

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 105]

Boating; Operational Conditions

The Fish and Boat Commission (Commission) proposes to amend Chapter 105 (relating to operational conditions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

This proposed amendment to § 105.3 (relating to unacceptable boating practices) is published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. *Purpose and Background*

This proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal. On February 23, 2017, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a proposed rulemaking.

E. *Summary of Proposal*

In late 2015, Volvo Penta (Volvo) approached the Commission about amending § 105.3(12) to permit boaters within this Commonwealth to utilize Volvo's new forward facing drive for wake surfing. The Commonwealth is one of three states that has regulations in place that forbid wake surfing behind inboard/outboard motors. This topic was discussed at the annual conference of the National Association of State Boating Law Administrators, at which time the safety protocols that manufacturers were held to by the United States Coast Guard (USCG) were reviewed. The consensus was that if the manufacturer was under strict guidelines from the USCG for development, states should do what they could to allow those approved developments to be used on state waters.

Before the boating season in 2016, this issue was reviewed by the Commission's Bureau of Law Enforcement (BLE). This review included a review of other states' laws and regulations pertaining to the subject, as well as any accident statistics. It was found that most states do not have motor restrictions for wake surfing beyond using common sense. Several states that are considering regulations are not looking to limit motors

such as the forward facing drive. At that time, an enforcement guidance memo was issued by BLE headquarters allowing discretionary usage of this type of motor if found on Commonwealth waters.

With this in mind, the Commission proposes to amend § 105.3 to allow for advancements within the boating industry to be used upon Commonwealth waters. The Commission proposes to amend § 105.3 to read as set forth in Annex A.

F. *Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This proposed rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. This proposed rulemaking will not impose new costs on the private sector or general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/reg comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-275. 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:

* * * * *

(12) Operate a motorboat propelled by an outboard motor, inboard/outboard motor or water jet while a person is wake surfing in or on the wake of the motorboat, **unless the propulsion system is specifically designed by the manufacturer for that activity.**

[Pa.B. Doc. No. 17-1206. Filed for public inspection July 21, 2017, 9:00 a.m.]