

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 105 AND 111]

Boating

The Fish and Boat Commission (Commission) amends Chapters 53, 105 and 111 (relating to Commission property; operational conditions; and special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 53.8 (relating to boats) is published under the statutory authority of section 741 of the code (relating to control of property). The amendment to § 105.4 (relating to overloading and improper loading) is published under the statutory authority of section 5123 of the code (relating to general boating regulations). The amendment to § 111.40 (relating to Luzerne County) is 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 simplify and improve the Commission's boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. On July 31, 2015, the Boating Advisory Board (BAB) considered the proposed amendments and recommended that the Commission approve the publication of the proposed rulemaking. The Commission published the proposed rulemaking at 45 Pa.B. 6689 (November 21, 2015).

E. Summary of Changes

(1) Last year, the Commission was contacted by numerous boaters and an outfitter regarding § 53.8 that prohibited the use of single-chambered inflatable boats on its lakes. The Department of Conservation and Natural Resources (Department) has a similar regulation that prohibits the use of these boats on State Park lakes. These regulations were promulgated prior to the manufacture and widespread availability of high-quality, durable inflatable canoes, kayaks and stand-up paddleboards.

The use of other inflatable devices is addressed in other sections of Chapter 53 as well. Section 53.16(c) (relating to special use) prohibits launching or retrieving swimming aids such as inner tubes from Commission-owned or Commission-controlled access areas. Float tubes on Commission-owned or Commission-controlled lakes are addressed in § 53.19 (relating to use of float tubes on Commission-controlled lakes). Specifically, they must have

a secondary bladder for additional emergency flotation and the user shall wear a Coast Guard-approved personal flotation device.

Thirty-three states responded to a survey administered by the National Association of State Boating Law Administrators (NASBLA) regarding special regulations relating to the use of inflatable boats. One of the respondents indicated that single-chambered air-inflated devices do not meet that state's definition of "vessel." Another respondent indicated that single-chambered inflatable vessels are prohibited from use statewide. There were no other responses regarding special regulations for recreational use of single-chambered inflatable boats. Additionally, NASBLA does not have a model act regarding inflatable vessels. Therefore, states may deal with specific issues as they see fit.

A review of recreational boating accident statistics in this Commonwealth reveals that there have not been reportable accidents regarding loss of inflation for incidents involving inflatable boats since 1985. With the recent advent of high-quality, durable inflatable boats with less than two separate buoyancy chambers, such as inflatable standup paddleboards, the Commission believes that the regulation is overly restrictive and may be eliminated. The Commission therefore amends § 53.8 to remove the requirement as set forth at 45 Pa.B. 6689.

(2) The Commission wishes to clarify its regulations regarding overloading and improper loading by adopting language recommended by NASBLA's Model Act for Maximum Loading and Horsepower Capacity Compliance. The model act prohibits the operation of certain recreational vessels when those vessels exceed their loading or powering capacities or exceed the capacity limits identified on the vessel's capacity label or through calculations presented in the *Code of Federal Regulations*. The Commission therefore amends § 105.4 to read as set forth at 45 Pa.B. 6689.

(3) Lily Lake is a 160-acre impoundment situated on a 376-acre parcel owned by the Commission in southeastern Luzerne County. The Commission acquired Lily Lake in 1968. When the Commission initially acquired Lily Lake, there was controversy over what uses of the lake should be allowed. Cottage owners insisted on waterskiing and high-speed motorboat operation. Staff were opposed to high-powered motorboat activity on the lake primarily because of the size of the lake (approximately 90 acres of boatable water) and concern that allowing waterskiing and internal combustion motors would create a safety hazard. The Lily Lake Property Owners' Association (Association) retained legal counsel and sent the Commission a letter on June 29, 1970, detailing its request for a 60 horsepower limitation and other proposals. However, before negotiations with the property owners concluded, the Commission adopted regulations at its May 3, 1971, meeting prohibiting internal combustion engines on Commission lakes. The minutes from that meeting state that "the regulations adopted for all wholly owned Fish Commission lakes [are to] be applied to Lily Lake." The Association again submitted a proposal in 1972 that they believed would allow for compatible, multiple uses of boats for fishing and other activities, including waterskiing.

On April 6, 1973, the Commission's Executive Director provided a report on the situation to the Commissioners and referred the matter to the BAB for study. On May 16,

1973, members of the BAB met with the Association to develop a consensus proposal. As a result, they mutually agreed to a high-speed operating zone where all ski operations would occur and that would be buoyed by the Commission. The high-speed operating zone was proposed as being 2,000 feet long and 650 feet wide and approximately 75 feet from the northern shore, which was uninhabited.

In addition, the Association proposed a limit of 60 horsepower and maximum of 18 feet in length for all boats on the lake, as initially recommended by their attorney in 1970. The rationale provided at the time was "the 60 HP limitation will make it unattractive to the hard core water skier but would still permit the several cottage owners who own 60 HP boats now to continue to use them." Also expressed was a concern of attracting a large number of boats from outside the area, but it was believed that the horsepower limitation would minimize that.

During discussion of the consensus proposal at a BAB meeting on August 20, 1973, a Commissioner noted that the main reason for the Commission's allowing the use of only electric motors on its lakes was to "prevent noise and pollution." He further stated that since these elements were already present on Lily Lake when the Commission acquired it in 1968, this rationale had to be discounted at this lake.

The consensus proposal was advanced from the BAB to the Commission, and upon approval at its October 20, 1973, meeting, the Commission published a proposed rulemaking at 3 Pa.B. 2882 (December 15, 1973) to prohibit the use of boats with greater than 60 horsepower

engines or greater than 18 feet in length on Lily Lake. Additionally, boats were limited to slow, no wake speed except those operating within the buoyed high speed operating zone, between noon and sunset from the Saturday preceding Memorial Day to September 30. No public comments were received. The regulation went into effect upon final-form publication at 4 Pa.B. 133 (January 26, 1974).

The regulations for Lily Lake have seen minor amendments since 1973. However, there have not been changes to the horsepower or boat length limitations since adoption. The current Permit to Install Floating Structures and Private Aids to Navigation indicates the high-speed zone as 1,500 feet by 600 feet, mid-lake along the opposite shoreline from the boat launch and homes.

The Commission maintains a surfaced launch ramp and parking at Lily Lake that can accommodate 18 vehicle-trailer combinations and more than 25 cars. To date, there are no reportable recreational boating accidents recorded for Lily Lake.

On May 18, 2015, Commission representatives met with members of the Association. The purpose of the meeting was to discuss a request from the Association to increase the maximum allowable horsepower to 90 and boat length to 25 feet.

The Commission owns four lakes with horsepower or speed restrictions and the Department owns ten. A comparison of lake acreage to horsepower or mile-per-hour restrictions on these lakes indicates that Lily Lake is currently the second smallest lake and has the highest horsepower allowance.

<i>Name</i>	<i>County</i>	<i>Owner</i>	<i>Acreage</i>	<i>Horsepower or Mile-per-Hour Restriction</i>
Pymatuning Reservoir	Crawford	Department	17,088	20 horsepower
Lake Arthur	Butler	Department	3,225	20 horsepower
Foster Joseph Sayers Lake	Centre	Department	1,730	45 mile-per-hour
Lake Wilhelm	Mercer	Department	1,680	20 horsepower
Glendale Lake	Cambria	Department	1,635	20 horsepower
East Branch Clarion River Lake	Elk	Department	1,554	45 mile-per-hour
Nockamixon Lake	Bucks	Department	1,450	20 horsepower
Lake Marburg	York	Department	1,275	20 horsepower
Beltzville Lake	Carbon	Department	949	45 mile-per-hour
Yellow Creek Lake	Indiana	Department	720	20 horsepower
Harveys Lake	Luzerne	Commission	658	45 mile-per-hour
Lake Canadohta	Crawford	Commission	169	10 horsepower
Lily Lake	Luzerne	Commission	160	60 horsepower
Sugar Lake	Crawford	Commission	90	6 horsepower

The Commission's local law enforcement staff recommended a change to allow boats up to 20 feet in length but that the Commission maintain the horsepower limitation at 60 due to the small size of the impoundment. Boat registration records reveal that an increase in length will potentially allow for an additional 1,672 actively registered motorboats in Luzerne County and the 7 surrounding counties to operate on Lily Lake. It is predicted that the increased length allowance will enhance boating

opportunities for the lake residents and the northeast region without having a significant impact on user conflicts or safety on this small impoundment. The Commission therefore amends § 111.40 to read as set forth at 45 Pa.B. 6689.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. *Public Involvement*

The Commission did not receive public comments regarding the proposed rulemaking.

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 public 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 code.

Order

The Commission, acting under the code, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 53, 105 and 111, are amended by amending §§ 53.8, 105.4 and 111.40 to read as set forth at 45 Pa.B. 6689.

(b) The Executive Director will submit this order and 45 Pa.B. 6689 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 45 Pa.B. 6689 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-268 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 16-513. Filed for public inspection March 25, 2016, 9:00 a.m.]