

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 89]

Preparation of Forms

The Insurance Department (Department) proposes to amend Chapter 89 (relating to approval of life, accident and health insurance) to read as set forth in Annex A. This rulemaking is proposed under the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), section 314 of the Accident and Health Filing Reform Act (40 P.S. § 3801.314) and the Department's rulemaking authority under the Unfair Insurance Practices Act (40 P.S. §§ 1171.1—1171.15). See *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977) (further explaining the Insurance Commissioner's authority to promulgate regulations under the Unfair Insurance Practices Act).

Background and Purpose

This proposed rulemaking, as set forth in Annex A, will allow for the voluntary collection of demographic data, including questions related to race and ethnicity when certain criteria are met. Specifically, the proposed amendment to § 89.12 (relating to application forms) will allow insurers to collect data that will help them develop better tools to address inequities in life, accident and health insurance coverage. Moreover, this proposed amendment will be consistent with Federal and State efforts to address equity issues across society generally. For example, at the Federal level, the 2023 Notice of Benefit and Payment Parameters takes significant steps toward requiring health insurers to collect race and ethnicity data; beginning with the 2025 benefit year, health insurers will be required to collect it. Amending § 89.12(e) will allow the Commonwealth's health insurers to comply with this upcoming Federal requirement and remove an inconsistency between Federal and State provisions.

The provision, as currently written in § 89.12(e), addresses the inequities that were the focus of the landmark Civil Rights Act of 1964 (42 U.S.C. §§ 2000a—2000h-6), which prohibited “discrimination or segregation on the ground of race, color, religion or national origin.” Following that National precedent, on July 1, 1969, the Department issued § 89.12 for application forms, including: “Questions as to race or color are not permitted on the application.” See § 89.12(e).

In the 54 years since the 1969 issuance, society has continued to grapple with racial and ethnic equity issues. More recently, society has recognized that inequities can only be addressed if they are adequately identified. To identify those issues and measure improvement in addressing them, data is necessary. This proposed amendment will allow insurers to collect that data, if they choose, while continuing to prohibit insurers from using that data in an unfairly discriminatory manner. This is consistent with ongoing Federal initiatives outlined the 2023 Notice of Benefit and Payment Parameters and will allow the Commonwealth's regulations to remain consistent with Federal law.

Explanation of Regulatory Requirements

Proposed § 89.12(e) allows an insurer to include questions as to demographic factors, including race and ethnicity, on an application.

Proposed § 89.12(e)(1) requires an application to clearly state that the disclosure is voluntary.

Proposed § 89.12(e)(2) requires any questions as to the data to include the following options verbatim: (i) Prefer Not to Answer; (ii) Other.

Proposed § 89.12(e)(3) requires an insurer to provide, at the time of application or when the data is collected, the prospective insured with a written statement including that the data will be maintained as private, that the data may not be used by the insurer for eligibility determinations, underwriting or rating purposes, and that the insurer may not deny an application based on the applicant's refusal to answer the questions related to demographic data on the application.

Proposed § 89.12(e)(4) requires an insurer to provide to the insured a written explanation as to why the data is being requested by the insurer and how the data will be used to support efforts to provide equitable coverage.

Proposed § 89.12(e)(5) requires the insurer to provide written attestation to the Department that the application, collection and use of demographic data meets Federal and State laws regarding unfair discrimination, including that the data is maintained as private, the data may not be used for eligibility determinations, underwriting or rating purposes, and that the insurer may not deny an application based on the applicant's refusal to answer the question related to demographic data on the application.

Proposed § 89.12(e)(6) requires the insurer to submit the written attestation set forth in proposed § 89.12(e)(5) by 180 days after the effective date of the final-form rulemaking, the date the product is filed or the date that there is a material change to the data collection process even if no filing is required.

Proposed § 89.12(f) states that an insurer is not required to collect demographic information, including race and ethnicity at the time of application or otherwise.

External Comments

The Department circulated an exposure draft similar to this proposed rulemaking to several industry participants including the Insurance Federation of Pennsylvania, Inc., the Pennsylvania Association of Mutual Insurance Companies and several health insurers. The exposure draft was circulated on October 11, 2022. The Department has also discussed this topic informally with industry members over approximately the last year. The Department considered all comments, responded to several questions and incorporated revisions to this proposed rulemaking based upon stakeholder feedback.

Affected Parties

This proposed rulemaking will affect foreign and domestic insurers that issue individual and group life, accident and health insurance contracts in this Commonwealth.

Fiscal Impact

State government

There will not be any fiscal impact to the Department as a result of this proposed rulemaking.

General public

This proposed rulemaking will have no fiscal impact upon the general public.

Political subdivisions

This proposed rulemaking will have no fiscal impact upon political subdivisions.

Private sector

This proposed rulemaking will have no fiscal impact upon the private sector, except for a possible minimal impact to the regulated entities who choose to collect the data.

Paperwork

This proposed rulemaking would impose minimal additional paperwork on the Department because it would be reviewing attestations and related information submitted by insurers choosing to collect the demographic data. The Department does not anticipate that this additional review will materially impact its regulatory activities.

Effective Date / Sunset Date

This proposed rulemaking will become effective immediately upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Eric Carlisle, Regulatory Coordinator, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to ercarlisle@pa.gov or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 4, 2023, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final delivery of the rulemaking by the Department, the General Assembly and the Governor.

MICHAEL HUMPHREYS,
Acting Insurance Commissioner

Fiscal Note: 11-261. No fiscal impact; recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 89. APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE

Subchapter A. REQUIREMENTS FOR ALL POLICIES AND FORMS

PREPARATION OF FORMS

§ 89.12. Application forms.

(a) When submitting a policy form to which a copy of the application will be attached when the policy is issued,

a copy of the application shall be attached to the policy form. If the form of the application has already been approved, the form number and date of approval shall be shown either on the form or in the transmittal letter.

(b) If it is the practice of the insurer to attach a reduced size reproduction of the application to a form when issued, the application should be attached to each copy of the form submitted. The application should be legibly reproduced in the size to be used in the contract.

(c) An application which includes a provision for home office endorsements or corrections may not be approved for use unless it is specifically stipulated therein that a change may not be made in the amount of insurance, the age at issue, the plan of insurance or benefits applied for by the endorsements or corrections. This subsection does not apply to group applications.

(d) Applications shall contain clear and direct questions by the insurer permitting answers by the applicant only in the form of direct statements of known facts. Applications may not contain questions or representations based on indefinite or ambiguous terms or which are inconsistent with policy provisions and may not require the making of warranties by the applicant.

(e) [Questions as to race or color are not permitted on the application.] An insurer may include questions as to demographic factors, including race and ethnicity, on an application subject to all of the following:

(1) The application clearly states that the disclosure of the data is voluntary.

(2) Questions as to the data include the following answer options verbatim:

(i) Prefer Not to Answer.

(ii) Other.

(3) At the time of application or when the data is collected, the insurer provides to the insured a written statement that contains the following information:

(i) The data will be maintained as private.

(ii) The data may not be used by the insurer for eligibility determinations, underwriting or rating purposes.

(iii) The insurer may not deny an application based on the applicant's refusal to answer the questions related to demographic data on the application.

(4) At the time of application or when the data is collected, the insurer provides a written explanation to the insured regarding all of the following:

(i) Why the data is being requested by the insurer.

(ii) How the data will support efforts to provide equitable coverage.

(5) The insurer provides a written attestation to the Department that the insurer's application, collection and use of data meets Federal and State law regarding unfair discrimination, including all of the following:

(i) The insured's data is maintained as private.

(ii) The insured's data may not be used by the insurer for eligibility determinations, underwriting or rating purposes.

(iii) The insurer may not deny an application based on the applicant's refusal to answer the questions related to demographic data on the application.

(6) The insurer shall provide the written attestation in paragraph (5) for each product by the following dates:

(i) (The blank refers to the date 180 days following the effective date of the final-form rule-making), for products in existence as of the effective date of this regulation.

(ii) The date the product is filed.

(iii) The date that there is a material change to the application or data collection process, even if not required to be filed.

(f) Nothing in this subsection may be construed to require an insurer to collect demographic information, including race and ethnicity data, at the time of application or otherwise.

[Pa.B. Doc. No. 23-490. Filed for public inspection April 14, 2023, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission's regulations pertaining to the fees of fishing licenses and permits.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on December 1, 2023.

B. Contact Person

For further information on this proposed rulemaking, contact Robert T. Caccese, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The proposed amendment to § 63.57 (relating to license, permit and issuing agent fees) is published under the statutory authority of section 322.1 of the code (relating to power to set fees).

D. Purpose and Background

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

The Commonwealth's fishing and boating programs are paid for by anglers and boaters through the User pays, User Benefits Model, primarily from the sale of fishing licenses, permits and boat registrations.

The Commission has two legislatively authorized special funds: the Fish Fund and Boat Fund. These funds receive money mainly from fishing license and permit fees, boat registration fees, fines and penalties, tax refunds of motorboat fuel and Federal funds.

By far, the largest source of revenue for the Fish Fund is from fishing license and permit fees, and these fees account for more than 67% of Fish Fund revenues.

Commission staff regularly monitor the status and fiscal health of the Fish Fund to ensure that adequate funds are available to maintain and support programs designed to meet the expectations of anglers and other users of this Commonwealth's aquatic resources.

An adjustment to the fees for fishing licenses and permits is needed to cope with inflationary pressures, maintain and improve existing programs, and to address and meet anglers and boaters' desires for:

- Strategic and timely fisheries management to protect, conserve and enhance the aquatic resources of this Commonwealth.
- Critical infrastructure improvements and maintenance efforts for State fish hatcheries, hazardous dams, boat launch access areas and ramps, and other Commission-owned facilities to improve and maintain fishing opportunities.
- Upgrades and replacement of equipment, vehicles and watercraft for customer and employee safety and for sustained service delivery.
- Aquatic resource field and classroom education and angler information programs.
- Conservation law enforcement.
- Maintaining operations and offsetting inflationary and supply chain constraint costs.

If new revenues are not in place for the 2024 license year, the Commission will not be able to maintain adequate levels of services to this Commonwealth's anglers, let alone respond to anglers' desires for expanded efforts in many program areas.

To maintain adequate funding to sustain these important programs and invest in the future, the Commission is seeking a modest fee increase for all fishing license and permit categories as shown in the following table:

License Category	Fee		
	Current	Charge	Proposed
Resident Annual	\$23.50	\$2.50	\$26
Nonresident Annual	\$55	\$4	\$59
Senior Resident Annual	\$11.25	\$1.25	\$12.50
Senior Resident Lifetime	\$75	\$10	\$85

License Category	Fee		
	Current	Charge	Proposed
3-Day Tourist	\$27.50	\$2.50	\$30
7-Day Tourist	\$35	\$2.50	\$37.50
1-Day Resident	\$11.25	\$1.25	\$12.50
1-Day Tourist	\$27.50	\$2.50	\$30
Trout Permit	\$10.50	\$2.50	\$13
Trout/Lake Erie Permit	\$16.50	\$2.50	\$19

F. Paperwork

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

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. This proposed rulemaking will increase fees for license and permit buyers as outlined in the summary of proposal.

H. Public Comments

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

Comments also may be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

(Editor’s Note: See 53 Pa.B. 2150 (April 15, 2023) for a notice relating to this proposed rulemaking.)

Fiscal Note: 48A-343. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.57. License, permit and issuing agent fees.

(a) *License fees.* The following fees apply to fishing licenses issued under this chapter and shall be paid into the Fish Fund:

- (1) Resident Annual Fishing License, [~~\$23.50~~] **\$26.**
- (2) Senior Resident Annual Fishing License, [~~\$11.25~~] **\$12.50.**
- (3) Senior Resident Lifetime Fishing License, [~~\$75~~] **\$85.**
- (4) Nonresident Annual Fishing License, [~~\$55~~] **\$59.**
- (5) Seven-Day Tourist Fishing License, [~~\$35~~] **\$37.50.**
- (6) Three-Day Tourist Fishing License, [~~\$27.50~~] **\$30.**
- (7) One-Day Resident Fishing License, [~~\$11.25~~] **\$12.50.**
- (8) One-Day Tourist Fishing License, [~~\$27.50~~] **\$30.**

(b) *Permit fees.* The following fees apply to permits issued under this chapter and shall be paid into the Fish Fund:

- (1) Trout permits, [~~\$10.50~~] **\$13.**
- (2) Combination trout permit and Lake Erie permit, [~~\$16.50~~] **\$19.**

(c) *Effective date.* The fees imposed under subsections (a) and (b) are effective beginning December [~~31, 2022~~] **1, 2023.**

[Pa.B. Doc. No. 23-491. Filed for public inspection April 14, 2023, 9:00 a.m.]