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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### **CLEARINGHOUSE RULE 03-105**

#### **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.]**

#### **1. Statutory Authority**

The rule establishes in s. NR 6.08 (1) (c) that the “sound level requirements and testing criteria of the Society of Automotive Engineers Technical Report J192 *as amended* shall be adhered to in certifying compliance” (emphasis added) with the specified snowmobile sound level requirements. The reference to this report includes all future versions of the report. The department’s authority to establish this open-ended delegation of state regulatory powers to unknown future versions of the report is not apparent. The most recent edition of the report should be referenced.

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

a. Since existing s. NR 6.08 contains more than testing criteria, the department should consider using this rule to also amend the title of s. NR 6.08 and either amend or repeal s. NR 6.08 (intro.).

b. If the definitions in s. NR 6.08 (1m) (a) apply to all of s. NR 6.08, as indicated in s. NR 6.08 (1m) (a) (intro.), then the definitions in par. (a) should be placed before any substantive provisions in s. NR 6.08, including the sound level limit and manufacturer procedures in s. NR 6.08 (1). [See s. 1.02 (3) (b), Manual.]

c. The use of parentheses in s. NR 6.08 (1m) (d) (intro.) does not conform to preferred drafting style. [See s. 1.01 (6), Manual.]

d. Since the list in s. NR 6.08 (1m) (d) is identifying specific types of instrumentation, the engine speed tachometer identified in the second sentence in s. NR 6.08 (1m) (d) 4. should be placed in a separate subdivision.

e. The use of slashed alternatives in the rule, such as s. NR 6.08 (1m) (f) 4., does not conform to preferred drafting style. [See s. 1.01 (9) (a), Manual.]

f. The use of the negative subject “no person” with an affirmative “shall” in s. NR 6.08 (1m) (g) 1. does not conform with preferred drafting style. [See s. 1.01 (2), Manual.] In par. (g) 8. (intro.), the semicolon should be deleted and the introduction, because it does not lead grammatically into the subd. subpars., should be renumbered as subd. subpar. a. and the remaining subunits should be renumbered accordingly.

g. The department should revise the rule so that either all of the paragraphs in s. NR 6.08 (1m) have a title or none of them do. As drafted, pars. (a), (b), (c), and (h) do not have titles.

h. Section NR 6.08 (1m) (g) 3. (intro.) should include a subject. For example, “A person shall . . .”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the analysis accompanying the rule, the reference to the statutes being interpreted should include s. 350.09 (6), Stats., given the inclusion of the definition of “excessive or unusual noise” in s. NR 6.03 (1m).

b. The reference to “procedures herein” in s. NR 6.03 (1m) is vague and should be clarified by an appropriate cross-reference.

c. The rule incorporates the sound level requirements and testing criteria of the Society of Automotive Engineers Technical Report J192 by reference in s. NR 6.08 (1) (c) and (4). Consent for incorporation of these requirements and criteria must be obtained from the Revisor of Statutes and Attorney General pursuant to s. 227.21 (2) (a), Stats. The analysis accompanying the rule should, but does not, indicate that this consent has been given either prior to this rule promulgation or concurrently with this rule promulgation.

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

a. Since the rule establishes snowmobile operation standards and procedures for testing the sound levels of operating snowmobiles in the field, the department should consider amending ss. NR 6.01 and 6.02 to reflect the purpose and applicability of ch. NR 6, as affected by the rule.

b. The text of s. NR 6.08 (1m) (a) (intro.) is wordy. It could, for example, be simplified to read: “In this section:”.

c. The use of the phrase “(sound meters to be used)” after “instrumentation” in s. NR 6.08 (1m) (d) (title) is potentially confusing as some of the types of instrumentation listed in par. (d) are not sound meters. Also, the introduction should state the purpose for which the instrumentation is used.

d. The department should review the text of s. NR 6.08 (1m) (g) 6. to determine if this paragraph duplicates the text in subd. 7. and is thus unnecessary. Similarly, the text of s. NR 6.08 (1m) (g) 8. a. and b. repeat the substantive requirements in s. NR 6.08 (1m) (b) and (c). Can the department revise the rule to only state the substantive requirement once?

e. The direction to the technician to repeat the ambient sound measurement in s. NR 6.08 (1m) (g) 8. c. is ambiguous. Is this repetition the same test repetition called for in subd. 5.? If a technician repeats the measurement under subd. 8. c., what shall the technician do if the repeated measurements are not identical to the measurements obtained under subd. 7.?