

## Order Adopting Amendments

### COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

#### Title 58. Recreation Part II. Fish and Boat Commission Chapters 99 and 111 Boating

## Preamble

The Fish and Boat Commission (Commission) amends Chapter 99 (relating to capacity plates), and Chapter 111 (relating to special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa. C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at [www.fish.state.pa.us](http://www.fish.state.pa.us).

C. *Statutory Authority*

The amendments to Chapter 99 are published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics). The amendments to §§

111.3 and 111.16 (relating to Armstrong County and Clarion County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

The final-form rulemaking is designed to simplify and improve the Commission's boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. On December 7, 2017, the Commission's Boating Advisory Board considered the proposed amendments and recommended that the Commission approve the publication of a notice of proposed rulemaking.

E. *Summary of Changes*

(1) Prior to January 1, 2013, the Commission issued capacity plates for certain boats that were operated or offered for sale in this Commonwealth. During an audit of the Commission's Recreational Boating Safety Program in 2011, the United States Coast Guard identified this practice as a violation of federal regulation and directed the Commission to stop issuing the plates. In response to this direction, the Commission rescinded Chapter 99. At the time, this decision was thought to be the best way to handle the issue. However, it has since been determined that the best change would have been to rescind only those sections dealing with the Commission's issuance of capacity plates and not to rescind other sections that extended the federal standard to Commonwealth waters. Commission staff examined what other states have done regarding capacity plates and recommend that certain sections of the former regulations be reinstated.

The Commission therefore adds Chapter 99a to read as set forth in the notice of proposed rulemaking.

(2) Keystone Lake is a 1,000-acre impoundment in Armstrong County that provides water to the Keystone Generation Station, Chief Keystone Power, LLC. The property is leased to the Commission for fishery and aquatic resource management, and recreational fishing and boating purposes. Under a prior agreement, a horsepower restriction for motorboats was set at 10 horsepower. The Commission adopted this restriction in § 111.3(b).

In March 2017, the lease agreement for this property was renewed. As part of that renewal, Chief Keystone Power requested that the 10 horsepower restriction be raised to 20 horsepower.

The Commission therefore amends § 111.3 to read as set forth in the notice of proposed rulemaking.

(3) At the September 2017 Commission meeting, Jeffrey Pfister approached the Commission on behalf of several landowners adjacent to Redbank Creek, Clarion County. The landowners are concerned about boating safety because the creek traditionally had been locally treated as a slow, no wake (SNW) zone without an official designation.

In recent years, the amount of boating traffic entering Redbank Creek from Pool 9 on the Allegheny River has increased substantially. This traffic goes above SNW even where the creek narrows to less than 200 feet across, creating a safety hazard. The landowners petitioned the Commission for Redbank Creek to be designated as a SNW zone.

The Commission's Bureau of Law Enforcement staff from the Northwest Region were tasked with exploring the issue and to offer an opinion. Upon investigation, they determined that the creek does narrow and the entrance from the river quickly becomes congested with boats. The presence of an old railroad bridge also adds to the congestion as boats have to traverse under and between the bridge abutments to navigate safely.

Allegheny Land Trust (Trust), the owner of the bridge that is now part of a rail to trails, is concerned about erosion damage to the shore line and the bridge itself due to the excessive wake in a confined area. If the proposed amendment is adopted, the Trust has agreed to allow signage to be posted on the bridge structure for the SNW zone.

The Commission therefore amends § 111.16 to read as set forth in the notice of proposed rulemaking.

F. *Paperwork*

The amendments will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of proposed rulemaking was published at 48 Pa. B. 2654 (May 5, 2018). Regarding the proposed amendment to Chapter 99a, the Commission received no public comment. Regarding the proposed amendment to § 111.3, the Commission received six public comments, all supporting the proposal; and regarding the proposed amendment to § 111.16, the Commission received no public comment. Copies of all public comments were provided to the Commissioners.

**FINDINGS**

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201, 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the public comments that were received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

### **ORDER**

The Commission, acting under the authorizing statutes, orders that:

(A) The regulations of the Commission, 58 Pa. Code Chapters 99 and 111, are amended by adding Chapter 99a and amending §§ 111.3 and 111.16 to read as set forth at 48 Pa. B. 2654.

(B) The Executive Director will submit this order and 48 Pa. B. 2654 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 48 Pa. B. 2654 and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on upon publication in the *Pennsylvania Bulletin*.

For the Pennsylvania Fish and Boat Commission

John A. Arway  
Executive Director