

PROPOSED RULEMAKING

BOARD OF CLAIMS

[61 PA. CODE CH. 899]
Rules of Procedure

The Board of Claims (Board), under 72 P. S. §§ 4651-1—4651-10 and section 204(1) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)), intends to amend its rules of procedure, §§ 899.101—899.702, by final order, proposed rulemaking omitted.

The rules of procedure govern practice before the Board. The amendment will add a new rule which will provide that no motions for posthearing relief may be filed.

Interested persons may obtain a copy of the amendment from the Board of Claims, 200 North Third Street, Suite 700, Harrisburg, PA 17101-1518, or by contacting Connie Rode at (717) 787-3325, and may submit comments or suggestions within 15 days of the publication of this notice in the *Pennsylvania Bulletin*.

DAVID C. CLIPPER,
Chief Administrative Judge

[Pa.B. Doc. No. 00-561. Filed for public inspection March 31, 2000, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51, 53, 61, 93 AND 97]

Administration; Commission Property; Fishing and Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 51, 53, 61, 93 and 97 (relating to administrative provisions; Commission property; seasons, sizes and creel limits; registration and numbering; and operator provided equipment). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to the release of documents and records, restrictions on Commission property, fishing and boating.

A. Effective Date

The proposed amendments, if approved on final rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

The proposed amendments to § 51.9 (relating to release of documents and records) are published under the statutory authority of section 3 of the Right to Know Law (65 P. S. § 66.3) and section 506 of The Administrative Code

of 1929 (71 P. S. § 186). The proposed amendments to §§ 53.4, 53.10, 53.11, 53.15 and 53.18 are published under the statutory authority of section 741 of the code (relating to control of property). The proposed amendment to § 61.1 (relating to Commonwealth inland waters) is published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to §§ 93.4 and 93.17 (relating to certificate of registration; and registration of abandoned boats) are published under the statutory authority of section 5122 of the code (relating to registration, licenses, permits, plates and statistics). The proposed amendments to § 93.110 (relating to boats that are junked, destroyed, lost, stolen or abandoned) are published under the statutory authority of section 5325 of the code (relating to rules and regulations). The proposed amendments to § 97.3 (relating to sound producing devices) are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. Purpose and Background

The proposed amendments are designed to update, modify and improve Commission regulations relating to the release of documents and records, Commission property, fishing and boating. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. The Commission's Boating Advisory Board (Board) considered the amendments relating to boating and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the changes.

E. Summary of Proposal

(1) *Section 51.9 (relating to the release of documents and records)*. The Commission's staff routinely receives and processes requests for release of documents and other information in Commission files. Sometimes these requests are made under the Right-to-Know Law (act) (65 P. S. §§ 66.1—66.4). The act contains a very specific definition of the term "public record." This definition has been given a liberal interpretation by the courts, but it is clear that many, if not most, documents in the Commission's files do not meet the statutory definition. Moreover, most law enforcement records are specifically excluded in that they would disclose the institution, progress or results of agency investigations. In addition to documents that meet the statutory definition of "public record," the Commission ordinarily has provided access to other documents, including correspondence with entities and individuals outside Commonwealth government, on request.

One of the issues that arises in dealing with requests for access to documents relates to fees for copying them. Under the act, requesters have the right to inspect, examine and copy public records subject to reasonable restrictions, but there is no requirement for agencies to make copies of records and send them to requesters. To follow more systematic procedures for the release of documents, the Commission has proposed the amendments to read as set forth at Annex A.

(2) *Sections 53.4, 53.15 and 53.18 (relating to limiting access to Commission property; Commission lakes or access areas under special time regulations; and additional restrictions)*. A recent review by Commission staff has revealed some overlap in the Commission's property regulations in §§ 53.4, 53.15 and 53.18. Therefore, the Commission proposes consolidating these regulations into one regulation (§ 53.4) and deleting §§ 53.15 and 53.18.

(3) *Sections 53.10 and 53.11 (relating to vehicles; and off-highway vehicles and snowmobiles).* The act of November 3, 1999 (P. L. 447, No. 41) (Act 41), which became effective on January 1, 2000, amended, among other things, the penalty provision of section 741 of the code. In light of this amendment, staff revisited the Commission's regulations relating to vehicles on Commission property. Commission staff also have received legislative inquiries regarding the legality of the use of registered all terrain vehicles (ATVs) on Commission property. In an effort to clarify the Commission's intent with regard to the use of vehicles on Commission property, the Commission proposes the amendments to §§ 53.10 and 53.11 to read as set forth at Annex A.

(4) *Section 61.1 (relating to Commonwealth inland waters).* A recent review of this regulation has revealed that a housekeeping correction is warranted. Therefore, the Commission proposes to amend this section to read as set forth at Annex A.

(5) *Section 93.4 (relating to certificate of registration).* One of the more common violations of the boating regulations is operating without the required registration certificate onboard. Often this is simply an oversight as the boater has left the certificate in the car, at the cottage or at home on the kitchen table. Commission policy is that citations usually are not issued when it is reasonable that the certificate is most likely available, just not on-board. An officer, however, must still be shown proof that the registration is valid. Current procedure requires that the owner produce an original certificate within a certain number of days for inspection by the officer. This sometimes causes inconvenience for both the officer and the violator as they arrange for verification.

The regulations provide a mail-in procedure for persons who are caught fishing without displaying a license. This procedure has been very successful and has resulted in greater efficiency and use of officer time. The Commission proposes to implement a similar procedure for boat registration certificates by adding a new subsection to § 93.4 to read as set forth at Annex A.

(6) *Sections 93.17 and 93.110 (relating to registration of abandoned boats; and boats that are junked, destroyed, lost, stolen or abandoned).* Although these regulations, as currently written, allow the Commonwealth, its agencies and political subdivisions to register or acquire title to any boat abandoned on areas under their ownership, the regulations do not extend to the Federal government and do not allow these entities to avail themselves of the salvor process. Therefore, the Commission proposes amending these sections to read as set forth at Annex A.

(7) *Section 97.3 (relating to sound producing devices).* As currently written, the requirement for sound producing devices contained in this section is different and, in some ways, inconsistent with the Federal Inland Navigation Rules. The purpose of sound producing devices is to allow motorboats to make the sound signals required by the Federal Navigation Rules. Boaters in this Commonwealth seldom use sound signals on small inland lakes and rivers. According to the Federal Inland Navigation Rules, the technical specifications for whistles and bells are only applicable to boats greater than 12 meters in length. Less than 400 of the 350,000 boats registered in this Commonwealth are 12 meters in length or greater. The current requirement in subsection (b)(1) is not complete, and the term bell is not defined in the Commission's regulations.

The current regulations go further than the Federal regulations by requiring unpowered vessels such as ca-

noes and kayaks to carry a mechanical means of making a sound signal. The Commission has received many complaints from unpowered boat owners (particularly boat livery operators) that this requirement places an inappropriate burden on paddlers and on businesses renting small, unpowered boats. There is little, if any, evidence that this requirement resolves a safety issue or that sound producing devices serve any real purpose on unpowered boats. Finally, the definitions in subsection (a) serve no purpose for regulating sound producing devices or providing useful information to the boating public.

The Commission proposes that § 97.3 be amended to remove those provisions that are inconsistent with the Federal rules, to add a general statement about the applicability of the Federal rules in this Commonwealth and to add a provision concerning sound device requirements for unpowered boats to read as set forth at Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on this Commonwealth or its political subdivisions. The proposed amendments to § 51.9 will impose modest costs on the private sector and the general public in that those who request copies of public records and other documents in the Commission's files will be charged 25¢ per letter or legal size page for such copies, \$1 per page or the actual cost of reproduction (whichever is greater) for oversize copies (in excess of legal size), \$2 for handling, plus the actual cost of postage or shipping. The other proposed amendments will impose no new costs on the private sector or the general public.

H. Public Comments

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

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-105. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter A. PRELIMINARY PROVISIONS

§ 51.9. Release of documents and records.

(a) **Consistent with the act of June 21, 1957 (P. L. 390, No. 212), known as Right-to-Know Law (65 P. S.**

§§ 66.1—66.4) and section 324 of the code (relating to Commission records), the Commission will make public records contained in its files available to citizens of this Commonwealth for inspection and examination at reasonable times and will allow requesters to make extracts and copies of the records subject to reasonable restrictions to safeguard the records and reasonable procedures on the time and place for making copies and extracts.

(b) Requests for release of public records contained in Commission files shall be made in writing and submitted to Executive Director, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000.

(c) If a photocopier or reproduction device under the control of the Commission is used to copy information released under this section, the requester will be charged 25¢ per letter or legal size page for the copies. If the Commission copies oversize pages (in excess of legal size), the charge will be \$1 per page or the actual cost of reproduction, whichever is greater. If the Commission mails copies of documents copied under this section to the requester, the requester will be charged \$2 for handling, plus the actual cost of postage or shipping. The charges shall be payable in advance by check or money order made payable to "Pennsylvania Fish and Boat Commission." The Commission may waive copy charges and mailing charges for good cause or in the public interest. When the total copying, handling and mailing charges for a request are \$10 or less, collection ordinarily will be waived.

CHAPTER 53. FISH AND BOAT COMMISSION PROPERTY

§ 53.4. Limiting access to Commission property and other restrictions.

(a) Commission-owned or -controlled property, including Commission lakes and access areas, may be closed to the public during hours as the Executive Director may direct. The Executive Director will publish a notice in the *Pennsylvania Bulletin* and will cause the hours to be posted at the site. Time restrictions imposed under this subsection will be effective upon publication in the *Pennsylvania Bulletin* and when posted at the site. It is unlawful for any person to enter or remain upon [the] Commission property during the times it is closed to public use, without the express written consent of the Executive Director or a designee.

* * * * *

(c) The Executive Director may impose additional restrictions on the use of Commission property, including prohibitions on use or possession of beer and alcoholic beverages and restrictions on fires at times and for periods as the Director deems appropriate for the protection and management of Commission-owned or -controlled property. The Executive Director will publish a notice in the *Pennsylvania Bulletin* and will cause the additional restrictions to be posted at the site. Additional restrictions imposed under this subsection will be effective upon publication in the *Pennsylvania Bulletin* and when posted at the site. It is unlawful to violate restrictions imposed by the Executive Director on behalf of the Commission under this subsection.

§ 53.10. Vehicles.

(a) *Registration required.* [A vehicle] Vehicles properly registered in conformity with 75 Pa.C.S. (relating to the Vehicle Code) [is], except all terrain vehicles (ATVs), are permitted on Commission-owned or -controlled property on those areas that are open to vehicular traffic, such as roadways, driveways, launch ramps and designated parking areas.

(b) *Prohibited vehicle operations.* It is unlawful to operate a vehicle on Commission property as follows.

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(5) In a manner not in conformity with posted traffic control signs or devices.

(6) On forest lands, grass areas, wetlands and lands under cultivation.

(7) On frozen lakes, ponds, rivers and streams.

(c) *Parking regulations.* It is unlawful to park a vehicle on Commission property except in a designated parking area. It is unlawful to park in an area designated for handicapped parking unless the vehicle clearly displays a disability plate or disability parking placard.

§ 53.11. Off-highway vehicles and snowmobiles.

(a) *General rule.* Except as provided in subsection (c), the use of off-road motorized vehicles [which are not registered and which are capable of off-highway use], including trail bikes, Tote Gotes, all terrain vehicles (ATVs), air cushioned vehicles, track vehicles, hydrofoils and the like, is prohibited on Commission-owned or -controlled property.

(b) It is unlawful to operate a snowmobile on Commission-owned or -controlled property except in areas designated for use by the Executive Director and so posted. The Commission will maintain a list of areas when use is permitted. In those areas where use of snowmobiles is permitted, the following conditions apply:

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(4) The operation of snowmobiles on frozen lakes, ponds, rivers and streams is prohibited.

(c) *Persons with disabilities.*

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

§ 53.15. [Commission lakes or access areas under special time regulations] (Reserved).

[The Executive Director may designate Commission lakes and access areas to be closed to public use during certain times. The Executive Director will publish a notice of designation in the *Pennsylvania Bulletin* and will cause the hours to be posted at the site. It is unlawful to enter upon or remain in Commission property during the posted hours when it is closed to the public without the express written consent of the Executive Director or his designee.]

§ 53.18. [Additional restrictions] (Reserved).

[The Executive Director may impose additional restrictions on use of Commission property, including but not limited to, time restrictions, prohibitions on use or possession of beer and alcoholic beverages, and restrictions on fires at times and for periods as he deems appropriate for the protection and management of Commission-owned or -controlled property. Additional restrictions imposed under this section will be effective when posted at the site. It is unlawful to violate restrictions imposed by the Executive Director on behalf of the Commission under this section.]

Subpart B. Fishing

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.1. Commonwealth inland waters.

| SPECIES | SEASONS | MINIMUM SIZE | DAILY LIMIT |
|-------------|-----------------|--------------|-------------|
| HERRING**** | Open year-round | No minimum | 50 |

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

Subpart C. Boating

CHAPTER 93. REGISTRATION AND NUMBERING

Subchapter A. REGISTRATION OF BOATS

§ 93.4. Certificate of registration.

(e) Boating without a certificate of registration onboard.

(1) When a resident of this Commonwealth is found operating a boat without the required certificate of registration onboard and claims that the boat is validly registered, the apprehending officer shall give the operator 7 days to produce the original certificate.

(2) If it is inconvenient for the operator to produce the certificate in person, the officer may permit the operator to mail the original certificate to the officer for verification. The operator shall provide a stamped self-addressed envelope for the return of the certificate. If the officer permits the operator to mail the original certificate to the officer, the officer shall provide the operator with a receipt or other documentation allowing continued operation of the boat during the period the original certificate is not in possession.

(3) If the operator fails to send the original certificate within the 7-day period, the officer shall institute summary proceedings against the operator in the manner prescribed by law.

§ 93.17. Registration of abandoned boats.

(b) Boats abandoned on private property. Subject to the following, a landowner, his lessee or his agent may register a boat that has been abandoned on his land or the waters immediately adjacent to his land for at least 3 months.

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[(7) The Commonwealth, its agencies and political subdivisions may register any boat abandoned on areas under their ownership by proceeding in the manner set forth in this section.]

(c) Boats abandoned on [Commonwealth] public property or waters. A person finding a boat abandoned on [the waters of this Commonwealth (not private property)] public property or waters—that is, property or waters under the ownership or control of the Commonwealth, its agencies and political subdivisions or the Federal Government—shall notify the Commission of the description and location of the boat as well as the date on which it was found. A person may notify the Commission by completing Form PFBC-R3, "Notice of Abandoned Boat Found on Commonwealth Waters" and mailing the form to the Commission.

(1) The Commission may take possession of a boat abandoned on [the waters of this Commonwealth] public property or waters or may authorize a salvor to take possession provided the salvor complies with these provisions, is a vehicle salvage dealer as defined in 75 Pa.C.S. § 1337 (relating to use of "Miscellaneous Motor Vehicle Business" registration plates), and holds a current, valid certificate of authorization issued by the Department of Transportation under 75 Pa.C.S. § 7302 (relating to certification of authorization).

* * * * *

(8) The Commonwealth, its agencies and political subdivisions and the Federal Government may register any boat abandoned on areas under their ownership or control by proceeding under subsection (b) or may follow the procedure in this subsection.

§ 93.110. Boats that are junked, destroyed, lost, stolen or abandoned.

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(b) Acquiring title to boats abandoned on private property.

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[(9) The Commonwealth, its agencies and political subdivisions may acquire title to any boat abandoned on areas under their ownership by proceeding in the manner set forth in this subsection.]

(c) Acquiring title to boats abandoned on [Commonwealth] public property or waters.

(1) A person finding a boat abandoned on [the waters of this Commonwealth (not private property)] public property or waters—that is, property or waters under the ownership or control of the Commonwealth, its agencies, political subdivisions or the Federal Government—shall notify the Commission of the description and location of the found boat as well as the date on which it was found.

(2) The Commission may take possession of a boat abandoned on [the waters of this Commonwealth]

public property or waters or may authorize a salvor to take possession if the salvor complies with this section, is a vehicle salvage dealer as defined in [section 1337 of the code] 75 Pa.C.S. § 1337 (relating to use of ["miscellaneous motor vehicle business"] Miscellaneous Motor Vehicle Business registration plates) and holds a current, valid certificate of authorization issued by the Department of Transportation under [section 7302 of the code] 75 Pa.C.S. § 7302 (relating to certification of authorization).

* * * * *

(9) The Commonwealth, its agencies and political subdivisions and the Federal Government may acquire title to any boat abandoned on areas under their ownership or control by proceeding under subsection (b) or may follow the procedure in this subsection.

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.3. Sound producing devices.

(a) [Definitions. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Danger signal—A signal of five or more blasts. It is used to warn other boats of a potential danger.

Whistle—A sound signaling appliance capable of producing a sound.

(b) *Equipment for sound signals.*

(1) A vessel of 12 meters (39.4 feet) or more in length shall have a whistle and a bell.

(2) A vessel of less than 12 meters (39.4 feet) in length shall carry some mechanical means of making a sound signal audible for a distance of 1/2 mile. This device may be either hand, mouth or power operated. An athletic coaches whistle is an acceptable sound producing device.

(3) Sound signaling devices shall be readily accessible to the operator or a passenger of the boat.]

Motorboats 12 meters or more in length. A motorboat 12 meters (39.4 feet) or more in length shall carry sound producing devices as prescribed by the Inland Navigation Rules Act of 1980 (33 U.S.C.A. §§ 2001—2073).

(b) *Motorboats less than 12 meters.* A motorboat less than 12 meters (39.4 feet) in length shall carry some mechanical means of making a sound signal. This device may be hand, mouth or power operated. An athletic coach's whistle is an acceptable sound producing device for small motorboats.

(c) *Unpowered boats.* Unpowered boat operators are required to have some means of making an efficient oral or mechanical sound signal that can be heard by another boat operator in time to avoid a collision.

(d) *Device accessibility.* Sound signaling devices shall be readily accessible to the operator of the boat.

[Pa.B. Doc. No. 00-562. Filed for public inspection March 31, 2000, 9:00 a.m.]