

**STATE OF MINNESOTA**  
**DEPARTMENT OF NATURAL RESOURCES**  
**BUREAU OF INFORMATION, EDUCATION & LICENSING**

**IN THE MATTER OF PROPOSED ADOPTION OF**  
**RULES RELATING TO BOAT AND WATER SAFETY**

**STATEMENT OF NEED AND REASONABLENESS**

**NOVEMBER 12, 2002**

## GENERAL PROVISIONS

### I. INTRODUCTION

#### **Purpose**

The primary purpose of the boat and water safety rules is to make the waters of the state safer and more enjoyable. The primary purpose of the proposed changes in the rules is to bring them up-to-date with changes in federal requirements to ensure uniformity from state-to-state and remove obsolete sections.

#### **Scope**

The proposed rule changes are primarily technical and include changes to rental boat requirements, life jacket labeling restrictions, boat capacity plate language, aids to navigation standards and the minimum property damage amount for boat accident reports. The changes would affect all waters of the state.

#### **Notification of Persons and Classes of Persons Affected by the Proposed Rules**

The Department of Natural Resources (DNR) published a request for comments in the *State Register* on August 5, 2002 regarding the potential rule changes. This notice outlined the specific area of the proposed rules, the statutory authority for the proposed rules and the parties that could be affected by the proposed rules. In addition notices were also mailed to all individuals and groups on the DNR's rule notification list. The Department also published a statewide news release on August 6, 2002 and this also appeared on the DNR web page.

Notification of the change in aids to navigation was also brought to the attention of all counties that participate in the boat and water safety program over the last two-three years, since most of the navigational aids are placed by the counties in the state. Counties specifically affected by the navigational aids change were contacted individually.

Information on the upcoming change in aids to navigation has been in the *Minnesota Boating Guide* for the past three years. This guide is distributed to approximately 275,000 persons each year.

The dual notice of intent to adopt rules will be published in the *State Register* and those persons on DNR's rule notification list will be mailed copies. The chairs of the appropriate natural resources policy and finance committees in both houses of the Legislature will be notified as required in MS § 14.116. In addition, the DNR will include the notice in a statewide news release, which will can also be viewed on the DNR's website. Copies of the release will also be sent electronically to all county sheriff's departments who are on our electronic mailing list.

#### **Statutory Authority**

Statutory authority for the proposed rules is in Minnesota Statutes, section 86B.211

## **II. REGULATORY ANALYSIS**

### **Description of the Classes of Persons Affected by the Proposed Rules**

The proposed rule amendments would, to some extent, affect most all persons using boats on the state's waters. Both boats and boat owners vary greatly depending on income, size and type of boat and waters used. Boats can range from 9-foot rowing craft and canoes to fishing boats, runabouts, pontoons, sailboats and cruisers. As an example, those boat operators using the estimated five to six lakes where there would be a large change in the buoy system would be somewhat more affected than majority of boaters and anglers who operate on lakes with few or no aids to navigation. The proposed rule amendments repeal outdated equipment requirements, making it simpler for both rental boat owners and renters. Those boaters involved in an accident involving only property damage of less than \$2,000 would no longer be required to report the accident to the county sheriff.

### **Probable Cost to the Agency or Other Agencies from Proposed Rules**

The proposed boat and water safety rules will have minimal fiscal impact on both the DNR and other agencies since they are primarily technical in nature. The DNR has been working with the counties who will need to make the most buoy changeovers and has scheduled the rules change to coincide with buoy replacement schedules. In addition the DNR will be assisting two or three counties with supplementary federal boating safety funding to accomplish this buoy replacement. Rule changes will also approximately coincide with the publication date of the 2003 *Minnesota Boating Guide* – eliminating additional printing costs. Other changes, such as the increase in accident reporting levels, should actually reduce the costs to counties who complete these reports, since they will no longer be required to complete them on a number of small “fender bender” type boat accidents.

### **Determination of Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rules.**

To bring the boat and water safety rules into compliance with the federal requirements, there is really no other way than to amend the rules that currently exist. The federal standards, established by the U.S. Coast Guard, are in existence to provide some uniformity from state-to-state, much as on the highways. In a number of cases, these amendments delete obsolete or superfluous rules.

### **Description of Alternative Methods for Achieving the Purpose of the Proposed Rules**

The only alternative would be to not modify the rules to bring them in line with federal regulations and delete obsolete and superfluous sections or to delay implementation. In order to keep Minnesota's boating safety program effective and compliant, this is would not be a viable alternative. A delay would be costly for those counties where preliminary work on buoy replacement has already started in anticipation of these changes.

### **Probable Costs for Complying with the Proposed Rules**

The proposed rule changes should not result in any additional costs to the public. The costs to the counties that are affected will be minimal, since their normal replacement schedule was taken into consideration on the rules implementation date and DNR will be assisting them with federal grant funds. Total additional cost to the counties for the shoreward obstruction buoy replacement (which was scheduled by them in any case) is estimated to be about \$18,000.

### **Assessment of the Difference between the Proposed Rules and the Existing Federal Regulations**

The changes being proposed regarding lifesaving device labeling restrictions, boat capacity plates, waterway markers (buoys) and accident reporting level would bring Minnesota's requirements in line with the federal boating regulations established by the U.S. Coast Guard.

### **Regulatory, Licensure or Other Charges in the Proposed Rules**

The proposed rules do not involve any new regulatory permit, license fees, or other charges to the public.

### **Proposed Rules Affect on Farming Operations**

The proposed rules would not affect farming operations

### **Description of How the Agency Considered and Implemented the Policy to Adopt Rules that Emphasize Superior Achievement in Meeting the Agency's Regulatory Objective and Maximum Flexibility for the Regulated Party and the Agency in Meeting these Goals**

The State's boat and water safety policy is outlined in Minnesota Statutes, Section 86B.001. Essentially, it is to promote the full use and enjoyment by all of the people, now and in the future, to promote safety for persons and property, to promote uniformity of laws relating to the use, and to conform to the use requirements of the United States.

The DNR attempts to balance the need for simple regulations with the need for changes brought about by changes in federal standards that affect all states. To continue Minnesota's excellent record in boat and water safety, there is a need for periodic change to keep up with changes in technology and national standards. Some of these proposed rules, in fact, eliminate outdated a superfluous language and requirements that are no longer needed. The average boater will probably notice little if any effect on an outing on most lakes and rivers in the state after rule implementation

## **III. RULE-BY-RULE ANALYSIS**

### **6110.1100 - RENTAL OF WATERCRAFT.**

#### **Subpart 1. Condition and equipment of rental watercraft.**

A. Simplifies language by eliminating a sentence that specifically references oars, paddles and oarlocks. While some craft, such as small fishing boats and canoes still have oars and paddles, this language was originally written over 40 years ago. The

addition of the words "including any accessory equipment" will cover not only oars, paddles and oarlocks, but also motors, fire extinguishers and any other items that may be a part of or come with a rental boat.

B. Language deleted as superfluous, it will be covered under A. in this section.

C. Since this rule was originally written over 40 years ago, federal regulations were implemented covering basic and level flotation requirements for manufacturers. This language has become superfluous and out-of-date.

G. The requirement for all rental watercraft to have a paddle, oars or a pole is now out-of-date with most modern watercraft. Rental watercraft can include large cruisers, houseboats, runabouts & personal watercraft (Jet Skis) where these auxiliary propulsion items are no longer needed.

H. This change corrects a technical oversight and brings the lifesaving device requirements for rental craft, in line with the existing requirements in 6110.1200, Subp. 3, since on craft 16 feet or more in length (except canoes and kayaks) a throwable device is required in addition to the wearable device for each person on board.

It is necessary and reasonable to modify the requirements for rental watercraft to repeal obsolete and superfluous language, reference federal manufacturer standards for boat flotation requirements and correct the technical oversight the lifesaving device requirements. The magnitude of the proposed changes is small and probably will not be noticed by most boat rental operations or operators.

#### **6110.1200 - NAVIGATION OF WATERCRAFT ON THE WATERS OF THE STATE; SAFETY EQUIPMENT.**

##### **Subpart 3. Personal flotation (lifesaving) devices.**

C. (5) Adds language to include the use restrictions placed on some lifesaving devices by the U.S. Coast Guard and so noted on the approval label attached to the device. As examples, some of the new inflatable devices are not approved for use by those less than 16 years of age, or for such activities as operating personal watercraft or water skiing.

It is necessary and reasonable to modify the lifesaving device requirements to comply with restrictions on the U. S. Coast Guard approval label of the device. With the advent of more specialized life jackets, the Coast Guard has had to place restrictions on a small number devices to insure that the device will work properly in an emergency. This change will not require individuals to obtain new devices, nor make modifications to existing ones. The number of devices with such restrictions is relatively small.

#### **6110.1300 - CAPACITY PLATE INFORMATION REQUIREMENTS FOR WATERCRAFT CONSTRUCTED FROM JANUARY 1, 1972 TO JULY 31, 1980.**

This whole section is being deleted, since it has become superfluous and obsolete. Boats manufactured during this period are covered under federal safety standards for boat manufacturers and any state regulations that differ from these are generally preempted by the Federal Boating Safety Act. Standards in effect at the time of the boat's manufacture govern both the horsepower and weight capacity. Reference to these federal standards for all boats is made in 6110.1400.

See next section - 6110.1400 - for the statement of need and reasonableness.

**6110.1400 - CAPACITY PLATE INFORMATION REQUIREMENTS FOR WATERCRAFT CONSTRUCTED ON OR AFTER AUGUST 1, 1980.**

**Title.** Title is being changed to encompass boats manufactured in any year

**Subpart 1. Information required.** Deletes obsolete language and replaces it with the reference to the Coast Guard's Safe Loading and Powering Standards found in the Code of Federal Regulations (33 CFR 183, Parts B, C, &D).

**Subpart 2. Method to determine capacity information.** Makes reference to the boat's year of manufacture and the section of the Coast Guard regulations that govern how boat capacity (for horsepower and weight) is determined (33 CFR, 183, Parts C and D).

**Subpart 3. Definitions.** Removes reference to 6110.1300, which is being deleted.

It is necessary and reasonable to modify the language referencing boat capacity plates and capacity determination. Obsolete language is being repealed and being replaced by a reference to the U.S. Coast Guard regulations in effect at the time of boat manufacture. Any future changes in these standards will be reflected automatically through this reference. The average boater will, once again, probably not even notice this change, since they are simply required to stay within the capacity limits on the plate and there has been no change in that statutory requirement.

**6110.1500 - WATERWAY MARKERS.**

**Subpart 1. In general.** Additional language is being added to this subpart that defines the terms "flashing" and "quick-flashing" in reference to lights that are used on buoys and fixed aids to navigation. These definitions comply with the federal standards used by the Coast Guard.

**Subpart 2. Channel marker buoys.**

B. Adds language to allow the use of red nun (conical top) buoys to reflect the U.S. Aids to Navigation (USATON) System requirements. Also provides the standards for daymarks (signboards) that mark channels to comply with the USATON System standards.

**Subpart 3. Other navigational buoys.** Redefines the specifications for the shoreward obstruction (point) buoy to meet the new requirements found in the U.S. Aids to Navigation (USATON) System. By December 31, 2003, the Uniform State Waterway Marking System will be phased-out and combined with the USATON System. The shoreward obstruction buoy was changed under the USATON System from a red-white striped buoy to a black and white striped buoy, since the red-white striped buoy is used to mark the center of a channel (see Subp. 3a).

**Subpart 3a. Mid-channel or safe water buoy.** Defines the new mid-channel or safe water buoy as a red-white striped buoy that may also have a red spherical topmark. Also defines light and daymark characteristics for this marker. These are in compliance with the USATON System.

**Subpart 5. Regulatory and information signs and buoys.**

A. Adds language to define the lighting characteristics for these markers that complies with the USATON System.

I. Changes the height requirement for waterway markers on posts or attached to the bottom to the same level as buoys have been (36" above the surface).

J. Removes the term "florescent" as obsolete and superfluous

K. This section is being stricken, since it is already covered in 6110.1500, Subp. 8.

It is necessary and reasonable to modify the standards for waterway markers to bring them into compliance with the U.S. Aids to Navigation System. The combination of the U.S. Aids to Navigation System and the Uniform State Waterway Marking System (which Minnesota is currently using) was made by the Coast Guard to reduce confusion on the part of both commercial and recreational boat operators and have just one system of waterway markers in the country. This will provide for uniformity for boaters coming from other states and on boundary waters, such as Lake Superior and the St. Croix and Mississippi Rivers. The two aids that are being modified the most are in very limited use (on perhaps five to six lakes in the state), thus making the changeover unnoticeable for most boaters. This upcoming change has been noted for three years in the *Minnesota Boating Guide* and will also be noted again in the 2003-2005 *Minnesota Boating Guides* distributed to approximately 275,000 persons each year and in news releases in the spring of 2003.

**6110.1900 – REPORTS**

**Subpart 1. Accident reports.**

A. This change deletes specific language on minimum property damage (currently at \$500) before a boat accident is required to be reported. Instead, a reference to the federal regulation (33CFR 173.55) is noted in the rule. The U.S. Coast Guard just completed an extensive study of the national standards for boat accident reporting and determined that a minimum property damage value of \$2,000 should be used. Their regulation was changed to reflect this increase. The proposed rules change would simply reference the federal level and it also automatically change with any changes in that level in future years.

It is necessary and reasonable to modify the minimum level of property damage for boat accident reportability. The states must submit their accident reports into the Coast Guard system and reporting levels need to match across the U.S. for consistency sake. The Coast Guard modified their reportability level to \$2,000 based on cost of living changes since the amount was last set at \$500. This change will also be noted beginning in the 2003 *Minnesota Boating Guide* distributed to approximately 275,000 persons each year and in news releases in the spring of 2003.

## OTHER CONSIDERATIONS

### Review of Documents

Sources cited in the document can be reviewed on workdays from 8am to 4:30pm at the Bureau of Information, Education and Licensing office at DNR Headquarters, 500 Lafayette Road, St. Paul, MN 55155.

Upon request, this document and others can be made available in an alternative format, such as large print, Braille or cassette tape. To make such a request, please contact Kim Elverum by writing to the DNR Bureau of Information, Education and Licensing, 500 Lafayette Road, St. Paul, MN 55155-4046, by calling 651-296-0905 or by e-mail at: kim.elverum@dnr.state.mn.us.

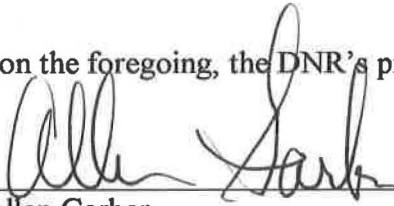
### Witnesses

If the rules go to public hearing, the witness below may testify on behalf of the DNR in support of the need a reasonableness of the rules. The witness will be available to answer questions about the development and content of the rules. The witness for the DNR is:

Kim Elverum, Boat & Water Safety Coordinator  
Bureau of Information, Education and Licensing  
Box 46  
500 Lafayette Road  
St. Paul, MN 55155-4046

Based on the foregoing, the DNR's proposed rules are both necessary and reasonable.

By:

  
Allen Garber,  
Commissioner

Dated:

