

**CHAPTER 109. SPECIALTY BOATS AND
WATERSKIING ACTIVITIES**

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§ 109.1. [Reserved].

Source

The provisions of this § 109.1 adopted February 12, 1993, effective February 13, 1993, 23 Pa.B. 744; amended June 3, 1994, effective June 4, 1994, 24 Pa.B. 2795; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (293725) to (293726).

§ 109.2. Paddleboards and sailboards.

(a) *Paddleboards.* For purposes of this subsection, a paddleboard is a boat with no freeboard propelled by a paddle, oar, pole or other device. It is unlawful for a person to operate or attempt to operate a paddleboard on waters of this Commonwealth without having a United States Coast Guard approved wearable personal flotation device on board for each person, unless otherwise required to be worn in accordance with § 97.1 (relating to personal flotation devices). This prohibition does not apply to persons operating or attempting to operate a paddleboard in designated swimming, surfing or bathing areas.

(b) *Sailboards.* For purposes of this subsection, a sailboard is a type of single or double hulled boat equipped with an articulating mast and designed to be operated by a person standing on the board and maneuvering through the trim of the hand-held sail and distribution of body weight on the board. It is unlawful for a person to operate or attempt to operate a sailboard on waters of this Commonwealth unless the person is wearing a United States Coast Guard approved wearable personal flotation device. Inflatable personal flotation devices may not be used to meet this requirement.

Authority

The provisions of this § 109.2 amended under the Fish and Boat Code, 30 Pa.C.S. § 5123.

Source

The provisions of this § 109.2 adopted February 12, 1993, effective February 13, 1993, 23 Pa.B. 744; amended June 3, 1994, effective June 4, 1994, 24 Pa.B. 2795; amended August 8, 1997, effective August 9, 1997, 27 Pa.B. 3999; amended December 19, 2014, effective January 1, 2015, 44 Pa.B. 7872. Immediately preceding text appears at serial page (365097).

§ 109.3. Personal watercraft.

(a) As used in this section, “personal watercraft” means a boat less than 16 feet in length which meets the following conditions:

- (1) Uses an internal combustion motor powering a water jet pump as its primary source of motive propulsion.

- (2) Is designed to be operated by a person sitting, standing or kneeling on, rather than being operated by a person sitting or standing inside the vessel.
- (b) It is unlawful for a person to operate, or be a passenger onboard, a personal watercraft on the waters of this Commonwealth unless the person is wearing a United States Coast Guard approved wearable personal flotation device in accordance with § 97.1 (relating to personal flotation devices). Inflatable personal flotation devices may not be used to meet this requirement.
- (c) A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch shall attach the lanyard to his person, clothing or personal flotation device as appropriate for the specific vessel.
- (d) A person may not operate a personal watercraft between sunset and sunrise.
- (e) Subsections (b) and (c) do not apply to a performer participating in a permitted regatta, race, marine parade, tournament or exhibition or to a person preparing to participate in the event at the location and within 48 hours prior to the event.
- (f) Except as otherwise provided in this subpart, 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 Boating Safety Education Certificates).

Authority

The provisions of this § 109.3 amended under the Fish and Boat Code, 30 Pa.C.S. § 5123.

Source

The provisions of this § 109.3 adopted February 12, 1993, effective February 13, 1993, 23 Pa.B. 744; amended June 3, 1994, effective June 4, 1994, 24 Pa.B. 2795; amended August 8, 1997, effective August 9, 1997, 27 Pa.B. 3999; amended September 25, 1998, effective September 26, 1998, 28 Pa.B. 4789; amended December 4, 1998, effective December 5, 1998, 28 Pa.B. 5984; amended April 12, 2002, effective April 13, 2002, 32 Pa.B. 1865; amended November 15, 2002, effective November 16, 2002, 32 Pa.B. 5659; amended July 18, 2003, effective July 19, 2003, 33 Pa.B. 3497; amended November 20, 2015, effective January 1, 2016, 45 Pa.B. 6679. Immediately preceding text appears at serial pages (375777) to (375778).

Cross References

This section cited in 17 Pa. Code § 11.201 (relating to definitions).

§ 109.4. Waterskiing, aquaplaning, kiteskiing 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:

Competent observer—A person who has the ability to assess when a skier is in trouble, knows and understands the waterskiing hand signals and is capable of helping a skier.

PFD—Personal Flotation Device.

Trick-skier—A water-skier who can be identified by body movements and skiing positions, which readily differentiate the trick-skier from the ordinary “forward” skier engaged in straight skiing or slalom and jump events, and also by the following:

- (i) *Skis.* Short (38 inches—40 inches) and wide (8 inches—9 inches) with no keels on bottom.
- (ii) *Speed of tow.* Slow (12—18 miles per hour).

(iii) *Rope*. Short (40 to 50 feet) and often with toehold strap attached to handle.

Wake surfing—A competitive or recreational water sport in which a person on a wake board or similar style board rides in or on the wake of a motorboat.

Water ski—A device used by a person to be towed through or on water behind a boat. The term includes conventional water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattress, parasails, kite skis and similar devices.

Waterskiing—A competitive or recreational water sport in which a person is towed across the water's surface behind a boat in any fashion on a water ski as defined in this subsection or on his bare feet.

(b) *Skiing hours*. Ski activities are prohibited between the hours of sunset and sunrise.

(c) *Observer required*. The following conditions apply:

(1) *General rule*. Except as otherwise provided in this subsection, it is unlawful for a person to operate a boat towing or otherwise assisting a person on water skis unless there is at least one competent observer in the boat in addition to the operator of the boat. The observer shall be positioned in the boat to observe the progress of the person being towed. It is unlawful for a person to water ski being towed by a watercraft or device not containing an operator and observer as required by this subsection.

(2) *Special conditions*. The Executive Director, or a designee, may issue a permit to allow a limited exception to paragraph (1). A permit issued under this paragraph will permit operation of a boat towing a water skier without an observer, in addition to the operator, on board the boat. These operations will be permitted only under the following conditions:

(i) Both the operator of the boat and the water skier meet safety training requirements as evidenced by documented completion of a safe boating course and active membership in a State or National waterskiing organization, which provides members with information on waterskiing safety.

(ii) The operator fulfills the definition of a "competent observer" as set forth in this section, wears an approved PFD and is a person 18 years of age or older.

(iii) The boat is equipped with the following:

(A) A rearview mirror which is at least 5 inches by 10 inches configured so that the operator may at all times observe the progress of the person being towed.

(B) A ski platform

(C) A boom, towing eye or pylon mounted permanently inside the hull of the boat to which the towing rope is secured.

(iv) Only one person is being towed.

(v) The water skis or other device on which the person is riding are attached only to the person and not to the boat.

- (vi) Conditions, including weather, other boating activities and congestion in the vicinity of the proposed operation, do not impede safe and prudent boat or waterskiing operations.
 - (vii) The waterskiing takes place before the hour of 10 a.m. on a day other than a weekend or holiday. The Executive Director, for good cause shown, may permit waterskiing under this section on a Saturday or Sunday before the hour of 10 a.m. if the Executive Director finds that other boating activities on the waters at the same time will not interfere with the waterskiing.
 - (viii) The waterskiing takes place on waters described and approved for the operations in the permit.
 - (ix) The waterskiing takes place when the Executive Director or a designee indicates in the permit.
 - (x) The boat towing the water skier displays a special water ski flag of a size and design approved by the Commission.
 - (xi) The permittee carries the permit onboard while operating the boat towing a water skier without an observer.
- (d) *Umbilical or remote controls.* A person may not operate a device which is controlled by a person connected to the power source by means of an umbilical or remote control, or both, which tows the person on or through the water.
- (e) *Ski tow ropes.* Ski tow ropes may not exceed the following lengths:
- (1) Conventional water skis and similar devices—80 feet.
 - (2) Nonreleasable kite ski—150 feet.
 - (3) Releasable kite ski—500 feet.
 - (4) Parasails—300 feet.
 - (5) Commercial winch boat parasails—600 feet.
- (f) *PFDs.* It is unlawful for a person to operate a boat on the waters of this Commonwealth for:
- (1) Waterskiing unless each person being towed is wearing a United States Coast Guard approved wearable PFD in accordance with § 97.1 (relating to personal flotation devices). Inflatable PFDs may not be used to meet this requirement.
 - (2) Wake surfing unless the wake surfer is wearing a United States Coast Guard approved wearable PFD in accordance with § 97.1 or water ski wetsuit as defined in subsection (g). Inflatable PFDs may not be used to meet this requirement.
- (g) *Water ski wetsuits.* A person engaged in slalom skiing on a marked course or a person engaged in barefoot, jump or trick skiing, or wake surfing may elect to wear a wetsuit designed specifically for the activity in lieu of the United States Coast Guard approved wearable PFD required in § 97.1. A United States Coast Guard approved wearable PFD described in § 97.1 shall be carried in the tow boat for each skier electing to wear a water ski wetsuit. The nonapproved water ski wetsuit device shall meet the following criteria:
- (1) The device shall be marked by the manufacturer as a water ski wetsuit.

(2) The device shall be constructed of nylon covered neoprene or similar material and may have either long or short sleeves or be sleeveless. The device may have legs.

(3) The device shall be equipped with additional flotation padding material of a close cell nonabsorptive type such as PVC foam or Ensolite®. This flotation/padding shall be sewn into the device according to the following:

(i) On the front extending from the clavicle to the top of the pelvis vertically and covering the front rib cage area and covering as much of the side area as feasible. A maximum gap between padded areas on the side of the suit under the arm is 4 inches.

(ii) On the rear of the device, padding/flotation material shall cover the area from the top of the shoulder blade to the top of the pelvis and span the entire width of the back.

(iii) Padding/flotation shall be at least 1/2-inch thick. This thickness excludes the thickness of covering material.

(h) *Starting and returning from shore or dock.* Notwithstanding the slow, no wake restrictions contained in § 103.3(b) (relating to restriction for special areas), skiers are permitted to start from the shore or dock if the traffic situation permits this to be done safely and in accordance with other water ski regulations. A water skier is not permitted to be returned to dock or shore under power. The skier shall release outside the 100-foot limit. The skier may then coast or glide toward the shore or dock, if the skier does not endanger life and property in so doing and steers clear of swimmers, docks and boats.

(i) *Ski ramps and jumps.* Ski ramps or jumps, authorized in accordance with § 113.10 (relating to permits for installation and lighting of floats, ski ramps and other floating structures) shall have attached on each side a sign which will be evidence that the installation is authorized and warn boaters against mooring or drifting within 100 feet of the jump while it is in use.

(j) *Kiteskiing and parasailing.* The following additional restrictions are applicable to kiteskiing and parasailing:

(1) Kiteskiing and parasailing is prohibited on waters where waterskiing is prohibited or is subject to special regulation.

(2) Kiteskiing or parasailing is prohibited on water when other boating activities or congestion impedes safe and prudent operations.

(3) Kite skiers and parasailers may not fly over or under overhead obstructions such as power and telephone lines or bridges; nor may they fly over dams, locks, docks, launching ramps, swim areas, marinas or congested areas.

(k) *Wake surfing.* Boats engaged in the activity of wake surfing are limited to slow, no wake speed when within 200 feet of the following:

(1) Shore line.

(2) Docks.

(3) Launching ramps.

(4) Swimmers or downed skiers.

(5) Persons wading in the water.

(6) Anchored, moored or drifting boats.

(7) Floats, except for ski jumps and ski landing floats.

(8) Other marked areas.

Authority

The provisions of this § 109.4 amended under the Fish and Boat Code, 30 Pa.C.S. §§ 741, 2502, 5122 and 5123; and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 109.4 adopted February 12, 1993, effective February 13, 1993, 23 Pa.B. 744; amended June 3, 1994, effective June 4, 1994, 24 Pa.B. 2795; amended August 8, 1997, effective August 9, 1997, 27 Pa.B. 3999; amended January 2, 1998, effective January 1, 1998, 28 Pa.B. 30; amended February 26, 1999, effective February 27, 1999, 29 Pa.B. 1068; amended April 12, 2002, effective April 13, 2002, 32 Pa.B. 1865; amended December 21, 2012, effective January 1, 2013, 42 Pa.B. 7688; amended November 20, 2015, effective January 1, 2016, 45 Pa.B. 6679. Immediately preceding text appears at serial pages (375778) and (365099) to (365102).

Notes of Decisions*Competent Observer and Lookout*

Sections 109.4(c)(i) and 103.4 require that each ski tow boat must have an operator and a lookout, in addition to a competent observer; however, the operator may also serve the role of lookout, as there is no requirement that separate people fulfill the two functions. *Smith v. Haggerty*, 169 F. Supp. 2d 376 (E.D. Pa. 2001), opinion withdrawn and vacated at 223 F. Supp. 2d 618, 2002 A.M.C.

Competent Observer

The competent observer is charged with watching the progress of the person being towed and, as such, cannot be charged with looking for other boats in front of the tow boat. A competent observer is under no legal obligation to serve as lookout. *Smith v. Haggerty*, 169 F. Supp. 2d 376 (E.D. Pa. 2001), opinion withdrawn and vacated at 223 F. Supp. 2d 618, 2002 A.M.C.

Preemption

The relevant Pennsylvania boating regulations do not conflict with applicable Federal statutes and general maritime law. Congress did not, either expressly or impliedly, preempt the State regulation, which concern an important local matter. Therefore, the State regulations are not preempted. *Smith v. Haggerty*, 169 F. Supp. 2d 376 (E.D. Pa. 2001), opinion withdrawn and vacated at 223 F. Supp. 2d 618, 2002 A.M.C.

Cross References

This section cited in 58 Pa. Code § 53.8 (relating to boats); and 58 Pa. Code § 105.3 (relating to unacceptable boating practices).

§ 109.5. Divers and buoys.

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

Code flag alpha—A rigid flag not less than 1 meter (39.37 inches) square, with the half closest to the staff being white and the other half being blue. The blue segment has a triangular piece removed. The apex of the triangle extends halfway through the blue field.

Divers down flag—A flag not less than 14 inches square, red in color with a white stripe running diagonally from the top of the staff to the opposite lower corner. The white stripe shall be one-fifth as wide as the flag.

(b) *Displaying of flags.*

(1) A boat shall display the code flag alpha while it is restricted in its ability to maneuver due to diving operations. Restricted in its ability to maneuver means that divers are attached to a boat by some physical means.

(2) During diving activities a divers down flag shall be displayed in the water on a buoy, whether a boat is present or not. The buoy shall be placed directly above the diving location.

(c) *Responsibility of other boaters.* Boats not engaged in diving operations shall remain at least 100 feet from areas displaying the divers down flag or boats displaying the code flag alpha.

Source

The provisions of this § 109.5 adopted February 12, 1993, effective February 13, 1993, 23 Pa.B. 744; amended June 3, 1994, effective June 4, 1994, 24 Pa.B. 2795. Immediately preceding text appears at serial page (178655).

§ 109.6. Special marine events.

(a) A special marine event may be permitted only as authorized by the Commission, or where applicable, Federal authority.

(b) Persons responsible for holding special marine events shall:

(1) Submit a complete Form PFC-500 in duplicate to the Regional Law Enforcement office for the region where the event is to be held at least 60 days prior to the start of the event.

(2) Provide for marking and patrolling the event.

(3) Ensure a copy of the special activities Permit is available onsite for inspection by authorized personnel of the Commission.

(4) Ensure that participants are familiar with the conditions of the special activities permit.

(c) The Commission will not issue a special activities permit for a marine event unless the applicant first obtains written permission for the event from the entity that owns or controls the waters on which the event will occur. The Commission will require evidence that the applicant has the permission of the controlling entity unless that entity has delegated approval authority to the Commission.

(d) The Executive Director may impose special regulations designed to protect the safety or limit the activity of either participants or nonparticipants. Regulations which would prohibit the special marine event may be temporarily suspended upon a finding that the event will not significantly impact the long-term management of the resource, create a safety hazard or unreasonably limit the use of the area by other boaters. It shall be the responsibility of the sponsor to advertise these special conditions in a manner satisfactory to the Commission.

Source

The provisions of this § 109.6 adopted February 12, 1993, effective February 13, 1993, 23 Pa.B. 744; amended June 3, 1994, effective June 4, 1994, 24 Pa.B. 2795; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial page (287840).

Cross References

This section cited in 58 Pa. Code § 53.8 (relating to boats); 58 Pa. Code § 97.2 (relating to fire extinguisher); and 58 Pa. Code § 119.7 (relating to race boats).

§ 109.7. [Reserved].**Source**

The provisions of this § 109.7 adopted February 12, 1993, effective February 13, 1993, 23 Pa.B. 744; reserved June 3, 1994, effective June 4, 1994, 24 Pa.B. 2795; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial page (287840).

§ 109.8. [Reserved].**Source**

The provisions of this § 109.8 adopted February 12, 1993, effective February 13, 1993, 23 Pa.B. 744; reserved June 3, 1994, effective June 4, 1994, 24 Pa.B. 2795. Immediately preceding text appears at serial pages (178656) to (178657).

[Next page is 111-1.]