

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 69]

Seasons, Sizes and Creel Limits; Fishing in Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) proposes to amend Chapters 61 and 69 (relating to seasons, sizes and creel limits; and fishing in Lake Erie and boundary lakes). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to fishing.

A. *Effective Date*

The proposed amendments, if approved on final rulemaking, will go into effect on January 1, 2002, or upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*, whichever occurs later.

B. *Contact Person*

For further information on the proposed amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

The proposed amendments to §§ 61.2, 61.3 and 69.12 (relating to Delaware River and River Estuary; Pymatuning Reservoir; and seasons, sizes and creel limits—Lake Erie) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 69.33 (relating to use of trap nets) is published under the statutory authority of section 2903 of the code (relating to boats and net licenses for boundary lakes).

D. *Purpose and Background*

The proposed amendments are designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

(1) *Section 61.2 (relating to Delaware River and River Estuary)*. Management of Delaware River and Estuary striped bass is complicated given that this water borders with the states of New York and New Jersey. Also, the Atlantic States Marine Fisheries Commission (ASMFC) is involved because the striped bass stock is a migratory fish. Federal mandates place migratory East Coast striped bass under the purview of the ASMFC having a membership of all Atlantic Coast states as well as the District of Columbia and the Potomac River Fisheries Commission. The existing ASMFC striped bass management plan requires jurisdictions to adhere to a set standard of minimum length and creel limits. Harvest ceilings apply in some fisheries. However, jurisdictions are able to deviate from standard regulations provided that the alternative seasons, length limits, creel limits, gear restrictions, and the like, provide a conservation equivalency. State management plans undergo review by the ASMFC Striped Bass Technical Committee before

being considered by the Striped Bass Management Board, both of which include representation from the Commonwealth.

The recovery of East Coast striped bass stocks has permitted the liberalization of regulations so anglers, both recreational and commercial, can once again enjoy fishing over an abundance of striped bass. Various stock abundance and harvest indices as well as actual harvest counts/estimates are used to determine stock status and to set the tone for regulations for each fishing season. Unfortunately, the process often results in jurisdictions not being able to implement regulatory changes in a timely fashion given the timing of Striped Bass Board action and rulemaking processes in the jurisdictions.

Since the early 1980s when ASMFC striped bass management action began in earnest to rebuild seriously depleted stocks, the Commonwealth has worked in concert with neighboring jurisdictions regarding regulations for Delaware River and Estuary striped bass. Currently, Commission regulations provide for a 28-inch minimum length limit, a 2 fish daily possession limit and a year-round harvest season except for a closed season from January through February and April through May from the Pennsylvania/Delaware State line upstream to Trenton Falls. Delaware and New Jersey, as part of fine-tuning their Statewide striped bass regulations including marine fisheries, are making or recently have made changes. New Jersey, in particular, is considering regulations that provide for one fish that is in the 24 to less than 28-inch size range and one fish that is 28 inches and over. In fact, this package applied to the Delaware River from Trenton Falls downstream during much of the 2000 season. The Commission believes that it would be desirable to have its regulations be consistent with the New Jersey package, particularly if that state applies the regulations to the freshwater portion of the Delaware River. Accordingly, the Commission proposes amending § 61.2 to implement a new size and daily creel limit for Delaware River and Estuary striped bass. The Commission proposes that one striped bass may be in the 24 to less than 28-inch range, and one striped bass may be 28 inches in length or greater.

(2) *Section 61.3 (relating to Pymatuning Reservoir)*. Pymatuning Reservoir is a 14,000-plus acre flood control and augmentation impoundment in Crawford County, Pennsylvania and Ashtabula County, Ohio. The fishery is jointly managed by the Ohio Department of Natural Resources (Ohio DNR) and the Commission. Representatives from the two agencies meet annually to discuss management issues and plans. In recent years, Ohio DNR has changed Statewide bass regulations as a result of ongoing studies. The daily creel limit component of the Statewide regulations has been reduced to five. The Commission has been approached about reducing the daily creel limit at Pymatuning Reservoir to five to be consistent with Ohio. Currently, a 12-inch minimum length limit and an eight bass daily limit applies to black bass at Pymatuning, while the Statewide limit in this Commonwealth is six.

The Commission proposes reducing the creel limit in the Pymatuning to five fish to be consistent with Statewide regulations in Ohio. The Commission believes that it is unlikely that the three fish reduction will have any impact on the bass population or anglers seeking bass. Creel surveys conducted jointly by both agencies consis-

tently have indicated less than 5% of all anglers were fishing for black bass. Since regulations in Ohio run from March through February while those in this Commonwealth are on a calendar year basis, the regulations will not be congruent for 2 months during the first year of implementation. The Commission, however, believes that this will not be a problem.

(3) *Sections 69.12, 69.31 and 69.33 (relating to seasons, sizes and creel limits—Lake Erie; seasons; and use of trap nets).* Current sport fish regulations concerning the harvest of walleye include a daily limit of six fish and a 15-inch minimum size limit. The commercial trap net fishery, on the other hand, is regulated by a 15-inch minimum size and an annual total allowable harvest (in pounds) set at the onset of each fishing year. There is no closed season for the sport fishery.

Since the mid 1980's, there has been an inexorable decline in walleye abundance throughout Lake Erie. Walleye presently are only 14% of their 1993 population size. In Commonwealth waters, a similar, continuous trend has been observed. Since 1988, walleye numbers have declined over 80%. Accordingly, the annual estimated number of walleye harvested in this Commonwealth has declined from nearly 250,000 during the late 1980's to 77,000 in year 2000. Explanations for these population decreases are: (1) decreases in overall lake productivity; (2) weaker recruitment patterns and smaller year classes; and (3) gradual increases in exploitation (fishing) rates.

To reverse the downward trend in walleye abundance, it will be necessary to increase walleye survival lake-wide and that is expected to increase walleye reproductive potential. While this Commonwealth is not a major source of increased fishing rates, we need to do our part to insure the walleye's reproductive potential. In this Commonwealth, this can be achieved by restricting fishing during the spawning period. A closed season from mid-March to early May is expected to reserve up to 20% of the potential commercial walleye catch and 1% of the angler catch for conservation purposes as well as limiting the potential to target future increases in early spring walleye spawning populations. This will affect both commercial and recreational fisheries where they occur on Lake Erie, Presque Isle Bay and peninsular waters. Accordingly, the Commission proposes to amend §§ 69.12, 69.31 and 69.33 to include a Lake Erie closed season for walleye from March 15 (12:01) to the first Friday in May (12:00 midnight).

F. *Paperwork*

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

G. *Fiscal Impact*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no 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 amendments 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 at "ra-pfbcregs@state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-115. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.2. Delaware River and River Estuary.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Delaware River and to Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

<i>Species</i>	<i>Seasons</i>	<i>Minimum Size</i>	<i>Daily Limit</i>
	* * * * *		
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to Trenton Falls: March 1 until March 31, and June 1 until December 31. From Trenton Falls upstream: open year-round	[28 inches] 24 inches to less than 28 inches 28 inches or greater	[2] 1 1
	* * * * *		

§ 61.3. Pymatuning Reservoir.

* * * * *

(c) Except as provided by special regulations, the following sizes and creel limits apply to Pymatuning Reservoir; no closed season applies:

<i>SPECIES</i>	<i>MINIMUM SIZE</i>	<i>DAILY CREEL LIMIT</i>
*	*	*
BASS	12 inches	[8] 5
*	*	*

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

§ 69.12. Seasons, sizes and creel limits—Lake Erie.

(d) The following seasons, sizes and creel limits apply to Lake Erie and Presque Isle Bay, including peninsula waters:

<i>Species</i>	<i>Seasons</i>	<i>Minimum Size</i>	<i>Daily Limit</i>
	* * * * *		
WALLEYE*	[Open year-round] January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31	15 inches	6
	* * * * *		

§ 69.31. Seasons.

* * * * *

(b) The commercial fishing season for walleye is January 1 [until] to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31. This season will close on the date established by the Executive Director as marking the probable attainment of the total allowable catch for walleye for that year. The total allowable catch for walleye for any year will be determined by the Executive Director and announced annually on or before March 1. After the announcement, the Executive Director may, from time to time, revise the total allowable catch for that year if he determines that conditions so warrant. The Executive Director or a designee will monitor monthly, weekly and daily reports of catch of walleye and will declare the season to be closed on a date the Director determines will probably mark the attainment of the total allowable catch. It is unlawful for a person fishing under a commercial fishing license or with a device subject to licensing under section 2902 of the code (relating to net permits) to take, catch or attempt to catch walleye except during the walleye season established under this subsection. Walleye accidentally caught out of season shall be immediately returned to the waters from which it was taken regardless of its condition and reported within 2 business days to the Commission at the address where commercial catch reports are filed.

* * * * *

§ 69.33. Use of trap nets.

* * * * *

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
	* * * * *	
Walleye (<i>Stizostedion vitreum</i>)	15 inches	[No closed season until the total allowable catch is taken] January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31. This season will close when the total allowable catch for walleye is taken.
	* * * * *	

[Pa.B. Doc. No. 01-404. Filed for public inspection March 9, 2001, 9:00 a.m.]

**[58 PA. CODE CHS. 91 AND 111]
Boating Safety Education Certificates; Special Regulations Counties**

The Fish and Boat Commission (Commission) proposes to amend Chapters 91 and 111 (relating to general provisions; and special regulations counties). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to boating.

A. Effective Date

The proposed amendments, if approved on final rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-

7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The proposed amendment to § 91.6 (relating to Boating Safety Education Certificates) is published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed amendments to §§ 111.45, 111.48 and 111.52 (relating to Monroe County; Northampton County; and Pike 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 amendments are designed to update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. The Commission's Boating Advisory Board has considered the proposals and has recommended that the Commission publish a notice of proposed rulemaking containing the amendments.

E. Summary of Proposal

(1) *Section 91.6 (relating to Boating Safety Education Certificates)*. The Commission's regulations require that operators of personal watercraft and children who are operating certain boats obtain and carry a Boating Safety Education Certificate. It is the intent of the regulations that the operator receive instruction in boating safety and show competence in the boating regulations and procedures. Carrying the Certificate is incidental to this overarching requirement, and the requirement to carry it is intended to help the law enforcement officer ensure that the operator has fulfilled his obligations. It is reasonable to assume that some operators have obtained the requisite Certificate but have forgotten it or misplaced it. Citations usually are not issued when the officer can reasonably assume that the Certificate is likely available, just not onboard.

The Commission's regulations provide a mail-in procedure for persons who are caught fishing without displaying a license or boating without the boat registration card onboard. This procedure has been very successful and has resulted in greater efficiency and use of officer time. Therefore, the Commission proposes implementing a similar program for Boating Safety Education Certificates by amending § 91.6 as set forth in Annex A.

(2) *Sections 111.45, 111.48 and 111.52 (relating to Monroe County; Northampton County; and Pike County)*. The Commission has received notification that the Superintendent of the Delaware Water Gap National Recreation Area has taken action to prohibit the operation of personal watercraft within the boundaries of the area under the jurisdiction of the National Park Service (NPS). The Commission has been asked to amend its regulations to assist in the enforcement of this ban.

The Commission always has had a cooperative relationship with NSP and has attempted to have consistent regulations to help enforcement personnel effectively and uniformly enforce boating safety regulations. Accordingly, the Commission proposes that these special boating regulations be amended to be consistent with the new NPS restrictions as set forth in Annex A.

F. Paperwork

The proposed amendment to § 91.6 will slightly increase paperwork and will create a few new paperwork

requirements because boat operators, who are required by regulation to have a Boating Safety Education Certificate onboard and do not have one in their possession, will have the option of mailing the original Certificate to the apprehending officer. If the officer permits the operator to mail the original Certificate to the officer, the officer will provide the operator with a receipt or other documentation that will allow the continued operation of the boat during the period that the original Certificate is not in possession. The proposed amendments to §§ 111.45, 111.48 and 111.52 will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions, and they will impose no new costs on the private sector. The proposed amendment to § 91.6 will impose only nominal costs on those members of the general public who mail the original Certificate to the apprehending officer. The proposed amendments to §§ 111.45, 111.48 and 111.52 will impose no new costs on the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments 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 at "ra-pfbcregs@state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-113. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 91. GENERAL PROVISIONS

§ 91.6. Boating Safety Education Certificates.

* * * * *

(e) *Boating without a Certificate onboard.*

(1) When an operator is found operating a boat without a Boating Safety Education Certificate onboard and claims that the Certificate is available, the apprehending officer shall give the operator 7 days to produce the original Certificate.

(2) If it is inconvenient for the operator to produce the Certificate in person, the officer may permit the operator to mail the original Certificate to the officer for verification. The operator shall provide a stamped self-addressed envelope for the return of the Certificate. If the officer permits the operator to mail the original Certificate to the

officer, the officer shall provide the operator with a receipt or other documentation allowing continued operation of the boat during the period the original Certificate is not in possession.

(3) If the operator fails to send the original Certificate within the 7-day period, the officer shall institute summary proceedings against the operator in the manner prescribed by law.

CHAPTER 111. SPECIAL REGULATIONS
COUNTIES

§ 111.45. Monroe County.

* * * * *

(d) Delaware River. The operation of personal watercraft is prohibited within the Delaware Water Gap National Recreation Area.

§ 111.48. Northampton County.

* * * * *

(c) Delaware River. The operation of personal watercraft is prohibited within the Delaware Water Gap National Recreation Area (upstream from mile 209.5).

§ 111.52. Pike County.

* * * * *

(j) Delaware River. The operation of personal watercraft is prohibited in the following areas within the Upper Delaware Scenic and Recreational River:

* * * * *

(4) The Delaware Water Gap National Recreation Area (downstream from mile 250).

[Pa.B. Doc. No. 01-405. Filed for public inspection March 9, 2001, 9:00 a.m.]

[58 PA. CODE CH. 93]
Registration and Numbering of Boats

The Fish and Boat Commission (Commission) proposes to amend Chapter 93 (relating to registration and numbering). The Commission is publishing this amendment as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendment relates to boat registration issuing agents.

A. Effective Date

The proposed amendment, if approved on final rulemaking, will go into effect upon publication of an order adopting the amendment in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed amendment, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The proposed amendment is published under the statutory authority of section 5304(d.1) of the code (relating to issuing agents, rules and regulations).

D. Purpose and Background

The proposed amendment is designed to update, modify and improve the Commission's regulations pertaining to boat registration issuing agents. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

The Commission issues a *Handbook for Boat Registration Issuing Agents* that is distributed at the beginning of each calendar year. This handbook details procedures to be followed in the performance of an agency's responsibilities and is based on the code, the Commission's regulations and experience gained from registering boats over the years. The handbook also contains operational suggestions and highlights penalties that can be imposed for noncompliance with the code and the regulations. Section 93.13 (relating to issuing agents) currently addresses certain aspects of an issuing agency, including eligibility, minimum sales requirements and the treatment of nonpublic boat registration information. However, a considerable portion of the Commission's requirements for issuing agents as detailed in the handbook has not been adopted as regulations.

To update and clarify the requirements for issuing agents that are regulatory in nature, the Commission proposes new boat registration issuing agent regulations as set forth in Annex A. The proposed amendment addresses the establishment of a nonrefundable \$100 fee for new issuing agents; training requirements for new and existing agents; requirements for the minimum number of registrations issued; recordkeeping and operational requirements; reporting requirements; and provisions for the recall of agencies. Except for the fee and training requirements, most of these provisions mirror those in guidelines that have been in effect for several years. Similar regulations adopted by the Commission at the January 1997 meeting regarding fishing license issuing agents have achieved the intended objectives.

F. Paperwork

The proposed amendment will slightly increase paperwork in terms of creating and reproducing training materials. The proposed amendment will create few new paperwork requirements because most of the proposed amendment mirrors guidelines already in place. To the extent that there are any new reporting requirements, the increase in paperwork will be minimal.

G. Fiscal Impact

The proposed amendment will have a modest fiscal impact on the Commonwealth in that new and existing agents will be required to attend training offered by the Commission. The Commission expects to incur an increase in program costs associated with the publication and reproduction of training materials and with employee travel to locations outside the Harrisburg area. The proposed amendment generally will not have an adverse fiscal impact on the Commonwealth's political subdivisions, except for county treasurers who serve as issuing agents. As described, the proposed amendment will impose a one-time, nonrefundable fee of \$100 on new issuing agents only. The Commission anticipates that it will receive applications from less than 30 new issuing agents each year. New and existing agents also will incur costs associated with traveling to attend mandatory training. Although county treasurers will incur travel costs, section 5304(d.1) of the code exempts them from paying any administrative fee established by the Commission. Costs

incurred by county treasurers therefore will be nominal. The proposed amendment will impose no new costs on the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendment 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 at "ra-pfbcregs@state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-112. (1) Fish Fund; (2) Implementing Year 2001-02 is \$10,000; (3) 1st Succeeding Year 2002-03 is \$10,000; 2nd Succeeding Year 2003-04 is \$10,000; 3rd Succeeding Year 2004-05 is \$10,000; 4th Succeeding Year 2005-06 is \$10,000; 5th Succeeding Year 2006-07 is \$10,000; (4) Fiscal Year 2000-01 \$n/a; Fiscal Year 1999-00 \$n/a; Fiscal Year 1998-99 \$n/a; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 93. REGISTRATION AND NUMBERING

§ 93.13. Issuing agents.

(a) [The designation of issuing agents for temporary boat registrations shall be limited to the Commission and Commission offices, county treasurers, businesses dealing in boats, boating equipment or sporting goods and temporary tag services or messenger services approved by the Department of Transportation for the issuance of temporary boat trailer registrations.

(b) To maintain an agency, the agent shall issue at least 25 temporary boat registrations during the calendar year.

(c) If the Executive Director determines that a sufficient number of agents are not available in an area reasonably to address the needs of the boating public, the Executive Director may appoint additional agents from other interested individuals or reduce the number of temporary boat registrations that existing agents are required to issue during the year.

(d) The Commission will collect and deposit in the Boat Fund the \$2 issuing agent fee for all temporary boat registrations issued by Commission offices.

(e) Issuing agents shall have access to nonpublic information concerning holders of boat registrations and titles, including their home addresses. Issuing agents who are provided nonpublic infor-

mation about boat registration holders or boat owners in the course of their duties may not release or disclose the nonpublic information except for official purposes.]

Designation

(1) The designation of issuing agents for temporary boat registrations shall be limited to the Commission and Commission offices, county treasurers, businesses dealing in boats, boating equipment or sporting goods and temporary tag services or messenger services approved by the Department of Transportation for the issuance of temporary boat trailer registrations.

(2) An applicant seeking to become an issuing agent for temporary boat registrations shall complete and submit to the Commission an application on the form prescribed by the Commission and shall pay a one-time, nonrefundable fee of \$100. Applications shall be accompanied by a bond in favor of the Commission in a minimum amount specified by the Executive Director or a designee.

(3) Upon being designated as an issuing agent, at least one employe of the new agent with primary responsibility for handling boat registrations shall successfully complete a training course offered by the Commission at its Harrisburg office or other location the Executive Director designates.

(b) Maintaining an agency.

(1) To maintain an agency, the agent shall issue at least 25 temporary boat registrations each calendar year, unless the Executive Director, for good cause shown, finds that unusual circumstances precluded the agent from issuing the minimum number of temporary boat registrations.

(2) To maintain an agency, the agent or a designee who is routinely involved in the issuance of temporary validation decals or the registration of boats shall successfully complete, at least once every 2 years, training offered by the Commission at a location designated by the Executive Director.

(c) *Insufficient number of agents.* If the Executive Director determines that a sufficient number of agents is not available in an area reasonably to address the needs of the boating public, the Executive Director may appoint additional agents from other interested individuals or reduce the number of temporary boat registrations that existing agents are required to issue during the year.

(d) *Change of address, telephone number or ownership.* An issuing agent shall notify the Commission, in writing, within 10 days after a change of address, telephone number or ownership of the agency.

(e) Operation of an agency.

(1) Issuing agents shall prominently display the hours of operation and fee schedule at the agent's premises.

(2) Issuing agents who conduct transactions via e-commerce shall maintain the same standards as non-e-commerce agents.

(3) Issuing agents shall store temporary validation decals and related documentation in a secure location within the agent's premises and may not

remove the decals or related documentation from the agent's premises without the Commission's written permission.

(4) Issuing agents shall retain copies of all applications and related documentation for the current calendar year and the 2 previous years.

(5) Issuing agents shall have access to nonpublic information concerning holders of boat registrations and titles, including their home addresses. Issuing agents who are provided nonpublic information about boat registration holders or boat owners in the course of their duties may not release or disclose the nonpublic information except for official purposes.

(6) Issuing agents shall permit the inspection during regular business hours of the agent's premises and business records by Commission employees designated by the Executive Director or officers authorized to enforce the code.

(f) Issuance of temporary boat registrations.

(1) An issuing agent is responsible for ensuring that the "Application for Pennsylvania Boat Registration and/or Boat Title" (Form REV-336) is fully completed. An issuing agent shall ensure that the Form REV-336 is legible and accurate.

(2) An issuing agent may not knowingly permit an applicant to provide false or misleading information on the Form REV-336 or related documentation. If an issuing agent suspects that an applicant has provided false or misleading information on the Form REV-336 or related documentation, the agent immediately shall notify the Commission. An issuing agent may not provide false or misleading information on the Form REV-336 or related documentation.

(3) An issuing agent shall issue a temporary boat registration only to the owner or co-owner of the boat being registered. An issuing agent shall verify the identity of the applicant by requiring that the applicant produce positive means of identification.

(4) An issuing agent shall issue, upon request, a temporary boat registration to any individual who properly completes the Form REV-336, submits the appropriate documentation and pays the applicable fees and sales or use tax as required by the code and this chapter.

(5) An issuing agent shall issue a temporary boat registration only for new boats, used boats where ownership is being transferred and boats brought into this Commonwealth from another state.

(6) An issuing agent shall issue temporary validation decals in numerical sequence, beginning with the lowest number.

(7) An issuing agent shall indicate on temporary validation decals the month and year the temporary registration expires, using a black waterproof permanent ink marker or paint marker. The agency may not place any other marks on the decal.

(8) Within 10 days of the issuance of a temporary boat registration, the issuing agent shall submit to the Commission a properly completed "T-Sticker Summary Report" (Form PFBC-725) along with all applications, related documentation, applicable fees and Sales and Use Tax as required by the code and this chapter.

(g) *Inventory of decals.* Upon the Commission's request, an issuing agent shall submit an inventory report on the form prescribed by the Commission, accounting for all temporary validation decals in the agent's possession. The agent shall submit a complete and accurate inventory within 10 days of the agent's receipt of the Commission's request.

(h) *Voided decals.* When an issuing agent voids a temporary validation decal, the agent shall forward to the Commission the voided decal along with a report on the form prescribed by the Commission, explaining why the decal was voided. The agent shall forward the voided decal and the report within 10 days of the decal being voided.

(i) *Lost stolen or missing decals.* An issuing agent shall notify the Commission in writing of any lost, stolen or missing temporary validation decal within 48 hours of the agent's discovery of the lost, stolen or missing decal. The Commission may charge the agent a fee that is two times the highest annual boat registration fee for each decal that is lost, stolen or missing.

(j) *Replacement decals.* An issuing agent may not issue a replacement temporary validation decal without the Commission's approval.

(k) *Used boats sold by dealers.* An issuing agent may not submit to the Commission a Form REV-336 and related documentation from an applicant who purchased a used boat from a dealer and does not possess a properly completed "Dealer Notification of Boat Trade-In" (Form PFBC-TS1).

(l) *Acceptance of applications for permanent registrations or titles.* Within 10 days of the acceptance of the Form REV-336 and related documentation for a permanent registration or title, the issuing agent shall forward to the Commission, using the "T-Sticker Summary Report" (Form PFBC-725), all applications, related documentation, applicable fees and Sales and Use Tax as required by the code or this chapter.

(m) *Commission offices.* The Commission will collect and deposit in the Boat Fund the \$2 issuing agent fee for all temporary boat registrations issued by Commission offices.

(n) *Recall of agency.* The Commission may recall the agency of an issuing agent who violates the code or this chapter. A conviction of an offense under the code or this chapter is not a prerequisite to initiating an action to recall an agency. The Executive Director or a designee may initiate action to recall an agency by serving an order to show cause on the agent, which order will describe the alleged violation of the code or this chapter. Proceedings to recall an agency shall be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

[Pa.B. Doc. No. 01-406. Filed for public inspection March 9, 2001, 9:00 a.m.]

[58 PA. CODE CH. 105]

Unacceptable Boating Practices

The Fish and Boat Commission (Commission) proposes to amend Chapter 105 (relating to operational conditions).

The Commission is publishing this amendment as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendment relates to boating.

A. *Effective Date*

The proposed amendment, if approved on final rulemaking, will go into effect on January 1, 2002, or upon publication of an order adopting the amendment in the *Pennsylvania Bulletin*, whichever occurs later.

B. *Contact Person*

For further information on the proposed amendment, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

The proposed amendment is published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. *Purpose and Background*

The proposed amendment is designed to update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of the proposed amendment is described in more detail under the summary of proposal. The Commission's Boating Advisory Board has considered the proposal and has recommended that the Commission publish a notice of proposed rulemaking containing the amendment.

E. *Summary of Proposal*

Under the code, negligent operation of watercraft represents a deviation from the ordinary standard of care that a reasonable operator would observe under the circumstances. Reckless operation adds the component of willfulness and wanton disregard for the safety of persons or property. The Commission's regulations in § 105.3 (relating to unacceptable boating practices) contain a lesser offense defined as "unacceptable boating practices." This section lists operations that, while unsafe, do not always fall within the definition of negligent or reckless operation.

Section 105.3(1) prohibits the operation of a boat not equipped with railings or other safeguards at a speed of greater than slow minimum height swell speed when any person is riding on the bow, decking, gunwales, transom or motor cover. While this definition has served the safety of boaters well, recent court cases indicate a need to further define this regulation. The majority of boats are equipped with railings intended to keep the occupants of the boats within the confines of the boat. A person riding in a bow rider is on the inside of the railings and in the cockpit of the boat. A person riding on a sailboat deck is within the area encompassed by the railings. The most prevalent exception to this general boat construction is the pontoon boat. Quite often, the railings of the pontoon boat do not entirely encompass the bow deck of the boat. Frequently, 3 or 4 feet of deck remain outside the railings. This is to facilitate docking and to keep passen-

gers back from the bow to help balance the boat while underway. Certain courts have interpreted § 105.3 to mean that there is no requirement that persons must remain behind safety rails. The Commission therefore proposes amending this section as set forth in Annex A.

F. *Paperwork*

The proposed amendment will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendment will impose no 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 amendment to the Executive Director, Pennsylvania 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 at "ra-pfbcregs@state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-114. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 105. OPERATIONAL CONDITIONS

§ 105.3. Unacceptable boating practices.

It is unlawful to:

* * * * *

(9) Operate a pontoon boat while a person is riding outside the passenger carrying area. The passenger carrying area is defined by continuous railings or enclosed spaces intended for persons to use while the pontoon boat is underway. This prohibition does not apply when the operator of the boat is docking, mooring, anchoring or rafting the pontoon boat or when the pontoon boat is underway at slow minimum height swell speed or less.

[Pa.B. Doc. No. 01-407. Filed for public inspection March 9, 2001, 9:00 a.m.]