

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 65, 69, 75, 77 AND 111]

Fishing; Boating

The Fish and Boat Commission (Commission) amends Chapters 65, 69, 75, 77 and 111. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The final-form rulemaking will go into effect upon publication of this order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes). The amendments to §§ 69.21 and 69.24 (relating to limitations on numbers and types of licenses; and limitations on gear) are published under the statutory authority of section 2903 of the code (relating to boat and net licenses for boundary lakes). The amendment to § 75.1 (relating to endangered species) is published under the statutory authority of section 2305 of the code (relating to threatened and endangered species). The amendments to § 77.2 (relating to reptile and amphibian hunt permits) are published under the authority of section 2904 of the code (relating to permits for protection and management of particular fish). The amendments to § 77.6 (relating to season and daily possession limits) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations). The amendments to §§ 111.6, 111.21 and 111.54 (relating to Berks County; Cumberland County; and Schuylkill County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The final-form rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing and boating. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes. The Commission's Boating Advisory Board considered the proposed changes to Chapter 111 (relating to special regulations counties) and recommended that the Commission adopt the amendments as set forth in the notice of proposed rulemaking.

E. Summary of Changes

(1) *Sections 65.24, 77.2 and 77.6.* A recent review of the Commission's regulations has revealed that certain housekeeping changes should be made. Accordingly, the Commission has amended these sections to read as set forth in the notice of proposed rulemaking.

(2) *Sections 69.21 and 69.24.* Beginning on January 1, 1996, the use of gill nets for fishing on boundary lakes became illegal. Since that time, there have been only three commercial fishermen who annually apply for trap net licenses to legally fish in the Commonwealth waters of Lake Erie.

Section 69.21 currently provides that up to 10 individuals may be licensed to fish with up to 20 trap nets each and that each net requires a separate license. Two of the three licensees have not recorded any fishing activity or landings for several years, a requirement for renewing and maintaining a commercial trap net license under § 69.23(c)(1) and (2) (relating to responsibility of licensees). Based upon the performance of the trap net fishery since 1996 and the lack of additional interest in its expansion, there is no reasonable expectation that a vigorous trap net fishery will prosper in the near future. Accordingly, the Commission has amended §§ 69.21 and 69.24 to reduce the number of trap net licenses so that up to three individuals may be licensed to fish up to six trap nets each. The Commission intends to revisit this issue in the future and further reduce the number of trap net licenses if activity continues to be limited and interest is waning.

(3) *Section 75.1.* In 1990, the United States Department of Interior, Fish and Wildlife Service, designated *Alasmidonta heterodon* (dwarf wedgemussel) as Federally endangered in the entire range. This species of freshwater mussel is known to occur in Connecticut, Massachusetts, Maryland, North Carolina, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, Vermont and New Brunswick, Canada. Until recently, the dwarf wedgemussel was considered extirpated from its former range in the Delaware River drainage.

During mussel surveys of the Upper Delaware Scenic and Recreation River by William Lellis of the United States Geological Survey, from July to August 2000, the dwarf wedgemussel was discovered at six locations in the Upper Delaware River, Wayne County. Thirteen live specimens and four shells were located from north of Equinunk, PA to south of Callicoon, NY. Subsequent surveys in 2001 and 2002 by William Lellis have documented additional occurrences in the Upper Delaware River Basin.

Section 102 of the code (relating to definitions) defines endangered species as "all species and subspecies of fish which (1) have been declared by the Secretary of the United States Department of Interior to be threatened with extinction and appear on the Endangered Species List or the Native Endangered Species List published in the *Federal Register*; or (2) have been declared by the executive director to be threatened with extinction and appear on the Pennsylvania Endangered Species List published in the *Pennsylvania Bulletin*." Because this Federally endangered species recently has been rediscovered in this Commonwealth, the Commission has added it to the Pennsylvania list of endangered species as set forth in the notice of proposed rulemaking.

(4) *Section 111.6.* The Commission adopted special regulations in 1971 to allow and control the use of the Felix Dam Pool of the Schuylkill River for waterskiing and other uses inconsistent with the 100-foot rule and other special boating requirements. The dam is a very old wooden crib structure and was breached several years ago during a flood event. It does not appear that the dam will

be reconstructed and the regulations have become superfluous because the type of boating that the regulations were intended to permit can no longer take place. Accordingly, the Commission has deleted the regulation as set forth in the notice of proposed rulemaking.

(5) *Section 111.21.* The Commission adopted special regulations in 1979 to control the use of boats on the pool behind the Good Hope Mill Dam on the Conodoguinet Creek. The dam was removed in 2001 and the circumstances that required these special regulations no longer exist. The general boating regulations adequately regulate boating in this area. Accordingly, the Commission has deleted the regulation as set forth in the notice of proposed rulemaking.

(6) *Section 111.54.* A recent staff review of the Commission's regulations has revealed that they do not include Tuscarora Lake in Schuylkill County as being electric motors only. Accordingly, the Commission has added this lake to its list of electric motors only restrictions as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 33 Pa.B. 1479 (March 22, 2003). Prior to the formal public comment period, the Commission received two public comments supporting the addition of the *Alasmidonta heterodon* (dwarf wedgemussel) to the Pennsylvania list of endangered species. Copies of these comments were provided to the Commissioners. The Commission did not receive any other public comments regarding the proposals.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and any comments received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 65, 69, 75, 77 and 111, are amended by amending §§ 65.24, 69.21, 69.24, 75.1, 77.2, 77.6, 111.6, 111.21 and 111.54 to read as set forth at 33 Pa.B. 1479.

(b) The Executive Director will submit this order and 33 Pa.B. 1479 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 33 Pa.B. 1479 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-139 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 03-1404. Filed for public inspection July 18, 2003, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CHS. 91, 109 AND 117]
Boating

The Fish and Boat Commission (Commission) amends Chapters 91, 109 and 117 (relating to general provisions; specialty boats and waterskiing activities; and boat rental businesses). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). This final-form rulemaking relates to boating.

A. Effective Date

This final-form rulemaking will go into effect upon publication of this order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The amendments to §§ 91.4, 91.6, 91.7, 109.3 and 117.4 are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. Purpose and Background

This final-form rulemaking is designed to update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of this rulemaking is described in more detail under the summary of changes. The Commission's Boating Advisory Board considered the proposed changes and recommended that the Commission adopt the amendments to §§ 91.4 and 109.3 (relating to age of operator; and personal watercraft) to read as set forth in the notice of proposed rulemaking and §§ 91.6, 91.7 and 117.4 (relating to Boating Safety Education Certificates; criteria for courses of instruction in boating safety education; and motorboat liveries) to read as set forth in Annex A.

E. Summary of Changes

(1) *Section 91.4.* The act of December 9, 2002 (P. L. 1542, No. 199) (Act 199), which went into effect on February 7, 2003, requires any person born on or after January 1, 1982, to have a Boating Safety Education Certificate to operate a boat propelled by a motor greater than 25 horsepower. As a result of Act 199, certain parts of § 91.6 regarding personal watercraft use have become redundant. The Commission has amended this section to

eliminate operational requirements for persons 12 through 15 years of age that are redundant with § 109.3(h) and Act 199.

Additionally, the current regulations place restrictions on the operation of boats propelled by a motor greater than 10 horsepower. Because Act 199 regulates the use of powerboats based on a horsepower limitation of greater than 25 horsepower, the Commission will retain the current regulations regulating the age-based use of boats powered by motors of 25 horsepower or less.

Accordingly, the Commission has removed the redundant sections and has reworded the regulation for clarity. The amendments do not change the original intent of the regulations, and the current prohibitions remain in effect. The Commission has amended this section to read as set forth in the notice of proposed rulemaking.

(2) *Section 91.6.* The current definition of a "Boating Safety Education Certificate" in this section does not adequately define what information a Boating Safety Education Certificate must contain. Accordingly, the Commission proposed to amend this section to include this information.

On final-form rulemaking, the Commission determined that § 91.6(a) should be revised to better explain the Boating Safety Education Certificate requirements in terms of residents and nonresidents. Therefore, the Commission adopted an amendment that allows the Commission to accept a certificate issued by the Commission, another state, Canada or an organization designated by the Executive Director for all nonresidents. The Commission further amended § 91.6 to require nonresidents to carry proof of nonresidency during operation.

The Commission also concluded on final-form rulemaking that the proposed amendments needed to be modified to provide that when an operator is found operating a boat without a certificate onboard, the operator should be required to cease operation of the boat until the operator demonstrates to the Commission's satisfaction that he possesses a certificate. Under the current regulations, an operator found operating without a certificate onboard is permitted to mail the original certificate to the officer for verification, and the officer may give the operator a receipt or other documentation allowing continued operation of the boat during the period the original certificate is not in possession. The Commission concluded that operators should no longer be provided with a receipt or other documentation allowing continued operation of the boat.

Last, on final-form rulemaking, the Commission determined that the text of § 91.6(b) pertaining to designation of acceptable courses should be moved to § 91.7.

Accordingly, the Commission has amended § 91.6 to read as set forth in Annex A. In addition, the Commission designated § 91.6 as being for the protection of the health and safety of persons on boats, towed by boats, or on, in or along the waters of this Commonwealth and has promulgated this section in accordance with section 5123(a)(1) of the code. Any person who violates a rule or regulation promulgated under this subsection and paragraph commits a summary offense of the second degree.

(3) *Section 91.7.* Act 199 requires that the Commission adopt criteria for courses and certificates that are acceptable for the purposes of Act 199. The Commission proposed adding § 91.7 to address this requirement. Under § 91.7, the Commission will accept courses that meet the requirements of the National Association of State Boating Law Administrators (NASBLA). These standards for edu-

cation courses were developed through a United States Coast Guard grant and meet Nationally accepted education standards for course content. States that incorporate these Nationally accepted standards by adopting NASBLA approval as a minimum requirement assure a degree of uniformity among the states that helps boaters who travel between the states meet the education certification requirements of the states they travel through. On final-form rulemaking, the Commission added § 91.7 as set forth in the notice of proposed rulemaking with one change. The Commission moved text in § 91.6(b) pertaining to designation of acceptable courses to this section. Accordingly, the Commission has adopted § 91.7 to read as set forth in Annex A.

(4) *Sections 109.3 and 117.4.* Section 109.3(f) and (h)(1) refer to the rental of personal watercraft. Therefore, the Commission proposed that these subsections be moved to § 117.4.

Section 109.3(h)(2) and (3) provides for the issuance of temporary Boating Safety Education Certificates for purchasers of new personal watercraft. These provisions were initially intended to help boat buyers who could not readily attend a boating class after they had purchased a boat. Since the Commission promulgated this regulation, the Commission has instituted an Internet and a video course that is acceptable for obtaining a certificate. The regulation is no longer needed because boaters are able to obtain their permanent certificates in a reasonable amount of time. Dealers should encourage prospective buyers to review the video or go online while they are making purchase decisions or the boat is being prepared for delivery. Accordingly, the Commission proposed that the provisions for dealer issued temporary certificates for boat buyers be eliminated.

On final-form rulemaking, the Commission adopted the amendments to § 109.3 as set forth in the notice of proposed rulemaking and modified § 117.4 to include provisions relating to rental of all boats equipped with motors greater than 25 horsepower, not just personal watercraft. Accordingly, the Commission has amended § 117.4 to read as set forth in Annex A. In addition, the Commission has designated § 109.3 as being for the protection of the health and safety of persons on boats, towed by boats, or on, in or along the waters of this Commonwealth and has promulgated this section in accordance with section 5123(a)(1) of the code.

F. *Paperwork*

This final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. This final-form rulemaking will impose no new costs on the private sector or the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 33 Pa.B. 1482 (March 22, 2003). The Commission did not receive any public comments regarding the proposals.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 91, 109 and 117, are amended by amending §§ 91.4 and 109.3 to read as set forth at 33 Pa.B. 1482 and by amending §§ 91.6, 91.7 and 117.4 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 33 Pa.B. 1482 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 33 Pa.B. 1482 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-140 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 91. GENERAL PROVISIONS

§ 91.6. Boating Safety Education Certificates.

(a) *Definition.*

(1) For residents of this Commonwealth, a Boating Safety Education Certificate is one issued to an individual by the Commission. Upon proper application and payment of the appropriate fee, the Commission will issue a Boating Safety Education Certificate to a resident of this Commonwealth who successfully completes a course offered by the Commission, another state, Canada or an organization designated by the Executive Director.

(2) For nonresidents, a Boating Safety Education Certificate is one issued to an individual who successfully completes a course offered by the Commission, another state, Canada or an organization designated by the Executive Director.

(b) *Certificate possession.* When the operator of a boat is required by law or regulation to possess a Boating Safety Education Certificate, it is unlawful to operate the boat on the waters of this Commonwealth without carrying onboard the Boating Safety Education Certificate issued to the operator. A Boating Safety Education Certificate shall be carried so that it can be presented to an officer authorized to enforce this subpart. In addition to the requirements of this subsection, nonresidents shall carry proof of nonresidency.

(c) *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 60 days after issuance, whichever occurs first.

(d) *Boating without a certificate onboard.*

(1) When an operator is found operating a boat without a Boating Safety Education Certificate onboard, the operator will cease operation of the boat and follow the instructions of the apprehending officer. The operator may not resume operation of the boat until he demonstrates to the Commission's satisfaction that he possesses a certificate.

(2) When an operator is found operating a boat without a Boating Safety Education Certificate onboard and claims that the certificate is available, the apprehending officer shall give the operator 7 days to produce the original certificate. If it is inconvenient for the operator to produce the certificate in person, the officer may permit the operator to mail the original certificate to the officer for verification. The operator shall provide a stamped self-addressed envelope for the return of the certificate. If the operator fails to send the original certificate within the 7-day period, the officer shall institute summary proceedings against the operator in the manner prescribed by law.

(e) A person may not alter, borrow, lend or transfer a Boating Safety Education Certificate or give false or misleading information to the Commission, its officers or agents when applying for a Boating Safety Education Certificate.

§ 91.7. Criteria for courses of instruction in boating safety education.

The Executive Director may designate, by notice, organizations that offer boating safety education courses that are acceptable for residents, nonresidents, or both. A course of instruction in boating safety education shall meet the National Boating Safety Education Standards of the National Association of State Boating Law Administrators (NASBLA) and shall have received the approval of the NASBLA. These standards and procedures for approval may be obtained from the NASBLA at 1500 Leestown Road, Suite 330, Lexington, Kentucky 40511 or http://www.nasbla.org/education_standards.htm.

CHAPTER 117. BOAT RENTAL BUSINESSES

§ 117.4. Motorboat liveries.

(a) In addition to the requirements of § 117.3 (relating to obligations), a livery operator that rents boats equipped with motors greater than 25 horsepower and personal watercraft shall verify that operators of these boats either possess a permanent Boating Safety Education Certificate or have obtained a temporary Boating Safety Education Certificate from the livery. The Executive Director may authorize boat liveries to issue temporary Boating Safety Education Certificates, effective for the period of rental only, to operators of these boats if the boat livery and the operator comply with the requirements governing the rental of boats and the operation of boat liveries as defined in this chapter. The Executive Director will establish rules and guidelines for the issuance of temporary certificates.

(b) A personal watercraft livery shall take measures to oversee the operation of rented personal watercraft by persons who possess only a temporary Boating Safety Education Certificate. These measures shall include one of the following:

(1) The designation of a specified, marked area of operation for rented personal watercraft.

(2) The provision of qualified observers employed by the livery to directly observe the operation of rented personal watercraft. No more than seven personal watercraft may be under the observation of a single observer at any one time. Qualified observers shall be at least 16 years of age, have at least 10 hours of experience operating personal watercraft and have successfully completed the requirements for a permanent Boating Safety Education Certificate. The permanent Boating Safety Education Certificate shall be in the observer's possession when performing duties under this paragraph.

(c) A personal watercraft livery may not lease, hire or rent a personal watercraft to or for use by a person who is 15 years of age or younger.

[Pa.B. Doc. No. 03-1405. Filed for public inspection July 18, 2003, 9:00 a.m.]

Title 64—SECURITIES

SECURITIES COMMISSION

[64 PA. CODE CHS. 102, 202—204, 207, 305 AND 606]

[Correction]

Banking and Savings and Loan Institutions

An error occurred in the ordering language in the document which appeared at 33 Pa.B. 3365, 3367 (July

12, 2003). The correct version of the ordering language is as follows, with ellipses referring to the existing text:

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 64 Pa. Code, Chapters 102, 202—204, 207, 305 and 606, are amended by amending §§ 102.202, 102.241, 202.010, 202.030, 202.051, 202.092, 203.091, 203.189, 204.010 and 606.011 and deleting §§ 202.032 and 207.120 to read as set forth at 33 Pa.B. 884; and by amending §§ 102.041, 203.041, 203.161, 305.011 and 606.041 and adding § 102.112 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

* * * * *

In addition, the form which is currently contained in § 203.161 (relating to debt securities of nonprofit organizations) will be preserved.

[Pa.B. Doc. No. 03-1350. Filed for public inspection July 11, 2003, 9:00 a.m.]
