

Section 5

Small Business Impact And Regulatory Flexibility Analysis

SMALL BUSINESS IMPACT STATEMENT

Prior to adopting a new section or amendment to a regulation, Section 4-168a of the Connecticut General Statutes (C.G.S.) requires that each state agency consider the effect of such action on small businesses as defined in C.G.S. Section 4-168a. When such regulatory action may have an adverse effect on small businesses, C.G.S. Section 4-168a directs the agency to consider regulatory requirements that will minimize the adverse impacts on small businesses if the addition of such requirements (1) will not interfere with the intended objectives of the regulatory action and (2) will allow the new section or amendment to remain consistent with public health, safety and welfare.

State Agency submitting proposed regulations: **Department of Environmental Protection**

Subject matter of Regulation: **Candlewood Lake Vessel Length Restriction**

In accordance with C.G.S. Section 4-168a, staff analyzed the effect on small businesses of the proposed regulations and determined the following:

Check all appropriate boxes:

- The regulatory action will not have an effect on small businesses.
- The regulatory action will have an effect on small businesses, but will not have an adverse effect on such small businesses.
- The regulatory action may have an adverse effect on small businesses, and no alternative considered would be both as effective in achieving the purpose of the action and less burdensome to potentially effected small business. Alternatives considered include the following:
 - (1) The establishment of less stringent compliance or reporting requirements for small businesses;
 - (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
 - (4) The establishment of performance standards for small businesses to replace design or operational standards required in the new section or amendment; and
 - (5) The exemption of small businesses from all or any part of the requirements contained in the new section or amendment.
- The regulatory action will have an adverse effect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare (see explanation below, and accompanying Regulatory Flexibility Analysis).

Has the State agency listed above notified the Department of Economic and Community Development (DECD) of its intent to take the proposed action and completed the Agency Fiscal Estimate of Proposed Regulations? The Department notified DECD on August 1, 2011.

An agency fiscal estimate has been completed.

Explanation of Impact:

The DEEP is directed by Special Act 10-03 to prepare regulations implementing a vessel length limit on Candlewood Lake. Under these regulations as drafted, persons operating a vessel of 26-feet or longer (an "oversized vessel") will be subject to ejection from the lake and/or a fine, except that the *existing fleet* of oversized vessels will be authorized for use on Candlewood Lake for the life of the vessel.

In order to minimize the adverse affect on businesses who sell and broker oversized vessels used on Candlewood Lake, this proposed regulation recognizes as part of the *existing fleet* those oversized vessels that, by the effective date of this regulation, are in stock or are ordered for stock by marine dealers who are located in one of the five municipalities surrounding Candlewood Lake. This proposed regulation also allows a marine dealer or certified marine surveyor to demonstrate or test-run *any* oversized vessel on Candlewood Lake, provided the vessel displays a valid marine dealer registration number. This latter exemption is included to assist businesses that are based on Candlewood Lake and that sell, repair or assess oversized vessels for use elsewhere.

In addition, certain oversized vessels that are used exclusively for business related purposes while on Candlewood Lake, such as those involved in structure or infrastructure repair or maintenance, are exempted from this regulation.

As noted above, this proposed regulation contains considerations for marine dealers who are located in one of the five municipalities that surround Candlewood Lake. Based on an informal study, there are about a dozen such marine dealers. Of those, about half deal in oversized vessels. In March 2010 these dealers reported (in aggregate) about ten oversized vessels in stock, about ten on order, and approximately 100 sold over the last three years. It is impossible to gauge with precision the affect this proposed regulation will have on local marine dealers, however, an on-water survey performed 19 August 2009 revealed only 110 vessels that were 26 feet in length or greater on Candlewood Lake. This suggests that a large share of the oversized vessels purchased from local dealers are used somewhere other than on Candlewood Lake, and such sales would be unaffected by this regulation. In the short term, any oversized vessel authorized for use on Candlewood Lake could maintain or increase in value, regardless of whether it is in the hands of a consumer or a business. Once the availability of such vessels dwindles, it is expected that most if not all consumers who might previously have opted for an oversized vessel will now opt for the largest legal vessel they can obtain, however, it should be acknowledged that some consumers may simply choose not to buy and some business may be lost. Given the requirements of Special Act 10-03, such loss is unavoidable.

REGULATORY FLEXIBILITY ANALYSIS

AGENCY SUBMITTING REGULATION: Department of Energy and Environmental Protection

DATE: May 7, 2012

SUBJECT MATTER OF REGULATION: Candlewood Lake Vessel Length

REGULATION SECTION NUMBERS: 15-121-B15a

STATUTORY AUTHORITY: S.A. 10-03

OTHER AGENCIES AFFECTED: None

EFFECTIVE DATE USED IN REGULATORY FLEXIBILITY ANALYSIS: May 7, 2012

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REGULATORY FLEXIBILITY ANALYSIS

Connecticut General Statute Section 4-168a, as amended, states that for proposed regulations that impact small business, the "agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulations on small business:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- (5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

In 2009 the Connecticut General Assembly (CGA), through Special Act 09-12, directed the DEP to make recommendations regarding a vessel length and engine size limit on Candlewood Lake. Accordingly, the DEP in consultation with the executive officers of the five surrounding municipalities, proffered a recommendation to limit vessel size on the lake to vessels under 26-feet, but recommended that no engine limit size be adopted.

In 2010 the CGA, through Special Act 10-03, directed the DEP to prepare regulations implementing the recommended vessel length limit.

With respect to regulatory flexibility and its application to the regulations mandated by Special Act 10-03 and proposed herewith:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses is not consistent with the intent of Special Action 10-03;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses is not consistent with the intent of Special Act 10-03;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses is not relevant to this proposal;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation is not relevant to this proposal; and
- (5) **The exemption of small businesses from all or any part of the requirements contained in the proposed regulation is accommodated where possible.**

As part of the subject regulatory proposal, the DEP proposes to authorize the operation of oversized vessels that have already been *purchased or ordered for stock* by a business located in one of the five municipalities surrounding Candlewood Lake. This grandfathering function is included in part to protect the value of those vessels that are or will be in the hands of marine dealers. For a marine dealer to qualify an oversized vessel for an authorizing decal, the dealer must have such a vessel in inventory or have ordered such a vessel for inventory by the effective date of this regulation.

In addition, exemptions are included for oversized vessels that have certain specific business functions, such as vessels that are used exclusively for marine structure or infrastructure improvements while on Candlewood Lake. Also, consideration is given to those marine dealers who are based on Candlewood Lake and who demonstrate oversized vessels on the lake *for use elsewhere*, by allowing oversized vessels registered with a Marine Dealer Registration Number to be operated for *demonstration and test purposes only* without the benefit of an authorizing decal.