

SS 079-14

DRAFT #2

[October 27, 2014]

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 64.15; to **amend** NR 50.03 (8), 50.12 (3) (d) (intro.), 1. to 4., 50.12 (3) (e) 4., 50.13 (1m) (a), (e), (3), (4) (c), (d) (intro.), 1. to 4., and (6); and to **create** NR 50.12 (3) (d) 7., 8., 50.125, and 50.13 (4) (d) 6. and (7), relating to law enforcement aids to counties and municipalities.

LE-17-13

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: ss. 30.79, 23.33 (9), 350.12 (4), Stats.

2. Statutory Authority: ss. 30.79, 23.33 (9), 350.12 (4), Stats.

3. Explanation of Agency Authority: The chapter relating to water safety patrol units in s. 30.79, Stats., establishes that the department shall promulgate rules that restrict the costs eligible for state aid. Snowmobile enforcement aid language statutory authority is contained in s. 350.12 (4), Stats. All terrain / utility terrain vehicle enforcement aid language is contained in s. 23.33 (9), Stats.

4. Related Statutes or Rules: N/A

5. Plain Language Analysis:

Section 1 - Clarifies the definition of Enforcement Officer in order for the patrol agency to qualify for state aid.

Section 2, 3, 4, and 5– Provides consistency for the patrol agencies and reduces the number of copies required to be submitted to the department. Creates requirements for the all-terrain/utility terrain law enforcement aid program in NR 50 to provide consistency for the patrol agencies.

Section 6 - Add Municipal Boat Patrol U.S. Coast Guard Annual Report (Form 8700-330) to the list of forms required as part of the annual reimbursement claim submittal. Information collected on this form is required in the U.S. coast guard federal grant application process.

Section 7 – Reduces the maximum allowable administrative percentage to 30% of the total hours claimed. Provides consistency across the three patrol unit types and limits the administrative hours claimed by a patrol unit to ensure patrol units are reimbursed for time spent patrolling vs. administrative tasks, thereby reducing the cost per citation.

Section 8– Creates the ability for patrols to include hours for safety education teaching as a reimbursable cost, consistent with water safety patrol requirements. Allowing safety education teaching hours as exempt hours will allow the patrol units to include all relevant hours on their claim, while keeping the patrol hours as actual hours spent patrolling.

Section 9 - Removes all terrain law enforcement aids program requirements from NR 64 in order to create language in NR 50 to provide consistency for the patrol agencies.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: Not applicable.

7. Comparison with Similar Rules in Adjacent States: Not applicable

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: Proposed changes will have an overall positive economic impact on the county sheriff's departments and local municipalities identified in the list at the end of this document.

A review of the reimbursement payments for the past three years indicates that increasing the minimum patrol hour requirement could affect 5 ATV patrol units, 12 water safety patrol units and 5 snowmobile patrol units that would have to increase their patrol efforts in order to meet the minimum standards. However, the revision will provide for an increased law enforcement presence thereby providing a positive impact for health and safety.

The revisions propose capping the reimbursable administrative time to 30%, which is close to the amount used for federal grants and other aids program within the State of Wisconsin. While reducing the maximum administrative time allowed will impact patrol unit reimbursement claims, the intent of the law enforcement aids program is to provide reimbursement for law enforcement activities.

An analysis of the 174 patrol claims received for the 2013 boating season and the 2013-2014 ATV and Snowmobile seasons indicates that 78% of the patrols would receive an increase in their reimbursement payment, 10% would see a decrease in their reimbursement payment, and 12% of the patrols would need to increase their patrol numbers in order to meet the minimum standards proposed in this rule.

These rules are applicable to county sheriff's departments and local municipality enforcement units and impose no compliance or reporting requirements for small business.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

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

11. Agency Contact Person: Roy Zellmer, Bureau of Law Enforcement, Boating Law Administrator, 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, fax or email to:

Roy Zellmer
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Bureau of Law Enforcement
101 S Webster St,
Madison, WI 53703

Phone: 608-212-5358
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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 50.03 (8) is amended to read:

50.03 (8) "Enforcement" means the detection and prevention of crimes and civil violations, and the arrest of those persons who violate such laws. To qualify for state aids under ss. 23.33 (9), 30.79, and 350.12, Stats., and ss. NR 50.12, 50.125, and 50.13, officers involved in the "enforcement" of ss. 23.33 or 30.50 to 30.80, Stats., or ch. 350, Stats., must meet the requirements in s. 165.85, Stats., by the end of the patrol period and must have the authority to make arrests for the violations of the laws they are employed to enforce.

SECTION 2. NR 50.12 (3) (d) (intro.), 1. to 4., and (3) (e) 4. are amended to read:

50.12 (3) (d) (intro.) ~~On or about April 1 of each year, one set of the following forms will be sent by the department to each county which has an intent to patrol form on file. The An~~ appropriate official of the snowmobile patrol shall fill out complete the following forms, retains retain one set for the county's records, and ~~files file 2 one sets~~ one set set with the department's bureau of law enforcement on or before June 1, covering the patrol expense for the preceding 12-month period of May 1 to April 30. Claims ~~which that~~ that are received by the department after June 1 will not be processed for payment.

1. 'Form 8700-60 — Application for state aid.' ~~This form~~ Form 8700-60 is to shall be completed by the appropriate county official, who shall list the total net cost of the snowmobile patrol claimed by the county.

2. 'Form 8700-61 — Salary schedule.' ~~This form is to~~ Form 8700-61 shall be completed by the appropriate county official, who shall list the names and salaries of persons engaged in the enforcement of ch. 350, Stats. Salary rate is restricted to no more than the regular straight time rate ~~which~~ that the officer normally receives. ~~Eligible~~ Allowable fringe benefit rates are actual costs up to a maximum of ~~29~~ 50 percent of the reimbursable straight time salary rate.

3. 'Form 8700-62 — Travel, materials, and supplies schedule.' ~~This form is to~~ Form 8700-62 shall be completed by the appropriate county official, who shall list all reimbursable expenditures other than salaries and depreciable items.

4. 'Form 8700-63 — Depreciation schedule — straight line method.' ~~This form is to~~ Form 8700-63 shall be completed by the appropriate county official, who shall list all capital outlay equipment and the resulting depreciation. ~~Depreciation shall be calculated at the rate of 20 percent annually on all equipment over \$1,000.00.~~ Purchase of capital equipment shall be preapproved by the department. Depreciation shall be calculated at the rate of 20 percent annually for each new item of capital equipment whose cost is \$2,500 or greater. All costs of repairs to an item of capital equipment that are \$2,500 or greater shall be reimbursed by the department on a 20 percent per year straight line depreciation schedule.

(e) 4. A minimum of ~~20~~ 40 patrol hours is required in order to be eligible for reimbursement.

SECTION 3. NR 50.12 (3) (e) 7. and 8. are created to read:

50.12 (3) (e) 7. A local unit of government may be reimbursed for the actual teaching hours of a law enforcement officer who conducts an authorized department snowmobile safety education course. Teaching hours are considered exempt hours and may not be included in patrol hour totals. Reimbursement will be limited to 2 snowmobile safety education courses per patrol year.

8. Except for time spent teaching snowmobile safety education courses, no local unit of government is eligible for more than 30 percent of the total number of hours claimed on form 8700-61 for administrative time.

SECTION 4. NR 50.125 is created to read:

50.125 Law enforcement aids to counties (ch. 23.33, Stats.). (1) Counties may receive up to 100 percent reimbursement of monies spent on the enforcement of s. 23.33, Stats. Officers involved in the enforcement of s. 23.33, Stats., must have authority pursuant to s. 23.33 (12), Stats. Claims for reimbursement shall be made on claim forms filed with the Bureau of Law Enforcement, Department of Natural Resources on or before June 1 of the year following the 12-month period from May 1 to April 30 for which the claim is made.

(2) The following forms shall be used in the all-terrain/utility terrain vehicle enforcement aid program:

(a) *Form 8700-59 — Notice of intent to patrol.* In order to be eligible for the state aids, an all-terrain/utility terrain vehicle patrol shall function as an enforcement unit and file form 8700-59 with the department listing the authority under which the all-terrain/utility terrain vehicle patrol will operate. On or before June 1 of each year, a county shall file an intent to patrol form with the department, sent to the attention of the Department of Natural Resources, Bureau of Law Enforcement, P.O. Box 7921, Madison, Wisconsin 53707.

(b) *Form 8700-89 — Daily log.* Form 8700-89 shall be used in compiling a summary of the all-terrain/utility terrain vehicle patrol's daily activities and expenses. It is not to be filed with the department, but is to be used for assembling information necessary to complete form 8700-90. This form shall be kept on file by the all-terrain/utility terrain vehicle patrol to augment its records and shall be available in chronological order for periodic checks by representatives of the department during normal business hours and at the time of the annual audit.

(c) *Form 8700-90 — Monthly report.* Form 8700-90 shall be completed and filed with the department no later than the tenth day following the month covered. The information shown on this form will be a computation of the information taken from the daily logs (form 8700-89).

(d) An appropriate official of the all-terrain/utility terrain vehicle patrol shall complete the following forms, retain one set for the county's records, and file one set with the department's

bureau of law enforcement on or before June 1, covering the patrol expense for the preceding 12-month period of May 1 to April 30. Claims that are received by the department after June 1 may not be processed for payment.

1. *Form 8700-60 — Application for state aid.* Form 8700-60 shall be completed by the appropriate county official, who shall list the total net cost of the all-terrain/utility terrain vehicle patrol claimed by the county.

2. *Form 8700-61 — Salary schedule.* Form 8700-61 shall be completed by the appropriate county official, who shall list the names and salaries of persons engaged in the enforcement of s. 23.33, Stats. Salary rate shall be restricted to no more than the regular straight time rate that the officer normally receives. Allowable fringe benefit rates are actual costs up to a maximum of 50 percent of the reimbursable straight time salary rate.

3. *Form 8700-62 — Travel, materials, and supplies schedule.* Form 8700-62 shall be completed by the appropriate county official, who shall list all reimbursable expenditures other than salaries and depreciable items.

4. *Form 8700-63 — Depreciation schedule — straight line method.* Form 8700-63 shall be completed by the appropriate county official, who shall list all capital outlay equipment and the resulting depreciation. Purchase of capital equipment shall be preapproved by the department. Depreciation shall be calculated at the rate of 20 percent annually on each new item of capital equipment whose cost is \$2,500 or greater. All costs of repairs to an item of capital equipment

that are \$2500 or greater shall be reimbursed by the department on a 20 percent per year straight line depreciation schedule.

5. *Form 8700-64 — Record of court cases for violations of s. 23.33, Stats.* Form 8700-64 shall be completed by the appropriate county official, who shall list all violations and court actions for the calendar year.

(e) Each claim shall be audited by the department as soon as possible after the claim has been received. Payment of claims shall be made no later than October 1. Reimbursement of the actual cost and maintenance of all-terrain/utility terrain vehicle enforcement patrols is authorized. Travel expenses and salaries for training purposes are authorized only for attendance of all-terrain/utility terrain vehicle enforcement training sessions conducted by the department. The person in charge of the patrol or designee is required to attend all designated department all-terrain/utility terrain vehicle enforcement patrol training sessions as a condition of receiving aids under this section and s. 23.33, Stats.

(f) Should funds not be sufficient to satisfy the total request of eligible audited costs, funds shall be distributed on a proportional basis.

(g) In order to help achieve uniformity, accountability, and cost controls, the following standards are established:

1. For the purpose of patrol reimbursement, each patrol is eligible for reimbursement for only

those hours up to 3 times the state average of arrests per hour for participating sheriff patrols for the past 3 years computed from the statewide all-terrain/utility terrain vehicle sheriff patrol records. Two documented written warnings will be given the same weight as an arrest. No more than 50 percent of the credits to reach the standard may be for written warnings.

2. For the purpose of reimbursement of leased capital equipment, the amount may not be more than 50 percent above the average depreciation cost of the prior year for all all-terrain/utility terrain vehicle patrols claiming depreciation. If a personal all-terrain/utility terrain vehicle is used for patrol, the reimbursement rate shall be no more than the maximum rate for leased all-terrain/utility terrain vehicles prorated for the days of use.

3. When more than 50 percent of the eligible patrols are submitting claims, no one patrol may receive more than 20 percent of funds available.

4. A minimum of 40 patrol hours is required in order to be eligible for reimbursement.

5. For the purpose of administering reimbursement, search and rescue enforcement costs are eligible only for officers actively looking for all-terrain/utility terrain vehicle operators who are, or who are reasonably believed to be, alive, in distress, or are in a life threatening situation.

6. For the purpose of reimbursement of capital equipment under s. 23.33 (9), Stats., for law enforcement aid to counties, the amount is limited to depreciation for all-terrain/utility terrain vehicles and all-terrain/utility terrain vehicle trailers.

7. A local unit of government may be reimbursed for the actual teaching hours of a law enforcement officer who conducts an authorized department all-terrain/utility terrain safety education course. Teaching hours are considered exempt hours and may not be included in patrol hour totals. Reimbursement will be limited to 2 all-terrain/utility terrain safety education courses per patrol year.

8. Except for time spent teaching all-terrain/utility terrain safety education courses, no local unit of government is eligible for more than 30 percent of the total number of hours claimed on form 8700-61 for administrative time.

SECTION 5. 50.13 (1m) (a) (intro.), (e), (3), (4) (c), (d) (intro.), and 1. to 4. are amended to read:

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 percent 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 for inland water patrols or less than 22 on-water patrol hours per arrest for patrols that operate on outlying waters or on lakes of over 100,000 acres. 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. Two documented written warnings will be given the same weight as an arrest. No

more than 50 percent of the credits to reach the standard may be for written warnings. Patrols are also subject to the following guidelines:

(e) No local unit of government may receive aid under any portion of the program of aids to municipal water safety patrol units unless its water safety patrol has performed at least ~~40~~ 80 hours of fundable on-the-water patrol time during the calendar year.

(3) Claim forms shall be filed with the ~~appropriate district office~~ bureau of law enforcement, ~~of the~~ department of natural resources, as specified in s. 30.79, Stats. Claims are to be made for the calendar year immediately preceding the filing date.

(4) (c) *Form 8700-90 — Monthly report.* ~~This form is to~~ Form 8700-90 shall be completed and filed with the ~~appropriate district office~~ department no later than the tenth day following the month covered. The information shown on this form will be a computation of the information taken from the daily logs (form 8700-89).

(d) (intro.) ~~On or about September 1 of each year, one set of the following forms will be sent by the department to each municipality which has an active intent to patrol form on file. The appropriate official shall fill out~~ complete the following forms, retain one set for the municipality's records, and file ~~2~~ one sets set with the ~~appropriate regional office~~ department's bureau of law enforcement ~~of the department~~ as specified in s. 30.79, Stats., covering the patrol expense for the preceding calendar year. Claims which are received by the department after January 31 will not be processed for payment.

1. 'Form 8700-60 — Application for state aid.' ~~This form is to~~ Form 8700-60 shall be completed by the appropriate municipal official, who shall list the total net cost of the water safety patrol claimed by the municipality.

2. 'Form 8700-61 — Salary schedule.' ~~This form is to~~ Form 8700-61 shall 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. Allowable fringe rates are actual costs up to a maximum of ~~29~~ 50 percent of the reimbursable straight time salary rate.

3. 'Form 8700-62 — Travel, materials, and supplies schedule.' ~~This form is to~~ Form 8700-62 shall be completed by the appropriate municipal official, who shall list all reimbursable expenditures other than salaries and depreciable items.

4. 'Form 8700-63 — Depreciation schedule — straight line method.' ~~This form is to~~ Form 8700-63 shall be completed by the appropriate local unit of government official, who shall list all capital outlay equipment and the resulting depreciation. Purchase of capital equipment shall be preapproved by the department. Depreciation shall be calculated at the rate of 20 percent annually ~~on all~~ for each new item capital equipment whose cost is ~~(\$1000)~~ \$2,500 or greater. ~~Repairs \$1,000 and under to authorized capital equipment may be reimbursed during the year the repairs were paid for. All costs of repairs to an item of capital equipment that are \$2,500 or greater over \$1,000 to capital equipment~~

shall be reimbursed by the department on a 20 percent per year straight line depreciation schedule.

SECTION 6. NR 50.13 (4) (d) 6. is created to read:

50.13 (4) (d) 6. ‘Form 8700-330 – U.S. Coast Guard Annual Report.’ Form 8700-61 shall be used to compile a summary of the water safety patrol activities for submittal to the U.S. coast guard.

SECTION 7. NR 50.13 (6) is amended to read:

50.13 (6) Except for time spent teaching boating education courses, no local unit of government is eligible for more than ~~40~~ 30 percent of the total number of hours claimed on form 8700-61 for administrative time.

SECTION 8. NR 50.13 (7) is created to read:

50.13 (7) A municipality may be reimbursed for the actual teaching hours of a law enforcement officer who conducts an authorized department boat safety education course. Teaching hours are considered exempt hours and may not be included in patrol hour totals. Reimbursement will be limited to 2 boat safety education courses per patrol year.

SECTION 9. NR 64.15 is repealed.

SECTION X. STATEMENT OF EMERGENCY. [Include for all emergency rules, even if the rule making is statutorily exempt from requiring a finding of emergency (in which case so state). For permanent rules, delete this section].

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)