

FEB 02 2001

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. CF-33-00

Legislative Council Rules Clearinghouse Number 00-112

Subject of Rules Recreation boating facilities program

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Date of Transmittal to Presiding Officers January 12, 2001

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

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

Telephone: 266-1959  
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An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

## REPORT TO LEGISLATURE

NR 7, Wis. Adm. Code  
Recreation boating facilities program

Board Order No. CF-33-00  
Clearinghouse Rule No. 00-112

### Statement of Need

The recreational boating facilities program provides cost sharing assistance to eligible sponsors for improvements for motor boat access for items such as launch ramps, parking facilities, harbors of refuge, equipment for the mechanical removal of aquatic vegetation, etc. 1997 Wisconsin Act 27 also allowed "in-kind contributions" as an eligible part of the local cost share. The existing rules for the program allow the value of donated materials, equipment, services or labor to be used as part of the project costs borne by the project sponsor. Because of the confusion that sometimes exists with the concept of in-kind contributions, the Wisconsin Waterways Commission expressed its desire to clarify in the rule that "in-kind contributions" has the same meaning as "donations" in the existing rule.

The 1997 budget bill also created program eligibility of equipment necessary to remove floating trash and debris from a waterway. Specifically, the proposed rule changes include the following:

Ties the statutory eligibility of "in-kind contributions" as local match to the donation policy outlined in the current rule language.

Further outlines project eligibility and application materials necessary for capital equipment necessary for the removal of floating trash and debris from a waterway.

Further outlines project eligibility and application materials necessary for projects for the chemical removal (spraying) of Eurasian water milfoil.

Add the requirement that a chemical application permit be obtained prior to Commission review of a chemical spraying project.

Criteria for determining when a project can be considered as of statewide or regional significance that may result in a higher cost sharing rate.

### Modifications as a Result of Public Hearing

The reimbursement rate for volunteer labor was modified from \$5 to \$6 to be consistent with other programs.

### Appearances at the Public Hearing and Their Position

In support:

Kathy Rydquist, Fox Lake Inland Lake Protection and Rehabilitation District, N10676 Chief Kung Trail,  
Fox Lake, WI 53933

Mary J. Danaski, Fox Lake Inland Lake District, W10919 Blackhawk Trail, Fox Lake, WI 53933

Barbara M. Dutkiewicz, Fox Lake Inland Lake District, W10311 Shorecrest Drive, Fox Lake, WI 53933

In opposition – none

As interest may appear:

Larry Francis, Wood County Park and Forestry Dept., P.O. Box 8095, Wisconsin Rapids, WI

### Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

### Final Regulatory Flexibility Analysis

The proposed rule does not regulate small business; therefore a final regulatory flexibility analysis is not required.

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

The Wisconsin Natural Resources Board proposes an order to amend NR 7.04(6); to repeal and recreate NR 7.04(9); and to create NR 7.03(3a) and (8a), 7.05(10) and (11), 7.084, 7.086 and 7.088 relating to the recreation boating facilities program.

CF-33- 00

Statutory authority: ss. 30.92(5)(a) and (b) and 227.11(2)(a), Stats.  
Statutes interpreted: s. 30.92(4)(b)2.b., 2m., 8am and 8.bn., Stats.

In this order section 1 establishes a definition for donations and in-kind contributions. Section 2 adds the requirement of obtaining a chemical application permit for chemical treatment projects prior to the review of the project by the Wisconsin Waterways Commission. Section 3 ties the provision of s. 30.92(4)(b)2m., Stats. regarding in-kind contributions to the existing policy on donations serving as all or a portion of the local cost share match for a project. Section 4 creates new project eligibility for chemical removal of Eurasian water milfoil under s. 30.92(4)(b)8.am., Stats. Section 5 creates new project eligibility for capital equipment necessary for the removal of floating trash and debris from a waterway under s. 30.92(4)(b)8.bn., Stats. Section 6 describes the application materials necessary for a project request for capital equipment to collect and remove floating trash and debris from a waterway. Section 7 describes the application materials necessary for a project request for chemical removal of Eurasian water milfoil. Section 8 sets out the criteria for a project to be considered as a project of regional or statewide significance as provided under s. 30.92(5)(b), Stats.

**SECTION 1. NR 7.03(3a) and (8a) are created to read:**

**NR 7.03(3a)** "Donations" means the cash or non-cash contributions of materials, equipment, services or labor provided by a third party to the sponsor that are reasonable and necessary for carrying out the project and meet the same test of eligibility as any other cost item.

**(8a)** "In-kind contributions" means the non-cash contributions of materials, equipment, services or labor provided by the sponsor that are reasonable and necessary for carrying out the project and meet the same test of eligibility as any other cost item.

**SECTION 2. NR 7.04(6) is amended to read:**

**NR 7.04(6)** Prior to project review by the commission, the sponsor shall have obtained all permits required under ch. 30, Stats., and s. 281.17(2), Stats.

**SECTION 3. NR 7.04(9) is repealed and recreated to read:**

**NR 7.04(9)** Pursuant to s. 30.92(4)(b)2m, Stats., the substantiated value of in-kind contributions or donated money, materials, equipment, services or labor may be used as all or part of the sponsor's share of the project cost subject to all of the following:

(a) All sources of sponsor match shall be indicated when the application for a grant is submitted.

(b) The value of in-kind contributions is what the sponsor would have to pay for similar services, materials, equipment or labor based on existing contracts, schedules or on the open market.

(c) The maximum value of donated labor shall be \$6.00 per hour.

(d) The value of donated equipment shall conform to the Wisconsin department of transportation county highway rates for equipment.

Note: The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

(e) The value of donated materials and services shall conform to market rates and be established by invoice.

**SECTION 4. NR 7.05(10) is created to read:**

**NR 7.05(10)** Use of chemicals to remove Eurasian water milfoil as follows:

(a) Eligible costs are the cost of chemicals, chemical application and necessary permits.

(b) Ineligible costs are costs of pre- and post-treatment monitoring, information and education materials, preparation of aquatic plant management plans, spraying equipment or protective equipment.

**SECTION 5 NR 7.05(11) is created to read:**

**NR 7.05(11)** Acquisition of capital equipment that is necessary to collect and remove floating trash and debris from a waterway. Eligible costs are the costs of the following capital equipment: collecting devices, barges with propelling motors, conveyors and trailering devices.

**SECTION 6. NR 7.084 is created to read:**

**NR 7.084 Applications for the acquisition of capital equipment to collect floating trash and debris from a waterway.** (1) Applications from governmental units and qualified lake associations for funding the acquisition of capital equipment to collect and remove floating trash and debris shall be made to the department for presentation to the commission.

(2) The application shall be made on forms provided by the department at its regional offices and shall contain the following information:

(a) A resolution officially adopted by the governmental unit or qualified lake association authorizing a representative to act as agent for the governmental unit or lake

association to sign forms or claims and verifying that sufficient funds are available to acquire the equipment.

(b) A statement supported by appropriate documents that the project is feasible from economic and environmental viewpoints.

(c) A detailed estimate of the cost of the project indicating the local share, the requested amount of state funding, and the extent of all other sources of funds.

(3) The department may fund acquisition of capital equipment for collecting and removing floating trash and debris at a rate determined by the commission subject to the limitations of s. 30.92(4), Stats. The actual rates of funding may vary from project to project and will be based on consideration of the factors contained in s. 30.92(3)(b), Stats., and the principles expressed in s. NR 7.09(1). In the case of an equipment trade-in, the amount eligible for reimbursement will be up to 50% of the difference between the price of a new unit and the trade-in value of the equipment being traded.

**SECTION 7. NR 7.086 is created to read:**

**NR 7.086 Applications for the chemical removal of Eurasian water milfoil.**

(1) Applications from governmental units and qualified lake associations for funding the chemical removal of Eurasian water milfoil shall be made to the department for presentation to the commission.

(2) The application shall be made on forms provided by the department at its regional offices and shall contain the following information:

(a) A resolution officially adopted by the governmental unit or qualified lake association authorizing a representative to act as agent for the governmental unit or lake association to sign forms or claims and verifying that sufficient funds are available to complete the project.

(b) A statement supported by appropriate documents that the project is feasible from economic and environmental viewpoints.

(c) A detailed estimate of the cost of the project indicating the local share, the requested amount of state funding, and the extent of all other sources of funds.

(d) A copy of the chemical treatment permit issued under s. 281.17(2), Stats., including a map of the areas to be treated.

(3) In addition to the factors in s. 30.92(3)(b), Stats., and the principles expressed in s. NR 7.09(1) to establish project priorities, the commission shall give a higher priority to projects that provide public boating benefits than to projects primarily benefiting riparian landowners and projects that prevent expansion of or substantially eradicate Eurasian water milfoil than to projects that provide for annual nuisance relief.

(4) The department may fund chemical treatment at a rate determined by the commission subject to the limitations of s. 30.92(4), Stats. The actual rates of funding may vary from project to project.

**SECTION 8. NR 7.088 is created to read:**

**NR 7.088 Projects of statewide or regional significance** The department, with the approval of the commission, may increase the maximum cost-share rate of 50% under s. 30.92(4)(b)2.a., Stats., to 80% if the commission determines that the project is of statewide or regional significance and the project meets all of the criteria under sub. (1) or (2) as follows:

(1) For projects located on lakes or flowages:

(a) The project is located on an inland lake that is at least 1,000 surface acres in size or is located on Lake Superior or Lake Michigan.

(b) The project site has, or will have as a result of the project, a boat launching facility protected by a breakwater structure.

(c) The project is located on a lake or flowage that has the minimum number of car-trailer unit parking spaces required under s. NR 1.91 or the project will bring the number of car-trailer unit parking spaces on a lake or flowage into compliance with the standards in s. NR 1.91.

(2) For projects located on rivers:

(a) The project is located on the Mississippi river.

(b) The project provides motorized boating access to a river at a site that is more than 10 miles from another motorized boating access site.

(c) The project provides or will provide a minimum of 15 car-trailer unit parking spaces at the site.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on December 6, 2000.

The rules 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

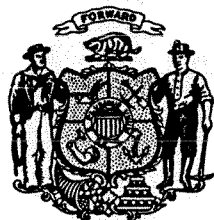
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**CLEARINGHOUSE REPORT TO AGENCY**

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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 00-112**

AN ORDER to amend NR 7.04 (6); to repeal and recreate NR 7.04 (9); and to create NR 7.03 (3a) and (8a), 7.05 (10) and (11), 7.084, 7.086 and 7.088, relating to the recreation boating facilities program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

07-05-00 RECEIVED BY LEGISLATIVE COUNCIL.

07-28-00 REPORT SENT TO AGENCY.

RNS:REL:jal;tlu

**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

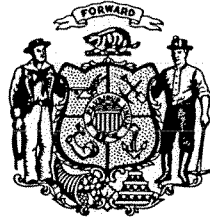


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## CLEARINGHOUSE RULE 00-112

### 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

Introductory material should end with a colon and lead into the subunits that follow. [See s. 1.03 (8), Manual.] In s. NR 7.05 (10) (intro.), ", as follows" should replace the period. A similar change is needed in s. NR 7.088 (intro.).

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

In s. NR 7.03 (8a), "In kind" should be hyphenated. A similar change should be made in s. NR 7.04 (9) (intro.) and (b). Also, "cost share" should be hyphenated in s. NR 7.088 (intro.).