify the proposed suspension, denial or revocation will be on the Commission to prove by a preponderance of the evidence that the proposed action is justified by the facts and circumstances.

(d) The presiding officer will permit either oral argument at the conclusion of the hearing or the filing of written briefs, but not both, except in cases of extraordinary complexity where he finds, upon motion of the parties or his own motion, that the ends of justice require allowance of both. In cases where briefs are to be filed, the procedures of 1 Pa. Code §§ 35.191—35.193 (relating to proceedings in which briefs are to be filed; content and form of briefs; and filing and service of briefs) will be followed. This subsection supersedes 1 Pa. Code § 35.204 (relating to oral argument before presiding officer).

§ 51.28. Report of the presiding officer.

(a) After the hearing is closed, the transcript prepared, and briefs, if any, received, the presiding officer will prepare a proposed report, the contents of which shall be in substantial compliance with 1 Pa. Code § 35.205 (relating to contents of proposed reports).

(b) A copy of the proposed report shall be served on respondent and other parties of record who shall thereafter have 30 days to file exceptions to the report

together with any brief on exceptions. Briefs opposing exceptions may be filed in accordance with 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).

(c) If exceptions to the proposed report are not filed, the proposed report will be considered the final administrative adjudication of the Commission.

(d) If exceptions to the proposed report are filed, the proposed report, together with the entire record, the briefs, the exceptions, and briefs on and opposing exceptions will be filed by the Executive Director with the Chairperson of the Commission's Law Enforcement Committee.

Authority

The provisions of this § 51.28 amended under the Fish and Boat Code, 30 Pa.C.S. §§ 741, 2502, 5122 and 5123; and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 51.28 amended January 2, 1998, effective January 1, 1998, 28 Pa.B. 30. Immediately preceding text appears at serial pages (216390) and (227609).

§ 51.29. Final action.

(a) The members of the Commission's Law Enforcement Committee will review the proposed report, together with other matters of record and filings in the proceedings. At a public meeting convened under the Open Meeting Law, the Committee will consider the matter. Unless ordered by the Committee, no oral argument will be permitted at the public meeting nor will the respondent be permitted to reargue or retry matters that were raised or could have been raised before the presiding officer. The Committee will vote to approve or disapprove a proposed report. If committee action results in a suspension, denial or revocation of a license, permit, privilege or registration, the Committee will set the date upon which the action will take effect.

(b) The action by the Committee will be considered the final administrative adjudication of the Commission with respect to the suspension, denial or revocation. The respondent will be notified in writing of the final action. The final order will be considered officially entered on the date it is mailed or otherwise served, whichever comes first.

(c) If, after the entry of a final order, the respondent files a timely petition for review of the adjudication, he may apply in writing to the Executive Director for a stay of the effective date of the order. The filing of a petition for review may not operate as an automatic stay. The Executive Director may grant a stay for good cause shown. Unless stayed by the Executive Director or a court of competent jurisdiction, the suspension, denial or revocation will take effect on the date provided in the order.

Subchapter D. ISSUING AGENTS

Sec.

- 51.31. Responsibility of issuing agents.
- 51.32. Resident and nonresident licenses.
- 51.33. Effective dates of licenses and permits.
- 51.34. Stamps and permits.
- 51.35. Operation of the issuing agency.
- 51.36. Lost license certificates.
- 51.37. Application and prerequisites for becoming an issuing agent for the Pennsylvania Automated Licensing Service (PALS).
- 51.38. Operation of the issuing agent for the Pennsylvania Automated Licensing Service (PALS).

Authority

The provisions of this Subchapter D issued under the Fish and Boat Code, 30 Pa.C.S. §§ 2102 and 2106; amended under the Fish and Boat Code, 30 Pa.C.S. §§ 741 and 2711, unless otherwise noted.

Cross References

This subchapter cited in 58 Pa. Code § 51.129 (relating to special issuing agents).

§ 51.31. Responsibility of issuing agents.

(a) Issuing agents are responsible to ensure that the fishing license is fully completed. The applicant shall make sure the information entered on the license form is correct, and shall sign his own name or place his mark in the place indicated on the reverse of the license certificate.

(b) Issuing agents shall verify the eligibility of the applicant for the class of license indicated on the license in accordance with § 51.32 (relating to resident and nonresident licenses).

(c) The issuing agent shall transfer the information provided by the applicant to the license certificate, assuring that the information can be easily read. Information on the license certificate shall agree with the information provided and be typed or printed in ink.

(d) Agents shall use standard abbreviations supplied by the Commission for the color of eyes.

(e) Each license shall bear the account number of the issuing agent and the signature or initials of the person issuing the license.

(f) Issuing agents shall issue licenses in numerical sequence.

(g) Issuing agents shall provide a *Summary of Fishing Regulations and Laws* with each license issued. Issuing agents also shall provide a copy of the summary book to any holder of a Senior Resident Lifetime Fishing License who requests one. Failure to comply with this subsection will be grounds for recall of the issuing agency as provided in section 2711 of the code (relating to issuing agents). Issuing agents are encouraged to provide a copy of the summary book, if adequate numbers are available, to other individuals who request one.

(h) Issuing agents are responsible to ensure that when someone buys a license as a gift for another person, the person buying the license signs his name on the reverse of the agent's copy of the license and indicates that the license was purchased as a gift. The recipient of the gift license shall sign his name on the original of the license.

Source

The provisions of this § 51.31 adopted August 13, 1982, effective January 1, 1983, 12 Pa.B. 2692; amended March 7, 1997, effective March 8, 1997, 27 Pa.B. 1153; amended April 10, 1998, effective April 11, 1998, 28 Pa.B. 1753. Immediately preceding text appears at serial pages (239808) to (239809).

§ 51.32. Resident and nonresident licenses.

(a) Only bona fide residents of this Commonwealth who establish their resident status by producing a Pennsylvania motor vehicle driver's license or other positive means of identification are entitled to one of the various forms of a resident fishing license.

(1) Other positive means of identification for establishing bona fide residence in this Commonwealth include proof of payment of Pennsylvania Personal Income Tax as a resident of this Commonwealth; proof of payment of earned income, personal income tax or per capita taxes showing residence in a Pennsylvania municipality; current Pennsylvania firearms permit; Pennsylvania voter registration card; Pennsylvania nondriver identification card; or a signed affidavit of Pennsylvania residency on the form prescribed by the Commission.

(2) For purposes of this subsection, a bona fide resident of this Commonwealth is a permanent resident who has a fixed intent to return to this Commonwealth when he leaves it and maintains a permanent place of abode here. A person may not be a bona fide resident of this Commonwealth for this purpose while claiming residence in another state for any purpose.

(b) Military personnel who are stationed in this Commonwealth under permanent change of station orders (PCS) for a duration of 6 months or more may qualify as bona fide residents for the purpose of obtaining resident fishing licenses regardless of the fact they may maintain a legal domicile in another state as authorized by the Servicemembers Civil Relief Act (50 U.S.C.A. App. §§ 501—596). Military personnel who are domiciled in this Commonwealth but who are stationed in another state or country qualify as bona fide residents of this Commonwealth for fishing license purposes so long as they do not become domiciles of another state.

(c) A person who does not qualify as a bona fide resident of this Commonwealth under subsection (a) or (b) is considered a nonresident for purposes of obtaining a fishing license.

(d) A Senior Resident Lifetime Fishing License is valid only so long as the holder is a bona fide resident of this Commonwealth. A holder of a Senior Resident Lifetime Fishing License who establishes residence in another state and continues to fish in this Commonwealth without purchasing a Nonresident Fish-

ing License may be charged with violating sections 923(c) and 2703 of the code (relating to additional penalty for fishing without license; and possession and display of licenses).

Authority

The provisions of the § 51.32 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 305, 322, 741, 928, 2102, 2307, 2711 and 5122—5124.

Source

The provisions of this § 51.32 adopted December 28, 1984, effective December 29, 1984, 14 Pa.B. 4691; amended March 7, 1997, effective March 8, 1997, 27 Pa.B. 1153; amended November 23, 2005, effective January 1, 2006, 35 Pa.B. 6434; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7447. Immediately preceding text appears at serial pages (316039) to (316040).

Cross References

This section cited in 58 Pa. Code § 51.31 (relating to responsibility of issuing agents); and 58 Pa. Code § 51.38 (relating to operation of the issuing agent for the Pennsylvania Automated Licensing Service (PALS)).

§ 51.33. Effective dates of licenses and permits.

Fishing licenses and related permits are valid for the year printed on the license certificate or permit, and the month of December of the preceding year, except for 1-day and tourist licenses that are valid for the dates specified on the license certificate.

Authority

The provisions of this § 51.33 amended under the Fish and Boat Code, 30 Pa.C.S. §§ 741, 2502, 5122 and 5123; and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 51.33 adopted June 28, 1991, effective June 29, 1991, 21 Pa.B. 2894; amended March 7, 1997, effective March 8, 1997, 27 Pa.B. 1153; amended January 2, 1998, effective January 1, 1998, 28 Pa.B. 30; amended November 12, 2004, effective November 13, 2004, 34 Pa.B. 6148; amended November 23, 2005, effective January 1, 2006, 35 Pa.B. 6434. Immediately preceding text appears at serial page (307382).

§ 51.34. Stamps and permits.

(a) The Commission may require licensees to possess stamps or permits to fish for certain species or in certain bodies of water.

(b) Individuals who purchase the stamp or permit to fish for the specified species or in designated bodies of water shall permanently affix the stamp or permit to their license certificate, sign their names (or in the instance of small stamps or permits, their initials) in ink across the face of the stamp or permit and display the stamped or permitted license certificate when fishing for the specified species or on the designated body of water. The buyer is not required to affix the stamp or permit on the license certificate until he actually engages in the stamped or permitted activity.

(c) Issuing agents shall make stamps and permits available to individuals purchasing them as collectibles. The buyer does not have to sign the stamp or permit.

Source

The provisions of this § 51.34 adopted March 7, 1997, effective March 8, 1997, 27 Pa.B. 1153; amended April 10, 1998, effective April 11, 1998, 28 Pa.B. 1753. Immediately preceding text appears at serial page (239810).

§ 51.35. Operation of the issuing agency.

(a) A person, sole proprietorship, partnership or corporation may apply to become an issuing agent of the Commission for the purpose of selling fishing licenses. An applicant seeking to become an issuing agent shall complete and submit to the Commission an application on the form prescribed by the Commission and shall pay a one-time, nonrefundable fee of \$100. Applications shall be accompanied by a bond in favor of the Commission, or other security in a form satisfactory to the Commission, in a minimum amount specified by the Executive Director or designee.

(b) An entity accepted by the Commission to act as an issuing agent shall perform in the following manner:

(1) An issuing agent, including county treasurers, may not appoint sub-agents to issue fishing licenses, stamps or permits.

(2) Issuing agents shall file monthly reports of all fishing licenses, stamps and permits sold during the month in the manner determined by the Commission. Agents may file reports more frequently at the discretion of the agent.

(i) Agents shall include in their monthly reports detailed sales information and remittance for all licenses, stamps and permits sold during the reporting period.

(ii) Agents shall file their reports so that they are received in the Harrisburg office by the 15th of the month following the reportable month.

(iii) Agents shall file a report even if there is no sales activity to report for the month. Failure to file a report places the agency in a delinquent status.

(iv) Agents shall indicate their agent number on the report, as well as the remittance.

(3) Issuing agents shall retain the third copy of the license certificate for 1 year after the close of any given license year.

(4) Issuing agents shall maintain a bond in favor of the Commission in a minimum amount specified by the Commission for each location where licenses, stamps and permits are issued.

(5) An issuing agent may not borrow, lend or otherwise transfer a supply of licenses, stamps or permits to another agent without the prior written consent of the Commission.

(6) An issuing agent or an issuing agent's employe may not provide false or misleading information on a license issued. The date reported on a license sold shall be the date of the actual sale.

Authority

The provisions of this § 51.35 amended under the Fish and Boat Code, 30 Pa.C.S. § 2711.

Source

The provisions of this § 51.35 adopted March 7, 1997, effective March 8, 1997, 27 Pa.B. 1153; amended April 10, 1998, effective April 11, 1998, 28 Pa.B. 1753; amended March 14, 2003, effective March 15, 2003, 33 Pa.B. 1348; amended November 23, 2005, effective January 1, 2006, 35 Pa.B. 6434. Immediately preceding text appears at serial page (296285).

Cross References

This section cited in 58 Pa. Code § 51.129 (relating to special issuing agents).

§ 51.36. Lost license certificates.

(a) An issuing agent shall replace a lost license regardless of where the licensee purchased the original license.

(b) If a licensee seeks to purchase a replacement license at the agency where he bought the original license, the licensee shall present the original license number and complete the form provided by the Commission relating to the lost license certificate. If the original license number is not known, the form shall be notarized.

(c) If a licensee seeks to purchase a replacement license at an agency other than the agency where he bought the original license, the licensee shall complete the form provided by the Commission relating to the lost license certificate and have it notarized.

(d) The issuing agent shall write the word "DUPLICATE" and the original number, if known, across the face of the replacement license certificate.

(e) The issuing agent shall attach to the monthly report the form relating to the lost license certificate, any voided license certificate and the original and duplicate of the license certificate. The issuing agent shall record the certificate number in the body of the report.

(f) If the original license was sold through the Pennsylvania Automated Licensing Service (PALS) and the licensee seeks to purchase a replacement license, the licensee shall present the original license number or licensee's PALS customer identification number to the issuing agent, and the issuing agent shall issue a replacement license, including associated permits, through the PALS.

Source

The provisions of this § 51.36 adopted March 7, 1997, effective March 8, 1997, 27 Pa.B. 1153; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7447. Immediately preceding text appears at serial page (316042).

§ 51.37. Application and prerequisites for becoming an issuing agent for the Pennsylvania Automated Licensing Service (PALS).

(a) A person, sole proprietorship, partnership or corporation may apply to become an issuing agent of the Commission for the purpose of selling fishing licenses and permits through the PALS.

(1) An applicant seeking to become an issuing agent shall complete and submit to the Commission an application on the form prescribed by the Commission and pay a one-time, nonrefundable fee of \$150.

(2) Applications shall be accompanied by a bond in favor of the Commission, or other security in a form satisfactory to the Commission, in a minimum amount specified by the Executive Director or designee.

(3) A person, sole proprietorship, partnership or corporation that is an agent of the Commission for the sale of paper licenses may sell licenses through PALS without making a new application under this subsection.

(b) An entity accepted by the Commission to act as an issuing agent shall perform in the following manner and meet the following prerequisites:

(1) An issuing agent, including county treasurers, may not appoint sub-agents to issue fishing licenses or permits.

(2) Issuing agents shall enter into a Fishing License Issuing Agent Agreement with the Commission that covers the issuance of fishing licenses and permits and the electronic transfer of funds through the PALS.

(3) Issuing agents shall maintain a bond in favor of the Commission, or other security in a form satisfactory to the Commission, in a minimum amount specified by the Commission for each location where licenses and permits are issued.

(4) Issuing agents shall maintain an account in a Federally insured financial institution organized under the authority of the Commonwealth or the United States. This bank account must be able to accept electronic funds transfers. Issuing agents shall provide the Commission with account information upon the request of the Commission.

Source

The provisions of this § 51.37 adopted December 8, 2006, effective December 9, 2006, 36 Pa.B. 7447.

§ 51.38. Operation of the issuing agent for the Pennsylvania Automated Licensing Service (PALS).

(a) *Sale of licenses.*

(1) Issuing agents shall collect the required customer information, including Social Security numbers, at the time of purchase and ensure that the fishing license is accurate, correct and fully completed. The applicant shall verify the information provided to the issuing agent and entered into the PALS is accurate and correct and sign his own name or place his mark in the place indicated on the face of the license certificate. A license is not valid unless it is signed by the applicant. If an applicant indicates to the issuing agent that he does not have a Social Security number, the issuing agent shall ask the applicant to complete an affidavit on the form prescribed by the Commission certifying under penalty of law that the applicant does not have a Social Security

number and the reason therefor. Upon completion and execution of the form by the applicant, the issuing agent may issue the license to the applicant. Issuing agents shall deny the issuance of a license to an applicant who fails to provide his Social Security number or who fails to sign an affidavit as required by this paragraph. Issuing agents shall retain the affidavits and submit them to the Commission at least once a month or in another manner prescribed by the Commission.

(2) Issuing agents shall verify the eligibility of the applicant for the class of license indicated on the license in accordance with § 51.32 (relating to resident and nonresident licenses). If an applicant for a resident license indicates that he is unable to establish that he is a resident of this Commonwealth by any of the means identified in § 51.32 other than by signing an affidavit of Pennsylvania residency, the issuing agent shall ask the applicant to complete the form prescribed by the Commission certifying under penalty of law that the applicant is a bona fide resident of this Commonwealth. Issuing agents shall deny the issuance of a resident license to an applicant who fails to establish his residency by signing the form or as otherwise provided in § 51.32. Issuing agents shall retain the affidavits of Pennsylvania residency and submit them to the Commission at least once a month or in another manner prescribed by the Commission.

(3) Issuing agents shall transfer the information provided by the applicant to the PALS and ensure that the PALS is otherwise operational and prints the license certificate legibly. Issuing agents may not provide a customer with more than one copy of a license certificate issued under PALS.

(4) Issuing agents shall provide a *Summary of Fishing Regulations and Laws* with each license issued. Issuing agents also shall provide a copy of the summary book to any holder of a Senior Resident Lifetime Fishing License who requests one. Issuing agents are encouraged to provide a copy of the summary book, if adequate numbers are available, to other individuals who request one.

(5) Issuing agents shall make available licenses and permits for sale to the public in strict accordance with all policies, instructions, rules and regulations of the Commission.

(6) Issuing agents and their employees may not provide false or misleading information on a license. The date reported on a license sold shall be the date of the actual sale.

(7) Issuing agents shall keep customer information confidential and not use, release or permit the use of this information for any purpose not specifically authorized by the Commission or applicable law.

(8) Issuing agents shall return all original voided licenses to the Commission within 15 days of their issuance. Issuing agents shall pay the license fees for voided licenses that are not returned to the Commission within 15 days of issuance.

(9) Issuing agents shall return all documents designated by the Commission within the time frame specified by the Commission.

(10) Issuing agents shall maintain, as instructed by the Commission, displays, notices or other informational materials relating to licenses and permits provided by the Commission, distribute to customers and fishing guides other compliance or educational materials provided by the Commission and promote and market new products or privileges as required by the Commission.

(11) Issuing agents shall sell licenses and permits only at the business location specified in their application or approved by the Commission and at a place on the premises accessible to the public.

(12) Issuing agents may not offer or provide licenses or permits free of charge or for any fee not authorized by section 2715 of the code (relating to license, permit and issuing agent fees).

(13) Issuing agents shall redeem a license or permit voucher regardless of where the voucher was purchased.

(b) *PALS equipment.*

(1) Issuing agents shall ensure proper use of the PALS equipment and follow the PALS operating manual and subsequent amendments and revisions thereto.

(2) An issuing agent may not borrow, lend or otherwise transfer PALS equipment or supplies to another agent without the prior written consent of the Commission.

(3) Issuing agents shall safeguard PALS equipment and supplies from unauthorized, wasteful, inappropriate or fraudulent use. Issuing agents shall place the equipment and supplies in a secure location. Issuing agents shall use license paper stock only for purposes of printing licenses, permits, reports and receipts. Issuing agents shall promptly notify the Commission or its designee of equipment malfunction. PALS equipment and supplies are not transferable to other locations without the prior written consent of the Commission. Issuing agents shall return the defective equipment immediately to the repair center identified by the Commission.

(4) Issuing agents shall notify the Commission by telephone within 48 hours and submit a written report within 10 days after any fire, theft or natural disaster affecting PALS equipment and supplies or records.

(5) Issuing agents shall be responsible for the PALS equipment and the supplies relating to the issuance of licenses and permits, except for events beyond their control, and they shall assume financial responsibility for any damage to the PALS equipment resulting from negligence, malicious activity, abandonment, failure to return upon request of the Commission or improper electrical service to the equipment.

(6) Issuing agents shall carry appropriate insurance covering PALS equipment and supplies in an amount determined by the Commission. Issuing agents shall provide proof of insurance coverage upon the request of the Commission.

(c) *Access and auditing.*

(1) Issuing agents, their employees and subcontractors shall allow the Commission or other authorized representatives access to periodically inspect, review or audit PALS associated records, reports, canceled checks and similar material pertaining to PALS. Issuing agents shall maintain these records for 5 years.

(2) Issuing agents shall allow the Commission access to all materials and equipment related to the PALS operations. Issuing agents shall allow access to the Commission to make inspections during reasonable business hours, with or without notice to the issuing agent, to determine whether the issuing agent is in compliance with this section.

(d) *Financial provisions.*

(1) Issuing agents shall deposit the money received from the sale of licenses and permits in a designated bank account less the amount retained as an issuing agent fee under section 2715 of the code.

(2) Issuing agents shall have sufficient funds available in the designated bank account at the time of the electronic funds transfers. Upon notification of insufficient funds for payment to the Commission, the Commission may immediately and without notice suspend an issuing agent's authority to issue licenses and permits, may assess an administrative fee in accordance with section 502 of the code (relating to collection fee for uncollectible checks) and may require the issuing agent to increase the amount of the bond or other security or to provide adequate bank account overdraft protection.

(3) Issuing agents shall provide written notification on the form prescribed by the Commission at least 15 days prior to changing banks, account numbers, ownership status, business status or other information used by the Commission or its designee for the purpose of collecting moneys owed by the issuing agent.

(e) *Suspension or recall of agency.*

(1) The Commission may suspend the issuing agency of any agent that no longer meets the Commission's criteria for acceptance for participation in PALS until the agent becomes compliant.

(2) The Commission may recall the issuing agency of any agent that violates the requirements of this section.

Source

The provisions of this § 51.38 adopted December 8, 2006, effective December 9, 2006, 36 Pa.B. 7447.

51-16.4

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Subchapter E. PERMIT PROCEDURES

| | |
|--------|----------------------|
| Sec. | |
| 51.41. | General. |
| 51.42. | Applications. |
| 51.43. | Staff review. |
| 51.44. | Appeals. |
| 51.45. | Procedures. |
| 51.46. | Final agency action. |

Authority

The provisions of this Subchapter E issued under the Fish and Boat Code, 30 Pa.C.S. §§ 928, 2102, 2305, 2307, 2711, 2901, 2903 and 2904.

Source

The provisions of this Subchapter E adopted January 6, 1984, effective January 7, 1984, 14 Pa.B. 46, unless otherwise noted.

Cross References

This subchapter cited in 58 Pa. Code § 65.26 (relating to extended trout seasons); 58 Pa. Code § 71.7 (relating to triploid grass carp); 58 Pa. Code § 79.5 (relating to snapping turtle permits); 58 Pa. Code § 79.6 (relating to venomous snake permits); and 58 Pa. Code § 79.7 (relating to organized reptile and amphibian hunt permits).

§ 51.41. General.

This subchapter establishes the agency practices and procedures to be followed in consideration and disposition of applications for permits the granting or denial of which is discretionary, including permits issued under sections 2902, 2903, 2905, 2906, 3106 and 3509 of the code and including permits issued under provisions of the code which contain the word, “may.”

Authority

The provisions of this § 51.41 amended by the Fish and Boat Code, 30 Pa.C.S. §§ 928, 2102, 2305, 2711, 2903 and 2904.

Source

The provisions of this § 51.41 amended December 7, 2001, effective December 8, 2001, 31 Pa.B. 6669. Immediately preceding text appears at serial pages (243538) and (239813).

Cross References

This section cited in 58 Pa. Code § 69.42 (relating to policy); and 58 Pa. Code § 79.4 (relating to possession permits for native species).

§ 51.42. Applications.

(a) *Forms.* Applications shall be made on forms prescribed by the Executive Director. In addition to the information required by 1 Pa. Code § 35.2 (relating to contents of applications), applicants shall provide other information as may be

required by the Executive Director to enable the Commission to fully review the application. Incomplete applications will be returned without action.

(b) *Time.* An application for permit shall be filed no later than 40 days before the activity to be permitted; however, the Executive Director may waive this limitation for good cause in cases where the permitted activity is found by the staff to be unlikely to result in significant adverse impacts on fish, fish habitat, fishing, boating or other matters within the cognizance of the Commission.

Cross References

This section cited in 58 Pa. Code § 69.42 (relating to policy); 58 Pa. Code § 69.43 (relating to applications for permits); and 58 Pa. Code § 79.4 (relating to possession permits for native species).

§ 51.43. Staff review.

(a) The staff will administratively review applications filed with the Commission.

(b) If, after administrative review, the staff concludes that the proposed activity is unlikely to result in significant adverse impacts on fish, fish habitat, fishing, boating or other matters within the cognizance of the Commission as a trustee of this Commonwealth's environment, the staff may dispose of the application by appropriate action.

(c) If, after administrative review of the application, the staff finds that the proposed permitted activity creates a substantial likelihood of significant adverse impacts on fish, fishing, fish habitat, boating or other matters within the cognizance of the Commission as a trustee of this Commonwealth's environment, the staff will defer action on the application until after publication of a notice in the *Pennsylvania Bulletin* under 1 Pa. Code § 35.105 (relating to notice of nonrule-making proceedings).

Cross References

This section cited in 58 Pa. Code § 69.42 (relating to policy); 58 Pa. Code § 69.44 (relating to review of permit applications); and 58 Pa. Code § 79.4 (relating to possession permits for native species).

§ 51.44. Appeals.

A party aggrieved by a staff decision under this subchapter may appeal to the Commission in the manner provided by 1 Pa. Code § 35.20 (relating to appeals from actions of the staff). A party appealing a staff decision may request the Executive Director to stay the staff decision pending disposition of the appeal, and the Executive Director will grant a stay for good cause shown to preserve the status quo, or to avoid irreparable harm to any party, or in other circumstances where the grant of a stay has been found appropriate in similar proceedings.

Cross References

This section cited in 58 Pa. Code § 69.42 (relating to policy); 58 Pa. Code § 69.44 (relating to review of permit applications); and 58 Pa. Code § 77.4 (relating to possession permits for native species).

§ 51.45. Procedures.

(a) The Commission will designate one or more presiding officers to conduct hearings on issuance or denials of permits.

(b) Part II of 1 Pa. Code (relating to general rules of administrative practice and procedure) applies to proceedings under this subchapter.

(c) The presiding officer will file a proposed report with the Commission as provided in 1 Pa. Code § 35.202 (relating to proceedings in which proposed reports are prepared).

(d) A party filing exceptions to a proposed report may, by motion, request the opportunity to present oral argument to the Commission. If the motion is granted, oral argument will ordinarily be scheduled as part of a regular public meeting of the Commission. Oral argument to the Commission will not exceed 15 minutes per party unless the Commission, for cause shown, votes to adopt another schedule for a particular oral argument. This subsection supplements 1 Pa. Code § 35.214 (relating to oral argument on exceptions).

(e) The Commission's chief counsel will either represent the staff in proceedings before the presiding officer and the Commission or will advise and counsel the Commission on its final decision.

Cross References

This section cited in 58 Pa. Code § 69.42 (relating to policy); 58 Pa. Code § 69.44 (relating to review of permit applications); and 58 Pa. Code § 79.4 (relating to possession permits for native species).

§ 51.46. Final agency action.

After considering the entire record in the case, including an oral argument permitted before the Commission, the Commission will vote at a regular public meeting on whether to grant or deny the requested permit. The Commission's decision will be forwarded to the parties in writing and will constitute the agency adjudication on the matter under review.

Cross References

This section cited in 58 Pa. Code § 69.42 (relating to policy); 58 Pa. Code § 69.44 (relating to review of permit applications); and 58 Pa. Code § 79.4 (relating to possession permits for native species).

Subchapter F. CHEMICAL TESTS

Sec.
51.51. Chemical tests.

Authority

The provisions of this Subchapter F issued under the Fish and Boat Code, 30 Pa.C.S. § 5125, unless otherwise noted.

Source

The provisions of this Subchapter F adopted July 27, 1984, effective July 30, 1984, 14 Pa.B. 2759, unless otherwise noted.

§ 51.51. Chemical tests.

(a) The same devices, equipment and training required for administering chemical tests, test procedures and accuracy certifications for breath test devices that apply to prosecutions under 75 Pa.C.S. (relating to vehicles) apply to prosecution under 30 Pa.C.S. Part III (relating to boats and boating).

(b) The Commission approves the devices, equipment and training required for administering chemical tests, test procedures and accuracy certifications for breath test devices prescribed jointly by the Department of Health and Department of Transportation at 67 Pa. Code Chapter 77 (relating to equipment and training required for administering chemical tests; test procedures and accuracy certification for breath test devices) and prescribed by the Department of Health at 28 Pa. Code §§ 5.101—5.104 (relating to equipment to determine blood alcohol content under the Vehicle Code and the Fish and Boat Code) and in other regulations.

Subchapter G. PERMIT REQUIREMENTS

Sec.
51.61. Permits required for disturbance of waterways or watersheds.

§ 51.61. Permits required for disturbance of waterways or watersheds.

(a) A permit shall be deemed necessary under 30 Pa.C.S. § 2502 (relating to disturbance of waterways or watersheds) if the activity would be a violation of statutes or regulations administered by the Commission, the Department of Environmental Resources, the United States Environmental Protection Agency, the United States Army Corps of Engineers or local municipalities if the activity were performed without a permit. The failure of the agency charged with enforcement or issuance responsibility for a permit to prosecute or take civil action for failure to obtain a permit or other permit violation may not affect the validity of a prosecution under 30 Pa.C.S. § 2502.

(b) Examples of permits that may be required to undertake specific activities in the waters or watersheds of this Commonwealth include the following:

- (1) Permits for use of explosives in waters of this Commonwealth (Fish and Boat Commission).
- (2) Sewage facilities permits (Department of Environmental Resources).
- (3) Solid waste management permits (Department of Environmental Resources).
- (4) Oil and gas well drilling permits (Department of Environmental Resources).
- (5) Coal mining permits (Department of Environmental Resources).
- (6) Surface mining operator's license (Department of Environmental Resources).
- (7) Coal refuse disposal permit (Department of Environmental Resources).
- (8) National Pollutant Discharge Elimination System (NPDES) permits (Department of Environmental Resources).
- (9) Mine drainage permits (Department of Environmental Resources).
- (10) Erosion and sedimentation control permits (Department of Environmental Resources).
- (11) Dam, water obstruction or encroachment permits (includes permits required by 25 Pa. Code Chapter 105 (relating to dam safety and waterway management)) (Department of Environmental Resources).
- (12) Floodplain management permits (Department of Environmental Resources).
- (13) Blasters' licenses and explosives permits (Department of Environmental Resources).
- (14) Building permits (local municipalities).
- (15) Army Corps of Engineers' permits (United States).
- (16) Delaware River Basin Commission permits.
- (17) Susquehanna River Basin Commission permits.
- (18) Permit for use of an algicide, herbicide or fish control chemical in waters of this Commonwealth.
- (19) Permit to draw off impounded water.

Authority

The provisions of this § 51.61 amended under the Fish and Boat Code, 30 Pa.C.S. §§ 741, 2502, 5122 and 5123; and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 51.61 adopted July 12, 1985, effective July 13, 1985, 15 Pa.B. 2578; amended January 2, 1998, effective January 1, 1998, 28 Pa.B. 30. Immediately preceding text appears at serial page (216397).

51-18.3

(331459) No. 399 Feb. 08

Subchapter H. PERMITS FOR FISH COLLECTING ACTIVITIES

Sec.
51.71. Scientific collectors' permits.

Authority

The provisions of this Subchapter H issued under the Fish and Boat Code, 30 Pa.C.S. §§ 322, 2102 and 2307, unless otherwise noted.

Source

The provisions of this Subchapter H adopted November 8, 1985, effective January 1, 1986, 15 Pa.B. 4036, unless otherwise noted.

§ 51.71. Scientific collectors' permits.

(a) A valid and current scientific collector's permit issued by the Commission is required to collect, take or maintain, for scientific or educational research purposes, any species of Pennsylvania fishes, amphibians, reptiles or aquatic organisms, during seasons not permitted by regulations governing holders of a valid Pennsylvania fishing license, venomous snake permit, organized reptile and amphibian hunt permit, or other license or permit.

(b) The Commission will issue three categories of scientific collectors' permits: nonprofit research and education, governmental and consulting.

(1) *Type I Permit: Nonprofit Research and Education.* The Commission will issue a Type I (Nonprofit Research and Education) permit to individuals whom the Commission deems to be qualified to competently and capably conduct research or educational programs and who are not engaged in scientific collecting for monetary gain.

(i) *Qualifications.* To qualify for a Type I permit, applicants shall demonstrate to the satisfaction of the Commission that they meet one or more of the following conditions:

(A) They possess a Bachelor's Degree, are pursuing studies toward an advanced degree and have a demonstrable need to collect fishes, reptiles, amphibians or aquatic invertebrates to complete the degree.

(B) They possess an advanced academic degree and are conducting biological research that requires field specimens.

(C) They are associated with or employed by a museum or an accredited institution of higher learning and are academically or professionally, or both, qualified to conduct biological research or have a valid need for collection of specimens for science or education.

(D) They have gained, through association with a museum, zoological institution or personal endeavor, recognized expertise in some area of herpetology, fisheries science, limnology, aquatic entomology or related sciences.

(ii) *Geographic area covered.* A Type I permit will be generally limited to a specific geographic area (that is, county or specific water area), except that the Commission may issue a Statewide collector's permit to persons serving as members of an advisory board or advisory committee to the Commission or, in exceptional cases, to persons conducting critical research that the Commission recognizes as justification for Statewide collecting.

(iii) *Fees.* The fee for a Type I permit holder is \$30. Each assistant is free. Permit amendments are \$15 each.

(2) *Type II Permit: Governmental.* A Type II (Governmental) permit is a free permit that the Commission issues, at the discretion of the Executive Director, to State and Federal employees who are engaged in scientific collecting as a part of their required duties. A Type II permit may be Statewide or regional depending upon the application.

(3) *Type III Permit: Consulting.* The Commission will issue a Type III (Consulting) permit to individuals whom the Commission deems to be qualified to engage in scientific collecting and who are engaged in private consulting for profit. The Commission will issue a Type III permit to qualified individuals only and will not issue one in the name of a corporation or other business entity.

(i) *Qualifications.* To qualify for a Type III permit, applicants shall demonstrate to the satisfaction of the Commission that they possess at a minimum a Bachelor's Degree in biological science, zoology, fisheries science, herpetology or a related field that is specific to the purpose of the scientific collecting described in their application. The Commission will consider professional experience, certification by a professional society or recommendations by acknowledged authorities in the appropriate field of biological science when evaluating an applicant's qualifications.

(ii) *Geographic area covered.* A Type III permit will be limited to specific site as described in the conditions of the permit. A holder may change the area of coverage to accommodate new projects by applying to the Commission for a permit amendment.

(iii) *Fees.* The fee for a Type III permit holder is \$150. Each assistant is \$30. Permit amendments are \$75 each.

(c) Holders of scientific collectors' permits and their assistants shall comply with terms and conditions of the permit, including the requirement for a report of collecting activities. Permit holders and their assistants shall possess a valid Pennsylvania fishing license. Permit holders shall be personally present any time collecting activities under the permit take place. Permits will cover the permit holder and the assistants named in the permit.

Authority

The provisions of this § 51.71 amended under the Fish and Boat Code, 30 Pa.C.S. § 2905.

Source

The provisions of this § 51.71 amended November 30, 2007, effective January 1, 2008. Immediately preceding text appears at serial page (325050).

**Subchapter I. PERMITS TO DRAW OFF
IMPOUNDED WATERS**

Sec.

- 51.81. Permit required.
- 51.82. Application for permits.
- 51.83. Other permits required.
- 51.84. Review of permit applications.
- 51.85. Taking and disposal of fish.
- 51.86. Responsibility of permittee.
- 51.87. Refilling of impoundments.
- 51.88. Extension of permit.
- 51.89. General permits.

Authority

The provisions of this Subchapter I issued under the Fish and Boat Code, 30 Pa.C.S. §§ 2102 and 3506, unless otherwise noted.

§ 51.81. Permit required.

A permit from the Commission is required under section 3506 of the code (relating to drawing off or interference with dams or devices) for the following activities:

- (1) Drawing down impounded waters inhabited by fish.
- (2) Destruction, removal, breach or disturbance of a dam, deflector, retard or similar device in waters inhabited by fish.

Source

The provisions of this § 51.81 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422.

§ 51.82. Application for permits.

(a) An application for a permit to draw down impounded waters is available from the Fish and Boat Commission, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616.

(b) A completed permit application shall be submitted to the address set forth in subsection (a) no later than 30 days prior to proposed commencement of draw down operations.

Source

The provisions of this § 51.82 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422.

§ 51.83. Other permits required.

The issuance of a draw down permit under section 3506 of the code (relating to drawing off or interference with dams or devices) does not constitute a waiver of the requirement for applicants to obtain other State, local or Federal permits for the proposed activity.

Source

The provisions of this § 51.83 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422.

§ 51.84. Review of permit applications.

A permit application will be reviewed by the Commission's Division of Environmental Services and by the Department of Environmental Protection, Bureau of Dams and Waterways Management. The Division of Environmental Services will issue permits for the Commission.

Authority

The provisions of this § 51.84 amended under the Fish and Boat Code, 30 Pa.C.S. § 2102.

Source

The provisions of this § 51.84 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422; amended November 21, 2003, effective November 22, 2003, 33 Pa.B. 5704. Immediately preceding text appears at serial page (216399).

§ 51.85. Taking and disposal of fish.

(a) A permit issued under the authority of section 3506 of the code (relating to drawing off or interference with dams or devices) authorizes the permittee to

take, catch, kill or possess fish taken from the drawn down waters regardless of seasons, sizes and creel limits or manner of taking.

(b) Disposal of fish and aquatic life shall be done in conformance with applicable State and local laws and regulations.

(c) It is unlawful to stock fish salvaged as a result of draw down operations in waters without the permission of the owners of the waters. It is unlawful to stock fish salvaged as a result of draw down operations in any waters of this Commonwealth designated by the Commission as inappropriate for stocking of salvaged fish.

Source

The provisions of this § 51.85 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422.

§ 51.86. Responsibility of permittee.

A permittee is solely responsible for the consequences of drawing down the impounded waters. A permittee is responsible to ensure compliance with laws and regulations governing downstream flooding. A permittee is responsible for acquiring property rights, flowage easements or other interests required to accomplish the draw down. A permittee is responsible to allow a minimum flow of water determined by the Commission to be sufficient at all times to flow in a natural stream on which the impoundment is located to provide for the protection and conservation of fish downstream from the site.

Source

The provisions of this § 51.86 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422.

§ 51.87. Refilling of impoundments.

Except when the purpose of the permitted draw down is to remove or eliminate the impoundment, the permittee shall refill the impoundment when the permit expires or the work is completed, whichever occurs first. In refilling the impoundment, the permittee is responsible to allow a minimum flow of water determined by the Commission to be sufficient at all times to flow in a natural stream on which the impoundment is located to provide for the protection and conservation of fish downstream from the site.

Source

The provisions of this § 51.87 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422.

§ 51.88. Extension of permit.

An application to extend the permit expiration date shall be received by the issuing office no later than 30 days prior to the expiration date of the permit.

Source

The provisions of this § 51.88 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422.

§ 51.89. General permits.

(a) Notwithstanding the other provisions of this subchapter, this section constitutes a general permit for persons to draw down impounded waters without applying for an individual permit when the following circumstances exist:

(1) The water area to be drawn down is 1 acre or less.

(2) The draw down operations are of a type that do not require other State permits, such as erosion and sedimentation control permits and Dams and Waterways Management permits.

(b) Notwithstanding the other provisions of this subchapter, this section constitutes a general permit for the Commission and cooperative nurseries recognized by the Commission to draw down impounded waters without applying for an individual permit when the waters to be drawn down are located on hatchery property and the draw down is in connection with hatchery operations. The general permit authorized by this subsection does not waive a requirement for a permittee to apply for and obtain other necessary permits.

Authority

The provisions of this § 51.89 amended under Fish and Boat Code, 30 Pa.C.S. § 2102.

Source

The provisions of this § 51.89 adopted February 1, 1991, effective February 2, 1991, 21 Pa.B. 422; amended December 7, 2001, effective December 8, 2001, 31 Pa.B. 6669. Immediately preceding text appears at serial page (270097).

**Subchapter J. ROYALTIES FOR
SAND AND GRAVEL PERMITS**

Sec.

51.91. Authority.

51.92. Royalty rates.

Authority

The provisions of this Subchapter J issued under section 503(c) of the Conservation and Natural Resources Act (71 P. S. § 1340.503(c)), unless otherwise noted.

Source

The provisions of this Subchapter J adopted December 19, 1997, effective December 20, 1997, 27 Pa.B. 6570, unless otherwise noted.

§ 51.91. Authority.

Under section 503(c) of the Conservation and Natural Resources Act (71 P. S. § 1340.503(c)), the Commission with the concurrence of the Department of Environmental Protection, is authorized to adjust the amount of royalty payments per ton or cubic yard of usable or merchantable, or both, sand or gravel, or both, extracted from Commonwealth waters.

§ 51.92. Royalty rates.

Persons holding permits granting them nonexclusive rights and privileges of dredging, excavating, removing and carrying away merchantable sand and gravel under agreements between the permittees and the Department of Environmental Protection shall pay royalties in accordance with the following schedule:

- (1) During the period, January 1 through December 31, 1998—15¢ per dry ton or 25¢ per cubic yard; or \$1,000, whichever is greater.
- (2) During the period, January 1, 1999 through June 30, 2000—20¢ per dry ton or 30¢ per cubic yard; or \$1,000, whichever is greater.
- (3) During the period, July 1, 2000 through December 31, 2001—25¢ per dry ton or 37.5¢ per cubic yard; or \$1,000, whichever is greater.
- (4) During the period, January 1, 2002 through December 31, 2002—30¢ per dry ton or 40¢ per cubic yard; or \$1,000, whichever is greater.
- (5) During the period, January 1, 2003 through December 31, 2010—30¢ per dry ton or 40¢ per cubic yard plus or minus an amount equal to the change in the producer price index (PPI) for sand and gravel from the base year (2002), provided that the rate per dry ton may not be less than 25¢.

**Subchapter K. CIVIL PENALTY
FORFEITURE PROCESS**

- Sec.
- 51.101. General.
 - 51.102. Initiation of process.
 - 51.103. Compliance notification.
 - 51.104. Order to show cause for forfeiture of civil penalty.
 - 51.105. Amount of proposed civil penalty forfeiture.
 - 51.106. Procedure in lieu of hearing.
 - 51.107. Hearings.
 - 51.108. Report of the presiding officer.
 - 51.109. Final administrative action.

Authority

The provisions of this Subchapter K issued under the Fish and Boat Code, 30 Pa.C.S. § 3510, unless otherwise noted.

Source

The provisions of this Subchapter K adopted October 27, 2000, effective October 28, 2000, 30 Pa.B. 5541, unless otherwise noted.

§ 51.101. General.

- (a) Under section 3510(h) of the code (relating to marking of dams), a person failing to comply with section 3510(a) or (b) of the code shall forfeit a civil penalty of not less than \$500 nor more than \$5,000.

(b) Under section 3510(h) of the code, a person failing to comply with section 3510(c) of the code shall forfeit a civil penalty of not less than \$250 nor more than \$5,000.

(c) The civil penalties described in subsections (a) and (b) may be recovered by civil suit or process in the name of the Commonwealth. The purpose of this subchapter is to describe the administrative process for forfeiture of civil penalties under the code.

§ 51.102. Initiation of process.

(a) The administrative process to effect the forfeiture of a civil penalty under section 3510(h) of the code may be initiated by any person authorized to enforce the code and any employe of the Commission or the Department of Environmental Protection authorized by the Executive Director to initiate the process.

(b) A person authorized to initiate the process under subsection (a) shall do so by completing a report on a form approved by the Executive Director. The report, to be executed under penalty of law, will, at a minimum, describe:

- (1) The name of the owner or permittee of the dam.
- (2) The location of the dam, including county and township or other political subdivision.
- (3) The dates the dam was inspected.
- (4) The nature of the noncompliance.

§ 51.103. Compliance notification.

(a) Prior to serving an order to show cause for civil penalty under section 3510 of the code, the Executive Director or a designee will send the owner or permittee of the dam in question a written compliance notification that will describe the nature of the alleged noncompliance with section 3510 of the code.

(b) The compliance notification shall give the owner or permittee of the dam not less than 15 nor more than 30 days to demonstrate to the satisfaction of the Executive Director or a designee that the owner or permittee has brought the dam into compliance with section 3510 of the code or face forfeiture of civil penalties.

Cross References

This subsection cited in 58 Pa. Code § 51.104 (relating to order to show cause for forfeiture of civil penalty).

§ 51.104. Order to show cause for forfeiture of civil penalty.

(a) If the owner or permittee fails to demonstrate compliance after the notification described in § 51.103 (relating to compliance notification), the Executive Director or a designee will serve on the owner or permittee of the dam an order to show cause for forfeiture of civil penalty in a form approved by the Executive Director or designee. Service will be by registered or certified mail, or by per-

sonal service. If the mail is tendered at the address in the permit, or at an address where the owner or permittee is located, and delivery is refused, or mail is not collected, the requirements of this section shall be deemed to have been complied with upon tender.

(b) The owner or permittee who has been served with an order to show cause in accordance with subsection (a) has 30 days to file an answer to the order to show cause. If no answer is submitted, the failure to submit a timely answer will operate as a waiver and the proposed forfeiture of civil penalty will become a final forfeiture upon the expiration of the 30-day period unless the Executive Director or a designee determines to hold a hearing on the proposed forfeiture under the procedures in § 51.107 (relating to hearings).

§ 51.105. Amount of proposed civil penalty forfeiture.

(a) *Amount.* The amount of the proposed civil penalty forfeiture will be set forth in the order to show cause for civil penalty forfeiture. In determining the amount of the proposed forfeiture, the Executive Director or a designee will consider:

(1) *Health and safety of public.* The hazards posed to the health or safety of the public. The minimum proposed civil penalty forfeiture will be \$2,500 if the Executive Director or a designee determines, based on the uses of the waters, that the unmarked dam poses substantial danger to the angling, boating and wading public.

(2) *Negligence, recklessness or intentional failure.* Whether the violation was caused by a negligent, reckless or intentional failure to comply. A civil penalty of at least \$500 should be proposed in cases of negligent failure to comply. A civil penalty of at least \$2,000 should be proposed where there is probable cause to believe that the lack of compliance was based on reckless misconduct. A civil penalty of at least \$3,000 should be proposed when there is probable cause to believe that the lack of compliance was based on wilful or intentional misconduct.

(3) *Speed of compliance.* A credit will be given of up to \$1,000 based on the attempt of the owner or permittee to achieve rapid compliance after the owner or permittee knew or should have known of the violation. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) *Cost to the Commonwealth.* In proposing the amount of a civil penalty forfeiture, the costs to the Commonwealth will be considered. The costs may include:

- (i) Administrative costs.
- (ii) Costs of inspection.
- (iii) Costs of preventive or restorative measures taken by the Commission or the Department of Environmental Protection to prevent or lessen the threat of damage to persons or property.

(5) *Savings to the dam owner/permittee.* If the owner or permittee of the dam who fails to comply gains economic benefit as a result of the noncompliance, the proposed civil penalty may include an amount equal to the savings up to the statutory maximum for each violation.

(6) *History of previous violations.* In determining a proposed civil penalty for a violation, the Executive Director or a designee will consider previous noncompliance with the requirements of section 3510 of the code (relating to marking of dams) for which the same owner or permittee has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree that became final within the previous 3-year period. The penalty otherwise assessable for noncompliance shall be increased by a factor of 25% for each previous violation. The total increase in assessment based on the history of the previous violation will not exceed \$1,000.

(i) A previous instance of noncompliance will not be counted if it is the subject of pending administrative or judicial review, or if the time to request the review or to appeal the administrative or judicial decision determining the previous violation has not expired.

(ii) Each previous instance of noncompliance will be counted without regard to whether it led to a civil penalty assessment.

(b) *Maximum penalty.* If consideration of the factors described in this section yields a penalty in excess of the statutory maximum, the maximum civil penalty will be proposed for that violation.

(c) *Revision of proposed civil penalty.* The Executive Director, upon his own initiative or upon written request received within 15 days of issuance of an order to show cause, may revise a proposed civil penalty calculated in accordance with the dollar limits in subsection (a). If the Executive Director revises the civil penalty, the Commission will use the general criteria in subsection (a) to determine the appropriate civil penalty. When the Executive Director has elected to revise a civil penalty, he will give a written explanation of the basis for the revised civil penalty to the dam owner or permittee to whom the order to show cause was issued.

Source

The provisions of this § 51.105 amended April 10, 2009, effective April 11, 2009, 39 Pa.B. 1860. Immediately preceding text appears at serial pages (270100) to (270101).

§ 51.106. Procedure in lieu of hearing.

(a) When for any reason a hearing is not held with regard to forfeiture, the entire written file on the case shall be submitted to the Commission, which will review the matter and make a final determination as to its disposition. The action of the Commission is considered the final agency action.

(b) Subsection (a) supersedes 1 Pa. Code § 35.226 (relating to final orders).

Cross References

This section cited in 58 Pa. Code § 51.109 (relating to final administrative action).

§ 51.107. Hearings.

(a) If an owner or permittee of a dam requests a hearing, or the Executive Director or a designee determines a hearing is appropriate, the Executive Director will appoint a presiding officer to conduct the hearing on behalf of the Commission. This subsection supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers).

(b) Hearings will be conducted at the Harrisburg office of the Commission or at another location the presiding officer or Executive Director may designate. Dam owners or permittees will be given at least 10 days written notice of the date and time of the hearing.

(c) The burden of proof to justify the proposed forfeiture will be on the Commission to prove by a preponderance of the evidence that the proposed action is justified by the facts and circumstances.

(d) The presiding officer will permit either oral argument at the conclusion of the hearing or the filing of written briefs, but not both, except in cases of extraordinary complexity when the presiding officer finds, upon motion of the parties or his own motion, that the ends of justice require allowance of both. When briefs are to be filed, the procedures of 1 Pa. Code §§ 35.191—35.193 (relating to proceedings in which briefs are to be filed; content and form of briefs; and filing and service of briefs) will be followed. This subsection supersedes 1 Pa. Code § 35.204 (relating to oral argument before presiding officer).

Cross References

This section cited in 58 Pa. Code § 51.104 (relating to order to show cause for forfeiture of civil penalty).

§ 51.108. Report of the presiding officer.

(a) After the hearing is closed, the transcript prepared, and briefs, if any, received, the presiding officer will prepare a proposed report, the contents of which shall be in substantial compliance with 1 Pa. Code § 35.205 (relating to contents of proposed reports).

(b) A copy of the proposed report shall be served on the owner or permittee of the dam, the Commission staff and other parties of record who shall thereafter have 30 days to file exceptions to the report together with any brief on exceptions. Briefs opposing exceptions may be filed in accordance with 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).

(c) If no timely exceptions to the proposed report are filed, the proposed report will be considered the final administrative adjudication of the Commission.

(d) If exceptions to the proposed report are filed, the proposed report, together with the entire record, the briefs, the exceptions, and briefs on and opposing exceptions will be subject to review by the Commission under § 51.109 (relating to final administrative action).

§ 51.109. Final administrative action.

(a) When exceptions are filed to the proposed report or which are disposed of under § 51.106 (relating to procedure in lieu of hearing), the members of the Commission will review the case file, together with other matters of record and filings in the proceedings. At a public meeting convened under 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act), the Commission will consider the matter. Unless ordered by the Commission, oral argument will not be permitted at the public meeting nor will the respondent be permitted to reargue or retry matters that were raised or could have been raised before the presiding officer. The Commission will vote to approve or disapprove a proposed report or, in cases under § 51.106, to issue an order as appropriate.

(b) The action by the Commission will be considered the final administrative adjudication with respect to the forfeiture of civil penalties. The dam owner or permittee will be notified in writing of the final action. The final order will be considered officially entered on the date it is mailed or otherwise served, whichever comes first.

(c) If, after the entry of a final order, the dam owner or permittee files a timely petition for review or judicial appeal of the adjudication, the owner or permittee may apply in writing to the Executive Director for a stay of the effective date of the order. The filing of a petition for review or judicial appeal does not operate as an automatic stay. The Executive Director may grant a stay for good cause shown.

Cross References

This section cited in 58 Pa. Code § 51.108 (relating to report of the presiding officer).

Subchapter L. CHARTER BOAT/FISHING GUIDE OPERATIONS

- Sec.
 51.121. Definitions.
 51.122. Permits.
 51.123. Display of permits.
 51.124. Boating safety education.
 51.125. Insurance.
 51.126. CPR and first aid.
 51.127. Fishing license and permits.
 51.128. Compliance with laws and regulations
 51.129. Special issuing agents.
 51.130. Boundary waters.

Authority

The provisions of this Subchapter L issued under the Fish and Boat Code, 30 Pa.C.S. § 2907.3(d), unless otherwise noted.

Source

The provisions of this Subchapter L adopted December 2, 2005, effective January 1, 2006, 35 Pa.B. 6533, unless otherwise noted.

§ 51.121. Definitions.

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

Charter boat—A boat operated as a commercial enterprise which carries passengers for hire for the purpose of fishing on the waters of this Commonwealth.

Charter boat operator—A person who operates or is in actual physical control of the movement of a charter boat.

Commercial enterprise—An operation where a person provides fishing guide or charter boat services in exchange for any consideration, including money, goods or services.

Fishing guide—A person who operates a commercial enterprise whereby he guides or leads other persons for the purpose of fishing on the waters of this Commonwealth.

§ 51.122. Permits.

(a) *Application.* A person desiring to be a charter boat operator or a fishing guide on the waters of this Commonwealth shall first apply for a permit on the form provided by the Commission. The applicant shall submit the completed form to the Commission along with the fee specified in section 2715 of the code (relating to license, permit and issuing agent fees). The applicant shall be 16 years of age or older.

(b) *Duration.* Charter boat/fishing guide permits are valid for a calendar year and expire on December 31 of the year for which it was issued.

(c) *Renewal.* A holder of a charter boat/fishing guide permit shall apply to the Commission for renewal of the permit by completing the renewal application form provided by the Commission and by submitting it along with the appropriate fee to the Commission.

(d) *Suspension or revocation of permit.* The Commission may suspend or revoke a charter boat/fishing guide permit for noncompliance with the terms and conditions of this chapter or when the charter boat operator or fishing guide is convicted or acknowledges guilt of a violation of the code or this chapter. Suspension or revocation procedures must comply with Chapter 51, Subchapter C (relating to suspension, denial or revocation of licenses, permits, registrations or privileges).

(e) *Prima facie evidence.* Advertising by any means, including, but not limited to, websites, business cards, brochures, newspapers, periodicals or billboards, that a person provides fishing guide or charter boat services shall be prima facie evidence of a commercial enterprise.

§ 51.123. Display of permits.

(a) *Display of permit on outer garment.* While operating a charter boat or fishing guide operation, charter boat operators and fishing guides shall display

their permits on a hat or an outer garment in plain view. The charter boat operator and fishing guide may carry and display the permit in the same holder containing a fishing license.

(b) *Officers designated to check permits.* Charter boat operators and fishing guides shall present their charter boat/fishing guide permits upon the request of an officer authorized to enforce the code.

(c) *Display of decal on charter boats.* When a boat is used in the charter boat/fishing guide operation, the charter boat operator shall display a decal supplied by the Commission on both sides of the boat hull above the waterline and below the gunwale near the stern of the boat or on each side window of the cockpit of the boat. While onboard a boat displaying a decal, the charter boat operator is exempt from the permit display requirements of this section provided the permit is onboard the boat. When, due to exigent circumstances, a charter boat operator must use a boat that does not display a charter boat/fishing guide decal, the charter boat operator shall display the permit on a hat or outer garment as required by this section.

§ 51.124. Boating safety education.

When a boat is used in the charter boat/fishing guide operation, the charter boat operator shall possess a boating safety education certificate issued by the Commission or by another state in accordance with criteria of the National Association of State Boating Law Administrators or a boat operator's license issued by the United States Coast Guard. Applicants and holders of charter boat/fishing guide permits shall provide proof of certification of boating safety education upon the request of the Commission.

§ 51.125. Insurance.

Charter boat operators and fishing guides shall possess and maintain in full force and effect general liability insurance for all periods during which they are operating a charter boat/fishing guide operation on the waters of this Commonwealth. The minimum amount of coverage is \$250,000 for each occurrence and \$500,000 in the aggregate. Applicants and holders of charter boat/fishing guide permits shall provide proof of insurance upon the request of the Commission.

§ 51.126. CPR and first aid.

Charter boat operators and fishing guides shall possess and maintain current certification in basic CPR and basic first aid skills. Applicants and holders of charter boat/fishing guide permits shall provide proof of CPR or basic first aid certification upon the request of the Commission.

§ 51.127. Fishing license and permits.

Charter boat operators and their crewmembers and fishing guides shall possess valid fishing licenses and the stamps and permits required for the waters in which they fish. Charter boat operators and fishing guides are responsible for ensuring that their employees, passengers and customers possess a valid fishing license and the appropriate stamps and permits.

§ 51.128. Compliance with laws and regulations.

Charter boat operators and fishing guides shall comply with all Federal, State and local laws and regulations. Charter boat operators and fishing guides are responsible for ensuring that their employees, passengers and customers comply with all fishing and boating laws and regulations.

§ 51.129. Special issuing agents.

(a) The Commission may designate holders of charter boat/fishing guide permits as special issuing agents for the purpose of selling to their customers One-Day Fishing Licenses, Three-Day Tourist Fishing Licenses, Seven-Day Tourist Fishing Licenses and trout/salmon permits and special permits for fishing Lake Erie and tributaries.

(b) A holder of a charter boat/fishing guide permit may seek to become a special issuing agent by completing and submitting to the Commission an application on the form prescribed by the Commission. Applications to become a special issuing agent shall be accompanied by a bond or other security in a form satisfactory to the Commission in an amount equal to the value of the licenses, stamps and permits being requested by the applicant. The one-time, nonrefundable fee required by § 51.35 (relating to operation of the issuing agency) is waived.

(c) Special issuing agents shall file quarterly reports of all fishing licenses, stamps and permits sold during the quarter in the manner determined by the Commission. Special issuing agents may file reports more frequently at the discretion of the agent.

(1) Special issuing agents shall include in their quarterly report detailed sales information and remittance for all licenses, stamps and permits sold during the reporting period.

(2) Special issuing agents shall file their reports so that they are received in the Harrisburg office by the 15th of the month following the reportable quarter.

(3) Special issuing agents shall file a report even if there is no sales activity to report for the quarter. Failure to file a report places the agency in a delinquent status.

(4) Special issuing agents shall indicate their agent number on the report, as well as the remittance.

(d) Special issuing agents shall maintain a bond or other security in a form satisfactory to the Commission in an amount equal to the value of all licenses, stamps and permits they wish to possess at each location where they issue licenses, stamps and permits.

(e) Except as otherwise provided by this section, Chapter 51, Subchapter D (relating to issuing agents) applies to special issuing agents under this section.

§ 51.130. Boundary waters.

(a) Residents of this Commonwealth who operate charter boats or fishing guide operations on boundary waters under the jurisdiction of the Commonwealth shall possess a resident charter boat/fishing guide permit.

(b) Nonresidents of this Commonwealth who operate charter boats or fishing guide operations on boundary waters under the jurisdiction of the Commonwealth shall possess a nonresident charter boat/fishing guide permit.

(c) For purposes of this section, there shall be a rebuttable presumption that a person operating a charter boat or fishing guide operation is operating on the waters of this Commonwealth if the person uses a boat launch in this Commonwealth.

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