

Notice Number 2019-69Rule Number Pda 501-511, 513-515

1. Agency Name & Address:

**Pease Development Authority
Division of Ports and Harbors
555 Market St.
Portsmouth, NH 03801**

2. RSA Authority: RSA 21-G:42, X (c)3. Federal Authority: N/A

4. Type of Action:

Adoption _____

Amendment _____

Repeal _____

Readoption XReadoption w/amendment X5. Short Title: **Rules Regarding Permitting and Setting Moorings and Anchorages**

6. (a) Summary of what the rule says and of any proposed amendments:

Chapter Pda 500 governs moorings and anchorages. Part Pda 512 governs mooring permit fees but is exempt from RSA 541-A pursuant to RSA 12-G:42, XI and is not part of this proceeding. Through Parts Pda 503-Pda 511 and Pda 513-Pda 515 the Pease Development Authority, Division of Ports and Harbors (PDA-DPH), specifies the rules for administering a system for permitting moorings to be set and issued in state tidal waters. Most of the rules are scheduled to expire 8-20-19 but are subject to extension pursuant to RSA 541-A:14-a.

This proposal readopts without change Parts Pda 501, 502, and 503 on, respectively, the purpose and scope of Pda 500, definitions, and required mooring permits and mooring use. This proposal also readopts without change Pda 508, Pda 513, Pda 514, and Pda 515 on, respectively, transfer of mooring permits, emergency moorings, reconsideration and appeal, and anchorage.

The following amendments are proposed to Parts Pda 504-Pda 511:

- **Pda 504.01 (a) allows the Harbormaster and permit holder to consult rather than meet with a mooring permit holder when the mooring location is determined. It is not necessary to physically meet with a mooring permit holder to determine a mooring location.**
- **Pda 505.03 (c)(2) and Pda 505.03(c)(3) contain corrections to support changes within Pda 510.05 which specifies mooring equipment requirements.**
- **Pda 506.04 (c)(1) removes the prohibition against being able to change the category of a mooring permit from general to commercial only at time of renewal, and new paragraph (g) allows the mooring permit holder to change the category at any time during the permit year provided the mooring permit holder meets all the requirements under Pda 506.08.**
- **Pda 506.07 and Pda 506.10 (c)(1) remove the requirement to produce a NH state “tidal” registration.**
- **Pda 507.03 (a)(18) would, after notice and opportunity for a hearing, require the Director to revoke the permit of a mooring permit holder if he or she has been convicted of a crime in any jurisdiction in which the mooring was used in the furtherance of a criminal activity. For example, a mooring permit holder convicted for drug trafficking where he or she used the mooring in the furtherance of the crime, or a mooring permit holder who is convicted under Title XVIII of the New Hampshire statutes for stealing another fisherman’s lobster gear as prohibited under RSA 211:31, Limitation.”**
- **Pda 509.01 (b)(8)a. corrects the location of Hampton Harbor so as not to be confused with Hampton Beach State Park as previously listed.**
- **Pda 509.06 (c)(3) corrects the spelling of the word “wait list” to be consistent with the rest of the rules.**
- **Pda 510.04 removes a reference to Pda 510.05 provisions which are proposed to be removed from the Pda 500 rules.**

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- **Pda 510.05**, removes the provision for the Division to establish a requirement for minimum mooring standards. According to this rule, the State of New Hampshire, Pease Development Authority, acting through its Division of Ports and Harbors (“the Division”), is responsible for determining the size, weight, and construction of the 1500 +/- moorings in the tidal zone of State waters. To date, the Division has not been able to discover where the weight, chain, and pennant requirements, contained within Table 500.1 Minimum Mooring Standards, derive. The Division being held to a one-size-fits-all table of weights that are not based on any recognized standard is fundamentally unfair to the mooring permit holder. The arbitrary nature of these requirements causes undue cost to mooring permit holders. In addition, should the mooring suffer a failure which causes damage to the mooring permit holders or another person’s property, the Division could be held accountable. Further, certain areas designated as “special aquatic sites” by the Army Corps of Engineers require environmentally friendly moorings (e.g. helical moorings) to protect eel grass and similar vegetation. The Division’s opinion is that a marine construction company specializing in the installation of moorings is in a much better position to advise the permit holder of the proper gear needed for the mooring based on the specific location and type of vessel.
- **Pda 511.01 –Pda 511.02** eliminate the requirement to supply a summer address, summer phone number, block weight and type, and date of last inspection, in accordance with the changes to Pda 510.05 and the requirement that the applicant provide the proposed or existing location of the mooring as the Division captures that information at time of initial application.
- **Pda 511.03-Pda 511.05** eliminate the requirement to supply block weight and type in accordance with the changes to Pda 510.05 and the requirement that the applicant provide the proposed or existing location of the mooring as the Division captures that information at time of initial application.

6. (b) Brief description of the groups affected:

Current and potential mooring permit holders within the state tidal waters which include: Cocheco River, Exeter Town Landing, Portsmouth Harbor and sub-fields, Great Bay, Hampton and sub-fields, Gosport Harbor, Lamprey River, Little Bay and sub-fields, Little Harbour, Newfields Town Landing, Oyster River, certain areas of the Piscataqua River including Newington Town Landing, Bloody Point and Hilton Park, Rye Harbor, Sagamore Creek, and Seabrook. The type of moorings include general use, shorefront property owners, commercial use, commercial mooring for hire, non-revenue, and temporary seasonal moorings. Mooring permit wait list applicants are also affected.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Number	State Statute Implemented
Pda 501-Pda 502	RSA 12-G:42, III, VI; 12-G:50, I(b), (c), (f)
Pda 503.01	RSA 12-G:42, III, VI; 12-G:50, I(b)
Pda 503.02	RSA 12-G:42, III, VI; 12-G:50, I(b), (f)
Pda 504	RSA 12-G:42, III, VI; 12-G:50, I(b)
Pda 505-Pda 508.02	RSA 12-G:42, VI
Pda 508.03- Pda 509.07	RSA 12-G:42, VI, VII
Pda 509.08	RSA 12-G:42, VI
Pda 510.01 – 510.02	RSA 12-G:42, VI; 12-G:50, I(b)
Pda 510.03	RSA 12-G:42, VI, 12-G:50, I(b), (f)
Pda 510.04 – 510.07	RSA 12-G:42, VI; 12-G:50, I(b)
Pda 511	RSA 12-G:42, VI
Pda 513	RSA 12-G:42, VI
Pda 514	RSA 12-G:42, VI, VII
Pda 515.01	RSA 12-G:42, III; 12-G:50, I(c), (f)

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7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Geno Marconi** Title: **Division Director**
Address: **555 Market St.** Phone #: **603-436-8500**
Portsmouth, NH 03801 Fax#: **603-436-2780**
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TTY/TDD Access: Relay NH 1-800-735-2964 or
dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Monday June 10, 2019**

Fax E-mail Other format (specify):US Mail

9. Public hearing scheduled for:

Date and Time: **Wednesday May 22, 2019 6:00 PM**
Place: **NH Division of Ports and Harbors office**
555 Market St.
Portsmouth, NH 03801

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:044, dated 4/18/19

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules may decrease costs to State citizens and independently owned businesses.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed Pda 510.05 eliminates the minimum mooring standards, which the Division believes are excessive in most cases and costlier to private mooring permit holders. Instead of the Division monitoring maintenance of privately owned moorings and equipment marine construction companies provide guidance to permit holders based on their training and expertise.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

To the extent State citizens are mooring holder may experience the savings described in #3 above. There is no cost or benefit to political subdivisions.

C. To independently owned businesses:

To the extent an independently owned business holds a mooring permit it may experience the savings described in #3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed re-adoption and re-adoption with amendments of rules do not mandate any fees, duties, or expenditures on a political subdivision of the state which could violate Pt. 1, Article 28-a of the NH Constitution.