

Notice of Proposed Rulemaking

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapters 53, 91, 97, 101, 105, 109 and 111 General Provisions and Boating

Preamble

The Fish and Boat Commission (Commission) proposes to amend 58 Pa. Code Chapters 53, 91, 97, 101, 105, 109 and 111 (relating to commission property; general provisions; operated provided equipment; boating accidents; operational conditions; specialty boats and waterskiing activities; and special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa. C.S. (relating to the Fish and Boat Code) (code). The proposed amendments modify and update the Commission's boating regulations.

A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect immediately upon publication of an order in the *Pennsylvania Bulletin*.

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 proposal is available electronically through the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendment to §53.8 (relating to boats) is published under the statutory authority of section 741 of the code (relating to control of property). The proposed amendments to §§91.5, 97.1, 101.5, 105.3 and 109.1 (relating to parental and boat owner responsibility; personal floatation devices; confidentiality of boating accident reports; unacceptable boating practices; and air boats) are published under the statutory authority of section 5123 (relating to general boating regulations). The proposed amendment to §109.6 (relating to special marine events) is published under the statutory authority of section 5122 of the code (relating to registration, licenses, permits, plates and statistics). The proposed amendments to §§111.17 and 111.20 (relating to Clearfield County; and Crawford County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals. On October 21, 2008, the Commission's Boating Advisory Board considered each of the proposals and recommended that the Commission approve the publication of a notice of proposed rulemaking.

E. *Summary of Proposals*

(1) *Sections 53.8 and 97.1.* Section 97.1(f) of the Commission's regulations follows the Code of Federal Regulations that excludes racing shells, rowing sculls and racing kayaks from the requirements for personal floatation devices (PFDs). However, this subsection provides that the exemption does not apply on Commission and State Park owned or controlled boating waters. Section 53.8 of the Commission's regulations similarly requires occupants of skulls, shells and racing kayaks to carry or wear Coast Guard approved PFDs on Commission property.

This type of boating is somewhat exclusive due to its nature. Most often, racing shells, sculls and kayaks are used by high school, college or university students or special clubs. They are, with few exceptions, very safe boaters, and the accident record for such boats does not point to a need for requiring PFDs for their occupants. Moreover, there is no support to require occupants of such boats to wear PFDs on small Commission lakes when they are not required to carry them onboard on larger waters.

Section 91.7(f) also provides detailed information on what type of PFDs must be carried by the safety boat accompanying the shells, sculls or racing kayaks. However, section 97.1(f) does not, and may not (because of the federal regulations), require that there to be a safety boat present. Accordingly, it does not make sense to stipulate requirements for safety boats when the safety boats are not required to be on the scene under the federal regulations. Moreover, the accident record for such boats does not point to the need for requiring PFDs on safety boats. The Commission therefore proposes that §§53.8 and 97.1 be amended to read as set forth in Annex A.

(2) *Section 91.5.* The Commission's current regulations do not include a provision making it unlawful for a boat owner knowingly to allow someone to operate a boat without a boating safety education certificate onboard when the individual is required to have one. The Commission's law enforcement staff have requested that this requirement be added. The Commission therefore proposes that §91.5 be amended to read as set forth in Annex A.

(3) *Section 101.5.* The confidentiality of boating accident reports is covered in detail in section 5503 of the code (relating to accident reports) and in section 101.5 of the Commission's regulations. The Commission receives requests from time to time for certified abstracts for specific boating accidents. This is the only information that can be released from the Boating Accident Report (PFC-260) filed by the boat operator or owner who was involved in a reportable, recreational

boating accident. Commission staff have always asked that such requests be in writing. The Commission therefore proposes that language be added to §101.5 to support the Commission's standard practice and clarify this matter to the inquiring public. The Commission proposes that §101.5 be amended to read as set forth in Annex A.

(4) *Section 105.3.* The existing regulation concerning pontoon boats allows passengers to ride outside the normal passenger carrying area when the pontoon boat is travelling at slow, no wake speed. This is an unsafe practice because the passenger can very easily fall overboard, even at the reduced, slow, no-wake speed. Because of the nature of the hull design of pontoon boats, slow, no-wake can be a faster speed than on single hull boats, such as a runabout. If the passenger is in the bow of the boat and falls overboard, he will most likely be struck by the boat's propeller with catastrophic results. This very scenario took place this year on a lake in western Pennsylvania when the pontoon boat operator unexpectedly hit a log, causing a boy who was riding on the bow outside of the normal passenger carrying area to fall overboard and be struck by the boat's propeller. This proposed amendment places no undue hardship on the operators or passengers of pontoon boats. It does allow our officers to stop pontoon boats that have their passengers so exposed and to inform the operator that this is an unsafe practice. The Commission therefore proposes that §105.3 be amended to read as set forth in Annex A.

(5) *Section 109.1.* Section 109.1 of the Commission's regulations provides detailed standards for the construction of air boats. However, a recent technical inquiry by a member of the general public about this regulation could not be answered because there are no known sources for the content of this regulation. There are very few airboats in this Commonwealth, and the Commission's law enforcement staff have had few issues with operators of these unusual boats. The Commission therefore proposes that §109.1 be deleted as set forth in Annex A.

(6) *Section 109.6.* Section 109.6(b)(5) of the Commission's regulations provides that the Commission will not issue a special activities permit for a marine event in a State Park unless the applicant first obtains written permission from the Bureau of State Parks, Department of Conservation and Natural Resources (DCNR) for the event. The Commission, however, issues permits for events occurring in State Forests, not just those in State Parks. The regulation goes on to state that for marine events held on waters under the ownership or control of other Federal or State agencies, the Commission will require evidence that the applicant has the permission of the controlling agency. In order to simplify the regulation, the Commission proposes that the regulation be revised to simply require the permission of the entity that owns or controls the waters on which the marine event will occur. The Commission routinely issues special activities for marine events that occur on private and public waters, including waters owned or controlled by DCNR, the Pennsylvania Game Commission, the U.S. Army Corps of Engineers (USACOE), and county and municipal governments. The Commission therefore proposes that §109.6 be amended to read as set forth in Annex A.

(7) *Section 111.17.* Curwensville Lake is a USACOE, Baltimore District impoundment of the West Branch of the Susquehanna River in central Clearfield County. It is managed jointly by the USACOE and the Clearfield County Recreation and Tourism Authority. The lake comprises 790

acres with 19 shoreline miles and unrestricted horsepower. The lake provides open water adjacent to the dam with the majority of the water in a serpentine pattern based upon the original river contours. The lake narrows severely in its upper reaches. Use of the upper area is popular, but not conducive to unrestricted horsepower boating. These upper reaches, most of which are less than 200 feet in width, have been posted and enforced as a slow, no-wake area but have never been defined by regulation. Giving clear and legal definition of the slow, no wake area is of joint interest of the agencies and will enhance fairness in public notice and enforceability. The USACOE has requested that the slow, no-wake area be marked in the area upriver of the cliff at Ferguson and the area between the old viaduct pillars. The Commission therefore proposes that §111.17 be amended to read as set forth in Annex A.

(8) *Section 111.20.* Pymatuning Lake is part of Pymatuning State Park. DCNR regulates the waterway's horsepower limit and has recently set it at 20 horsepower, like several other lakes owned or controlled by DCNR. In the past, the Commission removed all references to horsepower limits on DCNR waterways from Chapter 111 of the Commission's regulations. Removal of Pymatuning Lake will complete that process. The Commission therefore proposes that §111.20 be amended to read as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Pennsylvania 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 by completing the form at www.fishandboat.com/regcomments. 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.

For the Pennsylvania Fish and Boat Commission

Douglas J. Austen, Ph.D
Executive Director

Annex A

Regulation No. 48A-210

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart A. General Provisions

CHAPTER 53. COMMISSION PROPERTY

§ 53.8. Boats.

* * *

(b) [Occupants of sculls, shells and racing kayaks are required to carry or wear Coast Guard approved personal flotation devices.]

[(c)]

[(d)] (c) * * *

[(e)] (d) * * *

[(f)] (e) * * *

[(g)] (f) * * *

[(h)] (g) * * *

Subpart C. Boating

CHAPTER 91. GENERAL PROVISIONS

§ 91.5. Parental and boat owner responsibility.

(a) It is unlawful for the owner of a boat knowingly to allow or permit a child 17 years of age or younger to operate **[a watercraft] the boat** in violation of this subpart.

(b) It is unlawful for a parent or guardian of a child 17 years of age or younger knowingly to allow or permit the child to operate a **[watercraft] boat** in violation of this subpart.

(c) It is unlawful for the owner of a boat knowingly to allow an individual who is required to have a boating safety education certificate to operate the boat without having a boating safety education certificate onboard.

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.1. Personal flotation devices.

* * *

(f) This section does not apply to racing shells, rowing sculls and racing kayaks, such as manually propelled boats recognized by National racing associations for use in competitive racing, where the occupants row, scull or paddle with the exception of the coxswain, if one is provided, and which are not designed to carry and do not carry equipment not solely for competitive racing. **[Safety boats accompanying the boats shall carry a sufficient number of readily accessible Type I, II, III or V PFDs for the occupants of the shells, sculls or kayaks.**

This exemption does not apply on Commission and State Park owned or controlled boating waters.]

* * *

CHAPTER 101. BOATING ACCIDENTS

§ 101.5. Confidentiality of boating accident reports.

* * *

(b) An abstract which contains the date, time, location, weather conditions, names and addresses of the operators, passengers and witnesses and descriptions of the watercraft involved is releasable upon written request. The Commission may charge a reproduction fee of 50¢ per page.

CHAPTER 105. OPERATIONAL CONDITIONS

§ 105.3 Unacceptable boating practices.

It is unlawful to:

* * *

(9) Operate a pontoon boat while a person is riding outside the passenger carrying area. The passenger carrying area is defined by continuous railings or enclosed spaces intended for persons to use while the pontoon boat is underway. The prohibition does not apply when the operator of the boat is docking, mooring, anchoring or rafting the pontoon boat **[or when the pontoon boat is underway at slow minimum height swell speed or less]**.

* * *

CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

[§ 109.1. Air boats.

Persons operating a type of boat with an airplane-type motor shall comply with the following:

(1) When the air propeller is capable of being turned laterally and used as a rudder as well as for propulsion, the propeller shall be completely enclosed with a protective housing. The housing shall be metal tubing or heavy wire, or both.

(2) When the boat is steered by a rudder and the propeller is located astern of—behind—the power unit, the propeller shall be housed as follows:

(i) It shall be enclosed at least 50% or 80° from the bottom upward, with two parallel curved metal rods or tubes of at least 1/2-inch diameter, the rods or tubes are to be fastened to the boat rather than to the power unit, and located so that the propeller turns within the enclosure formed by the rods or tubes. There shall be similar metal cross bars at intervals of

not more than 30° along the 180° arc or at least six cross bars attached to the two curved parallel housing rods or tubes.

(ii) On these boats, there shall be stout metal rods turning from a point at or near the forward end of the engine or power unit, outward and rearward at an angle, so that if a person becomes overbalanced and falls backward toward a propeller, the person tends to be deflected away from the propeller.

(3) When tractor-type air drive is used, with the propeller located forward of the engine, the entire propeller shall be enclosed by parallel rod or tube housing, the rods or tubes are to be of material and size as previously described in this section. In addition, the 360° housing shall be crossed on the forward side by stout rod or wire sections, placed so that at no point is there an opening greater than 3 inches, vertically or horizontally, through which a person may by accident thrust a hand or arm. An arrangement of stout rods or tubes, as previously described from a forward point, fanning outward and upward to the rim of the nearer, or forward, of the 360° housing rods or tubes, shall be placed so that a person falling backward tends to be thrown outward and away from the propeller.

(4) Regardless of the type of power unit employed, the propeller may not extend horizontally beyond the gunwales of the boat on which it is used.]

§ 109.6. Special marine events.

* * *

(b) * * *

(5) The Commission will not issue a special activities permit for a marine event **[in a State Park]** unless the applicant first obtains written permission **[from the Bureau of State Parks, Department of Conservation and Natural Resources,]** for the event **from the entity that owns or controls the waters on which the event will occur**. **[For marine events held on waters under the ownership**

or control of other Federal or State agencies, the] The Commission will require evidence that the applicant has the permission of the controlling **[agency] entity** unless that **[agency] entity** has delegated approval authority to the Commission.

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CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§111.17. Clearfield County.

* * *

(d) Curwensville Lake.

(1) Boats are limited to slow, no wake speeds in the following areas:

(i) Upriver of the cliff at Ferguson.

(ii) Between the old viaduct pillars.

§ 111.20. Crawford County.

* * *

(c) [Pymatuning Lake – Pymatuning State Park. The use of motors in excess of 10 horsepower is prohibited.]

[(d) * * *

[(e) (d) * * *

[(f) (e) * * *