

98-161 NR 5125 BOATING & EDUC.  
ENFORCEMENT

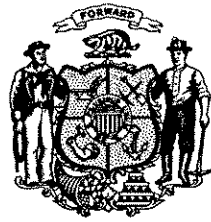
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-161**

AN ORDER to renumber NR 5.125 (3); to amend NR 5.001 (4) and (16), 5.125 (4) and 5.15; to repeal and recreate NR 5.125 (1) (b); and to create NR 5.001 (7m), 5.125 (3) (a) (title) and (b), 5.17 and 5.18, relating to boating enforcement and education.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

10-27-98 RECEIVED BY LEGISLATIVE COUNCIL.

11-20-98 REPORT SENT TO AGENCY.

RS:RJC;jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

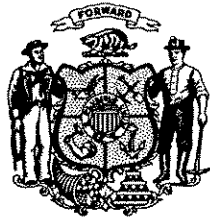
Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 98-161

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. Sections NR 5.001 (7m) and 5.15 interpret ss. 30.66 and 30.77 (4), Stats. Consequently, these two sections of the statutes should be included in the statement of statutes interpreted in the analysis to the rule.

b. The titles in s. NR. 5.125 (3) (a) and (b) should conform with current drafting convention. Paragraph titles are written with an initial capital letter and italicized. [See s. 1.05 (2) (d), Manual.]

#### 4. Adequacy of References to Related Statutes, Rules and Forms

a. The analysis to the rule would be more helpful to readers if it identified the acts which required the changes proposed in the rule.

b. Section NR 5.001 (7m) refers to what appears to be a published document, i.e., Wisconsin Lakes, Publ-FM-800. A note should be included with the rule indicating where this publication may be obtained.

c. Section NR 5.125 (1) (b) refers to a manual. A note should be included in the rule indicating where this manual may be obtained. Also, it is not clear what the testing methods "J34a, J1970 or J2005" refer to. Although it appears from the current rule that the method J34a refers to a Society of Automotive Engineers standard, all three testing methods should be more

clearly identified. In addition, it appears that the Note at the end of current s. NR 5.125 should be amended to make reference to testing methods J1970 and J2005. Also, the rule should be reviewed to ensure compliance with the requirements for incorporating standards established by technical societies into the Wisconsin Administrative Code. [See s. 2.08, Manual.]

d. In s. NR 5.17, what are the federal lighting requirements that boat operators must comply with? A cross-reference to the applicable federal laws or regulations should be included in the rule. It seems that such direction would be needed in order for the rule to comply with the statutory directive to supplement the statutory lighting requirements to keep the requirements in conformity with lighting rules adopted by the U.S. Coast Guard. [See s. 30.61 (9), Stats.]

### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 5.001 (4), the word “a” after the word “means” should be deleted.

b. In s. NR 5.001 (16), what is a “designated person”? Who designates the person? How is he or she designated? Is the term referring to a “person designated by a boat dealer or manufacturer,” or some other “designated person”? The meaning of the term should be clarified. In addition, it should be noted that s. NR 5.001 (4) and (16) define terms that are no longer used in s. 30.52 (5) (a) 3., Stats., following the enactment of 1997 Wisconsin Act 198.

c. For purposes of clarity, it appears that the phrase “of these methods” should be inserted at the end of s. NR 5.125 (1) (b).

d. The word “manufacturers” in the title to s. NR 5.125 (3) (a), should contain an apostrophe.

e. In s. NR 5.125 (4), the word “it” should be replaced by “the boat.”

f. The second sentence of s. NR 5.15 should, for the sake of clarity, be rewritten in substantially the following form: “The sign shall list, in letters with a minimum height of one inch, a summary, synopsis, or outline of those restrictions, or shall contain a map showing those areas with local restrictions, or both, including speed limits, . . . .”

g. Section NR 5.18 provides that the department “may authorize” boating education instructors to retain up to 50% of the fee. How is this authorization done? Is it case-by-case, or does the department intend to make an annual determination as to whether and how much of the fee may be retained? This point should be clarified. Also, the fiscal note does not appear to contemplate that part of the fees will be kept by local instructors.

h. In the effective date provision of the rule, a period should replace the comma after “April 1, 1999.”

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Natural Resources Board proposes an order to renumber NR 5.125(3); to amend NR 5.001(4) and (16), 5.125(4) and 5.15; to repeal and recreate NR 5.125(1)(b); and to create NR 5.001(7m), 5.125(3)(a)(title) and (b); 5.17 and 5.18 relating to boating enforcement and education.

LE-47-98

NR 5.125

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 30.61(9), 30.74(1)(b), 30.62(2)(d)2, 30.62(2)(d)3 and 227.11(2)(a), stats.

Statutes interpreted: ss. 30.52(3)(im), 30.52(5)(a)3, 30.523(2)(c), 30.523(3), 30.62(2)(d)2, 30.62(2)(d)3, 30.61(9) and 30.74(1)(b), Stats.

198 198 } 198  
add 30.66 s.m.(d)

The Department of Natural Resources has been directed by new legislative changes to create rules on student course fees for boating safety and to clarify the dealer law language. The Department is directed by current statutory language to update the state requirements on boat lighting to comply with federal regulations and the Department is requesting to update the current noise level testing procedures to comply with requirements of current statutory language to meet technological advances and consistency in testing methods.

SECTION 1. NR 5.001(4) is amended to read:

NR 5.001(4) "Demonstrate", for the purposes of s. 30.52 (5) (a) 3., Stats., means a the showing of a boat, boat motor or boat trailer ~~to a specific customer~~ in an effort to sell or show the operation of the boat, boat motor, or boat trailer ~~with a paid employee of by the manufacturer or , dealer either operation or accompanying the operator or a designated person.~~

the word no longer used. the:

SECTION 2. NR 5.001(7m) is created to read:

NR 5.001(7m) "Lake", for the purpose of s. 30.66, Stats., means a lake, reservoir or flowage, or millpond, or portion thereof, within the boundaries of the state that is listed by the department in the most current version of Wisconsin Lakes, Publ-FM-800.

SECTION 3. NR 5.001(16) is amended to read:

NR 5.001(16) "Test", for the purposes of s. 30.52 (5)(a) 3., Stats., means an examination of a boat, boat motor or boat trailer for the specific purpose of determining the worthiness of the item conducted by a ~~paid employee of a~~ designated person, boat dealer or manufacturer.

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SECTION 4. NR 5.125(1)(b) is repealed and recreated to read:

NR 5.125(1)(b) An officer requesting a boat operator to submit to a noise test shall utilize the procedures in the Wisconsin department of natural resources motorboat noise measurement procedures manual PUB LEB-500 and shall test the boat using testing methods J34a, J1970 or J2005 or any combination.

SECTION 5 NR 5.125 (3) is renumbered (3)(a).

SECTION 6. NR 5.125(3)(a)(title) is created to read:

NR 5.125(3)(a)(title) Manufacturers standard. ?

SECTION 7 NR 5.125 (3)(b) is created to read:

NR 5.125(3)(b) Operation standard. Noise level testing procedures J34a, J1970 or J2005 of the Society of Automotive Engineers shall be adhered to by boat operators when requested to submit to one or more of them by officers conducting noise tests on boats operating in the state of Wisconsin.

SECTION 8. NR 5.125(4) is amended to read:

NR 5.125(4) CUTOUT MECHANISMS. No person may operate a boat that is equipped with a muffler cut out, by-pass switch or similar device which allows it to operate contrary to s. 30.62(2)(b), Stats.

SECTION 9. NR 5.15 is amended to read:

NR 5.15 POSTING REQUIREMENTS. The posting requirements for local authorities under s. (30.77(4)) Stats., shall be a sign with a minimum of 3 inch lettering stating "Local Ordinance" posted at each public landing list . The sign shall list a summary, synopsis, or outline of those regulations more restrictive than state law with a minimum of 1 inch lettering or a map showing those areas with local restrictions, or both, including but not limited to speed limits, water ski hours and personal watercraft restrictions, if any.

SECTION 10 NR 5.17 is created to read:

NR 5.17 LIGHTING REQUIREMENTS. In addition to the lighting requirements specified in s. 30.61., Stats., operators of boats in the state of Wisconsin shall also comply with all federal lighting requirements.

SECTION 11 NR 5.18 is created to read:

NR 5.18 BOATING EDUCATION CERTIFICATION PROGRAM FEE. The fee for the boating education certification program shall be \$10.00. The department may authorize the instructors to retain up to 50% of the fee to defray expenses incurred locally to operate the program.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_

Sections 4 through 7 shall take effect on the first day of the month following publication in the Wisconsin Administrative register as provided in s. 227.22(2)(intro.), Stats. Sections 1, 2 and 3 shall take effect April 1, 1999. Section 8 shall take effect on May 1, 1999.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)

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