

 **07hr\_SC-ENR\_CRule\_06-132\_pt01**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2007-08**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on ... Environment and Natural  
Resources (SC-ENR)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (June/2014)

**Senate**

**Record of Committee Proceedings**

**Committee on Environment and Natural Resources**

**Clearinghouse Rule 06-132**

Relating to the mandatory boating education program, temporary certifications, and course fees.

Submitted by Department of Natural Resources.

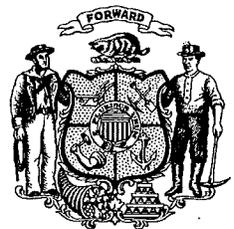
April 09, 2007          Referred to Committee on Environment and Natural Resources.

May 10, 2007          No action taken.

  
Elizabeth Bier  
Committee Clerk



# WISCONSIN STATE LEGISLATURE



**NATURAL RESOURCES BOARD AGENDA ITEM**

**SUBJECT:** Request adoption of Board Order LE-06-07, revisions to NR 5, Wis. Adm. Code, pertaining to mandatory boating education, temporary certifications and course fees.

**FOR:** MARCH 2007 BOARD MEETING

**TO BE PRESENTED BY:** Roy Zellmer, Boating Law Administrator

**SUMMARY:**

2005 Wis. Act 356 was passed into law in May 2006. Provisions of this Act require all persons born after 1-1-1989 and who are at least 16 years of age, to possess a WI DNR approved boating education course certificate before they may operate any motor boat. There was an exception created for a person who is renting/leasing a motorboat if the person providing the boat gives the renter/leaser instruction on how to operate a motorboat in the manner established by the department by rule. A provision of Act 356 prohibit the department from enforcing the new mandatory boating education certification requirement until the department first promulgates rules that establish the minimum standards and procedures for the instruction to be given to persons who rent or lease a motorboat. This rule order has been developed to establish the minimum standards and procedures for the instruction to be given under and comply with ss. 30.625 (1) (a) and 30.74 (1) (am), Stats.

The process developed under this rule will allow boat rental businesses to provide the minimum basic training required to for a person who will be renting or leasing and operating a motorboat which they have rented or leased. This rule clarifies the minimum age to be eligible for a temporary boating education training and certification will be 16 years of age and that the certification only applies to the operation of boats that are rented or leased by the holder of the certificate. In addition, this rule establishes the process for administering an exam and issuance of a temporary certificate. Motorboat rental businesses will be required to collect a \$10 fee for the temporary boating education course of instruction and issuance of the certificate. Similar to fees collected for regular boating education certification courses, the person or business providing the training and administering the exam will be allowed to retain up to 50 % of the fee to defray expenses incurred locally to provide the training and issue the temporary certificate. All remaining funds shall be turned in to the department. Based on public comment heard on this proposed rule we request the adoption of LE-06-07

**RECOMMENDATION:** Adopt Board Order LE-06-07, revisions to NR 5, Wis. Adm. Code, pertaining to mandatory boating education, temporary certifications and course fees.

**LIST OF ATTACHED MATERIALS:**

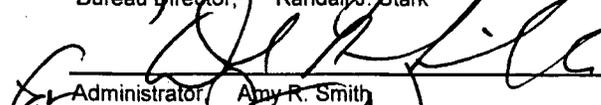
- |    |                                     |   |     |                                     |          |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/>            | Fiscal Estimate Required                              | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/>            | Attached |
| No | <input type="checkbox"/>            | Background Memo                                       | Yes | <input checked="" type="checkbox"/> | Attached |

**APPROVED:**

  
Bureau Director, Randall J. Stark

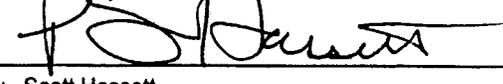
Date

2/16/07

  
Administrator, Amy R. Smith

Date

2/16/07

  
Secretary, Scott Hassett

Date

2/24/07

- cc: Laurie J. Ross - AD/5
- Amy Smith - AD/5
- Mike Lutz - LS/5
- Carol Turner - LS/5
- Randy Stark - LE/5

- Bill Engfer - LE/5
- Roy Zellmer - LE/5
- Kristin Turner - LE/5
- Tom Van Haren - LE/5
- Regional LE Supervisors - LE/5 (5)

STAFF REVIEW - DNR BOARD AGENDA ITEM

REMINDER

Have the following questions been answered under the summary section of this form?

- Why is the rule needed?
- What are the significant changes?
- What are the key issues/controversies?
- What was the last action of the Board?

LIST OF ATTACHED REFERENCE MATERIAL REQUIRED FOR RULE PROPOSALS:

Hearing authorization:

Final adoption:

Background Memo (if needed)\*  
 Fiscal Estimate  
 Environmental Assessment (if needed)  
 Rule

Background Memo (if needed)\*  
 Response Summary  
 Fiscal Estimate  
 Environmental Assessment (if needed)  
 Rule

\* If all the questions listed in the REMINDER section above can be adequately summarized on the Green Sheet (and a second sheet if needed), the Background Memo may be omitted.

Unit	Reviewer	Date	Comments
Environmental Analysis and Review	DLS	2/21/07	
Management and Budget	W	02/19/07	
Legal Services -Program Attorney -Carol Turner	MI  CT	2-19-07  2-21-07	w/ modifications to the rule.
Other (if applicable)			

DATE: February 15, 2007

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: NRB adoption of Board Order LE-06-07 pertaining to temporary boating education temporary certification.

I am requesting Natural Resources Board adoption of Board Order LE-06-07, a rule package pertaining to Chapter NR 5, Wis. Adm. Code, relating to the departments requirement to develop a temporary boating education course and certification process for individuals who rent or lease boats and establishment of qualification, restrictions and course fees.

### **Background**

2005 Wis. Act 356 was passed into law in May 2006. Provisions of this Act require all persons born after 1-1-1989 and who are at least 16 years of age, to possess a WI DNR approved boater's education course certificate before they may operate any motor boat. The state of Wisconsin has a large number of people who boat recreationally in the state, both resident and non-resident. Some of the people who will operate motorboats in the state will do so by renting them from rental businesses and/or marinas. Many of the people who rent these boats may not hold a boating education course certificate.

There was an exception created by statute for a person who is renting/leasing a motorboat if the person providing the boat gives the renter/lesser instruction on how to operate a motorboat in the manner established by the department by rule. A provision of Act 356 prohibits the department from enforcing the new mandatory boating education certification requirement until the department first promulgates rules that establish the minimum standards and procedures for the instruction to be given to persons who rent or lease a motorboat.

### **Summary of Rule**

This rule order has been developed to establish the minimum standards and procedures for the instruction to be given under and comply with ss. 30.625 (1) (a) and 30.74 (1) (am), Stats. The process developed under this rule will allow boat rental businesses to provide the minimum basic training required for a person who will be renting or leasing and operating a motorboat, which they have rented or leased. This rule clarifies the minimum age to be eligible for temporary boating education training and certificate will be 16 years of age and that the certification only applies to the operation of boats that are rented or leased by the holder of the certificate. In addition, this rule establishes the process for administering an exam and issuance of a temporary certificate. Motorboat rental businesses will be required to collect a \$10 fee for the temporary boating education course of instruction and issuance of the certificate. Similar to fees collected for regular boating education certification courses, the person or business providing the training and administering the exam will be allowed to retain up to 50 % of the fee to defray expenses incurred locally to provide the training and issue the temporary certificate. All remaining funds shall be turned in to the department to defray expenses incurred to operate the boating safety program.

Internet based courses provide a very viable option for people who wish to become certified in boating

safety education in the convenience of their own homes if they wish. Current rules are unclear regarding fees to be charged and remitted when the department issues a DNR boating education certificate for a course taken over the internet, when such course has been recognized by the Department as meeting the minimum requirements to become certified to operate a boat in Wisconsin under a memorandum of Understanding between the internet course provider and the Department. This rule will clarify that the fee structure for internet based courses will be the same as the structure used for courses provided 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. This clarification will allow for better quality courses and providing more availability of courses to the public.

### **Public Comment Summary**

The department held four public hearings at the following locations Waukesha, Fitchburg, Wausau and Eau Claire. The department also took written comment by mail and electronically. The department had 6 public appearances and 5 phone calls regarding the rule. The people appeared as interested parties and asked questions about the process and their requirements. The only comment which was voiced in opposition to any of the proposed rule was the requirement that rental agents send in the monthly reports instead of just once a year. Based on the comment received and re-evaluation by the department the rule was modified to this concern. The rule was changed from a monthly reporting requirement to an annual reporting and remittance requirement, along with a requirement that the rental agent maintain certain records and makes them available for inspection upon request.

### **Rule Development**

The proposed rules were developed based on statutory requirements by s. 30.625 (1) (a), Stats. and done by Bureau of Law Enforcement Boating Education Program, incorporating comment received during the public comment period and hearings.

### **Small Business and Final Regulatory Flexibility Analysis**

#### *A.1. Describe the compliance and/or reporting requirements imposed on small business.*

Small businesses, who operate as boat rental agents and want to participate in issuing temporary boating safety certificates will be required to do the following;

- 1) Administer the training necessary for the public to take the boating safety exam. If the person passes the exam, the boat rental agent will then issue the temporary boating safety certificate to that individual who took the exam.
- 2) The boat rental agent will collect the fees as prescribed for the boating safety test and temporary certificate. If a business chooses to participate in this program, they shall by December 31 annually send a roster of the individual's information to the department and remit 50% of the monies collected to the department at the same time.
- 3) Maintain a record of individuals they certify and make those records available to inspection by the department if requested during normal business hours.

#### *A.2. Can these compliance and/or reporting requirements be made less stringent for small businesses?*

No. The requirements have already been amended to impact small businesses as little as possible. The requirements are minimal and streamlined. It is still the choice of the small business to participate in the program. So, should the small business not feel it is to their benefit to participate they may choose not to.

*B.1. Describe the schedules or deadlines for compliance or reporting imposed on small businesses.*

The temporary boating safety certificate issued by the boat rental agent will be filled out by the agent indicating the date of issuance, which is then valid through the current calendar year. The rosters of the names of individuals tested and those issued the temporary boating safety certificate will be sent into the department annually, by December 31 along with the remittance for the tests administered to the individuals.

*B.2. Can these schedules or deadlines be made less stringent for small businesses?*

No. These schedules have already been relaxed as part of the rule development process and are less stringent than what is required of instructors teaching regular boating education courses.

*C. Can the compliance or reporting requirements for small businesses be consolidated or simplified?*

We have established compliance and reporting requirements which we have simplified during the process as much as we can. We are requiring the boat rental agent to send in rosters and remittance only once a year and not after each class as required for other entities teaching boat safety courses. In order to maintain some accountability in the course, fees collected and number of individuals taking advantage of the temporary certificate the boat rental agents must comply with these minimum requirements.

*D. Can performance standards be established for small businesses in lieu of design or operational standards?*

No. The compliance and reporting requirements do not have any established performance standards which would replace the current compliance and reporting requirements.

*E. Can small businesses be exempted from any or all requirements of the rule?*

No. The purpose of this rule is to ensure consistent and uniform implementation for the training and issuance of the temporary boating safety certificates. So, by not having small businesses follow these minimal procedures we would have no accountability of the program.

*F. Initial Regulatory Flexibility Analysis*

1. Describe the type of small business that will be affected by rule.

Businesses that either rent or lease motorboats and chose to participate in this process will be affected.

2. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule.

Boat rental agents will be required to keep a log or roster of an individuals name, address and date of birth, the exam score, the date each persons temporary boating education certificate was issued, the total course fee's collected and the total fee's remitted to the department on an annual basis, if they participated in the program during the calendar year.

**Environmental Analysis:**

The department has determined that these rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

**Legislative Clearing House Report:**

All comments from Legislative Council Rules Clearinghouse have been incorporated in the final rule order.

### Fiscal Estimate — 2007 Session

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number LE-06-07

**Subject**

Proposed rule on issuing of temporary boating education certificates by boat rental agents.

**Fiscal Effect**

- State:  No State Fiscal Effect  
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes       No

- Decrease Costs

- Local:  No Local Government Costs  
 Indeterminate

1.  Increase Costs  
      Permissive     Mandatory  
 2.  Decrease Costs  
      Permissive     Mandatory

3.  Increase Revenues  
      Permissive     Mandatory  
 4.  Decrease Revenues  
      Permissive     Mandatory

5. Types of Local Governmental Units Affected:  
 Towns     Villages     Cities  
 Counties     Others  
 School Districts       WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

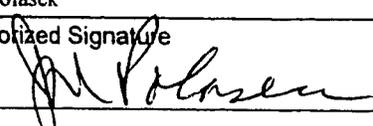
**Rule Summary:** The proposed rule will allow boat rental business in the state to provide boat education training, administer a boating education test and issue temporary boating education certificates to those born on or after 1-1-89 and who are at least 16 years of age that passes the course.

**Fiscal Estimate:** There will be additional revenue spent for administering this program and supplying the materials to the boat rental businesses. The Department is estimating an initial order of test booklets to be 5,000, for an estimated 250 boat rental agents statewide. The Department is estimating approximately 80 hours annually to administer the program. This is at an estimated cost of \$6,800.00 for both staff cost and materials (LTE Salary \$13/hr x 80 = \$1,040.00 + \$260.00 Fringes = \$1,300.00) (Printing of tests and postage 5,000 test books x \$1.00 = \$5,000 + postage \$2.00 x 250 = \$500.00 for a total cost of \$5,500.00). These are being estimated as reoccurring.

The department has also estimated an initial start up cost of \$19,250.00 (\$25.00/hr x 2hrs x 250 liveries = \$12,500.00 + \$6,750.00 for fringes) for the cost of local Conservation Wardens meeting with each boat rental agent and going through an explanation of how the temporary certificate program shall work. This was figured at 2 hours per boat rental agent. Should the boat rental agent use all 5,000 tests they will generate revenues of \$25,000 for the department. This amount is based upon \$10 per test with up to 50% or \$5.00 being retained by the rental agent and the remaining funds remitted to the department. The offset cost of the program will be able to absorbed into our normal operations. After the initial year the costs of Conservation Wardens should drop by at least 50% with subsequent years decreasing even more.

**Long-Range Fiscal Implications**

None

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	11/15/2006

**Fiscal Estimate Worksheet — 2007 Session**  
 Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number LE-06-07

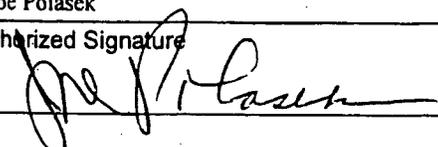
Subject  
 Proposed rule on issuing of temporary boating education certificates by boat rental agents.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):  
 N/A

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$ 20,550	\$ -
(FTE Position Changes)		( FTE )	( FTE )
State Operations — Other Costs		5,500	-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>Total State Costs by Category</b>		\$ 26,050	\$ -
<b>B. State Costs by Source of Funds</b>			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S		26,050	-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S		25,000	-
<b>Total State Revenues</b>		\$ 25,000	\$ - 0

**Net Annualized Fiscal Impact**

	State	Local
Net Change in Costs	\$ 26,050	\$
Net Change in Revenues	\$ 25,000	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 11/15/2006



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

[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 06-132**

AN ORDER to repeal and recreate NR 5.18; and to create NR 5.001 (12m), relating to the mandatory boating education program, temporary certifications, and course fees.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-06-2006 RECEIVED BY LEGISLATIVE COUNCIL.

12-20-2006 REPORT SENT TO AGENCY.

RNS:MCP

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
*Clearinghouse Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Terry C. Anderson  
*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 06-132

#### 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 January 2005.]

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

a. The rule uses both “motorboat” and “motor boat.” One term should be used consistently.

b. In s. NR 5.18 (1) (c), the introductory material is incorrectly drafted since it does not end in a colon and lead into the following subdivisions. [See s. 1.03 (8), Manual.] Therefore, it should be numbered subd. 1. and the other subdivisions should be subds. 2. to 4.

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

a. In s. NR 5.18 (1) (a) (intro.), “who” should replace “that.”

b. In s. NR 5.18 (2) (c) (intro.), there is an extraneous period in the last line.

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

The Natural Resources Board proposes an order to repeal and recreate s. NR 5.18; and to create s. NR 5.001(12m) relating to the mandatory boating education program, temporary certifications and course fees.

LE-06-07

Analysis Prepared by Department of Natural Resources

**1. Statutes Interpreted.**

Sections 30.625(1)(a), 30.678(1)(d), and 30.74(1)(a) and (b), Stats.

**2. Statutory Authority.**

Section 30.74(1)(a), (am), and (b), Stats.

**3. Explanation of agency authority to promulgate the proposed rule under the statutory authority.**

The new mandatory boating safety education program is established under s. 30.678 (1)(d), Stats. Section 30.74(1)(a), Stats., requires the department to create comprehensive courses on boating safety and operation. These courses shall be offered in cooperation with schools, private clubs and organizations, and may be offered by the department in areas where requested and where other sponsorship is unavailable. The department is required to prescribe the course content and the form of the certificate. Section 30.74(1)(am), Stats., authorizes the department to promulgate rules to establish minimum standards and procedures for the instruction required to be given pursuant to s. 30.625(1)(a), Stats. Section 30.625(1)(a), requires any person engaged in the rental or leasing of a motorboat to provide instruction to the customer on how to operate in the manner established by the department. Section 227.11(2)(a), Stats., also grants the department rule making authority to better effectuate the statute. All rules promulgated under this authority are subject to review under ch. 227, Stats.

**4. Related statute or rule**

None

**5. Plain language analysis of the proposed rule**

This rule establishes the minimum standards and procedures for the instruction to be given under and comply with ss. 30.625 (1) (a) and 30.74 (1) (am), Stats. The process developed under this rule will allow boat rental businesses to provide the minimum basic training

required to for a person who will be renting or leasing and operating a motorboat which they have rented or leased. This rule clarifies the minimum age to be eligible for a temporary boater education training and certificate will be 16 years of age and that the certification only applies to the operation of boats that are rented or leased by the holder of the certificate. In addition, this rule establishes the process for administering an exam and issuance of a temporary certificate. Motorboat rental businesses will be required to collect a \$10 fee for the temporary boating education course of instruction and issuance of the certificate. Similar to fees collected for regular boating education certification courses, the person or business providing the training and administering the exam will be allowed to retain up to 50 % of the fee to defray expenses incurred locally to provide the training and issue the temporary certificate. All remaining funds shall be turned in to the department to defray expenses incurred to operate the boating safety program.

**6. Summary of and preliminary comparison with existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.**

None

**7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan)**

None of the states of Minnesota, Iowa, Illinois or Michigan have a temporary certificate program. They also do not regulate the fees that are charged for an internet class. Those fees are administered by the internet provider.

**8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.**

Recently 2005 ACT 356 was passed into law requiring all persons born on 1-1-1989 and who is 16 years of age or older to have a boating safety certification if they wish to operate a motorboat in the state. Wisconsin is a very popular boating state and has many businesses who rent boats to people both residents and non-residents. The state also has many people visit the state who bring their own motorboat into the state to use its many lakes and rivers. By providing a temporary boating safety certificate through the rental businesses it allows the department to better facilitate the business and the person who wishes to operate a rental motor boat in this state.

Internet based courses provide a very viable option for people who wish to become certified in boating safety education in the convenience of their own homes if they wish. Current rules are unclear regarding fees to be charged and remitted when the department issues a DNR boating education certificate for a course taken over the internet, when such course has been recognized by the department as meeting the minimum requirements to become certified to operate a boat in Wisconsin under a memorandum of Understanding between the internet course provider and the department. This rule will

clarify that the fee structure for internet based courses will be the same as the structure used for courses provided 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. This clarification will allow for better quality courses and providing more availability of courses to the public.

**9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rules effect on small businesses under s. 227.114, stats or that was used when the agency prepared an economic impact report.**

The modification of the current rule and the establishment of the temporary boater education certificate will only affect those small businesses that rent or lease motorboats and who wish to participate in this program. The affect is hoped to be minimal based on the simplified process which was developed by the department to keep track of the number of temporary boating safety education certificates that were issued and the funds which were collected by the boat rental agents providing the education and certification. The department used the small business and final regulatory flexibility analysis procedure to formulate this summary.

**10. Effects on small business, including how the rule will be enforced.**

These rules will allow small businesses that rent motor boats the opportunity to continue to conduct their business of renting motor boats to customers who may not already hold a department issued boater safety education certification or one recognized from another state. The rental business will be provided the opportunity to provide training to the renter and issue them a temporary safety education certificate.

The rule establishment and modification will allow businesses who rent motorboats to administer a boater education test and record the information for the temporary certificate. This rule will allow small businesses the ability to rent motorboats to individuals that might otherwise not be able to legally operate a motorboat. This will require the business to provide a minimum level of training on the safe operation of a boat and the boating laws of Wisconsin and issue a temporary boating education certificate to individuals who were born on or after 1-1-89 and are at least 16 years of age, but who are not already certified to operate a motorboat in Wisconsin. A small business will not be required to provide this training and certification to customers. It will be up to the small business to determine if they want to take advantage of these rules. This rule does provide that a small business that provides boating education training and issues temporary certificates under the authority of this rule to keep up to \$5 per individual that they train and certify to help defray the cost of doing so.

A small business that chooses to participate in the temporary boater education certification program who does not submit reports or persons they train and certify or the required fees to the department may be subject to a forfeiture of not more than \$100 and may be subject to s. 23.79(3), Stats., for any fees not submitted to the department.

**11. Agency contact person (including e-mail and telephone number).**

Roy S. Zellmer, 101 S. Webster Street P.O. Box 7921, Madison, WI 53707-7921, (608) 264-8970, [roy.zellmer@wisconsin.gov](mailto:roy.zellmer@wisconsin.gov)

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**SECTION 1. NR 5.001(12m) is created to read:**

**NR 5.001(12m)** "Rental agent" means a person who is in the business of renting or leasing motor boats to the public.

**SECTION 2. NR 5.18 is repealed and recreated to read:**

**NR 5.18 Boating education certification program. (1) TEMPORARY BOATING EDUCATION CERTIFICATES.** (a) *Eligibility.* Only individuals who meet all of the following are eligible to receive a temporary boating education certificate:

1. A person who is or will be renting or leasing a motor boat from a rental agent who has agreed to provide them with boating education training as required under par. (c).
2. A person who is 16 years of age or older.

(b) *Effective period.* All of the following conditions apply to a temporary boating education certificate issued under this section:

1. Shall be valid from the time and date of issuance, until the end of the calendar year issued.
2. Shall only be valid for the person it is issued to for the purpose of complying with s. 30.678(1)(d), Stats.
3. Shall only be valid for the operation of a motor boat which is rented or leased by the holder of the certificate.

Note: Temporary boating education certificates are only available for and may not to be issued to persons who are not renting or leasing the motor boat. Persons age 10-15 are not eligible for a temporary boating education certificate. Pursuant to s. 30.678(1), Stats., a person age 10-15 may operate a motor boat that is not a personal watercraft (PWC) if they are accompanied by a parent or guardian or by a person who is at least 18 years of age and who is designated by a parent or guardian. Persons age 12-15 may operate a motor boat, including a PWC without an adult, parent or guardian present if they hold a valid boating education certificate issued by the department under s. 30.74(1)(a), Stats.

(c) *Education and training requirements.* 1. The department shall create a short course of instruction which covers the Wisconsin general boating laws and the safe operation of a motor boat. These courses may be offered through a rental agent that rents or leases motor boats to the public, or by the department.

2. A rental agent that rents or leases motor boats and offers a course of instruction under this paragraph shall issue a temporary boating education certificate to persons 16 years of age or older successfully completing the course.

3. The department shall prescribe the course content in a student manual to be provided to any rental agent that rents or leases motor boats to the public.

4. The department shall prescribe the form of the temporary certificate that shall be provided to any person that successfully completes that training and passes an exam provided by the department with the manual.

(2) COURSE AND CERTIFICATE ISSUANCE FEES. (a) *Department sponsored courses.* The fee for the boating education certification course taught by the department or an instructor certified by the department to teach the department's boating education program authorized under s. 30.74(1)(a), Stats., 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.

(b) *Department approved courses.* The portion of the fees collected for certification and turned into the department for 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. This paragraph does not prevent those entities covered by a memorandum of understanding with the department from charging a fee that is reasonable to defray their costs of administering and operating the courses they provide. The department may authorize specialized fees for internet based education certification programs pursuant to a memorandum of understanding with the managing entity. The fee shall be sufficient to defray authorized operational costs of the managing entity and the department.

(c) *Rental agent short courses.* 1. The fees for a temporary boating education certificate issued under sub. (1) shall be \$10.00. A rental agent that offers training and certification pursuant to sub. (1)(c), shall collect the fee and may retain up to 50% of the fee to defray expenses incurred by them to conduct the training and exam and issue the certificate. The remaining funds shall be remitted to the department along with the records to be submitted under subd. 2.

2. All rental agents who provide a course of instruction under this section shall submit an annual report to the department by December 31 each year for any training provided and certification issued during that calendar year. The report shall contain the following information regarding each person who completes the training and exam described in sub. (1)(c) during the calendar year:

- a. Name, address and date of birth.
- b. The exam score.
- c. The date each person's temporary boating education certificate was issued.
- d. Total course fees collected.
- e. Total fees being remitted to the department.

3. Rental agents shall maintain a written or electronic record of all information required under subd. 2. for a period of 2 years after the deadline for submitting the information to the department a required under subd. 2.

4. Copies of records or reports required to be kept under this section shall be made available for inspection and copying by the department during normal business hours. No rental agent who has been requested to submit to an inspection under this section, or employee or person acting on behalf of such rental agent shall refuse to provide the department or its agents any record or report required to be kept under this section.

**SECTION 3. Effective date.** This 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.

**SECTION 4. Board adoption.** The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

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

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)