

Amend Pda 506.04(d), effective 8-23-03 (Document #7940), cited and to read as follows:

Pda 506.04 Mooring Permit Applications for Existing Moorings.

(d) Any applicant filing a mooring permit application in accordance with this section shall return a completed application with the required information, documentation, and permit fee to the division's office no later than March 1. Failure to meet the application deadline, whether or not the applicant received an application form with information pre-entered by the division, shall result in a denial in accordance with Pda 507, unless the applicant files a completed application with the required information, documentation, permit fee, and late application fee within 10 business days after March 1. An applicant who fails to comply with the March 1 deadline or the late application deadline shall not submit an application under this section, but may make an application pursuant to Pda 506.01, including possible placement on a wait list under Pda 509, unless the reason for the late application was one of the reasons listed in Pda 514.04(d)(1)c or Pda 514.05(d)(1)c. If the applicant fails to comply with the March 1 deadline or the late application deadline for one of the reasons listed in Pda 514.04(d)(1)c or Pda 514.05(d)(1)c and wishes to appeal the permit denial to the authority under Pda 514.06, the applicant shall first file his or her application for reconsideration with the division director under Pda 514.03.

Amend Pda 509.07(a), effective 8-23-03 (Document # 7940), as amended effective 10-1-04 (Document # 8184), cited and to read as follows:

Pda 509.07 Mooring Wait List Renewal Applications.

(a) An applicant who seeks to remain on a mooring wait list(s) shall renew his or her wait list status annually by March 1 of each year by submitting a mooring wait list application in accordance with Pda 509.03 and payment of the wait list fee, or within 10 business days after March 1 by submitting a mooring wait list application in accordance with Pda 509.03 and payment of the wait list late fee.

Change the part heading for Pda 514 to read as follows:

PART 514 RECONSIDERATION AND APPEAL

Adopt Pda 514.01, and renumber existing Pda 514.01 as Pda 514.02, so that Pda 514.01 reads as follows:

Pda 514.01 Definitions.

(a) "Application period" means the period of time between January 15 and 10 business days after March 1 of the year for which the mooring permit application was submitted.

(b) "Incapacitated" means a physical or mental condition that results in:

(1) The inability of an individual to:

a. Walk unassisted; or

b. Drive unassisted; or

(2) The confinement of an individual to a location(s) for the purpose of receiving medical or rehabilitative treatment or care.

Readopt with amendments Pda 514.02, effective 8-23-03 (Document #7940), as amended effective 12-16-06 (Document #8775), and renumber as Pda 514.03, to read as follows:

Pda 514.03 Requirements for Petition for Reconsideration. A petition for reconsideration shall:

- (a) Specify the date of the challenged decision;
- (b) Specify every reason that the action taken by the division director or authority was unlawful or unreasonable, including any error of law or error of fact;
- (c) Include as an attachment a copy of the application or request that was denied or failed to receive approval;
- (d) Include any new or additional information relevant to the matter proposed for reconsideration that was not available at the time the application was filed or the revocation was made;
- (e) In the case of denial of a permit because of a late filing under Pda 506.04(d), the reason for the late filing; and
- (f) Include the following certification:

“I certify under penalty of law that I have personally examined, and am familiar with, the information submitted in this petition for reconsideration and all of its attachments. I certify that the statements and information submitted therewith are to the best of my knowledge and belief true, accurate and complete.”

Readopt with amendments Pda 514.03, effective 8-23-03 (Document #7940), as amended effective 10-1-04 (Document #8184), and renumber as Pda 514.04, to read as follows:

Pda 514.04 Reconsideration by Division Director; Granting of Permit under Certain Circumstances.

- (a) A petition for reconsideration by the division director:
 - (1) For revocation of a permit pursuant to Pda 507.03 shall be filed with the division director within 10 calendar days from receipt of notice of the revocation; and
 - (2) For a permit denial pursuant to Pda 506.06(f), Pda 506.07(h), Pda 506.08(h), or Pda 506.10(f), shall be filed with the division director within 10 calendar days from receipt of notice of the permit denial.
- (b) The division director shall:
 - (1) Reconsider a permit revocation or denial within 10 business days of receipt of the petition for reconsideration; and

(2) Notify the petitioner of his or her decision under (c) below within 10 business days of reconsideration.

(c) When reconsidering the decision to deny or revoke the permit, the division director shall consider all information on file with division relating to the denied or revoked permit and any new or additional information relevant to the matter under reconsideration that was not available regarding a permit:

(1) Denial, when the application in question was submitted; or

(2) Revocation, when the decision to revoke a permit was rendered.

(d) The division director shall issue the permit sought after in the petition for reconsideration if, after reconsideration, the division director finds:

(1) One or more of the following:

a. It more likely than not that the decision to deny or revoke a permit was based on an error of law or fact;

b. That there was a lack of facts that could reasonably sustain the decision to deny or revoke the permit; or

c. In the case of denial of a permit because of a late filing under Pda 506.04(d), that:

1. The petitioner was temporarily incapacitated for:

(i) Fifty percent or more of the application period; or

(ii) One day or more during the final 10 days of the application period;

2. The petitioner was on active military service at any time during the application period;

3. The late filing was caused by the failure of any state or governmental agency to timely provide the petitioner with documentation required for an application under Pda 500; or

4. A death in the immediate family occurred during the final 10 days of the application period. For the purposes of this paragraph, "immediate family" means grandparents, parents, siblings, spouse, children, or grandchildren; and

(2) All of the following:

a. The petition for reconsideration was timely filed in accordance with (a) above;

b. The petition for reconsideration filed by the petitioner meets all of the requirements of Pda 514.03; and

c. The petitioner:

1. Meets all of the requirements under Pda 500 for the permit;

2. Has provided written documentation for any reason claimed under (1)c. above, including, but not limited to:

(i) In the case of temporary incapacitation:

i. A signed letter from a doctor, nurse, or other medical provider or caregiver attesting to the petitioner's incapacitation;

ii. A copy of a bill or invoice from an institution where the petitioner received medical or rehabilitative treatment or care; or

iii. A copy of a statement from an insurance company showing that costs for medical or rehabilitative treatment or care were submitted to the company for services for the petitioner;

(ii) In the case of military service, a signed letter from the petitioner's commanding officer or supervisor attesting to the petitioner's military service;

(iii) In the case of the failure of any state or federal agency to provide the petitioner with documentation needed for an application under Pda 500, a copy of correspondence between the petitioner and a state or governmental agency, showing that the petitioner timely sought documentation needed for an application under Pda 500, but was not provided with the documentation in a timely manner; or

(iv) In the case of a death in the immediate family, to identify the name of the deceased, the relationship to the petitioner, and the date of death; and

3. Has paid the mooring permit reapplication late fee, in the case of petition granted under (1)c. above.

(e) The division director shall deny the request to issue or reinstate the permit if, after reconsideration, the division director finds that:

(1) It is more likely than not that the decision was not based on any error of law;

(2) There were facts reasonably sustaining the decision;

(3) In the case of a late filing under Pda 506.04(d), the petitioner failed to meet the requirements under (d)(1)c. above;

(4) The petition for reconsideration was not timely filed in accordance with (a) above;

(5) The petition for reconsideration filed by the petitioner does not meet all of the requirements of Pda 514.03; or

(6). The petitioner:

a. Does not meet all of the requirements under Pda 500 for the permit;

- b. Has not provided written documentation for any reason claimed under (d)(1)c. above; or
- c. Has not paid the mooring permit reapplication late fee, in the case of petition filed under (d)(1)c. above.

Amend Pda 514.04(c)-(e), effective 8-23-03 (Document #7940), as amended effective 10-1-04 (Document #8184), and renumber Pda 514.04 as Pda 514.05, cited and to read as follows:

Pda 514.05 Reconsideration by Authority for Commercial for Hire Moorings and Commercial Moorings.

(c) When making a decision on a petition for reconsideration, the authority shall consider all information on file with the division concerning the authority's denial under Pda 514.02(b) and any new or additional information relevant to the matter under reconsideration that was not available regarding:

- (1) A permit denial, when the application in question was submitted; or
- (2) The transfer of a commercial mooring permit, when the decision to refuse the permit transfer was rendered.

(d) The authority shall remand the matter to the division director for issuance of the permit or for granting a request for a transfer sought after in the petition for reconsideration, if, after reconsideration, the authority finds:

- (1) One or more of the following:
 - a. It more likely than not that the authority's decision concerning the issuance or transfer of the mooring was based on an error of law or fact;
 - b. That there was a lack of facts that could reasonably sustain the decision to deny or revoke the permit; or
 - c. In the case of denial of a permit because of a late filing under Pda 506.04(d), that:
 - 1. The petitioner was temporarily incapacitated for:
 - (i) Fifty percent or more of the application period; or
 - (ii) One day or more during the final 10 days of the application period;
 - 2. The petitioner was on active military service at any time during the application period;
 - 3. The late filing was caused by the failure of any state or governmental agency to timely provide the petitioner with documentation required for an application by Pda 500; or
 - 4. A death in the immediate family occurred during the final 10 days of the application period. For the purposes of this paragraph, "immediate family" means grandparents, parents, siblings, spouse, children or grandchildren; and

(2) All of the following:

a. The petition for reconsideration was timely filed in accordance with (a) above;

b. The petition for reconsideration filed by the petitioner meets all of the requirements of Pda 514.03; and

c. The petitioner:

1. Meets all of the requirements under Pda 500 for the permit or transfer;

2. Has provided written documentation for any reason claimed under (1)c. above, including, but not limited to:

(i) In the case of temporary incapacitation:

i. A signed letter from a doctor, nurse, or other medical provider or caregiver attesting to the petitioner's incapacitation;

ii. A copy of a bill or invoice from an institution where the petitioner received medical or rehabilitative treatment or care; or

iii. A copy of a statement from an insurance company showing that costs for medical or rehabilitative treatment or care were submitted to the company for services for the petitioner;

(ii) In the case of military service, a signed letter from the petitioner's commanding officer or supervisor attesting to the petitioner's military service;

(iii) In the case of the failure of any state or federal agency to provide the petitioner with documentation needed for an application under Pda 500, a copy of correspondence between the petitioner and a state or governmental agency, showing that the petitioner timely sought documentation needed for an application under Pda 500, but was not provided with the documentation in a timely manner; or

(iv) In the case of a death in the immediate family, to identify the name of the deceased, the relationship to the petitioner, and the date of death; and

3. Has paid the mooring permit reapplication late fee, in the case of petition granted under (1)c. above.

(e) The authority shall deny the request to issue or transfer the permit specified in Pda 514.02(b) if, after reconsideration, the authority finds that:

(1) It is more likely than not that the decision was not based on any error of law;

(2) There were facts reasonably sustaining the decision;

- (3) In the case of a late filing under Pda 506.04(d), the petitioner failed to meet the requirements under (d)(1)c. above;
- (4) The petition for reconsideration was not timely filed in accordance with (a) above;
- (5) The petition for reconsideration filed by the petitioner does not meet all of the requirements of Pda 514.03; or
- (6). The petitioner:
 - a. Does not meet all of the requirements under Pda 500 for the permit or transfer;
 - b. Has not provided written documentation for any reason claimed under (d)(1)c. above; or
 - c. Has not paid the mooring permit reapplication late fee, in the case of petition filed under (d)(1)c. above.

Adopt Pda 514.06 – Pda 514.14 to read as follows:

Pda 514.06 Appeal to Authority; Standard of Review.

(a) If the division director has denied a request to issue the permit sought after in a petition for reconsideration under Pda 514.04, the petitioner may appeal to the authority within 10 calendar days after receipt of written notice of denial by the division director.

(b) The appellant shall bear the burden of proving that the decision of the division director to deny appellant's request to issue the permit sought after in a petition for reconsideration under Pda 514.04 was based on an error of law or fact or there was a lack of facts that could reasonably sustain the division director's decision.

(c) The authority shall accept all determinations of the division director made under Pda 514.04 upon questions of fact as lawful and reasonable unless the appellant specifically rebuts such determination of fact as unlawful or unreasonable.

Pda 514.07 Requirements for Appeal. A request for appeal shall:

(a) Specify the date notice of the division director's denial of the request to issue the permit sought after in a petition for reconsideration was received by the appellant;

(b) Specify every reason that the action taken by the division director or authority was contrary to Pda 500 or otherwise unlawful or unreasonable, including any error of law or error of fact;

(c) Include as an attachment a copy of the application or request that was denied or failed to receive approval;

(d) Include any new or additional information relevant to the matter on appeal that was not available at the time the request for reconsideration was made to the director under Pda 514.01;

(e) Specify the reason for the late filing and include as an attachment written documentation supporting the reason specified for late filing; and

(f) Include the following certification:

“I certify under penalty of law that I have personally examined, and am familiar with, the information submitted in this appeal and all of its attachments. I certify that the statements and information submitted therewith are to the best of my knowledge and belief true, accurate and complete.”

Pda 514.08 Referral of Matter to Board Member for Recommendation; Procedure for Board Member.

(a) The chair of the board shall designate a board member to review appeals to the authority under Pda 514.06.

(b) The board designate shall:

(1) Notify the appellant in writing that the board designate will be reviewing the matter on appeal on behalf of the board and preparing a recommended decision regarding the appeal for consideration and action by the board;

(2) Provide the appellant an opportunity, including date, time, and location, to meet with the board designate and present his or her information and argument regarding the appeal, provided that the meeting shall occur within 15 business days of the filing of the appeal with the authority;

(3) Notify the appellant that he or she may bring counsel or a personal representative to the meeting;

(4) Notify the appellant that any written information, testimony or argument not previously submitted during reconsideration by the division director shall be submitted to the board designate not later than 5 business days before the date of the meeting with the board designate; and

(5) Notify the appellant that the meeting with the board designate will be recorded.

(c) The division director shall provide the board designate a copy of all information concerning the matter in the possession of the division director.

(d) The following shall apply at the meeting with the board designate:

(1) The board designate shall exclude any additional written information, testimony or argument that was not submitted in accordance with (b)(4) above unless the board designate finds good cause for appellant's failure to comply with (b)(4) above and that late submission was not intended to delay the appeal or the meeting with the board designate. For purposes of this paragraph, “good cause” means that the appellant did not discover, learn of, or formulate the information, testimony, or argument in time to submit such information, testimony, or argument in accordance with (b)(4) above and could not have discovered, learned of, or formulated such information, testimony, or argument with reasonable diligence to comply with (b)(4) above;

(2) The appellant or his or her counsel or representative may direct questions to the board designate, including questions for a division representative(s) present at the meeting;

(3) The division staff may direct questions to the board designate, including questions for appellant or his or her counsel or representative present at the meeting;

(4) The appellant's questions for the division representative(s) and the division's questions to the appellant or appellant's representative shall be asked only by the board designate; and

(5) The board designate may exclude irrelevant, immaterial, or unduly repetitious information, testimony or argument.

(e) Within 10 business days after the meeting with the board designate under (d) above, the board designate, after reviewing the information provided by the division director and the appellant, and after meeting with division staff and the appellant, if the appellant requested such a meeting, shall make a written recommendation to the authority regarding the appeal. The board designate shall at the same time send to the appellant, by first class mail, a copy of the recommendation made to the authority.

Pda 514.09 Authority Action on Appeal.

(a) Within 10 business days of receipt of a recommendation from a board designate, the authority shall notify the appellant in writing:

(1) That the authority will be reviewing the board designate's recommendation regarding the appeal;

(2) Of the date, time, and location of the regularly scheduled board meeting at which the review is scheduled, provided that the meeting shall not be sooner than 20 calendar days from the receipt of the board designate's recommendation under Pda 514.08(e);

(3) That he or she may bring counsel or a personal representative to the meeting; and

(4) That the meeting with the board will be recorded.

(b) At the board meeting when the appeal is scheduled, the authority shall consider:

(1) All information on file with the division concerning the matter;

(2) All information submitted to the authority or board designate under Pda 514.07 and Pda 514.08;

(3) Any additional written information not previously submitted under Pda 514.07 or Pda 514.08, provided the chair of the authority finds good cause for appellant's failure to comply with Pda 514.07 or Pda 514.08 and that late submission was not intended to delay the appeal or the meeting with the authority. For purposes of this paragraph, "good cause" means that the appellant did not discover or learn of the information in time to submit such information in accordance with Pda 514.07 or Pda 514.08 above and could not have discovered or learned of such information with reasonable diligence to comply with Pda 514.07 or Pda 514.08;

(4) Any oral statement or argument made by the appellant or his representative or division staff; and

(5) The recommendation of the board designate.

(c) The following shall apply at the board meeting:

(1) The appellant may bring counsel or a personal representative;

(2) The authority shall exclude any additional written information, testimony or argument that was not submitted in accordance with Pda 514.07 and Pda 514.08 unless the chair of the authority finds good cause for appellant's failure to comply with Pda 514.07 and Pda 514.08 and that late submission was not intended to delay the appeal. For purposes of this paragraph, "good cause" means that the appellant did not discover, learn of, or formulate the information, testimony, or argument in time to submit such information, testimony, or argument in accordance with Pda 514.07 or Pda 514.08 above and could not have discovered, learned of, or formulated such information, testimony, or argument with reasonable diligence to comply with Pda 514.07 or Pda 514.08; and

(3) Any oral information, testimony or argument may be received, but the chair or other presiding officer in the chair's absence shall exclude irrelevant, immaterial, or unduly repetitious information, testimony or argument, including without limitation, information, testimony or argument included in or with the division's file regarding the appellant or the written recommendation of the board designate.

Pda 514.10 Decision by Authority on Appeal. The authority shall render a decision regarding the appeal no later than the next regularly scheduled board meeting following any board meeting held under Pda 514.09.

Pda 514.11 When Matter Remanded to Division Director; Notification of Decision of Authority.

(a) If the authority determines that the permit should be granted because the appellant has met its burden of proving by a preponderance of the evidence that the decision of the division director to deny the appellant's request to issue the permit sought after in the petition for reconsideration was based on an error of law or fact or there was a lack of facts that could reasonably sustain the division director's decision, the authority shall remand the matter to the division director for action in accordance with its decision.

(b) The authority shall notify the appellant of its decision and provide a written copy thereof within 10 business days of issuing a decision pursuant to 514.10.

Pda 514.12 Removal of Representatives.

(a) Upon making a finding of misconduct on the part of any representative appearing before the director, authority or board designate, as applicable, the director, authority or board designate shall prohibit that individual from acting as a representative for the pending matter.

(b) For purposes of this section, misconduct means:

(1) Behavior that is disruptive to the orderly conduct of the reconsideration or appeal; or

(2) A consistent or recurring failure to:

a. Meet deadlines; or

b. Comply with the provisions of Pda 514.

(c) Prior to making a finding of misconduct so as to warrant the imposition of such prohibition, the director, authority or board designate, as applicable, shall:

(1) Inform the representative and the party represented by the representative to the proceeding of the proposed prohibition; and

(2) Provide an opportunity for the representative and the party represented by the representative to address the director, authority or board designate, as applicable, regarding why the prohibition should or should not be imposed.

Pda 514.13 Requests to Extend Time.

(a) Any person seeking reconsideration or appellant may ask the director, authority or board designate, as applicable, to extend any time limit established by Pda 514.

(b) A request for an extension of time shall be made in writing to the director, authority or board designate, as applicable, before the expiration of the prescribed period.

(c) Division staff shall be given an opportunity to object within 5 business days of receiving a request to extend time.

(d) The director, authority or board designate, as applicable, shall grant the requested extension if it determines that:

(1) The time period is not mandated by statute;

(2) One of the following applies:

a. An extension is necessary to conduct a more effective reconsideration or appeal; or

b. The person seeking reconsideration, the appellant, or their representative(s) is incapacitated, has suffered a death in the family, or has otherwise been delayed or prevented from meeting the applicable deadline by unforeseeable circumstances beyond the party's control; and

(3) No person objects to the extension or, if a person does object, the reason(s) for granting the extension outweigh the reason(s) for denying the extension.

Pda 514.14 Continuance.

(a) Any appellant or person seeking reconsideration may request that a meeting conducted pursuant to Pda 514 be continued for reasonable cause and reconvened or rescheduled.

(b) Prior to filing a request for a continuance of any scheduled meeting regarding a pending reconsideration or appeal made in advance of the meeting, the appellant or person seeking reconsideration seeking the continuance shall seek concurrence with the request from division staff.

(c) A request for a continuance of a meeting with the director, authority or board designate, as applicable, made in advance of such meeting shall:

(1) Be in writing;

(2) State the reason(s) for the request;

(3) Be delivered or received filed at least 5 calendar days before the scheduled meeting date; and

(4) State whether the division staff agree or disagree with the request or did not respond to the request for concurrence.

(d) A request for a continuance made at a scheduled meeting may be made orally provided notice of such request is recorded by the division director, authority or board designate, as applicable.

(e) The division director, authority or board designate shall grant the request if he determines that reasonable cause exists and that no person will be materially prejudiced by the delay.

(f) For purposes of this section, reasonable cause shall include:

(1) Unavailability of an individual appellant or person seeking reconsideration, or representative, or witness;

(2) The participants believe that an informal resolution is possible and need more time to resolve the matter; or

(3) The appellant or person seeking reconsideration or the division are awaiting information, reports, data, or a related court decision which is material to the reconsideration or appeal.

(g) Any grant of a continuance shall specify the time and place at which the meeting shall be rescheduled. The division director, authority or board designate, as applicable, shall provide notice of a rescheduled meeting regarding the reconsideration or appeal in such a manner as is appropriate to ensure that reasonable notice of at least 10 calendar days shall be given of the time and place of the continued meeting.