

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CHS. 99a AND 111 ]

### Boating; Capacity Plates; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to add Chapter 99a (relating to capacity plates) and amend Chapter 111 (relating to special regulations counties) to read as set forth in Annex A. 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, P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed addition of Chapter 99a is published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics). The proposed amendments to §§ 111.3 and 111.16 (relating to Armstrong County; and Clarion County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

#### 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 amendments is described in more detail under the summary of proposals. On December 7, 2017, the Commission's Boating Advisory Board considered the proposed amendments and recommended that the Commission approve the publication of a proposed rulemaking.

#### E. *Summary of Proposals*

(1) Prior to January 1, 2013, the Commission issued capacity plates for certain boats that were operated or offered for sale in this Commonwealth. During an audit of the Commission's Recreational Boating Safety Program in 2011, the United States Coast Guard identified this practice as a violation of Federal regulation and directed the Commission to stop issuing the plates. In response to this direction, the Commission rescinded Chapter 99. At the time, this decision was thought to be the best way to handle the issue. However, it has since been determined that the best change would have been to rescind only those sections dealing with the Commission's issuance of capacity plates and not to rescind other sections that extended the Federal standard to Commonwealth waters. Commission staff examined what other states have done regarding capacity plates and recommend that certain sections of the former regulations be reinstated.

The Commission proposes that Chapter 99a be added to read as set forth in Annex A.

(2) Keystone Lake is a 1,000-acre impoundment in Armstrong County that provides water to the Keystone Generation Station, Chief Keystone Power, LLC. The property is leased to the Commission for fishery and aquatic resource management, and recreational fishing and boating purposes. Under a prior agreement, a horsepower restriction for motorboats was set at 10 horsepower. The Commission adopted this restriction in § 111.3(b).

In March 2017, the lease agreement for this property was renewed. As part of that renewal, Chief Keystone Power requested that the 10 horsepower restriction be raised to 20 horsepower. The Commission proposes to amend § 111.3 to read as set forth in Annex A.

(3) At the September 2017 Commission meeting, Jeffrey Pfister approached the Commission on behalf of several landowners adjacent to Redbank Creek, Clarion County. The landowners are concerned about boating safety because the creek traditionally had been locally treated as a slow, no wake (SNW) zone without an official designation.

In recent years, the amount of boating traffic entering Redbank Creek from Pool 9 on the Allegheny River has increased substantially. This traffic goes above SNW even where the creek narrows to less than 200 feet across, creating a safety hazard. The landowners petitioned the Commission for Redbank Creek to be designated as a SNW zone.

The Commission's Bureau of Law Enforcement staff from the Northwest Region were tasked with exploring the issue and to offer an opinion. Upon investigation, they determined that the creek does narrow and the entrance from the river quickly becomes congested with boats. The presence of an old railroad bridge also adds to the congestion as boats have to traverse under and between the bridge abutments to navigate safely.

Allegheny Land Trust (Trust), the owner of the bridge that is now part of a rail to trails, is concerned about erosion damage to the shore line and the bridge itself due to the excessive wake in a confined area. If the proposed amendment is adopted, the Trust has agreed to allow signage to be posted on the bridge structure for the SNW zone.

The Commission proposes to amend § 111.16 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 the 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/regcomments. 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-279. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 99a. CAPACITY PLATES

(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)

- Sec.
99a.1. Boats requiring capacity plates.
99a.2. Information required.
99a.3. Replacement plates.
99a.4. Prohibited acts.

§ 99a.1. Boats requiring capacity plates.

(a) A capacity plate must be permanently affixed to a monohull boat less than 20 feet in length designed to carry two or more persons and propelled by machinery or oars as its principal source of power if one of the following applies:

- (1) The boat is manufactured, transferred, sold or offered for sale in this Commonwealth.
(2) The boat is operated on waters in this Commonwealth.
(b) Sailboats, canoes, kayaks and inflatable boats are exempt from this chapter.

(c) As used in this chapter, "manufacture" means to construct or assemble a boat or alter a boat in a manner that changes its weight carrying capacity.

§ 99a.2. Information required.

The capacity plate must contain the following information:

- (1) For boats designed for or represented by the manufacturer as being suitable for use with outboard motors, all of the following:
(i) The total weight of persons, motor, gear and other articles placed aboard which the boat is capable of carrying safely under normal conditions.
(ii) The recommended number of persons consistent with the weight capacity of the boat and the presumed weight in pounds of those persons. The presumed weight per person may not be less than 150 pounds.
(iii) The maximum horsepower of the motor that the boat is designed or intended to accommodate.
(2) For other boats to which the requirement applies, all of the following:

(i) The total weight of persons, gear and other articles placed aboard which the boat is capable of carrying safely under normal conditions.

(ii) The recommended number of persons consistent with the weight capacity of the boat and the presumed weight in pounds of those persons. The presumed weight per person may not be less than 150 pounds.

§ 99a.3. Replacement plates.

If the manufacturer did not affix a plate, a plate is damaged to the point of being not discernable or a plate is removed, the owner of the boat shall make application to the manufacturer for a replacement.

§ 99a.4. Prohibited acts.

- (a) A person may not tamper with or remove a capacity plate or any of the information shown.
(b) A person may not sell or otherwise transfer ownership of a boat subject to this chapter that does not comply with this chapter.
(c) A person may not operate a boat displaying an illegible capacity plate. Owners of these boats shall apply for a replacement plate as provided in § 99a.3 (relating to replacement plates).
(d) A person may not operate a boat for which a capacity plate is required unless the boat displays the capacity plate.
(e) A manufacturer, dealer or other person may not offer a boat for sale for which a capacity plate is required unless a capacity plate is properly affixed.

CHAPTER 111. SPECIAL REGULATIONS
COUNTIES

§ 111.3. Armstrong County.

\* \* \* \* \*

(b) Keystone Lake. The use of motors in excess of [ 10 ] 20 horsepower is prohibited.

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§ 111.16. Clarion County.

(a) Clarion River. Boats are limited to slow, no-wake speed from the mouth of McGourvey Run to the mouth of Blyson Run.

(b) Redbank Creek. Boats are limited to slow, no wake speed on the entire creek from its headwaters to its confluence with the Allegheny River.

[Pa.B. Doc. No. 18-686. Filed for public inspection May 4, 2018, 9:00 a.m.]

FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 53 ]

Commission Property

The Fish and Boat Commission (Commission) proposes to amend Chapter 53 (relating to Commission property) to read as set forth in Annex A. 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, P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

### C. Statutory Authority

The proposed amendments to § 53.11 (relating to off-highway vehicles, snowmobiles and mobility devices) are published under the statutory authority of section 741 of the code (relating to control of property).

### D. Purpose and Background

This proposed rulemaking is designed to improve, enhance and update the Commission's property regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

### E. Summary of Proposal

Section 53.11(c) currently allows persons who are exempt from the fishing license requirement under section 2709(b) of the code (relating to exemptions from license requirements) and persons who are deprived of the use of a leg or both legs in a manner that significantly limits mobility to apply for a permit to use an off-road motorized vehicle on Commission property for the purpose of gaining access to fishing or boating opportunities. A recent review of this section and the Commission's application disclosed that both are in need of updating so that they meet current requirements of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) and United States Department of Justice regulations implementing the requirements of the ADA. In addition, to give the Commission more flexibility in adapting to future changes in law, the Commission proposes deleting certain language from § 53.11 and relying on the application form and the conditions in the permit. The Commission also proposes housekeeping changes to subsection (a).

The Commission proposes to amend § 53.11 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 the 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/regcomments](http://www.fishandboat.com/regcomments). 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-280. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

##### Subpart A. GENERAL PROVISIONS

#### CHAPTER 53. COMMISSION PROPERTY

§ 53.11. Off-highway vehicles [ and ], snowmobiles and mobility devices.

(a) *General rule.* Except as provided in subsection (c), the use of off-road motorized vehicles[ , **including trail bikes, Tote Gotes, all terrain vehicles (ATVs), air cushioned vehicles, track vehicles, hydrofoils and the like,** ] is prohibited on Commission-owned or -controlled property. **As used in this subsection, "off-road motorized vehicle" means a motorized vehicle specifically designed for this use. The term includes trail bikes, Tote Gotes, all-terrain vehicles, air cushioned vehicles, track vehicles and hydrofoils. The term does not include a vehicle licensed or registered for on-road use, such as a 4 by 4 sport utility vehicle, and the like.**

(b) *Snowmobiles.* It is unlawful to operate a snowmobile on Commission-owned or -controlled property except in areas designated for use by the Executive Director and so posted. The Commission will maintain a list of areas when use is permitted. In those areas where use of snowmobiles is permitted, the following conditions apply:

(1) Snowmobiles may be loaded or unloaded in Commission parking areas unless otherwise posted.

(2) Snowmobiles may be operated in parking areas only for the purpose of direct access and egress to other areas where operation is permitted. Parking areas may not be used for general snowmobile operation.

(3) The operation of snowmobiles on Commission-owned and -controlled property is at the sole risk of the operator. The Commission assumes no responsibility for the operations and makes no representations as to the suitability of trails or areas for their use.

(4) The operation of snowmobiles on frozen lakes, ponds, rivers and streams is prohibited.

(c) *Persons with disabilities.*

(1) *Motorized wheelchairs.* A person whose disability requires him to use a motorized wheelchair or similar device powered by an electric motor may use the device on Commission property. The Commission does not represent that Commission properties except those specifically marked and designated for access by persons with disabilities are suitable for this use.

[ (2) *Other motorized vehicles.* **The Executive Director or a designee may permit persons exempt from the fishing license requirement under section 2709(b) of the code (relating to exemptions from license requirements) and persons who are deprived of the use of a leg or both legs in a manner that significantly limits mobility to use an off-road motorized vehicle on Commission property for the purpose of gaining access to fishing or boating opportunities under the following conditions:**

(i) **The person applies in writing for permission stating the nature of the disability, the description**

of the vehicle and the areas for which use is proposed. The application should be sent to:

Director, Bureau of Law Enforcement  
 Pennsylvania Fish and Boat Commission  
 Post Office Box 67000  
 Harrisburg, Pennsylvania 17106-7000

The application shall include a statement from a physician or a chiropractor licensed to practice in this Commonwealth describing the disability and certifying that the applicant meets the requirements of this section.

(ii) The vehicle is operated by the person with a disability or a person identified in the application to operate the vehicle for the person with disability.

(iii) The person agrees that he will be responsible for the operation of the vehicle, the suitability of the site for the operation, and for damages caused by operation of the vehicle.

(iv) The person acknowledges that the Commission does not represent that Commission properties, except those specifically marked and designated for access by persons with disabilities, are suitable for any such use.

(d) As used in this section, the term, "off-road motorized vehicle," means a motorized vehicle specifically designed for this use. The term does not include a vehicle licensed or registered for on-road use, such as a 4 by 4 sport utility vehicle and the like. ]

(2) Other power-driven mobility devices. The Executive Director or a designee may permit persons who have a disability for which they need to use other power-driven mobility devices to use them on Commission property for the purpose of gaining access to fishing or boating opportunities under all of the following conditions:

(i) The person applies in writing for permission on the form provided by the Commission and sends the application to the Director, Bureau of Law Enforcement, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000.

(ii) The person who has received permission under subparagraph (i) complies with the written conditions of the permit.

(iii) For purposes of this paragraph, "other power-driven mobility devices" means any mobility device, other than a wheelchair, powered by battery, fuel or other engine that is used by persons with a mobility disability for the purpose of locomotion. The term includes golf carts and electronic personal assistance mobility devices such as a Segway or any mobility device designed to operate in areas without defined pedestrian routes, regardless of whether it is designed primarily for use by persons with a mobility disability.

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