

Clearinghouse Rule 14-048

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 5.11(e), 5.125(1)(d), 5.125(1)(e), 5.13(2)(c) 5.13(5) Figure 1; to **renumber and amend** NR 5.13(2)(d); to **amend** NR 5.01(1)(a), 5.01(1)(b), 5.01(1)(c), 5.01(1)(e), 5.04(1)(c), 5.09(3)(a), 5.11(2), 5.125 (Note), 5.125(1)(b), 5.125(1)(c), 5.13(1), 5.13(2)(a), 5.13(2)(a)1., 5.13(2)(a)2., 5.13(2)(a)3., 5.13(2)(b), 5.13(3)(a), 5.13(3)(b), 5.13(4), 5.13(4)(b), 5.13(4)(c), 5.13(5); and to **create** NR 5.01(2a), 5.01(11a), 5.01(16a), 5.01(16b), 5.01(17a), 5.01(1)(c)1, 5.01(1)(c)1.a., 5.01(1)(c)1.b., 5.01(1)(c)1.c., 5.06(5), 5.06(5)(a), 5.06(5)(a)1., 5.06(5)(a)2., 5.06(5)(b), 5.13(4)(c)1., 5.13(4)(c)2., 5.13(4)(c)3., 5.13(4)(c)4., 5.13(4)(c)5., 5.13(4)(c)6., 5.13(d), 5.13(6), 5.13(6)(a), 5.13(6)(b), 5.17(a), 5.33(4), relating to boat rules and regulations.

LE-01-14

Analysis Prepared by the Department of Natural Resources

- 1. Statute Interpreted:** 30.505, 30.62(d)2, 30.62(d)3, 30.62(2)(d)3, 30.62(9) and 30.65(2)
- 2. Statutory Authority:** 30.505, 30.62(d)2, 30.62(d)3, 30.62(2)(d)3, 30.62(9) and 30.65(2)
- 3. Explanation of Agency Authority:** The above statutes have been interpreted as giving the department authority to promulgate rules necessary to conform with federal regulations, establish noise level testing procedures, adjust to advances in technology, and necessary in the interest of public safety.
- 4. Related Statutes or Rules:** N/A
- 5. Plain Language Analysis:** The proposed rule makes several modifications to chapter NR 5.

Sections 1-5 adds definitions for coastal waters, personal flotation devices, visual distress signal to conform to federal requirements.

Sections 6-12 require each recreational vessel owner provide a unique identification number with the birth date to register a vessel for a certificate of number as required by federal regulations. These elements are part of an approved vessel numbering system necessary to maintain overall program approval and eligibility to receive federal financial assistance under the State Recreational Boating Safety Grant Program.

Sections 13-14 changes the term “state of principal use” to “state of principal operation” as required by federal regulations. State of principal operation means the State in whose waters a vessel is or will be operated most during a calendar year.

Sections 15-19 require the state issuing authority verify that the owner of a vessel that is issued a state assigned hull identification number has permanently affixed the assigned hull identification number to the vessel in compliance with 33 CFR Part 181, subpart C

Section 20 adds a requirement to label approved waterway markers with a department assigned number to allow law enforcement officers to determine the legality of markers that have been placed.

Sections 21-22 modifies fire extinguisher requirements to match federal regulations.
Sections 23-27 corrects noise level testing requirements to meet Society of Automotive Engineers recommended practices.

Section 28-47 revises personal flotation device requirements to remove type requirements and replace with the terms wearable and throwable personal flotation devices as modified by federal regulations.

Section 48-52 creates requirements for visual distress signals and sound producing devices as required by federal regulations. U.S. Coast Guard conducted an on-site review of Wisconsin's State Recreational Boating Safety (RBS) Program. Onsite reviews are used to help determine a state's eligibility to receive funding made available under Title 46 U.S.C. Chapter 131 for the State RBS Program. A state's eligibility is determined by the content of its RBS Program and its conformance to applicable federal laws and regulations.

Based on the programmatic review of Wisconsin's State RBS program, two deficiencies were noted that require corrective action. The State laws and regulations do not include a provision for the carriage of visual distress signals (VDS) in waters where required under Title 33 Code of Federal Regulations (CFR), Part 175 Subpart C; and State laws and regulations do not include a provision for the carriage of a sound-producing device where required under the Navigation Rules; International-Inland. State law must require the carriage of the minimum federal equipment requirements in order to meet eligibility requirements as an adequate law enforcement program.

Section 53 prohibits vessel owners from displaying blue colored lights which may be confused with an authorized patrol or emergency vessel. Pleasure boaters with aftermarket blue LED lighting can easily be mistaken for Law Enforcement in the dark of night.

Section 54 requires vessel operators to operate at slow no wake speeds when approaching a patrol or emergency vessel that is displaying an emergency light and/or siren due to public safety and law enforcement officer safety concerns.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: A state's eligibility to receive federal financial assistance under the State Recreational Boating Safety (RBS) Grant Program is determined by the content of its RBS Program and its conformance to applicable federal laws and regulations.

State law must require the carriage of the minimum federal equipment requirements in order to meet eligibility requirements as an adequate law enforcement program.

These elements are part of an approved vessel numbering system necessary to maintain overall program approval and eligibility

7. Comparison with Similar Rules in Adjacent States: Adjacent states have substantially the same rules as eligibility to receive federal financial assistance under the State Recreational Boating Safety (RBS) Grant Program is determined by the content of the state's RBS Program and its conformance to applicable federal laws and regulations.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: Eligibility to receive federal financial assistance under the State Recreational Boating Safety (RBS) Grant Program is determined by the content of the state's RBS

Program and its conformance to applicable federal laws and regulations.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: The department anticipates that the proposed rule will have no more than a minimal economic impact.

10. Effect on Small Business (initial regulatory flexibility analysis): None

11. Agency Contact Person: Roy Zellmer, Boating Law Administrator, Bureau of Law Enforcement, roy.zellmer@wisconsin.gov. 608-212-5385

12. Place where comments are to be submitted and deadline for submission:
Written comments may be submitted at the public hearings, by regular mail or email to:

Penny Kanable
Department of Natural Resources
P.O. Box 7921, Madison, WI 53707.
penny.kanable@wisconsin.gov

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 5.001(2a) is created to read:

5.001(2a) Coastal waters” means: (1) The U.S. waters of the Great Lakes (Lake Erie, Huron, Michigan, Ontario, and Superior); (2) The territorial seas of the United States; and (3) Those waters directly connected to the Great Lakes and territorial seas (i.e., bays, sounds, harbors, rivers, inlets, etc.) where any entrance exceeds 2 nautical miles between opposite shorelines to the first point where the largest distance between shorelines narrows to 2 miles, as shown on the current edition of the appropriate National Ocean Service chart used for navigation. Shorelines of islands or points of land present within a waterway are considered when determining the distance between opposite shorelines.

SECTION 2. NR 5.001(11c) is created to read:

5.001(11c) Personal flotation device or PFD means a device that is approved by the USCG Commandant under 46.CFR Part 160.

SECTION 3. NR 5.01(16a) is created to read:

5.001(16a) Throwable PFD means a PFD that is intended to be thrown to a person in the water. A PFD marked as Type IV or Type V with Type IV performance is considered a throwable PFD. Unless specifically marked otherwise, a wearable PFD is not a throwable PFD.

SECTION 4. NR 5.001(16b) is created to read:

5.001(16b) Visual distress signal means a device that is approved by the Commandant under 46 CFR Part 160 or certified by the manufacturer under 46 CFR Parts 160 and 161.

SECTION 5. NR 5.001(17a) is created to read:

5.001(17a) Wearable PFD means a PFD that is intended to be worn or otherwise attached to the body. A PFD marked as Type I, Type II, Type III, Type V with Type I performance, Type V with Type II performance or Type V with Type III performance is considered a wearable PFD.

SECTION 6. NR 5.01(1)(a) is amended to read:

5.01(1)(a) Name of the owner(s).

SECTION 7. NR 5.01(1)(b) is amended to read:

5.01(1)(b) Address of the owner(s). include Zip code.

SECTION 8. NR 5.01(1)(c) is amended to read:

5.01(1)(c) Date of birth of the owner(s).

SECTION 9. NR 5.01(1)(c)1 is created to read:

5.01(1)(c)1 Unique identification information for each vessel owner who applies for a certificate of number.

SECTION 10. NR 5.01(1)(c)1.a. is created to read:

5.01(1)(c)1.a. Owner's tax identification number.

SECTION 11. NR 5.01(1)(c)1.b. is created to read:

5.01(1)(c)1.b. Date of birth with driver's license number; or.

SECTION 12. NR 5.01(1)(c)1.c is created to read:

5.01(1)(c)1.c. Date of birth together with other unique number.

SECTION 13. NR 5.01(1)(e) is amended to read:

5.01(1)(e) State in which boat is or will be principally ~~used~~ operated.

SECTION 14. NR 5.04(1)(c) is amended to read:

5.04(1)(c) State of principal ~~use~~ operation.

SECTION 15. NR 5.06(5) is created to read:

5.06(5) Upon assignment of a hull identification number required under s. 30.533(2), the owner shall permanently affix the assigned hull identification number to the starboard side of the transom of the vessel to which the hull identification number is assigned.

SECTION 16. NR 5.06(5)(a) is created to read:

5.06(5)(a) The assigned hull identification number must be permanently affixed in two (2) places.

SECTION 17. NR 5.06(5)(a)1. is created to read:

5.06(5)(a)1. The primary hull identification number in watercraft with transoms shall be affixed to the starboard outboard side within two inches of the top of transom, gunwale, or hull/deck joint, whichever is lowest. On vessels without transoms or impractical to use transom, to the starboard outboard side of hull, aft, within one foot of the stern and within two inches of the top of the hull side, gunwale or hull/deck joint, whichever is lowest. On catamarans and pontoon boats with replaceable hulls, to the aft crossbeam, within one foot of the starboard hull attachment.

SECTION 18. NR 5.06(5)(a)(2) is created to read:

5.06(5)(a)2. The duplicate hull identification number shall be affixed in an unexposed location on the interior of the vessel or beneath a fitting or item of hardware.

SECTION 19. NR 5.06(5)(b) is created to read:

5.06(5)(b) Each hull identification number must be carved, burned, stamped, embossed, molded, bonded, or otherwise permanently affixed to the watercraft so that alteration, removal, or replacement would be obvious. Use of a plate must be fastened so that removal would cause scarring or damage to surrounding hull area. Hull identification number characters must be no less than ¼ inch in height and not attached to any removable part.

SECTION 20. NR 5.09(3)(a) is amended to read:

5.09(3)(a) Such political subdivision of the state shall, prior to authorizing placement, obtain the approval of the department. The political subdivision shall complete a waterway marker application form, indicating their approval or disapproval and submit the application to the department. The department shall review the application and approve or disapprove placement of the waterway markers. The department shall distribute a copy of the permit to the political subdivision, the applicant and the property owner. A copy of the permit will remain on file with the department. Mooring buoys placed within the boundaries of a state or federally approved mooring area are exempt from this section when such placement is authorized by the unit of government having jurisdiction. Approved waterway markers shall be labelled with a Department assigned identification number. Waterway markers for which department approval was not obtained may be removed by the department.

SECTION 21. NR 5.11(2) is amended to read:

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 B-I
(b)	Class 1	(16 feet to 26 feet)	1 size B-I
(c)	Class 2	(26 feet to 40 feet)	2 size B-I or 1 size B-II
(d)	Class 3	(40 feet or over)	3 size B-I or 1 size B-II and 1 size B-I

SECTION 22. NR 5.11(e) is repealed:

SECTION 23. NR 5.125(1)(b) is amended to read:

5.125(1)(c) An officer requesting a boat operator to submit to a noise test shall test the boat using testing methods J34a, J1970 or J2005.

SECTION 24. NR 5.125(1)(c) is amended to read:

5.125(1)(b) When the J2005 testing method is used, the officer shall deduct 2 decibels from the decibel reading ~~obtained in order for the test to be comparable to the J34a and J1970 tests.~~

SECTION 25. NR 5.125(1)(d) is repealed:

SECTION 26. NR 5.125(1)(e) is repealed:

SECTION 27. NR 5.125 Note is amended to read:

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.

SECTION 28. NR 5.13(1) is amended to read:

5.13(1) This section applies to all boats that are propelled or controlled by machinery, sails, oars, paddles or poles or another vessel including but not limited to inflatables ~~and sailboards~~, used on waters subject to the jurisdiction of this state except:

<u>Minimum Number of Hand-Portable Fire Extinguishers Required</u>		
<u>Vessel Length</u>	<u>No Fixed System</u>	<u>With Approved Fixed Systems</u>
<u>Less than 26'</u>	<u>1 B-01</u>	<u>0</u>
<u>26' to less than 40'</u>	<u>2 B-1 or 1 B-11</u>	<u>1 B-1</u>
<u>40' to 65'</u>	<u>3 B-1 or 1 B-11 and 1 B-1</u>	<u>2 B-1 or 1 B-11</u>

SECTION 29. NR 5.13(2)(a) is amended to read:

5.13(2)(a) No person may operate or use a ~~boat~~ recreational vessel unless ~~at least one PFD of the following types or their equivalents listed in figure 1 is on board for each person:~~

SECTION 30. NR 5.13(2)(a)1. is amended to read:

5.13(2)(a)1. ~~Type I PFD.~~ At least one wearable PFD is on board for each person; and

SECTION 31. NR 5.13(2)(a)2. is amended to read:

5.13(2)(a)2. ~~Type II PFD~~ Each PFD is used in accordance with any requirements on the approved label; and

SECTION 32. NR 5.13(2)(a)3. is amended to read:

5.13(2)(a)3. ~~Type III PFD~~ Each PFD is used in accordance with any requirements in its owner's manual, if the approval label makes reference to such a manual.

SECTION 33. NR 5.13(2)(b) is amended to read:

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

SECTION 34. NR 5.13(2)(c) is repealed:

SECTION 35. NR 5.13(2)(d) is renumbered and amended to read:

5.13(2)(c) No person may operate or use a ~~boat~~ recreational vessel of any size to carry passengers for hire unless at least one ~~type I wearable~~ wearable PFD ~~or its equivalent listed in figure 1 is~~ is on board for each person and in addition one ~~ring life buoy as listed in figure 1~~ throwable PFD must be carried on board such ~~boats~~ recreational vessels which are 26 feet or more in length.

SECTION 36. NR 5.13(3)(a) is amended to read:

5.13(3)(a) No person may use a ~~boat~~ recreational vessel unless each ~~type I, type II, type III or type V~~ wearable PFD required by sub. (2) is readily accessible.

SECTION 37. NR 5.13(3)(b) is amended to read:

5.13(3)(b) No person may operate or use a ~~boat~~ recreational vessel unless each ~~type IV~~ throwable PFD required by sub. (2) is immediately available.

SECTION 38. NR 5.13(4) is amended to read:

5.13(4) CONDITIONS, APPROVAL, MARKING. No person may operate or use a ~~boat~~ recreational vessel unless each device required by this section is:

SECTION 39. NR 5.13(4)(b) is amended to read:

5.13(4)(b) ~~Legibly marked with the approval number as listed in figure 1 for items subject to approval, and~~ Of an appropriate size for the person for whom it is intended.

SECTION 40. NR 5.13(4)(c) is amended to read:

5.13(4)(c) ~~Of an appropriate size for the person for whom it is intended.~~ Each personal flotation device must be marked in accordance with the recognized laboratory's listing and labelling requirements. At a minimum, all labels must include:

SECTION 41. NR 5.13(4)(c)1. is created to read:

5.13(4)(c)1. Size information, as appropriate.

SECTION 42. NR 5.13(4)(c)2. is created to read:

5.13(4)(c)2. The US Coast Guard approval number;

SECTION 43. NR 5.13(4)(c)3. is created to read:

5.13(4)(c)3. Manufacturer's contact information.

SECTION 44. NR 5.13(4)(c)4. is created to read:

5.13(4)(c)4. Model name/number.

SECTION 45. NR 5.13(4)(c)5. is created to read:

5.13(4)(c)5. Lot number, manufacturer date; and

SECTION 46. NR 5.13(4)(c)6. is created to read:

5.13(4)(c)6. Any limitations or restrictions on approval or special instructions for use.

SECTION 47. NR 5.13(d) is created to read:

5.13(d) Durability of marking. Marking must be of a type which will be durable and legible for the expected live of the device.

SECTION 48. NR 5.13(5) is amended to read:

5.13(5) ~~Personal Flotation Device Equivalents. Figure 1 lists devices that are equivalent to personal flotation devices.~~ Visual distress signals. It is unlawful to operate any watercraft on the coastal waters of the United States without having onboard visual distress signals as required and approved by the U.S. Coast Guard, so placed as to be readily accessible and in such condition as to be ready for immediate and effective use.

SECTION 49. NR 5.13(5) Figure 1 is repealed:

SECTION 50. NR 5.13(6) is created to read:

5.13(6) Sound Producing Devices required by the U.S. Coast Guard Navigation Rules

SECTION 51. NR 5.13(6)(a) is created to read:

5.13(6)(a) A vessel less than 39.4 feet must, at a minimum, have some means of making an "efficient" sound signal, (i.e., handheld air horn, athletic whistle, installed horn, etc. A human voice/sound is not acceptable.

SECTION 52. NR 5.13(6)(b) is created to read:

5.13(6)(b) A vessel 39.4 feet or greater, must have a sound signaling appliance capable of producing an efficient sound signal, audible for ½ mile with a 4 to 6 seconds duration. In addition, must carry on board a bell with a clapper (bell size no less than 7.9 inches, based on the diameter of the mouth.

SECTION 53. NR 5.17(a) is created to read:

5.17(a) No vessel may be equipped with or display any blue colored light or lamp unless the vessel is a patrol boat defined in s. 30.50(9b).

SECTION 54. NR 5.33(4) is created to read:

5.33(4) No motorboat shall be operated in excess of a slow no wake speed when approaching a stationary or drifting authorized patrol vessel or emergency vessel displaying an emergency light and/or siren.

SECTION Y. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats. OR This rule shall take effect on [DATE].

SECTION Z. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Cathy Stepp, Secretary

(SEAL)