

Regulatory Analysis Form

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(1) Agency

Department of Conservation & Natural Resources

2011 OCT 20 AM 9:35

(2) I.D. Number (Governor's Office Use)

7B-003

IRRC Number: 2260

(3) Short Title

State Parks, General Provisions

(4) PA Code Cite

17 Pa. Code Chapter 11

(5) Agency Contacts & Telephone Numbers

Primary Contact: Susan Wood, Assistant Counsel, Office of Chief Counsel, 772-4171

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of this rulemaking is to improve the protection of state park resources and to increase the safety and enjoyment of visitors to state parks. It adds some rules of conduct for park visitors and relaxes others, and it provides additional tools of enforcement. The rulemaking also reorganizes and streamlines the chapter.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Department is authorized to promulgate these regulations by Sections 303 (relating to parks), 313 (relating to rulemaking authority), and 314 (relating to fees and charges) of the Conservation and Natural Resources Act, 71 P.S. §§ 1340.303, 1340.313, and 1340.314; and the Crimes Code, 18 Pa.C.S. § 7505 (relating to violation of governmental rules regarding traffic) and § 7506 (relating to violation of rules regarding conduct on Commonwealth property).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The Department is mandated by the Conservation and Natural Resources Act, 71 P.S. § 1340.313 (relating to rulemaking authority), to promulgate regulations for the control, management, protection, utilization, development, occupancy and use of the lands and resources of state parks and state forests as it may deem necessary or proper to conserve the interests of the Commonwealth.

The Department is also mandated by the Crimes Code, 18 Pa.C.S. § 7505 (relating to violation of governmental rules regarding traffic), to promulgate regulations governing all vehicular traffic on land under the jurisdiction of the Department.

The Department is not mandated by federal law or regulation or court order to promulgate these regulations.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Chapter 11, which has not been revised for nine years, needs to be updated to address changing needs in state parks regarding visitor safety and the protection of park resources.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Non-regulation would result in lack of protection of state park resources and visitors.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The revisions to Chapter 11 will improve the protection of state park resources and visitors to the parks. In the year 2001, 36-38 million persons visited the Commonwealth's state parks.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

Chapter 11 is being revised to improve the protection of state park resources and safety of visitors. Therefore, no one will be adversely affected.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All visitors to state parks are required to comply with Chapter 11. These include campers, swimmers, boaters, including whitewater boaters, fishers, hikers, mountain bikers, equestrians, snowmobilers, and bird-watchers.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In June and July of 2000, the Department received public comment during the development of the proposed rulemaking at six regional public meetings. In addition, the Department received comments at round table meetings sponsored by state park managers across the state. State park volunteers and groups with strong knowledge of the state park system attended these round table meetings and provided input on the development of the proposed rulemaking.

The Conservation and Natural Resources Advisory Council reviewed a draft of the proposed rulemaking and offered comments and suggestions, many of which were adopted, before it was approved by the executive staff for submission to the Governor's offices for review.

The Department considered the comments on the proposed rulemaking that it received from the public during the 60-day comment period and from the Independent Regulatory Review Commission and adopted many of the suggestions made in the comments. No comments were received from the legislative committees.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

This rulemaking imposes no new costs or savings to the regulated community.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to state governments associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

Costs will be minimal—Postings of horsepower restrictions at lakes; signs on trails open for mountain biking; postings of length limits for pet leashes; and posting of revised summaries of Chapter 11 will be required. The total cost of these postings is estimated to be less than \$1,000. Permits for overnight facilities will need to be revised at a total cost of approximately \$750.

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(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

Not applicable.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Not applicable.

Program	FY-3	FY-2	FY-1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives would not be appropriate. See answer to #10.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal standards.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

All state park agencies have similar regulations. Adoption of these revisions will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No. This is a final rulemaking.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

February 22, 2003.

(31) Provide the schedule for continual review of the regulation.

The effectiveness of Chapter 11 will be monitored on an ongoing basis.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2260

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

Department of Conservation and
Natural Resources

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7B-003

DATE OF ADOPTION: _____

BY: John C. Oliver

TITLE: John C. Oliver, Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independ-
ent Agencies.

BY: [Signature]

9/9/02
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

Notice of
Final Rulemaking
Department of Conservation and Natural Resources

(17 Pa. Code, Chapter 11)

State Parks - General Provisions

Annex A

TITLE 17. CONSERVATION AND NATURAL RESOURCES

PART I. DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Subpart B. STATE PARKS

CHAPTER 11. GENERAL PROVISIONS

Sec.

- 11.1--11.16. (Reserved).
- 11.21--11.27. (Reserved).
- 11.31--11.39. (Reserved).
- 11.41--11.52. (Reserved).
- 11.61--11.83. (Reserved).
- 11.91--11.96. (Reserved).
- 11.101--11.102. (Reserved).
- 11.111--11.124. (Reserved).
- 11.151--11.164. (Reserved).
- 11.201. Definitions.
- 11.202. Scope.
- 11.203. State park waters.
- 11.204. Application of Fish and Boat Commission rules and Game Commission rules.
- 11.205. Trespass.
- 11.206. Property left in a State park.
- 11.207. Traffic and parking.
- 11.208. Schedule; closure.
- 11.209. Miscellaneous activities.
- 11.210. Fires.
- 11.211. Natural resources.
- 11.212. Pets.
- 11.213. Organized events; public assemblies; distribution of printed matter.
- 11.214. Waste.
- 11.215. Weapons and hunting.

- 11.216. **General recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes.**
- 11.217. **Swimming.**
- 11.218. **Camping; overnight facilities.**
- 11.219. **Boating.**
- 11.220. **Whitewater boating.**
- 11.221. **Special provisions for Point State Park.**
- 11.222. **Special provisions for Presque Isle State Park.**
- 11.223. **Violation of rules regarding conduct in State parks.**
- 11.224. **Prices.**

§ 11.201. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act--The Conservation and Natural Resources Act (71 P. S. §§ 1340.101--1340.1102).

ALL-TERRAIN VEHICLE—AN ALL-TERRAIN VEHICLE AS DEFINED IN SECTION 7702 (RELATING TO DEFINITIONS) OF THE VEHICLE CODE.

Commercial activity--An activity in which a person directly or indirectly accepts consideration of value as compensation for the provision of goods or services, including transportation.

Crimes Code--Title 18 *Pennsylvania Consolidated Statutes*.

Department--

(i) The Department of Conservation and Natural Resources of the Commonwealth.

(ii) The term includes authorized officials of the Department.

Designated swimming area--

(i) A swimming pool, wading pool or the area of a natural or artificially constructed pond, lake, stream, river, bay, tidal waters or other body of water, which is designated, developed, maintained and operated by a State park for ~~bathing~~ and swimming purposes.

(ii) The term includes the land, buildings, equipment and appurtenances used in connection with the body of water.

Fish and Boat Code--Title 30 *Pennsylvania Consolidated Statutes*.

Game and Wildlife Code--Title 34 *Pennsylvania Consolidated Statutes*.

MOTOR VEHICLE—A MOTOR VEHICLE AS DEFINED IN SECTION 102 OF THE VEHICLE CODE, EXCEPT THAT THIS TERM DOES NOT INCLUDE A SNOWMOBILE OR ALL-TERRAIN VEHICLE AS DEFINED IN SECTION 7702 OF THE VEHICLE CODE (RELATING TO DEFINITIONS).

OFFICIAL TRAFFIC-CONTROL DEVICES—OFFICIAL TRAFFIC-CONTROL DEVICES AS DEFINED IN SECTION 102 OF THE VEHICLE CODE.

Person--A corporation, company, club, firm, association, society, partnership, joint stock company, governmental agency or individual.

PERMISSION OF THE DEPARTMENT OR PERMITTED BY THE DEPARTMENT—APPROVAL OBTAINED FROM A PARK MANAGER OR DESIGNEE.

PERMIT—WRITTEN APPROVAL OBTAINED FROM A PARK MANAGER OR DESIGNEE ON A FORM PRESCRIBED BY THE DEPARTMENT.

PERSONAL WATERCRAFT—PERSONAL WATERCRAFT AS DEFINED IN SECTION 109.3 (RELATING TO PERSONAL WATERCRAFT) OF FISH AND BOAT COMMISSION REGULATIONS, TITLE 58 PA. CODE.

Pet--A dog, cat or other ~~domestic~~ animal THAT HAS BEEN DOMESTICATED. THIS TERM DOES NOT INCLUDE BOVINE OR EQUINE ANIMALS OR POULTRY.

SNOWMOBILE—A SNOWMOBILE AS DEFINED IN SECTION 7702 (RELATING TO DEFINITIONS) OF THE VEHICLE CODE.

State park--

(i) An area under the jurisdiction of the Department acquired or administered as a park under section 303 of the act (71 P. S. § 1340.303) or designated or administered as a park under section 302(a)(12) of the act (71 P. S. § 1340.302(a)(12)).

(ii) The term includes:

(A) A State park.

(B) A State park preserve.

(C) A parkway.

(D) A conservation area as defined in § 44.1 (relating to defined) that is administered and managed by the Department's Bureau of State Parks.

(E) A State Park Natural Area as defined in § 17.2 (relating to State Parks Natural Area definition).

(F) An environmental education center administered by the Department's Bureau of State Parks.

(G) State park waters under § 11.203 (relating to State park waters).

Summer season--The period beginning on the Saturday of Memorial Day weekend and continuing through Labor Day.

VEHICLE—A VEHICLE AS DEFINED IN SECTION 102 OF THE VEHICLE CODE.

Vehicle Code--Title 75 Pennsylvania Consolidated Statutes.

WATERCRAFT—WATERCRAFT AS DEFINED IN SECTION 102 (RELATING TO DEFINITIONS) OF THE FISH AND BOAT CODE.

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, AND AIR MATTRESSES. THE TERM DOES NOT INCLUDE PARASAILS, KITE SKIS, AND OTHER DEVICES INTENDED TO LIFT OFF THE SURFACE OF THE WATER.

§ 11.202. Scope.

(a) This chapter applies to State parks.

(b) The ~~prohibitions~~ RESTRICTIONS in this chapter do not apply to authorized Department employees, authorized volunteers and concessionaires acting within the scope of their duties or concession agreement, or to Federal, State and municipal law enforcement officers performing their official duties.

§ 11.203. State park waters.

The Department has jurisdiction over the following bodies of water:

(1) *General.*

(i) Lakes, ~~water~~ impoundments and other bodies of water that are wholly owned by the Department or completely surrounded by State park land.

(ii) Creeks, streams and nonnavigable rivers that run through or along State parks.

(iii) Water areas within a 100-foot safety zone around launching, swimming, docking, mooring and marina facilities at State parks.

(2) *Presque Isle State Park.* Misery Bay, Marina Lake, Thompson Bay, Horseshoe Pond, Duck Pond, lagoons and all the waters in Lake Erie and Presque Isle Bay within 500 feet of the low-water mark of the peninsula of Presque Isle, PURSUANT TO 32 P.S. SECTION 923 (RELATING TO DEDICATION OF LANDS) AND 55 P.S. SECTION 361 (RELATING TO ENTRY UPON DEDICATED LANDS; RULES AND REGULATIONS).

(3) *Pymatuning State Park.* Pymatuning Lake, PURSUANT TO 32 P.S. SECTION 763 (RELATING TO CONSTRUCTION OF DAM; USE OF RESERVOIR AND SURROUNDING LANDS FOR RECREATION AND OTHER PURPOSES; RULES AND REGULATIONS).

§ 11.204. Application of Fish and Boat Commission rules and Game Commission rules.

Title 58 Pa. Code Parts II and III (relating to Fish and Boat Commission; and Game Commission) apply in State parks to activities under the jurisdiction of the Fish and Boat Commission and the Game Commission. However, to the extent that this chapter is more restrictive than 58 Pa. Code Part II or III, this chapter applies.

§ 11.205. Trespass.

(a) A person who violates this chapter, disregards an instruction or warning given by a Department-commissioned officer or interferes in the performance of the duties of a Department-commissioned officer, may be ordered to leave a State park.

(b) A person who refuses to leave a State park after receiving an order to leave from a Department-commissioned officer commits an act of criminal trespass under section 3503(b) of the Crimes Code (relating to criminal trespass).

§ 11.206. Property left in a State park.

(a) Property that has been left in a State park for more than 24 hours without written permission of the Department, ~~or property that impedes public access or navigation,~~ OR VEHICLES OR OTHER PROPERTY PARKED IN VIOLATION OF § 11.207 (B) (RELATED TO TRAFFIC AND PARKING) may be moved or removed by the Department and placed in storage at the State park. The property may be subject to disposal under Article XIII.1 of The Fiscal Code (72 P. S. §§ 1301.1--1301.29) or as otherwise provided by law or by agreement between the owner and the Department.

(b) Property that has been stored under this section will be released from storage only upon adequate proof of ownership and payment of the charges established under § 11.224 (relating to prices).

§ 11.207. Traffic and parking.

(a) ~~Traffic. Operation of a motor vehicle, as defined in the Vehicle Code, as follows is~~ THE FOLLOWING ARE prohibited:

(1) ~~On~~ OPERATION OF A VEHICLE ON a State park road at a speed in excess of the posted limit or, where no speed limit is posted, in excess of 25 miles per hour.

(2) ~~On~~ OPERATION OF A MOTOR VEHICLE ON a State park road, lane, trail or area that is posted as closed to motor vehicles, except with permission of the Department.

(3) ~~Off~~ OPERATION OF A MOTOR VEHICLE OFF a road or outside a parking area, except on a trail or in an area posted as open to motor vehicles, or except with written permission of the Department.

(4) ~~So as to cause noise that would likely annoy or disturb a reasonable person of normal sensitivities.~~

~~—(5) Not~~ OPERATION OF A VEHICLE NOT in obedience to OFFICIAL traffic-control devices.

(6) ~~For purposes of commercial activity without written permission from the Department.~~

(b) *Parking.* The following activities are prohibited:

(1) Parking a motor vehicle, boat trailer, camp trailer or other vehicle or equipment in an area designated by the Department for persons with a disability unless ~~the vehicle is operated by, or for the transportation of, a person with a disability or a severely disabled veteran and the vehicle displays one of the following~~ ONE OF THE FOLLOWING REQUIREMENTS IS MET:

~~(i) A valid person with disability registration plate or a valid severely disabled veteran registration plate, issued in accordance with the Vehicle Code, or a substantially equivalent issuance from another state.~~

~~(ii) A valid person with disability parking placard or a valid severely disabled veteran placard, issued in accordance with the Vehicle Code, or a substantially equivalent issuance from another state.~~

~~(iii) A valid placard provided by the Department's Bureau of State Parks indicating issuance of authorization to operate the vehicle on State park land.~~

(i) PERMISSION HAS BEEN GIVEN TO A USER OF THE VEHICLE UNDER SUBSECTION (C) AND THE USER IS IN COMPLIANCE WITH THE CONDITIONS OF THE PERMISSION.

(ii) A VALID PLATE OR VALID PLACARD HAS BEEN ISSUED TO A USER OF THE VEHICLE UNDER SECTION 1338 (RELATING TO PERSON WITH DISABILITY PLATE AND PLACARD) OR SECTION 1342 (A) OR (B) (RELATING TO VETERAN PLATES AND PLACARD) OF THE VEHICLE CODE. A VALID PLATE OR VALID PLACARD ISSUED BY ANOTHER STATE, THE DISTRICT OF COLUMBIA, OR A CANADIAN PROVINCE FOR A PERSON WITH A DISABILITY IS DEEMED TO BE IN COMPLIANCE WITH THE PLATE AND PLACARD REQUIREMENTS OF THIS SUBPARAGRAPH. PLACARDS SHALL BE DISPLAYED IN THE MANNER REQUIRED BY SECTION 1338(B) OR 1342(B) OF THE VEHICLE CODE.

(2) PARKING A VEHICLE IN VIOLATION OF SECTION 1338, SECTION 1342, OR SECTION 3354 (D)(2), (D)(3) OR (E) OF THE VEHICLE CODE.

(3) Parking a motor vehicle, boat trailer, camp trailer or other vehicle or equipment as follows without written permission of the Department:

(i) In an area other than an area designated by the Department for parking.

(ii) In a location that obstructs a gate, road, trail, footpath, bicycle path, access way, drinking fountain, entrance, exit or road turnaround.

(iii) In an area that is posted as closed.

(iv) At a ~~campsite~~ AN OVERNIGHT FACILITY.

(v) When the park is closed under § 11.208 (relating to schedule; closure).

~~(3)~~ (4) Parking a bus in an area that is ~~posted as being closed~~ NOT DESIGNATED for buses.

~~(c) Removal; storage. A motor vehicle, boat trailer, camp trailer or other vehicle or equipment parked in violation of subsection (b) may be removed and stored at the owner's expense upon authorization of the Department. PERSONS WITH DISABILITIES.~~

(1) A PERSON WHO, BECAUSE OF A DISABILITY, REQUIRES A MOTORIZED VEHICLE TO GAIN ACCESS TO A PORTION OR PORTIONS OF A STATE PARK MAY REQUEST WRITTEN PERMISSION OF THE DEPARTMENT TO USE A MOTORIZED VEHICLE IN AREAS OF A STATE PARK NOT OTHERWISE OPEN FOR MOTORIZED VEHICLE USE BY THE PUBLIC.

(2) A PERSON WHO HAS RECEIVED PERMISSION UNDER PARAGRAPH (1) SHALL COMPLY WITH THE WRITTEN CONDITIONS OF SUCH PERMISSION.

(d) Violations.

(1) SUMMARY OFFENSE.

(I) ~~Engaging in an activity in~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II), A violation of this section constitutes a summary offense under section 7505 of the Crimes Code (relating to violation of ~~government~~ GOVERNMENTAL rules regarding traffic).

(II) A VIOLATION OF SUBSECTION (B)(2) CONSTITUTES A SUMMARY OFFENSE UNDER THE VEHICLE CODE.

~~(e) Parking tickets.~~

(2) PARKING TICKETS.

~~(4) (I) Prior to filing a citation charging a summary offense for~~ FOR A violation of subsection (b)(1), (3) OR (4) OR FOR VIOLATION OF SECTION 3351 (RELATING TO STOPPING, STANDING AND PARKING OUTSIDE BUSINESS AND RESIDENCE DISTRICTS), 3353 (RELATING TO PROHIBITIONS IN SPECIFIED PLACES) OR 3354 (A), (B), OR (D)(1) (RELATING TO ADDITIONAL PARKING REGULATIONS) OF THE VEHICLE CODE, the Department may issue a parking ticket, AS PROVIDED FOR IN 234 PA. CODE RULE 401 (RELATING TO PROCEEDINGS IN SUMMARY CASES CHARGING PARKING VIOLATIONS), which will be handed to the violator or placed on the windshield of the violator's vehicle. ~~The Department will not file a citation if the violator pays a charge to the Department in the amount of the maximum fine as provided in section 7505 of the Crimes Code within 5 days of the violation as specified on the ticket.~~

~~(2)~~ (II) If it has issued a parking ticket, the Department will file a citation only if the violator fails to pay the A charge TO THE DEPARTMENT IN THE AMOUNT PROVIDED IN CLAUSE (A) OR (B) ~~within the time limit specified in paragraph (1)~~ WITHIN 5 DAYS OF THE VIOLATION and in the manner specified on the ticket, ~~as provided for in 234 Pa. Code (relating to rules of criminal procedure).~~

(A) FOR VIOLATIONS OF SUBSECTION (B)(1), (3) OR (4), THE CHARGE WILL BE IN THE AMOUNT OF THE MAXIMUM FINE AS PROVIDED IN SECTION 7505 OF THE CRIMES CODE.

(B) FOR VIOLATIONS OF SECTION 3351, 3353, OR 3354 (A), (B), OR (D)(1) OF THE VEHICLE CODE, THE CHARGE WILL BE IN THE AMOUNT OF THE MAXIMUM FINE FOR THE OFFENSE AS SPECIFIED IN THE VEHICLE CODE.

~~(3)~~ (III) If it has not issued a parking ticket, the Department may file ISSUE a citation as provided for in ~~the~~ 234 Pa. Code RULE 401.

~~(f) Violations of parking provisions of the Vehicle Code. Violations of sections 3351–3354 of the Vehicle Code (relating to stopping, standing and parking) will be handled in accordance with subsection (e) except that the amount of the charge imposed by a parking ticket will be \$15.~~

§ 11.208. Schedule; closure.

(a) *General.* Except as otherwise provided in subsections (b) – ~~(f)~~ (G), as otherwise provided in this chapter, and as otherwise posted, State parks are open to the public daily only from sunrise until sunset.

(b) *Point State Park.* Point State Park is open to the public from ~~8 a.m.~~ SUNRISE to 11 p.m.

(c) *Presque Isle State Park.* Presque Isle State Park is open to the public from 5 a.m. until sunset. After sunset, it is open only to tenants, persons with visitor passes and persons engaged in evening driving. The closing hour for evening driving is as posted.

(d) *Fishing and boating.* Subject to § 11.219 (relating to boating), areas designated for fishing and nonwhitewater boating are open to the public for these purposes 24-hours per day. However, at Presque Isle State Park, fishing is permitted only during hours when the park is open to the public.

(e) *Hunting and trapping.* Subject to § 11.215 (relating to weapons and hunting), areas designated by the Department for hunting are open to the public for hunting and trapping ~~24 hours per day~~ DURING HOURS PERMITTED FOR

THESE ACTIVITIES UNDER GAME COMMISSION REGULATIONS, 58 PA. CODE PART III (RELATING TO GAME COMMISSION).

(f) *Snowmobiling.* Subject to § 11.216 (relating to general recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes), snowmobiling is permitted 24-hours per day.

(g) *CAMPING AND USE OF OVERNIGHT FACILITIES.* CAMPING AND USE OF OVERNIGHT FACILITIES IS PERMITTED IN ACCORDANCE WITH PERMIT CONDITIONS AS PROVIDED IN § 11.218 (RELATING TO CAMPING; OVERNIGHT FACILITIES).

(H) *Closings and restrictions.* Notwithstanding other provisions of this chapter, the Department may close a State park, portion of a State park, or State park facility or may restrict it to certain uses or activities.

(h) (I) *Prohibited activities.* Notwithstanding other provisions of this chapter, the Department may prohibit certain uses or activities in a State park, portion of a State park or State park facility.

(h) (J) *Informing the public.* The public will be informed of the closure, restriction or prohibition under subsection (g) (H) or (h) (I) by any form of communication, which may include this chapter or posting, or by fencing, barricade, gate or other structure or device manifestly designed to exclude intruders.

(h) (K) *Prohibitions.*

(1) Entering, using or remaining in a State park, area or facility that is not open to the public or that has been closed under this section is prohibited, unless permitted by the Department.

(2) Using, or engaging in activities in, a State park, area or facility in violation of a restriction or prohibition under subsection (g) (H) or (h) (I) is prohibited, unless permitted by the Department.

§ 11.209. Miscellaneous activities.

(a) The following activities are prohibited without written permission of the Department:

(1) Engaging in construction or excavation.

(2) Moving, removing, damaging or defacing a Department sign, structure, facility or equipment.

(3) Possessing, discharging or causing to be discharged a firecracker, explosive, torpedo, rocket or other pyrotechnical material.

(4) Using a chain saw.

(5) Engaging in commercial activity.

(6) Posting or displaying a sign or printed matter.

(7) Soliciting funds.

(8) Removing or disturbing an historical or archeological artifact, relic or object.

(9) Bringing an animal, other than a pet as provided in § 11.212 (relating to pets), and other than a horse as provided in § 11.216 (relating to general recreational activity; horses; snowmobiles; all terrain vehicles; mountain bikes), into a State park.

(10) **STORING OR LEAVING FOOD IN A MANNER THAT IS REASONABLY LIKELY TO ATTRACT WILDLIFE.**

(b) The following are prohibited:

(1) Failing to comply with a condition of a permit issued by the Department.

(2) Possessing, selling or consuming an alcoholic beverage except at specially designated facilities operated or leased by the Department.

(3) Causing or creating a noise which would likely annoy or disturb a reasonable person of normal sensitivities.

(4) Obstructing or impeding persons or vehicles.

(5) ~~, or subjecting~~ **SUBJECTING** persons to unwanted physical contact or unwanted verbal behavior.

(6) Failing to fully cover with opaque clothing one's genitals, pubic area, buttocks ~~or~~ **AND** female breast below the top of the nipple.

(7) ~~Storing or leaving food in a manner that is reasonably likely to attract wildlife~~ **USING DRINKING FOUNTAINS, SPRINGS, LAKES OR WATERWAYS FOR WASHING PURPOSES.**

§ 11.210. Fires.

The following activities are prohibited ~~without written permission of the Department:~~

- (1) Starting or maintaining a fire except in a fireplace, grill, stove or other facility designated by the Department for campfires OR EXCEPT WITH WRITTEN PERMISSION OF THE DEPARTMENT.
- (2) Leaving a fire unattended EXCEPT WITH WRITTEN PERMISSION OF THE DEPARTMENT.
- (3) Disposing hot charcoal except in a facility designated by the Department for charcoal disposal.

§ 11.211. Natural resources.

(A) The following activities are prohibited ~~without~~ EXCEPT WITH written permission of the Department: OR EXCEPT AS PROVIDED IN SUBSECTION (B):

- (1) Cutting, picking, digging, damaging or removing, in whole or in part, a living or dead tree, shrub or plant. ~~However, the following activities are permitted:~~
 - ~~(i) Gathering edible fruits, nuts, berries and fungi, in reasonable amounts, for one's own personal or family consumption. This permission does not apply to wild plants listed in Chapter 45 (relating to conservation of Pennsylvania native wild plants) as threatened, endangered, rare or vulnerable.~~
 - ~~(ii) Gathering dead and down wood for use within the State park in a fireplace, grill, stove or other facility designated by the Department for campfires.~~
- (2) Damaging, defacing, cutting or removing rock, shale, sand, clay, soil or other mineral product, natural object or material.
- (3) Planting a seed, tree, shrub or plant.
- (4) Feeding wildlife.
- (5) Releasing an animal that was brought into a State park.

(B) THE FOLLOWING ACTIVITIES ARE PERMITTED:

- (1) GATHERING EDIBLE FRUITS, NUTS, BERRIES AND FUNGI, IN REASONABLE AMOUNTS, FOR ONE'S OWN PERSONAL OR FAMILY CONSUMPTION. THIS PERMISSION DOES NOT APPLY TO WILD PLANTS LISTED IN CHAPTER 45 (RELATING TO CONSERVATION OF

PENNSYLVANIA NATIVE WILD PLANTS) AS THREATENED,
ENDANGERED, RARE OR VULNERABLE.

(2) GATHERING DEAD AND DOWN WOOD FOR USE WITHIN THE STATE PARK IN A FIREPLACE, GRILL, STOVE OR OTHER FACILITY DESIGNATED BY THE DEPARTMENT FOR CAMPFIRES.

§ 11.212. Pets.

(a) ~~This section does not apply to a guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability.~~

~~(b)~~ AN EXCEPT AS PROVIDED IN SUBSECTIONS (E) AND (F), AN owner, keeper or handler of a pet may keep the pet in a State park only in accordance with subsections ~~(e)~~ ~~(e)~~ (B) ~~(D)~~ and only under the following conditions:

(1) It is on a leash or is in a cage or crate. If a maximum length of leash is specified by posting, the leash may not exceed the length specified.

(2) It is attended and under physical control of an individual.

(3) It does not behave in a manner that may reasonably be expected to disturb or intimidate another person.

(4) It does not behave in a manner that may cause damage to property or resources.

(5) Its droppings are disposed of in trash receptacles or outside the park.

(6) It has been licensed and vaccinated as required by law.

~~(e)~~ (B) A pet is not permitted in a designated swimming area.

~~(d)~~ (C) A pet is not permitted in an overnight area unless the area is designated by the Department for pets.

~~(e)~~ (D) A pet is not permitted in a building.

~~(f)~~ (E) Subsection ~~(b)~~(A)(1)--(5) does not apply to a dog being used by a person engaged in hunting or training as provided in § 11.215 (relating to weapons and hunting).

(F) SUBSECTIONS (B), (C), AND (D) DO NOT APPLY TO A GUIDE DOG, SIGNAL DOG OR OTHER ANIMAL WHICH HAS BEEN TRAINED TO ASSIST, AND IS ACCOMPANYING, A PERSON WITH A DISABILITY.

§ 11.213. Organized events; public assemblies; distribution of printed matter.

(a) *Activities.* Engaging or participating in any of the following activities is prohibited without written permission of the Department:

- (1) An exhibition, competition or organized event.
- (2) A public assembly, meeting, gathering, demonstration, parade or other public expression of views.
- (3) Distribution of printed matter.

(b) *Application.* An application for ~~a permit~~ PERMISSION to engage in an activity listed in subsection (a), ACCOMPANIED BY A COPY OF ANY PRINTED MATTER TO BE DISTRIBUTED, shall be delivered to the park manager ~~at least 24 hours before the activity~~ on a form ~~prescribed by the Department and shall include a copy of any printed matter to be distributed~~ THAT MAY BE OBTAINED FROM THE PARK MANAGER.

(c) *Departmental review.* The Department will grant or deny ~~a permit~~ PERMISSION without unreasonable delay. A denial of ~~a permit~~ PERMISSION will specify the grounds for denial.

(d) *Grounds for denial.* Any of the following will justify denial of ~~a permit~~ PERMISSION:

- (1) A prior application for ~~a permit~~ PERMISSION TO ENGAGE IN AN ACTIVITY ~~for~~ AT the same time and place has been ~~made that has been~~ or will be granted and the activities ~~authorized by that permit~~ PERMITTED do not reasonably allow multiple ~~occupancy~~ USE of the particular area.
- (2) It reasonably appears that the activity will present a clear and present danger to public health or safety.
- (3) The activity is of a nature or duration that it cannot be accommodated without causing injury or damage to park resources.
- (4) The activity is of a nature or duration that it cannot be accommodated without unreasonably interfering with a protected area's peace and tranquility, the use of the State park by other visitors, program or administrative activities, the operation of public use facilities or the provision of services by State park concessionaires or contractors.

(e) *Conditions.* ~~A permit issued~~ PERMISSION GRANTED under this section may contain conditions consistent with the considerations in subsection (d).

§ 11.214. Waste.

The following activities are prohibited:

(1) Depositing, dumping or causing to be deposited or dumped, litter, trash, refuse, garbage, bottles, pollutants or any other substance, liquid or waste, including sewage, sink water or bath water, except in receptacles or facilities provided by the Department for this purpose and in accordance with any posted instructions.

(2) Disposing material that was not accumulated during use of a State park.

§ 11.215. Weapons and hunting.

The following activities are prohibited without written permission of the Department:

(1) Hunting, pursuing or intentionally disturbing woodchucks, also known as groundhogs. Paragraph (2) does not apply to this activity.

(2) Hunting, pursuing or intentionally disturbing wildlife unless:

(i) The person engaging in the activity is licensed by the Game Commission to hunt and is engaged in hunting in accordance with the Game and Wildlife Code.

(ii) The activity takes place in an area designated by the Department for hunting. At Presque Isle State Park, waterfowl hunting may take place only from a facility designated by the Department as a waterfowl blind, and shooting shall be directed away from State park land and over the adjacent waters.

(iii) The activity takes place during hunting season as established by the Game Commission.

(iv) The firearm, archery equipment or other device used for this activity is lawful for hunting under the Game and Wildlife Code. A device operated by air, chemical or gas cylinder by which a projectile can be discharged or propelled is not lawful for hunting under the Game and Wildlife Code.

(3) Using a device, including a firearm, archery equipment, or slingshot, that is capable of discharging or propelling a projectile, except as provided in paragraph (2) or (7).

(4) Possessing an uncased device, or uncasing a device, including a firearm, archery equipment, or slingshot, that is capable of discharging or propelling a projectile, except as provided in paragraph (2) or (7), or except in the owner's

building on a leased campsite, in the owner's residence, or in the owner's vehicle or trailer.

(5) Failing to keep a device, including a firearm, archery equipment, or slingshot, that is capable of discharging or propelling a projectile, in the owner's building on a leased campsite, in the owner's residence or in the owner's vehicle or trailer. This prohibition does not apply to either of the following:

(i) A person licensed by the Game Commission to hunt, and in possession of a device that is lawful for hunting under the Game and Wildlife Code, during hunting season as established by the Game Commission, in a State park open for hunting.

(ii) A person engaged in target-shooting under paragraph (7).

(6) The trapping of wildlife. This prohibition does not apply to a person licensed by the Game Commission to engage in trapping, during trapping season as established by the Game Commission, in an area designated by the Department for hunting.

(7) Target-shooting with a device, including a firearm, archery equipment or slingshot, capable of discharging or propelling a projectile, except in an area designated by the Department for this purpose and in accordance with posted requirements and restrictions.

(8) Dog training, except from the day following Labor Day through March 31, in an area designated by the Department for hunting.

§ 11.216. General recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes.

(a) *General recreational activity.* Outdoor recreational activity is restricted to locations at which physical improvement or posting designates the appropriate purpose and use and to the requirements in subsections (b)—(e).

(b) *Horses.*

(1) ~~Subject to paragraph (4), a~~ A horse is permitted only on the right side of a State park road open to motor vehicles or on a trail or area posted for horseback riding. AT PRESQUE ISLE STATE PARK, A HORSE IS PERMITTED ONLY WITH WRITTEN PERMISSION OF THE DEPARTMENT.

(2) Hitching or confining a horse in a manner that may cause damage to a tree, shrub, improvement or structure is prohibited.

(3) Droppings from hitched or confined horses shall be disposed of outside the State park.

~~(4) At Presque Isle State Park, a horse is permitted only with written permission of the Department.~~

(c) *Snowmobiles*. Use of a snowmobile, ~~as defined in the Vehicle Code~~, is permitted only as follows:

(1) In accordance with Chapter 77 of the Vehicle Code (relating to snowmobiles and all-terrain vehicles).

(2) On an area, road or trail posted for snowmobiles, or with written permission of the Department IN ACCORDANCE WITH SECTION 11.207(C) (RELATING TO TRAFFIC AND PARKING).

(3) During the period beginning the day following the last day of antlerless deer season as established by the Game Commission, through the following April 1, unless otherwise posted. For purposes of this paragraph, "antlerless deer season" means a regular season or an extended season. If more than one antlerless deer season in a calendar year is established by the Game Commission, then "the last day of antlerless deer season" as used in this paragraph means the antlerless deer season that is the latest in the calendar year but that ends prior to December 25.

(d) *All-terrain vehicles*. Use of an all-terrain vehicle, ~~as defined in the Vehicle Code~~, is permitted only as follows:

(1) In accordance with Chapter 77 of the Vehicle Code.

(2) On an area, road or trail posted for all-terrain vehicles, or with written permission of the Department IN ACCORDANCE WITH SECTION 11.207(C) (RELATING TO TRAFFIC AND PARKING).

(e) *Mountain bikes*. Use of a mountain bike on a trail is permitted only on a trail posted for mountain biking.

§ 11.217. Swimming.

The following are prohibited:

(1) Swimming outside a designated swimming area.

(2) Swimming at other than posted hours.

(3) Use of underwater breathing apparatus or a snorkel. However, with permission of the Department, this equipment may be used by an emergency or

rescue unit conducting a rescue operation or training or by a diver certified by an organization approved by the Department. THE LIST OF ORGANIZATIONS APPROVED BY THE DEPARTMENT MAY BE OBTAINED FROM THE PARK MANAGER.

(4) Possessing or using a glass or breakable container or utensil in a designated swimming area.

(5) Wearing the following:

(i) In a designated swimming area that is a swimming pool, cut-off pants, clothing that may damage the filtration system or pool surface or clothing that may otherwise cause damage or endanger the facility or a visitor.

(ii) In a designated swimming area that is a swimming pool, clothing that is not leak-proof, on an infant or on a child who is not toilet-trained.

(iii) In a designated swimming area, clothing that displays lifeguard lettering or insignia.

(6) The presence of a child under 10 years of age in a designated swimming area unless accompanied and supervised competently and effectively by a person at least 14 years of age. There may be no more than five children under the supervision of one person.

(7) Diving as follows in a designated swimming area:

(i) Running-entry diving.

(ii) Diving from the shoulders of another person.

(iii) Head-first diving from poolside where the water depth is 5 feet or less.

(8) Engaging in the following activities in a designated swimming area unless permitted by posting or by an on-duty lifeguard:

(i) Using or possessing a buoyant device. However, personal flotation devices approved by the United States Coast Guard may be worn.

(ii) Engaging in sports activities, including water polo, volleyball, disc throwing and catch.

§ 11.218. Camping; overnight facilities.

(a) *Camping*. Placing a tent, shelter, lean-to, sleeping bag, bedding material or mobile camping unit in an area without a valid camping permit for use of that area is prohibited.

(b) *Overnight facilities*. Placing personal property in, or otherwise using, a cabin, yurt, walled tent, camping cottage or other overnight facility without possession of a valid permit for use of that facility is prohibited.

§ 11.219. Boating.

(a) *Applicability*. This section applies to ~~the use of watercraft, as defined by section 102 of the Fish and Boat Code (relating to definitions);~~ ACTIVITIES AT STATE PARKS other than ~~whitewater boating~~ STATE PARKS COVERED BY § 11.220 (RELATING TO WHITEWATER BOATING).

(b) USE OF INNER TUBES, BODY BOARDS, SURFBOARDS, AIR MATTRESSES, AND OTHER SIMILAR NON-WATERCRAFT DEVICES IS PERMITTED IN CREEKS, STREAMS, AND RIVERS. CHILDREN AGES 12 AND UNDER SHALL WEAR UNITED STATES COAST GUARD-APPROVED PERSONAL FLOTATION DEVICES WHILE ENGAGED IN THIS ACTIVITY.

(C) EXCEPT AS PROVIDED IN SUBSECTION (D), USE OF BODY BOARDS AND SURFBOARDS IS PERMITTED IN BODIES OF WATER DESIGNATED FOR BOATING. PERSONS SHALL WEAR UNITED STATES COAST GUARD-APPROVED PERSONAL FLOTATION DEVICES WHILE ENGAGED IN THIS ACTIVITY.

(D) AT PRESQUE ISLE STATE PARK, USE OF BODY BOARDS AND SURFBOARDS IS PERMITTED ONLY AT LOCATIONS WHERE POSTING STATES THAT THIS ACTIVITY IS PERMITTED. PERSONAL FLOTATION DEVICES ARE NOT REQUIRED.

(E) *General*. The following activities are prohibited without written permission of the Department:

(1) Operating watercraft on a body of water not ~~posted as being open~~ DESIGNATED for boating. HOWEVER, USE OF NON-MOTORIZED WATERCRAFT IS PERMITTED ON CREEKS, STREAMS AND RIVERS UNLESS POSTED OTHERWISE.

(2) Operating, using or anchoring watercraft within 100 feet of either a designated swimming area or an area marked by buoys.

(3) ~~Operating or using watercraft in an impoundment, except where the impoundment is designated for boating.~~

(4) Operating, towing or using any of the following:

(i) Watercraft propelled by air propellers.

(ii) Seaplanes. However, seaplanes may be taxied at a slow minimum-height-swell speed in the waters of Presque Isle State Park for the purpose of access to and egress from the park.

~~(iii) Water skis, as defined by the Fish and Boat Commission in 58 Pa. Code Chapter 109 (relating to specialty boats and water skiing activities). This prohibition does not apply to the use of conventional water skis~~ HOWEVER, USE OF WATER SKIS IS PERMITTED in lakes where motorboats with unlimited horsepower are permitted AND IN LAKES WHERE POSTING STATES THAT WATER SKIING IS PERMITTED.

(iv) PARASAILS, KITE SKIS AND OTHER DEVICES TOWED BEHIND A BOAT AND INTENDED TO LIFT OFF THE SURFACE OF THE WATER.

(V) Unseaworthy watercraft.

~~(v) Novelty type watercraft.~~

~~(vi) An inflatable device~~ (VI) INFLATABLE DEVICES except one AS PROVIDED IN SUBSECTION (B) AND EXCEPT DEVICES which is ARE at least 7 feet long, ~~made of durable, reinforced fabric and has at least two~~ HAVE MORE THAN ONE separate buoyancy chambers CHAMBER ~~exclusive of an inflatable floor or bottom.~~

(vii) Equipment or devices not constructed or sold primarily for transportation on water, EXCEPT AS PROVIDED IN SUBSECTIONS (B) – (D).

~~(viii) Body boards or surfboards, except where permitted by posting at Presque Isle State Park.~~

(e) (F) *Motorboats.* This subsection does not apply to boats used for purposes of State park administration, law enforcement, search and rescue, safety patrol or concessionaire excursions. The following activities are prohibited without written permission of the Department:

(1) Operating a boat powered by one or more internal combustion engines totaling more than the posted maximum horsepower.

(2) Operating a boat powered by an internal combustion engine in waters that are posted as being restricted to electric motor use.

(3) Operating personal watercraft, ~~regardless of horsepower~~, unless the body of water is posted as being open to motorboats without a limit on horsepower.

~~(d)~~ (G) *Endangerment.* Operating or using watercraft OR A NON-WATERCRAFT DEVICE in a manner that endangers a person or property is prohibited.

~~(e)~~ (H) *Mooring, anchoring and storing.* The following activities are prohibited:

(1) Mooring watercraft at any location without possession of a valid watercraft mooring permit issued by the Department for that location. This prohibition does not apply as provided in subparagraph (ii).

(i) A decal issued by the Department evidencing issuance of the permit shall be affixed aft of amidship on the starboard (right) side of the watercraft.

(ii) At Point State Park, watercraft may be moored along the river wall ~~temporarily~~ during the ~~day~~ HOURS THE PARK IS OPEN TO THE PUBLIC. Watercraft may be moored along the river wall overnight only with permission of the Department.

(2) Leaving watercraft in an area designated by the Department for storage without possession of a valid storage permit issued by the Department.

(3) Leaving unoccupied watercraft anywhere in a State park between sunset and 8 a.m., except in accordance with paragraph (1) or (2).

~~(f)~~ (I) *Launching.* The following activities are prohibited:

(1) Launching or removing MOTORIZED watercraft at a location that is not designated by the Department as a launching site, without written permission of the Department.

(2) LAUNCHING OR REMOVING NON-MOTORIZED WATERCRAFT AT A LOCATION WHERE POSTING PROHIBITS THIS ACTIVITY.

(3) Except as provided in paragraph (4), launching watercraft without one of the following:

(i) A valid watercraft launching or mooring permit issued by the Department. If a decal evidencing the issuance of a permit has been provided by the Department, the decal shall be affixed to the watercraft aft of amidship on the starboard (right) side. If another form of evidence of the issuance of a permit has been provided by the Department in lieu of a decal, this evidence shall be carried on the watercraft.

(ii) A valid registration number and validation decal, or a valid use permit, issued and displayed in accordance with 58 Pa. Code Part II (relating to Fish and Boat Commission).

(4) Paragraph (3) does not apply as follows:

(i) *Presque Isle State Park.* To an operator of watercraft at Presque Isle State Park, unless registration or a use permit is required under 58 Pa. Code Part II. If registration or a use permit is required under 58 Pa. Code Part II, launching watercraft without complying with the regulations is prohibited.

(ii) *Pymatuning State Park.* To an operator of watercraft at Pymatuning State Park if a valid launching permit has been issued for the watercraft by the State of Ohio.

§ 11.220. Whitewater boating.

(a) *General requirements.* ~~A person engaging in whitewater boating~~ THE FOLLOWING RULES APPLY TO PERSONS USING WATERCRAFT AT Ohiopyle State Park, Lehigh Gorge State Park or McConnells Mill State Park. ~~shall comply with the following requirements:~~ THESE REQUIREMENTS DO NOT APPLY AT LEHIGH GORGE STATE PARK WHEN THE FLOW RATE OF THE LEHIGH RIVER IS LESS THAN 250 CUBIC FEET PER SECOND.

(1) Wear an appropriate-sized United States Coast Guard-approved personal flotation device, Type I, III or V. ~~However, participants in whitewater events approved by the Department and the Fish and Boat Commission may, with written approval of the Department and the Fish and Boat Commission, wear a lifedeck personal flotation device that provides a minimum buoyancy of 6 kilograms (13.5 pounds).~~

(2) Use one of the following types of watercraft in addition to complying with specific watercraft requirements in subsections (c)—(e):

(i) Noninflatable watercraft that is designed by the manufacturer for whitewater use. Noninflatable canoes and noninflatable kayaks shall have sufficient flotation to ensure that they will float when they are completely full of water.

(ii) Inflatable watercraft that has multiple air chambers of a tough durable construction intended for whitewater use, consists of a tough laminated material, and is of commercial grade. THE MULTIPLE AIR CHAMBERS MUST BE IN THE OUTSIDE TUBE.

(iii) Other nonmotorized watercraft approved by the Department.

(b) *General prohibitions.* THE FOLLOWING ARE PROHIBITED ~~A person engaging in whitewater boating~~ at Ohiopyle State Park, Lehigh Gorge State Park ~~or~~ AND McConnells Mill State Park ~~is prohibited from the following:~~

- (1) Using motorized watercraft.
- (2) Using watercraft in a manner that endangers a person or property.
- (3) ~~Using watercraft before sunrise or after sunset without written permission of the Department.~~
- (4) Using a nonwatercraft device, such as an inner tube, ~~or~~ body board, SURFBOARD, OR AIR MATTRESS, ~~without written permission of the Department.~~ HOWEVER, THESE DEVICES MAY BE USED AT LEHIGH GORGE STATE PARK WHEN THE FLOW RATE OF THE LEHIGH RIVER IS LESS THAN 250 CUBIC FEET PER SECOND. CHILDREN AGES 12 AND UNDER SHALL WEAR A UNITED STATES COAST GUARD-APPROVED PERSONAL FLOTATION DEVICE WHEN ENGAGED IN THIS ACTIVITY.
- (5) (4) Possessing or using a glass container.

(c) *Ohiopyle State Park.* The following rules apply on the Youghiogheny River at Ohiopyle State Park. River levels are measured at the State park's river gauge at the Lower Youghiogheny River launch area.

(1) *Lower Youghiogheny River.* The Lower Youghiogheny River is the section of the Youghiogheny River between the base of Ohiopyle Falls and the northernmost point of the river that lies within the State park. ~~Persons engaging in whitewater boating~~ THE FOLLOWING RULES APPLY TO PERSONS USING WATERCRAFT on the Lower Youghiogheny River ~~shall comply with the following requirements:~~

(i) *Guided tour or permit.* They shall either be part of a guided tour provided by a State park-licensed concession or have a valid whitewater launch permit issued by the Department. Permits may not be transferred, assigned, altered or used to subvert their original intent. During periods when a launch area is not staffed, boaters shall sign the sign-on sheet at the contact station in lieu of obtaining a permit.

(ii) *Launch and take-out.* Except as provided in clauses (A) and (B), launch of watercraft shall occur only at THE launch ~~areas~~ AREA designated by the Department and take-out shall occur only at take-out areas designated by the Department.

(A) Watercraft may be launched on tributaries entering the Youghiogheny River downstream from Ohiopyle Falls, with permission of the Department.

(B) Watercraft may be launched at Bruner's Run take-out area for the purpose of boating downstream from Bruner's Run take-out area.

(iii) *Watercraft requirements.* Except as provided in subparagraph (iv), the following requirements apply to watercraft used on the Lower Youghiogeny River:

(A) At river levels below 3 feet, inflatable watercraft shall be at least 8 feet long and have an outside tube diameter of at least 14 inches. This requirement does not apply to inflatable canoes and inflatable kayaks.

(B) At river levels 3 feet and above but less than 4 feet, inflatable watercraft shall be at least 12 feet long and have an outside tube diameter of at least 16 inches. INFLATABLE CANOES AND INFLATABLE KAYAKS ARE NOT PERMITTED.

(C) At river levels 4 feet and above,

(I) ~~INFLATABLE watercraft shall be other than commercially rented watercraft, and inflatable~~ watercraft shall be at least 15 feet long and have an outside tube diameter of at least 18 inches. INFLATABLE CANOES AND INFLATABLE KAYAKS ARE NOT PERMITTED.

(II) WATERCRAFT RENTED FROM A BOAT RENTAL BUSINESS ARE NOT PERMITTED.

(iv) *Exceptions to watercraft requirements.*

(A) State park-licensed concession watercraft is ARE not subject to THE WATERCRAFT REQUIREMENTS IN subparagraph (iii), but is ARE subject to the terms of the license agreement.

~~(B) Watercraft, other than commercially rented watercraft, that is approved by the Department as being high performance watercraft is not subject to subparagraph (iii) unless posting states otherwise.~~ WITH PERMISSION OF THE DEPARTMENT, A PERSON MAY USE WATERCRAFT THAT DOES NOT MEET THE REQUIREMENTS IN SUBPARAGRAPH (III) IF THE DEPARTMENT DEEMS IT SAFE FOR USE, TAKING INTO ACCOUNT DURABILITY, BUOYANCY, AND MANEUVERABILITY. THIS PERMISSION WILL NOT BE GIVEN FOR WATERCRAFT RENTED FROM A BOAT RENTAL BUSINESS.

(2) *Middle Youghiogeny River.* The Middle Youghiogeny River is the section of the Youghiogeny River between the Ramcat launch area and the Middle Youghiogeny take-out area upstream of ~~the bike trail bridge~~ BIKE TRAIL BRIDGE in Ohiopyle Borough. ~~Persons engaging in whitewater boating~~ THE

FOLLOWING RULES APPLY TO PERSONS USING WATERCRAFT on the Middle Youghiogeny River ~~shall comply with the following requirements:~~ :

(i) *Launch and take-out.* Launch of watercraft shall occur only at THE RAMCAT launch areas AREA ~~designated by the Department~~, and take-out shall occur only at THE MIDDLE YOUGHIOGHENY TAKE-OUT AREA UPSTREAM OF BIKE TRAIL BRIDGE IN OHIOPYLE BOROUGH ~~take-out areas designated by the Department.~~

(ii) *Watercraft requirements.* Except as provided in subparagraph (iii), the following requirements apply to watercraft used on the Middle Youghiogeny River:

(A) At river levels below 3 feet, inflatable watercraft shall be at least 8 feet long and have an outside tube diameter of at least 14 inches. THIS REQUIREMENT DOES NOT APPLY TO INFLATABLE CANOES AND INFLATABLE KAYAKS.

(B) At river levels 3 feet and above, inflatable watercraft shall be at least 12 feet long and have an outside tube diameter of at least 16 inches. INFLATABLE CANOES AND INFLATABLE KAYAKS ARE NOT PERMITTED.

(iii) *Exceptions to watercraft requirements.*

(A) ~~Inflatable canoes and inflatable kayaks are not subject to subparagraph (ii).~~

~~(B)~~ GUIDED AND UNGUIDED State park-licensed concession watercraft is ARE not subject to subparagraph (ii), but is ARE subject to the terms of the license agreement.

~~(C)~~ (B) ~~Watercraft, other than commercially rented watercraft, that is approved by the Department as being high performance watercraft is not subject to subparagraph (ii) unless posting states otherwise.~~ WITH PERMISSION OF THE DEPARTMENT, A PERSON MAY USE WATERCRAFT THAT DOES NOT MEET THE REQUIREMENTS IN SUBPARAGRAPH (II) IF THE DEPARTMENT DEEMS IT SAFE FOR USE, TAKING INTO ACCOUNT DURABILITY, BUOYANCY, AND MANEUVERABILITY. THIS PERMISSION WILL NOT BE GIVEN FOR WATERCRAFT RENTED FROM A BOAT RENTAL BUSINESS, INCLUDING A STATE PARK-LICENSED CONCESSION BUSINESS..

(3) *Waterfall running.* ~~Waterfall running~~ BOATING FROM BIKE TRAIL BRIDGE TO AND INCLUDING OHIOPYLE FALLS is ~~prohibited without written permission of the Department~~ PERMITTED UNLESS POSTED OTHERWISE.

(d) *Lehigh Gorge State Park.* The following rules apply on the Lehigh River at Lehigh Gorge State Park. Flow rates are measured at the State park river gauges at the launch area designated by the Department at White Haven and the launch and take-out areas designated by the Department at Rockport and Glen Onoko.

~~(1) At flow rates less than 250 cubic feet per second, inflatable watercraft shall be at least 7 feet long and have at least two separate air chambers.~~

~~(2) At flow rates from 250 cubic feet per second through 1,000 cubic feet per second, inflatable watercraft shall be at least 8 feet long, contain at least three separate air chambers, and have an outside tube diameter of at least 13 inches. This requirement does not apply to inflatable canoes and inflatable kayaks.~~

~~(3) (2) At flow rates above 1,000 cubic feet per second through 5,000 cubic feet per second, inflatable watercraft shall be at least 11 feet long, contain at least 3 separate air chambers, and have an outside tube diameter of at least 15 inches. This requirement does not apply to inflatable canoes and inflatable kayaks.~~

~~(4) (3) At flow rates above 5,000 cubic feet per second, inflatable watercraft shall be at least 12-1/2 feet long, contain at least 3 separate air chambers and have an outside tube diameter of at least 17 inches. This requirement does not apply to inflatable canoes and inflatable kayaks.~~

~~(5) (4) Launch of watercraft shall occur only at launch areas designated by the Department and take-out shall occur only at take-out areas designated by the Department, except with written permission of the Department.~~

~~(6) (5) Operation of commercial watercraft is prohibited on the Lehigh River GUIDED AND UNGUIDED WATERCRAFT TRIPS PROVIDED BY COMMERCIAL OUTFITTERS ARE NOT PERMITTED between the Francis E. Walter Dam and the White Haven launch area.~~

~~(7) (6) Operation of commercial watercraft is prohibited on the Lehigh River GUIDED AND UNGUIDED WATERCRAFT TRIPS PROVIDED BY COMMERCIAL OUTFITTERS ARE NOT PERMITTED between the White Haven launch area and the Rockport launch and take-out area during the opening weekend of annual trout season, as established by the Fish and Boat Commission, and the following weekend.~~

(e) *McConnells Mill State Park.* Inflatable watercraft used on Slippery Rock Creek at McConnells Mill State Park shall be at least 8 feet long and have an outside tube diameter of at least 14 inches. This requirement does not apply to inflatable canoes and inflatable kayaks.

§ 11.221. Special provisions for Point State Park.

The following provisions apply to Point State Park:

- (1) *Memorials*. Memorials may be erected with written permission of the Department to honor those persons and events which symbolize the spirit of the American pioneer and the significance of frontier forts prior to the year 1800.
- (2) *Portal Arch Bridge*. Congregating or loitering on the Portal Arch Bridge is prohibited.
- (3) *Decorative pools*. Swimming, wading or fishing in the reflecting pool or the fountain pool is prohibited.
- (4) *Recreational equipment*. Use of roller skates, skateboards, scooters, bicycles or other wheeled recreational equipment is prohibited, except where posted as being permitted or except with written permission of the Department.

§ 11.222. Special provisions for Presque Isle State Park.

The following provisions apply to Presque Isle State Park:

- (1) *Visiting after closing*. A person who desires to enter the park during a period when the park is closed shall stop at the park ranger office and state his name, address, destination, reason for entering and planned time of departure. Permission to enter the park may be granted if the Department determines that good cause exists for entering the park. This provision does not apply to a park resident or tenant.
- (2) *Transfer of night parking permit*. Lending or transferring a night parking permit is prohibited and will result in cancellation of the permit.
- (3) *Seining for bait*. Seining for bait in designated swimming areas is prohibited.

§ 11.223. Violation of rules regarding conduct in State parks.

Engaging in activity prohibited under the following sections constitutes a summary offense under section 7506 of the Crimes Code (relating to violation of rules regarding conduct on Commonwealth property):

- (1) Section 11.208 (relating to schedule; closure).
- (2) Section 11.209 (relating to miscellaneous activities).
- (3) Section 11.210 (relating to fires).
- (4) Section 11.211 (relating to natural resources).

- (5) Section 11.212 (relating to pets).
- (6) Section 11.213 (relating to organized events; public assemblies; distribution of printed matter).
- (7) Section 11.214 (relating to waste).
- (8) Section 11.215 (relating to weapons and hunting).
- (9) Section 11.216 (relating to general recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes).
- (10) Section 11.217 (relating to swimming).
- (11) Section 11.218 (relating to camping; overnight facilities).
- (12) Section 11.219 (relating to boating).
- (13) Section 11.220 (relating to whitewater boating).
- (14) Section 11.221 (relating to special provisions for Point State Park).
- (15) Section 11.222 (relating to special provisions for Presque Isle State Park).

§ 11.224. Prices.

(a) *Schedule of prices.* ~~The~~ UNDER ITS AUTHORITY IN THE ACT, 71 P.S. § 1340.314 (RELATING TO FEES AND CHARGES), THE Department will establish, by publication in the *Pennsylvania Bulletin*, a schedule of prices for activities, uses and privileges. THIS SCHEDULE WILL BE POSTED ON THE DEPARTMENT'S WEBSITE, WWW.DCNR.STATE.PA.US.

(b) *Reduction or waiver of prices.* ~~The~~ UPON REQUEST MADE TO A PARK MANAGER, THE Department may reduce or waive prices established under subsection (a) as follows:

(1) For persons who provide a service deemed by the Department to be valuable to the public, the Department or the Commonwealth.

(2) In specific situations in which the Department determines that good customer service or a marketing or promotional benefit to the Department warrants a reduction or waiver.

(c) *Prices for goods and services.* The Department will set reasonable prices for the sale of goods and services to the public.

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

[17 PA. CODE CH. 11]

State Parks; General Provisions

The Department of Conservation and Natural Resources (Department), Bureau of State Parks (Bureau), adopts amendments to Chapter 11 (relating to general provisions). The amendments update the chapter to improve the protection of State park resources, safety of visitors and recreational opportunities of park visitors.

The amendments also reorganize Chapter 11 and eliminate unnecessary provisions. The previous sections of Chapter 11 are deleted and replaced with §§ 11.201—11.224.

A. *Effective date*

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

B. *Contact person*

For further information, contact Gary Smith, Chief, Park Operations and Maintenance Division, Bureau of State Parks, P. O. Box 8551, Harrisburg, PA 17105-8551; fax (717) 783-5017; or e-mail at garysmith@state.pa.us. Persons with a disability may use the AT & T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This rulemaking is available electronically through the Department's website (www.dcnr.state.pa.us).

C. *Statutory Authority*

This rulemaking is being made under the authority in sections 303, 313 and 314 of the Conservation and Natural Resources Act (act) (71 P. S. §§ 1340.303, 1340.313 and 1340.314); and 18 Pa.C.S. §§ 7505 and 7506 (relating to violation of governmental rules regarding traffic; and violation of rules regarding conduct on Commonwealth property).

D. *Background and Purpose*

Under Executive Order 1996-1, the Department reviewed Chapter 11 and determined that it needed to be updated, reorganized and streamlined. This rulemaking is intended to accomplish these objectives, as well as to incorporate the flexibility to expand recreational opportunities of the public in State parks. All provisions that formerly comprised Chapter 11 have been eliminated and replaced by new provisions to which new section numbers have been assigned.

The substance of most former provisions of Chapter 11 is retained in the amended chapter, but many of these provisions appear in a different arrangement. In addition, unnecessary provisions have been eliminated. These include provisions that would more appropriately be in the form of permit conditions rather than regulations; provisions that are matters of internal Department policy rather than rules governing conduct of the public in State parks; and provisions that merely restate Fish and Boat Commission regulations.

In the previous provisions of Chapter 11, many rules of conduct carried criminal penalties--the offender could be cited with a summary offense--while others did not. The only means of enforcing the latter was to order the offender to leave a State park. An offender who refused to leave could be charged with criminal trespass, a misdemeanor. In the amended Chapter 11, all rules of conduct carry a criminal penalty. Therefore, the amended chapter gives officers more flexibility in enforcing the regulations--if a regulation needs to be enforced against a park visitor, the officer may either cite the offender for violating the regulation or order the offender to leave the park.

Finally, as a result of several successful pilot programs, the amended chapter liberalizes some provisions to expand recreational opportunities in State parks.

E. *Summary of Comments and Responses and Changes Made in the Final-Form Rulemaking*

This rulemaking was published as proposed on March 23, 2002 (32 Pa.B. 1611), with a 60-day public comment period. As a result of the comments received from the public and from the Independent Regulatory Review Commission (IRRC), the Department made a number of changes to the proposed regulation. The comments and changes are discussed below.

Comment

Section 11.203 (relating to State park waters) identifies areas of water that are under the jurisdiction of the Department. If this jurisdiction is established via statute, this section may be unnecessary. What new rules or procedures does this section establish that apply to members of the public? The Department should cite the specific statutory citations that provide for the jurisdiction described in Subsection (1) and for the specific bodies of water in Subsections (2) and (3).

Response

The purpose of this section is to inform the public what bodies of water the Department has jurisdiction over, and therefore, what bodies of water are covered by this chapter. The information, some of which is derived from statutes and some from deeds, is not readily available anywhere else. In the final rulemaking, statutory cites have been added to paragraphs (2) (Presque Isle State Park) and (3) (Pymatuning State Park).

Comment

State parks should not be open for hunting and trapping 24 hours a day because of excessive disturbance to animals and non-hunting visitors to the parks. The Department should explain why these activities should be allowed 24 hours per day.

Response

The Department recognizes that the proposed regulation could be misleading. It appears to allow all hunting and trapping 24 hours a day. Hunting and trapping are regulated by the Game Commission, not the Department, and therefore, the Department does not have the authority to expand hours for these activities beyond the hours permitted by the Game Commission. The final regulation clarifies that hunting and trapping are permitted during hours permitted for these activities under Game Commission regulations.

Comment

State parks should not be open for fishing 24 hours a day. It would be difficult to enforce this provision against persons who might use the park during the night for purposes other than fishing.

Response

The provision allowing fishing and boating 24 hours a day is not a change from the previous regulation, which was successfully implemented and enforced for many years.

Comment

Allowing snowmobiling 24 hours a day will result in excessive noise, which could adversely impact wildlife and overnight park visitors. Are snowmobiles limited to certain areas or designated trails? The Department should explain why this activity should be allowed 24 hours per day.

Response

Snowmobiling has been permitted 24 hours a day in State parks for many years. This policy has been implemented successfully and is now being incorporated in the Department's regulations. Snowmobiling, which is subject to noise level requirements under 17 Pa. Code § 51.91 (relating to snowmobile noise level requirements), is restricted to specifically designated snowmobile trails. The number of persons who engage in snowmobiling during overnight hours and the number of persons who engage in overnight camping in the winter are relatively low and therefore the opportunity for any conflict is minimal.

Comment

Should Section 11.208 (relating to schedule; closure) include camping or use of overnight facilities as a 24-hour activity and reference Section 11.218 (relating to camping; overnight facilities)?

Response

The final regulation has a provision referencing camping and overnight facilities in Section 11.218.

Comment

Motor vehicles and motorboats should not be allowed in State parks because of the noise, disturbance, and environmental damage they cause.

Response

Motor vehicles were permitted in all State parks and motorboats were permitted in selected State parks under previous regulations. This permission is continued under the new regulation. Pleasure driving is one of the most popular activities in State parks. Motorboating is also a popular form of recreation for which the Department wishes to continue to provide opportunities. Depending on the size and characteristics of the particular body of water, the

Department restricts the type and size of boat motors. The Department does not permit motorboating on some lakes.

Comment

The format of certain sections of the proposed regulations is confusing because the sections are written in the negative as lists of prohibitions. This negative format becomes even more complicated when an allowed activity is stipulated as an exception to the prohibition. Chapter 8 of the *Pennsylvania Code & Bulletin Style Manual* recommends “directness” and the use of “positive ideas” rather than “exceptions” in drafting regulations.

Response

The Department reviewed the proposed regulations and made changes in several sections to improve clarity. These sections are noted elsewhere in the Preamble. Although some of the regulations could be stated as “positive ideas” many cannot be phrased this way without sounding awkward and confusing. Since engaging in an activity that is prohibited in these regulations is a summary offense, the Department chose to maintain a generally consistent format of listing prohibitions.

Comment

In the section on traffic and parking (§ 11.207), Subsection (b)(3) states, “The following activities are prohibited: . . . Parking a bus in an area that is posted as being closed for buses.” This could mean that every area in the park not intended for bus parking would need to be posted.

Response

The Department changed this provision in the final regulation. The final regulation states that parking a bus in an area that is not designated for buses is prohibited.

Comment

The section on traffic and parking (§ 11.207) should include a specific reference to the Vehicle Code definition of “motor vehicle.”

Response

This change has been made in the final regulation by defining “motor vehicle” in the definition section (§ 11.201). The definition includes references to specific sections of the Vehicle Code.

Comment

The section on natural resources (§ 11.211) is confusing because paragraph (1) is a prohibition that contains exceptions to the prohibition. The exceptions in paragraph (1) (i) and (ii) could stand alone as positive statements.

Response

The Department changed this section in the final regulation to improve clarity. As suggested in the comment, the exceptions which in the proposed regulation appeared under paragraph (1) now stand alone as permitted activities in a new Subsection (b).

Comment

A number of provisions in this regulation include phrases such as “permission of the Department” or “approved by the Department.” Also, references are made to permits. The regulations should inform the reader how to apply for approval or a permit.

Response

Persons who wish to engage in an activity which requires Department permission under this chapter may request permission from the park manager. Definitions of “permission of the Department” and “permit” have been added to the definition section (§ 11.201) in the final regulation. “Permission of the Department” is defined to mean approval obtained from a park manager. “Permit” is defined to mean written approval obtained from a park manager on a form prescribed by the Department.

Comment

The section on traffic and parking (§ 11.207), which refers to “traffic-control devices,” should include a specific reference to the Vehicle Code definition of “official traffic-control devices.”

Response

This change has been made in the final regulation by defining “official traffic-control devices” in the definition section (§ 11.201). The definition includes a specific reference to Section 102 of the Vehicle Code.

Comment

In proposed Section 11.207 (relating to traffic and parking), paragraph (1) of Subsection (b) (parking) uses the terms “a person with a disability” or “severely disabled veteran.” Paragraphs (1)(i) and (ii) should be combined into one paragraph or subsection. The new subsection need only refer to a valid plate or placard issued in accordance with Sections 1338 and 1342(a) and (b) of the Vehicle Code.

Response

This change has been made in the final regulation. See Section 11.207(b)(1)(ii).

Comment

In Subsection (b) (parking) of proposed Section 11.207, paragraphs (1)(i) and (ii) contain the phrase “or a substantially equivalent issuance from another state.” We have two concerns with this phrase. First, how would a person with an out-of-state plate know whether it is “substantially equivalent” to a Pennsylvania plate? Since other jurisdictions issue plates and placards, any valid plate or placard from another jurisdiction should be allowed. Our second concern is that the regulation should be expanded beyond “another state” to include jurisdictions such as Canadian provinces and the District of Columbia.

Response

The final regulation addresses these concerns. See Section 11.207(b)(1)(ii). It states that a valid plate or valid placard issued by another state, the District of Columbia, or a Canadian province for a person with a disability is deemed to be in compliance with the plate and placard requirements.

Comment

In Subsection (b) (parking) of proposed Section 11.207, paragraph (1)(iii) is confusing because it refers to a “placard . . . indicating issuance of authorization to operate the vehicle on

State park land” with no reference to parking or people with disabilities. The paragraph does not include the word “disability.” It is our understanding that it is referring to a placard that is part of the Department's policy for fostering greater access to State parks for persons with disabilities. People with disabilities who use a motor vehicle for personal mobility may obtain a placard from the Department to use their vehicle on pathways where other motor vehicles are prohibited. There are two concerns.

First, the Department should consider formalizing this policy by adding a new subsection to Section 11.207 (relating to traffic and parking) indicating that persons with disabilities who use this type of personal vehicle may apply to the Bureau of State Parks for this placard.

Second, Subsection (b)(1)(iii) should be amended to explain that paragraph (1)(iii) is limited to people with disabilities who use a motor vehicle for personal mobility.

Response

The final regulation addresses these concerns. Subsection (c) states the process for persons with disabilities to request permission to use a motorized vehicle on State park land. Subsection (b) states that a person who has received this permission may park in an area designated for persons with disabilities. In addition, Section 11.216(c) and (d) (relating to general recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes) has been modified to specify that permission for persons with disabilities to use a snowmobile or ATV in areas not otherwise open for this use may be given in accordance with Section 11.207(c).

Comment

In Subsection (e) (parking tickets) of proposed Section 11.207, paragraphs (2) and (3) include citations to 234 Pa. Code. These should cite the specific rule(s) in 234 Pa. Code that apply.

Response

The final regulation addresses this concern. The provisions that were in Subsection (e) of the proposed Section 11.207 are in Subsection (d)(2)(ii) and (iii) of the final Section 11.207. The citations to 234 Pa. Code include the citation to the applicable rule (Rule 401).

Comment

Subsection (f) (violations of parking provisions of the Vehicle Code) of proposed Section 11.207 specifies that the fine for a parking ticket is \$15 and references Sections 3351-3354 of the Vehicle Code. However, the minimum fine for parking in spaces reserved for a person with a disability is \$50 and fines may be greater pursuant to Sections 3354 of the Vehicle Code (75 Pa.C.S.A. §§ 3354(f) and (g)). The regulation should directly specify or reference the fines for violations of parking provisions of the Vehicle Code.

Response

The final regulation addresses this concern in Subsection (d)(2)(i). For violations of Section 3351 (relating to stopping, standing and parking outside business and residence districts), 3353 (relating to prohibitions in specified places), and 3354(a), (b), or (d)(1) (relating to additional parking regulations) of the Vehicle Code, the amount charged by a parking ticket will be in the amount of the maximum fine as provided in the Vehicle Code. The Vehicle Code currently establishes a fine of \$25 for violation of Section 3351 and \$15 for violation of Section 3353 or 3354(a), (b), or (d)(1).

Parking tickets will not be issued for violations of Section 3354(d)(2), (3), or (e) of the Vehicle Code. These violations will be handled solely by issuance of summary citations. The

reason tickets will not be issued for these violations is that under Subsection (f) of Section 3354, fines for these violations can range from \$50 to \$200, and Subsection (g) imposes an additional fine of \$50 for violations of Section 3354(d)(2) or (3). Rather than establishing a parking ticket charge for these violations, the Department will defer to the courts' authority to set the fine.

Comment

In proposed Section 11.207 (relating to traffic and parking), violations provisions are located separately in Subsections (d) and (f). These violations provisions should be combined into one subsection that lists all violations provisions.

Response

The final regulation addresses this concern. Section 11.207 (d) (violations) contains all violations provisions.

Comment

Mountain biking should not be permitted in State parks because of the environmental impact.

Response

Mountain biking is permitted on 18 designated trails in the State parks system. The new regulation does not expand opportunities for mountain biking; in fact it specifically restricts trail riding to trails posted for mountain biking. In considering whether to designate a trail for mountain biking, the Department applies certain guidelines. The possibility and impact of erosion and other environmental degradation are factors that the Department considers. Many parks do not have designated mountain biking trails because the Department has determined that these parks exhibit sensitive environmental conditions and are therefore not suitable for mountain biking. For the parks that do have designated trails, mountain biking clubs have been active in maintaining the trails.

Comment

With regard to the two provisions prohibiting causing noise that "would likely annoy or disturb a reasonable person of normal sensitivities," how will the Department interpret the phrase a "reasonable person of normal sensitivities"?

Response

In the proposed regulations, these provisions appeared in both the section on traffic and parking (§ 11.207) and the section on miscellaneous activities (§ 11.209). In the final regulation, the provision in the traffic and parking section is deleted because it is redundant with the same provision appearing in the miscellaneous activities section.

The noise provision incorporates the objective "reasonable person" standard, which the Commonwealth Court of Pennsylvania recently upheld in a constitutional challenge. In the case of *Commonwealth v. Ebaugh*, 783 A.2d 846 (2001), the court stated that the phrase "annoy or disturb a reasonable person of normal sensitivities" is an objective standard that looks to the impact of noise upon a reasonable person under the particular circumstances of the incident, and that a person of ordinary intelligence would understand what conduct violates this standard.

Comment

What is the intent of Subsection (h) of Section 11.208 (relating to schedule; closure), which states that the Department may prohibit certain uses or activities in a State park, portion of

a State park, or State park facility? What types of activities may be prohibited? What notice will be provided to the public?

Response

The intent of Subsection (h) is to put the public on notice that the Department may exercise its authority to prohibit certain activities in certain locations under certain circumstances. For example, a swimming area might be closed temporarily if testing reveals that the water is unsafe. Lake Erie at Presque Isle State Park might be closed temporarily for swimming during periods of high waves or strong undertow. Day use areas that have been flooded might be closed. A pavilion that has been struck by a falling tree might be determined to be unsafe and closed temporarily. A water main break might necessitate the closing of a restroom. The Department advises the public of these closures and restrictions by posting. Depending on the circumstances, the Department may also issue a press release.

Comment

In the section on fires (§ 11.210) the phrase “without written permission of the Department” is duplicative of the Department's discretion stated in Subsections (1) and (3). The phrase is also misleading because it implies the possibility the Department would grant written permission to leave a fire unattended.

Response

It should initially be noted that in the proposed regulation three fire-related activities were listed as being prohibited without written permission of the Department. In the final regulation, one of these activities (disposing hot charcoal except in designated facility) is prohibited absolutely (i.e., it is not conditioned on receiving written permission).

Other than that modification, the Department has retained the language of the proposed regulation. It disagrees with the comment that the regulation contains duplications and is misleading. Section 11.210 lists two activities that are prohibited without written permission of the Department. One of these activities is starting or maintaining a fire except in a facility designated for fires. An example of a situation in which the Department has given written permission to have a fire in other than a designated facility is at Presque Isle State Park where the Department has permitted bonfires on the beaches during Discover Presque Isle Days. The other activity that is prohibited without written permission of the Department is leaving a fire unattended. An example of a situation in which the Department has given written permission to leave a fire unattended is when a charcoal-making demonstration is being conducted. Because this process takes several days to complete, there are periods when the fire will be unattended.

Comment

A State park may need to restrict fires in dry periods or drought to prevent forest fires. Although there is a general provision in Section 11.208 (relating to schedule; closure) prohibiting activities, the section on fires (§ 11.210) should include notice that fires may be further restricted by a State park due to drought or dry forest conditions.

Response

As pointed out in the comment, in Section 11.208 the Department advises the public of its authority to restrict activities in particular areas when circumstances dictate. The Department acknowledges that there are times when it bans fires in particular parks due to the level of forest fire danger. During these times, signs are posted at the location informing the public of the fire ban. The Department prefers to rely on Section 11.208 and this posting rather than stating in

Section 11.210 that it may post restrictions during times of forest fire danger. It prefers not to single out the fires section of the regulations in which to advise of the possibility of further restrictions by posting, because this possibility applies to all activities in State parks.

Comment

A pet is defined in the proposed regulation as "A dog, cat or other domestic animal." It is unclear what other types of animals would qualify as domestic animals.

Response

To clarify the meaning of "pet" the final regulation (§ 11.201) defines "pet" as "A dog, cat or other animal that has been domesticated. This term does not include bovine or equine animals or poultry."

Comment

It is not reasonable to allow pets in recreation areas but not in camping areas. Having pets in camping areas is safer and more sanitary than in recreation areas because owners keep their pets inside their trailers, RVs, or tents and almost all are trained to relieve themselves only where their owners permit, and most owners pick up after them. A two-pet limit and \$1 per night charge per pet in overnight areas is suggested. Cats should be permitted in camping areas.

Response

Under both the previous regulation and the new regulation, pets are allowed in State parks, but they are not allowed in swimming areas, and they are not allowed in overnight areas unless the overnight area has been designated for pets.

The Department has tried to be responsive to both those who desire the opportunity to have their pets with them in overnight areas, and those who object to allowing pets in overnight areas. It has tried to balance these concerns by instituting a pilot program in 2001. Under the pilot program, pets are permitted in campgrounds in ten State parks. There is a two-pet limit for non-caged pets and a \$2 per night charge for each pet. The pilot program has been generally well-received by the public. The new regulations do not affect this pilot program. The Department has announced an expansion of the pilot program to additional parks in 2003.

Comment

Pets should not be allowed in overnight areas because of the smell of dog urine and the failure of owners to dispose of droppings.

Response

The Department has tried to be responsive to both those who desire the opportunity to have their pets with them in overnight areas, and those who object to allowing pets in overnight areas. It has tried to balance these concerns by instituting a pilot program in which it has permitted pets in some but not all overnight areas. The new regulation adds a requirement that pet droppings be disposed of properly.

Comment

With regard to the regulation concerning pets in overnight areas (§ 11.212) the Department should explain whether the new regulation is a change in policy and what restrictions apply to pets in overnight areas. If there is no change in policy, the Department should consider amending the language in the regulation to state that pets are permitted in overnight areas subject to restrictions.

Response

Under both the previous regulation and the new regulation, pets are allowed in State parks, but they are not allowed in swimming areas, and they are not allowed in overnight areas unless the overnight area has been designated for pets. Both the previous regulation and the new regulation require that pets be attended and under control at all times.

The new regulation adds other restrictions that were not included in the previous regulation. It requires that pets do not behave in a manner that may reasonably be expected to disturb or intimidate another person or that may cause damage to property. Pet droppings must be disposed of in trash receptacles or outside the park. Pets must be licensed and vaccinated.

Additional restrictions are posted at overnight areas designated for pets: pets may be walked only in the woods behind the campsite or in a designated pet walking area; they may not be walked through the campground or through any site other than the owner's site; they are allowed off their campsite only when on the way to or from a pet walking area or to a day use area. Pet food may not be left outside a camping unit or vehicle.

Concerning the suggestion that the Department consider amending the language in the regulation to permit pets in overnight areas subject to restrictions, the Department has tried to be responsive to both those who wish to have their pets with them in overnight areas, and those who object—for reasons such as allergies, noise, or other types of disturbances or annoyances—to allowing pets in overnight areas. It has tried to balance these concerns by instituting a pilot program in which it has permitted pets in some but not all overnight areas.

Comment

The leash requirement should not be relaxed because of the possibility of dog attacks.

Response

Under the previous regulation, the maximum leash length was six feet. The new regulation does not specify a leash length, but allows for establishment of leash length by posting. Removing the leash length requirement from the regulations allows the Department to tailor leash length requirements to specific areas in each park. The Department anticipates that the six-foot maximum leash length will continue to be the rule on certain trails.

Comment

Why are hunting dogs exempt from two of the requirements that apply to other pets, namely the requirement that they not behave in a manner that 1) may reasonably be expected to disturb or intimidate another person or 2) may cause damage to property?

Response

By their very nature, hunting dogs engaged in hunting could violate these requirements that apply to pets. For example, hunting dogs could offend persons who object to hunting, engage in behavior such as barking that could disturb other persons, or cause damage to flora and fauna. Therefore, unless they are exempted from the requirements that apply to pets, hunting dogs would effectively be prohibited in State parks.

Comment

The section on organized events (§ 11.213) requires that an application for permission to engage in an organized event be submitted on a form prescribed by the Department. The regulation should include information on how to obtain the form.

Response

The final regulation states that the form may be obtained from a park manager.

Comment

The section on organized events (§ 11.213) does not specify the minimum size of an event or group to which the restrictions apply. It should specify the minimum number of people that constitutes a group or event covered by this section. It should clearly state what specific activities require a permit. In Subsection (c), which states that the Department will grant or deny a permit without “unreasonable delay,” what is “unreasonable delay”?

Response

Many factors—such as the size of the park, size of the event, facilities available, number of visitors, whether other events and activities are being held and if so the location, number of participants, and facilities used—affect the impact of a particular group or event in a particular State park at a particular time. Examples of organized activities at State parks are Easter egg hunts, environmental fairs, fireworks displays, class field trips, graduation parties, kayak races, hot air ballooning, bicycle club activities, hang gliding, model airplane demonstrations, marathons, roller blade races, search and rescue training, volksmarches, and wedding ceremonies. State parks regulations have always included an organized activity provision similar to this regulation. It has been workable, the public has generally understood it and the parks have been able to work with the public in accommodating many kinds of activities. For these reasons, the Department has not added the specificity suggested by the comment.

Similarly, concerning the issue of “unreasonable delay,” it would be impossible to state in this regulation the precise number of days it would take the Department to deny or grant permission to engage in an organized event. Depending on staff availability and the nature of the activity, some permissions can be granted when a visitor makes the request at a park office. Others, such as those requiring special activities agreements (which may require substantial study and evaluation and various levels of approval within the Department), might take from six to eight weeks.

Comment

The section on weapons and hunting (§ 11.215) refers generally to the Game and Wildlife Code. The regulations should specifically reference the pertinent sections of the Game and Wildlife Code that apply.

Response

The Game and Wildlife Code and the Game Commission regulate the activity of hunting. The purpose of Section 11.215 (2) is to restrict hunting to areas of State parks designated for hunting and to generally advise the public that while engaged in hunting, they are subject to the Game and Wildlife Code. The Code would apply to the activity of hunting regardless of whether the Department's regulation states that it does. The Department prefers not to attempt to single out specific provisions of the Code that might be applicable in particular situations. However, in paragraph (2)(iv), which states that the device used for hunting must be lawful for hunting under the Game and Wildlife Code, the final regulation cites the applicable section of the Code.

Comment

The Department should consider allowing persons who have been issued a license under the Pennsylvania Uniform Firearms Act of 1995 (18 Pa.C.S. § 6109) to carry a firearm in State parks for purposes besides hunting or target-shooting.

Response

For reasons of public safety, the Department does not permit the carrying of firearms in State parks for purposes other than hunting and target-shooting. The high attendance rates at many State parks in the summer season can lead to confrontations between park visitors. A substantially increased level of vigilance and enforcement preparedness by park personnel would be needed if concealed weapons were permitted.

Comment

In Section 11.216 (relating to general recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes), greater clarity would be achieved by combining Subsections (b)(1) and (4) rather than using the reference to paragraph (4) in paragraph (1).

Response

This change has been made in the final regulation.

Comment

In Section 11.216 (relating to general recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes), Subsection (c) should specifically reference the pertinent section(s) of the Motor Vehicle Code.

Response

Subsections (c) and (d) of Section 11.216 apply to the use of snowmobiles and all-terrain vehicles. They state that use of snowmobiles and all-terrain vehicles shall be in accordance with Chapter 77 of the Vehicle Code. Since the entire Chapter 77 regulates the use of snowmobiles and all-terrain vehicles, Section 11.216 of the Department's regulations does not cite specific sections within Chapter 77. However, in the final regulation, definitions of the terms "snowmobile" and "all-terrain vehicle" have been added to the definitions section (§ 11.201), and specific sections of the Vehicle Code are cited in these definitions.

Comment

Swimming should not be prohibited outside designated areas. Swimming should be permitted except where dangerous conditions exist that are not obvious.

Response

This prohibition was in the previous regulation and is simply being continued in the new regulation. Hazardous conditions could develop in any body of water at any time. It would be impossible for the Department to monitor all portions of all bodies of water in State parks for potential hazards.

Comment

In the section on swimming (§ 11.217) in which the Department may permit use of underwater breathing apparatus or snorkel by a diver who has been certified by an organization approved by the Department, does the Department maintain a list of approved organizations that certify divers? If so, how can one obtain a copy?

Response

The final regulation states that a list of approved organizations may be obtained from the park manager.

Comment

In the section on boating (§ 11.219), Subsections (b)(1) and (b)(3) should be combined.

Response

In the proposed regulation, Subsection (b)(1) prohibited operating watercraft on a body of water not posted as being open for boating; Subsection (b)(3) prohibited operating watercraft in an impoundment not designated for boating. In the final regulation, Subsection (b)(3) has been deleted because an impoundment is a type of body of water and is therefore covered in Subsection (b)(1).

Comment

In the section on boating (§ 11.219), in which specific types of watercraft are listed as prohibited, the term “novelty-type watercraft” is vague.

Response

In the final regulation, this term has been deleted, because of the difficulty of defining the term and because the prohibition against unseaworthy watercraft (§ 11.219 (e)(3)(v)) adequately covers watercraft that is not suitable for boating.

Comment

In the section on boating, in which the construction requirements for inflatable watercraft are specified, why are these requirements different from the requirements for inflatable watercraft in the section on whitewater boating?

Response

In the boating section (§ 11.219) of the final regulation, specifications for the material with which inflatable watercraft must be constructed have been deleted. This deletion removes the inconsistency raised by this comment. The requirements for inflatable watercraft in the final regulation are the same as under the previous regulation.

Comment

The horsepower limit should not be increased in some State parks. Boats with higher horsepower will create increased noise and increased wake which will disturb other users of the park, such as kayakers, canoeists, and nature watchers, as well as wildlife. The increased wake will adversely affect the shoreline.

Response

The new regulation (§ 11.219) affects the six State parks where the previous regulation established a 10 horsepower limit. The new regulation replaces the 10 horsepower limit with the requirement that motorboats in these lakes not exceed the horsepower limit as posted. Therefore, rather than specifying the horsepower limit, the new regulation allows for the limit to be established by posting. This change gives the Department the flexibility to adopt appropriate horsepower restrictions by means of posting to better fit limitations at individual lakes.

The Department is currently conducting a pilot program at lakes at the six State parks where previous regulations limited the horsepower to 10. Under the pilot program, posting at the lakes allows motorboats with a horsepower up to 18. Prior to the pilot program, it had been a common practice for boaters to attempt to circumvent the 10 hp limit at these lakes by modifying their motors from 9.9 to 15 hp or to display 10 hp covers on more powerful motors. Because a 15 hp motor is so similar in appearance—especially from a distance—to a 9.9 hp motor, the Department had difficulty enforcing the 10 hp limit at these lakes.

In general, motors that are above 18 hp are noticeably larger than those that are 18 hp or less and therefore are easy to spot by law enforcement officers. It is for this reason and because there is no discernible difference between 15 hp motorboats and 18 hp motorboats in the amount of noise and wake they produce, that the Department's pilot program permits motors up to 18 hp. During the pilot program, park managers are closely monitoring the lakes for signs of increased shoreline erosion or other adverse effects.

Comment

The new regulation permits use of personal watercraft on bodies of water where unlimited horsepower boats are permitted. Based on studies of collision rates, personal watercraft threaten the safety of other waterway users. The Department should review these studies.

Response

The Fish and Boat Commission routinely reviews boating accidents and has taken regulatory measures to improve the safety record and boating knowledge of personal watercraft operators. Fish and Boat Commission regulations (58 Pa. Code § 109.3) now require that personal watercraft operators must obtain a Boating Safety Education Certificate. Since this requirement became effective, in January 2000, the number of accidents involving personal watercraft has significantly decreased. The Department's Bureau of State Parks meets regularly with officials from the Fish and Boat Commission and will continue to keep apprised of boating accident statistics involving all boats, including personal watercraft.

Comment

Should a provision be added to the section on boating (§ 11.219) to prohibit annoying others by causing loud noises similar to the provision in the traffic and parking section (§ 11.207)?

Response

The noise provision that had been in the traffic and parking section in the proposed regulation has been deleted in the final regulation because it was redundant with the general noise provision in Section 11.209 (relating to miscellaneous activities). The noise provision in Section 11.209 is applicable to any activity in a State park. It should also be noted that motorboat noise is regulated by Fish and Boat Commission regulations (58 Pa. Code Chapter 119).

Comment

The language concerning personal watercraft in the section on boating (§ 11.219) is unclear. The regulation does not define or explain the phrase "personal watercraft, regardless of horsepower."

Response

To eliminate confusion, the phrase "regardless of horsepower" has been deleted from the reference to personal watercraft in the boating section of the final regulations. A definition of "personal watercraft" has been added to the definitions section (§ 11.201). This definition adopts the definition of the term in Fish and Boat Commission regulations (58 Pa. Code § 109.3 (relating to personal watercraft)).

Comment

The Fish and Boat Commission lists safety requirements for personal watercraft in 58 Pa. Code § 109.3, including a requirement for a Boating Safety Education Certificate. The Department's regulation should include or cross-reference the safety requirements at 58 Pa. Code § 109.3.

Response

As stated in Section 11.204 (relating to application of Fish and Boat Commission rules and Game Commission rules) Fish and Boat Commission regulations apply in State parks. The Department has chosen not to restate or cross-reference Fish and Boat Commission regulations in Chapter 11.

Comment

In the boating section (§ 11.219) where the proposed regulations stated in Subsection (e) that at Point State Park watercraft may be moored along the river wall "temporarily" during the day, the meaning of "temporarily" is vague. The Department should indicate the maximum time limit for mooring watercraft along the river wall during the day.

Response

The final regulation clarifies this provision by stating that watercraft may be moored along the river wall during the hours the park is open to the public.

Comment

The best way to promote clean protected areas is to prevent fishing. Debris and damage along streams results from fishing activities.

Response

The new regulation merely carries forward the provision in the previous regulation that allowed fishing in State parks. The Department acknowledges the validity of the concern about debris and will continue to enforce the prohibition against littering (§ 11.214 (relating to waste)). However, fishing is a legitimate and very popular form of recreation for which the Commonwealth issues licenses. The Department believes it should not deny the public enjoyment of the many excellent opportunities for fishing in State parks.

Comment

ATVs should continue to be restricted to designated areas and horseback riding should continue to be permitted on designated trails.

Response

The comment is supportive of the proposed regulation, which simply continues the provisions of the previous regulation concerning ATVs and horseback riding. The proposed regulation has been adopted in this final-form rulemaking.

Comment

An exception should be allowed to the prohibition (§ 11.209 (relating to miscellaneous activities)) against "removing or disturbing an historical or archeological artifact, relic or object." The exception would be for collecting artifacts, such as arrowheads, from the ground surface. The exception would be justified because the ground surface is not a dateable area and artifacts not picked up could be broken.

Response

Surface collection of artifacts such as arrowheads in State parks is an archeological field investigation on Commonwealth land and since under the Historic Preservation Act, 37 Pa.C.S. §§ 501-512, the Commonwealth has the exclusive right to engage in such an investigation, the public is not permitted to remove the artifacts.

Comment

Logging and drilling for oil and gas should not be permitted on State park land. A provision should be added to these regulations prohibiting these activities. Is the public given notice and an opportunity to comment before the Department allows removal of natural resources? What factors does the Department consider in deciding whether to grant permission?

Response

Section 11.211 (relating to natural resources) of the new regulation prohibits “damaging, defacing, cutting or removing rock, shale, sand, clay, soil or other mineral product, natural object or material” without written permission of the Department. The same section prohibits “cutting, picking, digging, damaging or removing, in whole or in part, a living or dead tree, shrub or plant” (with specific exceptions for gathering certain edible plants for one’s own consumption and dead and down wood for use within the park in a fireplace or grill). Therefore, the proposed regulations prohibit logging and gas and oil drilling without Department approval.

The Department has the power and duty under the Conservation and Natural Resources Act to enter into contracts or leases for oil or gas drilling when it determines that it would be in the best interests of the Commonwealth to do so. The Department does not own the oil or gas drilling rights in most State parks, and therefore has no control over the decision to drill. However, where drilling occurs in these parks, the Department does have influence over the surface use. In State parks where the Department does own mineral rights, it will grant non-developmental leases for the purpose of ensuring that it receives the value of oil or gas removed from park land by wells drilled on adjoining property. Very rarely, the Department has drilled where it owns oil and gas rights, usually for the purpose of preventing the loss of the value of its mineral rights by wells drilled on adjoining property.

The Department does not permit logging in State parks where the purpose of the logging is solely commercial. The logging must achieve a benefit for the park. For example, salvage cuts have been needed due to damage caused by windstorms or insects. In addition, logging is sometimes necessary for rights-of-way, roads, and park facility construction.

Comment

In the section on whitewater boating (§ 11.220), the general requirements for inflatable watercraft—“tough durable construction intended for whitewater use, consists of a tough laminated material and is of commercial grade”—is vague.

Response

The Department consulted with organizations of users, commercial outfitters, and industry in formulating this standard of material and construction for inflatable whitewater watercraft. On the basis of input from these groups, it believes that the standard is understandable to the regulated community and allows for necessary flexibility in application.

Comment

In the whitewater boating section (§ 11.220), Subsection (c)(1)(iii)(C) (Ohiopyle State Park), what is meant by “watercraft must be other than commercially rented watercraft”?

Response

This provision establishes requirements for watercraft used when river levels on the Lower Youghiogheny River are four feet and above. At these levels, the river is very rough and swift, and boating is dangerous for inexperienced boaters. The prohibition against commercially-rented watercraft is intended to screen out inexperienced boaters. In the experience of the Department, persons who rent watercraft tend to be less experienced than persons who use their own watercraft. In addition, boaters tend to be less likely to engage in higher risk whitewater boating if it is their own watercraft that is at risk rather than rented watercraft.

To clarify the meaning this provision, the final regulation states that watercraft rented from a boat rental business are not permitted at these river levels. Fish and Boat Commission regulations (58 Pa. Code § 117.3) require that boats rented out by a boat rental business be clearly marked with the name of the business.

Comment

In the whitewater boating section (§ 11.220), Subsections (c)(1)(iv)(A) and (c)(2)(iii)(B) (Ohiopyle State Park) waive watercraft requirements for “state park-licensed concession watercraft.” Assuming the watercraft requirements are for purposes of safety, why are “state park-licensed concession watercraft” exempt?

Response

State park-licensed concession watercraft are subject to the terms of the concession license agreement rather than the regulations in order to allow concessionaires the opportunity to use state-of-the-art watercraft as they are developed and become available. These new models might not match the specifications required in the regulations but could nonetheless meet necessary safety standards. Under the license agreement, the concessionaire is required to obtain Department approval before using any type of watercraft in its operations.

In the Lower Youghiogheny River, concessionaires provide guided trips but do not rent out unguided watercraft. In the Middle Youghiogheny River, concessionaires provide guided trips and also rent out unguided watercraft. The final regulation (Subsection (c)(2)(iii)(A)) clarifies that on the Middle Youghiogheny, both guided and unguided concession watercraft are subject to the terms of the license agreement rather than the regulations.

Comment

In the whitewater boating section (§ 11.220), there are three concerns with Subsection (c)(1)(iv)(B) (Ohiopyle State Park). First, the intent of “other than commercially-rented watercraft” is unclear. Second, the regulation should provide information on how watercraft operators or owners can obtain approval for high performance watercraft. Third, what are the size or performance standards that qualify as “high performance” and require Departmental approval?

Response

The purpose of this provision is to allow for waiver of the watercraft requirements in Subsection (c)(1)(iii) for experienced boaters with high-performance watercraft. Waiver will not be allowed for commercially-rented watercraft, because in the experience of the Department, persons who rent watercraft tend to be less experienced than persons who use their own watercraft. To avoid confusion over the meaning of “other than commercially-rented watercraft,” the final regulation refers to “watercraft rented from a boat rental business.” Fish

and Boat Commission regulations (58 Pa. Code § 117.3) require that boats rented out by a boat rental business be clearly marked with the name of the business.

In response to the comment concerning how a person may obtain approval of high performance watercraft, the final regulation states that a person may use watercraft that does not meet the requirements of the regulations with "permission of the Department." The phrase "permission of the Department" is defined in Section 11.201 as "approval obtained from a park manager or designee."

To address the question concerning the size or performance standards that qualify as "high-performance," the final regulation removes the term "high-performance" and allows for the Department to make a determination whether the particular watercraft will be safe for use, taking into account durability, buoyancy, and maneuverability.

Comment

In the provision prohibiting waterfall running at Ohiopyle State Park (§ 11.220(c)(3)), the river segment(s) to which it applies should be clearly identified.

Response

The final regulation identifies the section of the Youghiogeny River to which the waterfall provision applies. The section is identified as extending from Bike Trail Bridge to and including Ohiopyle Falls.

Comment

The provision prohibiting waterfall running at Ohiopyle State Park (§ 11.220(c)(3)) should be amended to identify the process and procedures for obtaining written permission to run Ohiopyle Falls. Can representatives of a group obtain approval or written permission for group members or must each individual apply separately?

Response

The final regulation allows waterfall running unless posting states otherwise. The posting which would inform the public that waterfall running is prohibited would also state that permission to run the falls may be granted under a special activities agreement obtainable through the park office. A person or organization who contacts the park office will be informed about the procedures for entering into a special activities agreement, including the fact that a group representative may sign the agreement on behalf of the group.

Comment

In the whitewater boating section (§ 11.220), Subsection (d) (Lehigh Gorge State Park), why are inflatable canoes and kayaks exempted from the requirements of Subsections (d)(2), (3), and (4)? What are the minimal standards for these types of watercraft?

Response

The subsections addressed in the comment have been renumbered in the final regulation as Subsections (d)(1), (2), and (3). These are requirements for inflatable watercraft at various flow rates ranging from 250 cubic feet per second to more than 5,000 cubic feet per second. The proposed regulation listed minimum requirements for three characteristics of inflatable watercraft. These characteristics were length, number of air chambers, and outside tube diameter. The requirements prescribing the minimum number of air chambers have been eliminated in the final regulation. Therefore, inflatable watercraft used at Lehigh Gorge State Park are subject to the general requirement in Subsection (a)(2)(ii) of "multiple" air chambers

applicable to all inflatable watercraft, including canoes and kayaks, used at flow rates at and above 250 cubic feet per second.

The reason a minimum length requirement does not apply to inflatable canoes and inflatable kayaks is that these watercraft require maneuverability for effective performance in whitewater, and maneuverability is not a function of length. The reason a minimum outside tube diameter does not apply to inflatable canoes and inflatable kayaks is that these watercraft are not constructed with tube diameters as wide as the diameters required for other whitewater watercraft (rafts). Canoes and kayaks are constructed to have enough buoyancy to carry one or two passengers without tube diameters of the width needed for rafts, which are built to carry heavier loads.

Inflatable canoes and inflatable kayaks are subject to the general requirements at Section 11.220 (a)(2)(ii) applicable at all the whitewater parks, including Lehigh Gorge. The general requirements are that they have multiple air chambers of a tough durable construction intended for whitewater use, they consist of a tough laminated material, and they are of commercial grade.

Comment

The quota allocations for whitewater boating in the Youghiogheny River at Ohiopyle State Park unfairly favor commercial outfitters.

Response

The whitewater quota allocations in the previous regulation have been eliminated in the new regulation. Although quotas still exist, they are established by Department policy and are not part of this regulation.

Comment

The comments support the elimination of the quota provisions applicable to whitewater boating in the Youghiogheny River at Ohiopyle State Park.

Response

As noted in response to the previous comment, even though the actual quota allocations have been eliminated from this regulation, they still exist. They are established by Department policy rather than by regulation.

Comment

Waterfall running at Ohiopyle State Park should be permitted. Persons who commented included both in-state and out-of-state boaters, many of whom are experienced kayakers and canoeists. Reasons given for opening the falls for boating were varied, and included the following: it can be safely run by an intermediate boater; these falls are "easy", "fairly benign"; waterfall running is a part of responsible, mainstream whitewater boating; inexperienced boaters will generally not attempt to run the falls; the annual race at Ohiopyle Falls demonstrates that thousands of runs over the falls can be made safely; waterfall running is permitted at other rivers managed by state and federal agencies; the running of waterfalls is commonplace within the paddling community and the decision whether to run the falls should be left to the individual, not the government; running the falls could be permitted subject to certain restrictions, such as requiring that each group stations safety people during runs; whitewater boaters are generally safe, responsible, non-polluting recreationalists who should not be denied this opportunity; opening the falls would bring additional visitors to the park, including non-boating spectators; promoting outdoor recreation, including "extreme sports," should be a key part of Pennsylvania's

strategy to keep young people in the state; Pennsylvania needs more physically active people and should not discourage this kind of activity; waterfall running should be permitted during the off-season, when the number of inexperienced whitewater tourists is low and the cold water will not be tempting except to experienced boaters; waterfall running should be permitted early and late in the day to avoid attracting spectators; the falls should be open with some "common sense regulations" similar to those that link raft size to river level; if the Department is concerned about safety, it should prohibit boating on other stretches of the river where there are difficult rapids; all that is needed is a sign warning inexperienced or ill-equipped people against running the falls; running the falls would allow kayakers to become familiar with the rapids, which would better equip them to conduct rescues; the Lower Youghiogheny could go from "an already superb kayaking destination to a world class run" if the falls were open under appropriate water conditions.

Response

The proposed regulation (§ 11.220(c)(3)) prohibited waterfall running on the Youghiogheny River in Ohiopyle State Park without written permission of the Department. As a result of the comments it received, the Department has changed the proposed regulation. The final regulation permits waterfall running unless posted otherwise.

The final regulation reflects the current policy of the Department. Under its current policy, the Department informs the public by means of posting that Ohiopyle Falls is closed for boating. The Department does, however, grant permission under a special activities agreement with American Whitewater for an annual Ohiopyle Falls race. The final regulation allows for a continuation of this policy of posting the falls as being closed for boating, but allowing for opening of the falls for special events. The Department intends to continue to monitor activities at the falls and make decisions in the future as to whether opportunities for boating at that location should be expanded. Meanwhile, posting will inform the public that the falls are closed for boating, but that permission to run the falls may be granted with written permission of the Department.

Comment

Canoeing and kayaking should be permitted on waterways in state parks other than Ohiopyle, Lehigh Gorge, and McConnells Mill State Parks during times of high water (white water) unless posting prohibits this activity.

Response

As a result of the comments received on the proposed regulation, which prohibited all boating on bodies of water not designated for boating, the Department has made a change in the final regulation to expand non-motorized boating opportunities. The final regulation (§ 11.119) prohibits only motorized boating on bodies of water not designated for boating. It allows non-motorized boating in rivers, creeks, and streams unless posted otherwise.

Comment

The definition of "commercial activity" should be changed to allow non-profit organizations to provide guided whitewater raft trips to members of their organization. Currently, the Department grants licenses to a limited number of commercial concessionaires under which they provide guided whitewater raft trips. Non-profit organizations, such as certain summer camps, cannot successfully compete for such licenses because they are not outfitters that offer guided trips to the general public.

Response

The comment relates to the Department's policy of granting licenses to a limited number of commercial outfitters to provide guided whitewater raft trips to the public on the Youghiogheny River in Ohio State Park. The Department has the authority to do this under the Conservation and Natural Resources Act (71 P.S. § 1340.303(a)(4)). The only connection between this policy and the definition of "commercial activity" in the regulations is that Section 11.209 (relating to miscellaneous activities) of the regulations requires that written permission of the Department be obtained in order to engage in commercial activity.

"Commercial activity" is defined in Section 11.201 (relating to definitions) as "an activity in which a person directly or indirectly accepts consideration of value as compensation for the provision of goods or services, including transportation." This definition is substantially the same as the definition in the previous regulation. Under both the new and the old definition of commercial activity, a guided-raft trip provided by a non-profit organization would be considered "commercial activity" and would therefore require written permission of the Department.

The Department has chosen to give written permission—in the form of license agreements—to a limited number of commercial outfitters to act as its concessionaires in providing to the public guided whitewater raft trips. However, it is the policy of the Department not to permit other organizations to provide such trips because it has restricted the provision of such trips to its licensed concessionaires. This is a policy decision by the Department, authorized by law, and is not addressed in these regulations.

Comment

This comment addresses Section 11.220 (relating to whitewater boating), concerning the operation of commercial watercraft in particular sections of the Lehigh River at Lehigh Gorge State Park. Subsection (d)(6) should be amended to prohibit, in addition to commercial watercraft, "commercially-rented watercraft" and "inflatable watercraft." Subsection (d)(7) should be amended to prohibit, in addition to commercial watercraft, "commercially-rented watercraft." The comment does not explain why these changes should be made.

Response

These provisions are carried over from the previous regulations with no substantive changes. Section 11.220 (d)(5) (renumbered from (d)(6) in the proposed regulation) prohibits commercial watercraft between the Francis E. Walter Dam and the White Haven launch area. Section 11.220 (d)(6) (renumbered from (d)(7) in the proposed regulation) prohibits commercial watercraft between the White Haven launch area and the Rockport launch/take-out area during trout season. The purpose of prohibiting commercial watercraft in these areas is to allow persons to fish in these sections of the river without the disturbance caused by commercial watercraft traffic.

The final regulation clarifies the meaning of "commercial watercraft." It replaces this term with "guided and unguided watercraft trips provided by commercial outfitters."

These provisions have worked successfully in the past and the Department is aware of no problems or concerns that would require a change.

Comment

In the section on prices (§ 11.224), there is no instruction on how to apply for a waiver or reduction in prices.

Response

The final regulation indicates that a request for a waiver or reduction in prices may be made to a park manager.

Comment

In the section on prices (§ 11.224), the regulation should state that the schedule of prices will be posted on the Department's website and should include the website address.

Response

This change has been made in the final regulation.

Comment

In the section on prices (§ 11.224), the regulation should include a reference to Section 314 of the Conservation and Natural Resources Act (71 P.S. § 1340.314), which places limitations on the setting of fees by the Department including the limitation that charges and fees "shall be used solely for the acquisition, maintenance, operation or administration of the State Park system"

Response

This change has been made in the final regulation.

Comment

In the section on prices (§ 11.24), which states that the Department will set reasonable prices for the sales of goods and services to the public, what is meant by the word "reasonable"? What factors will the Department consider in determining what is "reasonable"?

Response

The purpose of this provision is to assure the legislature and the public that the Department does not intend to abuse its authority in establishing prices for the sales of goods and services. The "reasonable prices" standard is the standard recognized by the legislature in the Public Facilities Concession Regulation Act, 62 Pa.C.S. §§ 4301-4303, applicable to concessionaires in public facilities. It is an objective standard that allows for flexibility in application. It is the Department's intent to charge market prices unless specific circumstances dictate otherwise.

In addition to the changes made to the proposed regulations in response to the comments it received, the Department also made the following changes:

Section 11.207 (relating to traffic and parking)

In Section 11.207(a) the provision in the proposed regulation prohibiting operation of a motor vehicle for purposes of commercial activity without permission was deleted because it was redundant with Section 11.209(a)(5) (relating to miscellaneous activities), which prohibits engaging in commercial activity without written permission. "Commercial activity" is defined in Section 11.201 (relating to definitions) as "an activity in which a person directly or indirectly accepts consideration of value as compensation for the provision of goods or services, including transportation."

In Section 11.207(a), the provisions concerning speed limit and obedience to traffic-control devices are expanded in the final regulation to cover all vehicles, not just motor vehicles.

In Section 11.201 (relating to definitions), the Department has adopted the Vehicle Code's definition of "vehicle." Generally, vehicles are devices in, upon or by which a person is or may be transported upon a highway. The term includes bicycles. All vehicles are covered by the speed limit and traffic control device provisions because of problems in heavily used parks, where people who are walking, bicycling, or using roller blades, scooters, baby buggies, or motor vehicles all share the same road. Bicyclists have been clocked at 35 miles per hour on these roads and when they weave through crowds of other users, dangerous conditions result. The regulation subjecting bicyclists and operators of other types of vehicles to the same rules of traffic that apply to motorists is needed to for the safety of park visitors.

In Section 11.207(b), a provision was added requiring that parking placards issued under the Vehicle Code to persons with disabilities be displayed in their vehicles in the manner required by the Vehicle Code. This provision had been inadvertently omitted from the proposed regulation.

In Section 11.207, the provision in the proposed regulation that addressed the removal and storage of vehicles illegally parked was removed from the traffic and parking section and added to section 11.206 (related to property left in a State park).

In the provision on parking tickets, the final regulation states that for parking tickets issued for violations of Sections 3351 (relating to stopping, standing and parking), 3353 (relating to prohibitions in specified places), or 3354(a), (b), or (d)(1) (relating to additional parking regulations) of the Vehicle Code, the charge will be the maximum fine as provided in the Vehicle Code. The proposed regulation specified that the charge would be \$15. The reason for the change in the final regulations is to allow for the possibility of amendments to the Vehicle Code. Currently, the Vehicle Code provides that the fine for violation of Section 3351 is \$25 and the maximum fine for violation of Section 3353 or 3354(a), (b) or (d)(1) is \$15.

Section 11.208(b) (relating to schedule; closure)

In Section 11.208(b), the time in the morning when Point State Park is open to the public was changed from 8 a.m. in the proposed (and previous) regulation to sunrise in the final regulation. The reason for this change is to accommodate Pittsburgh commuters who park on the North shore and walk through the park before 8 a.m., as well as other persons who regularly walk in the park before 8 a.m. The park has staff coverage from 7 a.m. until 11 p.m. In addition, city police stationed near the park are on duty around the clock daily.

Section 11.209 (relating to miscellaneous activities)

In Section 11.209, the provision prohibiting storing or leaving food that could attract wildlife was moved from Subsection (b) to Subsection (a). The effect of this change is that under Subsection (a), this activity will be allowed if written permission is given. The change was made to allow for permitting bird feeders at State park facilities.

A provision was added to Section 11.209(b) prohibiting using drinking fountains, springs, lakes or waterways for washing purposes. This provision appeared in the previous regulation in the rules relating to camping areas. The provision was eliminated from the camping rules in the new regulation because these rules will be contained in camping permits. However, since the

provision on washing applies to all park visitors, not just to campers, it was added to the final regulation.

Section 210 (relating to fires)

In Section 11.210, "without written permission of the Department" was deleted from the general statement and added to paragraphs (1) and (2) but not to (3). The reason for this change is that there are no situations where permission would be given to dispose hot charcoal any place other than in a facility designated by the Department.

Section 212 (relating to pets)

Section 11.212 was revised to permit guide dogs, signal dogs, and other animals trained to provide assistance to persons with a disability, in areas of State parks where other pets may not be permitted, i.e., swimming areas, overnight areas, and buildings.

Section 11.213 (relating to organized events; public assemblies; distribution of printed matter)

In Section 11.213, the word "permit" was changed to "permission" so that the terminology would be internally consistent within this section. The requirement in Subsection (b) that an application for permission be delivered to the park manager at least 24 hours in advance was deleted to allow for flexibility in handling requests for permission. Depending on the nature of the activity and other circumstances, some permissions can be granted on the spot. Others, particularly those requiring special activities agreements, might require six to eight weeks for processing. The provision in Subsection (c) that the Department will grant or deny permission "without unreasonable delay" is sufficient to allow for processing requests for all the various types of activities and circumstances.

Section 11.219 (relating to boating)

Section 11.219 has been revised in the final rulemaking to allow for the use of inner tubes, body boards, surfboards, air mattresses, and other similar non-watercraft devices in creeks, streams, and rivers. Children ages 12 and under must wear United States Coast Guard-approved personal flotation devices while engaged in this activity. This revision is consistent with a longstanding policy of the Department allowing this activity.

This section was also revised to allow use of body boards and surfboards in bodies of water designated for boating. Personal flotation devices must be worn. This provision does not apply to Presque Isle State Park, where body boards and surfboards are permitted only by posting. In addition, at Presque Isle, personal flotation devices are not required.

In addition, a change was made in Section 11.219 concerning the use of water skis. In the proposed regulation, only conventional water skis were permitted in lakes that are open to motorboats with unlimited horsepower. In the final regulation, all types of water skis (as defined in Section 11.201) are permitted in these lakes. They are also permitted in other lakes if posting states that they are allowed. By allowing all types of water skis in these lakes, rather than just conventional water skis, devices such as aquaplanes, kneeboards, inner tubes, inflatable hot dogs, and air mattresses may be towed behind boats. However, a provision was added prohibiting, without written permission of the Department, the towing of parasails, kite skis and other devices that are intended to lift off the surface of the water. These devices are included in the Fish and

Boat Commission's definition of "water ski" (58 Pa. Code § 109.4 (relating to waterskiing, aquaplaning, kiteskiing and similar activities)) but are not included in the Department's definition of "water ski" in this chapter.

Section 11.220 (relating to whitewater boating)

Several changes were made Section 11.220. In Subsection (a)(1), the provision allowing participants in whitewater events to wear a "lifedeck" personal flotation device with permission of the Department and the Fish and Boat Commission was deleted. Lifedeck personal flotation devices are generally no longer being recognized in the whitewater industry as being useful as an alternative to the Type I, III, or V personal flotation devices. The previous regulation did not allow lifedeck devices, and the Department mistakenly included the lifedeck provision in the proposed regulation.

In Subsection (a)(2)(ii), the final regulation clarifies that the requirement of multiple air chambers for inflatable whitewater watercraft applies to the outside tube.

In Subsection (b) of the proposed regulation, paragraph (3), which prohibited boating before sunrise or after sunset, was deleted in the final regulation because it was redundant with Section 11.208(a) (relating to schedule; closure).

In Subsection (b), the prohibition against using nonwatercraft devices, such as inner tubes and body boards, was revised in the final regulation. First, "without written permission of the Department" was deleted, because permission to use these devices will not be given under any circumstances (except at Lehigh Gorge, which is addressed next). Second, a provision was added stating that nonwatercraft devices, such as inner tubes, surfboards, body boards, and air mattresses may be used at Lehigh Gorge State Park when the flow rate of the Lehigh River is less than 250 cubic feet per second. Children ages 12 and under must wear a United States Coast Guard-approved personal flotation device when engaged in this activity. Allowing the use of these nonwatercraft devices at Lehigh Gorge during low flow rates is consistent with a longstanding policy of the Department.

Consistent with the provision in Subsection (b) of the final regulation allowing use of nonwatercraft devices during low flow rates on the Lehigh River, paragraph (1) of Subsection (d) (Lehigh Gorge State Park) in the proposed regulation was deleted in the final regulation. This paragraph required that at flow rates less than 250 cubic feet on the Lehigh River, inflatable watercraft must be at least 7 feet long and have at least two air chambers.

In Subsection (c)(1)(iii) (Ohiopyle State Park), the final regulation states that inflatable canoes and inflatable kayaks are not permitted on the Lower Youghiogheny at river levels 3 feet and above. This is not a change from the proposed regulation, but rather a clarification. The regulation (proposed and final) requires that at these river levels inflatable watercraft must be of a specific minimum length and have a specific minimum outside tube diameter. Inflatable canoes and kayaks are not constructed in such a way as to be able to meet these specifications. Therefore, the final regulation clarifies that these watercraft are prohibited.

In Subsection (c)(2)(ii) (Ohiopyle State Park), the final regulation prohibits inflatable canoes and inflatable kayaks on the Middle Youghiogheny at river levels 3 feet and above. Under the proposed regulation, this prohibition was inadvertently omitted. The corrected provision in the final regulation is consistent with the parallel provision applicable at river levels 3 feet and above on the Lower Youghiogheny (Subsection (c)(1)(iii)(B)).

In Subsection (c)(2)(i) (Ohiopyle State Park), the final regulation identifies by name the launch and take-out areas on the Middle Youghiogheny River.

In Subsection (d) (Lehigh Gorge State Park), the requirement of at least three air chambers for inflatable watercraft at flow rates from 250 cubic feet and above has been deleted in the final regulation. The Department has concluded that the general requirement in Subsection (a)(2)(ii) of "multiple air chambers" is sufficient to satisfy safety considerations. The final regulation is consistent with the requirements for watercraft at Ohiopyle State Park.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

Benefits

This rulemaking benefits the public by expanding recreational opportunities in State parks. One of the ways it accomplishes this is by placing greater reliance on posting than did the previous regulation. For example, the previous regulation specified that the leash length for pets could not exceed six feet. The new regulation does not mandate a maximum leash length. Instead, it states that if posting specifies a maximum length, the leash may not exceed this length. Similarly, the previous regulation prohibited buoyant devices in swimming areas. The new regulation allows them if permission is given by posting or by an on-duty lifeguard. Other examples of reliance on posting include horsepower limits for motorboats, the use of body boards and surfboards at Presque Isle State Park, and the use of bicycles and other recreational equipment at Point State Park.

This rulemaking expands recreational opportunities in other ways as well. It allows non-watercraft devices (inner tubes, air mattresses, body boards, etc.) in creeks, streams and rivers. It allows body boards and surfboards in boating areas. It allows non-motorized boats, such as canoes and kayaks, in creeks, streams and rivers unless posted otherwise. It allows water skiing in lakes where motorboats with unlimited horsepower are permitted and in lakes where water skiing is permitted by posting. It allows nonwatercraft devices (inner tubes etc.) on the Lehigh River at Lehigh Gorge State Park during low flow rates.

Another benefit of this rulemaking is that it defines the violation of any rule in Chapter 11 as a summary offense. Under the previous regulation the violation of some rules was a summary offense and the violation of others was not. Not only was this inconsistency confusing, but the only means of enforcing the non-criminal rules was for the offender to be ordered to leave the park; a refusal to leave the park could then lead to a misdemeanor charge of criminal trespass. The new regulation clearly defines the violation of any rule in Chapter 11 as a summary

offense. Therefore, for any violation, a summary citation may be issued or the offender may be ordered to leave the park, or both of these enforcement actions may be taken.

Compliance Costs and Paperwork Requirements

The revision of Chapter 11 will result in no additional costs or paperwork requirements for the general public, local governments or the private sector. The costs for the Commonwealth will be minimal. They will consist of the Department's costs in revising rules and regulations booklets, summaries of rules and regulations for posting in State parks, web pages and permits to include conditions that are being eliminated from Chapter 11; posting horsepower limits for motorboats; and posting length limits for pet leashes.

G. *Sunset Review*

Chapter 11 will be monitored by the Department to determine whether the regulations effectively fulfill the goals which they were intended to accomplish.

H. *Regulatory Review*

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 13, 2002, the Department submitted a copy of notice of proposed rulemaking, published at 32 Pa.B. 1611, March 23, 2002, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under Section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), IRRC and the committees were provided with copies of the comments received during the public comment period. In preparing these final-form regulations, the Department has considered all comments from IRRC and the public. No comments were received from the legislative committees.

Under Section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), on _____, these final-form regulations were deemed approved by the House and Senate Committees. Under Section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on _____ and approved the final-form regulations.

I. *Order of the Secretary*

Acting under the authorizing statutes, I hereby order that:

(1) The regulations of the Department of Conservation and Natural Resources, 17 Pa. Code, are amended by amending Chapter 11 to read as set forth in Annex A.

(2) The Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(3) The Department shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(4) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

- (5) This order shall take effect immediately.

BY:

John C. Oliver
Secretary
Department of Conservation
and Natural Resources

August 30, 2002

DEPARTMENT OF CONSERVATION & NATURAL RESOURCES
17 Pa. Code Chapter 11 (State Parks; General Provisions)
Final Rulemaking—7B-003

Comment and Response Document

1. **Comment:** Section 11.203 (relating to State park waters) identifies areas of water that are under the jurisdiction of the Department. If this jurisdiction is established via statute, this section may be unnecessary. What new rules or procedures does this section establish that apply to members of the public? The Department should cite the specific statutory citations that provide for the jurisdiction described in Subsection (1) and for the specific bodies of water in Subsections (2) and (3). (132)

Response: The purpose of this section is to inform the public what bodies of water the Department has jurisdiction over, and therefore, what bodies of water are covered by this chapter. The information, some of which is derived from statutes and some from deeds, is not readily available anywhere else. In the final rulemaking, statutory cites have been added to paragraphs (2) (Presque Isle State Park) and (3) (Pymatuning State Park).

2. **Comment:** State parks should not be open for hunting and trapping 24 hours a day because of excessive disturbance to animals and non-hunting visitors to the parks. The Department should explain why these activities should be allowed 24 hours per day. (1, 16, 19, 34, 111, 132)

Response: The Department recognizes that the proposed regulation could be misleading. It appears to allow all hunting and trapping 24 hours a day. Hunting and trapping are regulated by the Game Commission, not the Department, and therefore, the Department does not have the authority to expand hours for these activities beyond the hours permitted by the Game Commission. The final regulation clarifies that hunting and trapping are permitted during hours permitted for these activities under Game Commission regulations.

3. **Comment:** State parks should not be open for fishing 24 hours a day. It would be difficult to enforce this provision against persons who might use the park during the night for purposes other than fishing. (16)

Response: The provision allowing fishing and boating 24 hours a day is not a change from the previous regulation, which was successfully implemented and enforced for many years.

4. **Comment:** Allowing snowmobiling 24 hours a day will result in excessive noise, which could adversely impact wildlife and overnight park visitors. Are snowmobiles limited to certain areas or designated trails? The Department should explain why this activity should be allowed 24 hours per day. (16, 52, 111, 132)

Response: Snowmobiling has been permitted 24 hours a day in State parks for many years. This policy has been implemented successfully and is now being incorporated in the Department's regulations. Snowmobiling, which is subject to noise level requirements under 17 Pa. Code § 51.91 (relating to snowmobile noise level requirements), is restricted to specifically designated snowmobile trails. The number of persons who engage in snowmobiling during overnight hours and the number of persons who engage in overnight camping in the winter are relatively low and therefore the opportunity for any conflict is minimal.

5. **Comment:** Should Section 11.208 (relating to schedule; closure) include camping or use of overnight facilities as a 24-hour activity and reference Section 11.218 (relating to camping; overnight facilities)? (132)

Response: The final regulation has a provision referencing camping and overnight facilities in Section 11.218.

6. **Comment:** Motor vehicles and motorboats should not be allowed in State parks because of the noise, disturbance, and environmental damage they cause. (111)

Response: Motor vehicles were permitted in all State parks and motorboats were permitted in selected State parks under previous regulations. This permission is continued under the new regulation. Pleasure driving is one of the most popular activities in State parks. Motorboating is also a popular form of recreation for which the Department wishes to continue to provide opportunities. Depending on the size and characteristics of the particular body of water, the Department restricts the type and size of boat motors. The Department does not permit motorboating on some lakes.

7. **Comment:** The format of certain sections of the proposed regulations is confusing because the sections are written in the negative as lists of prohibitions. This negative format becomes even more complicated when an allowed activity is stipulated as an exception to the prohibition. Chapter 8 of the *Pennsylvania Code & Bulletin Style Manual* recommends "directness" and the use of "positive ideas" rather than "exceptions" in drafting regulations. (132)

Response: The Department reviewed the proposed regulations and made changes in several sections to improve clarity. These sections are noted elsewhere in this comment response document. Although some of the regulations could be stated as "positive ideas" many cannot be phrased this way without sounding awkward and confusing. Since engaging in an activity that is prohibited in these regulations is a summary offense, the Department chose to maintain a generally consistent format of listing prohibitions.

8. **Comment:** In the section on traffic and parking (§ 11.207), Subsection (b)(3) states, "The following activities are prohibited: . . . Parking a bus in an area that is posted as being closed for buses." This could mean that every area in the park not intended for bus parking would need to be posted. (132)

Response: The Department changed this provision in the final regulation. The final regulation states that parking a bus in an area that is not designated for buses is prohibited.

9. **Comment:** The section on traffic and parking (§ 11.207) should include a specific reference to the Vehicle Code definition of “motor vehicle.” (132)

Response: This change has been made in the final regulation by defining “motor vehicle” in the definition section (§ 11.201). The definition includes references to specific sections of the Vehicle Code.

10. **Comment:** The section on natural resources (§ 11.211) is confusing because paragraph (1) is a prohibition that contains exceptions to the prohibition. The exceptions in paragraph (1) (i) and (ii) could stand alone as positive statements. (132)

Response: The Department changed this section in the final regulation to improve clarity. As suggested in the comment, the exceptions which in the proposed regulation appeared under paragraph (1) now stand alone as permitted activities in a new Subsection (b).

11. **Comment:** A number of provisions in this regulation include phrases such as “permission of the Department” or “approved by the Department.” Also, references are made to permits. The regulations should inform the reader how to apply for approval or a permit. (132)

Response: Persons who wish to engage in an activity which requires Department permission under this chapter may request permission from the park manager. Definitions of “permission of the Department” and “permit” have been added to the definition section (§ 11.201) in the final regulation. “Permission of the Department” is defined to mean approval obtained from a park manager. “Permit” is defined to mean written approval obtained from a park manager on a form prescribed by the Department.

12. **Comment:** The section on traffic and parking (§ 11.207), which refers to “traffic-control devices,” should include a specific reference to the Vehicle Code definition of “official traffic-control devices.” (132)

Response: This change has been made in the final regulation by defining “official traffic-control devices” in the definition section (§ 11.201). The definition includes a specific reference to Section 102 of the Vehicle Code.

13. **Comment:** In proposed Section 11.207 (relating to traffic and parking), paragraph (1) of Subsection (b) (parking) uses the terms “a person with a disability” or “severely disabled veteran.” Paragraphs (1)(i) and (ii) should be combined into one paragraph or subsection. The new subsection need only refer to a valid plate or placard issued in accordance with Sections 1338 and 1342(a) and (b) of the Vehicle Code. (132)

Response: This change has been made in the final regulation. See Section 11.207(b)(1)(ii).

14. **Comment:** In Subsection (b) (parking) of proposed Section 11.207, paragraphs (1)(i) and (ii) contain the phrase “or a substantially equivalent issuance from another state.” We have two concerns with this phrase. First, how would a person with an out-of-state plate know whether it is “substantially equivalent” to a Pennsylvania plate? Since other jurisdictions issue plates and placards, any valid plate or placard from another jurisdiction should be allowed. Our second concern is that the regulation should be expanded beyond “another state” to include jurisdictions such as Canadian provinces and the District of Columbia. (132)

Response: The final regulation addresses these concerns. See Section 11.207(b)(1)(ii). It states that a valid plate or valid placard issued by another state, the District of Columbia, or a Canadian province for a person with a disability is deemed to be in compliance with the plate and placard requirements.

15. **Comment:** In Subsection (b) (parking) of proposed Section 11.207, paragraph (1)(iii) is confusing because it refers to a “placard . . . indicating issuance of authorization to operate the vehicle on State park land” with no reference to parking or people with disabilities. The paragraph does not include the word “disability.” It is our understanding that it is referring to a placard that is part of the Department’s policy for fostering greater access to State parks for persons with disabilities. People with disabilities who use a motor vehicle for personal mobility may obtain a placard from the Department to use their vehicle on pathways where other motor vehicles are prohibited. There are two concerns.

First, the Department should consider formalizing this policy by adding a new subsection to Section 11.207 (relating to traffic and parking) indicating that persons with disabilities who use this type of personal vehicle may apply to the Bureau of State Parks for this placard.

Second, Subsection (b)(1)(iii) should be amended to explain that paragraph (1)(iii) is limited to people with disabilities who use a motor vehicle for personal mobility. (132)

Response: The final regulation addresses these concerns. Subsection (c) states the process for persons with disabilities to request permission to use a motorized vehicle on State park land. Subsection (b) states that a person who has received this permission may park in an area designated for persons with disabilities. In addition, Section 11.216(c) and (d) (relating to general recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes) has been modified to specify that permission for persons with disabilities to use a snowmobile or ATV in areas not otherwise open for this use may be given in accordance with Section 11.207(c).

16. **Comment:** In Subsection (e) (parking tickets) of proposed Section 11.207, paragraphs (2) and (3) include citations to 234 Pa. Code. These should cite the specific rule(s) in 234 Pa. Code that apply. (132)

Response: The final regulation addresses this concern. The provisions that were in Subsection (e) of the proposed Section 11.207 are in Subsection (d)(2)(ii) and (iii) of the final Section 11.207. The citations to 234 Pa. Code include the citation to the applicable rule (Rule 401).

17. **Comment:** Subsection (f) (violations of parking provisions of the Vehicle Code) of proposed Section 11.207 specifies that the fine for a parking ticket is \$15 and references Sections 3351-3354 of the Vehicle Code. However, the minimum fine for parking in spaces reserved for a person with a disability is \$50 and fines may be greater pursuant to Sections 3354 of the Vehicle Code (75 Pa.C.S.A. §§ 3354(f) and (g)). The regulation should directly specify or reference the fines for violations of parking provisions of the Vehicle Code. (132)

Response: The final regulation addresses this concern in Subsection (d)(2)(i). For violations of Section 3351 (relating to stopping, standing and parking outside business and residence districts), 3353 (relating to prohibitions in specified places), and 3354(a), (b), or (d)(1) (relating to additional parking regulations) of the Vehicle Code, the amount charged by a parking ticket will be in the amount of the maximum fine as provided in the Vehicle Code. The Vehicle Code currently establishes a fine of \$25 for violation of Section 3351 and \$15 for violation of Section 3353 or 3354(a), (b), or (d)(1).

Parking tickets will not be issued for violations of Section 3354(d)(2), (3), or (e) of the Vehicle Code. These violations will be handled solely by issuance of summary citations. The reason tickets will not be issued for these violations is that under Subsection (f) of Section 3354, fines for these violations can range from \$50 to \$200, and Subsection (g) imposes an additional fine of \$50 for violations of Section 3354(d)(2) or (3). Rather than establishing a parking ticket charge for these violations, the Department will defer to the courts' authority to set the fine.

18. **Comment:** In proposed Section 11.207 (relating to traffic and parking), violations provisions are located separately in Subsections (d) and (f). These violations provisions should be combined into one subsection that lists all violations provisions. (132)

Response: The final regulation addresses this concern. Section 11.207 (d) (violations) contains all violations provisions.

19. **Comment:** Mountain biking should not be permitted in State parks because of the environmental impact. (111)

Response: Mountain biking is permitted on 18 designated trails in the State parks system. The new regulation does not expand opportunities for mountain biking; in fact it specifically restricts trail riding to trails posted for mountain biking. In considering whether to designate a trail for mountain biking, the Department applies certain guidelines. The possibility and impact of erosion and other environmental degradation are factors that the Department considers. Many parks do not have designated mountain biking trails because the Department has determined that these parks exhibit sensitive environmental conditions and are therefore not suitable for mountain biking. For the parks that do have designated trails, mountain biking clubs have been active in maintaining the trails.

20. **Comment:** With regard to the two provisions prohibiting causing noise that "would likely annoy or disturb a reasonable person of normal sensitivities," how will the Department interpret the phrase a "reasonable person of normal sensitivities"? (132)

Response: In the proposed regulations, these provisions appeared in both the section on traffic and parking (§ 11.207) and the section on miscellaneous activities (§ 11.209). In the final regulation, the provision in the traffic and parking section is deleted because it is redundant with the same provision appearing in the miscellaneous activities section.

The noise provision incorporates the objective “reasonable person” standard, which the Commonwealth Court of Pennsylvania recently upheld in a constitutional challenge. In the case of *Commonwealth v. Ebaugh*, 783 A.2d 846 (2001), the court stated that the phrase “annoy or disturb a reasonable person of normal sensitivities” is an objective standard that looks to the impact of noise upon a reasonable person under the particular circumstances of the incident, and that a person of ordinary intelligence would understand what conduct violates this standard.

21. **Comment:** What is the intent of Subsection (h) of Section 11.208 (relating to schedule; closure) which states that the Department may prohibit certain uses or activities in a State park, portion of a State park, or State park facility? What types of activities may be prohibited? What notice will be provided to the public? (132)

Response: The intent of Subsection (h) is to put the public on notice that the Department may exercise its authority to prohibit certain activities in certain locations under certain circumstances. For example, a swimming area might be closed temporarily if testing reveals that the water is unsafe. Lake Erie at Presque Isle State Park might be closed temporarily for swimming during periods of high waves or strong undertow. Day use areas that have been flooded might be closed. A pavilion that has been struck by a falling tree might be determined to be unsafe and closed temporarily. A water main break might necessitate the closing of a restroom. The Department advises the public of these closures and restrictions by posting. Depending on the circumstances, the Department may also issue a press release.

22. **Comment:** In the section on fires (§ 11.210) the phrase “without written permission of the Department” is duplicative of the Department's discretion stated in Subsections (1) and (3). The phrase is also misleading because it implies the possibility the Department would grant written permission to leave a fire unattended. (132)

Response: It should initially be noted that in the proposed regulation three fire-related activities were listed as being prohibited without written permission of the Department. In the final regulation, one of these activities (disposing hot charcoal except in designated facility) is prohibited absolutely (i.e., it is not conditioned on receiving written permission).

Other than that modification, the Department has retained the language of the proposed regulation. It disagrees with the comment that the regulation contains duplications and is misleading. Section 11.210 lists two activities that are prohibited without written permission of the Department. One of these activities is starting or maintaining a fire except in a facility designated for fires. An example of a situation in which the Department has given written permission to have a fire in other than a designated facility is at Presque Isle State Park where the Department has permitted bonfires on the beaches during Discover Presque Isle Days. The other activity that is prohibited without written permission of the Department is leaving a fire unattended. An example of a situation in which the Department has given written permission to

leave a fire unattended is when a charcoal-making demonstration is being conducted. Because this process takes several days to complete, there are periods when the fire will be unattended.

23. **Comment:** A State park may need to restrict fires in dry periods or drought to prevent forest fires. Although there is a general provision in Section 11.208 (relating to schedule; closure) prohibiting activities, the section on fires (§ 11.210) should include notice that fires may be further restricted by a State park due to drought or dry forest conditions. (132)

Response: As pointed out in the comment, in Section 11.208 the Department advises the public of its authority to restrict activities in particular areas when circumstances dictate. The Department acknowledges that there are times when it bans fires in particular parks due to the level of forest fire danger. During these times, signs are posted at the location informing the public of the fire ban. The Department prefers to rely on Section 11.208 and this posting rather than stating in Section 11.210 that it may post restrictions during times of forest fire danger. It prefers not to single out the fires section of the regulations in which to advise of the possibility of further restrictions by posting, because this possibility applies to all activities in State parks.

24. **Comment:** A pet is defined in the proposed regulation as "A dog, cat or other domestic animal." It is unclear what other types of animals would qualify as domestic animals. (132)

Response: To clarify the meaning of "pet" the final regulation (§ 11.201) defines "pet" as "A dog, cat or other animal that has been domesticated. This term does not include bovine or equine animals or poultry."

25. **Comment:** It is not reasonable to allow pets in recreation areas but not in camping areas. Having pets in camping areas is safer and more sanitary than in recreation areas because owners keep their pets inside their trailers, RVs, or tents and almost all are trained to relieve themselves only where their owners permit, and most owners pick up after them. A two-pet limit and \$1 per night charge per pet in overnight areas is suggested. Cats should be permitted in camping areas. (27, 110)

Response: Under both the previous regulation and the new regulation, pets are allowed in State parks, but they are not allowed in swimming areas, and they are not allowed in overnight areas unless the overnight area has been designated for pets.

The Department has tried to be responsive to both those who desire the opportunity to have their pets with them in overnight areas, and those who object to allowing pets in overnight areas. It has tried to balance these concerns by instituting a pilot program in 2001. Under the pilot program, pets are permitted in campgrounds in ten State parks. There is a two-pet limit for non-caged pets and a \$2 per night charge for each pet. The pilot program has been generally well-received by the public. The new regulations do not affect this pilot program. The Department has announced an expansion of the pilot program to additional parks in 2003.

26. **Comment:** Pets should not be allowed in overnight areas because of the smell of dog urine and the failure of owners to dispose of droppings. (83)

Response: The Department has tried to be responsive to both those who desire the opportunity to have their pets with them in overnight areas, and those who object to allowing pets in overnight areas. It has tried to balance these concerns by instituting a pilot program in which it has permitted pets in some but not all overnight areas. The new regulation adds a requirement that pet droppings be disposed of properly.

27. **Comment:** With regard to the regulation concerning pets in overnight areas (§ 11.212) the Department should explain whether the new regulation is a change in policy and what restrictions apply to pets in overnight areas. If there is no change in policy, the Department should consider amending the language in the regulation to state that pets are permitted in overnight areas subject to restrictions. (132)

Response: Under both the previous regulation and the new regulation, pets are allowed in State parks, but they are not allowed in swimming areas, and they are not allowed in overnight areas unless the overnight area has been designated for pets. Both the previous regulation and the new regulation require that pets be attended and under control at all times.

The new regulation adds other restrictions that were not included in the previous regulation. It requires that pets do not behave in a manner that may reasonably be expected to disturb or intimidate another person or that may cause damage to property. Pet droppings must be disposed of in trash receptacles or outside the park. Pets must be licensed and vaccinated.

Additional restrictions are posted at overnight areas designated for pets: pets may be walked only in the woods behind the campsite or in a designated pet walking area; they may not be walked through the campground or through any site other than the owner's site; they are allowed off their campsite only when on the way to or from a pet walking area or to a day use area. Pet food may not be left outside a camping unit or vehicle.

Concerning the suggestion that the Department consider amending the language in the regulation to permit pets in overnight areas subject to restrictions, the Department has tried to be responsive to both those who wish to have their pets with them in overnight areas, and those who object—for reasons such as allergies, noise, or other types of disturbances or annoyances—to allowing pets in overnight areas. It has tried to balance these concerns by instituting a pilot program in which it has permitted pets in some but not all overnight areas.

28. **Comment:** The leash requirement should not be relaxed because of the possibility of dog attacks. (83, 111)

Response: Under the previous regulation, the maximum leash length was six feet. The new regulation does not specify a leash length, but allows for establishment of leash length by posting. Removing the leash length requirement from the regulations allows the Department to tailor leash length requirements to specific areas in each park. The Department anticipates that the six-foot maximum leash length will continue to be the rule on certain trails.

29. **Comment:** Why are hunting dogs exempt from two of the requirements that apply to other pets, namely the requirement that they not behave in a manner that 1) may reasonably be expected to disturb or intimidate another person or 2) may cause damage to property? (132)

Response: By their very nature, hunting dogs engaged in hunting could violate these requirements that apply to pets. For example, hunting dogs could offend persons who object to hunting, engage in behavior such as barking that could disturb other persons, or cause damage to flora and fauna. Therefore, unless they are exempted from the requirements that apply to pets, hunting dogs would effectively be prohibited in State parks.

30. **Comment:** The section on organized events (§ 11.213) requires that an application for permission to engage in an organized event be submitted on a form prescribed by the Department. The regulation should include information on how to obtain the form. (132)

Response: The final regulation states that the form may be obtained from a park manager.

31. **Comment:** The section on organized events (§ 11.213) does not specify the minimum size of an event or group to which the restrictions apply. It should specify the minimum number of people that constitutes a group or event covered by this section. It should clearly state what specific activities require a permit. In Subsection (c), which states that the Department will grant or deny a permit without “unreasonable delay,” what is “unreasonable delay”? (132)

Response: Many factors—such as the size of the park, size of the event, facilities available, number of visitors, whether other events and activities are being held and if so the location, number of participants, and facilities used—affect the impact of a particular group or event in a particular State park at a particular time. Examples of organized activities at State parks are Easter egg hunts, environmental fairs, fireworks displays, class field trips, graduation parties, kayak races, hot air ballooning, bicycle club activities, hang gliding, model airplane demonstrations, marathons, roller blade races, search and rescue training, volksmarches, and wedding ceremonies. State parks regulations have always included an organized activity provision similar to this regulation. It has been workable, the public has generally understood it and the parks have been able to work with the public in accommodating many kinds of activities. For these reasons, the Department has not added the specificity suggested by the comment.

Similarly, concerning the issue of “unreasonable delay,” it would be impossible to state in this regulation the precise number of days it would take the Department to deny or grant permission to engage in an organized event. Depending on staff availability and the nature of the activity, some permissions can be granted when a visitor makes the request at a park office. Others, such as those requiring special activities agreements (which may require substantial study and evaluation and various levels of approval within the Department), might take from six to eight weeks.

32. **Comment:** The section on weapons and hunting (§ 11.215) refers generally to the Game and Wildlife Code. The regulations should specifically reference the pertinent sections of the Game and Wildlife Code that apply. (132)

Response: The Game and Wildlife Code and the Game Commission regulate the activity of hunting. The purpose of Section 11.215 (2) is to restrict hunting to areas of State parks designated for hunting and to generally advise the public that while engaged in hunting, they are subject to the Game and Wildlife Code. The Code would apply to the activity of hunting regardless of whether the Department's regulation states that it does. The Department prefers not to attempt to single out specific provisions of the Code that might be applicable in particular situations. However, in paragraph (2)(iv), which states that the device used for hunting must be lawful for hunting under the Game and Wildlife Code, the final regulation cites the applicable section of the Code.

33. **Comment:** The Department should consider allowing persons who have been issued a license under the Pennsylvania Uniform Firearms Act of 1995 (18 Pa.C.S. § 6109) to carry a firearm in State parks for purposes besides hunting or target-shooting. (132)

Response: For reasons of public safety, the Department does not permit the carrying of firearms in State parks for purposes other than hunting and target-shooting. The high attendance rates at many State parks in the summer season can lead to confrontations between park visitors. A substantially increased level of vigilance and enforcement preparedness by park personnel would be needed if concealed weapons were permitted.

34. **Comment:** In Section 11.216 (relating to general recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes), greater clarity would be achieved by combining Subsections (b)(1) and (4) rather than using the reference to paragraph (4) in paragraph (1). (132)

Response: This change has been made in the final regulation.

35. **Comment:** In Section 11.216 (relating to general recreational activity; horses; snowmobiles; all-terrain vehicles; mountain bikes), Subsection (c) should specifically reference the pertinent section(s) of the Motor Vehicle Code. (132)

Response: Subsections (c) and (d) of Section 11.216 apply to the use of snowmobiles and all-terrain vehicles. They state that use of snowmobiles and all-terrain vehicles shall be in accordance with Chapter 77 of the Vehicle Code. Since the entire Chapter 77 regulates the use of snowmobiles and all-terrain vehicles, Section 11.216 of the Department's regulations does not cite specific sections within Chapter 77. However, in the final regulation, definitions of the terms "snowmobile" and "all-terrain vehicle" have been added to the definitions section (§ 11.201), and specific sections of the Vehicle Code are cited in these definitions.

36. **Comment:** Swimming should not be prohibited outside designated areas. Swimming should be permitted except where dangerous conditions exist that are not obvious. (51)

Response: This prohibition was in the previous regulation and is simply being continued in the new regulation. Hazardous conditions could develop in any body of water at any time. It would be impossible for the Department to monitor all portions of all bodies of water in State parks for potential hazards.

37. **Comment:** In the section on swimming (§ 11.217) in which the Department may permit use of underwater breathing apparatus or snorkel by a diver who has been certified by an organization approved by the Department, does the Department maintain a list of approved organizations that certify divers? If so, how can one obtain a copy? (132)

Response: The final regulation states that a list of approved organizations may be obtained from the park manager.

38. **Comment:** In the section on boating (§ 11.219), Subsections (b)(1) and (b)(3) should be combined. (132)

Response: In the proposed regulation, Subsection (b)(1) prohibited operating watercraft on a body of water not posted as being open for boating; Subsection (b)(3) prohibited operating watercraft in an impoundment not designated for boating. In the final regulation, Subsection (b)(3) has been deleted because an impoundment is a type of body of water and is therefore covered in Subsection (b)(1).

39. **Comment:** In the section on boating (§ 11.219), in which specific types of watercraft are listed as prohibited, the term “novelty-type watercraft” is vague. (132)

Response: In the final regulation, this term has been deleted, because of the difficulty of defining the term and because the prohibition against unseaworthy watercraft (§ 11.219 (e)(3)(v)) adequately covers watercraft that is not suitable for boating.

40. **Comment:** In the section on boating, in which the construction requirements for inflatable watercraft are specified, why are these requirements different from the requirements for inflatable watercraft in the section on whitewater boating? (132)

Response: In the boating section (§ 11.219) of the final regulation, specifications for the material with which inflatable watercraft must be constructed have been deleted. This deletion removes the inconsistency raised by this comment. The requirements for inflatable watercraft in the final regulation are the same as under the previous regulation.

41. **Comment:** The horsepower limit should not be increased in some State parks. Boats with higher horsepower will create increased noise and increased wake which will disturb other users of the park, such as kayakers, canoeists, and nature watchers, as well as wildlife. The increased wake will adversely affect the shoreline. (1, 67, 89, 105)

Response: The new regulation (§ 11.219) affects the six State parks where the previous regulation established a 10 horsepower limit. The new regulation replaces the 10 horsepower limit with the requirement that motorboats in these lakes not exceed the horsepower limit as posted. Therefore, rather than specifying the horsepower limit, the new regulation allows for the limit to be established by posting. This change gives the Department the flexibility to adopt appropriate horsepower restrictions by means of posting to better fit limitations at individual lakes.

The Department is currently conducting a pilot program at lakes at the six State parks where previous regulations limited the horsepower to 10. Under the pilot program, posting at the lakes allows motorboats with a horsepower up to 18. Prior to the pilot program, it had been a common practice for boaters to attempt to circumvent the 10 hp limit at these lakes by modifying their motors from 9.9 to 15 hp or to display 10 hp covers on more powerful motors. Because a 15 hp motor is so similar in appearance—especially from a distance—to a 9.9 hp motor, the Department had difficulty enforcing the 10 hp limit at these lakes.

In general, motors that are above 18 hp are noticeably larger than those that are 18 hp or less and therefore are easy to spot by law enforcement officers. It is for this reason and because there is no discernible difference between 15 hp motorboats and 18 hp motorboats in the amount of noise and wake they produce, that the Department's pilot program permits motors up to 18 hp. During the pilot program, park managers are closely monitoring the lakes for signs of increased shoreline erosion or other adverse effects.

42. **Comment:** The new regulation permits use of personal watercraft on bodies of water where unlimited horsepower boats are permitted. Based on studies of collision rates, personal watercraft threaten the safety of other waterway users. The Department should review these studies. (57)

Response: The Fish and Boat Commission routinely reviews boating accidents and has taken regulatory measures to improve the safety record and boating knowledge of personal watercraft operators. Fish and Boat Commission regulations (58 Pa. Code § 109.3) now require that personal watercraft operators must obtain a Boating Safety Education Certificate. Since this requirement became effective, in January 2000, the number of accidents involving personal watercraft has significantly decreased. The Department's Bureau of State Parks meets regularly with officials from the Fish and Boat Commission and will continue to keep apprised of boating accident statistics involving all boats, including personal watercraft.

43. **Comment:** Should a provision be added to the section on boating (§ 11.219) to prohibit annoying others by causing loud noises similar to the provision in the traffic and parking section (§ 11.207)? (132)

Response: The noise provision that had been in the traffic and parking section in the proposed regulation has been deleted in the final regulation because it was redundant with the general noise provision in Section 11.209 (relating to miscellaneous activities). The noise provision in Section 11.209 is applicable to any activity in a State park. It should also be noted that motorboat noise is regulated by Fish and Boat Commission regulations (58 Pa. Code Chapter 119).

44. **Comment:** The language concerning personal watercraft in the section on boating (§ 11.219) is unclear. The regulation does not define or explain the phrase "personal watercraft, regardless of horsepower." (132)

Response: To eliminate confusion, the phrase “regardless of horsepower” has been deleted from the reference to personal watercraft in the boating section of the final regulations. A definition of “personal watercraft” has been added to the definitions section (§ 11.201). This definition adopts the definition of the term in Fish and Boat Commission regulations (58 Pa. Code § 109.3 (relating to personal watercraft)).

45. **Comment:** The Fish and Boat Commission lists safety requirements for personal watercraft in 58 Pa. Code § 109.3, including a requirement for a Boating Safety Education Certificate. The Department's regulation should include or cross-reference the safety requirements at 58 Pa. Code § 109.3. (132)

Response: As stated in Section 11.204 (relating to application of Fish and Boat Commission rules and Game Commission rules) Fish and Boat Commission regulations apply in State parks. The Department has chosen not to restate or cross-reference Fish and Boat Commission regulations in Chapter 11.

46. **Comment:** In the boating section (§ 11.219) where the proposed regulations stated in Subsection (e) that at Point State Park watercraft may be moored along the river wall “temporarily” during the day, the meaning of “temporarily” is vague. The Department should indicate the maximum time limit for mooring watercraft along the river wall during the day. (132)

Response: The final regulation clarifies this provision by stating that watercraft may be moored along the river wall during the hours the park is open to the public.

47. **Comment:** The best way to promote clean protected areas is to prevent fishing. Debris and damage along streams results from fishing activities. (80)

Response: The new regulation merely carries forward the provision in the previous regulation that allowed fishing in State parks. The Department acknowledges the validity of the concern about debris and will continue to enforce the prohibition against littering (§ 11.214 (relating to waste)). However, fishing is a legitimate and very popular form of recreation for which the Commonwealth issues licenses. The Department believes it should not deny the public enjoyment of the many excellent opportunities for fishing in State parks.

48. **Comment:** ATVs should continue to be restricted to designated areas and horseback riding should continue to be permitted on designated trails. (105)

Response: The comment is supportive of the proposed regulation, which simply continues the provisions of the previous regulation concerning ATVs and horseback riding. The proposed regulation has been adopted in this final-form rulemaking.

49. **Comment:** An exception should be allowed to the prohibition (§ 11.209 (relating to miscellaneous activities)) against “removing or disturbing an historical or archeological artifact, relic or object.” The exception would be for collecting artifacts, such as arrowheads, from the

ground surface. The exception would be justified because the ground surface is not a dateable area and artifacts not picked up could be broken. (50)

Response: Surface collection of artifacts such as arrowheads in State parks is an archeological field investigation on Commonwealth land and since under the Historic Preservation Act, 37 Pa.C.S. §§ 501-512, the Commonwealth has the exclusive right to engage in such an investigation, the public is not permitted to remove the artifacts.

50. **Comment:** Logging and drilling for oil and gas should not be permitted on State park land. A provision should be added to these regulations prohibiting these activities. Is the public given notice and an opportunity to comment before the Department allows removal of natural resources? What factors does the Department consider in deciding whether to grant permission? (8, 29, 55, 66, 103, 106, 113, 119, 132)

Response: Section 11.211 (relating to natural resources) of the new regulation prohibits “damaging, defacing, cutting or removing rock, shale, sand, clay, soil or other mineral product, natural object or material” without written permission of the Department. The same section prohibits “cutting, picking, digging, damaging or removing, in whole or in part, a living or dead tree, shrub or plant” (with specific exceptions for gathering certain edible plants for one’s own consumption and dead and down wood for use within the park in a fireplace or grill). Therefore, the proposed regulations prohibit logging and gas and oil drilling without Department approval.

The Department has the power and duty under the Conservation and Natural Resources Act to enter into contracts or leases for oil or gas drilling when it determines that it would be in the best interests of the Commonwealth to do so. The Department does not own the oil or gas drilling rights in most State parks, and therefore has no control over the decision to drill. However, where drilling occurs in these parks, the Department does have influence over the surface use. In State parks where the Department does own mineral rights, it will grant non-developmental leases for the purpose of ensuring that it receives the value of oil or gas removed from park land by wells drilled on adjoining property. Very rarely, the Department has drilled where it owns oil and gas rights, usually for the purpose of preventing the loss of the value of its mineral rights by wells drilled on adjoining property.

The Department does not permit logging in State parks where the purpose of the logging is solely commercial. The logging must achieve a benefit for the park. For example, salvage cuts have been needed due to damage caused by windstorms or insects. In addition, logging is sometimes necessary for rights-of-way, roads, and park facility construction.

51. **Comment:** In the section on whitewater boating (§ 11.220), the general requirements for inflatable watercraft—“tough durable construction intended for whitewater use, consists of a tough laminated material and is of commercial grade”—is vague. (132)

Response: The Department consulted with organizations of users, commercial outfitters, and industry in formulating this standard of material and construction for inflatable whitewater watercraft. On the basis of input from these groups, it believes that the standard is understandable to the regulated community and allows for necessary flexibility in application.

52. **Comment:** In the whitewater boating section (§ 11.220), Subsection (c)(1)(iii)(C) (Ohiopyle State Park), what is meant by “watercraft must be other than commercially rented watercraft”? (132)

Response: This provision establishes requirements for watercraft used when river levels on the Lower Youghiogheny River are four feet and above. At these levels, the river is very rough and swift, and boating is dangerous for inexperienced boaters. The prohibition against commercially-rented watercraft is intended to screen out inexperienced boaters. In the experience of the Department, persons who rent watercraft tend to be less experienced than persons who use their own watercraft. In addition, boaters tend to be less likely to engage in higher risk whitewater boating if it is their own watercraft that is at risk rather than rented watercraft.

To clarify the meaning this provision, the final regulation states that watercraft rented from a boat rental business are not permitted at these river levels. Fish and Boat Commission regulations (58 Pa. Code § 117.3) require that boats rented out by a boat rental business be clearly marked with the name of the business.

53. **Comment:** In the whitewater boating section (§ 11.220), Subsections (c)(1)(iv)(A) and (c)(2)(iii)(B) (Ohiopyle State Park) waive watercraft requirements for “state park-licensed concession watercraft.” Assuming the watercraft requirements are for purposes of safety, why are “state park-licensed concession watercraft” exempt? (132)

Response: State park-licensed concession watercraft are subject to the terms of the concession license agreement rather than the regulations in order to allow concessionaires the opportunity to use state-of-the-art watercraft as they are developed and become available. These new models might not match the specifications required in the regulations but could nonetheless meet necessary safety standards. Under the license agreement, the concessionaire is required to obtain Department approval before using any type of watercraft in its operations.

In the Lower Youghiogheny River, concessionaires provide guided trips but do not rent out unguided watercraft. In the Middle Youghiogheny River, concessionaires provide guided trips and also rent out unguided watercraft. The final regulation (Subsection (c)(2)(iii)(A)) clarifies that on the Middle Youghiogheny, both guided and unguided concession watercraft are subject to the terms of the license agreement rather than the regulations.

54. **Comment:** In the whitewater boating section (§ 11.220), there are three concerns with Subsection (c)(1)(iv)(B) (Ohiopyle State Park). First, the intent of “other than commercially-rented watercraft” is unclear. Second, the regulation should provide information on how watercraft operators or owners can obtain approval for high performance watercraft. Third, what are the size or performance standards that qualify as “high performance” and require Departmental approval? (132)

Response: The purpose of this provision is to allow for waiver of the watercraft requirements in Subsection (c)(1)(iii) for experienced boaters with high-performance watercraft.

Waiver will not be allowed for commercially-rented watercraft, because in the experience of the Department, persons who rent watercraft tend to be less experienced than persons who use their own watercraft. To avoid confusion over the meaning of "other than commercially-rented watercraft," the final regulation refers to "watercraft rented from a boat rental business." Fish and Boat Commission regulations (58 Pa. Code § 117.3) require that boats rented out by a boat rental business be clearly marked with the name of the business.

In response to the comment concerning how a person may obtain approval of high performance watercraft, the final regulation states that a person may use watercraft that does not meet the requirements of the regulations with "permission of the Department." The phrase "permission of the Department" is defined in Section 11.201 as "approval obtained from a park manager or designee."

To address the question concerning the size or performance standards that qualify as "high-performance," the final regulation removes the term "high-performance" and allows for the Department to make a determination whether the particular watercraft will be safe for use, taking into account durability, buoyancy, and maneuverability.

55. **Comment:** In the provision prohibiting waterfall running at Ohiopyle State Park (§ 11.220(c)(3)), the river segment(s) to which it applies should be clearly identified. (92, 132)

Response: The final regulation identifies the section of the Youghiogeny River to which the waterfall provision applies. The section is identified as extending from Bike Trail Bridge to and including Ohiopyle Falls.

56. **Comment:** The provision prohibiting waterfall running at Ohiopyle State Park (§ 11.220(c)(3)) should be amended to identify the process and procedures for obtaining written permission to run Ohiopyle Falls. Can representatives of a group obtain approval or written permission for group members or must each individual apply separately? (132)

Response: The final regulation allows waterfall running unless posting states otherwise. The posting which would inform the public that waterfall running is prohibited would also state that permission to run the falls may be granted under a special activities agreement obtainable through the park office. A person or organization who contacts the park office will be informed about the procedures for entering into a special activities agreement, including the fact that a group representative may sign the agreement on behalf of the group.

57. **Comment:** In the whitewater boating section (§ 11.220), Subsection (d) (Lehigh Gorge State Park), why are inflatable canoes and kayaks exempted from the requirements of Subsections (d)(2), (3), and (4)? What are the minimal standards for these types of watercraft? (132)

Response: The subsections addressed in the comment have been renumbered in the final regulation as Subsections (d)(1), (2), and (3). These are requirements for inflatable watercraft at various flow rates ranging from 250 cubic feet per second to more than 5,000 cubic feet per second. The proposed regulation listed minimum requirements for three characteristics of inflatable watercraft. These characteristics were length, number of air chambers, and outside tube diameter. The requirements prescribing the minimum number of air chambers have been

eliminated in the final regulation. Therefore, inflatable watercraft used at Lehigh Gorge State Park are subject to the general requirement in Subsection (a)(2)(ii) of "multiple" air chambers applicable to all inflatable watercraft, including canoes and kayaks, used at flow rates at and above 250 cubic feet per second.

The reason a minimum length requirement does not apply to inflatable canoes and inflatable kayaks is that these watercraft require maneuverability for effective performance in whitewater, and maneuverability is not a function of length. The reason a minimum outside tube diameter does not apply to inflatable canoes and inflatable kayaks is that these watercraft are not constructed with tube diameters as wide as the diameters required for other whitewater watercraft (rafts). Canoes and kayaks are constructed to have enough buoyancy to carry one or two passengers without tube diameters of the width needed for rafts, which are built to carry heavier loads.

Inflatable canoes and inflatable kayaks are subject to the general requirements at Section 11.220 (a)(2)(ii) applicable at all the whitewater parks, including Lehigh Gorge. The general requirements are that they have multiple air chambers of a tough durable construction intended for whitewater use, they consist of a tough laminated material, and they are of commercial grade.

58. **Comment:** The quota allocations for whitewater boating in the Youghiogheny River at Ohiopyle State Park unfairly favor commercial outfitters. (57, 74)

Response: The whitewater quota allocations in the previous regulation have been eliminated in the new regulation. Although quotas still exist, they are established by Department policy and are not part of this regulation. The Department has reviewed the comments concerning the quotas, but is not responding to them in this document because they are not a part of this rulemaking.

59. **Comment:** The comments support the elimination of the quota provisions applicable to whitewater boating in the Youghiogheny River at Ohiopyle State Park. (4, 6, 14, 15, 23, 25, 26, 28, 30, 31, 32, 35, 42, 43, 46, 47, 49, 58, 59, 65, 70, 71, 72, 73, 79, 81, 85, 91, 93, 99, 101, 108, 115, 116, 117, 122, 126, 127, 128, 130, 131)

Response: The Department appreciates the favorable comments. As noted in response to the previous comment, even though the actual quota allocations have been eliminated from this regulation, they still exist. They are established by Department policy rather than by regulation.

60. **Comment:** Waterfall running at Ohiopyle State Park should be permitted. Persons who commented included both in-state and out-of-state boaters, many of whom are experienced kayakers and canoeists. Reasons given for opening the falls for boating were varied, and included the following: it can be safely run by an intermediate boater; these falls are "easy", "fairly benign"; waterfall running is a part of responsible, mainstream whitewater boating; inexperienced boaters will generally not attempt to run the falls; the annual race at Ohiopyle Falls demonstrates that thousands of runs over the falls can be made safely; waterfall running is permitted at other rivers managed by state and federal agencies; the running of waterfalls is commonplace within the paddling community and the decision whether to run the falls should be left to the individual, not the government; running the falls could be permitted subject to certain

restrictions, such as requiring that each group stations safety people during runs; whitewater boaters are generally safe, responsible, non-polluting recreationalists who should not be denied this opportunity; opening the falls would bring additional visitors to the park, including non-boating spectators; promoting outdoor recreation, including “extreme sports,” should be a key part of Pennsylvania’s strategy to keep young people in the state; Pennsylvania needs more physically active people and should not discourage this kind of activity; waterfall running should be permitted during the off-season, when the number of inexperienced whitewater tourists is low and the cold water will not be tempting except to experienced boaters; waterfall running should be permitted early and late in the day to avoid attracting spectators; the falls should be open with some “common sense regulations” similar to those that link raft size to river level; if the Department is concerned about safety, it should prohibit boating on other stretches of the river where there are difficult rapids; all that is needed is a sign warning inexperienced or ill-equipped people against running the falls; running the falls would allow kayakers to become familiar with the rapids, which would better equip them to conduct rescues; the Lower Youghiogheny could go from “an already superb kayaking destination to a world class run” if the falls were open under appropriate water conditions. (2, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 35, 37, 38, 40, 41, 42, 43, 45, 46, 47, 48, 49, 58, 59, 60, 61, 62, 63, 64, 65, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, 100, 101, 102, 104, 107, 108, 109, 112, 115, 116, 117, 118, 120, 121, 122, 123, 124, 126, 127, 128, 129, 130, 131)

Response: The proposed regulation (§ 11.220(c)(3)) prohibited waterfall running on the Youghiogheny River in Ohiopyle State Park without written permission of the Department. As a result of the comments it received, the Department has changed the proposed regulation. The final regulation permits waterfall running unless posted otherwise.

The final regulation reflects the current policy of the Department. Under its current policy, the Department informs the public by means of posting that Ohiopyle Falls is closed for boating. The Department does, however, grant permission under a special activities agreement with American Whitewater for an annual Ohiopyle Falls race. The final regulation allows for a continuation of this policy of posting the falls as being closed for boating, but allowing for opening of the falls for special events. The Department intends to continue to monitor activities at the falls and make decisions in the future as to whether opportunities for boating at that location should be expanded. Meanwhile, posting will inform the public that the falls are closed for boating, but that permission to run the falls may be granted with written permission of the Department.

61. **Comment:** Canoeing and kayaking should be permitted on waterways in state parks other than Ohiopyle, Lehigh Gorge, and McConnells Mill State Parks during times of high water (white water) unless posting prohibits this activity. (2, 3, 4, 5, 6, 14, 15, 17, 18, 23, 24, 25, 26, 28, 30, 31, 32, 33, 35, 36, 37, 39, 41, 42, 43, 44, 46, 47, 48, 49, 53, 54, 56, 57, 58, 59, 62, 64, 68, 70, 71, 72, 73, 75, 79, 81, 82, 84, 85, 86, 91, 92, 93, 96, 98, 99, 100, 101, 102, 104, 107, 108, 109, 112, 114, 115, 116, 117, 120, 121, 122, 123, 126, 127, 128, 130, 131)

Response: As a result of the comments received on the proposed regulation, which prohibited all boating on bodies of water not designated for boating, the Department has made a

change in the final regulation to expand non-motorized boating opportunities. The final regulation (§ 11.119) prohibits only motorized boating on bodies of water not designated for boating. It allows non-motorized boating in rivers, creeks, and streams unless posted otherwise.

62. **Comment:** The definition of “commercial activity” should be changed to allow non-profit organizations to provide guided whitewater raft trips to members of their organization. Currently, the Department grants licenses to a limited number of commercial concessionaires under which they provide guided whitewater raft trips. Non-profit organizations, such as certain summer camps, cannot successfully compete for such licenses because they are not outfitters that offer guided trips to the general public. (57, 125)

Response: The comment relates to the Department's policy of granting licenses to a limited number of commercial outfitters to provide guided whitewater raft trips to the public on the Youghiogheny River in Ohio State Park. The Department has the authority to do this under the Conservation and Natural Resources Act (71 P.S. § 1340.303(a)(4)). The only connection between this policy and the definition of “commercial activity” in the regulations is that Section 11.209 (relating to miscellaneous activities) of the regulations requires that written permission of the Department be obtained in order to engage in commercial activity.

“Commercial activity” is defined in Section 11.201 (relating to definitions) as “an activity in which a person directly or indirectly accepts consideration of value as compensation for the provision of goods or services, including transportation.” This definition is substantially the same as the definition in the previous regulation. Under both the new and the old definition of commercial activity, a guided-raft trip provided by a non-profit organization would be considered “commercial activity” and would therefore require written permission of the Department.

The Department has chosen to give written permission—in the form of license agreements—to a limited number of commercial outfitters to act as its concessionaires in providing to the public guided whitewater raft trips. However, it is the policy of the Department not to permit other organizations to provide such trips because it has restricted the provision of such trips to its licensed concessionaires. This is a policy decision by the Department, authorized by law, and is not addressed in these regulations.

63. **Comment:** This comment addresses Section 11.220 (relating to whitewater boating), concerning the operation of commercial watercraft in particular sections of the Lehigh River at Lehigh Gorge State Park. Subsection (d)(6) should be amended to prohibit, in addition to commercial watercraft, “commercially-rented watercraft” and “inflatable watercraft.” Subsection (d)(7) should be amended to prohibit, in addition to commercial watercraft, “commercially-rented watercraft.” The comment does not explain why these changes should be made. (97)

Response: These provisions are carried over from the previous regulations with no substantive changes. Section 11.220 (d)(5) (renumbered from (d)(6) in the proposed regulation) prohibits commercial watercraft between the Francis E. Walter Dam and the White Haven launch area. Section 11.220 (d)(6) (renumbered from (d)(7) in the proposed regulation) prohibits

commercial watercraft between the White Haven launch area and the Rockport launch/take-out area during trout season. The purpose of prohibiting commercial watercraft in these areas is to allow persons to fish in these sections of the river without the disturbance caused by commercial watercraft traffic.

The final regulation clarifies the meaning of “commercial watercraft.” It replaces this term with “guided and unguided watercraft trips provided by commercial outfitters.”

These provisions have worked successfully in the past and the Department is aware of no problems or concerns that would require a change.

64. **Comment:** In the section on prices (§ 11.224), there is no instruction on how to apply for a waiver or reduction in prices. (132)

Response: The final regulation indicates that a request for a waiver or reduction in prices may be made to a park manager.

65. **Comment:** In the section on prices (§ 11.224), the regulation should state that the schedule of prices will be posted on the Department's website and should include the website address. (132)

Response: This change has been made in the final regulation.

66. **Comment:** In the section on prices (§ 11.224), the regulation should include a reference to Section 314 of the Conservation and Natural Resources Act (71 P.S. § 1340.314), which places limitations on the setting of fees by the Department including the limitation that charges and fees “shall be used solely for the acquisition, maintenance, operation or administration of the State Park system” (132)

Response: This change has been made in the final regulation.

67. **Comment:** In the section on prices (§ 11.24), which states that the Department will set reasonable prices for the sales of goods and services to the public, what is meant by the word “reasonable”? What factors will the Department consider in determining what is “reasonable”? (132)

Response: The purpose of this provision is to assure the legislature and the public that the Department does not intend to abuse its authority in establishing prices for the sales of goods and services. The “reasonable prices” standard is the standard recognized by the legislature in the Public Facilities Concession Regulation Act, 62 Pa.C.S. §§ 4301-4303, applicable to concessionaires in public facilities. It is an objective standard that allows for flexibility in application. It is the Department's intent to charge market prices unless specific circumstances dictate otherwise.

DEPARTMENT OF CONSERVATION & NATURAL RESOURCES
17 Pa. Code Chapter 11 (State Parks; General Provisions)
Final Rulemaking—7B-003

Names and Addresses of Commenters

During the 60-day public comment period, the Department received comments on the proposed rulemaking from the following persons, #1 through #131. In addition, it received comments from the Independent Regulatory Review Commission, which is identified below as #132.

ID	Name/Address	Zip	Submitted 1-Page Summary	Provided Testimony	Requested Final Rulemaking
1	Kristina calicokatzen@ecoisp.com				
2	Jeff Ackerman 2733 River Road Mt. Bethel, PA 18343 jeffack@epix.net	18343			
3	Brad Adams jba7g@virginia.edu				
4	Robert Alarcon 1133 Dartmouth Road Pittsburgh, PA 15205 Rob_Alarcon@adc.com	15205			
5	H. Kyle Anderson 6514 Dobbins Bridge Road Anderson, SC 29626-5709 hkacpa@yahoo.com	29626- 5709			
6	Elisa Arcuri 2195 Maple Road Williamsville, NY 14221 dancerqueen_321@yahoo.com	14221			
7	Jason Arold Paddlejunk@aol.com				
8	Nina Arwitz narwitz@njch.org				
9	David R. Atkinson 231 Mcquistion Road Butler, PA 16001-3455 Yakmandave@aol.com	16001- 3455			
10	Benjamin S. Badger 216 Eastland Avenue Morgantown, WV 26505	26505			

11	Jean & Michael Bailey 3211 Churchview Avenue Pittsburgh, PA 15227 jbailey@kl.com	15227			
12	Michelle Bate sbate@prodigy.net				
13	Robert Baudoux bkote@westol.com				
14	Simon Beardmore 4834 Davenport Street NW Washington DC 20016 sdbeardm@sfu.ca	20016			
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17	Stephen D. Bloskis 2402 Longcrest Avenue Bethel Park, PA 15102 Mojobuddha@aol.com	15102			
18	Joe Bousquin 220 Cadillac Drive, Apt. 220 Sacramento, CA 95825 joe@winterxbike.com	95825			
19	Deborah E. Boyle RR 1, Box 231K Canadensis, PA 18325	18325			
20	Timothy Bromelkamp 1645 21 st Road N, Apt. 6 Arlington, VA 22209 tbromel@hotmail.com	22209			
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7/15/02



Pennsylvania Department of Conservation and Natural Resources

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Office of the Secretary

September 20, 2002

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown II
333 Market Street
Harrisburg, PA 17101

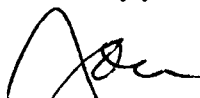
RE: Final Rulemaking: State Parks – General Provisions (7B-003)

Dear Mr. Nyce: *Bob,*

Enclosed is a copy of the above final-form regulation (face sheet, preamble, Annex A showing changes from proposed regulation, comment/response document, regulatory analysis form) for review by the Commission pursuant to the Regulatory Review Act.

The Department will provide the Commission with any assistance it may require to facilitate the review of this final regulation. If you have any questions regarding this proposal, please contact Susan Wood, Assistant Counsel, Office of Chief Counsel, at 772-4171.

Sincerely yours,


John C. Oliver
Secretary

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**


I.D. NUMBER: 7B-003
 SUBJECT: State Parks – General Provisions
 AGENCY: DEPARTMENT OF CONSERVATION & NATURAL RESOURCES

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 DEPARTMENT OF CONSERVATION & NATURAL RESOURCES
 9/20/02 10:58 AM

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/20/02		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
9/20/02	D. Newton	
9/20/02	Patricia A. Carnathan	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
9/20/02	A. Rybarczyk	
9/20/02	A. Helmet	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU

September 10, 2002