

NOV 18 1999

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. LE-47-98

Legislative Council Rules Clearinghouse Number 98-161

Subject of Rules Boating enforcement and education

Date of Transmittal to Presiding Officers November 17, 1999

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 5, Wis. Adm. Code
Boating enforcement and education

Board Order No. LE-47-98
Clearinghouse Rule No. 98-161

Statement of Need

Last session, the Legislature passed several changes to the boating statutes which mandated rule changes in ch. NR 5. There were also requirements in the current statutory language which require the Department to update administrative rules which are out of date and there were requests from the public to make certain changes to reduce the fiscal impact to municipalities relating to the posting of local boating ordinances.

The proposed rules will allow local municipalities to post local boating ordinances in a less costly fashion than is currently required by administrative code. The rule would also allow the Department to set the course fees for boating safety classes and it will clarify the boat motor noise law. The rule will also bring Wisconsin's boat lighting requirements into compliance with federal law to meet statutory requirements.

Modifications as a Result of Public Hearing

The Department has made minor changes to accommodate public comments. These changes were to the composition of the map under Section 7 in which the wording "made of a durable material" was added and under Section 9 an exemption for organizations that have a signed Memorandum of Understanding with the Department in regard to safety courses to charging the \$10 fee. An exemption for the Kilbourn Flowage was also added to address the concerns of the public, businesses and legislators under Section 1. This body of water is in question as to whether it should be classified as a lake or a river. The Department's intention is to exempt it until a final determination can be made.

Appearances at the Public Hearings

October 12, 1998 – La Crosse

Harold Cray
Mike Collins, La Crosse County Sheriff's Department
Robert Mullally, La Crosse Harbor Commission
John Noyes, Chairman, La Crosse Harbor Commission
Marc Schultz, UW-Extension
William Hove, Boundary Commission

October 13, 1998 – Madison

There were no appearances

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed rules do not regulation small businesses; therefore, a final regulatory flexibility analysis is not required.

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 5.125(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

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 30.61(9), 30.74(1)(b), 30.62(2)(d)2. and 3. and 227.11(2)(a), Stats.
Statutes interpreted: ss. 30.52(3)(m) and (5)(a)3., 30.523(2)(c) and (3), 30.62(2)(d)2. and 3., 30.61(9), 30.66, 30.74(1)(b) and 30.77(4), Stats.

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(7m) is created to read:

NR 5.001(7m) "Lake", for the purpose of s. 30.66, Stats., means a lake, reservoir, flowage or millpond, or portion thereof, that is listed by the department in the most current version of Wisconsin Lakes, Publ-FH-800, or any other body of water determined by the department to be a lake consistent with the test established in *Ne-pee-nauk Club v. Wilson*, 96 Wis. 2d 290 (1897), with the exception of the Kilbourn flowage in Juneau and Adams counties.

SECTION 2. 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 test the boat using testing methods J34a, J1970 or J2005.

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

SECTION 4. NR 5.125(3)(a)(title) is created to read:

NR 5.125(3)(a)(title) *Manufacturer's standard*.

SECTION 5. 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 6. 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 unless the operator of the boat can demonstrate at the time of inspection that the boat cannot operate contrary to s. 30.62(2)(b), Stats.

SECTION 7. 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 ~~listing~~. The sign shall list, in letters with a minimum height of one inch, a summary, synopsis, or outline of those regulations more restrictive than state law, or shall contain a map made of a durable material 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 8. 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 9. 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 based on the actual cost incurred to the instructor. The remaining funds shall be turned in to the department to defray expenses incurred to operate the boating safety program during the year. The fees for certification of courses taught by the United States power squadron, United States coast guard auxiliary and other entities which are covered by a memorandum of understanding with the department regarding boating education courses shall be \$1.00.

Note: Copies of the Society of Automotive Engineers Recommended Practice Report J34a, J1970 and J2005 entitled "Exterior Sound Level Measurement Procedure for Pleasure Motorboats" may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, Pennsylvania 15096. Copies of the Department of Natural Resources publication Publ-FH-800 entitled "Wisconsin Lakes" may be obtained from the Department of Natural Resources, Boating Program, 101 S. Webster, Madison, Wisconsin 53707-7921.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on October 27, 1999.

The rule 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.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)