

PROPOSED RULEMAKING

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 13]

Promotion with Licensees

The Liquor Control Board (Board), under the authority of sections 207(i) and 208(j) of the Liquor Code (47 P.S. §§ 2-207(i) and 2-208(j)), proposes to amend §§ 13.81 and 13.231 (relating to samples of liquor; and general provisions) to read as set forth in Annex A.

Summary

This proposed rulemaking is part of the Board's ongoing process to update its regulations by updating the process by which licensed vendors may promote products with licensees. This proposed rulemaking adds language to clarify what is required of the regulated community, expands the monthly amount of liquor that can be used for promotion and adjusts the cost of promotional product to be consistent with the Liquor Code. This proposed rulemaking also eliminates certain procedures and records that the Board no longer considers necessary. Proposed language is added to §§ 13.81 and 13.231 to clarify that only unlicensed consumers may receive samples.

This proposed rulemaking clarifies to whom samples may be given. Licensees and the public often use the words "tastings" and "samples" interchangeably, but in the Board's regulations, they mean different things:

- A tasting is no larger than a standard-size alcohol beverage, § 13.201 (relating to definitions), although manufacturing licensees can be restricted to even smaller amounts by the Liquor Code. Tastings are consumed at the location where they are given.

- Samples, on the other hand, must be provided in "unopened containers of the smallest commercially available size," as the regulation currently states. § 13.231 (relating to general provisions) (Emphasis added). Also, "samples may not be opened or consumed on State Liquor Store premises or distributor or importing distributor licensed premises." Id.

To reduce confusion over these words, this proposed rulemaking deletes the word "samples" from § 13.81. When promoting a product with licensees, licensed vendors shall only be able to provide tastings, not opened or unopened bottles of product.

In subsection (a), the first sentence is proposed to be amended from the negative—"Each agent. . . may not use more than one case"—to the positive: "Each agent. . . may use up to one case. . ." Next, the quantity is changed from one case of each brand to one case of each product. The word "brand," in this context, is synonymous with a line or style of products created by a manufacturer or company. The word "product" is a specific item within that brand. By changing the word from "brand" to "product," the Board is expanding the quantity of items that may be used by licensed vendors for promotion to licensees.

Throughout § 13.81, the word "licensed" has been inserted in front of the word "vendor" for the sake of clarity. The phrase "licensed vendor" is a defined term in § 13.71 (relating to definitions) for this subchapter of the Board's regulations, and it includes "A licensee holding a Manufacturer or Importer License, or a vendor's permit, and selling liquors to the Board."

The phrase "to promote that product to licensees, as that term is defined in § 13.71 (relating to definitions)," is added to subsection (a) to distinguish the application of this section from § 13.231, which applies to unlicensed consumers.

The second sentence of subsection (a) clarifies that the product must be purchased at a State Liquor Store, if it is available there, or through the Board's special liquor order process, if the product or desired bottle size is not available at a State Liquor Store. The previous calculation of cost is also changed, from the cost price plus 25% to the retail price. It is unclear how "cost plus 25%" was developed as it is not found in the Liquor Code. Section 305(b) of the Liquor Code (47 P.S. § 3-305(b)) provides as follows (Emphasis added).

Every Pennsylvania Liquor Store shall sell liquors at wholesale to hotels, restaurants, clubs, and railroad, pullman and steamship companies licensed under this act; and, under the regulations of the board, to pharmacists duly licensed and registered under the laws of the Commonwealth, and to manufacturing pharmacists, and to reputable hospitals approved by the board, or chemists. *Sales to licensees shall be made at a price that includes a discount of ten per centum from the retail price; except that special order sales to licensees authorized in subsection (a) shall not be subject to the ten per centum discount. The board may sell to registered pharmacists only such liquors as conform to the Pharmacopoeia of the United States, the National Formulary, or the American Homeopathic Pharmacopoeia. The board may sell at special prices under the regulations of the board, to United States Armed Forces facilities which are located on United States Armed Forces installations and are conducted pursuant to the authority and regulations of the United States Armed Forces. All other sales by such stores shall be at retail, except that incentives, such as coupons or discounts on certain products, may be offered to unlicensed customers of the board as provided under sections 207(m) and 493(24)(ii)(B).*

The statute does not include licensed vendors in the group of licensees that may purchase at wholesale, meaning a 10% discount from the retail price. Therefore, licensed vendors should pay the retail price.

The third sentence of subsection (a) is proposed to be deleted since this proposed rulemaking now requires the licensed vendor to purchase the promotional product at retail. The fourth sentence of subsection (a) is also proposed to be deleted, since the Board no longer requires a separate order to be placed for each agent. In the fifth sentence of subsection (a), the word "shall" replaces the word "may" because the Board does not wish to exercise discretion in allowing a licensed vendor to purchase and distribute promotional product to its agents; this activity shall be permitted. The final sentence of subsection (a) is proposed to be deleted, since the Board no longer requires a licensed vendor to file a statement giving the name of the licensed vendor's authorized supervisor, together with the territories and names of all agents under his supervision.

Subsection (b) is proposed to be rewritten to clarify that, for promotion with licensees, agents shall only use product to give tastings, as provided in § 13.211 (relating to tasting events). Agents shall not leave any bottle of

product with a licensee, whether opened or unopened. This language is proposed to be added because current § 13.81 does not clearly state that an agent may not leave a bottle of product with a licensee.

Subsection (c) proposes to clarify that the agent is required to label each bottle. It is no longer necessary for the bottles to be labeled before leaving the State Store, the bottles must simply be labeled before the agent promotes the product with a licensee. The language of the label has been updated, replacing the word “Sample” with “For tastings only.”

The first sentence of subsection (d) is proposed to be amended to bring the recordkeeping requirement of the licensed vendor into alignment with recordkeeping required of other licensees. The phrase “in hard copy or electronic media consistent with generally accepted accounting procedures, for a period of at least 2 years” is also used in §§ 5.101 and 9.13 (relating to breweries; and records and reports). The type of information that must be kept is proposed to be amended to be consistent with the changes made to subsection (a) in that the word “brand” is changed to “products.” The remainder of subsection (d) is proposed to be deleted as the Board no longer requires this information.

Section 13.231 is proposed to be renamed “Samples for unlicensed consumers,” to clarify that samples may be given to unlicensed consumers. The first sentence of subsection (a) is proposed to be amended by adding the word “only” to further strengthen the understanding that samples may only be given to unlicensed consumers. The second sentence of subsection (a) is proposed to be deleted since this proposed rulemaking eliminates the permissibility of allowing a licensed vendor to give samples of product to licensees.

Affected Parties

The affected parties include all manufacturing and importing licensees of liquor, including wine, as well as any vendor permittees. As of May 3, 2022, there are approximately 250 licensed vendors that could be affected by this proposed rulemaking. However, note that there are a significant number of manufacturers that get their product into this Commonwealth through the Board or an importer but are not licensed by the Board, such as out-of-State manufacturers. Since these entities are not licensed by the Board, it is difficult to quantify how many there are, let alone how large or small they are, and therefore the Board does not have enough information to evaluate the small business status of all entities that will be affected by this proposed rulemaking.

Paperwork Requirements

This proposed rulemaking would not require any additional paperwork to be filed. On the contrary, this proposed rulemaking eliminates existing paperwork requirements that the Board no longer deems necessary.

Fiscal Impact

This proposed rulemaking changes the cost of promotional product for licensed vendors, from the cost price to the Board plus 25% to the retail price, since there is no basis in the Liquor Code for charging a licensed vendor “cost plus 25%.” The Board analyzed a list of new products, introduced in September 2021 and October 2021, that were all 750 milliliters in size. The list excluded products that were identified as Luxury or Holiday products. Of the products the Board analyzed, the change in price from cost plus 25% to retail price resulted in an average increase of \$5.81 per unit, with a

mean of \$5.60 per unit. However, licensed vendors have complete control over what and how much product to offer retail licensees in promotion—within the size restrictions set forth in § 13.211—and therefore can mitigate whatever fiscal impact might occur because of the change in pricing. A change in cost to suppliers for lawfully procuring promotional product can also likely be offset by profits derived from future sales of the products for which the product is being used.

Effective Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments about this proposed rulemaking to Rodrigo Diaz, Chief Counsel, Jason M. Worley, Deputy Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001, or RA-lblegal@pa.gov, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. E-mail is preferred. When commenting, individuals should indicate if they wish to be apprised of future developments regarding this proposed rulemaking, and include a name, address and e-mail address. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission’s (IRRC) web site. Personal information will not be redacted from the public comments received.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 24, 2022, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

TIM HOLDEN,
Chairperson

Fiscal Note: 54-96. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 40. LIQUOR
PART I. LIQUOR CONTROL BOARD
CHAPTER 13. PROMOTION

Subchapter B. MARKETING BY VENDORS AND AGENTS; SPECIAL ORDERS; LUXURY ITEM ORDERS;
[SAMPLES] PROMOTION WITH LICENSEES AND UNLAWFUL ACTS

§ 13.81. [Samples of liquor] Promotion with licensees.

(a) Each agent of a licensed vendor may [**not use more than**] **use up to** one case of each [**brand**]

product of liquor sold by the licensed vendor to promote that product to licensees, as that term is defined in § 13.71 (relating to definitions), during any calendar month. The [samples] product shall be purchased only through the Board, at a State Liquor Store, if the product is available for purchase at a State Liquor Store, or through the Board's special liquor order purchase process, if the product or desired bottle size is not available for purchase at a State Liquor Store, at [a sum equal to the cost price to the Board plus 25% and] the retail price plus any required taxes. [The purchase of samples at retail in any State Store is prohibited. A separate order for samples shall be placed for each agent, and the name of the agent shall appear on the order.] The licensed vendor (or the licensed vendor's authorized supervisor) [may] shall be permitted to purchase and distribute the product to [the vendor's agents the prescribed allotment for all] agents under the licensed vendor's supervision. [The vendor shall, upon request, file with the Board a statement giving the name of the vendor's authorized supervisor, together with the territories and names of all agents under his supervision.]

(b) [The samples described in subsection (a) shall be restricted in size to half pints of distilled spirits, and to half bottles or smaller sizes of wine, except when operating conditions do not permit supplying the sizes, in which cases the Board may, upon proper application setting forth satisfactory reasons, permit the use of other sizes as samples] [Reserved].

(b.1) For promotion with licensees, agents shall only use product to give tastings, as provided in § 13.211 (relating to tasting events). Agents may not leave any bottle of product with a licensee, whether opened or unopened.

(c) [Sample bottles, before leaving the State Liquor Store, shall have affixed thereto] The agent shall affix to each bottle, before promoting the product with a licensee, a separate label, or lettering on the commercial label, at least 1/4 inch high, reading: "[Sample] For tastings only. Not to be sold. Possession of this bottle by licensee unlawful."

(d) Each licensed vendor shall keep, in hard copy or electronic media consistent with generally accepted accounting procedures, for a period of at least 2 years, a [permanent stock ledger] record of all [the] bottles purchased [by him], the names of the agents to whom samples were issued, and the quantity and [brand. Each authorized supervisor of a vendor shall keep in his office in this Commonwealth a permanent stock ledger record of all samples purchased and distributed by him to his agents as provided in this section. A requisition shall be prepared for each package removed from sample stock, bearing the signature of the agent receiving the merchandise] products.

Subchapter E. SAMPLES

§ 13.231. [General provisions] Samples for unlicensed consumers.

(a) Samples may be provided by manufacturers or their representatives, licensed distributors and importing dis-

tributors only to unlicensed [customers. Samples of liquor to licensed customers shall conform to § 13.81 (relating to samples of liquor)] consumers.

(b) Samples shall be in unopened containers of the smallest commercially available size.

(c) Providing samples may not be conditioned upon any purchase requirement.

(d) Samples may not be opened or consumed on State Liquor Store premises or distributor or importing distributor licensed premises.

(e) Samples are limited to one container per patron in any offering.

[Pa.B. Doc. No. 22-851. Filed for public inspection June 10, 2022, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing; Seasons, Sizes and Creel Limits

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission's regulations concerning American shad fishing in the Delaware River, West Branch Delaware River and River Estuary.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2023.

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

The proposed amendment to § 61.2 (relating to Delaware River, West Branch Delaware River and River Estuary) is published under the statutory authority of 2102(b) of the code (relating to rules and regulations).

D. Purpose and Background

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

American shad are an anadromous species. Adults inhabit the marine waters of the Atlantic Ocean, annually returning to natal freshwater systems during spring for spawning. Young-of-the-year utilize freshwater systems as nurseries, before out-migrating during fall. American shad fulfill a foundational ecological role as forage for many piscivores within oceanic, coastal and connected inland waters, in addition to supporting well-established recreational and commercial fishing opportunities throughout their range along the Atlantic Coast.

Multiple Federal, state and tribal jurisdictions jointly manage American shad fisheries along the Atlantic Coast, including the Atlantic States Marine Fisheries Commission (ASMFC) and specifically within the Delaware River Basin, the Delaware River Basin Fish and Wildlife Management Cooperative (Co-op). The Commission is a member of both entities. ASMFC's Amendment 3 to the Interstate Fishery Management Plan for shad and river herring requires Delaware River Basin states jointly submit a Sustainable Fisheries Management Plan for continuance of American shad fisheries for all connected waters within the Delaware River Basin.

In 2020, the ASMFC stock assessment workgroup developed the most current consensus population assessment for the Atlantic Coast. Findings specific to the Delaware River Basin, indicated the Delaware River American shad population is experiencing unsustainable mortality. Given the ASMFC stock assessment workgroup findings, Co-op members, including this Commonwealth, have agreed to reduce American shad harvest by approximately 33% for both the recreational and commercial fisheries.

This Commonwealth does not have a commercial fishery for American shad; however, a popular recreational fishery exists in the Delaware River Basin. Given the agreed upon 33% reduction in American shad harvest by Co-op member states, it is recommended that the Commission amend the daily creel of American shad from three to two fish per day on waters managed under § 61.2. New York, New Jersey and Delaware are seeking similar reductions to the recreational daily creel limits within their respective jurisdictional waters in the Delaware River Basin.

The Commission proposes that § 61.2 be amended 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 have no adverse fiscal impact on the Commonwealth or its political subdivisions.

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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-326. 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, West Branch Delaware River and River Estuary.

* * * * *

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
*	*	*	*
AMERICAN SHAD	Open year-round	No minimum	[3] <u>2</u>
*	*	*	*
*	*	*	*

[Pa.B. Doc. No. 22-852. Filed for public inspection June 10, 2022, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission's regulations pertaining to unlawful methods of taking fish.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon 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 § 63.5 (relating to methods of fishing) is published under the statutory authority of section 2102(a) of the code (relating to rules and regulations).

D. *Purpose and Background*

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Over the last several seasons, Waterways Conservation Officers (WCO) of the Commission have asked to update § 63.5 to include the attempt to take fish by unlawful methods. WCOs have noticed an increase in individuals using nets to attempt to take fish. This request is primarily in response to issues during the Steelhead Run

in the Lake Erie tributaries but would have application in other areas of this Commonwealth. For consistency, similar language exists in § 63.9 (relating to snatch fishing, foul hooking and snag fishing).

Staff from the Commission's Bureau of Law Enforcement have conferred and support a change to the regulation that would prohibit the attempt to take fish by unlawful methods.

The Commission proposes that § 63.5 be amended 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 have no adverse fiscal impact on the Commonwealth or its political subdivisions.

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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-330. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.5. Methods of fishing.

It is unlawful to use a method for taking fish or attempting to take fish from the waters of this Commonwealth, including boundary lakes and rivers, unless the use of the method is specifically authorized by law or this part.

[Pa.B. Doc. No. 22-853. Filed for public inspection June 10, 2022, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment

updates the Commission's regulations pertaining to allowable fishing devices for use in Commonwealth waters.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon 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 § 63.9 (relating to snatch fishing, foul hooking and snag fishing) is published under the statutory authority of section 2102(a) of the code (relating to rules and regulations).

D. Purpose and Background

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Over the last several years, anglers have asked the Commission whether devices such as trout beads are a legal device for use in Commonwealth waters. These devices consist of a small bead that sits several inches above the hook and generally hook a fish on the outside of the mouth. Under the current regulations, any fish not hooked inside the mouth must be released unharmed to the waters it was taken from.

Commission staff from the Bureaus of Law Enforcement and Fisheries have conferred and support a clarification of the regulations which would permit these devices.

The Commission proposes that § 63.9 be amended 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 have no adverse fiscal impact on the Commonwealth or its political subdivisions.

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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-331. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.9. Snatch fishing, foul hooking and snag fishing.

* * * * *

(b) Nothing in subsection (a) may be construed to prohibit the use of long bow, crossbow, spear and gigs as provided in § 63.8 (relating to long bows, crossbows, spears and gigs) or other net or devices specifically authorized by law or this subpart.

(c) Nothing in this section prohibits the use of a device so long as the eye of the hook is no more than 2 inches below the device.

[Pa.B. Doc. No. 22-854. Filed for public inspection June 10, 2022, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 97]

Boating; Operator Provided Equipment

The Fish and Boat Commission (Commission) proposes to amend Chapter 97 (relating to operator provided equipment). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission’s regulations pertaining to fire extinguishers.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2023.

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*

The proposed amendment to § 97.2 (relating to fire extinguishers) is published under the statutory authority of section 5123(a)(5) of the code (relating to general boating regulations).

D. *Purpose and Background*

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

In October 2021, the United States Coast Guard (USCG) published a final rule amending the fire extinguishing equipment regulations for recreational vessels propelled or controlled by propulsion machinery (33 CFR Parts 1 and 175, and 46 CFR Part 25 (relating to general provisions; equipment requirements; and requirements)). This rule relieves owners of these recreational vessels from certain inspection, maintenance and recordkeeping requirements that are more suited for commercial vessels and establishes that portable fire extinguishers on recre-

ational vessels shall be maintained in “good and serviceable” condition. The “good and serviceable” standard of this rule maintains the substantive requirements of the National Fire Protection Association’s standard 10 without extra burdens and requirements for recreational boaters. The new standard will continue to ensure that portable fire extinguishers are in good working order and ready for immediate use without imposing unnecessary burdens on the public. The Commission proposes to update their regulations to match the new USCG final rule.

The Commission proposes that § 97.2 be amended 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 have no adverse fiscal impact on the Commonwealth or its political subdivisions.

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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-327. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.2. Fire extinguishers.

* * * * *

(c) The following apply:

(1) Fire extinguishers carried in compliance with this section shall be maintained in [**a usable condition**] **good and serviceable working condition** and [**shall be charged**] in compliance with the specifications on the manufacturer’s certification label [**Gauges shall be operable and nozzles shall be free of obstruction. In prosecutions for violations of this section, there shall be a rebuttable presumption that a fire extinguisher is not usable if its gauge shows that the extinguisher is discharged.**], **meaning all of the following:**

(i) It shall not be expired.

(ii) It has a pressure gauge reading or indicator in the operable range or position, if there is one.

- (iii) The lock pin is firmly in place.
- (iv) The discharge nozzle is clean and free of obstruction.
- (v) The extinguisher does not show visible signs of significant corrosion or damage.
- (2) In prosecutions for violations of this section, there shall be a rebuttable presumption that a fire extinguisher is not usable if its gauge shows that the extinguisher is discharged.

(d) Fire extinguishers shall be installed and maintained so that they are immediately available within arms reach of the operator or passengers on the boat.

[Pa.B. Doc. No. 22-855. Filed for public inspection June 10, 2022, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission's regulations pertaining to Woodcock Creek Lake, located in Crawford County.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2023.

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

The proposed amendment to § 111.20 (relating to Crawford County) is published under the statutory authority of section 5124(a) of the code (relating to particular areas of water).

D. Purpose and Background

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Woodcock Creek Lake is a 333-acre flood control project managed by the United States Army Corps of Engineers (USACOE) in Crawford County. Recently, the USACOE Project Manager submitted a request through their Pitts-

burgh District Office to change the local policy to a 20-horsepower limitation on this impoundment. They are requesting this horsepower change to allow increased boating opportunities in response to recent upward trends in boating activity. Staff at the project have requested the Commission adopt the same regulatory amendment in the *Pennsylvania Code* so that Waterways Conservation Officers can continue to assist in enforcement of this boating regulation.

The Commission proposes that § 111.20 be amended 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 have no adverse fiscal impact on the Commonwealth or its political subdivisions.

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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-328. 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

§ 111.20. Crawford County.

* * * * *

(e) *Woodcock Creek Lake.*

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

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[Pa.B. Doc. No. 22-856. Filed for public inspection June 10, 2022, 9:00 a.m.]