

Notice of Proposed Rulemaking

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapter 119 Motorboat Noise Control

Preamble

The Fish and Boat Commission (Commission) proposes to amend Chapter 119 (relating to motorboat noise control). 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 update the Commission's methods for enforcement of motorboat noise control.

A. *Effective Date*

This 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 this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at <https://www.fishandboat.com>.

C. *Statutory Authority*

The proposed amendments to §§ 119.3 (relating to prohibited acts), 119.6 (relating to pass-by test), and 119.8 (relating to enforcement) are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. *Purpose and Background*

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Over the last several boating seasons the Commission has received multiple complaints about motorboat noise levels and a request for more enforcement. Under Title 58, Chapter 119 Motorboat Noise Control, regulations requiring mufflers and various noise levels for motorboats were established in June 1994. This regulation package was based on a model act provided by the National Association of State Boating Law Administrators (NASBLA). Even though the Commission adopted most of the recommendations from NASBLA, determining if a boat is in violation of the regulation is very subjective. Additionally, standards adopted have never truly been enforceable due to the lack of training and device guidelines.

Starting in 2018, staff began exploring the standards used and regulations in place in other states. It is believed with a few minor language adjustments the Commission will be able to establish a training program utilizing recognized devices and be able to better address the complaints from around the Commonwealth's waterways. This amendment was vetted and approved by the Boating Advisory Board on June 27, 2019.

The Commission proposes that §§ 119.3, 119.6, and 119.8 be amended 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 have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this 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

Timothy D. Schaeffer
Executive Director

Annex A

Regulation No. 48A-291

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart C. Boating

CHAPTER 119. MOTORBOAT NOISE CONTROL

§ 119.3. Prohibited Acts. – 5123(a)3 and 5123(a)5

(a) A person may not operate and an owner may not give permission for the operation of a motorboat upon the waters of this Commonwealth that is equipped with an altered muffler or a muffler cutout, bypass or other device designed or so installed so that it can be used continually or intermittently to bypass or otherwise reduce or eliminate the effectiveness of a muffler or muffler system installed under this chapter.

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§ 119.6. Pass-by test. – 5123(a)3

A person may not operate a motorboat on the waters of this Commonwealth that exceeds a noise level of 82dB(a) measured as specified in SAE [J34] J1970. The measurement may not preclude a stationary sound level test as prescribed in § 119.5 (relating to stationary test) if an officer has reason to believe that the motorboat is being operated in excess of the noise levels established in § 119.5.

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§ 119.8. Enforcement.

(a.) An officer authorized to enforce this chapter who has reason to believe that a [vessel] motorboat is being operated in excess of the noise levels established in this chapter may direct the operator of the [vessel] motorboat to submit the [vessel] motorboat to an onsite test to measure noise levels. If the [vessel] motorboat exceeds the decibel levels established by this chapter, the officer may direct the operator to take immediate and reasonable measures to correct

the violation, including returning the [vessel] **motorboat** to a mooring and keeping the [vessel] **motorboat** at the mooring until the violation is corrected or ceases.

(b). Any law enforcement officer who conducts motorboat noise level tests as provided in this chapter shall be qualified in motorboat noise testing by the Commission. Such qualifications shall include but are not limited to the selection of the measurement site, and the calibration and use of noise testing equipment.

(c). Measurements for either a Stationary or Pass-by Test will be made by a sound level meter which satisfies ANSI-S 1.4-1983, Type 2 or equivalent.