

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board approve the statement of scope for Board Order LE-01-14, and conditionally approve the public hearing notice for Board Order LE-01-14 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

FOR: May 2014 Board meeting

PRESENTER'S NAME AND TITLE: Roy Zellmer, Warden Supervisor-Boating Law Administrator

SUMMARY:

The Bureau of Law Enforcement recommends promulgating administrative rules that modify sections of Chapter NR 5. The intent of these rules changes is to meet federal requirements, correct noise level testing procedures, improve officer safety, and establish a numbering system for approved waterway markers. We believe the revisions to be minor and unlikely to be controversial.

Changes will include:

revisions to noise level testing requirements to implement changes in the Society of Automotive Engineers recommended practices,
add slow-no-wake restrictions within 100' of a patrol boat displaying emergency lights,
prohibiting the use of blue lights or lamps on boats that are not defined as patrol or emergency boats,
adding a requirement that a DNR assigned number be affixed to all approved waterway markers,
correction to exempt sailboards from personal flotation device requirements as indicated in s. 30.62(3)(a),
revisions to application information collected for boat certificate of number to meet federal requirements which must be implemented by January 1, 2017, and
adding visual distress signal and sound producing device requirements to meet federal standards as identified in a 2013 U.S. Coast Guard compliance assessment of Wisconsin's boating program.

RECOMMENDATION: That the Board approve the statement of scope and conditionally approve the public hearing notice for Board Order LE-01-14 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

LIST OF ATTACHED MATERIALS:

Statement of scope
Governor approval of statement of scope

Approved by	Signature	Date
Todd Schaller, Bureau Director	<i>Kul RBul Actng</i>	4-28-14
Type division administrator's or other staff's name and job title		
Cathy Stepp, Secretary	<i>[Signature]</i>	5/15/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: LE-01-14

Relating to: Chapter NR 5 – Boat Rules and Registration

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

[ENTER TEXT]

2. Detailed description of the objective of the proposed rule:

- a) Correct Noise Level Testing Requirements to meet Society of Automotive Engineers recommended practices.
- b) Add Slow No Wake restrictions within 100' of patrol boat displaying emergency lights due to public safety and law enforcement officer safety concerns.
- c) Add a requirement for an assigned number be affixed to all approved waterway markers to allow law enforcement officials to determine the legality of the marker. DNR proposes a numbering system that includes the county code, the township code and the DNR assigned permit number.
- d) Correction to NR 5.13 to remove sailboards from NR 5 requirements as 30.62(3)(a) exempts sailboards from personal flotation requirement.
- e) Additions and revisions to meet federal requirements:
 - Add visual distress signals and sound producing devices to meet federal requirements.
 - Revisions to application information to require the collection of unique identification information for each vessel owner who applies for a certificate of number. States have until January 1, 2017 to implement this change.
 - Add requirement for vessel owners to verify that a valid primary vessel HIN has been affixed to the vessel for which a certificate of number is issued, renewed, or upon the transfer of a vessel's ownership. States have until January 1, 2017 to implement this change.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

- a) Revise Noise Level Testing Requirements – current language contained in NR 5.125 refers to testing methods J34a, J1970 or J2005. SAE only refers to J34 not J34a. NR 5 should reflect actual Test #/Title of that being J34. Updates to the J34 Monitoring Test reflect a correction factor to a 50' distance/regulation and in J1970 (4.2.1) specifically states: "The applicable reading does not require the measured boat to be at any specific distance from the shoreline or microphone". Officers should not be limited by a minimum distance requirement in code and should rely on each Test Procedure.

- b) Add Slow No Wake within 100' of patrol boat displaying emergency lights – NR 5.33 contains requirements for Restricted Speed Zones. However there are no restrictions for vessel operators approaching a law enforcement boat displaying emergency lights. Due to public safety and law enforcement officer safety concerns, WDNR requests a variation of the “move over law” currently in place on highways.
- c) 30.62(3)(a) exempts sailboards from personal flotation requirement. Need to remove sailboards from NR 5 requirements: NR 5.13 Personal flotation and life saving device requirements. (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:
- d) Add Visual Distress Signals language to meet federal requirements – language not currently contained in NR 5.
- e) Add Sound Producing Device language to meet federal requirements - language not currently contained in NR 5.
- f) Revisions to application information for boat certificate or number and application for transfer to meet federal requirements. Changes to federal regulations require the collection of unique identification information for each vessel owner who applies for a certificate of number. The options to be collected are: owner's tax identification number, date of birth with driver's license number; or date of birth together with other unique number. States have until January 1, 2017 to implement this change.
- g) Add requirement for vessel owner to verify that a valid primary vessel HIN has been affixed to the vessel for which a certificate of number is issued, renewed, or upon the transfer of a vessel's ownership. States have until January 1, 2017 to implement this change. Per the federal regulations, States may use methods of its choosing to verify that each vessel's owner has affixed a valid primary HIN. WDNR would propose to require the vessel owner to complete a statement on the application form or renewal form.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

- 30.505 - The certificate of number system and the issuance of identification numbers employed by the department shall be in conformity with the overall system of identification numbering for boats established by the U.S. government. The department shall promulgate rules as are necessary to bring the state certificate of number system and the issuance of identification numbers into conformity with this federal system.
- 30.62(d)2 The department may promulgate rules establishing testing procedures to determine noise levels for the enforcement of this section.
- 30.62(d)3. 30.62(2)(d)3. The department may revise these rules as necessary to adjust to advances in technology.
- 30.62(9) - The department shall promulgate such rules modifying or supplementing the associated equipment requirements of this section as are necessary to keep those requirements in conformity with federal regulations.
- 30.65(2) - The department may promulgate such additional traffic rules as it deems necessary in the interest of public safety. Such rules shall conform as nearly as possible to the federal pilot rules

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

One month

6. List with description of all entities that may be affected by the proposed rule:

Wisconsin law enforcement officers and vessel owners

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

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.

The above 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 RBS Grant Program

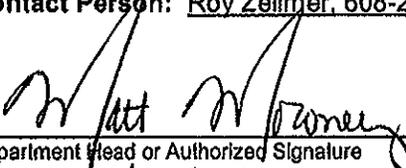
8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

None

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding two public hearings in the month of June 2014. Hearing cities will be: Madison and Wausau

Contact Person: Roy Zellmer, 608-212-5385


Department Head or Authorized Signature

2/6/14
Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

March 10, 2014

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

**RE: Scope Statement for LE-01-14 modifying Chapter NR 5 relating to Boat Rules
and Registration**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on January 28, 2014, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 5 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor