

NOTICE OF PROPOSED RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), State Parks Division hereby gives notice of the following proposed rulemaking. EMNRD proposes to amend its rule, 18.17.2 NMAC, Boating Operation and Safety.

Purpose of Amendment. EMNRD proposes the amendments to remove the flotation assist device definition; amend the definition of personal flotation device to include language consistent with US Coast Guard regulations; amend the definition of power driven vessel to include “at the time of operation”; to codify the placement of a validation sticker for motorboat registration; to amend requirements for the carry of throwable flotation devices; to amend requirements for personal flotation devices consistent with US Coast Guard regulations; to amend fire extinguisher size and type consistent with US Coast Guard regulations; to amend light requirements consistent with US Coast Guard regulations; to amend other equipment required on paddle craft and inflatable vessels; to amend provisions regarding prohibited operations for clarity; to amend language for tampering, mooring, or otherwise anchoring to buoys and other water marking systems; to add emergency cutoff switch requirements; to amend accident report provisions for clarity; to amend traffic control provisions for clarity; to amend restricted operations on state waters; and add a provision to allow State Parks Division officers, New Mexico State Police and county sheriffs to terminate voyage for unsafe operation of vessels.

EMNRD proposes to remove the definition of flotation assist device in 18.17.2.7 NMAC because there is no requirement or recommendation in current statute or rules for the application of such device. Additionally, no data exists in New Mexico that support the requirement of a flotation assist device for recreational water users.

EMNRD proposes to amend the definition of personal flotation device (PFD) to include language consistent with US Coast Guard regulation 33 CFR 175.15. Pursuant to the findings of a routine program audit the US Coast Guard conducted, their recommendation is to amend State Parks Division rules to remove PFD type code terminology throughout State Parks Division Rules and replace it with language approved by the US Coast Guard.

EMNRD proposes to amend the definition of power-driven vessel to include the operation of vessels whose main propulsion is not by mechanical means to be considered power driven at the time it is propelled by machinery.

EMNRD proposes to add terminology to Subsection B of 18.17.2.8 NMAC requiring the registration validation sticker be affixed within six inches to the right of the registration number on the port side of the vessel pursuant to the results and recommendation of the US Coast Guard program audit and consistent with 33 CFR 174.15.

In Subsection A of 18.17.2.9 NMAC, EMNRD proposes to amend the requirements to carry throwable flotation devices on paddle craft or inflatable vessels for consistency and clarification.

EMNRD proposes to amend the provisions regarding the wearing of a PFD consistent with 33 CFR 175.15, which eliminates the “type code” terminology and adds language pertaining to the use of PFDs consistent with the PFD label.

In Subsection B of 18.17.2.9 NMAC, EMNRD proposes to amend the provisions pertaining to size and type of fire extinguishers, so they are consistent with 33 CFR 175.320.

In Subsection F of 18.17.2.9 NMAC, EMNRD proposes to amend the light requirements as a result and requirement of the US Coast Guard program audit to include language that pertains to vessels under sail and paddle craft, consistent with 33 CFR 83.20.

In Subsection G of 18.17.2.9 NMAC, EMNRD proposes to amend the provision pertaining to equipment not required on paddle craft and inflatable vessels for clarification.

In 18.17.2.11 NMAC, EMNRD proposes to amend the provisions pertaining to prohibited operation for clarification. For general safety, operators will not be allowed to authorize persons to participate in unsafe behavior while the vessel is underway, and passengers will not be allowed to participate in unsafe behavior while the vessel is underway independent of the operator's knowledge or consent.

EMNRD proposes to amend the provisions pertaining to the restriction and prohibition of activities involving tampering with government placed marking and safety buoys and the safe navigation of vessels in marked channels.

In Subsection J of 18.17.2.11 NMAC, EMNRD proposes to add a provision pertaining to the requirement of the use of an emergency cutoff switch while the vessel is above wake speed or on plane pursuant to 46 USC 4312 with certain exceptions.

In 18.17.2.12 NMAC, EMNRD proposes to amend the language pertaining to the use of an accident report, to remove the requirement for the use of a US Coast Guard form.

In Subsection E of 18.17.2.15 NMAC, EMNRD proposes to amend the provision pertaining to traffic control while on the water for clarification and safety of operation.

In 18.17.2.16 NMAC, EMNRD proposes to amend the provisions pertaining to restricted operations on state waters for clarification and consistency.

EMNRD proposes to add a new section, 18.17.2.18 NMAC, that will allow a State Parks Division law enforcement officer, NM State Police officer, and county sheriff to terminate or prevent the voyage of a vessel in the event the vessel/operator is deemed unsafe contrary to certain provisions of 18.17.2 NMAC or in the interest of public safety.

Legal Authority. EMNRD proposes this rule amendment under the authority of NMSA 1978, Section 66-12-18.

The full text of the proposed rule amendment is available from Wendy Mason at 505-819-1785 or wendy.mason@emnrd.nm.gov or can be viewed on the EMNRD, State Parks Division's website at <https://www.emnrd.nm.gov/spd/public-meetings/> or at the State Parks Division's office in Santa Fe.

Public Hearing and Comment. EMNRD will hold a public hearing on the proposed rule amendments at 9:00 a.m. on Wednesday, January 31, 2023, at the New Mexico Law Enforcement Academy Auditorium, 4491 Cerillos Rd, Santa Fe, NM.

Those wishing to comment on the proposed rule amendment may make oral comments or submit information at the hearing or may submit written comments by January 31, 2023, by 9:00 a.m. by mail or email. Please mail written comments to Wendy Mason, EMNRD, State Parks Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to wendy.mason@emnrd.nm.gov.

Technical Information that served as a basis for the proposed rule amendments includes:

Copies of the technical information can be obtained from Manuel Overby at 505-570-7501 or manuel.overby1@emnrd.nm.gov or can be viewed on the EMNRD, State Parks Division's website at <https://www.emnrd.nm.gov/spd/public-meetings/>.

- 46 USC 4312. (b), Engine cut-off switches; use requirement
- 33 CFR 83.20, Navigation and navigable waters, inland navigation, lights and shapes
- 33 CFR 83.25, Sailing vessels underway and vessels under oar
- 33 CFR 174.15(a), State numbering and casualty reporting systems; validation stickers
- 33 CFR 175.15, Personal floatation devices required
- 33 CFR 175.17, Personal floatation devices required, exemptions
- 33 CFR 175.21, Condition, size and fit; approval marking
- 33 CFR 175.320, Fire extinguishing equipment required
- 33 CFR 70.01 & 70.05, Interference with aids to navigation/Collision with or damage to aids to navigation
- 33 CFR 83.03, General definitions, power-driven vessel, sailing vessel

36 CFR 3.8, What vessel operations are prohibited
2022 NM DR State Letter, USCG Compliance Review Results, July 28, 2022

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Wendy Mason at (505) 819-1785 or through the New Mexico Relay Network at 1-800-659-1779 two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Wendy Mason at (505) 819-1785 or by email at wendy.mason@emnrd.nm.gov, if a summary or other type of accessible format is needed.