

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA FISH AND BOAT COMMISSION**

**AGENDA FOR
THE BOATING ADVISORY BOARD MEETING**

Thursday, February 9, 2012

9:00 a.m.

Harrisburg, Pennsylvania

Members

Chair Mary Gibson

Loren Lustig

Michael LeMole

Andrew Talento

Henry Grilk

Members Ex Officio

John A. Arway, Executive Director

Laurel L. Anders, Secretary

Ryan Dysinger for Richard Allen, Secretary for the
Department of Conservation and Natural Resources

TABLE OF CONTENTS

Page No.

I.	Roll Call	
II.	Introduction of Guests	
III.	Approval of Minutes: February 2011 Meeting	
IV.	Election	
V.	Public Comment	
VI.	New Business	
	A. Amendment to Section 93.2 (Permanent and Temporary Registration) and Section 93.13 (Issuing Agent)	2
	B. Amendments to Chapter 99 (Capacity Plates), Section 93.3 (Application for Boat Registration) and Section 93.102 (Application for Procedure and Contents of Applications for Certificates of Title).	6
	C. Amendments to Section 105.3 (Unacceptable Boating Practices) and Section 109.4 (Waterskiing, Aquaplaning, Kite Skiing, and Similar Activities).	7
	D. Amendments to Chapter 115 (Boats Carrying Passengers for Hire).	10
VII.	Updates	
	A. Update on agency re-organization	
	B. Final rulemaking from 2011	
	C. Summary of 2011 USCG Performance Report	
	D. Boating Accident Analysis & Fatality Summary	
	E. Update on Water Rescue Program	
	F. Travel Management Directive update	
VIII.	Discussion Items	
	A. Communication strategies for cold weather wear requirement	
	B. Mandatory boat registration	
VIII.	Exhibits	
	A. Exhibit A (Chapter 99)	
	B. Exhibit B (Sections 93.3 and 93.102)	
	C. Exhibit C (Chapter 115)	

NEW BUSINESS

A. Amendments to Section 93.2 (Permanent and Temporary Registration) and Section 93.13 (Issuing Agent).

Commentary:

On June 1 and 2, 2011, the United States Coast Guard's Boating Safety Division (USCG) conducted an on-site program review of Pennsylvania's Recreational Boating Safety (RBS) program. On-site program reviews are used by the USCG to help determine a state's eligibility to receive funding made available under 46 U.S.C. Chapter 131 for the state RBS program.

During the program review, the USCG identified a deficiency that requires corrective action. Specifically, the issuance of a temporary registration certificate and sticker that remains valid in excess of 60 days is not in compliance with federal regulations. Currently, the Commission's regulations allow for temporary boat registrations to be valid for up to 90 days. The USCG requires that this deficiency be addressed so as not to jeopardize the state's funding eligibility.

Staff propose changes to modify the temporary boat registration decal to include the expiration date (day), reduce the period in which the temporary decal is valid to 60 days, and require issuing agents to submit to the Commission temporary boat registration documentation within five days.

Staff therefore propose to amend §93.2 and 93.13 as follows:

§ 93.2. Permanent and temporary registration.

(a) *Boat not previously registered in this Commonwealth.*

(1) A person acquiring a boat which has not been previously registered in the person's name in this Commonwealth shall complete an application for boat registration as set forth in § 93.3 (relating to application for boat registration). The applicant will receive a copy of the completed application which will be recognized as the boat's certificate of registration for a period specified in subsection [(d)] (e). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date (month/day/year), calculated in accordance with subsection [(d)] (e), on the decal. Before the boat is operated, these temporary validation decals shall be displayed on each side of the bow—the front half—of the boat in a position to provide for maximum visibility.

* * *

(b) *Boat previously registered in this Commonwealth but having expired registration.*

(1) A person acquiring a boat which has been previously registered in another person's name in this Commonwealth and possesses an expired registration shall complete an application for boat registration as set forth in § 93.3. The applicant will receive a copy of the completed application which will be recognized as the boat's certificate of registration for a period specified in subsection [(d)] (e). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date (month/day/year), calculated in accordance with subsection [(d)] (e), on the decal. Before the boat is operated, these temporary validation decals shall be displayed on each side of the bow—the front half—of the boat in a position to provide for maximum visibility. If the boat is displaying expired validation decals, the owner or operator shall remove the expired validation decals and replace them with the temporary validation decals. The previously assigned registration number currently on the boat will remain with the boat as long as the boat is registered in this Commonwealth.

* * *

(c) *Boat previously registered in this Commonwealth having current registration.*

(1) A person acquiring a boat which has been previously registered in another person's name in this Commonwealth displaying current biannual validation decals shall complete an application for boat registration as set forth in § 93.3. The applicant will receive a copy of the completed application which will be recognized as the boat's certificate of registration for a period specified in subsection [(d)] (e). This temporary certificate of registration shall be carried on the boat when the boat is in operation and shall be available for inspection by an authorized officer. The new owner will receive a set of temporary validation decals from the authorized issuing agent who will enter the expiration date (month/day/year), calculated in accordance with subsection [(d)] (e), on the decal. Before operating the boat on the waters of this Commonwealth, the owner or operator shall remove the prior validation decals and replace them with the temporary validation decals. The previously assigned registration number will remain with the boat as long as the boat is registered in this Commonwealth. It is unlawful for a person acquiring a boat described in this subsection to operate the boat on the waters of this Commonwealth until the registration is transferred to the new owner as provided in this section.

* * *

(e) *Temporary decals.* The temporary validation decals are valid **[until the last day of the second month after the date of issuance of the decal, which date will be not less than 60 nor more than 90 days after issuance of the decal] for 60 days including the date of issuance.** The owner or operator shall ensure that the temporary validation

decals are removed and the biannual validation decals, when received from the Commission, are displayed in place of the temporary validation decals. The temporary validation decal shall display the date on which it expires in the following format: “Expires [**last day of**] (month)/(**day**)/(year).” The authorized issuing agent shall enter the expiration date (month/**day**/year) on the decal.

* * *

§ 93.13. Issuing agents.

* * *

(f) *Issuance of temporary boat registrations.*

* * *

(6) An issuing agent shall issue temporary validation decals in numerical sequence, beginning with the lowest number. **Temporary decals are valid for 60 days including the date of issuance.**

(7) An issuing agent shall indicate on temporary validation decals the month, **day** and year the temporary registration expires, using a black waterproof permanent ink marker or paint marker. The agency may not place any other marks on the decal.

(8) Within [**10**] **5** days [**of**] **from** the **date of** issuance of a temporary boat registration, the issuing agent shall submit to the Commission a properly completed “T-Sticker Summary Report” (Form PFBC-725) along with all applications (**Form REV-336**), related documentation, [**applicable fees and Sales and Use Tax**] **registration fees and sales or use tax** as required by the code, [**and**] this chapter, **and as outlined in the Instructions for Issuing Agents of PA Boat Registrations and Titles.**

(g) *Inventory of decals.* Upon the Commission’s request, an issuing agent shall submit an inventory report on the form prescribed by the Commission, accounting for all temporary validation decals in the agent’s possession. The agent shall submit a complete and accurate inventory within [**10**] **5** days of the agent’s receipt of the Commission’s request.

(h) *Voided decals.* When an issuing agent voids a temporary validation decal, the agent shall forward to the Commission the voided decal along with a report on the form prescribed by the Commission, explaining why the decal was voided. The agent shall forward the voided decal and the report within [**10**] **5** days of the decal being voided.

* * *

(I) *Acceptance of applications for permanent registrations or titles.* Within 10 days of the acceptance of the Form REV-336 and related documentation for a

permanent registration or title, the issuing agent shall forward to the Commission, using the “T-Sticker Summary Report” (Form PFBC-725), all applications, related documentation, applicable fees and Sales and Use Tax as required by the code or this chapter.]

* * *

Briefer:

Bernard M. Matscavage, Director, Bureau of Administration

Action:

B. Amendments to Chapter 99 (Capacity Plates), Section 93.3 (Application for Boat Registration) and Section 93.102 (Application for Procedure and Contents of Applications for Certificates of Title).

Commentary:

Due to changing federal regulations at the time, the Commission made large-scale amendments to its capacity plate regulations in 1975 to be in conformance with federal regulations. The Commission again made modifications to its capacity plate regulations in 1994 as part of a year-long comprehensive review and update of Pennsylvania boating regulations.

During the past two years, staff have dealt with a number of capacity plate applications and inquiries that have revealed conflicts between the Commission's regulations and federal regulations. Further research revealed that Pennsylvania is the only state that has capacity plate regulations that differ from federal regulations and issues capacity plates. The Commission currently processes capacity plate applications for boats registered in Pennsylvania as well as boats registered in other states that may not be operated on waters of the Commonwealth. The Commission utilizes a capacity plate calculator provided by the USCG that was intended to provide guidance to boaters rather than to be used to meet state or federal regulations. In fact, the USCG recently informed the Commission that it should discontinue its use of the capacity plate calculator for such purposes.

Federal capacity plate requirements apply to manufacturers and are enforced by the United States Coast Guard (USCG). Therefore, it is unnecessary for the Commission to promulgate regulations regarding capacity plate requirements. To bring the Commission's regulations into conformance with federal regulations, staff propose that Chapter 99 be deleted in its entirety as set forth in Exhibit A.

As a result of deleting Chapter 99, the references to capacity plate information contained in Sections 93.3(2)(x) and 93.102(b)(11) must also be deleted which require applicants to provide capacity plate information for boat registrations and certificates of title, respectively, as set forth in Exhibit B.

Briefer:

Laurel L. Anders, Director, Bureau of Boating and Outreach

Action:

C. Amendments to Section 105.3 (Unacceptable Boating Practices) and Section 109.4 (Waterskiing, Aquaplaning, Kite Skiing, and Similar Activities).

Commentary:

Based on information presented at its February 8, 2011 meeting, the Boating Advisory Board recommended amending sections 105.3 and 109.4 regarding the operation of boats engaged in the activity of wake surfing. Specifically, the Board recommended that the Commission adopt a 300-foot slow, no-wake zone for boats engaged in the activity of wake surfing, exclude wake surfing from the 20-foot minimum tow rope requirement, adopt a definition of “wake surfing,” and allow wake surfing participants to wear a specifically designed wetsuit in lieu of the United States Coast Guard approved PFD.

To date, there have been no propeller strike accidents reported nationwide for participants in wake surfing activities. Boats with inboard motors are the preferred configuration for wake surfing activity. The propellers of inboard motors are located in front of the boat’s transom and pose less risk to a person being towed. Outboard and inboard/outboard motors pose a much greater risk to persons being towed since the propeller is located aft of the transom. Outboards and inboard/outboards used for wake surfing are often trimmed up to create more wake which increases exposure to the propeller. The Water Sports Industry Association has been working with states to encourage the use of “model language” in crafting legislation or regulations to protect the safety of towed watersport participants, such as wake surfers. Staff therefore propose the adoption of this model language in paragraph (12) in addition to the previously recommended changes to paragraph (11) of section 105.3. Additionally, staff propose the clarification of the 20-foot measurement for tow ropes as being measured from the transom of the boat.

As noted above, the Board previously recommended the Commission adopt a 300-foot slow, no-wake zone for boats engaged in the activity of wake surfing. This recommendation was made in an effort to limit disturbance and damage resulting from excessive wakes created by boats engaged in wake surfing activity. However, upon further research of other states’ regulations and a U.S. Naval Academy study on wave height and energy, staff concluded that a 300-foot slow, no-wake zone will provide minimal additional benefits and will unnecessarily limit wake surfing activity as compared to a 200-foot slow, no-wake zone. Staff propose the creation of a new subsection (k) within section 109.4 to contain additional regulations specific to wake surfing, including a slow, no-wake zone of 200 feet.

Staff propose the following changes to §105.3 and 109.4:

§ 105.3. Unacceptable boating practices.

It is unlawful to:

* * *

(11) Operate a motorboat at any speed when towing a person on waterskis or other devices using a tow rope of 20 feet or less **as measured from the transom of the boat.**

This prohibition does not apply to wake surfing as defined in §109.4 (relating to waterskiing, aquaplaning, kite skiing and similar activities).

(12) Operate a motorboat propelled by an outboard motor, inboard/outboard motor or water jet while a person is wake surfing in or on the wake of the motorboat.

§109.4. Waterskiing, aquaplaning, kite skiing, and similar activities.

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

* * *

Wake surfing.—A competitive or recreational water sport in which a person on a wake board or similar style board rides in or on the wake of a motorboat.

* * *

(f) *PFDs.* – It is unlawful for a person to operate a boat on the waters of this Commonwealth for:

(1) waterskiing unless each person being towed is wearing a Type I, II, III or V United States Coast Guard approved PFD. Inflatable PFDs may not be used to meet this requirement.

(2) wake surfing unless the wake surfer is wearing a Type I, II, III or V United States Coast Guard approved PFD or water ski wetsuit as defined in §109.4(g). Inflatable PFDs may not be used to meet this requirement.

(g) *Water ski wetsuits.* A person engaged in slalom skiing on a marked course or a person engaged in barefoot, jump or trick skiing, **wake surfing** may elect to wear a wetsuit designed specifically for the activity in lieu of the United States Coast Guard approved PFD required in §97.1 (relating to personal flotation devices). A United States Coast Guard approved PFD of a type described in §97.1 shall be carried in the tow boat for each skier electing to wear a water ski wetsuit. The nonapproved water ski wetsuit device shall meet the following criteria:

(1) The device shall be marked by the manufacturer as a water ski wetsuit.

(2) The device shall be constructed of nylon covered neoprene or similar material and may have either long or short sleeves or be sleeveless. The device may have legs.

(3) The device shall be equipped with additional flotation padding material of a close cell nonabsorptive type such as PVC foam or Ensolite®. This flotation/padding shall be sewn into the device according to the following:

(i) On the front extending from the clavicle to the top of the pelvis vertically and covering the front rib cage area and covering as much of the side area as feasible. A maximum gap between padded areas on the side of the suit under the arm is 4 inches.

- (ii) On the rear of the device, padding/flotation material shall cover the area from the top of the shoulder blade to the top of the pelvis and span the entire width of the back.
- (iii) Padding/flotation shall be at least 1/2-inch thick. This thickness excludes the thickness of covering material.

* * *

(k) *Wake surfing.* Boats engaged in the activity of wake surfing are limited to slow, no wake speed when within 200 feet of the shore line; docks; launching ramps; swimmers or downed skiers; persons wading in the water; anchored, moored or drifting boats; floats, except for ski jumps and ski landing floats; or other areas so marked.

* * *

Briefer:

Laurel L. Anders, Director, Bureau of Boating and Outreach

Action:

D. Amendment to Section 115 (Boats Carrying Passengers for Hire).

Commentary:

The current regulations contained in Chapter 115 regarding the operation of boats carrying passengers for hire were adopted in 1994. With the exception of some minor procedural amendments in 1999 and 2003, no significant changes have been made to the regulations in the past 18 years. During this period, boat accidents involving passenger for hire vessels have occurred in other states, most notably the capsizing of the tour boat *Ethan Allen* on Lake George, New York in 2005, which prompted staff to re-examine the Commission's current regulations. In July 2011, a workgroup consisting of Commission staff and a passenger for hire business owner and vessel operator met to discuss proposed revisions to the regulations.

The most significant proposed change to the current regulations involves a requirement that the passenger capacity of all vessels in the program be determined through U.S. Coast Guard approved stability testing by an accredited marine surveyor. The current passenger for hire fleet in the Commonwealth numbers 18 vessels owned and operated by 13 businesses. All of the above vessels are tour boats and range in size from 18 to 75 feet. Most are pontoon boats with the exception of four larger vessels operated on Lake Raystown and Conneaut Lake. Under the current regulations, only boats carrying more than 49 passengers or having more than one passenger carrying deck are required to undergo stability testing. In all other cases, passenger capacity is determined via manufacturer supplied capacity plates. In the *Ethan Allen* accident, the vessel was initially rated for 50 passengers but had been modified with the addition of a solid canopy and other superstructure. On the day of the accident, the *Ethan Allen* carried 47 passengers plus the operator and capsized after striking the wake of another vessel during a turn. Twenty passengers died as a result of the accident. The National Transportation Safety Board concluded that had the vessel undergone appropriate stability testing after modification, it would have been certified for only 14 passengers. Members of the workgroup agreed that requiring stability testing on all passenger for hire boats is the most appropriate method to address concerns regarding capacity and loading. A marine surveyor who currently inspects six of the 18 boats in the program advised staff that with the assistance of the boat owner, stability testing can be performed on all boats in the program without excessive cost. After obtaining an initial test, boats will not be required to have a new stability test unless modified or involved in an accident.

Other proposed changes include the following:

- Increasing the required amount of liability insurance to reflect more realistic damage and personal injury estimates in case of an accident.
- A housekeeping change to indicate that passenger for hire vessels are now a Bureau of Law Enforcement program area.
- Requiring passenger for hire vessel operators and crew members to maintain certification in CPR and basic first aid. These certifications are currently required for holders of fishing guide/charter boat permits.

- Requiring that the initial physical examination include a standard drug screen. This requirement is being proposed at the suggestion of two vessel owners.
- Eliminating the requirement that licensed operators disclose changes in their physical condition when applying for renewal of their license and instead requiring that operators obtain a new physical examination with each renewal of their license.
- Removing the requirement that the vessel operator license, currently an 8.5” x 11” paper certificate, be displayed on the boat next to the certificate of inspection in favor of the issuance of a wallet sized identification card that the operator will be required to carry and display while in operation of the boat.
- Adding language indicating that operator licenses are good on any sole state water for vessels up to and including the size listed on the license and thereby clarifying the intent that operators may work on any passenger for hire vessel certified by the Commission and are not limited to one employer.
- Eliminating the requirement that the Commission maintain an approved list of marine surveyors in favor of a requirement that marine surveys be conducted by individuals accredited through one of the national marine surveyors associations.
- Adding language indicating that individuals with U.S. Coast Guard certification appropriate to the size and type of boat they intend to operate in the Commission’s program will be able to obtain a waiver of the state licensing requirements upon presentation of their Coast Guard credentials and certification in CPR and first aid.

Staff propose the amendments set forth in Exhibit C.

Briefer:

Robert W. Croll, Waterways Conservation Officer Manager, Bureau of Law Enforcement

Action: