

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 101, 109, 111 AND 115]

Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 101, 109, 111 and 115. 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 will go into effect on January 1, 2003, 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, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The proposed amendments to §§ 101.2 and 109.3 (relating to reportable boating accidents; and personal watercraft) are published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed amendment to § 111.2 (relating to Allegheny County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water). The proposed amendments to §§ 115.4, 115.8 and 115.9 (relating to annual safety inspections; personnel requirements of passenger carrying boats; and licenses for operators) are published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics).

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 (BAB) considered all of the proposals and recommended that the Commission publish a notice of proposed rulemaking. With regard to the proposed amendment to § 111.2, BAB also requested that the Commission hold a public meeting in the Pittsburgh, PA area on a weeknight during the boating season to give the public an additional opportunity to comment.

E. Summary of Proposal

(1) *Section 101.2.* The United States Coast Guard has raised the threshold of property damage for reportable accidents involving recreational vessels. Prior to this change, the Coast Guard's regulations, like the Commission's, required a boating accident to be reported when damage to the vessel and other property totaled more than \$500 or there was a complete loss of the vessel. The National Association of State Boating Law Administrators (NASBLA) successfully persuaded the Coast Guard to increase the amount of damage to \$2,000.

If the Commission were to adopt this change, there would be less paperwork required by the public to report a loss. It also would reduce the amount of recordkeeping by the Bureau of Law Enforcement and the Bureau of Boating and Education. In 2001, 90 recreational boating accidents were reported to the Commission. If the Commission had been using the new criteria of \$2,000 or more, there would have been 74 reportable accidents, a reduction of 18%. In 2000, the change would have been less dramatic. There were 90 accidents reported. With the new criteria, there would have been eight fewer reportable accidents, a reduction of 9%. The Commission proposes to amend this section to read as set forth in Annex A.

(2) *Section 109.3.* NASBLA has a model act for personal watercraft that includes a definition of the term "personal watercraft." The definition is very similar to the existing definition in the Commission's regulations and to those enacted by other states. The Commission's current definition, however, is vague when it refers to the position of the operator (rather than in the conventional manner of boat operation). The NASBLA model act is clearer and does not change "spirit" or the intent of the existing Commission regulation. In addition, recent developments in boat design continue to make clarification necessary so that boat operators and the Commission's officers clearly understand the legal requirements for all boats. The Commission, accordingly, proposes to amend the definition to read as set forth in Annex A.

(3) *Section 111.2.* On February 15, 2002, the Commission received a petition from "Boaters are Voters," Pittsburgh, PA. The petition requests an extension of the existing slow, minimum height swell speed zone currently in place at the "Point" in Pittsburgh, PA to encompass the area between the Fort Duquesne and Sixth Street Bridges, a distance of about 1,500 feet. The petition was accompanied by letters of support from 6 organizations and petition sheets with 291 signatures.

Under § 51.6 (relating to petitions or requests for regulations), petitions are reviewed by Commission staff to ensure that the requested regulatory changes are complete, do not conflict with Commonwealth or Federal law and are within the Commission's jurisdiction. Commission staff have determined that these conditions have been met and, accordingly, have accepted the petition. Because Commission staff were made aware of the petitioners' concerns during the 2001 boating season, preliminary investigation of the need for this regulation was commenced in 2001. Additionally, the request involves only the extension of a current regulated zone and is not a new regulation. With this information in hand, Commission staff believe that a full staff report is unnecessary and recommended to the Commission that the petition go directly to the proposed rulemaking phase. Accordingly, the Commission proposes to amend this section to read as set forth in Annex A.

(4) *Sections 115.4, 115.8 and 115.9.* A recent review of Chapter 115 (relating to boats carrying passengers for hire) has revealed that minor changes are needed to correct some of the problems and concerns that occur for owners and operators of passenger carrying vessels and the inspectors of these vessels. In § 115.4(a) and (d), the Commission proposes amendments to make it clear that when the inspector arrives on the agreed date of inspection, the vessel must be completely ready for inspection

and a current certificate of insurance must be presented to the inspector. Too often, vessels are not ready for inspection and certificates of insurance are late or never forwarded by the insurance companies.

The Commission also proposes to amend § 115.8 to provide accommodations for persons with physical limitations. Recently, the owner of a passenger carrying vessel requested certification as a passenger for hire operator. A doctor had certified that the individual is physically qualified to operate a passenger carrying vessel in accordance with the Commission's current standards. The individual's physical limitations, however, would prohibit the individual from handling mooring lines, associated equipment and certain emergencies without assistance. These limitations would not interfere with the actual operation of the vessel.

The fee requirement in § 115.9(a) is redundant because § 115.9(c) already requires that the applicable fee be attached to the application. Thus, the Commission proposes that it be deleted. The Commission also proposes to amend § 115.9(d) to be more specific concerning examination requirements for the oral and practical test. Current regulations require a Boating Safety Education Certificate for crewmembers but not the operator. Accordingly, the Commission proposes to amend these sections to read as set forth in Annex A.

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 to 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-128. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 101. BOATING ACCIDENTS

§ 101.2. Reportable boating accidents.

Boating accidents shall be reported when one or more of the following conditions exist:

* * * * *

(3) Damage to [the vessel] vessels and other property totals [more than \$500] \$2,000 or more or there is a complete loss of [the] any vessel.

* * * * *

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 meets the following conditions:

* * * * *

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

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CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§ 111.2. Allegheny County.

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(c) Allegheny, Monongahela and Ohio Rivers. (City of Pittsburgh). Boats are limited to slow, minimum height swell speed from the Fort Pitt Bridge over the Monongahela River and the [Fort Duquesne Bridge] Sixth Street Bridge over the Allegheny River to the West End Bridge over the Ohio River. This zone shall be in effect on weekends from May 1 to October 1 from 3 p.m. Friday until midnight Sunday and from 3 p.m. on the day preceding Memorial Day, July 4 and Labor Day until midnight of the holiday.

* * * * *

CHAPTER 115. BOATS CARRYING PASSENGERS FOR HIRE

§ 115.4. Annual safety inspections.

(a) [Every] Annual safety inspections are required every year after the year of initial certification. When the vessel is ready for inspection, the owner shall apply for an annual safety inspection in writing to the regional law enforcement office for the region in which the boat is to operate. The application shall be submitted at least 30 days prior to the requested date of inspection. This annual inspection shall be conducted prior to the first commercial use of the boat or within 30 days of the date of issue on the certificate of inspection if the boat operates year round.

* * * * *

(d) The owner or a representative shall [forward or cause to be forwarded to the Commission] present on the day of inspection a current certificate of insurance with minimum coverage as described in § 115.2 (b)(2) (relating to initial certification) to the inspector designated by the Commission. [The insurance certificate shall be mailed to the Commission at least 30 days prior to the requested date of the annual safety inspection of the boat.]

§ 115.8. Personnel requirements of passenger carrying boats.

* * * * *

(b) It is unlawful to operate a boat carrying passengers for hire without an additional qualified crew member if one of the following conditions exist:

* * * * *

(3) The [boat is of a design that the] operator cannot handle the mooring lines or associated equipment without assistance.

(c) To qualify as a crew member, an individual shall meet the following conditions. The individual shall [be]:

- (1) [At] Be at least 16 years of age.
- (2) [Capable] Be capable of performing the duties required.
- (3) [A graduate of an approved safe boating course] Possess a valid Boating Safety Education Certificate.

§ 115.9. Licenses for operators.

(a) Eligibility. Persons, 18 years of age and older, of good character and in good physical condition and who possess a valid Boating Safety Education Certificate are eligible for licensing as operators of passenger-carrying boats [upon payment of the fee specified in section 5104 of the code (relating to fees)].

* * * * *

(d) Examination. Persons applying for a license to operate a boat carrying passengers for hire shall pass a professional examination to demonstrate sufficient experience and capabilities to assume the responsibilities for operation of a passenger-carrying boat. Examination will include [both] oral [and written] questions and a practical test of boating skills using the boat—or a boat of identical size and type—for which an operator’s license is being requested. [A passing score of 80% is required.] If the applicant does not pass the oral [or written] examination or the practical test, 30 days is required prior to taking a retest. A request for the retest shall be submitted on Form PFBC-292.

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[Pa.B. Doc. No. 02-1250. Filed for public inspection July 19, 2002, 9:00 a.m.]

[58 PA. CODE CH. 111]
Boating; Pike County

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). 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).

A. Effective Date

The proposed amendment 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, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposal is available electronically through the Commission’s website (http://www.fish.state.pa.us).

C. Statutory Authority

The proposed amendment to § 111.52 (relating to Pike County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The proposed amendment is designed to update, modify and improve the Commission’s regulations pertaining to boating.

E. Summary of Proposal

Under § 111.52(c)(5), floating docks and mooring buoys shall be removed from Lake Wallenpaupack, Pike County, prior to December 1 of each year. Commission staff believe that the Commission adopted this regulation in the early 1970s at the request of PP&L, which wanted to make Lake Wallenpaupack safer for snowmobiles. From a boating safety perspective, the regulation does not serve any purpose. In addition, the Department of Environmental Protection, Bureau of Watershed Management, has prepared a draft general permit specific to Lake Wallenpaupack for docks, access paths and ramps, boat launching ramps and shoreline stabilization and protection projects at Lake Wallenpaupack. One of the permit conditions will be that floating docks must be removed from the water by December 1 of each year. Therefore, the special boating regulation is no longer necessary, and the Commission proposes removing it.

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, 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 to 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-130. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart C. BOATING
CHAPTER 111. SPECIAL REGULATIONS
COUNTIES

§ 111.52. Pike County.

* * * * *

(c) *Lake Wallenpaupack.*

* * * * *

(5) [Floating docks and mooring buoys shall be removed from the lake prior to December 1 of the year.

(6)] Boats are limited to 45 miles per hour from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day to Labor Day.

[(7)] (6) * * *

[Pa.B. Doc. No. 02-1251. Filed for public inspection July 19, 2002, 9:00 a.m.]

[58 PA. CODE CHS. 61 AND 63]
Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61 and 63 (relating to seasons, sizes and creel limits; and general fishing regulations). 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).

A. Effective Date

The proposed amendments 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, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposal is available electronically through the Commission's website (http://www.fish.state.pa.us).

C. Statutory Authority

The proposed amendments to §§ 61.1 and 63.3 (relating to Commonwealth inland waters; and fishing in approved trout waters) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 63.20 (relating to permits for the protection and management of trout and salmon) are published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish).

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 61.1. According to this section, the extended trout season applies to "all approved trout waters streams plus lakes and ponds." The "Summary of Fishing Regulations and Laws" (Summary Book), on the other hand, provides that the extended trout season applies to "all approved trout streams and their downstream areas and all lakes and ponds." Since the current wording of § 61.1 is a bit awkward and does not include the downstream areas, the Commission proposes to amend this section to read as set forth in Annex A.

(2) Sections 63.3 and 63.20. The allocation of stocked trout is a dynamic process, which has recently resulted in

some changes, with some waters that were previously not to be stocked by the Commission this year having been added back to the stocking program. Under §§ 63.3 and 63.20 and § 65.26 (related to extended trout seasons), the term "approved trout waters" has regulatory significance:

(1) Approved trout waters are closed to all fishing from March 1 to opening day. With the exception of the select trout lakes and several special cases, this means that it is illegal to fish for anything in these waters during the "closed season." For waters not listed, fishing is permitted and a person does not commit a violation as long as the individual does not take, catch, kill or possess trout. (A fish returned immediately unharmed to the waters from which taken is not considered a violation.)

(2) The extended trout season (day after Labor Day until the last day of February of following year) applies to approved trout waters with a creel limit of three per day.

(3) An angler needs a trout stamp to fish in approved trout waters from opening day until the first Saturday in May regardless of what the angler is fishing for.

The Commission's regulations are currently worded in a way that seems to limit the Commission's ability to add waters back to the approved trout waters list. Currently, the list is defined as the list in the Summary Book, which does not give the Commission much flexibility. Accordingly, the Commission proposes to amend §§ 63.3 and 63.20 to read as set forth in Annex A.

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 90 days after publication of this notice in the Pennsylvania Bulletin. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to 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-129. 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

§ 61.1. Commonwealth inland waters.

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(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland

waters of this Commonwealth and the Youghiogheny Reservoir:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)	Regular Season: 8 a.m. first Saturday after April 11, to midnight Labor Day	7 inches	5—Streams, lakes and ponds (combined species) except areas with special regulations
	Extended Season: [All approved Trout waters streams plus lakes and ponds] Streams listed as approved trout waters and all waters downstream of streams listed as approved trout waters plus lakes and ponds: January 1—last day of February and day after Labor Day to midnight, last day of February of the following year.	7 inches	3 (combined species)
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CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.3. Fishing in approved trout waters.

It is unlawful to fish in [**designated**] approved trout waters [**as listed in the Commission’s “Summary of Fishing Regulations and Laws,” available from the Fish and Boat Commission at Post Office Box 1673, Harrisburg, Pennsylvania 17105,**] from 12:01 a.m. March 1 to 8 a.m. on the opening day of trout season in April. **As used in this subpart, the term “approved trout waters” means designated waters open to public fishing that are stocked with trout. A listing of approved trout waters is published in the Commission’s “Summary of Fishing Regulations and Laws,” which is available from the Commission at Post Office Box 67000, Harrisburg, PA 17106-7000. The Executive Director or a designee may, from time to time, supplement or modify the list of approved trout waters, and additions or deletions will be published in the *Pennsylvania Bulletin*.**

§ 63.20. Permits for the protection and management of trout and salmon.

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(f) *Fish for trout or salmon.* A person fishes for trout or salmon when one of the following applies:

* * * * *

(2) The person fishes in streams or rivers that are [**designated**] approved trout waters **as defined in § 63.3 (relating to fishing in approved trout waters)** or their tributaries during the period from 8 a.m. on the first Saturday after April 11 until 12:01 a.m. on the first Saturday in May. [**Designated approved trout waters are listed in the Commission’s “Summary of Fishing Regulations and Laws,” available from the Commission at Post Office Box 67000, Harrisburg, PA 17106-7000.**]

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[Pa.B. Doc. No. 02-1252. Filed for public inspection July 19, 2002, 9:00 a.m.]