

HEARING OFFICER'S REPORT AND RESPONSE TO COMMENTS

**Prepared pursuant to Section 4-168 of the Connecticut General Statutes and
the Department of Energy and Environmental Protection Rules of Practice**

**Regarding
Amendment of the Boating Safety Regulations Concerning
Implementation of a Waterskiing Endorsement Program**

**Hearing Officer:
Eleanor C. Mariani, Director, Boating Division**

Date of Hearing: 29 June 2016

On 7 June 2016 the Commissioner of the Department of Energy and Environmental Protection (DEEP) published a Notice of Intent to amend sections 15-121-A9, 15-140f-1 and 15-140j-2 of the Regulations of the Connecticut State Agencies (RCSA), regarding waterskiing safety. Concurrent with the publication of the notice, a public comment period was commenced during which the public was invited to comment on the proposed amendments. On 29 June 2016 a public hearing was held to give the public a direct opportunity to comment on the proposed amendments. Ms. Eleanor C. Mariani, Director of the Boating Division, was delegated by the Commissioner of the DEEP, Robert Klee, to hear the matter and render a final decision regarding the proposed amendments on his behalf (Attachment 1). The public comment period closed on 17 July 2016. This report describes the proposed amendments, provides a response to the one comment received during the comment period, and identifies and explains a technical change included in the final proposed amendment that was not included in the proposed amendment offered for public comment.

The authority to adopt this proposal is granted by Public Act 15-25 and by sections 15-121(b)(6) and 15-121(b)(11) of the Connecticut General Statutes (CGS).

Description and Purpose.

Public Act 15-25 - "An Act Concerning a Minimum Age for Towing Any Person by Vessel and Requiring the Completion of Safe Towing Instruction Prior to Issuance of a Safe Boating Certificate" - set a minimum age for the operator of the towing vessel and required certain towing vessel operators to gain a safe waterskiing endorsement to supplement their safe boating certificates prior to towing any water skier. Public Act 15-25 also required the commissioner set forth a program through the promulgation of regulation to issue and revoke safe waterskiing endorsements to those who, unless exempted by the public act, meet a minimum standard of safe waterskiing education. These amendments to existing regulation fulfill that requirement by establishing, inter alia, minimum education and examination standards for receipt of a safe waterskiing endorsement; a mechanism allowing both DEEP educators and approved private educators to provide safe waterskiing education that leads to the issuance of a safe waterskiing endorsement; maximum fees associated with safe waterskiing education and examination; and, standards for the revocation and restoration of a safe waterskiing endorsement for repeat offenders of safe waterskiing rules. These amendments also prohibit a dangerous activity known as "teak surfing", codify a rule regarding vessel capacity and towing sports that has long been taught but has heretofore escaped enforcement and establish a penalty subsection to assist with tracking of waterskiing violations germane to the process of revoking a safe waterskiing endorsement. The proposed amendment is expected to have minimal fiscal impact and no measurable impact to small business is anticipated.

Public Comment and DEEP Response

One comment was received. It was authored by Mr. Jim Long and was sent and received by email on 20 June 2016 (Attachment 2). It regards the proposed section 15-121-A9(i) (new), which currently reads as follows:

“No person shall operate a motorboat or have the engine of a motorboat run idle while a person is teak surfing or platform dragging. For the purposes of this section, “teak surfing” or “platform dragging” means holding onto the swim platform, swim deck, swim step, swim ladder, or any portion of the exterior of the transom of a motorboat for any amount of time while the motorboat is underway at any speed.”

Mr. Long comments as follows:

“The way this paragraph is written it could be mistaken to read that it is legal to Teak Surf or Platform Drag in the state of Connecticut. Both of these practices are extremely dangerous, and have resulted in deaths from carbon monoxide poisoning.

My re-write would be this: (i) “Teak surfing” or “platform dragging” is illegal in the State of Connecticut. For the purposes of this section...” *(Comment excerpted)*

In response to Mr. Long’s comment DEEP will modify the proposed section to read as follows:

“No person shall engage in teak surfing or platform dragging and no person shall operate a motorboat or have the engine of a motorboat run idle while a person is teak surfing or platform dragging. For the purposes of this section, “teak surfing” or “platform dragging” means holding onto the swim platform, swim deck, swim step, swim ladder, or any portion of the exterior of the transom of a motorboat for any amount of time while the motorboat is underway at any speed.”

This change appears in the final proposed amendments.

Comments of the Hearing Officer

Following proposal of these amendments it was determined that the street address and the website address for the National Association of State Boating Law Administrators (NASBLA) as referenced in section 15-140f-1 was incorrect. While not germane to the purpose of this proposal, I choose to take this opportunity to correct the information. The corrected contact information appears in the final proposed amendments.

Conclusion

I recommend that the proposal be revised as indicated herein and that the final proposal be submitted by the Commissioner for approval by the Attorney General and the Legislative Regulations Review Committee.

/s/ Eleanor C. Mariani

7/22/16

Eleanor C. Mariani, Delegated Hearing Officer

Date