

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51, 63 AND 65]

General Provisions; Fishing

The Fish and Boat Commission (Commission) amends Chapters 51, 63 and 65 (relating to administrative provisions; general fishing regulations; and special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking includes housekeeping changes to the regulations.

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2006.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Chief Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The amendments to §§ 51.32 and 51.33 (relating to resident and nonresident licenses; and effective dates of licenses and permits) are published under the statutory authority of sections 322 and 2102 of the code (relating to rules and regulations; and rules and regulations). The amendment to § 51.35 (relating to operation of the issuing agency) is published under the statutory authority of section 2711 of the code (relating to issuing agents). The amendment to § 63.20 (relating to permits for the protection and management of trout and salmon) is published under the statutory authority of section 2904 of the code (relating to permits for the protection and management of particular fish). The amendment to § 65.13 (relating to wild brook trout enhancement) is published under the statutory authority of section 2102 of the code and 2307 of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

The final-form rulemaking is designed to improve and update the Commission's regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

E. *Summary of Changes*

Upon review of existing regulations regarding the sale and issuance of licenses and permits, the Commission identified the need to make a few housekeeping changes to update the regulations to keep them consistent with the act of November 29, 2004 (P. L. 1286, No. 159). The Commission also identified the need for other housekeeping changes. For example, § 51.32(b) refers to the Soldiers' and Sailors' Civil Relief Act of 1940, which the Commission amended to reflect the current name, the Servicemembers Civil Relief Act (50 U.S.C.A. App. §§ 501—596). The Commission further amended § 51.35 to allow other forms of security for issuing agents, in addition to bonds, to make this section consistent with the code.

In addition, § 63.20(f) provided that persons fishing in waters under special trout regulations designated under §§ 65.1—65.3 and 65.5—65.7 are required to have a trout/salmon permit. However, since that provision was first adopted, the Commission added special regulation programs for managing trout, including the wild brook trout enhancement program, and ended others. The Commission therefore removed the references to specific programs in § 63.20(f) and instead included the requirement for a trout/salmon permit in the regulations pertaining to the individual programs, as in § 65.13.

The Commission adopted the amendments to these sections as set forth in the notice of proposed rulemaking.

As part of the proposed rulemaking package, the Commission also proposed amendments to §§ 53.24 and 63.40 (relating to tournament and fishing derby permits; and fishing tournaments and fishing derbies). The Commission previously adopted the proposed amendments on final-form rulemaking at 35 Pa.B. 5006 (September 10, 2005).

F. *Paperwork*

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 35 Pa.B. 3419 (June 18, 2005). The Commission did not receive any public comments regarding the proposed amendments to §§ 51.32, 51.33, 51.35, 63.20 and 65.13.

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 no comments were received.

(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 51, 63 and 65, are amended by amending §§ 51.32, 51.33, 51.35, 63.20 and 65.13 to read as set forth at 35 Pa.B. 3419.

(b) The Executive Director will submit this order and 35 Pa.B. 3419 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 35 Pa.B. 3419 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2006.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-171a remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-2167. Filed for public inspection November 23, 2005, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CHS. 103 AND 111]
Boating

The Fish and Boat Commission (Commission) amends Chapters 103 and 111 (relating to rules of the road; and special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking removes the requirement that all boat traffic operate in a counterclockwise fashion and limits the number of water ski devices on certain Commonwealth lakes.

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2006.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Chief Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The amendment to § 103.3 (relating to restriction for special areas) is published under the statutory authority of section 5123 of the code (relating to general boating regulations). The amendments to §§ 111.3, 111.6, 111.13, 111.58, 111.64 and 111.66 are published under the statutory authority of sections 322 and 5124 of the code (relating to rules and regulations; and particular areas of water).

D. *Purpose and Background*

The final-form rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes. The Commission's Boating Advisory Board (BAB) considered the proposed amendments and recommended that the Commission adopt them as set forth in the notice of proposed rulemaking with modifications to the proposed amendments to §§ 111.3 and 111.6 (relating to Armstrong County; and Berks County).

E. *Summary of Changes*

(1) *Section 103.3.* This section, which requires motor-boats to operate in a counterclockwise fashion insofar as reasonably possible, has been in place for many years and was promulgated in an attempt to regulate boating traffic patterns on inland waters. While the regulation has been successful in establishing an operational pattern, its language is ambiguous in that it allows for operation "insofar as reasonably possible." This caveat was included

to allow deviation from the rule in some (or most) circumstances. It establishes an operational pattern but made strict enforcement problematic.

The rule was created to help establish an orderly flow of traffic on smaller lakes of the Commonwealth. It was intended to be an advisory regulation to be used if circumstances dictated. As boating use has grown, however, its applicability has become increasingly clouded and its usefulness questionable. With more and more boaters plying the waters and growing shoreline development, operation in a strict counterclockwise direction is not always feasible or desirable. The Inland Navigation Rules were established to regulate the operation of boats in the vicinity of others. They were born from experience and have historically been adequate to control the operation of boats. Accordingly, the Commission has deleted § 103.3(a) as set forth in the notice of proposed rulemaking.

(2) *Sections 111.3, 111.6, 111.13, 111.58, 111.64 and 111.66.* The BAB requested a review of existing water skiing regulations that limit the number of water skiers or water skiing devices that may be towed behind a boat to identify those special regulations targeting single skier restrictions, and the BAB recommended amendments to these regulations to improve recreational opportunities. The original intention of most of these special regulations was to limit the number of water ski ropes rather than the number of persons on the skis. (In some cases such as at Blue Marsh Lake, there was also an intention to limit the number of persons.) The review revealed a great deal of inconsistency in language across the regulations that needed to be corrected. In addition, since towed inflatables are regulated the same as water skis, the number of persons that can be towed on an inflatable is also limited to one. This creates problems for people whose device is manufactured to carry multiple persons and who wish to ride on the inflatable with younger children. The Commission therefore proposed amendments to §§ 111.3, 111.6, 111.13, 111.58, 111.64 and 111.66. Some of the affected lakes are owned and operated by either the United States Army Corps of Engineers or the Department of Conservation and Natural Resources, Bureau of State Parks.

During the comment period, Commission staff continued their dialog with the managers of the lakes operated by the Corps of Engineers and the Bureau of State Parks to assure their agreement with any changes. The managers of Crooked Creek Lake and Blue Marsh Lake, lakes owned by the United States and operated by the Corps of Engineers, objected to the proposed amendments to §§ 111.3 and 111.6, respectively. Accordingly, the Commission adopted, as recommended by the BAB, the proposed amendments as set forth in the notice of proposed rulemaking with the exception of the proposed amendments to §§ 111.3 and 111.6, which the Commission amended to read as set forth in Annex A.

F. *Paperwork*

The final-form rulemaking will not increase paperwork or create any new paperwork requirements.

G. *Fiscal Impact*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 35 Pa.B. 3423 (June 18, 2005). The Commission received 14

comments concerning the proposed amendments to § 103.3. Of those 14 comments, 12 comments (5 received prior to the official public comment period and 7 received during it) opposed the elimination of the counterclockwise requirement. Those comments related to lakes in the northeastern part of this Commonwealth. The Commission also received two public comments after the close of the official public comment period. Those comments supported the proposed rulemaking and centered on Glendale Lake.

The Commission received one comment supporting the proposed amendments to Chapter 111. In addition, the Commission received input from the managers of lakes operated by the Corps of Engineers and the Bureau of State Parks. Copies of all public 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 the comments that were received were considered.

(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 103 and 111, are amended by amending §§ 103.3, 111.13, 111.58, 111.64 and 111.66 to read as set forth at 35 Pa.B. 3423 and by amending §§ 111.3 and 111.6 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 35 Pa.B. 3423 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, 35 Pa.B. 3423 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2006.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-172 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 111. SPECIAL REGULATIONS COUNTIES

§ 111.3. Armstrong County.

(a) *Crooked Creek Lake.*

(1) A boat may not tow more than one water-skier on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

(2) Boats equipped with inboard engines with over-the-transom or straight type exhausts, wet or dry, are prohibited.

(3) Air boats are prohibited.

(4) Boats are limited to slow, no wake speed in the following areas:

(i) From the dam to a buoy line crossing the lake above the swimming beach.

(ii) From the shoal buoys to the headwaters.

(5) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe or kayak.

(b) *Keystone Lake.* The use of motors in excess of 10 horsepower is prohibited.

(c) *Mahoning Creek Lake.*

(1) The use of motors in excess of 10 horsepower is prohibited.

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe or kayak.

§ 111.6. Berks County.

(a) *Blue Marsh Lake.*

(1) Boats equipped with inboard engines with over-the-transom or straight stack type exhausts, wet or dry, are prohibited.

(2) Boats are limited to a slow, no wake speed in the two arms of the lake formed by Spring Creek and Tulpehocken Creek.

(3) A boat may not tow more than one water-skier.

(b) *Hopewell Lake—French Creek State Park.* The operation of boats powered by internal combustion motors is prohibited.

(c) *Kaercher's Creek Lake.* The operation of boats powered by internal combustion motors is prohibited.

(d) *Scotts Run Lake—French Creek State Park.* The operation of boats powered by internal combustion motors is prohibited.

(e) *Schuylkill River; Kernsville Pool.* Boats are limited to slow, no wake speed.

[Pa.B. Doc. No. 05-2168. Filed for public inspection November 23, 2005, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 65]

Permit Agents

The Department of Transportation, under 75 Pa.C.S. §§ 6103, 6142 and 6145 (relating to promulgation of rules and regulations by department; reciprocity agreements, arrangements and declarations; proportional registration of fleet vehicles), amends Chapter 65 (relating to permit agents).

Purpose of this Chapter

The purpose of Chapter 65 is to establish rules governing the qualifications and duties of designated agents for the issuance of trip permits, hunter permits and tele-

grams of authority under Chapter 63 (relating to proportional registration of fleet vehicles).

Purpose of this Final-Form Rulemaking

The purpose of this final-form rulemaking is to clarify the definition of "telegram of authority" and to extend the term of the telegram of authority. Currently, the regulation provides that a telegram of authority authorizes the use of a Commonwealth based fleet vehicle under temporary registration for a period of 30 days. Recent proposed amendments to Chapter 63 extend the period of temporary registration under a telegram of authority to 60 days. The purpose of this final-form rulemaking is to conform the definition of "telegram of authority" to the definition in the proposed amendment to Chapter 63.

Persons and Entities Affected

This final-form rulemaking affects permit agents designated to issue trip permits, hunter permits and telegrams of authority under Chapter 63.

Fiscal Impact

The final-form rulemaking will not require any additional expenditure by the Bureau of Motor Vehicles or the permit agents.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 15, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 6339 (November 24, 2005), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 6, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory

Review Act, this final-form rulemaking was deemed approved by IRRC effective October 5, 2005, confirmed at meeting of IRRC on October 6, 2005.

Sunset Date

The Department is not establishing a sunset date for the regulation, as the regulation is needed to administer provisions of 75 Pa.C.S. (relating to Vehicle Code). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for this final-form rulemaking is Joseph Centurione, Manager, Customer Service Division, Bureau of Motor Vehicles, 1101 S. Front Street, Harrisburg, PA 17104, (717) 787-2780.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 65, are amended by amending § 65.2 to read as set forth at 34 Pa.B. 6339.

(b) The Secretary of the Department shall submit this order and 34 Pa.B. 6339 to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and 34 Pa.B. 6339 and deposit them with the Legislative Reference Bureau, as required by law.

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

ALLEN D. BIEHLER, P.E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 5893 (October 22, 2005).)

Fiscal Note: Fiscal Note 18-399 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-2169. Filed for public inspection November 23, 2005, 9:00 a.m.]