

# RULES AND REGULATIONS

## Title 58—RECREATION

### FISH AND BOAT COMMISSION [58 PA. CODE CHS. 53, 105 AND 109] Commission Property and Boating

The Fish and Boat Commission (Commission) by this order amends Chapters 53, 105 and 109 (relating to Commission property; operational conditions; and specialty boats and waterskiing activities). The Commission is adopting these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments relate to Commission property and boating.

#### A. *Effective Date*

These amendments will go into effect upon publication of this order.

#### B. *Contact Person*

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

#### C. *Statutory Authority*

The amendments are published under the statutory authority of sections 741 and 5123 of the code (relating to control of property; and general boating regulations).

#### D. *Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations on boating. The specific purpose of the amendments is described in more detail under the summary of changes.

#### E. *Summary of Changes*

1) *Section 53.8 (relating to boats)*. The Commission has owned and operated lakes for fishing for many years. Boats of any kind were originally prohibited because these lakes were deemed to be for fishing. Over time, these restrictions were relaxed. First, unpowered boats, except sailboats, were permitted. Then the Commission allowed boats with electric motors. Finally, sailboats were permitted but were restricted to boats less than 14 feet on lakes less than 100 acres and less than 17 feet on all other lakes. Sailboats also were not permitted on trout stocked lakes from opening day of trout season until June 1.

The original restrictions were based on the principle that the lakes were fishing lakes and not boating. The actual reasons for the change in direction are lost in the records, but it is assumed that the Commissioners at that time began to realize that fishing from a boat did not hurt the resource and would provide additional enjoyment. Sailboats were considered not to be useful for fishing and therefore were not included. It was further thought that the operation of sailboats would impact the use of the lakes by fishermen. They feared uncontrolled sailboats running over anglers' fishing lines.

The use of Commission lakes by sailboats is limited, but the potential for additional use exists. Since the Commission is charged with providing both fishing and boating opportunities, the Commission has amended the current regulations to accommodate both uses within

acceptable management principles. The amendment will provide additional resources for use by sailboats.

The Commission's Boating Advisory Board (Board) previously recommended the publication of a notice of proposed rulemaking containing this change. At its meeting in May 1997, the Board recommended final adoption by the Commission.

2) *Sections 105.3 and 109.3 (relating to unacceptable boating practices; and personal watercraft)*. At the 1996 annual conference, the National Association of State Boating Law Administrators (NASBLA) adopted changes to the model Personal Watercraft Act. The amendments were directed at further refining the use and operation of these boats. Although the Commission already has implemented several of the changes, staff wished to include several new sections relating to operating in proximity of other boats. Additionally, staff proposed that the age for operating personal watercraft solo be raised to 16. Staff proposed that these changes be incorporated into § 109.3.

At its December 20, 1996, meeting, the Board considered these changes and concluded, with the concurrence of staff, that the majority of the discussed restrictions should not apply solely to personal watercraft but to other boats as well. Therefore, the Board recommended that the Commission amend these provisions, with a few changes, into existing unacceptable boating practices in § 105.3. The Board, however, did not recommend that the Commission adopt the staff's recommendation that the age for operating personal watercraft solo be raised to 16 years.

At its January 25, 1997, meeting, the Commission considered these changes. With regard to § 105.3, the Commission approved the publication of a notice of proposed rulemaking consistent with the recommendations of the Board. With regard to § 109.3, the Commission, contrary to the recommendation of the Board, approved the publication of a notice of proposed rulemaking containing a provision that no person 15 years of age or younger may operate a personal watercraft on the waters of this Commonwealth, except a person 12 to 15 years of age may operate a personal watercraft if a person at least 18 years of age is on board the boat.

At its meeting in May 1997, the Board recommended final adoption of the proposed changes to the unacceptable boating practices provisions, but it did not recommend final adoption of the proposed amendments to the personal watercraft provisions. The Commission, on final rulemaking, adopted the changes to §§ 105.3 and 109.3 as proposed with one exception. The Commission amended § 109.3 to provide that a person 12 to 15 years of age may legally operate a personal watercraft if the person has obtained a boating safety certificate issued or recognized by the Commission and there are no passengers on board the personal watercraft or if there is a person at least 18 years of age on board the personal watercraft.

3) *Sections 109.2—109.4 (relating to sailboards; personal watercraft; and waterskiing, aquaplaning, kite skiing and similar activities)*. The Coast Guard has adopted regulations that will allow manufacturers to produce fully inflatable personal flotation devices (PFDs) for the recreational boating market in 1997. This action is seen by many as a major step forward in boating safety. With these devices, more boaters will be willing to wear a PFD. Wearing a PFD has been shown to be the single most effective factor that boaters can do to increase their

chances of surviving a boating accident. However, the fully inflatable PFD is not designed to be the PFD of choice for all activities. While it is ideal for cruising boats and fishing boats, it is not well designed for use on boats where the participant ends up in the water on a routine basis. Examples of this type of boat would be personal watercraft and sailboats. Use by waterskiers also would have the reverse effect than that which is desired.

Some inflatable PFDs are being manufactured so that they automatically inflate when submersed; others must be manually inflated by jerking a cord. Both types will have an oral backup capability. Boaters and waterskiers who are frequently in the water will find an automatic inflatable device an inconvenience as it inflates every time that it falls into the water. A manual inflation device also would not be a good choice because these individuals often end up in the water under conditions that would not allow them to inflate the device in time to save their lives. Manufacturers intend to place a warning label on their packaging about the dangers of using a fully inflatable PFD in the wrong circumstances. This warning to the purchaser will not be enough to prevent unknowledgeable boaters from purchasing or using these devices when they should not.

The Commission therefore adopted amendments to §§ 109.2—109.4 that clarify that inflatable PFDs may not be used to meet the requirements of these sections. The Board previously recommended the publication of a notice of proposed rulemaking containing these changes. At its meeting in May 1997, the Board recommended final adoption by the Commission.

#### F. Paperwork

The amendments hereby adopted will not increase paperwork and will create no new paperwork requirements.

#### G. Fiscal Impact

The amendments hereby adopted 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 containing the changes was published at 27 Pa.B. 1159 (March 8, 1997). The only changes to attract public comment were the amendments to §§ 105.3 and 109.3. The Commission received three comments on these changes. One commentator believed that (1) the Commission should require all persons who operate a boat or personal watercraft to take a boating safety course; (2) no one under 16 should be permitted to operate any boat or personal watercraft; and (3) water skiers should be required to wear bright orange or yellow ski vests. A second commentator supported the amendments making it unlawful to operate a boat in excess of slow, minimum height swell speed within 100 feet to the rear of another boat. The third commentator opposed the regulation that provided that no person 15 years of age or younger may operate a personal watercraft solo on the waters of this Commonwealth.

Copies of all 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 and 1202) and the regulations promulgated thereunder 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The adoption of the regulations 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 53, 105 and 109, are amended by amending §§ 53.8, 105.3, 109.2 and 109.4 to read as set forth at 27 Pa.B. 1159 and by amending § 109.3 to read as set forth at Annex A.

(b) The Executive Director will submit this order, 27 Pa.B. 1159 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 27 Pa.B. 1159 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-64 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart C. BOATING

#### CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

#### § 109.3. Personal watercraft.

(a) As used in this section, "personal watercraft" means a boat less than 16 feet in length which:

(1) Uses an internal combustion motor powering a water jet pump as its primary source of motive propulsion.

(2) Is designed to be operated by a person sitting, standing or kneeling rather than in the conventional manner of boat operation.

(b) It is unlawful for a person to operate, or be a passenger onboard, a personal watercraft on the waters of this Commonwealth unless the person is wearing a Type I, II, III or V United States Coast Guard approved personal flotation device. Inflatable personal flotation devices may not be used to meet this requirement.

(c) A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch shall attach the lanyard to his person, clothing or personal flotation device as appropriate for the specific vessel.

(d) A person may not operate a personal watercraft between sunset and sunrise.

(e) Subsections (b) and (c) do not apply to a performer participating in a permitted regatta, race, marine parade,

tournament or exhibition or to a person preparing to participate in the event at the location and within 48 hours prior to the event.

(f) A rental business may not lease, hire or rent a personal watercraft to or for use by a person who is 15 years of age or younger.

(g) The operator of a personal watercraft with a capacity of two or less persons as determined by the manufacturer, may not tow waterskiers or engage in waterskiing or similar activities while operating a personal watercraft.

(h) A person 15 years of age or younger may not operate a personal watercraft on the waters of this Commonwealth, except a person 12 to 15 years of age may operate a personal watercraft if there is a person at least 18 years of age on board the personal watercraft or if the person operating the personal watercraft has obtained a boating safety certificate issued or recognized by the Commission and there are no passengers on board the personal watercraft.

[Pa.B. Doc. No. 97-1248. Filed for public inspection August 8, 1997, 9:00 a.m.]

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