

# RULES AND REGULATIONS

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 65 AND 93]

#### Commission Property, Fishing and Boating

The Fish and Boat Commission (Commission) by this order amends Chapters 53, 65 and 93. The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments concern Commission property, fishing and boating.

#### A. *Effective Date*

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

#### 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 at <http://www.fish.state.pa.us>.

#### C. *Statutory Authority*

These amendments are published under the statutory authority of sections 741, 2102 and 5122 of the code (relating to control of property; rules and regulations; and registrations, licenses, permits, plates and statistics).

#### D. *Purpose and Background*

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

#### E. *Summary of Changes*

1) *Section 53.13 (relating to domestic water supply reservoirs)*. For many years, the Commission has pursued an active program of encouraging agreements from municipal water supplies to allow fishing in the waters of domestic water supply reservoirs. The Commission has entered into agreements with numerous municipal authorities to make these reservoirs subject to Commission property regulations and establish additional restrictions. This course of action is beneficial to the angling public since it provides important fishing opportunities. It is also beneficial to the operators of the water supply reservoirs since it makes Commission property regulations and additional restrictions applicable to these sites.

In reviewing the regulation applicable to this program, it appeared that it can be streamlined. The regulation currently provides that additional restrictions contained in agreements between municipal authorities and the Commission shall be fully enforceable when posted at the site. The regulation goes on to list some of the additional restrictions applicable to many of the water supply reservoirs with which the Commission has agreements. Including the specific list of additional restrictions in the regulation text appears unnecessary since the regulation also provides that the additional restrictions are fully enforceable when approved by the Executive Director and posted at the site. Accordingly, the Commission has amended the regulation to address this issue.

2) *Section 65.24 (relating to miscellaneous special regulations)*. Angling at the Fairmount fishway on the Schuylkill River has reached the point where a change in regulations is necessary for the well being of users as well as fish, including migratory species such as American shad, gizzard and hickory shad and striped bass. Fairmount Dam (river mile 9.0) is the first barrier that migratory species encounter as they come up the Schuylkill River. A fish passage facility was open for use in the spring of 1979 and was successful in passing migratory species, including American shad, gizzard shad, river herring and a host of warmwater/coolwater species. Aside from problems in maintaining an operational facility due to debris clogging the facility, fish have utilized this facility annually. At the same time, anglers began to frequent the site because: 1) it provides much needed shore access along the river; and 2) the dam provides excellent habitat for fish moving up the river. The Commission made an exception to the restriction prohibiting angling within 100 feet of a fishway so anglers could take advantage of the access at the fishway. Over the years, as water quality in the Schuylkill and Delaware continued to improve so did the density of fish congregating downstream of the dam and along the fishway wall. Angling interest did likewise, including those who opted to use snagging gear, particularly when schools of gizzard shad made snagging very easy. In addition, enterprising anglers with specialized nets would break through fences on the top of the fishway and place homemade gill nets in the vertical slots between individual pools. Despite herculean efforts by various waterways conservation Officers and their deputies, illegal angling activities at the fishway continue to increase. Thus, the Commission has amended this section to no longer permit fishing within 100 feet of the Fairmount fishway.

3) *Section 93.2 (relating to permanent and temporary registration)*. At its October 1997 meeting, the Senate Game and Fisheries Committee asked the Commission staff to look at regulatory actions to address concerns related to Senate Bill 686. This bill, introduced by Senator Leonard Bodack, would change the code so that when a person receives a new boat registration, it would be valid for 2 years from the date of issuance. Thereafter, it is presumed that renewals would be issued on the same 2-year cycle. Thus, if a person obtained a new registration in July 1997, it would expire in July 1999 and so on.

Under the current cycle, renewals are sent out in the winter, and the vast majority of renewals are issued by March 31. This enables Commission staff to complete action on most renewals before they are inundated with new registrations in the summer. The Commission is able to process hundreds of thousands of new and renewal boat registrations each year with a very small staff of five permanent and four seasonal employees because the current law is effective in its timing of renewals vis-a-vis the bulk of new registrations. If SB 686 becomes law in its present form, more and more renewals will need to be processed in the same summer months when staff are handling most new registrations. Eventually, over a period of several years, it is likely that the majority of renewals and new registrations will be concentrated in the same months.

The Commission believes that its staff's efforts to provide the best possible service to boat registration customers depend, in part, on the ability to schedule the renewal cycle so that it does not conflict with the timing

of the bulk new registrations. Changing over to a renewal cycle based on the month the boat is first registered would entail additional costs in terms of computer programming. The Commission fears that, if renewals become concentrated in the same months when most new registrations are issued, it may also face additional personnel costs.

Even though the Commission would like to maintain the current cycle whereby most renewals are handled in February and March, it agrees that some changes may be desirable to ensure that persons who obtain new boat registrations get fair value for their registration fees. The Commission recently approved changes to the boat registration regulations, effective January 1998, to permit the transfer of boat registrations so that persons who change boats in the middle of a registration cycle can keep on the same cycle at a cost of \$5. Prior to this change, which was instituted as a direct result of Senator Bodack's inquiry, a registrant had to pay for a new registration when the registrant changed boats regardless of the timing or the circumstances.

The Commission has amended its regulations to ensure that no matter when someone obtains a new registration, the registrant will get to boat during two boating seasons on their initial registrations. Under current regulations, October 1 is the cutoff point for determining the duration of a new registration. Thus, a person who obtains a new registration in September 1997 will need to renew in March 1999, while a person who obtains a new registration in October 1997 will not need to renew until March 2000. Although it might seem the September registrant is being shortchanged, it is important to remember that, in most cases, the registrant had use of the boat for at least 60 days prior to September under the temporary registration sticker. Thus, even under the current regulations, a September registrant would be able to boat in July and August of one boating season and all of the following boating season under a single 2-year registration. The Commission has amended § 93.2 to make it clear that the expiration date of a 2-year registration will cover at least two boating seasons.

*F. Paperwork*

The amendments will not increase paperwork and will not create any 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 containing the proposed amendments was published at 28 Pa.B. 1837 (April 18, 1998). The Commission did not receive any public comments regarding the proposed amendments.

*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 Commission did not receive any comments.

(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 53, 65 and 93, are amended by amending §§ 53.13, 65.24 and 93.2 to read as set forth at 28 Pa.B. 1837. (*Editor's Note:* A proposal to amend § 65.24 remains outstanding at 28 Pa.B. 3058 (July 4, 1998).)

(b) The Executive Director will submit this order and 28 Pa.B. 1837 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 28 Pa.B. 1837 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-79 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 98-1549. Filed for public inspection September 25, 1998, 9:00 a.m.]

**FISH AND BOAT COMMISSION**  
**[58 PA. CODE CHS. 91, 95, 97, 109 AND 113]**  
**Boating**

The Fish and Boat Commission (Commission) by this order amends 58 Pa. Code Chapters 91, 95, 97, 109 and 113. The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments concern boating.

*A. Effective Date*

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

*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 at <http://www.fish.state.pa.us>.

*C. Statutory Authority*

These amendments are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

*D. Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations pertaining to boating. The specific purpose of the amendments is described in more detail under the summary of changes. Prior to consideration by the Commission on final rulemaking, the Commission's Boating Advisory Board considered the proposed amendments and recommended adoption by the Commission.

### E. Summary of Changes

1) *Section 91.2 (relating to definitions)*. The Commission's Bureau of Law Enforcement has reported that many boat operators are not counting passengers being towed behind their boats as being included in the number of persons allowed on the boat as rated by the capacity plate. To clarify this requirement, the Commission amended the definition of "passenger."

2) *Sections 91.4 and 109.3 (relating to age of operator; and personal watercraft)*. The Commission recently amended § 109.3 to provide that: (1) no one 11 years old or younger may operate a personal watercraft; (2) persons 12 to 15 years of age may operate a personal watercraft alone, with no passengers on board, only if they have in their possession a Boating Safety Certificate issued or recognized by the Commission; and (3) persons 12 to 15 years of age may operate a personal watercraft with or without a Boating Safety Certificate if accompanied by someone at least 18 years of age. This is somewhat different from the requirements of § 91.4 that provides that persons 11 years of age or younger must be accompanied by someone at least 16 years of age to operate a motorboat of 10 horsepower or more. This section also requires persons 12 to 15 years of age to obtain a Boating Safety Certificate to operate boats alone with no restrictions on passengers. If they do not have a Certificate, they must be accompanied by someone at least 16 years of age. The primary difference between boats of 10 horsepower or more and personal watercraft is that no one 11 years or age or younger may operate a personal watercraft, and persons 12 to 15 years of age may not operate a personal watercraft with passengers unless the passengers are at least 18 years of age. The new § 109.3 is somewhat difficult to understand or to explain, especially with the different age of operator requirements in § 91.4. To simplify the regulations, the Commission proposed to amend § 91.4 and to delete § 109.3(h) in its entirety. On final rulemaking, the Commission, in the interest of clarity, struck the proposed text of § 91.4 in the notice of proposed rulemaking and substituted it with the text to read as set forth in Annex A. The Commission also deleted § 109.3(h) in its entirety, as proposed.

3) *Section 91.6 (relating to certificates)*. The Commission currently issues Boating Safety Education Certificates free of charge to residents who have successfully completed a National Association of State Boating Law Administrators (NASBLA), an approved Commission, a United States Power Squadrons (Squadrons) or a United States Coast Guard Auxiliary (Auxiliary) classroom boating course. The NASBLA recommends that the states recognize, for reciprocity, courses that have been approved by the NASBLA and recognized by the United States Coast Guard (Guard). The Commission therefore proposed to amend this section to accept Boating Safety Education Certificates from boaters coming into this Commonwealth from out-of-State that are issued by another state or province or by the Auxiliary or Squadrons in another state or province. On final rulemaking, the Commission determined that in addition to accepting certificates issued by the Auxiliary and the Squadrons, the Commission should accept certificates from private organizations such as the American Sailing Association that sponsors and teaches a Nationally known sailing school. Certificates issued by private companies or Internet programs will not be accepted. The Commission adopted the amendment to read as set forth in Annex A.

4) *Section 95.3 (relating to lights for boats)*. The Federal Rules of the Road exclude boats less than 7 meters in

length from the requirement of displaying an anchor light when not in a channel or other area where boats normally navigate. The Commission intended, with § 95.3 (d), to remove this exemption to require lights on all boats on all waters of this Commonwealth. Instead, a strict reading of the regulation leads to an interpretation that only those boats less than 7 meters are required to display anchor lights. The Commission amended this regulation to clarify that an anchor light is required on all boats at all times on most waters of this Commonwealth.

5) *Section 97.1 (relating to personal flotation devices)*. This section prohibits the use of recreational vessels without one personal flotation device (PFD) for each person on board. The code does not define the word "recreational," and the word "vessel" is a boat that is defined as "every description of watercraft constructed or sold for the primary purpose of being used as a means of transportation on water." The use of these two terms together creates several problems. One is that the requirement appears not to apply to vessels used in commerce since they are not used for recreation. Second, the strict definition of "vessel" excludes certain other craft from the requirement. If the vessel was not intended as a means of transportation on water, its passengers do not have to have PFDs. The Commission therefore amended this section to replace the term "recreational vessel" with the broader term "boat" since it was not the original intent of this regulation to limit the PFD requirement to recreational vessels only.

6) *Section 109.3 (relating to personal watercraft)*. A request has been received by the Bureau of Law Enforcement to amend this section so that the number of water skiers towed by a personal watercraft is limited to one. Law enforcement officers have noticed an increase in situations where operators are exceeding the carry capacity of personal watercraft by pulling more than one skier while having a full capacity of passengers on board. If an emergency were to occur or a skier wanted to board the vessel, the skier would be unable to do so. This creates an unsafe boating practice that needs to be more clearly addressed in the regulations. Therefore, the Commission amended this section to address this concern.

7) *Chapter 113 (relating to Aids to Navigation and Obstructions to Navigation)*. The United States began conversion of the United States Aids to Navigation System (System) to harmonize with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System in 1985, and completed the conversion for all Coast Guard maintained aids in 1989. The System has not changed in substance. It remains primarily a lateral aids to navigation system. The major changes are the introduction of the yellow special mark, the replacement of the black and white mid-channel aids with the red and white safe water mark, and most notably, the replacement of the older black port-hand buoys with green buoys. Information and regulatory marks remain the same as that of the Uniform State Waterway Marking System (USWMS). The states were not required to change to the System, but the Commission felt that since the USCG was making the change, the Commonwealth should as well. The Commission started replacing the black buoys and black and white mid-channel buoys when they were no longer serviceable; the Commission replaced them with the green buoys and the red and white safe water buoys. All buoys in this Commonwealth now conform to the System. The USCG has proposed rules that would eliminate the USWMS. The Commission therefore amended Chapter 113 to reflect the current practice.

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 containing the proposed amendments was published at 28 Pa.B. 1533 (March 28, 1998). The Commission did not receive any public comments regarding the proposed amendments.

*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 the Commission did not receive any comments.

(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 91, 95, 97, 109 and 113, are amended by amending §§ 91.2, 95.3, 97.1, 109.3, 113.1 and 113.2 to read as set forth at 28 Pa.B. 1533, and by amending §§ 91.4 and 91.6 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 28 Pa.B. 1533 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, 28 Pa.B. 1533 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-77 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 91. GENERAL PROVISIONS

§ 91.4. Age of operator.

(a) The following age restrictions apply to the operation of a motorboat propelled by a motor greater than 10 horsepower (other than personal watercraft):

(1) A person 11 years of age or younger may not operate such a watercraft unless at least one person 16 years of age or older is present onboard.

(2) A person 12 through 15 years of age may not operate such a watercraft unless the person has obtained and has in his possession a Boating Safety Education Certificate or at least one person 16 years of age or older is present onboard.

(b) The following age restrictions apply to the operation of personal watercraft:

(1) A person 11 years of age or younger may not operate a personal watercraft.

(2) A person 12 through 15 years of age may not operate a personal watercraft unless he has obtained and has in his possession a Boating Safety Education Certificate.

(3) A person 12 through 15 years of age may not operate a personal watercraft if there are any passengers onboard 15 years of age or younger.

§ 91.6. Certificates.

(a) A certificate, license or other document required under this subpart or the code shall be carried when the boat is in operation and shall be carried so that it can be handed to an officer authorized to enforce this subject.

(b) A Boating Safety Education Certificate is one issued to an individual by one of the following:

(1) The Commission or another state or province for successful completion of a boating safety education program approved by the Commission and the National Association of State Boating Law Administrators.

(2) The United States Coast Guard Auxiliary or the United States Power Squadrons or other organizations approved by the Executive Director in another state or province for successful completion of a boating safety education program approved by the National Association of State Boating Law Administrators.

[Pa.B. Doc. No. 98-1550. Filed for public inspection September 25, 1998, 9:00 a.m.]