

38 N.J.R. 3144(a)

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RULE PROPOSALS

**LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE**

38 N.J.R. 3144(a)

Proposed Readoption with Amendments: N.J.A.C. 13:64

Proposed Repeal: N.J.A.C. 13:64-5

Personal Watercraft Operation

Authorized By: Colonel Joseph R. Fuentes, Superintendent of State Police.

Authority: N.J.S.A. 12:7-86.

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

Proposal Number: PRN 2006-239.

Submit written comments by October 6, 2006 to:

New Jersey State Police
Marine Services Bureau
P.O. Box 7068
West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1 and Executive Order No. 66 (1978), N.J.A.C. 13:64 Personal Watercraft Operation will expire on January 8, 2007. The Division of State Police has reviewed the rules and has determined that they continue to be necessary and appropriate and should be readopted with amendments to reflect amendments to N.J.S.A. 12:7-86 enacted as part of P.L. 2005, c. 292, effective July 1, 2006.

N.J.A.C. 13:64 establishes conditions for the operation of rented personal watercraft on the waters of the State. Subchapters 1 through 4 apply to persons engaged in the business of renting personal watercraft. N.J.A.C. 13:64-1.1 requires persons engaged in the business of renting personal watercraft to ensure that operators have passed a boating safety course or operate rented only in designated areas provided by the business pursuant to a permit issued by the Superintendent. The Superintendent proposes amendments to improve clarity and to include specific requirements for operation. Operators of personal watercraft must be at least 16 years of age and must present proof of age. In addition, the operator must present proof of completion of an approved boat safety course or a substantially similar course from another state, unless the business has been issued a permit by the Superintendent for a personal watercraft operation zone under this chapter. N.J.A.C. 13:64-1.2 provides that the permit is for the calendar year in which it is issued. N.J.A.C. 13:64-1.3 describes the content of the application for a permit. A technical amendment is proposed to reflect the change in designation of the Marine Services Unit to the Marine Services Bureau. N.J.A.C. 13:64-1.4 contains the conditions for approval of the permit. N.J.A.C. 13:64-1.5 contains requirements for buoys to mark the designated area for operation. N.J.A.C. 13:64-1.6 contains requirements for transit of personal watercraft between the rental area and the area of operation. N.J.A.C. 13:64-1.7 establishes standards for revocation of permits. The Division proposes an amendment to clarify that the Superintendent or designee may suspend or revoke a permit for violation of these rules and to provide for an informal conference if requested within 14 days of receipt of a notice of suspension or revocation. Any matter not resolved by an informal conference will be treated as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Subchapter 2 contains requirements for supervision of the designated area. N.J.A.C. 13:64-2.1 states the number of supervisors required. N.J.A.C. 13:64-2.2 establishes the qualifications of supervisors. Subchapter 3 concerns instructions that must be provided to renters. N.J.A.C. 13:64-3.1 sets forth the contents of required instructions to renters who do not have proof of completion of a boat safety course. Subchapter 4 concerns rental agreements. N.J.A.C. 13:64-4.1 establishes requirements for the contents of rental agreements and recordkeeping requirements. A technical amendment is proposed to indicate the name change to Marine Services Unit.

Subchapter 5 applies to purchasers of personal watercraft who operate a personal watercraft within 21 days of purchase without having completed a boating safety course. The Superintendent proposes to repeal Subchapter 5 because the law on which the rules were based (N.J.S.A. 12:7-86b) was repealed by P.L. 2005, c. 392.

The Superintendent has provided a 60-day comment period for this proposal. Therefore, the proposal is exempt from the rulemaking calendar requirement of N.J.A.C. 1:30-3.3.

Social Impact

The rules proposed for readoption with amendments implement legislative exceptions to the requirement that persons operating personal watercraft must complete a boating safety course. The rules are intended to provide a means of demonstrating compliance with the legislation to aid both boaters and law enforcement officers. The definition of educational materials that must be provided to purchasers of personal watercraft is intended to include the minimum safety information necessary to encourage safe operation of personal watercraft and enhance the safety of other boaters with whom they share the waters of the State.

Economic Impact

The rules proposed for readoption with amendments concerning rental of personal watercraft will have an economic impact on the approximately 40 to 50 businesses engaged in renting personal watercraft, if those businesses choose to rent to persons who have not completed a boat safety course. Such businesses will be required to prepare and file annually a permit application for designation of personal watercraft rental operation zones and to prepare and maintain rental agreements for at least one year. There is no fee associated with the application for approval of a personal watercraft rental operation zone. The cost of preparing and filing the application is minimal. Such businesses must also provide an employee who has experience in the operation of personal watercraft and who has completed a boating safety course to supervise in designated areas of operation. The cost to the business will vary depending on individual circumstances. Businesses must also provide a course of instruction on boat safety to persons who rent personal watercraft without having completed a boating safety course. The cost of instruction is minimal and will depend on the type of and manner of instruction provided. The rules specify the content of instruction, not the method. Businesses may choose to pass on to the consumer the additional cost of compliance with the legislation and these implementing rules.

The proposed repeal of rules concerning temporary operation after purchase will not have an economic impact on purchasers and sellers.

Federal Standards Statement

A Federal standards analysis is not necessary because the rules proposed for readoption do not depend on or implement any Federal standard or program. There are no Federal standards on operation or rental of personal watercraft.

Jobs Impact

The rules proposed for readoption will not have any impact on jobs in the State of New Jersey.

Agriculture Industry Impact

The rules proposed for readoption will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules proposed for readoption do not impose mandatory requirements on businesses engaged in renting personal watercraft, some or all of which may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that businesses choose to engage in rentals of personal watercraft to persons who have not completed a boat safety course, the proposed rules impose reporting, recordkeeping and compliance requirements. These requirements include the preparation and filing of an application for designation of personal watercraft rental operation zones; the preparation and maintenance of written agreements for such rentals; and providing qualified supervision, and boating safety instruction, to such renters. Cost of compliance is minimal and the need to employ professional services is not anticipated. These requirements apply uniformly to all businesses engaged in the regulated activity and no waiver for small businesses is authorized by the legislation. The purpose of the proposed rules is to administer a legislatively mandated program to enhance the safety of the boating public. The costs of compliance may be reflected in the prices charged by the business.

Smart Growth Impact

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

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:64.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:64-5.

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

13:64-1.1 Operation prohibited

(a) No person engaged in the business of renting personal watercraft for use on the waters of this State shall permit **a person to operate** a rented personal watercraft [to be operated by a person who] **unless the operator is 16 years of age or older and** has [not] **proof of age and that he or she successfully** completed a boat safety course [required pursuant to Section 18 of P.L. 1995, c. 401 except in accordance with a permit issued by the Superintendent of State Police in accordance with this chapter] **approved by the Superintendent of State Police pursuant to N.J.S.A. 12:7-60, or has proof of successful completion of a boat safety course substantially similar to an approved boat safety course, unless the business has been issued a permit for a personal watercraft rental operation area pursuant to this chapter. For the purposes of this section proof of completion of a substantially similar boat safety course means written proof of completion of a boat safety course endorsed or approved by another state, the National Association of State Boating Law Administrators or its successor organization, or the United States Coast Guard.**

(b) **Persons engaged in the business of renting personal watercraft may rent personal watercraft to persons 16 years of age or older without proof of completion of a boat safety course upon issuance of a permit by the Superintendent subject to the requirements of this chapter.**

13:64-1.3 Contents of application for permit

(a) Applications for a permit shall be submitted on business letterhead addressed to:
Marine Services [Unit] **Bureau**
Division of State Police
P.O. Box 7068
West Trenton, New Jersey 08628-0068

(b)-(c) (No change.)

13:64-1.7 Revocation **or suspension** of permits

[Permits issued by the Superintendent may be revoked] **The Superintendent or designee may suspend or revoke a permit** for violation of conditions by the permittee or its employees, or for operation of rented personal watercraft outside the designated area, except as permitted in N.J.A.C. 13:64-1.6 or for other good cause, including, but not limited to, unsafe conditions in the designated area. **The permittee may request an informal conference by making a written request to the Marine Services Bureau within 14 days of receipt of written notice of suspension or revocation. Any matter not resolved by informal conference will be treated as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.**

13:64-4.1 Contents of rental agreement

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

(c) Agreements shall be subject to inspection by the Marine Services [Unit] **Bureau** during normal business hours.