

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

#652

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11/12 DUE DATE 12/2

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved _____ Date Sent Back to Agency D.N.R.

ATTN: Bill Clapp III 11/25/80

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1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 9.25.80
   Sufficiency ✓
6. ~~Secretary of State's~~ Agency's List ✓ (one copy only)
7. Certificate ~~of Acquisition of Secretary of State's List~~ of Accuracy ✓
8. ~~Secretary of State's Certification of Delivery of Secretary of State's List to Agency~~
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓ 8.19.80
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓ 8.25.80
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ combined with #15 - Order Adopting
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓ combined with #13 - F. of F.
16. Report of Chief Hearing Examiner N/A
17. Order Approving Incorporation by Reference, where applicable ✓
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
20. Petition by Public, where applicable N/A

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources
3rd Floor, Centennial Office Building

DATE Nov. 25, 1980

ATTN: A. W. CLAPP III, S.A.A.G.

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Department of Natural Resources Proposed Amendments to Board and Water Safety Rules.

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

- - - - - - - -

In the Matter of the Department of Natural Resources Proposed Amendments to Boat and Water Safety Rules

FINDINGS OF THE COMMISSIONER AND ORDER ADOPTING RULE

- - - - - - - -

I have read the Report of the Hearing Examiner. No exceptions have been filed. Concurring in those Findings and Conclusions, I adopt them as my own.

NOW THEREFORE IT IS ORDERED that the proposed amendments are adopted as they were published in the State Register, with the further changes recommended by staff at the hearing and found appropriate by the hearing examiner.

Dated November 7 Nov, 1980.

Joseph N. Alexander

JOSEPH N. ALEXANDER
Commissioner

Department of Natural Resources

Amendments to the Boat and Water Safety Rules

Rules as Adopted

final showing differences from amendment as proposed

AG copy

NR 200 Licensing of watercraft

(b) Display of license certificate. No person shall operate or use a watercraft, except a non-motorized canoe, kayak, sailboat, sailboard or rowing shell required to be licensed unless the license certificate for such watercraft is on board and available for inspection by authorized enforcement officers. Owners of non-motorized canoes, kayaks, sailboats, sailboards, or rowing shells shall produce the license certificate for such watercraft within a reasonable time upon request of authorized enforcement officers. The owner of rental watercraft may keep the license certificate available for inspection on the premises from which the watercraft is rented, provided that the owner's business is legibly printed on the rear half and on both sides of the watercraft in the same size and manner as required for the license number in NR 200, Section (c).

(c) Display of license number & validation decal on motorized watercraft. The license number, on all watercraft, except non-motorized canoes, kayaks, sailboats, sailboards and rowing shells shall be securely affixed on each side of the forward half of the watercraft for which it was issued in such a position as to provide clear and legible identification. The letters and numerals must be of a color that contrasts with the background and may be reflectorized decals or metal or may be painted. The letters and numerals shall read from left to right and shall not be less than 3 inches in height, of block type, of a stroke not less than ½ inch or more than 3/4 inch in width, not including a border. The license number shall be maintained so that it is clearly visible and legible, and the letter groups must be separated from the numeral groups by a space of not less than 3 inches nor more than 4 inches. Adjacent letters and

numerals within each group must be spaced not less than ½ inch nor more than 3/4 inch apart. A state validation decal for the current license period must be affixed toward the stern of the boat and not more than 4 inches from the first or last letter of the license number on each side of the boat.

(e) Marking of non-motorized sailboats and sailboards. All non-motorized sailboats and sailboards shall display the decals furnished by the Department of Natural Resources for such watercraft. These decals shall be securely affixed on each side of the forward half of the watercraft for which it was issued, in such a position as to provide clear and legible identification. If it is impossible to display such decals on the forward half of such watercraft so as to provide clear and legible identification both decals must then be affixed to the stern of such watercraft.

(g) Other insignia. No person shall operate any watercraft, except a non-motorized canoe, kayak, rowing shell, sailboard or sailboat, which has any number, letter, design or insignia displayed on either side thereof which is closer than 24 inches to any part of the watercraft license number of validation decal.

(j) Enforcement pennant. The pennant required under Minn. Stat. § 361.215 shall be triangular in shape and of the following dimensions: Four (4) inches in depth at the staff and one foot in length. The pennant shall be of a blue background and bear a three (3) inch replica of the Minnesota State Seal.

NR 201 Rental of watercraft

(a) Condition and equipment of rented watercraft.

(8) The owner of a business which rents, leases, or hires out watercraft shall provide for each person on board the watercraft a lifesaving device required by law or these rules, as well as all other required safety equipment for each watercraft.

(b) Persons to whom watercraft may be rented. No watercraft shall be knowingly rented or offered for rent to any person who is under the influence

of alcohol or a controlled substance.

NR 202 Navigation of watercraft on the waters of the state; safety equipment.

(a) General rules of the road.

(4) A non-motorized watercraft has right-of-way over a motor-powered watercraft except when it is the overtaking watercraft. Non-motorized watercraft should not insist on this right-of-way when approaching large commercial vessels. Motor-powered watercraft should always keep clear and pass astern of ~~such~~ non-motorized watercraft. HE 16

(5) All watercraft shall yield the right-of-way to enforcement or other authorized emergency watercraft displaying a red or blue flashing light.

(b) General mode of operation of watercraft.

(3) No person shall operate a watercraft within 150 feet of a diver's warning flag (described in Minn. Stat. § 361.085).

(4) The operator of any watercraft, when signaled to do so by a conservation officer, sheriff or sheriff's deputy shall bring the watercraft to a stop or maneuver it in a manner which will allow the officer to come alongside.

(c) Personal flotation (lifesaving) devices

(1) Every person on board a watercraft shall wear or have readily accessible a U.S. Coast Guard approved Type I, II, III or IV personal flotation device.

(2) A Coast Guard approved Type V personal flotation device may be carried in lieu of the Type I, II, III or IV personal flotation device required in this regulation, if the Type V personal flotation device is approved for the activity in which the watercraft is being used.

(3) Persons being towed by a watercraft on water skis, or other devices shall be considered to be on board the towing watercraft, for the purpose of personal flotation device requirements. A U.S. Coast Guard approved personal flotation device must be either carried in the towing watercraft or worn by the person being towed.

(4) All personal flotation devices required by these rules shall be:

(aa) Approved by the United States Coast Guard.

(bb) Legibly marked with the approval number issued by the United States Coast Guard.

(cc) In serviceable condition.

(dd) Either readily accessible or worn.

(ee) Of the appropriate size for the intended wearer, if the device is designed to be worn.

(d) Sound producing devices

(1) All motorboats 16 feet or more in overall length shall carry a power, hand or mouth-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one-half mile.

(2) All motorboats 26 feet but less than 40 feet in overall length shall be equipped with a hand or power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(3) All motorboats 40 feet or more in length shall be equipped with a power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(e) Fire extinguishers

(1) All motorboats less than 26 feet in length with construction permitting the entrapment of explosive or flammable gases or vapors must have at least one B-I type hand portable U.S. Coast Guard approved fire extinguisher fully charged and in serviceable condition on board and readily accessible.

(2) All motorboats 26 feet to less than 40 feet in length must have at least two B-I U.S. Coast Guard approved hand portable fire extinguishers, or at least one B-II type U.S. Coast Guard approved hand portable fire extinguisher on board in serviceable condition, fully charged and readily accessible.

(3) All motorboats 40 feet to not more than 65 feet in length must have at least three B-I type U.S. Coast Guard approved fire extinguishers; or at

least one B-I type plus one B-II type approved hand portable fire extinguisher on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(4) All motorboats over 65 feet in length must have at least three B-II type U.S. Coast Guard approved fire extinguishers on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(5) When a motorboat is equipped with a U.S. Coast Guard approved fixed fire extinguishing system installed in the engine compartment, one less B-I extinguisher is required. The fixed system must be in serviceable condition and fully-charged.

(f) Ventilation equipment

(g) Lighting equipment

(7) All watercraft over 65 feet in length must display the lights required by NR 202 (g)(4).

(8) All non-motorized watercraft when under way or anchored, between sunset and sunrise, shall carry aboard but not necessarily fixed to any part of the watercraft a minimum of one lantern or flashlight capable of showing a white light visible all around the horizon at a distance of two miles or more. Such light or lantern shall be displayed in sufficient time to avoid collision with another watercraft.

(9) When a watercraft is moored to a buoy authorized by a permit issued under NR 207 it shall not be required to display the 32-point anchor light required in NR 202 (g)(4) through (8).

NR 203 Capacity plate information requirements

(a) For watercraft constructed from January 1, 1972 through July 31, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) Safe maximum horsepower;

(bb) Maximum number of persons at 150 pounds per person;

(cc) Properly located maximum weight in pounds of persons, motor and gear.

(2) Formula for determining maximum weight. The formula for determining the maximum weight for watercraft manufactured for sale in Minnesota, 19 feet and under, except canoes, kayaks, and sailboats, shall be the recommended practices for watercraft load capacity Project H-5 (adopted) or Project H-5a (proposed) contained in the American Boat and Yacht Council Incorporated publication "Safety Standards for Small Craft 1971-72".

(3) Formula for determining maximum horsepower. The formula for determining the maximum horsepower for watercraft manufactured for sale in Minnesota, 19 feet and under, shall be the "recommended Practices and Standards Covering Safe Powering of Small Craft" Project P-11 (proposed) contained in the American Boat and Yacht Council, Incorporated publication "Safety Standards for Small Craft 1971-72".

(b) For watercraft constructed on or after August 1, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) For outboard boats

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons, motor and gear) in pounds

Maximum motor horsepower or maximum horsepower with and without remote steering

(bb) For inboard, inboard/outdrive and boats without mechanical propulsion

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons and gear) in pounds

(2) The method used for determining capacity information shall comply with the U.S. Coast Guard Safe Loading and Powering Standards as set forth in

33 CFR Part 183.

(c) The terms "safe power capacity" and "safe carrying capacity" used in Minn. Stat. § 361.05 (4) shall be that capacity displayed on the manufacturer's capacity plate. If no such plate exists, the method referred to in either NR 203 (a)(2) & (3) or NR 203 (b)(2) shall be used to determine the capacity.

NR 204 Waterway markers

(b) Channel marker buoys

(1) Every channel marker buoy shall have the external form of a cylinder having a circular transverse cross-section not less than 9 inches in diameter. All such markers must extend at least 36 inches above the water.

(3) To indicate a watercraft should pass to south or west, where there is no well-defined channel, a buoy shall have the top surface and upper 5 inches colored red and the remainder colored white. If the buoy is reflectorized, it shall be done with a white strip, no less than 4 inches in width, that completely encircles the buoy and it shall be placed directly under the red top. A white quick-flashing light shall be used if the buoy is lighted.

(c) Other navigational buoys. A buoy indicating that a watercraft should not pass between it and the nearest shore shall have a circular transverse cross section measuring not less than 9 inches in diameter and shall extend at least 36 inches above the surface of the water. Each such buoy shall be marked with alternating vertical red and white stripes. White reflectorization may be used on a minimum of the upper four inches of the white vertical stripe. Red reflectorization may be used on a minimum of the upper four inches of the red vertical stripes. A white quick-flashing light shall be used if the buoy is lighted.

(d) Mooring buoys. Every buoy placed in the waters of the state for use in anchoring or mooring watercraft may be of any practicable size or shape, but must have at least 8 inches extending above the waterline. No anchoring buoy

may have a diameter of over 24 inches if circular or a width of more than 24 inches if some other shape. No mooring or anchor buoy may be placed in any public water if it obstructs access to any public or private property or creates a navigational hazard. No mooring or anchor buoy may be placed in or upon the water of the State except by public authority or under a permit issued by the sheriff of the county. Every such buoy shall be colored white and shall be encircled by a visible blue band at least one inch wide. Mooring buoys must have a minimum total of 16 square inches of white reflectorization, part of which must be visible from any direction. Mooring buoys, if lighted, shall show a flashing white light.

(e) Regulatory and information signs and buoys

(1) No regulatory or informational signs or buoys may be placed in or upon the waters of this state, except by public authority or under a permit issued by the sheriff of the county. All such signs and buoys shall be colored white except as hereinafter provided.

When a buoy is used as a regulatory or informational marker (except in private swimming areas), it shall have two orange-colored horizontal bands completely around the buoy's circumference, one such band at the top, and the other just above the waterline. The appropriate geometric shape(s) indicating the buoy's purpose and any lettering or numerals shall be placed between these horizontal bands. The buoy itself shall have a circular transverse cross section of at least 9 inches and shall extend at least 36 inches above the surface of the water.

(2) Every sign or buoy giving information for the convenience of watercraft operators shall bear a two-inch wide orange-colored band forming an upright rectangle measuring at least 14 inches in height outside dimensions.

(3) Signs or buoys indicating danger to watercraft shall bear an orange-colored band of two-inch width forming an upright diamond at least 14 inches in outside height, and such signs shall bear a printed statement of the source of danger.

(4) Signs or buoys indicating controlled water areas in which boating, fishing, waterskiing, skin diving, or other water activities are restricted, limited or otherwise subjected to special rules or regulations shall bear a two-inch wide band forming a circle at least 12 inches in outside diameter. The limitation, restriction, prohibition or regulation effective within a controlled area shall be printed inside of the orange-colored circle when possible.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(5) Signs or buoys directing all watercraft to keep out of a specific water area shall bear a two-inch orange-colored band forming an upright diamond at least 14 inches in outside height, dissected vertically and horizontally by an orange-colored strip two inches wide.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(6) Signs indicated winter ice dangers to persons, motor vehicles, snowmobiles, all-terrain vehicles, ice boats, or any other conveyance used to transport persons over the ice on public waters of the state shall bear a two-inch wide orange-colored band forming an upright diamond at least 14 inches in outside height and such signs shall bear a printed statement of the source of danger.

Where used, except for the marking of aeration systems operating under a permit from the Commissioner of Natural Resources, these signs shall completely line the perimeter of the ice hazard at intervals not exceeding 75 feet and shall be at least 48 inches above the ice. When a permit is issued for an aeration system, the commissioner shall specify the marking requirements for each system as a part of the permit.

(7) No person shall operate any motor vehicle, snowmobile, all-terrain vehicle, ice boat, or any other conveyance used to transport persons over the ice on public waters of the state within 150 feet of a diver's warning flag

described in Minn. Stat. § 361.085.

(8) Written material on any waterway marker sign or buoy shall be printed with black letters at least 2 inches in height, on a white background.

NR 205 Marking of legally designated swimming areas

(b) Other areas

(1) The entire perimeter of the water area shall be marked with white marking buoys no less than 9 inches in diameter and extending no less than 36 inches above the surface of the water. Each marking buoy must contain two horizontal bands of orange, one such band at the top, and the other just above the waterline. Each marking buoy must also contain two diamond shapes with crosses which means "boats keep out." These diamond shapes must have a vertical diagonal of not less than 14 inches. The borders of the diamond and cross outline shall not be less than 2 inches in width. The color of these borders shall be orange. The diamonds shall be placed midway between the horizontal bands. The words "swim area" should also appear on each marker in no less than two-inch letters.

NR 206 Water skiers

Length of ski tow ropes. No person being towed on water skis, aqua-plane, saucer or other device shall be towed with a rope, wire, cable or other towing device extending more than 150 feet from the towing watercraft without obtaining a permit from the local sheriff.

NR 207 Placement of temporary structures and buoys in the waters of the state

(a) Generally. No person shall leave any temporary structure not extending from shore, or any buoy or sign in the waters of this state between the hours of sunset and sunrise without first obtaining a permit in writing therefor from the sheriff of the county. Mooring buoys must be placed as provided in NR 204(d). Swimming area markers must be placed as provided in NR 205.

NR 210 Reimbursement of county sheriffs for search and rescue operations

(b) Reimbursement by state. A sheriff claiming reimbursement shall submit in duplicate an itemized invoice, verified by the county auditor, together with a statement showing that the operation qualified for reimbursement to the Department of Natural Resources. All claims will be subject to audit by the state.

NR 211 Penalties

Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor. ~~and be punished by a fine of not more than $300, or by imprisonment for not more than 90 days or both.~~ [Note: This section was not in the proposed rules, but appears here because of an oversight of a 1977 statute changing the penalty for a misdemeanor, and a recommendation by the hearing examiner. It does not constitute a substantial change in these rules.]

HE 26

APPROVED AS TO FORM AND LEGALITY

11/24 1980

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 24 1980
Joan Anderson Growe
Secretary of State

3:25 P.M.

Department of Natural Resources

Proposed Amendments to the Boat and Water Safety Rules

Rules as Proposed

NR 200 Licensing of watercraft

(b) Display of license certificate. No person shall operate or use a watercraft, except a non-motorized canoe, kayak, ~~or~~ sailboat, sailboard or rowing shell required to be licensed unless the license certificate for such watercraft is on board and available for inspection by authorized enforcement officers. Owners of non-motorized canoes, kayaks, sailboats, sailboards, or rowing shells shall produce the license certificate for such watercraft within a reasonable time upon request of authorized enforcement officers. The owner of rental watercraft may keep the license certificate available for inspection on the premises from which the watercraft is rented, provided that the owner's business is legibly printed on the rear half and on both sides of the watercraft in the same size and manner as required for the license number in NR 200, Section (c).

(c) Display of license number & validation decal on motorized watercraft. The license number, on all watercraft, except non-motorized canoes, kayaks, sailboats, sailboards and rowing shells shall be securely affixed on each side of the forward half of the watercraft for which it was issued in such a position as to provide clear and legible identification. The letters and numerals must be of a color that contrasts with the background and may be reflectorized decals or metal or may be painted. The letters and numerals shall read from left to right and shall not be less than 3 inches in height, of block type, of a stroke not less than ½ inch or more than 3/4 inch in width, not including a border. The license number shall be maintained so that it is clearly visible and legible, and the letter groups must be separated from the numeral groups by a space of not less than 3 inches nor more than 4 inches. Adjacent letters and

DNR Exh. No. 4
File No. DNR-81-003-PR
par Date 9/25/80

numerals within each group must be spaced not less than ½ inch nor more than 3/4 inch apart. A state validation decal for the current license period must be affixed toward the stern of the boat and not more than 4 inches from the first or last letter of the license number on each side of the boat.

(e) Marking of non-motorized sailboats and sailboards. All non-motorized sailboats and sailboards shall display the decals furnished by the Department of Natural Resources for such watercraft. These decals shall be securely affixed on each side of the forward half of the watercraft for which it was issued, in such a position as to provide clear and legible identification. If it is impossible to display such decals on the forward half of such watercraft so as to provide clear and legible identification both decals must then be affixed to the stern of such watercraft.

(g) Other insignia. No person shall operate any watercraft, except a non-motorized canoe, kayak, rowing shell, sailboard or sailboat, which has any number, letter, design or insignia displayed on either side thereof which is closer than 24 inches to any part of the watercraft license number of validation decal.

(j) Enforcement pennant. ~~All watercraft used in the enforcement of these rules and regulations and the laws under which they are promulgated shall be marked by the flying of a pennant.~~ The pennant required under Minn. Stat. § 361.215 shall be triangular in shape and of the following dimensions: Four (4) inches in depth at the staff and one foot in length. The pennant shall be of a blue background and bear a three (3) inch replica of the Minnesota State Seal.

~~(k) Determining length of watercraft. For the purpose of determining the license fee, the overall length of the watercraft shall be measured from transom top to point of the bow.~~ Redefined by 1980 Legislature under 361.02 Subd 14

NR 201 Rental of watercraft

(a) Condition and equipment of rented watercraft.

(8) The owner of a business which rents, leases, or hires out watercraft shall provide for each person on board the watercraft a lifesaving device required by law or these rules, as well as all other required safety equipment for each watercraft.

specifically what does this provide proper notice?

(b) Persons to whom watercraft may be rented. No watercraft shall be knowingly rented or offered for rent to any person who is under the influence of ~~an alcoholic beverage, narcotic or habit-forming drug.~~ alcohol or a controlled substance.

1980 leg. changes in MS 361.12 -

NR 202 Navigation of watercraft on the waters of the state; safety equipment.

(a) General rules of the road.?

(4) A ~~sailboat~~ non-motorized watercraft has right-of-way over a motor-powered watercraft except when it is the overtaking watercraft. ~~Small sailboats~~ Non-motorized watercraft should not insist on this right-of-way when approaching large commercial vessels. ~~Watercraft propelled by oars or paddles shall also be given right-of-way by motor-powered watercraft.~~ Motor-powered watercraft should always keep clear and pass astern of such watercraft. commercial Vessels?

(5) All watercraft shall yield the right-of-way to enforcement or other authorized emergency watercraft displaying a red or blue flashing light.

(b) General mode of operation of watercraft.

(3) No person shall operate a watercraft within 150 feet of a diver's warning flag (described in (~~NR-206-(a)(6).~~ Minn. Stat. § 361.085). ?

(4) The operator of any watercraft, when signaled to do so by a conservation officer, sheriff or sheriff's deputy shall bring the watercraft to a stop or maneuver it in a manner which will allow the officer to come alongside.

~~(c)--Safety-Equipment.~~

~~---(1)--Every-person-on-board-a-non-motorized-canoe-or-kayak-shall-wear or-have-readily-accessible-to-him-on-board-the-non-motorized-canoe-or-kayak for-his-personal-use-a-U.S.-Coast-Guard-approved-lifesaving-device.--A-lifesaving device-of-the-vest-type-with-no-less-than-150-permanently-inflated-air-sacs-of 12-mil-vinyl-construction-and-capable-of-supporting-a-minimum-weight-of-13 pounds-may-be-substituted-for-a-U.S.-Coast-Guard-approved-lifesaving-device.~~

~~(2)--All-motor-powered-watercraft-26-feet-or-more-in-overall-length shall-be-equipped-with-one-hand-or-power-operated-horn-or-whistle-audible-at least-one-mile.~~

~~(3)--All-motor-powered-watercraft-less-than-26-feet-in-length-with construction-permitting-the-entrapment-of-explosive-or-flammable-gases-or vapors-must-have-at-least-one-B-1-type-hand-portable-U.S.-Coast-Guard-approved fire-extinguisher-fully-charged-and-in-good-operating-condition-on-board-and readily-accessible.~~

~~(4)--All-motor-powered-watercraft-26-feet-or-less-than-40-feet-in length-must-have-at-least-two-B-I-U.S.-Coast-Guard-approved-hand-portable-fire-extinguishers,-or-at-least-one-B-II-type-U.S.-Coast-Guard-approved-hand-portable fire-extinguisher-on-board-in-good-condition,-fully-charged-and-readily-accessible.~~

~~(5)--All-motor-powered-watercraft-40-feet-to-not-more-than-65-feet-in length-must-have-at-least-three-B9I-type-U.S.-Coast-Guard-approved-fire extinguishers;-or-at-least-one-B-I-type-plus-one-B-II-type-approved-hand-portable fire-extinguisher-on-board.--These-fire-extinguishers-must-be-fully-charged,-in good-working-condition-and-readily-accessible.~~

~~(6)--All-motor-powered-watercraft-over-65-feet-in-length-must-have-at least-three-B-II-type-U.S.-Coast-Guard-approved-fire-extinguishers-on-board. These-fire-extinguishers-must-be-fully-charged,-in-good-working-condition-and readily-accessible.~~

(c) Personal flotation (lifesaving) devices

(1) Every person on board a watercraft shall wear or have readily accessible a U.S. Coast Guard approved Type I, II, III or IV personal flotation device.

(2) A Coast Guard approved Type V personal flotation device may be carried in lieu of the Type I, II, III or IV personal flotation device required in this regulation, if the Type V personal flotation device is approved for the activity in which the watercraft is being used.

(3) Persons being towed by a watercraft on water skis, or other devices shall be considered to be on board the towing watercraft, for the purpose of personal flotation device requirements. A U.S. Coast Guard approved personal flotation device must be either carried in the towing watercraft or worn by the person being towed.

(4) All personal flotation devices required by these rules shall be:

(aa) Approved by the United States Coast Guard.

(bb) Legibly marked with the approval number issued by the United States Coast Guard.

(cc) In serviceable condition.

(dd) Either readily accessible or worn.

(ee) Of the appropriate size for the intended wearer, if the device is designed to be worn.

(d) Sound producing devices

(1) All motorboats 16 feet or more in overall length shall carry a power, hand or mouth-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one-half mile.

(2) All motorboats 26 feet but less than 40 feet in overall length shall be equipped with a hand or power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(3) All motorboats 40 feet or more in length shall be equipped with a power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(e) Fire extinguishers

(1) All motorboats less than 26 feet in length with construction permitting the entrapment of explosive or flammable gases or vapors must have at least one B-I type hand portable U.S. Coast Guard approved fire extinguisher fully-charged and in serviceable condition on board and readily accessible.

(2) All motorboats 26 feet to less than 40 feet in length must have at least two B-I U.S. Coast Guard approved hand portable fire extinguishers, or at least one B-II type U.S. Coast Guard approved hand portable fire extinguisher on board in serviceable condition, fully-charged and readily accessible.

(3) All motorboats 40 feet to not more than 65 feet in length must have at least three B-I type U.S. Coast Guard approved fire extinguishers; or at least one B-I type plus one B-II type approved hand portable fire extinguisher on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(4) All motorboats over 65 feet in length must have at least three B-II type U.S. Coast Guard approved fire extinguishers on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(5) When a motorboat is equipped with a U.S. Coast Guard approved fixed fire extinguishing system installed in the engine compartment, one less B-I extinguisher is required. The fixed system must be in serviceable condition and fully-charged.

(f) ~~(d)~~ Ventilation equipment

(g) ~~(e)~~ Lighting equipment

(7) All watercraft over 65 feet in length must display the lights required by ~~the Inland Rules Light Requirements found in~~ NR 202 ~~(e)~~(g)~~(5)~~(4).

(8) All non-motorized ~~canoes, kayaks, sailboats and rowboats~~ watercraft when under way or anchored, between sunset and sunrise, shall carry aboard but not necessarily fixed to any part of the watercraft a minimum of one a lantern or flashlight capable of showing a white light visible all around the horizon at a distance of two miles or more. ~~in sufficient time to avoid collision with another watercraft.~~ Such light or lantern shall be displayed. in sufficient time to avoid collision with another watercraft.

(9) When a watercraft is moored to a buoy authorized by a permit issued under NR 207 it shall not be required to display the 32-point anchor light required in NR 202 (g)(4) through (8).

NR 203 Capacity plate information requirements

(a) For watercraft constructed from January 1, 1972 through July 31, 1980:

(1)~~(a)~~ Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa)~~(1)~~ Safe maximum horsepower;

(bb)~~(2)~~ Maximum number of persons at 150 pounds per person;

(cc)~~(3)~~ Properly located maximum weight in pounds of persons, motor and gear.

(2)~~(b)~~ Formula for determining maximum weight. The formula for determining the maximum weight for watercraft manufactured for sale in Minnesota, 19 feet and under, except canoes, kayaks, and sailboats, shall be the recommended practices for watercraft load capacity Project H-5 (adopted) or Project H-5a (proposed) contained in the American Boat and Yacht Council Incorporated publication "Safety Standards for Small Craft 1971-72".

Not Amended

(3)~~(c)~~ Formula for determining maximum horsepower. The formula for determining the maximum horsepower for watercraft manufactured for sale in Minnesota, 19 feet and under, shall be the "recommended Practices and Standards Covering Safe Powering of Small Craft" Project P-11 (proposed) contained in the American Boat and Yacht Council, Incorporated publication "Safety Standards for Small Craft 1971-72".

(b) For watercraft constructed on or after August 1, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) For outboard boats

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons, motor and gear) in pounds

Maximum motor horsepower or maximum horsepower with and without remote steering

(bb) For inboard, inboard/outdrive and boats without mechanical propulsion

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons and gear) in pounds

(2) The method used for determining capacity information shall comply with the U.S. Coast Guard Safe Loading and Powering Standards as set forth in 33 CFR Part 183. (Incorporation by reference) - Redundant

~~(c)~~ The terms "safe power capacity" and "safe carrying capacity" used in Minn. Stat. § 361.05 (4) shall be that capacity displayed on the manufacturer's capacity plate. If no such plate exists, the method referred to in either NR 203 (a)(2) & (3) or NR 203 (b)(2) shall be used to determine the capacity.

NR 204 Waterway markers

(b) Channel marker buoys

(1) Every channel marker buoy shall have the external form of a ~~flat topped~~ cylinder having a circular transverse cross-section not less than 9 inches ~~and not more than 15 inches~~ in diameter. All such markers must extend at least 36 inches above the water.

(3) To indicate a watercraft should pass to south or west, where there is no well-defined channel, a buoy shall have the top surface and upper 5 inches colored red and the remainder colored white. If the buoy is reflectorized, it shall be done with a white strip, no less than 4 inches in width, that completely encircles the buoy and it shall be placed directly under the ~~black~~ red top. A white quick-flashing light shall be used if the buoy is lighted.

(c) Other navigational buoys. A buoy indicating that a watercraft should not pass between it and the nearest shore shall have ~~a flat top and shall have a square~~ a circular transverse cross-section measuring not less than 9 inches in diameter ~~nor more than 15 inches across on a side~~ and shall extend at least 36 inches above the surface of the water. ~~Each such buoy shall have a white top surface and a white vertical stripe on each side extending medially from top to bottom of a width equal to one half the width of each side. The remainder shall be colored red.~~ Each such buoy shall be marked with alternating vertical red and white stripes. White reflectorization may be used on a minimum of the upper four inches of the white vertical stripe. Red reflectorization may be used on a minimum of the upper four inches of the red vertical stripes. A white quick-flashing light shall be used if the buoy is lighted.

(d) Mooring buoys. Every buoy placed in the waters of the state for use in anchoring or mooring watercraft may be of any practicable size or shape, but must have at least 8 inches extending above the waterline. No anchoring buoy may have a diameter of over ~~20~~ 24 inches if circular or a width of more than ~~20~~ 24 inches if some other shape. No mooring or anchor buoy may be placed in any public water if it obstructs access to any public or private property or creates a navigational hazard. No mooring or anchor buoy may be placed in or upon the

water of the State except by public authority or under a permit issued by the sheriff of the county. Every such buoy shall be colored white and shall be encircled by a visible blue band at least ~~three~~ one inches wide. Mooring buoys must have a minimum total of 16 square inches of white reflectorization, part of which must be visible from any direction. Mooring buoys, if lighted, shall show a flashing white light.

(e) Regulatory and information signs and buoys

(1) No regulatory or informational signs or buoys may be placed in or upon the waters of this state, except by public authority or under a permit issued by the sheriff of the county. All such signs and buoys shall be colored white except as hereinafter provided.

When a buoy is used as a regulatory or informational marker (except in private swimming areas), it shall have two orange-colored horizontal bands completely around the buoy's circumference, one such band at the top, and the other just above the waterline. The appropriate geometric shape(s) indicating the buoy's purpose and any lettering or numerals shall be placed between these horizontal bands. The buoy itself shall have a circular transverse cross-section of at least 9 inches and shall extend at least 36 inches above the surface of the water.

(2) Every sign or buoy giving information for the convenience of watercraft operators shall bear a two-inch wide orange-colored band forming an upright rectangle measuring at least 14 inches in height ~~and width,~~ outside dimensions.

(3) Signs or buoys indicating danger to watercraft shall bear an orange-colored band of two-inch width forming an upright diamond at least 14 inches in outside ~~width~~ height, and such signs shall bear a printed statement of the source of danger.

(4) Signs or buoys indicating controlled water areas in which boating, fishing, waterskiing, skin diving, or other water activities are restricted,

limited or otherwise subjected to special rules or regulations shall bear a two-inch wide band forming a circle at least ~~24~~ 12 inches in outside diameter. The limitation, restriction, prohibition or regulation effective within a controlled area shall be printed inside of the orange-colored circle when possible.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(5) Signs or buoys directing all watercraft to keep out of a specific water area shall bear a two-inch orange-colored band forming an upright diamond at least 14 inches in outside ~~width~~ height, dissected vertically and horizontally by an orange-colored strip two inches wide.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(6) Signs indicating winter ice dangers to persons, motor vehicles, snowmobiles, all-terrain vehicles, ice boats, or any other conveyance used to transport persons over the ice on public waters of the state shall bear a two-inch wide orange-colored band forming an upright diamond at least 14 inches in outside width and such signs shall bear a printed statement of the source of danger.

Where used, except for the marking of aeration systems operating under a permit from the Commissioner of Natural Resources, these signs shall completely line the perimeter of the ice hazard at intervals not exceeding 75 feet and shall be at least 48 inches above the ice. When a permit is issued for an aeration system, the commissioner shall specify the marking requirements for each system as a part of the permit.

~~Such signs must be removed from the ice, by whomever placed, not later than April 1.~~

(7) No person shall operate any motor vehicle, snowmobile, all-terrain vehicle, ice boat, or any other conveyance used to transport persons over the

ice on public waters of the state within 150 feet of a diver's warning flag described in ~~NR-206-(a)(6)~~ Minn. Stat. § 361.085.

(8) Written material on any waterway marker sign or buoy shall be printed with black letters at least 2 inches in height, on a white background. ~~All-lettering-shall-be-placed-inside-the-area-enclosed-by-the-orange-band, except-that-explanatory-material-appearing-on-signs-indicating-an-area-prohibited-to-watercraft-shall-be-placed-outside-of-the-orange-band.~~

NR 205 Marking of legally designated swimming areas

(b) Other areas

(1) The entire perimeter of the water area shall be marked with white marking buoys no less than 9 inches in diameter and extending no less than 36 inches above the surface of the water. Each marking buoy must contain two horizontal bands of ~~reflectorized-international~~ orange, one such band at the top, and the other just above the waterline. Each marking buoy must also contain two diamond shapes with crosses which means "boats keep out." These diamond shapes must have a vertical diagonal of not less than 14 inches. ~~and-a-horizontal diagonal--of-not-less-than-14-inches.~~ The borders of the diamond and cross outline shall not be less than ~~1~~ 2 inches in width. The color of these borders shall be ~~reflectorized~~ ~~international~~ orange. The diamonds shall be placed midway between the horizontal bands. The words "swim area" should also appear on each marker in no less than two-inch letters.

NR 206 ~~Scuba-Divers-and~~ Water skiers

~~(a)--Diver's-Flags~~

~~(1)--Every-person-who-shall-swim-in-any-waters-of-the-state,-except-in legally-designated-swimming-areas,-while-wearing-or-carrying-any-apparatus including-a-snorkel-permitting-him-to-breathe-while-under-water,-shall-tow-a diver's-flag,-displayed-above-the-surface-of-the-water,-which-shall-be-attached-to-a-device-capable-of-supporting-such-swimmer-and-his-equipment-upon-the-surface of-the-water.~~

~~(2)--Every-person-who-causes-a-diver's-flag-to-be-displayed-shall-remain within-50-thereof,-measured-on-the-surface-of-the-water.~~

~~(3)--A-diver's-flag-shall-not-be-towed-by-more-than-one-person,-except as-provided-in-(5)-below.~~

~~(4)--No-person-shall-display-a-diver's-flag-so-as-to-cause-unlawful obstruction-to-navigation.~~

~~(5)--If-a-group-of-divers-is-operating-in-an-area,-the-outside-of-the perimeter-shall-be-marked-and-shall-be-outside-of-the-normal-area-of-navigation. These-markings-shall-consist-of-the-official-diver's-flag-and-shall-be-placed around-the-perimeter-of-the-diving-area-at-intervals-not-exceeding-150-feet.~~

~~(6)--A-diver's-flag-displayed-to-indicate-the-presence-of-persons engaged-in-underwater-activities-shall-measure-at-least-15-inches-horizontally and-12-inches-vertically,-and-both-sides-thereof-shall-have-a-red-colored-back ground-bisected-diagonally-by-a-three-inch-wide-white-stripe-having-its-upper end-adjacent-to-the-flagstaff.~~

~~(7)--A-diver's-flag-shall-be-displayed-in-a-vertical-plane-extended-from-a-rigid-flagstaff-equipped-to-maintain-the-upper-edge-of-the-flag-at least-three-feet-above-the-water-surface.~~

~~(8)--Any-diver's-flag-may-be-reflectorized-or-fluorescent-provided that-the-entire-displayed-surface-thereof-is-uniformly-reflectorized-or fluorescent.~~

~~(b)~~ Length of ski tow ropes. No person being towed on water skis, aqua-plane, saucer or other device shall be towed with a rope, wire, cable or other towing device extending more than 150 feet from the towing watercraft without obtaining a permit from the local sheriff.

NR 207 Placement of temporary structures and buoys in the waters of the state

(a) Generally. No person shall leave any temporary structure not extending from shore, or any ~~navigational~~ buoy or ~~regulatory-or-information~~

sign in the waters of [redacted] is state between the hours of [redacted] set and sunrise without first obtaining a permit in writing therefor from the sheriff of the county. Mooring buoys must be placed as provided in NR 204(d). Swimming area markers must be placed as provided in NR 205.

NR 210 Reimbursement of county sheriffs for search and rescue operations

(b) Reimbursement by state. A sheriff claiming reimbursement shall submit in duplicate an itemized invoice, verified by the county auditor, together with a statement showing that the operation qualified for reimbursement to the ~~administrator of the Bureau of Business Management, the~~ Department of Natural Resources~~, Centennial Building, Saint Paul, Minnesota 55155~~. All claims will be subject to audit by the state.

DNR-81-003-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Department of Natural Resources Proposed Amendments to Boat and Water Safety Rules.

REPORT OF THE HEARING EXAMINER

Pursuant to an Order for and Notice of Hearing issued on August 8, 1980 by Joseph N. Alexander, Commissioner, Department of Natural Resources, the above-entitled matter came on for hearing before Phyllis A. Reha, Hearing Examiner, on Thursday, September 25, 1980, at the Minnesota Historical Society Building, 640 Cedar Street in Saint Paul, Minnesota. The hearing began at 7:00 p.m. and concluded after all interested groups or persons had an opportunity to testify.

This Report is part of a rule making proceeding pursuant to Minn. Stat. Ch. 15 to determine whether proposed amendments to rules concerning boat and water safety should be adopted.

Representing the Department of Natural Resources (hereinafter the "Department") were A. W. Clapp, III, Special Assistant Attorney General, and Kim A. Elverum, Boat and Water Safety Coordinator for the Department.

Five persons signed the hearing register, and four persons spoke at the hearing. The Department submitted 10 exhibits. The public submitted two exhibits. Seven written comments were received by the Hearing Examiner from the public subsequent to the hearing and prior to the close of the record, which remained open through October 2, 1980. The record also includes a final submission by Mr. Elverum on behalf of the Department, which submission was received on October 1, 1980.

Pursuant to Minn. Stat. § 15.0412, subds. 4d and 4e (Minn. Laws 1980, Ch. 615, §§ 6 and 7), this Report shall be available for review to all affected persons upon request for at least five working days before the Commissioner takes any final action on the rules. Thereafter, if the Commissioner adopts the rules as recommended by the Hearing Examiner, they shall be submitted with the complete hearing record to the Attorney General who shall review the rules as to form and legality. If the Commissioner makes changes in the rules other than those recommended by the Hearing Examiner, he shall submit the rules with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to submitting them to the Attorney General for review. Procedures relating to the subsequent review by the Chief Hearing Examiner are set forth in subdivision 4e of the same statute.

Whenever the Commissioner submits the rules to the Attorney General, he shall give notice on the day of submission, to all person who requested that they be informed of the submission to the Attorney General.

Based on the records and proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On August 18, 1980, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed amendments.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.

2. On August 19, 1980, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Commissoner for the purpose of receiving such notice.

3. On August 25, 1980, a Notice of Hearing and a copy of the proposed amendments to the rules were published at 5 State Register 271.

4. On August 28, 1980, the Department filed the following documents:

(a) The Statement of Need and Reasonableness.
(b) The Affidavit of Mailing the Notice to all persons and associations listed with the Commissioner of the Department.
(c) The Department's Certification of Complete and Accurate Mailing List and attached list.
(d) A copy of the rule amendments as published in the State Register.

5. On September 23, 1980, the Department filed the following documents:

(a) The names of the Department personnel who would represent the Department at the hearing.
(b) The number of persons expected to attend the hearing.

The Department failed to file these documents prior to the publication of the rule amendments in the State Register as required by 9 MCAR § 2.102. The Department also failed to provide an estimate of the length of time that would be necessary for it to present its evidence at the hearing as required by 9 MCAR § 2.102 D. Since no one inquired with the Hearing Examiner in advance of the hearing to inspect these preliminary documents, or objected at the hearing to the testimony presented by the Department personnel, the failure of the Department to timely file the complete documents required is not deemed to be prejudicial error.

6. The documents listed above were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

7. On September 24, 1980, the Department submitted a request pursuant to 9 MCAR § 2.109 to the Chief Hearing Examiner for approval of the incorporation by reference of the following document: U.S. Coast Guard Safe Loading and Powering Standards as set forth in 33 C.F.R. Part 183. The Chief Hearing Examiner determined that said document met the criteria of Minn. Stat. § 15.0412, subd. 4a. By an Order dated September 25, 1980, the Chief Hearing Examiner approved the incorporation of said document in the proposed rules.

Although subdivision 4a and 9 MCAR § 2.109 state that such a request for incorporation by reference should be made before publication of the rules in the State Register, the Hearing Examiner received no objection to the inclusion of this document in the record and the error is not, therefore, deemed to be prejudicial.

8. The record remained open for five working days after the close of the hearing through Thursday, October 2, 1980, for the receipt of written comments and statements.

Statutory Authority

9. The authority of the Commissioner of Natural Resources to promulgate rules regarding boat and water safety is found in Minn. Stat. § 361.25.

That statutory provision grants broad authority to the Commissioner to adopt and publish rules and "regulations" pertaining to a broad spectrum of boat and water safety including licensing and marking of watercraft; rules of the road for watercraft navigation; standards for equipment used in towing of persons on water devices; standards for lights, signals, fire extinguishers and other lifesaving equipment such as personal flotation devices; and standards of safe loading and power capacity.

The Hearing Examiner finds that in all respects, the Department has documented its statutory authority to adopt the proposed amendments.

Proposed Amendments

10. Minn. Rules NR 200-219 were originally promulgated in 1972.[1] Because of legislative changes during the 1975 and 1980 legislative sessions, as well as changes in federal regulations, and those additions or deletions necessitated by experience, the Department determined that the rules required amendments. The proposed amendments which are new or substantially changed are discussed in detail below. The Hearing Examiner will not comment on many of the proposed amendments which are clerical in nature and proposed only to clarify the existing rules. The sections not commented on in this Report are hereby found to be needed and reasonable. This documentation is summarized in the Department's "Statement of Need and Reasonableness". No useful purpose is served by extensively repeating the language of that Statement in this Report.

11. NR 200 (b), (c), (e) and (g). The word "sailboard" is added in these subsections because of its addition to the statutes during the 1980 Legislature as an individual craft. This type of craft (also known as "windsurfer") is defined in Minn. Stat. § 361.02, subd. 16, and is also referred to again in Minn. Stat. § 361.03 (b). Also added in NR 200 (b) and (g) is the term "rowing shell". This was an oversight in the 1972 rules and the term is currently used in NR 200 (c).

Since the Legislature has chosen to include sailboard as a non-motorized watercraft, the changes in the above sections to include the term is found to be both needed and reasonable to conform with the recent legislative enactments. The inclusion of rowing shell in 200 (g) is considered a clerical

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1 Although the "NR" cite is technically out of date, the Revisor of Statutes has advised the Department and the Hearing Examiner that a change to the "MCAR" cite is not required for these proposed amendments at this time. Effective July 1, 1981, no rule shall be filed with the Secretary of State or published in the State Register unless the Revisor of Statutes has approved the rule as to form. Minn. Stat. § 15.0412, subd. 4g (Minn. Laws 1980, Ch. 615, § 46)

addition and is necessary to bring the provision in conformity with the original legislative enactment.

12. NR 200 (j). This section is amended to remove the requirement for flying the state pennant by all enforcement craft. The 1980 Legislature removed this requirement for craft marked on both sides with the enforcement agency's name. The Hearing Examiner finds this proposed amendment to be reasonable and necessary.

13. NR 200 (k). This section is deleted, since it has been redefined by the 1980 Legislature in an amendment to Minn. Stat. § 361.02, subd. 14. The Hearing Examiner finds this proposed deletion to be necessary and reasonable.

14. NR 201 (a)(8). The Department proposes to add the wording "as well as other required safety equipment for each watercraft" to clarify the duties of an owner of a business which rents, leases or hires out watercraft. The present wording only specifies the requirement of lifesaving devices on rented, leased or hired-out watercraft. Minn. Stat. § 361.24, subd. 1 prohibits the use of any watercraft or safety equipment for rent, lease or hire which does not comply with the safety standards prescribed by the Commissioner. Since NR 202 (c), (d), (e), (f) and (g) require other safety equipment in addition to lifesaving devices, it is necessary to clearly specify this so that owners of such watercraft for rent, lease or hire know what is legally required of them under these rules. The Hearing Examiner finds that this proposed amendment is necessary and reasonable.

15. NR 201 (b). The terminology in this proposed amendment is changed from "alcoholic beverage" to "alcohol" and from "narcotic or habit forming drug" to "controlled substance" to reflect the change made by the 1980 Legislature in Minn. Stat. § 361.12. The Hearing Examiner finds the changes to be both needed and reasonable.

16. NR 202 (a)(4). As published in the State Register, this rule amendment appeared as two paragraphs when it should have been written as one paragraph. At the hearing, the Department proposed to further amend the rule as published in the State Register as follows:

> (4) A ~~sailboat~~ non-motorized watercraft has the right-of-way over motor-powered watercraft except when it is the overtaking watercraft. ~~Small sailboats~~ Non-motorized watercraft should not insist on this right-of-way when approaching large commercial vessels. ~~Watercraft propelled by oars or paddles shall also be given the right-of-way by motor powered watercraft.~~ Motor-powered watercraft should always keep clear and pass astern of ~~such~~ non-motorized watercraft.

changed as here p. 3

The changes in this rule provision were made to shorten and clarify the rules of the road for non-motorized watercraft, and the Hearing Examiner finds such clarification to be both needed and reasonable.

The Hearing Examiner finds that the above amendment of the rule as published in the State Register to be necessary and reasonable for further clarification; and it does not constitute a substantial change from the rule amendments as originally published.

17. NR 202 (a)(5). This is a new section added to the general rules of the road requiring watercraft to yield the right-of-way to authorized craft displaying a red or blue flashing light. Failure to yield the right-of-way has been a problem to enforcement and rescue personnel on certain bodies of

water and in congested channels in emergency situations. The Hearing Examiner finds this new section to be both needed and reasonable.

18. NR 202 (b)(3). The change in this section is the removal of the reference to NR 206 (a)(6). A reference to the statute is substituted here in its place. The removal of NR 206 (a)(6) is necessary since it conflicts with Minn. Stat. § 361.085 passed by the 1975 Legislature. The Hearing Examiner finds the proposed change to be both needed and reasonable to bring the rule into conformity with the 1975 legislative enactment.

19. NR 202 (b)(4). This section was added to the rules to clarify the requirement for a boat operator to stop when signaled to do so (as implied in Minn. Stat. § 361.215). Similar language is used in the states of Michigan and Wisconsin and in Minnesota snowmobiling statutes. The Hearing Examiner finds that the Department has substantiated the need for and reasonableness of the proposed change.

20. NR 202 (c)(1) through (6). The language in this section is stricken, updated and rewritten in three separate sections that follow.

NR 202 (c). The 1980 Legislature struck most of the language on personal flotation devices in Minn. Stat. § 361.141 and gave the Commissioner the authority to set lifesaving device requirements. Section 1 and 2 requiring a Coast Guard approved personal flotation device for each person on board a watercraft is essentially the same as the current requirement because "sailboards" are now included within the definition of "watercraft". Persons on board sailboards are now required to wear or have readily accessible U.S. Coast Guard approved personal flotation devices (PFD's). Previously in this state, sailboards were totally unregulated.

This inclusion brought comment from several windsurfers, windsurfer instructors and members of associations of windsurfers who requested an exemption from the requirement to carry or wear PFD's. The claims of the windsurfers were best articulated by J. Michael Fox, a supervisory instructor with the International Windsurfer Sailing Schools. Mr. Fox testified that the windsurfer is one of the safest watercrafts in existence and is, essentially, a 400-pound flotation device with its own sea anchor. The windsurfer board does not capsize, but remains flat and when the user falls off or desires to stop, the board serves as a raft. Once the sail falls into the water, it serves as a sea anchor. The skill even to sail a short distance makes it unlikely that an inexperienced user will find himself in a difficult situation. Mr. Fox further states that in Minnesota, windsurfers are used close to shore and on lakes, but there is no stowage space for a PFD on the craft, and the PFD is bulky (weighing over 15 pounds) and hinders the windsurfer's ability to maneuver and move quickly when necessary. Furthermore, he argues, attaching a 15.5-pound PFD would increase flotation of the craft by nearly 4% thereby interfering with, rather than enhancing safety. Mr. Fox also submitted an official document substantiating his claim that the U.S. Coast Guard currently grants an exemption to Windsurfer International from the requirement to carry or wear a PFD. (See Pub. Ex. 1)

Kim Elverum responded to these comments at the hearing and in written comments following the hearing. In his comments, he attached several letters which addressed the exemption of sailboards from the PFD requirement. For

seven years, the Coast Guard has indeed given Windsurfer International an exemption from the carriage of PFD's. Currently, however, this exemption is undergoing revision for possible inclusion of all sailboard devices used in joint federal/state waters (such as the Mississippi). The proposed rule has not as yet been published. (See DNR Ex. 11c) He further submitted the resolutions of the National Association of State Boating Law Administrators and the North Central Boating and Snowmobile Law Administrators Association who oppose the exemption of sailboards from the use of PFD's. (See DNR Exs. 11d and e)

Mr. Elverum commented that there are devices currently on the market which are not confining, bulky, or hard to swim in. Furthermore, kayakers, white-water canoeists, waterskiers, and small sailboaters are all required to wear PFD's in competition events as well as for recreational use. He further commented that windsurfers do venture out on busier lakes and rivers in this state which are populated by all types of watercraft which could endanger the windsurfer. The windsurfer's only means of support without a PFD is the board. If the operator chooses to get away from the board, he is then without any type of lifesaving device whatsoever.

Subsection 1 and 2 requiring a Coast Guard approved PFD for each person on board a watercraft is essentially the same as the current requirement. The only change is that no provision is made for nonapproved, permanently-inflated devices for use on canoes and kayaks. This exception for canoes and kayaks was based on an old federal regulation allowing such devices. Because Coast Guard approved devices came on the market which were acceptable to canoeists and kayakers, the federal regulation exemption was withdrawn in 1976.

Subsection 3 includes persons being towed by a watercraft on water skis (or similar devices) as persons "on board" a watercraft because it assumes that these persons will eventually enter the watercraft. The requirement that the PFD be either carried in the towing watercraft or worn by the person being towed is found to be both needed and reasonable.

Subsection 4 specifies the acceptability criteria for PFD's. These criteria are currently used by the Coast Guard and other states and are found to be needed and reasonable.

The Hearing Examiner concludes that the requirement that all watercraft users must carry or wear the PFD's as specified in this section are necessary and reasonable, and the testimony and other evidence submitted by the Department has demonstrated the need for PFD's to be worn or carried by all operators of watercraft (including windsurfers) as defined in these rules.

21. NR 202 (g), Subsection 9. This is a new subsection which exempts boats moored at buoys placed under a permit from the county sheriff from displaying anchor lights. This provision is reasonable and necessary since it is almost impossible to maintain an anchor light for the long periods of time a small boat may be tied to the mooring buoy. This exemption is also provided for in federal rules, as well as rules of other states.

22. NR 203. Subsection (a) is changed to include only those craft manufactured between January 1972 and July 31, 1980. This and the addition of

subsection (b) for boats manufactured after July 31, 1980, is necessary because of a change in federal capacity plate requirements which manufacturers are following now.

Subsection (c) is a new subsection that defines the terms "safe power capacity" and "safe carrying capacity". Currently, there is no specific definition of these terms in statute or rule.

The Hearing Examiner finds the changes as indicated above to be both necessary and reasonable.

23. NR 204 (e). The word "buoys" is added throughout this section since most markers are now placed on buoys rather than signs. The new language in subsection 1 clarifies the location of the orange bands and geometric shapes which appear on these buoys under the Uniform Waterway Marking System.

In subsections 2 through 6, the sizes of the geometric shapes on the buoys and signs have been adjusted to conform to what is available on the market.

Subsection 6 has been changed by striking the requirement that ice signs be removed before April 1 of each year. This has proven to be a problem, since the ice may not leave a lake until May in some parts in the state. In addition, two sentences have been added to clarify and change procedures for the marking of artificial aeriation systems which are operated under a permit from the Department. A problem has been encountered over the past several years with very large aeriation systems which this type of marking may not be practical.

Subsection 7 is changed to reflect the 1975 law on diver's flags which superseded NR 206 (a)(6).

Subsection 8 removes the requirement that all lettering be placed inside the geometric shape on a buoy or sign. As a practical matter, most buoys do not have the space inside the geometric shape and it must appear above or below it.

The Hearing Examiner concludes that the changes in this section are needed and reasonable and bring the rule in conformity with recent legislative changes.

24. NR 205 (b)(1). This section is amended to bring swimming buoy specifications in line with what is available on the market. Reflectorized international orange markings are not currently available. The diamond shapes on the available buoys are 14 inches in height, but not in horizontal diagonal. The Hearing Examiner finds that the changes are necessary and reasonable.

25. NR 206 (a). This section is changed by striking the references to the diver's flag. This subject is now covered in Minn. Stat. § 361.085 passed by the 1975 Legislature. The reference to the waterskiing tow ropes is then made the only subject of the section.

The title of this section is changed from "Scuba Divers and Water skiers" to "Water skiers" by deleting the words "Scuba Divers and". Apparently through typographical error, "Scuba Divers and" was not striken in the amendments as published in the State Register although it is properly striken in the Department's text of proposed amendments. The correction of this error is not considered to be a substantial change.

The Hearing Examiner finds that the changes in this section are both necessary and reasonable.

26. NR 211. Because the penalty for a misdemeanor was changed from $300 to $500 in 1977 by the Legislature (and may be changed in the future), the Department proposed to amend the provision as follows. This proposed amendment did not appear in the proposed rules as published in the State Register.

NR 211 Penalties

Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor. ~~and be punished by a fine of not more than $300, or by imprisonment for not more than 90 days, or both.~~

P. 11

The Hearing Examiner finds that the above amendment is needed and reasonable for clarification and conformity with statutory requirements and does not constitute a substantial change from the amendments as originally published.

CONCLUSIONS

1. The Department gave due, timely and adequate legal notice of the hearing.

2. The Department has documented its statutory authority to promulgate the proposed rule amendments.

3. The Department has fulfilled all relevant substantive and procedural requirements of law or rule.

4. The Department has demonstrated the need for and reasonableness of the proposed amendments to its rules by an affirmative presentation of facts.

5. The additions to the proposed rule amendments which were proposed after publication of the amendments in the State Register do not constitute substantial changes.

RECOMMENDATION

The Hearing Examiner recommends that the proposed amendments to the boat and water safety rules be adopted by the Commissioner of the Department of Natural Resources in accordance with the Findings of Fact herein.

Dated: October 24, 1980.

Phyllis A. Reha

PHYLLIS A. REHA
Hearing Examiner

6. Plastic water well casing shall not be used in wells cased and cement grouted through cavernous rock formations. However, in such formations, plastic casing may be used as an inner casing if surrounded by an outer casing which meets the requirements of 7 MCAR § 1.220A.7.

7. Screws shall not be used to join solvent weld joints.

Department of Natural Resources

Proposed Amendments to Boat and Water Safety Rules

Notice of Hearing

A public hearing concerning the proposed rule amendments will be held in St. Paul on September 25, 1980 at the Minnesota Historical Society Building, 640 Cedar Street, in the Weyerhaeuser Room. The hearing will begin at 7:00 p.m.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are concerned about the content of the rules, you are urged to participate.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Phyllis Reha, Hearing Examiner, room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-6910 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.1417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Because of legislative changes during the 1975 and 80 sessions, as well as changes in federal regulations and those additions or deletions necessitated by experience, amendments to the current boat and water safety rules have been found to be necessary. Current rules were promulgated in 1972.

The following amendments are proposed:

—the addition of the term "sailboard" as well as several technical corrections in the rules on licensing and marking of watercraft.

—providing that all required safety equipment be provided by the owner of rental watercraft.

—changing technical terms regarding alcohol and controlled substances to conform to statute changes.

—shortening and clarifying the rules of the road for non-motorized watercraft and the use of emergency lights on patrol craft.

—rewriting the required safety equipment rules to conform to new statutes. This includes requirements for lifesaving devices, sound producing devices, fire extinguishers and navigation lights. No substantial change is proposed from existing rules, however.

—changing the technical requirements for certain waterway markers to more closely conform to what is practical and available commercially.

—removing language on skin and SCUBA diving which was preempted by a 1975 statute.

—clarifying permit requirements for temporary structures, buoys and signs.

—deleting reference to an obsolete address in the Department of Natural Resources.

The authority for and subject-matter of the rules are found in Minn. Stat. ch. 361.

The agency estimates that there will be no cost to local public bodies in the state to implement the amendments for the two years immediately following its adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

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DNR Exh. No. 6
File No. DNR-81-003-PR
PAR Date 9/25/80

Copies of the proposed rule amendments are now available and at least one free copy may be obtained by writing to Boat and Water Safety Section, Minnesota Department of Natural Resources, Box 46 Centennial Bldg., Saint Paul, Minnesota 55155, telephone (612) 296-3336. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments, contact the boat and water safety section at the address or phone listed above.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

August 8, 1980.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Rules as Proposed

NR 200 Licensing of watercraft.

(b) Display of license certificate. No person shall operate or use a watercraft, except a non-motorized canoe, kayak, ~~or~~ sailboat, sailboard or rowing shell required to be licensed unless the license certificate for such watercraft is on board and available for inspection by authorized enforcement officers. Owners of non-motorized canoes, kayaks, sailboats, sailboards, or rowing shells shall produce the license certificate for such watercraft within a reasonable time upon request of authorized enforcement officers. The owner of rental watercraft may keep the license certificate available for inspection on the premises from which the watercraft is rented, provided that the owner's business is legibly printed on the rear half and on both sides of the watercraft in the same size and manner as required for the license number in NR 200, Section (c).

(c) Display of license number & validation decal on motorized watercraft. The license number, on all watercraft, except non-motorized canoes, kayaks, sailboats, sailboards and rowing shells shall be securely affixed on each side of the forward half of the watercraft for which it was issued in such a position as to provide clear and legible identification. The letters and numerals must be of a color that contrasts with the background and may be reflectorized decals or metal or may be painted. The letters and numerals shall read from left to right and shall not be less than 3 inches in height, of block type, of a stroke not less than ½ inch or more than ¾ inch in width, not including a border. The license number shall be maintained so that it is clearly visible and legible, and the letter groups must be separated from the numeral groups by a space of not less than 3 inches nor more than 4 inches. Adjacent letters and numerals within each group must be spaced not less than ½ inch nor more than ¾ inch apart. A state validation decal for the current license period must be affixed toward the stern of the boat and not more than 4 inches from the first or last letter of the license number on each side of the boat.

(e) Marking of non-motorized sailboats and sailboards. All non-motorized sailboats and sailboards shall display the decals furnished by the Department of Natural Resources for such watercraft. These decals shall be securely affixed on each side of the forward half of the watercraft for which it was issued, in such a position as to provide clear and legible identification. If it is impossible to display such decals on the forward half of such watercraft so as to provide clear and legible identification both decals must then be affixed to the stern of such watercraft.

(g) Other insignia. No person shall operate any watercraft, except a non-motorized canoe, kayak, rowing shell, sailboard or sailboat, which has any number, letter, design or insignia displayed on either side thereof which is closer than 24 inches to any part of the watercraft license number of validation decal.

(j) Enforcement pennant. ~~All watercraft used in the enforcement of these rules and regulations and the laws under which they are promulgated shall be marked by the flying of a pennant.~~ The pennant required under Minn. Stat. § 361.215 shall be triangular in shape

and of the following dimensions: Four (4) inches in depth at the staff and one foot in length. The pennant shall be of a blue background and bear a three (3) inch replica of the Minnesota State Seal.

~~(k) Determining length of watercraft. For the purpose of determining the license fee, the overall length of the watercraft shall be measured from transom top to point of the bow.~~

NR 201 Rental of watercraft.

(a) Condition and equipment of rented watercraft.

(8) The owner of a business which rents, leases, or hires out watercraft shall provide for each person on board the watercraft a lifesaving device required by law or these rules, as well as all other required safety equipment for each watercraft.

(b) Persons to whom watercraft may be rented. No watercraft shall be knowingly rented or offered for rent to any person who is under the influence of ~~an alcoholic beverage, narcotic or habit forming drug~~ alcohol or a controlled substance.

NR 202 Navigation of watercraft on the waters of the state; safety equipment.

(a) General rules of the road.

(4) A ~~sailboat~~ non-motorized watercraft has right-of-way over a motor-powered watercraft except when it is the overtaking watercraft. ~~Small sailboats~~ Non-motorized watercraft should not insist on this right-of-way when approaching large commercial vessels.

~~Watercraft propelled by oars or paddles shall also be given right of way by motor-powered watercraft.~~ Motor-powered watercraft should always keep clear and pass astern of such watercraft.

(5) All watercraft shall yield the right-of-way to enforcement or other authorized emergency watercraft displaying a red or blue flashing light.

(b) General mode of operation of watercraft.

(3) No person shall operate a watercraft within 150 feet of a diver's warning flag (described in ~~NR 206 (a)(6).~~ Minn. Stat. § 361.085).

(4) The operator of any watercraft, when signaled to do so by a conservation officer, sheriff or sheriff's deputy shall bring the watercraft to a stop or maneuver it in a manner which will allow the officer to come alongside.

~~(c) Safety Equipment.~~

~~(1) Every person on board a non-motorized canoe or kayak shall wear or have readily accessible to him on board the non-motorized canoe or kayak for his personal use a U.S. Coast Guard approved lifesaving device. A lifesaving device of the vest type with no less than 150 permanently inflated air sacs of 12 mil vinyl construction and capable of supporting a minimum weight of 15 pounds may be substituted for a U.S. Coast Guard approved lifesaving device.~~

~~(2) All motor-powered watercraft 26 feet or more in overall length shall be equipped with one hand- or power-operated horn or whistle audible at least one mile.~~

~~(3) All motor-powered watercraft less than 26 feet in length with construction permitting the entrapment of explosive or flammable gases or vapors must have at least one B-I type hand portable U.S. Coast Guard approved fire extinguisher fully charged and in good operating condition on board and readily accessible.~~

~~(4) All motor-powered watercraft 26 feet or less than 40 feet in length must have at least two B-I U.S. Coast Guard approved hand portable fire extinguishers, or at least one B-II type U.S. Coast Guard approved hand portable fire extinguisher on board in good condition, fully charged and readily accessible.~~

~~(5) All motor-powered watercraft 40 feet to not more than 65 feet in length must have at least three B91 type U.S. Coast Guard approved fire extinguishers; or at least one B-I type plus one B-II type approved hand portable fire extinguisher on board. These fire extinguishers must be fully charged, in good working condition and readily accessible.~~

~~(6) All motor-powered watercraft over 65 feet in length must have at least three B-II type U.S. Coast Guard approved fire extinguishers on board. These fire extinguishers must be fully charged, in good working condition and readily accessible.~~

(c) Personal flotation (lifesaving) devices

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(1) Every person on board a watercraft shall wear or have readily accessible a U.S. Coast Guard approved Type I, II, III or IV personal flotation device.

(2) A Coast Guard approved Type V personal flotation device may be carried in lieu of the Type I, II, III or IV personal flotation device required in this regulation, if the Type V personal flotation device is approved for the activity in which the watercraft is being used.

(3) Persons being towed by a watercraft on water skis, or other devices shall be considered to be on board the towing watercraft, for the purpose of personal flotation device requirements. A U.S. Coast Guard approved personal flotation device must be either carried in the towing watercraft or worn by the person being towed.

(4) All personal flotation devices required by these rules shall be:

(aa) Approved by the United States Coast Guard.

(bb) Legibly marked with the approval number issued by the United States Coast Guard.

(cc) In serviceable condition.

(dd) Either readily accessible or worn.

(ee) Of the appropriate size for the intended wearer, if the device is designed to be worn.

(d) Sound producing devices

(1) All motorboats 16 feet or more in overall length shall carry a power, hand or mouth-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one-half mile.

(2) All motorboats 26 feet but less than 40 feet in overall length shall be equipped with a hand or power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(3) All motorboats 40 feet or more in length shall be equipped with a power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(e) Fire extinguishers

(1) All motorboats less than 26 feet in length with construction permitting the entrapment of explosive or flammable gases or vapors must have at least one B-I type hand portable U.S. Coast Guard approved fire extinguisher fully-charged and in serviceable condition on board and readily accessible.

(2) All motorboats 26 feet to less than 40 feet in length must have at least two B-I U.S. Coast Guard approved hand portable fire extinguishers, or at least one B-II type U.S. Coast Guard approved hand portable fire extinguisher on board in serviceable condition, fully-charged and readily accessible.

(3) All motorboats 40 feet to not more than 65 feet in length must have at least three B-I type U.S. Coast Guard approved fire extinguishers; or at least one B-I type plus one B-II type approved hand portable fire extinguisher on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(4) All motorboats over 65 feet in length must have at least three B-II type U.S. Coast Guard approved fire extinguishers on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(5) When a motorboat is equipped with a U.S. Coast Guard approved fixed fire extinguishing system installed in the engine compartment, one less B-I extinguisher is required. The fixed system must be in serviceable condition and fully-charged.

(f) ~~(d)~~ Ventilation equipment

(g) ~~(e)~~ Lighting equipment

(7) All watercraft over 65 feet in length must display the lights required by ~~the Inland Rules Light Requirements found in~~ NR 202 ~~(e)~~(g)~~(5)~~(4).

(8) All non-motorized ~~canoes, kayaks, sailboats and rowboats~~ watercraft when under way or anchored, between sunset and sunrise, shall carry aboard but not necessarily fixed to any part of the watercraft a minimum of one a lantern or flashlight capable of showing a white light visible all around the horizon at a distance of two miles or more. ~~in sufficient time to avoid collision with another watercraft.~~ Such light or lantern shall be displayed~~.~~ in sufficient time to avoid collision with another watercraft.

(9) When a watercraft is moored to a buoy authorized by a permit issued under NR 207 it shall not be required to display the 32-point anchor light required in NR 202 (g)(4) through (8).

NR 203 Capacity plate information requirements.

(a) For watercraft constructed from January 1, 1972 through July 31, 1980:

(1)~~(a)~~ Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa)~~(1)~~ Safe maximum horsepower;

(bb)~~(2)~~ Maximum number of persons at 150 pounds per person;

(cc)~~(3)~~ Properly located maximum weight in pounds of persons, motor and gear.

(2)~~(b)~~ Formula for determining maximum weight. The formula for determining the maximum weight for watercraft manufac-tured for sale in Minnesota, 19 feet and under, except canoes, kayaks, and sailboats, shall be the recommended practices for watercraft load capacity Project H-5 (adopted) or Project H-5a (proposed) contained in the American Boat and Yacht Council Incorporated publication "Safety Standards for Small Craft 1971-72."

(3)~~(c)~~ Formula for determining maximum horsepower. The formula for determining the maximum horsepower for watercraft manufactured for sale in Minnesota, 19 feet and under, shall be the "recommended Practices and Standards Covering Safe Powering of Small Craft" Project P-11 (proposed) contained in the American Boat and Yacht Council, Incorporated publication "Safety Standards for Small Craft 1971-72."

(b) For watercraft constructed on or after August 1, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) For outboard boats
Maximum persons capacity in pounds or persons
Maximum weight capacity (persons, motor and gear) in pounds
Maximum motor horsepower or maximum horsepower with and without remote steering

(bb) For inboard, inboard/outdrive and boats without mechanical propulsion
Maximum persons capacity in pounds or persons
Maximum weight capacity (persons and gear) in pounds

(2) The method used for determining capacity information shall comply with the U.S. Coast Guard Safe Loading and Powering Standards as set forth in 33 CFR Part 183.

(c) The terms "safe power capacity" and "safe carrying capacity" used in Minn. Stat. § 361.05 (4) shall be that capacity displayed on the manufacturer's capacity plate. If no such plate exists, the method referred to in either NR 203 (a)(2) & (3) or NR 203 (b)(2) shall be used to determine the capacity.

NR 204 Waterway markers.

(b) Channel marker buoys

(1) Every channel marker buoy shall have the external form of a ~~flat topped~~ cylinder having a circular transverse cross-section not less than 9 inches ~~and not more than 15 inches~~ in diameter. All such markers must extend at least 36 inches above the water.

(3) To indicate a watercraft should pass to south or west, where there is no well-defined channel, a buoy shall have the top surface and upper 5 inches colored red and the remainder colored white. If the buoy is reflectorized, it shall be done with a white strip, no less than 4 inches in width, that completely encircles the buoy and it shall be placed directly under the ~~black~~ red top. A white quick-flashing light shall be used if the buoy is lighted.

(c) Other navigational buoys. A buoy indicating that a watercraft should not pass between it and the nearest shore shall have ~~a flat top and shall have a square~~ a circular transverse cross-section measuring not less than 9 inches in diameter ~~nor more than 15 inches across on a side~~ and shall extend at least 36 inches above the surface of the water. ~~Each such buoy shall have a white top surface and a white vertical stripe on each side extending medially from top to bottom of a width equal to one-half the width of each side. The remainder shall be colored red.~~ Each such buoy shall be marked with alternating vertical red and white stripes. White reflectorization may be used on a minimum of the upper four inches of the white vertical stripe. Red reflectorization may be used on a minimum of the upper four inches of the red vertical stripes. A white quick-flashing light shall be used if the buoy is lighted.

(d) Mooring buoys. Every buoy placed in the waters of the state for use in anchoring or mooring watercraft may be of any practicable size or shape, but must have at least 8 inches extending above the waterline. No anchoring buoy may have a diameter of over ~~20~~ 24 inches if circular or a width of more than ~~20~~ 24 inches if some other shape. No mooring or anchor buoy may be placed in any public water if it obstructs access to any public or private property or creates a navigational hazard. No mooring or anchor buoy may be placed

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in or upon the water of the State except by public authority or under a permit issued by the sheriff of the county. Every such buoy shall be colored white and shall be encircled by a visible blue band at least ~~three~~ one inches wide. Mooring buoys must have a minimum total of 16 square inches of white reflectorization, part of which must be visible from any direction. Mooring buoys, if lighted, shall show a flashing white light.

(c) Regulatory and information signs and buoys

(1) No regulatory or informational signs or buoys may be placed in or upon the waters of this state, except by public authority or under a permit issued by the sheriff of the county. All such signs and buoys shall be colored white except as hereinafter provided.

When a buoy is used as a regulatory or informational marker (except in private swimming areas), it shall have two orange-colored horizontal bands completely around the buoy's circumference, one such band at the top, and the other just above the waterline. The appropriate geometric shape(s) indicating the buoy's purpose and any lettering or numerals shall be placed between these horizontal bands. The buoy itself shall have a circular transverse cross-section of at least 9 inches and shall extend at least 36 inches above the surface of the water.

(2) Every sign or buoy giving information for the convenience of watercraft operators shall bear a two-inch wide orange-colored band forming an upright rectangle measuring at least 14 inches in height ~~and width,~~ outside dimensions.

(3) Signs or buoys indicating danger to watercraft shall bear an orange-colored band of two-inch width forming an upright diamond at least 14 inches in outside ~~width~~ height, and such signs shall bear a printed statement of the source of danger.

(4) Signs or buoys indicating controlled water areas in which boating, fishing, waterskiing, skin diving, or other water activities are restricted, limited or otherwise subjected to special rules or regulations shall bear a two-inch wide band forming a circle at least ~~24~~ 12 inches in outside diameter. The limitation, restriction, prohibition or regulation effective within a controlled area shall be printed inside of the orange-colored circle when possible.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(5) Signs or buoys directing all watercraft to keep out of a specific water area shall bear a two-inch orange-colored band forming an upright diamond at least 14 inches in outside ~~width~~ height, dissected vertically and horizontally by an orange-colored strip two inches wide.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(6) Signs indicating winter ice dangers to persons, motor vehicles, snowmobiles, all-terrain vehicles, ice boats, or any other conveyance used to transport persons over the ice on public waters of the state shall bear a two-inch wide orange-colored band forming an upright diamond at least 14 inches in outside width and such signs shall bear a printed statement of the source of danger.

Where used, except for the marking of aeration systems operating under a permit from the Commissioner of Natural Resources, these signs shall completely line the perimeter of the ice hazard at intervals not exceeding 75 feet and shall be at least 48 inches above the ice. When a permit is issued for an aeration system, the commissioner shall specify the marking requirements for each system as a part of the permit.

~~Such signs must be removed from the ice, by whomever placed, not later than April 1.~~

(7) No person shall operate any motor vehicle, snowmobile, all-terrain vehicle, ice boat, or any other conveyance used to transport persons over the ice on public waters of the state within 150 feet of a diver's warning flag described in ~~NR 206 (a)(6)~~ Minn. Stat. § 361.085.

(8) Written material on any waterway marker sign or buoy shall be printed with black letters at least 2 inches in height, on a white background. ~~All lettering shall be placed inside the area enclosed by the orange band, except that explanatory material appearing on signs indicating an area prohibited to watercraft shall be placed outside of the orange band.~~

NR 205 Marking of legally designated swimming areas.

(b) Other areas

(1) The entire perimeter of the water area shall be marked with white marking buoys no less than 9 inches in diameter and extending no less than 36 inches above the surface of the water. Each marking buoy must contain two horizontal bands of ~~reflectorized international~~ orange, one such band at the top, and the other just above the waterline. Each marking buoy must also contain two diamond shapes with crosses which means "boats keep out." These diamond shapes must have a vertical diagonal of not less than 14 inches, ~~and a horizontal diagonal of not less than 11 inches.~~ The borders of the diamond and cross outline shall not be less than ~~1~~ 2 inches in width. The color of these borders shall be ~~reflectorized international~~ orange. The diamonds shall be placed midway between the horizontal bands. The words "swim area" should also appear on each marker in no less than two-inch letters.

NR 206 Scuba Divers and Water skiers.

~~(a) Diver's Flags~~

~~(1) Every person who shall swim in any waters of the state, except in legally designated swimming areas, while wearing or carrying any apparatus including a snorkel permitting him to breathe while under water, shall tow a diver's flag, displayed above the surface of the water, which shall be attached to a device capable of supporting such swimmer and his equipment upon the surface of the water.~~

~~(2) Every person who causes a diver's flag to be displayed shall remain within 50 feet thereof, measured on the surface of the water.~~

~~(3) A diver's flag shall not be towed by more than one person, except as provided in (5) below.~~

~~(4) No person shall display a diver's flag so as to cause unlawful obstruction to navigation.~~

~~(5) If a group of divers is operating in an area, the outside of the perimeter shall be marked and shall be outside of the normal area of navigation. These markings shall consist of the official diver's flag and shall be placed around the perimeter of the diving area at intervals not exceeding 150 feet.~~

~~(6) A diver's flag displayed to indicate the presence of persons engaged in underwater activities shall measure at least 15 inches horizontally and 12 inches vertically, and both sides thereof shall have a red-colored background bisected diagonally by a three-inch wide white stripe having its upper end adjacent to the flagstaff.~~

~~(7) A diver's flag shall be displayed in a vertical plane extended from a rigid flagstaff equipped to maintain the upper edge of the flag at least three feet above the water surface.~~

~~(8) Any diver's flag may be reflectorized or fluorescent provided that the entire displayed surface thereof is uniformly reflectorized or fluorescent.~~

~~(b)~~ Length of ski tow ropes. No person being towed on water skis, aquaplane, saucer or other device shall be towed with a rope, wire, cable or other towing device extending more than 150 feet from the towing watercraft without obtaining a permit from the local sheriff.

NR 207 Placement of temporary structures and buoys in the waters of the state.

(a) Generally. No person shall leave any temporary structure not extending from shore, or any ~~navigational~~ buoy or ~~regulatory or information~~ sign in the waters of this state between the hours of sunset and sunrise without first obtaining a permit in writing therefor from the sheriff of the county. Mooring buoys must be placed as provided in NR 204(d). Swimming area markers must be placed as provided in NR 205.

NR 210 Reimbursement of county sheriffs for search and rescue operations.

(b) Reimbursement by state. A sheriff claiming reimbursement shall submit in duplicate an itemized invoice, verified by the county auditor, together with a statement showing that the operation qualified for reimbursement to the ~~administrator of the Bureau of Business Management, the~~ Department of Natural Resources, ~~Centennial Building, Saint Paul, Minnesota 55155~~. All claims will be subject to audit by the state.

Department of Revenue

Proposed Amendments and New Rules Relating to Individual Income Tax and Property Tax Refund (13 MCAR §§ 1.6001-1.6004, 1.6020, 1.6030 and 1.6225)

Notice of Hearing

A public hearing concerning the proposed rule amendments and adoption of new rules will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on Thursday, October 2, 1980, commencing at 9:00 a.m. The proposed rule amendments and new rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendments and new rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested (or affected) persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to Jon L. Lunde, Office of Administrative Hearings, Room 300,

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

Proposed amendments to
The Boat and Water Safety
Rules and Regulations - NR 200-219

Statement of Need
and Reasonableness

The authority of the Commissioner of Natural Resources to promulgate rules regarding boat and water safety is found in Minnesota Statutes, Section 361.25. The rules and regulations currently in effect concerning boat and water safety are identified as Minnesota Rules NR 200-219.

Because of legislative changes during the 1975 and 80 sessions, as well as changes in federal regulations and those additions or deletions necessitated by experience in the field, amendments to the current boat and water rules and regulations have been found to be necessary. Current rules and regulations were promulgated in 1972.

The Commissioner of Natural Resources proposes to amend the rules and regulations as follows:

1. NR 200 (b), (c), (e) and (g). The word "sailboard" is added here because of its addition to the statutes during the 1980 legislature and an individual type of craft. This type of craft is defined in M.S. 361.02 Subd. 16 and is also referred to again in M.S. 361.03 (b). Also added in NR 200 (b) and (g) is the term "rowing shell." This was an oversight in the 1972 rules and the term is currently used in NR 200 (c).

2. NR 200 (j). This is amended to remove the requirement for flying the state pennant by all enforcement craft. The 1980 legislature removed this requirement for craft marked on both sides with the enforcement agency's name.

3. NR 200 (k). This section is deleted, since it has been redefined by the 1980 legislature under 361.02 Subd. 14.

4. NR 201 (a) (8). Adds the wording to provide other required safety equipment such as lights (if the boat is used from sunset and sunrise). Currently only personal flotation (lifesaving) devices are referred to.

5. NR 202 (b). The terminology is changed here from "alcoholic beverage" to "alcohol" and from "narcotic or habit forming drug" to "controlled substance" to reflect the change made by the 1980 legislature in M.S. 361.12.

6. NR 202 (a) (4). Changes are made here to shorten and clarify the rules of the road for non-motorized watercraft.

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PAR Date 9/25/80

7. NR 202 (a) (5). A new section is added to the General Rules of the Road requiring watercraft to yield the right of way to authorized craft displaying a red or blue flashing light. Failure to yield the right of way has been a problem to enforcement and rescue personnel on certain bodies of water and in congested channels during emergency situations.

8. NR 202 (b) (3). The removal of NR 206 (a) (6) is necessary since it conflicts with M.S. 361.085 passed by the 1975 legislature. This statute is substituted here in its place.

9. NR 202 (b) (4). This section was added to the rules to clarify the requirement for a boat operator to stop when signaled to do so (as implied in M.S. § 361.215). Similar language is used in the states of Michigan and Wisconsin and in Minnesota Snowmobiling Statutes.

10. NR 202 (c) (1) - (6). This language is stricken, updated and rewritten in the three separate sections that follow.

11. NR 202 (c). The 1980 legislature struck most of the language on personal flotation (lifesaving) devices in M.S. 361.141 and gave the Commissioner the authority to set lifesaving device requirements.

    Subsection (1) and (2) requiring a Coast Guard approved personal flotation device for each person on board a watercraft is essentially the same as the current requirement. The only change is that no provision is made for non-approved, permanently-inflated devices for use on canoes and kayaks. This exception for canoes and kayaks was based on an old federal regulation allowing such devices. Because Coast Guard approved devices came on the market which were acceptable to canoeists and kayakers the federal regulation exception was withdrawn in 1976.

    Subsection (3) clarifies the personal flotation device requirement for water skiers. This amendment makes the assumption that the water skier will eventually enter the watercraft.

    Subsection (4) specifies the acceptability criteria for personal flotation devices. These criteria are currently used by the Coast Guard and other states.

12. NR 202 (d). Subsection (1) and (2) are similar to current language in M.S. 361.16 Subd. 1 and NR 202 (c) (2). The only change in these two subsections is that they now appear together in a single rule. Subsection (3) concerns motorboats 40 feet or more in length and is the same requirement currently used by the Coast Guard and other states.

13. NR 202 (e). Subsections (1) through (4) are the same as the current language on fire extinguishers (NR 202 c (3) through (6)). It is now separated into its own section. Subsection (5) allows the use of fixed fire extinguishing systems in line with federal requirements.

14. NR 202 (f). Subsection relettered from (d) to conform to proposed rule.

15. NR 202 (g). Subsection (g) relettered from (e) to conform to proposed rule.

Subsection (7) corrects and clarifies light rules for boats exceeding 65 feet in length. The current rule does not allow the use of international lighting on these vessels. These vessels more than likely would be equipped with this type of lighting.

Subsection (8) simplifies the first sentence by using the term watercraft rather than listing all the specific types. It also clarifies the last two sentences by reversing their position and combining them.

Subsection (9) is a new subsection which exempts boats moored at buoys placed under a permit from the county sheriff from displaying anchor lights. This provision is necessary since it is almost impossible to maintain an anchor light for the long periods of time a small boat may be tied to the mooring buoy. This exemption is also provided for in federal rules, as well as those of other states.

16. NR 203. Subsection (a) is changed to include only those craft manufactured between January 1972 and July 31, 1980. This and the addition of subsection (b) for boats manufactured after July 31, 1980 is necessary because of a change in federal capacity plate requirements which manufacturers are following now.

Subsection (c) is a new subsection that defines the terms "safe power capacity" and "safe carrying capacity." Currently there is no specific definition of these terms in statute or rule.

17. NR 204. In Subsection (b) (1) the words "flat-topped" and a maximum size restriction are removed. The buoys currently available on the market are available in larger sizes, which are desireable on larger rivers and lakes for visibility. In addition, buoys are now manufactured with fluctuations in the top contour to discourage bird roosting and provide mounting sites for lights.

18. NR 204 (b) (3). The word "black" is changed to "red." This is an error in the current rules.

19. NR 204 (c). The wording is changed here to allow the use of round buoys, since no manufacturer currently produces the square buoy referred to in the current rule. The top configuration and maximum size are also deleted since larger buoys are now available and may be more desireable on larger bodies of water and the tops of the manufactured buoys are not necessarily flat. The reference to the striping is changed to reflect the change from a square to a circular shape.

20. NR 204 (d). The maximum size for mooring buoys has been changed from 20 to 24 inches in diameter or width to reflect the larger buoys available on the market which are used to moor large sailboats. The blue band width is also reduced to one inch, to accommodate the most common commercially available size and type

of buoy. Additional language is also added to clarify the permit requirements to place a buoy.

21. NR 204 (e). The word "buoys" is added throughout this section, since most markers are now buoys rather than signs. The new language in Subsection (1) clarifies the location of the orange bands and geometric shapes which appear on these buoys under the Uniform Waterway Marking System.

In Subsection (2) - (6), the sizes of the geometric shapes on buoys and signs have been adjusted to conform to what is available on the market.

Subsection (6) has been changed by striking the requirement that ice signs be removed before April 1 each year. This has proven to be a problem, since the ice may not leave a lake until May in some parts of the state. In addition, two sentences have been added to clarify and change procedures for the marking of artificial aeration systems which are operated under a permit from the department. A problem has been encountered over the past several years with very large aeration systems where this type of marking may not be practical.

Subsection (7) is changed to reflect the 1975 law on diver's flags which superceded NR 206 (a) (6).

Subsection (8) removes the requirement that all lettering be placed inside the geometric shape on a buoy or sign. As a practical matter, most buoys do not have the space inside the geometric shape and it must appear above or below it.

22. NR 205 (b) (1). This section is amended to bring swimming buoy specifications in line with what is available on the market. Reflectorized international orange markings are not currently available. The diamond shapes on the available buoys are 14 inches in height but not in horizontal diagonal.

23. NR 205 (a). This section is changed by striking the references to the diver's flag. This subject is now covered in M.S. 361.085 passed by the 1975 legislature. The reference to the water skiing tow ropes is then made the only subject of the section.

24. NR 207 (a). Clarification is made here to require a permit for all buoys structures or signs not extending from shore that remain in the water overnight. This coincides with the language in NR 204.

25. NR 210 (b). The reference to the specific Bureau and address is deleted since it has changed and is subject to future change.

Safety Coordinator

8-23-80

DNR-81-003-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Rule Amendments for Boat and Water Safety.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, on September 23, 1980, the Department of Natural Resources (DNR), by Special Assistant Attorney General Augustus W. Clapp, III, on behalf of the Commissioner, Joseph N. Alexander, submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of U.S. Coast Guard Safe Loading and Powering Standards as set forth 33 C.F.R. Part 183; and

WHEREAS, pursuant to Minn. Stat. (1978), as amended, § 15.0412, subd. 4a, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed the aforesaid document, and has found it to be in excess of 3,000 words and has determined that it would exceed five pages of publication in the State Register; and

WHEREAS, the DNR has indicated and the Chief Hearing Examiner finds that the document is readily available for viewing at the DNR, and is otherwise readily available and accessible to the public.

NOW, THEREFORE, IT IS ORDERED that the DNR shall have the approval of the Chief Hearing Examiner to incorporate by reference in their proposed amendments to the boat and water safety rules the above-reference document.

Dated: September 25th, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

DNR Exh. No. 8
File No. DNR-81-003-PR
PAR Date 4/25/80

DNR-81-003-PR

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

PHYLLIS A. REHA, being first duly sworn, hereby deposes and says:

That at the City of Saint Paul, county and state aforementioned, on the 25th day of September, 1980, she did serve the Order of the Chief Hearing Examiner

upon Mr. Kim Elverum, Boat and Water Safety Coordinator, Bureau of Information & Education, Department of Natural Resources, by personally handing to Mr. Elverum,

said copy of the Order.

Phyllis A. Reha

Subscribed and sworn to before me this 29th day of September, 1980.

Susan C. Stojnik

SUSAN B. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

DNR-81-003-PR

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

PHYLLIS A. REHA, being first duly sworn, hereby deposes and says:

That at the City of Saint Paul, county and state aforementioned, on the 25th day of September, 1980, She did serve the Order of the Chief Hearing Examiner

upon Augustus W. Clapp, III, Special Assistant Attorney General, by personally handing to Mr. Clapp,

said copy of the Order.

Phyllis A. Reha

Subscribed and sworn to before me this 29th day of September, 1980.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

RECEIVED
AUG 28 1980
OFFICE OF HEARING
EXAMINERS

In the matter of the proposed rule amendments for Boat and Water Safety.

AFFIDAVIT OF MAILING

Kathleen Buttermore, being first duly sworn, deposes and says:

That on the 19th day of August, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, and with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Commissioner of Natural Resources.

Kathy Buttermore

Subscribed and sworn to before me this 19th day of August, 1980.

Karen L. Singer

KAREN L. SINGER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 15, 1984

DNR Exh. No. 2
File No. DNR-81-003-PR
PAR Date 9/25/80

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AUG 28 1980
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EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

In the matter of the proposed
rule amendments for Boat and
Water Safety.

CERTIFICATION

I hereby certify that the attached 30 labels and 0 sheets constitute the complete list of persons, associations, and other interested groups who as of 8:45 o'clock a.m., this 19th day of August, 1980, have requested pursuant to Minnesota Statutes 1980, Section 15.0412, Subdivision 4, that their names be placed on file with the Department of Natural Resources for the purpose of receiving notice of public hearings on proposed rules on the subjects captioned above.

Joseph N. Alexander
Commissioner

BY: Andy Brewer

DNR 3
PAR DNR-81-003-PR
9/25/80

tc motive Assembly Division
000 Oakwood Blvd.
len Park, Mich. 48121

. John A. Knapp
ssian, McKasy & Soderberg
00 Midwest Plaza Bldg.
nneapolis, MN 55402

ter S. Popovich
terson, Popovich, Knutson &
Flynn
4 Minnesota Bldg.
. Paul, MN 55101

rdon Forbes
nn. Railroads Association
3 Hanover Bldg.
0 Cedar St.
. Paul, MN 55101

nt E. Eklund
pt. of Economic Development
0 Cedar St.
. Paul, MN 55101

nnie Bannanno
om 300
45 University Ave.
. Paul, MN 55104

bert S. Burk
44 IDS Center
nneapolis, MN 55402

rylee Fithian, Exec. Director
len & Associates
5 Park Ave. So.
ls., MN 55404

an Dawson, Editor
e Minnesota Government Report
12, Press Room
ateCapitol Bldg.
TEROFFICE

J. Manthey
ckands Mather & Co.
00 Superior Ave. NE
eveland, Ohio 44114

515 So. Washington
bert Lea, MN 56007

Robert A. Silvagni, Env. Eng.
U of M-Physical Plant Dept.
200 Shops Building
319 15th Ave. SE
Minneapolis, MN 55455

William G. Haddeland
Minn. Petroleum Council
300 Northern Federal Bldg.
St. Paul, MN 55102

Robert Bollant
City of Winona
City Hall
4th & Lafayette St.
Winona, MN 55987

Richard C. Buske
Dept. of Economic Development
480 Cedar St.
St. Paul, MN 55101

Bruce T. Rowe, Administrator
Community Health Services Board
325 Lake Ave. So., Suite 604
Duluth, MN 55802

Mr. Reynold S. Rahko, Mgr.
Projects Coordinating Division
United Power Association
Elk River, MN 55330

George C. Mastor
General Counsel
MN Gas Company, Legal Division
300 Peavey Bldg.
Mpls., MN 55402

G. V. Welk, Manager
Regulatory Compliance & Services
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

Philip D. Brick
Pickands Mather & Co.
Suite 811-200 W Superior St.
Duluth, MN 55802

Federal State Reports, Inc.
5203 Leesburg Pike, #1201
Baileys Crossroads
Falls Church, VA 22041

Gertrude M. James
Anoka Co. Community Health &
Social Services Dept.
Courthouse, 4th Floor
Anoka, MN 55303

James C. Shipman
Executive Director
Association of Minn. Counties
2305 Ford Parkway
St. Paul, MN 55116

Wayne H. Olson, Esq.
Olson, Gunn & Seran, Ltd.
315 Peavey Bldg.
730 Second Ave. So.
Mpls., MN 55402

Charles Schaffer
Dept. of Economic Development
480 Cedar St.
St. Paul, MN 55101

Marylee Fithian
Director
Development Disabilities Plann
200 Capitol Square Bldg.
INTEROFFICE

G. Robert Johnson
4344 IDS Center
Minneapolis, MN 55402

Frank Mixa
Executive Director
Lake Mtka. Conservation Distri
402 E. Lake St.
Wayzata, MN 55391

General Mills, Inc.
Attn: J. W. Haun
P. O. Box 1113
Minneapolis, MN 55440

Bob Franklin, City Editor
Minneapolis Tribune
425 Portland Ave.
Minneapolis, MN 55488

DNR 3a
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PRR 9/25/80

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

RECEIVED
AUG 18 1980
OFFICE OF HEARING EXAMINERS

Rules for Boat
and Water Safety

ORDER
FOR
HEARING

The Department has completed drafting amendments to the boat and water safety rules required by change in the state statutes during the 1975 and 1980 legislative sessions as well as changes in federal regulations and authorized under Minn. Stat. § 361.25. It is therefore ORDERED that a public hearing be held pursuant to the rule making provisions of Minn. Stat. chapter 15. Notice shall be published in the State Register and mailed to all who have registered with the Department for that purpose. The hearing is scheduled as follows:

September 25, 1980, Minnesota Historical Society Building, Saint Paul, Minnesota beginning at 7 p.m.

Dated August 8, 1980.

JOSEPH N. ALEXANDER
Commissioner

DNR Exh. No. 1
File No. DNR-81-003-PR
PAR Date 9/25/80

Department of Natural Resources

Proposed Amendments to the Boat and Water Safety Rules

Notice of Hearing

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OFFICE OF HEARING
EXAMINERS

A public hearing concerning the proposed rule amendments will be held in St. Paul on September 25, 1980 at the Minnesota Historical Society Building, 640 Cedar Street, in the Weyerhaeuser Room. The hearing will begin at 7:00 p.m.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are concerned about the content of the rules, you are urged to participate.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Phyllis Reha, hearing examiner, room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-6910 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.1417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying

DNR Exh. No. 9
File No. DNR-81-003-PR
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both the need for and the reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Because of legislative changes during the 1975 and 80 sessions, as well as changes in federal regulations and those additions or deletions necessitated by experience, amendments to the current boat and water safety rules have been found to be necessary. Current rules were promulgated in 1972.

The following amendments are proposed:

- the addition of the term "sailboard" as well as several technical corrections the rules on licensing and marking of watercraft.

- providing that all required safety equipment be provided by the owner of rental watercraft.

- changing technical terms regarding alcohol and controlled substances to conform to statute changes.

- shortening and clarifying the rules of the road for non-motorized watercraft and the use of emergency lights on patrol craft.

- rewriting the required safety equipment rules to conform to new statutes. This includes requirements for lifesaving devices, sound producing devices, fire extinguishers and navigation lights. No substantial change is proposed from existing rules, however.

- changing the technical requirements for certain waterway markers to more closely conform to what is practical and available commercially.

- removing language on skin and SCUBA diving which was prempted by a 1975 statute.

- clarifying permit requirements for temporary structures, buoys and signs.

- deleting reference to an obsolete address in the Department of Natural Resources.

The authority for and subject-matter of the rules are found in Minn. Stat. Chapter 361. 4

The agency estimates that there will be no cost to local public bodies in the state to implement the amendments for the two years immediately following its adoption, within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978). 10

Copies of the proposed rule amendments are now available and at least one free copy may be obtained by writing to Boat and Water Safety Section, Minnesota Department of Natural Resources, Box 46-Centennial Bldg., Saint Paul, Minnesota 55155, telephone (612) 296-3336. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendments, contact the boat and water safety section at the address or phone listed above.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General. 8

Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual: 6

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Date August 8, 1980.

Joseph N. Alexander

JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

Amendments to the
Boat and Water Safety Rules

CERTIFICATE
OF
COMPLIANCE

I, Special Assistant Attorney General A.W. Clapp III, declare that I have examined the proposed rules amendments and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Dated November 10, 1980.

A. W. Clapp III

A. W. Clapp III
Special Assistant Attorney General