

PROPOSED RULEMAKING

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 611]

Home Care Agencies and Home Care Registries

Under section 809.1(d) of the act of July 7, 2006 (P. L. 334, No. 69) (35 P. S. § 448.809a(d)), the Department of Health (Department) is required to submit the proposed rulemaking regarding home care agencies and home care registries not only to the Legislative Reference Bureau (LRB), the Independent Regulatory Review Commission (IRRC), the Public Health and Welfare Committee of the Senate and the Health and Human Services Committee of the House of Representatives, but also to the Aging and Youth Committee of the Senate and the Aging and Older Adult Services Committee of the House of Representatives. The Department inadvertently failed to submit the proposed rulemaking to the Aging and Youth Committee of the Senate and the Aging and Older Adult Services Committee of the House at the time proposed rulemaking was submitted to the other required House and Senate Committees, IRRC and the LRB. To correct that omission, the Department resubmitted the proposed rulemaking to each chair of the four House and Senate Committees, IRRC and the LRB on August 6, 2007. The Regulatory Review section of the preamble to proposed rulemaking is corrected to read as follows:

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 6, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Committee on Health and Human Services, the House Committee on Aging and Older Adult Services, the Senate Committee on Public Health and Welfare and the Senate Committee on Aging and Youth. In addition to submitting the proposed rulemaking, the Department provided IRRC and the Committees with a copy of the Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

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

Contact Person

In addition, the Department is providing additional time for public comment. Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Janice Staloski, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA 17104-1579, (717) 783-8665 within 30 days after publication of this correction in the *Pennsylvania Bulletin*. For persons with disabilities, comments, suggestions and objections regarding the proposed rulemaking may also be submitted to Janice Staloski in alternative formats, for example, audio tape, Braille or by using TDD: (717)

783-6514. Persons with a disability who require an alternative format of this document (for example, large print, audio tape or Braille) should contact Janice Staloski to make the necessary arrangements.

ESTELLE B. RICHMAN,
Secretary

[Pa.B. Doc. No. 07-1395. Filed for public inspection August 3, 2007, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

General Provisions; Scientific Collectors' Permits

The Fish and Boat Commission (Commission) proposes to amend Chapter 51 (relating to administrative provisions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2008.

B. *Contact Person*

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

C. *Statutory Authority*

The proposed amendment to § 51.71 (relating to scientific collectors' permits) is published under the statutory authority of section 2905 of the code (relating to permits for scientific and educational fish collecting activities).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's regulations regarding scientific collectors' permits. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Under section 2905 of the code, the Executive Director, with the Commission's approval, may issue permits to catch fish in waters within or bordering on this Commonwealth at any season of the year and with any kind of devices without regard to size or possession limits to a person who possesses a valid Pennsylvania fishing license and is engaged in scientific or educational research or other collecting activities approved by the Commission. This section also authorizes the Commission to promulgate regulations and to establish fees.

In 1985, the Commission adopted § 51.71, which requires a valid and current scientific collector's permit issued by the Commission to collect, take or maintain for scientific or educational 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 or other

license or permit issued by the Commission (for example, venomous snake permit, organized reptile and amphibian hunt permit). Although this regulation was not promulgated until 1985, the Scientific Collector's Permit Program (SCP Program) was initiated by the Commission in January 1966 and revised several times over the years. In July 1978, the Commission established various fees for different permit types within the SCP Program through a statement of policy. Three types of permits with associated fees were established and those fees are the same today: Type 1 permits (Research) are \$10, assistants and permit amendments have no fee; Type 2 permits (Government) are free, assistants and permit amendments are free; and Type 3 permits (Consulting) are \$50, \$10 for each assistant and permit amendments are \$10.

The Natural Diversity Section within the Commission's Bureau of Fisheries, Division of Environmental Services, administers the SCP Program. The SCP Program has significant staff demands. Administering the SCP Program requires staff to review permit applications and process end-of-year permit reports. Reviewing the applications requires a technical review and substantial staff interaction with potential collectors, often resulting in changes to proposed collections. Permit collection reports are filed by staff—relevant collection information (that is, rare, threatened and endangered species data) is extracted from the reports and submitted to Pennsylvania Natural Heritage Program to be included in a Statewide database for rare species (Pennsylvania Natural Diversity Inventory).

In the past, the Commission issued, on average, approximately 120 scientific collectors' permits annually. However, in the past 5 years, the number of permits reviewed, amended and issued by Commission staff has increased substantially. In 2005, 397 permits were issued; in 2006, 520 permits and amendments were issued. To address increasing SCP Program demands, Commission staff have streamlined the permit application process and improved and standardized permit reporting by developing an interactive, Internet-based computer application that will be accessible to the public.

Although the fee structure is included in the statement of policy, it currently is not set forth in § 51.71. The Commission proposes to include the fee structure in § 51.71. In addition, this fee structure has not changed in 29 years. Therefore, the Commission also proposes to increase the permit fees to help offset inflation and increasing SCP Program costs (staff time, new Internet-based, interactive application). The Commission further proposes to formalize the long-standing statement of policy that defines and describes the three different permit types that the SCP Program offers by including its terms in § 51.71. The Commission also proposes house-keeping changes to reflect the current names of some of the permits referenced in the regulation. The Commission proposes to amend § 51.71 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements. The Commission currently offers the three permit types described in this proposed rulemaking, and the interactive, Internet-based computer application is intended to streamline the permitting process and to reduce the paperwork demands of the SCP Program.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

The increased fees will help offset the Commission's continuing expenses to administer the SCP Program and the costs of the interactive, Internet-based application.

The proposed rulemaking will increase fees for permit applicants. The fee for a Type I permit for Nonprofit Research and Education will increase from \$10 to \$30, assistants on Type I permits will remain free and the fee for a Type I permit amendment will increase from no fee to \$15. The fee for a Type II permit for Government remains free and assistants and permit amendment also remain free. The fee for a Type III permit for Consulting will increase from \$50 to \$150, the fee for assistants on Type III permits will increase from \$10 to \$30 and the fee for a Type III permit amendment will increase from \$10 to \$75.

With regard to all permit types, the Commission will utilize the fees to offset the costs associated with permit issuance and processing and data compilation. It is expected that the Commission will recover its costs for the permits for which fees are charged and that the Commission will absorb the costs associated with the free permits.

H. Public Comments

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

Comments also may be submitted electronically by completing the form at www.fish.state.pa.us/promo/form/regulation_comments.htm. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

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

Fiscal Note: 48A-195. 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 H. PERMITS FOR FISH COLLECTING ACTIVITIES

§ 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, [**individual rattlesnake hunter**] **venomous snake** permit, organized **reptile and amphibian** [**and reptile**] 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.**

[Pa.B. Doc. No. 07-1430. Filed for public inspection August 10, 2007, 9:00 a.m.]