

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CH. 91]

### Boating; General Provisions

The Fish and Boat Commission (Commission) proposes to amend Chapter 91 (relating to general provisions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendment relates to the age of operation for personal watercraft (PWC) and boats propelled by motors in excess of 25 horsepower.

#### A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2005.

#### B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. Statutory Authority

The proposed amendment to § 91.4 (relating to age of operator) is published under the statutory authority of section 5123 of the code (relating to general boating regulations). A person violating this section commits a summary offense of the third degree for which a \$50 fine is imposed.

#### D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal. The Commission's Boating Advisory Board (Board) considered the proposed amendment to § 91.4 and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendment. The Board further recommended that the Commission seek the input of the Governor's Youth Council for Hunting, Fishing and Conservation.

#### E. Summary of Proposal

The Commission previously adopted limitations on the age of operation to address concerns for the safety of young operators of larger boats and PWC and those that boat around them. At the time the regulation was adopted, 10 horsepower was considered to be a satisfactory horsepower limitation. Youthful operators could operate larger boats (that is, boats with motors greater than 10 horsepower) after obtaining a Boating Safety Education Certificate (certificate) or if they had an older operator onboard. A recent amendment to section 5103 of the code (relating to boating education) that provides for mandatory boating education increased the minimum horsepower to 25. Specifically, this section provides that any person born on or after January 1, 1982, shall not operate a motorboat greater than 25 horsepower without first obtaining a certificate. To be consistent with the code and to eliminate some complexity in the regulations, the Commission proposes to amend § 91.4.

Specifically, the Commission proposes to simplify the existing regulation and make it consistent with provisions of the mandatory boating safety education law. The Commission also proposes to eliminate the distinction between PWC and other motorboat operation by applying the same standards to both. A description of the major proposed amendments follows.

*Subsection (a).* The current regulation prohibits operation by children 11 years of age or younger of boats powered by motors greater than 10 horsepower. The code, on the other hand, requires a certificate for operators of boats powered by motors in excess of 25 horsepower. Under the proposed amendment, operators 11 years of age or younger would not be permitted to operate PWC and other boats with motors greater than 25 horsepower.

*Subsection (b).* Subsection (b) is proposed to be deleted. The current regulation provides that a person 12–15 years of age may not operate a boat propelled by a motor greater than 10 horsepower unless the person has obtained and possesses a certificate or at least one person 16 years of age or older is onboard. Because all operators in the 12–15 years of age group are required by the law to possess a certificate, the first part of this subsection is no longer necessary and may be removed. The second part of the subsection also should be removed because it is no longer consistent with the code to allow operation by someone less than 16 years of age who does not have a certificate as long as another person 16 years of age or older is onboard.

*Old subsection (c)/new subsection (b).* No change at this time. However, the Commission proposes that after January 1, 2008, a person 15 years of age or younger may not operate a PWC. Therefore, if the Commission adopts the amendment on final-form rulemaking, this subsection will have to be removed at a later date.

*Subsection (c).* This proposed rulemaking prohibits the operation of PWC by anyone 15 years of age or younger effective January 1, 2008.

The Commission proposes that § 91.4 be amended to read as set forth in Annex A.

#### F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

#### G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking 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 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 to [rapfbcregs@state.pa.us](mailto:rapfbcregs@state.pa.us). A subject heading of the proposal and a return name and address must be included in each transmission. In addition, electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments

is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

**Fiscal Note:** 48A-159. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart C. BOATING

#### CHAPTER 91. GENERAL PROVISIONS

##### § 91.4. Age of operator.

(a) A person 11 years of age or younger may not operate a personal watercraft or a boat propelled by a motor greater than [ 10 ] 25 horsepower.

(b) [ A person 12 through 15 years of age may not operate a boat propelled by a motor greater than 10 horsepower unless the person has obtained and has in his possession a Boating Safety Education Certificate or at least one person 16 years of age or older is present onboard.

(c) ] A person 12 through 15 years of age may not operate a personal watercraft if there are any passengers onboard 15 years of age or younger.

(c) **Effective January 1, 2008, a person 15 years of age or younger may not operate a personal watercraft.**

[Pa.B. Doc. No. 04-1441. Filed for public inspection August 6, 2004, 9:00 a.m.]

#### [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 the Fish and Boat Code) (code). The proposed rulemaking relates to the creation of a slow, no wake zone on the Ohio River, Allegheny County, in the back channel of Neville Island from the Coraopolis Bridge upstream to the Interstate 79 bridge from May 1 through October 1 and the elimination of the slow, no wake zone in the Horseshoe Curve part of the Youghiogheny River Lake, Somerset County.

##### A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2005.

##### B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website: [www.fish.state.pa.us](http://www.fish.state.pa.us).

##### C. *Statutory Authority*

The proposed amendments to §§ 111.2 and 111.56 (relating to Allegheny County; and Somerset County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water). A person

violating the regulations contained in Chapter 111 commits a summary offense of the third degree for which a \$50 fine is imposed.

##### D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal. The Commission's Boating Advisory Board considered the proposed amendments to §§ 111.2 and 111.56 and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

##### E. *Summary of Proposal*

(1) *Section 111.2.* In September 2003, Commission staff received a letter and petition to designate a slow, no wake zone, approximately 9/10 mile long in the back channel of the Ohio River at Neville Island on the Ohio River at Coraopolis.

There are four marinas and a restaurant in the section being requested as slow, no wake. Two of the marinas are fairly new and have approximately 80 boats moored. The back channel is rather narrow with several shoals. The area dead-ends at the Emsworth Dam. The letter states that wakes from careless boaters caused more than \$1,000 damage to one docked vessel during the 2003 boating season. Other undocumented reports also have been received. Regional law enforcement personnel report an increase in boat traffic in this area resulting in increased complaints, and they recommend that the area be restricted. Commission staff last reviewed this matter in 1992. At that time, sufficient justification did not exist to restrict this area. However, there has been an increase in the number of marinas and the addition of a popular restaurant. The Commission, accordingly, proposes to amend § 111.2 to read as set forth in Annex A.

(2) *Section 111.56.* The United States Army Corps of Engineers (Corps), Pittsburgh District, has requested that a provision of § 111.56(b)(1) be removed. Corps staff at Youghiogheny Lake state that the regulation is not necessary because the usage in the Horseshoe Curve part of the lake, even during peak usage periods, does not warrant the retention of a slow, no wake zone. In addition, subsection (b) combines personal flotation device requirements in the same subsection as the slow, no wake areas. Separating these subjects into different paragraphs increases the clarity of the regulation. The Commission proposes to amend § 111.56(b) to read as set forth in Annex A.

##### F. *Paperwork*

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

##### G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking 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 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 to rapfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

**Fiscal Note:** 48A-158. 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**

**§ 111.2. Allegheny County.**

\* \* \* \* \*

(e) *Ohio River.* Boats are limited to slow, no wake speed in the back channel of Neville Island from the Coraopolis Bridge upstream to the Interstate 79 bridge from May 1 through October 1.

**§ 111.56. Somerset County.**

\* \* \* \* \*

(b) *Youghiogheny River Lake.* [ **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. Boats are limited to slow, minimum height swell speed within the following areas:**

**(1) *Wilkins Hollow Cove/Horseshoe Curve.* Starting at a point at the west bank approaching Wilkins Hollow Cove, within a line which follows the curve about 600—800 feet off the shore to a point about 1,000 feet east of the point where the shoreline turns abruptly northward. ]**

**(1) 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.**

**(2) Boats are limited to slow, no wake speed within the following areas:**

**(i) *Wilkins Hollow Cove.***

**[ (2) ] (ii) \* \* \***

**[ (3) ] (iii) \* \* \***

**[ (4) ] (iv) \* \* \***

**[ (5) ] (v) \* \* \***

**[ (6) ] (vi) \* \* \***

**[ (7) ] (vii) \* \* \***

**[ (8) ] (viii) \* \* \***

[Pa.B. Doc. No. 04-1442. Filed for public inspection August 6, 2004, 9:00 a.m.]