

Notice of Proposed Rulemaking

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) proposes to add Chapter 99 (relating to capacity plates) and amend Chapter 111 (relating to 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).

A. *Effective Date*

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

B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed addition of Chapter 99 is published under the statutory authority of section 5122 of the code (relating to registration, licenses, permits, plates and statistics). The proposed amendments to §§ 111.3 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 proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed addition and amendments is described in more detail under the summary of proposals. On December 7, 2017, the Commission's Boating Advisory Board considered the proposals and recommended that the Commission approve the publication of a notice of proposed rulemaking.

E. *Summary of Proposals*

(1) Prior to January 1, 2013, the Commission issued capacity plates for certain boats that were operated or offered for sale within the Commonwealth. During an audit of the Commission's Recreational Boating Safety Program in 2011, the U.S. Coast Guard identified this practice as a violation of the federal regulation and directed the Commission to stop issuing the plates. In response to this direction, the Commission removed the entire chapter of its regulations pertaining to capacity plates. At the time, this decision was thought to be the best way to handle the issue. However, it has since been determined that perhaps the best change would have been to remove only those sections dealing with the Commission's issuance of capacity plates and not to remove 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 regulation be reinstated.

The Commission proposes that Chapter 99 be added to read as set forth in Annex A.

(2) Keystone Lake is a 1000-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 section 111.3(b).

In March of 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 proposes to amend § 111.3 to read as set forth in Annex A.

(3) At the September 2017 Commission meeting, Mr. 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 even without an official designation as such.

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 the erosion damage to both the shore line and the bridge itself due to the excessive wake in a confined area. If the amendment is adopted, the Trust has agreed to allow signage to be posted on the bridge structure for the SNW zone.

The Commission proposes to amend § 111.16 to read as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose 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, 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

John A. Arway
Executive Director

REVISED

Annex A

Regulation No. 48A-279

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart C. Boating

CHAPTER 99. CAPACITY PLATES

§ 99.1. Boats requiring capacity plates.

(a) A capacity plate shall be permanently affixed to a monohull boat less than 20 feet in length designed to carry two or more persons and to be propelled by machinery or oars as its principal source of power if one of the following applies:

(1) The boat is manufactured, transferred, sold or offered for sale in this Commonwealth.

(2) The boat is operated on waters of this Commonwealth.

(b) Sailboats, canoes, kayaks, and inflatable boats are exempt from this chapter.

(c) As used in this chapter, “manufacture” means to construct or assemble a boat or alter a boat in a manner that changes its weight carrying capacity.

§ 99.2. Information required.

The capacity plate shall contain the following information:

(1) For boats designed for or represented by the manufacturer as being suitable for use with outboard motors:

(i) The total weight of persons, motor, gear, and other articles placed aboard which the boat is capable of carrying safely under normal conditions.

(ii) The recommended number of persons consistent with the weight capacity of the boat and the presumed weight in pounds of those persons. The presumed weight per person may not be less than 150 pounds.

(iii) The maximum horsepower of the motor that the boat is designed or intended to accommodate.

(2) For other boats to which the requirement applies:

(i) The total weight of persons, gear, and other articles placed aboard which the boat is capable of carrying safely under normal conditions.

(ii) The recommended number of persons consistent with the weight capacity of the boat and the presumed weight in pounds of those persons. The presumed weight per person may not be less than 150 pounds.

§ 99.3. Replacement plates.

If the manufacturer did not affix a plate, if a plate is damaged to the point of being not discernable, or if a plate is removed, the owner of the boat shall make application to the manufacturer for a replacement.

§ 99.4. Prohibited acts.

(a) A person may not tamper with or remove a capacity plate or any of the information shown.

(b) A person may not sell or otherwise transfer ownership of a boat subject to this chapter that does not comply with this chapter.

(c) A person may not operate a boat displaying an illegible capacity plate. Owners of these boats shall apply for a replacement plate as provided in § 99.3 (relating to replacement plates).

(d) A person may not operate a boat for which a capacity plate is required unless the boat displays the capacity plate.

(e) A manufacturer, dealer or other person may not offer a boat for sale for which a capacity plate is required unless a capacity plate is properly affixed.

§ 111.3. Armstrong County.

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(b) *Keystone Lake*. The use of motors in excess of [~~10~~ 20] horsepower is prohibited.

§ 111.16. Clarion County.

(a) *Clarion River*. * * *

(b) *Redbank Creek*. **Boats are limited to slow, no wake speed on the entire creek from its headwaters to its confluence with the Allegheny River.**