

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 91, 109 AND 111]

Boating Safety Education Certificates; Personal Watercraft; Waterskiing

The Fish and Boat Commission (Commission) proposes to amend Chapters 91, 109 and 111 (relating to general provisions; specialty boats and waterskiing activities; and special regulations counties). 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 concern boating.

A. *Effective Date*

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

C. *Statutory Authority*

The proposed amendments to §§ 91.6, 109.3 and 109.4 (relating to Boating Safety Education Certificates; personal watercraft; and waterskiing, aquaplaning, kite skiing and similar activities) are published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed amendments to §§ 111.13, 111.27 and 111.43 (relating to Carbon County; Forest County; and Mercer County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

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 (Board) has considered all of the proposals, with the exception of the change to § 111.13, and has recommended that the Commission publish a notice of proposed rulemaking containing the amendments. The Board will consider the proposed change to § 111.13 prior to the Commission's consideration of the change on final-form rulemaking and will make recommendations to the Commission.

E. *Summary of Proposal*

(1) *Sections 91.6 and 109.3.* Both of these sections refer to temporary Boating Safety Education Certificates. Section 91.6(d) refers to a 90-day temporary certificate. Section 109.3(h)(3) refers to a temporary certificate that is valid for at least 90 days and no more than 180 days from the date of purchasing a personal watercraft. The National Association for State Boating Law Administrators (NASBLA), in its Model Act for Mandatory Boating Safety Education adopted September 13, 2000, recom-

mends that temporary certificates (called temporary operators' permits in the NASBLA model) be issued for a duration not to exceed 60 days. To encourage uniformity and reciprocity between states, the Commonwealth's regulations should comply whenever possible with National reciprocity standards. Accordingly, the Commission proposes to amend these sections to read as set forth in Annex A.

(2) *Section 109.4.* To clarify its regulations, the Commission proposes to amend this section by adding a definition of "waterskiing" to read as set forth in Annex A.

(3) *Section 111.13.* The Commission received a petition from boaters who use Beltzville Lake in Carbon County to amend the waterskiing regulations. Beltzville Lake is a relatively small lake within the Beltzville State Park. Waterskiing type activities are currently restricted to 18% or 170 acres of the 950-acre lake. In the petition, the petitioners requested two changes: (1) to change the hours of skiing from 10 a.m. to sunset to sunrise to sunset; and (2) to open the entire lake to waterskiing.

The Commission accepted the petition for further review, and on June 4, 2001, the Commission held a public meeting at the park to obtain public input on the petition to change the regulations on Beltzville Lake. The meeting was well attended and gave Commission staff an opportunity to hear many views on how the lake should be regulated. Commission staff then prepared a report with input from the Bureau of State Parks.

Staff considered five possible options and recommended to the Commission that it consider a compromise solution that will allow waterskiing to begin at sunrise within the existing designated ski area only. This proposal would have little impact on other users and should not negatively affect boating safety. It allows skiers the opportunity to ski on calm water early in the day before wakes form and should have the additional benefit of reducing congestion in the ski zone, making that area safer. Accordingly, the Commission proposes to amend this section to read as set forth in Annex A.

(4) *Section 111.27.* Tionesta Lake was authorized by the Flood Control Act of 1936 and has been in full operation since December 1940. This reservoir project is part of the flood control system operated by the Corps of Engineers for the Allegheny and Upper Ohio Rivers. The pool elevation at Tionesta Lake is generally maintained between elevations 1,089-1,090, which creates a recreational pool of about 450 acres. The flood pool stretches 6 miles up Tionesta Creek from the dam. Much of the recreational pool is very narrow and is peppered with stumps from trees that were left standing when the impoundment was created.

Sometime in the early 1960s, project managers began to install and enforce a 10 mph zone on the portion of the lake from the confluence of Little Piney Run upstream, a distance of about 2 miles. This restriction was never adopted by the Commission as a regulation. In 1974, the Commission was asked by the project manager to make this area slow, no wake. At a series of meetings, the Board declined to recommend this change. The minutes of these meetings indicate that the Board felt that the area did not need those strict restrictions. The 10 mph zone was continued, but no regulations were passed to enable enforcement.

The Commission's Bureau of Law Enforcement, along with the Corps Project Manager, again requested that

this area of the lake be regulated at slow, no wake and that this restriction be adopted as a regulation so that it may be enforced. The request cited the numerous shoals and tree stumps in this area that preclude most high speed operation and a desire to create an area for boating anglers free from other types of operation. It should be noted that there are two boat launch facilities on the lake. The Commission operates the Nebraska Bridge access near the upper limits of the proposed slow, no wake zone. The Corps of Engineers operates a boat launch near the Dam that facilitates water skiers and other high-speed boats. The Commission proposes to amend § 111.27 to read as set forth in Annex A.

(5) *Section 111.43.* The Commission received a request from the Shenango Lake Water Safety Council to consider imposing restrictions on the towing of aquaplanes and similar devices in certain slow no wake areas on Shenango River Lake in Mercer County. Shenango River Lake is a Corps of Engineers impoundment that was constructed on the Shenango River in 1965 and became operational in 1967. The lake was created for the purpose of flood control, low flow augmentation and recreation. At the top of its recreational pool, the lake has a length of 11 miles and provides 3,500 acres of water surface.

The Water Safety Council, which is comprised of representatives of the Corps, the Commission and various users of the lake, makes recommendations concerning the operation of the recreational facilities on the lake. The Council has identified a potential safety problem with the operation of boats in two areas of the lake where boat traffic is directed through bridge piers. These areas have long been designated slow, no wake in recognition of the potential danger. Recently, project managers have observed an increasing number of people who are towing passengers through these areas on aquaplanes, tubes and similar devices. While the operators are maintaining a slow, no wake speed with their boats, the towing of devices behind the boats in the congested areas has resulted in several close calls for persons on the devices. Additionally, the presence of towlines in the water in the areas increases the potential for entanglement in propellers. Accordingly, the Commission proposes to amend § 111.43 to prohibit waterskiing in the slow, no wake zones.

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 at "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 com-

ments 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-123. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 91. GENERAL PROVISIONS

§ 91.6. Boating Safety Education Certificates.

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(d) *Temporary certificate.* The Executive Director or a designee may authorize the issuance of temporary Boating Safety Education Certificates to persons who successfully complete boating safety education courses approved by the Commission. Temporary Boating Safety Education Certificates expire when the permanent certification is issued or [90] 60 days after issuance, whichever occurs first.

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CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.3. Personal watercraft.

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(h) Except as otherwise provided in this subpart, on or after January 1, 2000, a person may not operate a personal watercraft on the waters of this Commonwealth unless the person has obtained a Boating Safety Education Certificate as defined in § 91.6 (relating to [**certificates**] **Boating Safety Education Certificates**).

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(3) New purchasers of personal watercraft and members of their immediate families may be eligible for issuance of temporary certificates, which shall be valid for [**at least 90 and no more than 180**] 60 days from the date of purchase.

§ 109.4. Waterskiing, aquaplaning, kite skiing and similar activities.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Waterskiing—The act of towing a person or persons on a waterski across the water's surface behind a boat.

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CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§ 111.13. Carbon County.

(a) *Beltzville Lake—Beltzville State Park.* The following regulations apply to Beltzville Lake:

* * * * *

(2) [**Water skiing**] **Waterskiing** is prohibited except between sunrise and sunset in the designated ski zone. [**Within the designated zone, water skiing is**

prohibited before 10 a.m. and after sunset.] Boats in this zoned area shall operate in a counter-clockwise direction. Boats not engaged in **[water skiing] waterskiing** shall remain outside the ski zone area while **[water skiing] waterskiing** is in progress. On weekdays, it is unlawful for a boat to tow more than two **[water skiers] waterskiers** at a time. On weekends—Saturday and Sundays—and Federal holidays, it is unlawful for a boat to tow more than one **[water skier] waterskier** at a time.

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§ 111.27. Forest County.

Tionesta Lake.

(1) * * *

(2) Boats are limited to slow minimum height swell speed upstream from the confluence of Little Piney Run.

§ 111.43. Mercer County.

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(b) Shenango River Lake.

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(6) Waterskiing is prohibited in the following slow no wake zones:

(i) Beneath the State Route 18 and 846 bridges.

(ii) Beneath the Parkers Landing railroad trestle.

(iii) Beneath the railroad trestle at the Shenango Recreation Area.

[Pa.B. Doc. No. 01-1885. Filed for public inspection October 19, 2001, 9:00 a.m.]
