

Clearinghouse Rule 06-039

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 5.125(1)(d) relating to sound testing methods for airboats.

LE-23-06

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

Section 30.62(2)(b), (d)2. and 3., Stats.

2. Statutory authority.

Section 30.62(2)(d)2, Stats.

3. Explanation of agency authority to promulgate the proposed rules under the statutory authority.

The proposed rule creates a new noise testing method for testing all noise related to boat operation which the department is authorized to enforce, under s. 30.62(2)(b), Stats., and which the department is authorized to create under s. 30.62(2)(d)2., Stats. The department is required to enforce the noise statutes, but needs to develop a testing procedure that will allow it to test boats it currently does not have the ability to do safely under current testing methods.

4. Related statute or rule.

s. 30.62(2)b), Stats., and s. NR 5.125

5. Plain language analysis of the proposed rule.

The proposed rule will allow the department to test airboats and other similar craft to assure that they meet the required sound levels when operating. This will be a new method based on the methodology established in Society of Automotive Engineers test method J 1970.

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

There are no existing or proposed federal regulations that create a test to address the testing of airboat type craft.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois, and Michigan)

Of the four states:

Minnesota's sound laws apply to airboats, but they are not aware of anyone enforcing the law against airboat prop noise.

In Michigan they do not measure prop noise, but they do require that airboats stay a distance away from residences and that from 11PM to 6 AM if operating within 400' of a residence that they operate at minimum speed to maintain forward motion.

In Iowa they do not enforce prop noise as their law was not intended for prop noise.

In Illinois they utilize the J1970 sound test, but they don't clarify whether they test airboats.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.

Airboats and other air propulsion driven boats are a commonly used on shallow rivers and on some lakes within Wisconsin. These boats create movement by either using forced air to push the boat forward or by lifting the boat up with air pressure and then moving it forward with forced air. In looking at the safety concerns when testing these type of craft, a method is needed to address the safety concerns of operating these craft at higher rates of speed to test the sound levels without creating safety concerns for the public, the boat operator or the testing officer. By using currently approved testing methodology and taking into consideration the safety distances needed, the department believes that the proposed rule will address the needs of the department in testing these boats with a safe and technically sound testing process.

9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rules effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.

Wisconsin law exempts the sound requirements for commercial or nonrecreational fishing boat, ferry, or other vessel engaged in interstate or international commerce, other than a tugboat. We believe that there may be some airboats that are used for commercial trapping or fishing that do not involve interstate or international commerce. These boats would most likely be illegal to operate if tested under the proposed rule.

10. Effects on small business, including how the rule will be enforced.

The rule is anticipated to affect approximately 150+ airboats that are used for commercial trapping and fishing. The rule would be enforced on them as long as they operate in the waters of the state. This rule will not affect those that only operate on the frozen waters of the state as there is not statutory authority to apply the sound law to the boats when they are operating solely on the ice.

11. Agency contact person (including e-mail and telephone number).

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12. Place where comments are to be submitted and deadline for submission.

Written comments may be submitted until June 9, 2006 to Mr. William Engfer. Comments may be electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>

SECTION 1. NR 5.125(1)(d) is created to read:

NR 5.125(1)(d) When the J1970 test method is used for testing airboats, hovercraft or other air propulsion type watercraft, the test shall be conducted at a minimum of 300 feet from the boat being tested.

SECTION 2. EFFECTIVE DATE. The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)