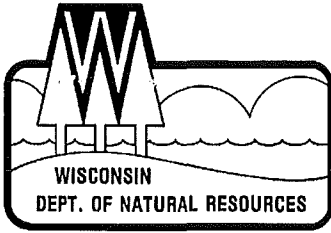


CR 94-219



George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. LE-5-95 was duly approved and adopted by this Department on February 23, 1995. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 12th day of April, 1995



George E Meyer
George E. Meyer, Secretary

(SEAL)

17-1-95



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

The Wisconsin Natural Resources Board proposes an order to repeal NR 5.13(2)(b); renumber NR 5.13(2)(d) and (e); renumber and amend NR 5.13(2)(c); to amend NR 5.09(3)(a), (4), (6)(a), 5.11(2)(a) to (d), 5.12(6)(b), 5.125(2), 5.13(2)(a), 5.33(2)(b), 50.13(1m)(a), (4)(d)2 and 4; and to create NR 5.125(1),(4) and (5), 5.16, 5.22, 5.33(1)(a), 5.33(2)(h) relating to boating safety and waterway markers.

LE-5-95

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 30.62(2)(d)2 and (9), 30.72(1), 30.74(2), 30.79(2m) and 227.11(2)(a), Stats.

Statutes interpreted: s. 30.62, 30.625(1)(a), 30.684(5), 30.72, 30.74(2), and 30.79, Stats.

This code revision specifies the procedures for obtaining a refusal hearing as stated in s. 30.684(5), Stats. Procedures for placement and maintenance of waterway markers are clarified. The size labeling of fire extinguishers is brought into compliance with federal requirements. Extinguisher sizes for boat classes remains the same, but labels change to conform with new federal designations. Procedure for calculation of horsepower capacity is simplified. Procedures for testing of boats and cutout mechanisms to determine compliance with s. 30.62(2), Stats., are clarified. Personal floatation devices and types are clarified to come into compliance with federal requirements. Seat cushions or ring buoys [type IV] are no longer acceptable by themselves as P.F.D.'s for craft under 16 feet, and at least one of these must be carried in addition to wearable P.F.D.'s on craft in excess of 16 feet. Procedures for safety instruction to renters of personal watercraft are clarified. Restricted speed zones are clarified for the St. Croix river. Procedures for funded municipal patrols to figure depreciation of capital outlay equipment, repairs, salary schedules, and on-water patrol ratio are clarified, and made more realistic to actual life of equipment.

SECTION 1. NR 5.09(3)(a), (4) and (6)(a) are amended to read:

NR 5.09(3)(a) No waterway marker may be placed on, in, or near the waters of the state unless such placement is authorized by a political subdivision of the state except that the provisions of this section do not apply to ~~private aids to navigation waterway markers placed under the jurisdiction of~~ by the department of natural resources or an authorized agency of the federal government.

(4) MAINTENANCE OF WATERWAY MARKERS. Waterway markers shall be maintained in proper condition, or be replaced or removed . by the applicant.

(6)(a) ~~The~~ Except for mooring, slalom, and race course buoys, the minimum size of buoys shall be 36 inches riding above the waterline with a 7-inch diameter. The size of the display area shall be as required by circumstances, except that no display area shall be smaller than one foot in height. Display symbol markers shall be shown on 2 sides of buoys.

SECTION 2. NR 5.11(2)(a) to (d) are amended to read:

NR 5.11 (2) The fire extinguishers required on each class of motorboat shall be as follows:

Class of Motorboat	Size and Number of Extinguishers Required
(a) Class A (less than 16 feet)	1 size A <u>B-I</u>
(b) Class 1 (16 feet to 26 feet)	1 size A <u>B-I</u>
(c) Class 2 (26 feet to 40 feet)	2 size A <u>B-I</u> or 1 size B <u>B-II</u>
(d) Class 3 (40 feet and over)	3 size A <u>B-I</u> or 1 size B <u>B-II</u> and 1 size A <u>B-I</u>

SECTION 3. NR 5.12(6)(b) is amended to read:

NR 5.12(6)(b) Step 2. If FACTOR number is larger than 52.0, the safe outboard horsepower capacity is figured according to the type of steering and the height of the transom. Measure transom height in inches (measure from bottom of keel to lowest point of the transom). For outboards with remote steering and a transom height of at least 20 inches, multiply the FACTOR by 2, subtract 90 and raise the answer to nearest multiple of 5, ~~using the information given in Table 3~~. The resulting number is the maximum safe horsepower in calm water.

SECTION 4. NR 5.125(1),(4) and (5) are created to read:

NR 5.125 (1) TESTING REQUIREMENTS. (a) The operator of any boat, when requested by a law enforcement officer who reasonably suspects a violation of s. 30.62(2), Stats., shall operate his or her boat in a manner prescribed by the officer, to determine compliance with s.30.62(2), Stats.

(b) The boat being tested under the officer's direction shall be operated for a minimum of 50 yards at speeds up to full throttle as specified by the officer.

(c) The officer shall conduct the test at a minimum of 50 feet from the watercraft.

(4) CUTOFF MECHANISMS. No person may operate a boat that is equipped with a muffler cut out, by-pass switch or similar device.

(5) REFUSAL TO ALLOW TESTING. No operator of any boat may refuse to operate his or her boat in a manner prescribed by the law enforcement officer who reasonably suspects a violation of s. 30.62(2), Stats.

SECTION 5. NR 5.125 (2) (Title) is amended to read:

(2)(title) PROOF OF COMPLIANCE FOR MANUFACTURERS.

SECTION 6. NR 5.13(2)(a) is amended to read:

NR 5.13 (2) PERSONAL FLOTATION DEVICE (PFD) REQUIREMENTS. (a) No person may operate or use a boat ~~less than 16 feet in length or a canoe or kayak~~ unless at least one PFD of the following types or their equivalents listed in the figure 1 is on board for each person:

1. Type I PFD
2. Type II PFD
3. Type III PFD
4. ~~Type IV PFD~~

SECTION 7. NR 5.13(2)(b) is repealed.

SECTION 8. NR 5.13(2)(c) to (e) are renumbered NR 5.13 (2)(b) to (d), and NR 5.13 (2)(b), as renumbered, is amended to read:

NR 5.13(2)(b) No person may operate or use a boat 16 feet or more in length, except a canoe or kayak, unless at least one type IV PFD or its equivalent listed in figure 1 is on board in addition to the PFD's required in par. ~~(b)~~ (a)

SECTION 9. NR 5.16 is created to read:

NR 5.16 INSTRUCTION FOR RENTAL OR LEASED PERSONAL WATERCRAFT.

Instruction for the purpose of s. 30.625(1)(a), Stats., shall include the following:

(1) The display of a personal watercraft decal in a location as specified by the department on the decal, by the owner or lessor of the watercraft explaining personal watercraft rules.

(2) A minimum of a 5 minute oral review to the operator of all of Wisconsin's special personal watercraft rules as supplied by the department by the lessor, or by an agent of the lessor, before operation of the personal watercraft occurs.

Note: Personal watercraft decals and special watercraft rules and acknowledgement forms, may be obtained from the Boating Safety Section, P.O. Box 7921, Madison, Wisconsin 53707.

SECTION 10. NR 5.22 is created to read:

NR 5.22 REFUSAL HEARINGS. Issues raised pursuant to s. 30.681 (5)(a) or (b), Stats., shall be raised by the defendant as a motion before trial contesting the validity of the arrest in the same manner as motions in misdemeanor actions filed under s. 971.31, Stats.

SECTION 11. NR 5.33 (1)(a) is created to read:

NR 5.33(1)(a) From May 15 through September 15, after 6:00 pm on Saturdays, Sundays and legal holidays until sunrise of the next day, from the sandbar located at mile 30.0 to the Stillwater, Minnesota north city limits at mile 25.0.

SECTION 12. NR 5.33 (2)(b) is amended to read:

NR 5.33 (2)(b) Between the coast guard navigational buoys designating location of the navigational channel from the railroad swing bridge located at mile 17.3 to the south side of the southern-most island in the chain of islands bridge in the interstate highway 94 corridor located at mile ~~16.5~~ 16.1, and from shore to shore in the area known as South Hudson Bay, down stream from the Hudson dike road to the embankment of interstate highway 94.

SECTION 13. NR 5.33(2)(h) is created to read:

NR 5.33(2)(h) From May 15 through September 15, after 12:00 noon on Saturdays, Sundays and legal holidays until 6:00 pm from the sandbar located at mile 30.0 to the Stillwater, Minnesota north city limits at mile 25.0.

SECTION 14. NR 50.13 (1m)(a)(intro), (4)(d) 2. and 4 are amended to read:

NR 50.13(1m)(a) (intro) On-water patrol hours for each water safety patrol are fundable based on a formula of the number of on-water patrol hours per arrest. The maximum number of on-water patrol hours per arrest shall be not more than 50% above the state average of on-water patrol hours per arrest for the past 3 years computed from the statewide municipal patrol records. This ratio may not be less than 15 on-water patrol hours per arrest. Patrols with a ratio of on-water patrol hours per arrest in excess of the maximum ratio may be funded only for those hours that result in a ratio equal to the maximum ratio allowed. Patrols are also subject to the following guidelines:

(4)(d)2 Form 8700-61 Salary schedule. This form is to be completed by the appropriate municipal official, who shall list the names and salaries of persons engaged in the local enforcement of ss. 30.50 to 30.80, Stats., and any administrative rules and ordinances enacted pursuant thereto. Salary rate is restricted to no more than the regular straight time rate which the officer normally receives. ~~Fringe benefits cannot exceed 20%~~ Allowable fringe rates are actual costs up to a maximum of 29% of the gross salary reimbursable straight time salary rate.

(4)(d)4 Form 8700-63 Depreciation schedule - straight line method. This form is to be completed by the appropriate local unit of government official, who shall list all capital outlay equipment and the resulting depreciation. Depreciation shall be calculated at the rate of ~~12 1/2%~~ 20% annually on all new capital equipment (~~\$500.00~~ \$1,000 or over). Repairs \$1,000 and under to authorized capital equipment may be reimbursed during the year the repairs were paid for. All repairs over \$1,000 to capital equipment shall be reimbursed on a ~~12 1/2%~~ 20% per year straight line depreciation schedule.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 23, 1995.

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 in Madison, Wisconsin 4/12/95

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY George E Meyer

George E. Meyer, Secretary

(SEAL)

