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**LAW AND PUBLIC SAFETY
BOAT REGULATION COMMISSION
MOTOR VEHICLE COMMISSION**

Boating Regulations

Proposed Readoption with Amendments: N.J.A.C. 13:82

Authorized By: New Jersey Boat Regulation Commission, Edward Harrison, Jr., Acting Chair, with the approval of Anne Milgram, Attorney General, and Sharon A. Harrington, Chief Administrator, Motor Vehicle Commission.

Authority: N.J.S.A. 12:7-34.49 and 12:7A-28

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-

Submit written comments on N.J.A.C. 13:82-1.1 through 7.4 by _____ to:

Edward Harrison, Jr., Acting Chair, Boat Regulation Commission
c/o Marine Services Bureau
Division of State Police
P O Box 6078
West Trenton, NJ 08628-0068

Submit written comments on N.J.A.C. 13:82-8.1 through 9.1 by _____ to:

Steven E. Robertson, Director
Legal and Regulatory Affairs
Motor Vehicle Commission
225 East State Street
P O Box 162
Trenton, NJ 08666-0162

The agency proposal follows:

Summary

N.J.A.C. 13:82, which contains rules concerning inspection, operation, equipment, anchorage, racing and safety of vessels on the waters of the State and regulations concerning the numbering and registration of vessels and licensing of operators, were scheduled to expire on July 22, 2009. The expiration date has been extended to January 18, 2010 by the filing of this proposal pursuant to N.J.S.A. 52:14B-5.1. The Boat Regulation Commission (BRC) and the Motor Vehicle Commission (MVC) have reviewed the existing rules and determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated. N.J.S.A. 12:7-34.49 requires that rules promulgated by the BRC be in conformity with regulations issued by the agency or agencies of the United States having jurisdiction with respect to power vessels upon waters of the State. The BRC has reviewed the rules for conformity with Federal boating laws and the regulations promulgated by the United States Coast Guard and is proposing certain amendments to conform to Federal standards. The MVC has determined that no substantive amendments are necessary for the regulations concerning titling, registration and numbering of vessels and licensing of operators on non-tidal waters.

Subchapter 1 contains general rules on equipment and operation. The BRC proposes to change the heading of the subchapter from Equipment to General Provisions to more accurately reflect the content of the rules. N.J.A.C. 13:82-1.1 describes the scope of the chapter. N.J.A.C. 13:82-1.2 contains general references. N.J.A.C. 13:82-1.3 describes the equipment required on all vessels. N.J.A.C. 13:82-1.4 describes the requirement for personal flotation devices (PFDs) on vessels. N.J.A.C. 13:82-1.5 describes the authorized use of rotating lights. N.J.A.C. 13:82-1.6 describes the authorized use of sirens. N.J.A.C. 13:82-1.7 provides general rules on speed of vessels. N.J.A.C. 13:82-1.8 incorporates by reference the Federal Inland Navigation Rules and International Navigation Rules, commonly referred to as the rules of the road. The Federal Inland Navigation Rules are found at 33 U.S.C. ' ' 2001-2038 and prescribes lighting characteristics and conduct between vessels in maneuvering situations. These rules are incorporated by reference to apply to all vessels on the waters of the State, except where the International Navigation Rules apply. International Navigation Rules are found at 33 U.S.C. ' ' 1601-1608 and apply to vessels outside the COLREGS Demarcation line indicated on

navigation charts.

N.J.A.C. 13:82-1.9 contains restrictions on anchoring near aids to navigation. N.J.A.C. 13:82-1.9 currently entitled Anchoring in channels, contains restrictions operating or anchoring vessels so as to interfere with other vessels. The BRC proposes to amend the title of the section to *Interference with other vessels* to more accurately reflect its contents. N.J.A.C. 13:82-1.11 prohibits traversing a race course in a manner that would endanger participants. The BRC proposes to change the references to *Race or regatta* to *Marine event* as defined in N.J.A.C. 13:82-1.20. N.J.A.C. 13:82-1.12 reiterates the requirement that vessel operators obey orders of law enforcement personnel. The BRC proposes an amendment to re-phrase the rule to mirror the statute, N.J.S.A. 12:7-79. N.J.A.C. 13:82-1.13 prohibits operators from allowing passengers to ride in dangerous positions. The BRC proposes an amendment to clarify that waterskiers are included in the number of passengers for the purpose of maximum capacity. The BRC proposes a new rule, N.J.A.C. 13:82-1.13A to prohibit vessels with a Coast Guard or manufacturer's maximum horsepower label from exceeding the stated maximum. N.J.A.C. 13:82-1.14 concerns motors with altered identification numbers. N.J.A.C. 13:82-1.15 requires operators to wear the lanyard cutoff switch on vessels so equipped. N.J.A.C. 13:82-1.16 provides an exemption from operational regulations for vessels engaged in authorized racing activity. The BRC proposes an amendment to substitute the term *Marine event* as explained above and to change the cross reference from N.J.A.C. 13:82-4.6 to N.J.A.C. 13:82-1.20. N.J.A.C. 13:82-4.6 addresses a race test noise permit, which is different from a marine event permit. N.J.A.C. 13:82-1.17 concerns reporting of vessels acquired under other than normal conditions. The BRC proposes an amendment and to add a requirement that vessels found under circumstances that indicate an emergency or life-threatening situation must be reported to State Police as soon as reasonably possible. N.J.A.C. 13:82-1.18 concerns floats and swim platforms that may be obstructions to navigation. The BRC proposes to amend the rule to delete the limitation of its application to non-tidal waters. N.J.A.C. 13:82-1.19 prohibits operation of a vessel by a non-licensed operator in an area where a license is required. N.J.A.C. 13:82-1.20 governs permits for marine events. A marine event is defined as an organized water event of limited duration that takes place on a predetermined schedule. Marine events include regattas, parades,

races and other such events that involve five or more vessels, but does not include events of public entertainment on wholly owned private lakes. The sponsor or organizer of a marine event will be required to obtain a permit from the Station Commander of the marine police station responsible for the affected area unless the State Police have been notified that the Coast Guard is assuming primary responsibility for the event. In such cases the Coast Guard issues permits and controls the event. The application for the permit must be made at least 45 days before the event, but a single permit may be issued for recurring events for a period of up to six months. The Station Commander will consider the inherent hazards of the event and the likely effect on other boating traffic. The Station Commander or Shift Supervisor may terminate an event based on the occurrence of unforeseen conditions, including weather changes.

Subchapter 2 contains rules on the reporting of boating accidents to conform the rules to the Federal rules on boat accident reporting at 33 CFR 173.1 et seq. to the extent not inconsistent with the requirements of N.J.S.A. 12:7-34.46. The subchapter requires operators to report boating accidents in which a person loses consciousness or is disabled for more than 24 hours to the State Police within 48 hours. Accidents involving loss of life or disappearance must be reported immediately. The subchapter also sets forth the information required on the written report mandated by N.J.S.A. 12:7-34.46 and Federal regulations.

Subchapter 3 contains rules on waterskiing and rules applicable to specific bodies of water in the State. The BRC proposes technical amendments to several sections to refer uniformly to Awaterskiing@ and Awaterskiers@. N.J.A.C. 13:82-3.1 contains general rules on waterskiing applicable to all bodies of water in the State. The BRC proposes a technical amendment to the definition of Awaterskiing@ to add Asking@ as a shorthand reference, which is used in subsequent rules and to simplify language. N.J.A.C., 13:8203.2 through 3.21 contain rules applicable to specific bodies of water. The BRC proposes to amend N.J.A.C> 13:82-3.3 to delete the reference “as required by law” in subsection (d) as unnecessary. The BRC proposes to delete subsections(c) through (e) in N.J.A.C. 13:82-3.10, applicable to the Shrewsbury and Navesink Rivers, because those subsections are adequately addressed in the general rules on waterskiing in N.J.A.C. 13:82-3.1. The BRC proposes to amend N.J.A.C. 13:82-3.11(j) for

Lake Hopatcong to substitute “marine event” for “races” and to add cross reference citations for clarity. N.J.A.C. 13:82-3.17 provides general regulations on swimming and diving and contains specific regulations for Manasquan Inlet, Barnegat Inlet and Shark River Inlet. The BRC proposes a technical amendment to subsections (c) and (d) to add a cross reference to subsection (a), which describes the type of flag divers must display.

Subchapter 4 contains rules on watercraft noise control. The BRC proposes a technical amendment to change the name of the subchapter to Power Vessel Noise Control@ to mirror the Power Vessel Noise Control Act, N.J.S.A. 12:7-23.1 et seq. No substantive amendments are proposed to these rules. The subchapter sets the maximum permitted decibel level for power vessels and prescribes the method of testing employed by the State Police for enforcement. The subchapter also contains rules for the issuance of race test permits. The permit required by subchapter 4 is in addition to any permit required for a marine event under N.J.A.C. 13:82-1.20.

Subchapter 5 contains rules on personal watercraft. The rules formerly in this subchapter, with modifications, were codified by P.L.1993, c.299 (N.J.S.A. 12:7-62 et seq.). Therefore personal watercraft operations are controlled by statute rather than rules. This subchapter provides that personal watercraft must conform to statutory requirements. No amendments are proposed.

Subchapter 6 contains rules on parasailing. The BRC proposes to make a technical amendment to N.J.A.C. 13:82-6.1 to clarify that parasailing is permitted, except as provided elsewhere in the chapter, not just in Subchapter 6. A technical amendment is also proposed to the definition of Aparasailing@ in N.J.A.C. 13:82-6.2 to conform to the proposed amendment of N.J.A.C. 13:82-3.1 discussed above. A technical amendment is also proposed for N.J.A.C. 13:82-6.3 to delete ACaptain=s@ modifying ALicense@ and to add Athe appropriate@ because that term is not used by the Coast Guard and there are different types of licenses for operators of passenger vessels. The amendment clarifies that the operator must have the appropriate license issued by the Coast Guard for the vessel being operated.

Subchapter 7 contains rules for motor vehicles on ice-covered waters. The subchapter contains definitions of all-terrain vehicles and snowmobiles permitted to operate on ice-covered waters and prohibits operations by other vehicles. The subchapter also requires operators to wear Coast Guard approved personal flotation devices. The BRC proposes to readopt these rules without amendment.

Subchapter 8 contains rules on the registration of vessels and the licensing of operators. These rules are promulgated by the MVC. The subchapter describes the requirements for the numbering of vessels, the issuance and transfer of registration certificates, and the issuance of operator=s licenses and fees. N.J.A.C. 13:82-8.19 and 8.20 incorporate the identification verification requirements for issuance of digitized driver licenses. The MVC has reviewed the current rules and has determined that no amendments are necessary.

Subchapter 9 contains rules establishing fees for issuance of certificates of ownership for vessels. The MVC has reviewed the current rules and has determined that no amendments are necessary in this filing because another MVC rule proposal, PRN 2009-56, which was published in the New Jersey Register at 41 N.J.R. 862 would adjust fees in N.J.A.C. 13:82-9.1(a), (b), (c), (d), (f), (g) and (h)

Because the BRC and MVC are providing a 60 day comment period for this proposal, the proposal is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments will have a positive social impact by continuing the safe operation of vessel on the waters of the State and promoting the enjoyment and use of those waters by the public.

Economic Impact

The rules proposed for readoption with amendments will not have any significant economic impact on the public. The rules imposing equipment requirements are based on State

and Federal statutory and regulatory mandates. The fees for registration of vessels and licensing of operators remain the same as under the current rules. Fees for issuance of certificates of ownership, registration and numbering of vessels and licenses for operators provide general State revenues, except for deposits in the Boat Certification Fund, which are used exclusively for administrative and enforcement costs associated with the Boat Ownership Certificate Act.

Federal Standards Statement

A Federal standards analysis is not necessary because the rules proposed for readoption and the proposed amendments do not exceed federal boating standards promulgated by the United States Coast Guard to the extent that those standards are applicable to waters of the State. Proposed N.J.A.C. 13:82-1.3 incorporates by reference Federal standards on required equipment contained in Title 33 and Title 46 of the Code of Federal Regulations. N.J.A.C. 13:82-1.8 incorporates by reference Federal standards contained in the Inland Navigation Rules in 33 U.S.C. ' ' 2001-2038 and the International Navigation Rules in 33 U.S.C. ' ' 1601-1608 where applicable. N.J.A.C. 13:82-2.1 conforms to the Federal boat accident reporting requirements contained in 33 C.F.R. 173.1 et seq. consistent with N.J.S.A. 12:7-34.46.

Jobs Impact

The rules proposed for readoption and the proposed amendments will not result in the generation or loss of any jobs in New Jersey.

Agriculture Industry Impact

The rules proposed for readoption and the proposed amendments will not have any impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

The rules proposed for readoption and the proposed amendments apply to all vessels and operators in the State. Of the approximately 200,000 vessels registered in the State, it is estimated that 5,000 are owned by small businesses, as that term is defined in the Regulatory

Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules apply to all vessels and operators uniformly in order to provide for the safety and enjoyment of the public. Small businesses are required to register and title vessels and pay the associated fees to the same extent as larger businesses and private individuals. Costs are based on the size of the vessel. Operators are required to report boating accidents by statute. The rules proposed for readoption with amendments do not impose any additional requirements. Operational rules apply uniformly to all vessels and operators and do not impose reporting, recordkeeping or other compliance requirements on small businesses. N.J.A.C. 13:82-1.20 imposes compliance requirements on sponsors and organizers of marine events, some of whom may be small businesses. There are no costs or fees associated with the required permit and small businesses will not need professional services to comply. The proposed new rule is intended to enhance safety on the waters of the state and therefore must be applied uniformly to all parties.

Smart Growth Impact

The rules proposed for readoption and the proposed amendments will not have any impact on smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact Statement

The proposed readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing because the proposed rules concern equipment and operation of vessels on the waters of the State.

Smart Growth Development Impact Statement

The proposed readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation would evoke a change in housing production in Planning areas 1 or 2 or within designated centers under the State Development

and Redevelopment Plan in New Jersey because the proposed rules concern equipment and operation of vessels on the waters of the State.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:82.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

13:82-1.3 Equipment

(a)-(b) (No change.)

(c) Failure to produce such equipment [will] shall be a violation of this section.

13:82-1.10 [Anchoring in channels] Interference with other vessels

(a)-(c) (No change.)

13:82-1.11 [Traversing race course] Interference with marine events

No vessel shall move across the course or around the course of any [race or regatta] marine event as defined in N.J.A.C. 13:82-1.20 so as to create a water condition which shall

unnecessarily endanger the life, limb or craft of those competing in the [race or regatta] marine event

13:82-1.12 Obeying orders

[No] A person operating a vessel on the waters of this State shall [fail to] stop or lay to when ordered to do so by a law enforcement officer. .

13:82-1.13 Riders

(a) The operator of a vessel shall not allow any person to ride in any position that would [unduly] endanger life or limb nor allow passengers or cargo in excess of the maximum capacity stated on the manufacturer=s or U.S. Coast Guard [information] capacity label.

1. This prohibition includes, but is not limited to, any position where the person may be in [grave] danger of falling overboard.

2 (No change.)

3. For purposes of this subsection, waterskiers as defined in N.J.A.C. 13:82-3.1 shall be included in the number of persons in the vessel.

13:82-1.17 Finding

(a) Any person finding, recovering or coming into possession of any vessel other than through normal purchase,, loan, rental charter[,] or gift[,] shall notify the State Police within 24 hours. Any person finding an unoccupied vessel on the waters of the State or under circumstances that indicate an emergency shall notify the State Police without

delay by the quickest means available.

(b) (No change.)

13:82-1.18 Floats and swim platforms

No person shall place, anchor, or construct or cause to be placed, anchored or constructed, any float or diving platform more than 25 feet from shore on any [non-tidal] waters where power vessels are permitted without the written approval of the State Police. Permitted floats or platforms that remain in the water between sunset and sunrise shall be marked by warning lights as required by the United States Coast Guard Navigation Rules InternationalCInland Annex V Rule 88.13. A copy of the Rule may be obtained from the State Police.

13:82-3.1 Waterskiing

(a) AWaterskiing@ or Askiing@ means [anything with] a [rider] person being towed by a power vessel by means of a tow rope, tow line, or training boom[, except another vessel being towed].

(b)-(h) (No change.)

13:82-3.3 Deal Lake, Monmouth County

(a)-(c) (No change.)

(d) Barefoot skiing, kite flying, [para-sailing] parasailing and ski jumping are prohibited, except for specific exhibitions requiring a permit from the State of New Jersey [, as required by law].

13:82-3.10 Shrewsbury and Navesink Rivers and adjacent areas; tidal waters

(a) No waterskiing shall be permitted in the following waterway areas of Shrewsbury and Navesink Rivers and adjacent areas:

1. Between northern limit Buoys No. 10 and No. 11 at Highlands to Buoys No. 28 at Rumson; thence to Buoys No. 5 off Barley Point;
2. From Buoys No. 10 southerly through Monmouth Beach Channel and Cove;
3. From Buoys No. 28 through area between Gunning Island and Rumson including entire area of Oyster Bay of Pollys Pond.

[(b) The right is reserved to amend these rules and regulations to cover more extensive areas as conditions warrant.

(c) All power vessels towing ski or aquaplane riders while underway must at all times keep at least 100 feet from any shore, wharf, pier, bridge structures, or abutment, or persons in the water.

(d) In passing another boat the operator thereof must keep at least 100 feet distance from any other craft.

(e) Waterskiing or aquaplaning or towing of skis or aquaplane will be permitted only during the hours between sunrise and sunset.

(f) The provisions of (b) through (e) above apply to all tidal waters.]

13:82-3.11 Lake Hopatcong, Sussex and Morris County

(a)-(i) (No change.)

(j) No vessel shall be operated at such a speed that shall cause 100 percent of the hull to come out of the water. Operation of the vessel in such a manner shall constitute, without further proof, careless operation. An exception to this requirement [will] shall be allowed for operation during authorized [races sanctioned] marine events for which a permit has been issued by the State Police pursuant to N.J.A.C. 13:82-1.20 or Division of Parks and Forestry, or with a valid race test permit issued by the State Police pursuant to N.J.A.C. 13:82-4.6.

13:82-3.17 Diving and swimming

(a)-(b) (No change.)

(c) Provisions for Barnegat Inlet are as follows:

1.-4 (No change.)

5. A diver shall mark his or her position with a float and skin diver=s flag as provided in (a) above.

6.-8 (No change.)

(d) Provisions for Shark River Inlet are as follows:

1.-2 (No change).

3. A diver shall mark his or her position with a float and skin diver=s flag as provided in (a) above.

4.-5 (No change.)

13:82-6.1 Scope

Parasailing, as defined in N.J.A.C. 13:82-6.2, is permitted on the waters of the State, except where prohibited by this [sub] chapter or by local ordinance.

13:82-6.2 Definition of parasailing

Parasailing means [anything with] a [rider] person towed by a power vessel by means of a tow rope where the rider ascends into the air by the towline extended from the vessel and remains suspended in the air as the vessel runs its course.

13:82-6.3 Operation

(a) (No change.)

(b) All commercial parasail operators are required to have [a Captain=s] the appropriate License for carrying passengers for hire issued by the United States Coast Guard.

(c)-(o) (No change.)