

07hr_SC-ENR_CRule_06-039_pt03



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Environment and Natural Resources (SC-ENR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (June/2014)

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. LE-23-06

Legislative Council Rules Clearinghouse Number 06-039

Subject of Rules Sound testing methods for airboats

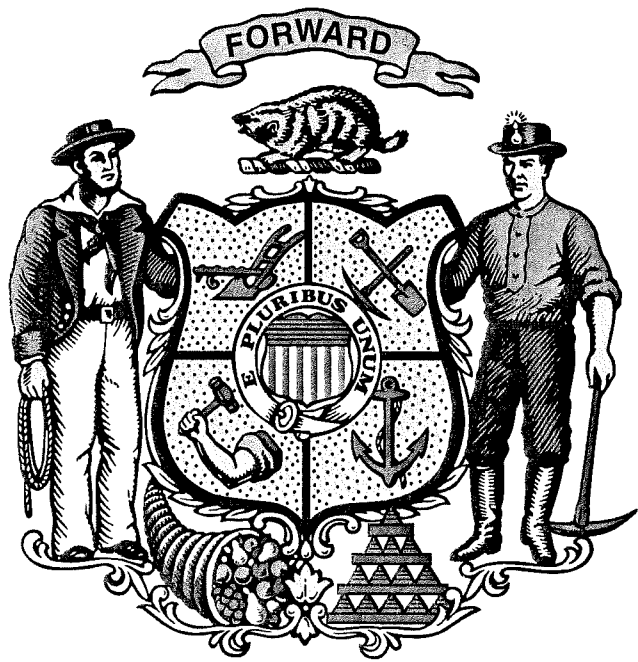
Date of Transmittal to Presiding Officers January 4, 2007

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster**

**Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us**

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner



Fiscal Estimate — 2005 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number LE 23-06

Subject
 Proposed rule to create new testing methods for boat noise.

Fiscal Effect

- State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

- Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others Inland Lake
 School Districts WTCS Districts

- Fund Sources Affected**
 GPR FED PRO PRS SEG SEG-S

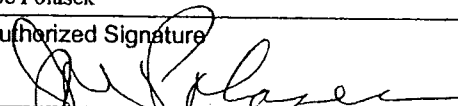
Affected Chapter 20 Appropriations

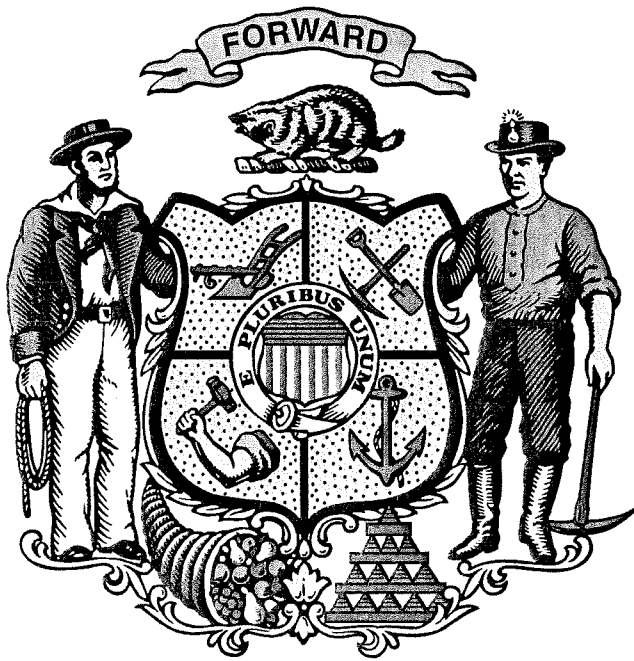
Assumptions Used in Arriving at Fiscal Estimate

If the new testing procedure is passed the public will expect law enforcement agencies who conduct boating enforcement, to enforce this law on prop driven type boats within their jurisdiction. While this will increase the workload of these agencies, it is anticipated that the increase workload will be minimal and can be accomplished in the daily operations of these patrols.

Long-Range Fiscal Implications

None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 11-06-06





**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 06-039

AN ORDER to create NR 5.125 (1) (d), relating to sound testing methods for airboats.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-11-2006 RECEIVED BY LEGISLATIVE COUNCIL.

04-26-2006 REPORT SENT TO AGENCY.

RS:JES

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-039

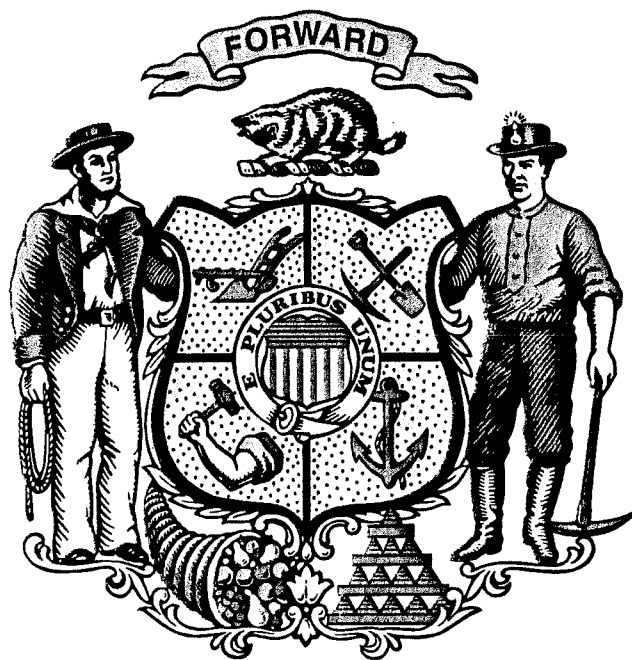
Comments

[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 January 2005.]

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

a. Item 3. of the preface to the rule states that: “The proposed rule creates a new noise testing method for testing all noise related to boat operation....” Since the rule relates to sound testing methods only for airboats, hovercraft, and other air propulsion type watercraft, should the explanation in this item be limited to noise related to operation of these types of boats?

b. In item 9. of the preface to the rule, the first sentence should read: “...a commercial or nonrecreational fishing boat, a ferry, or other vessel....”



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING
RULES

The Wisconsin Natural Resources Board proposes an order to create s. NR 5.125 (1) (d), (e), and (6) relating to sound testing methods for boats.

LE-23-06

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

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

2. Statutory authority.

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

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

The department is required to enforce the noise statutes found under s. 30.62(2)(b), Stats., but needs a new testing procedure that will allow officers to test boats, such as airboats, which it currently does not have the ability to do in a safer manner under current testing methods. The proposed rule creates a new noise testing method for testing all noise related to boat operation and which the department is authorized to create under s. 30.62(2)(d)2. and 3., Stats. Under s. 30.62(2)(h), Stats., the department has the authority to exempt certain types of motorboats from the noise level requirements for specific uses and specific areas of operation.

4. Related statute or rule.

Section 30.62(2)(b), Stats., and s. NR 5.125, Wisconsin Administrative Code.

5. Plain language analysis of the proposed rule.

The proposed rule will allow the department to safely test airboats and other similar craft to assure that they do not exceed the maximum noise level allowed for operation. This rule simply modifies the procedures used in conducting the J1970 and J34a tests established in Society of Automotive Engineers (SAE). Department is recommending that when an officer requests a boat operator to conduct a boat noise test under the J1970 shoreline test or the J34a pass-by test method, it will be done at a minimum distance of 100 feet. If the J34a pass-by test is used it will be correlated back to 50 feet requirement of the J34a test by adding 2 dB's to the decibel reading obtained from the test. This rule also creates certain exemptions from the noise level requirements of s. 30.62(2)(b), Stats., to allow the use of boats, such as airboats, hover craft or similar craft used during search and rescue operations and when used by agents of federal, state or municipal governments in the performance of their official duties of enforcement, search and rescue, fire fighting or research programs.

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 specific to testing airboat type craft.

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

Of the four states:

Minnesota: Sound laws do apply to airboats, but they are not aware of anyone enforcing the law against airboat prop noise.

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

Iowa: Does not enforce prop noise as their law was not intended for prop noise.

Illinois: Utilizes the J1970 sound test, but they do not 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 many related findings support the regulatory approach chosen for the proposed rule.

Airboats and other air propulsion driven boats are 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 types of craft a method is needed to address the safety concerns of operating these craft at higher rates of speed to test them 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 a commercial or nonrecreational fishing boat, ferry, or other vessel engaged in interstate or international commerce, other than a tugboat from the maximum noise level requirement. We believe that there may be some airboats that are used for commercial trapping which 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 airboats that are used for commercial trapping. The noise level test created under this rule order as well as existing noise level maximum limits would apply to such airboats that operate in the waters of this state. It is unlikely that most such airboats will be able to comply with the current maximum noise level limit of 86 decibels established by state statute, regardless of the testing method used. 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: William Engfer – LE/5, 101 S. Webster St., PO BOX 7921, Madison, WI 53707-7921, Phone: (608) 266-0859, Email: William.engfer@dnr.state.wi.us

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

NR 5.125(1)(d) When an officer requests a boat operator to conduct a boat noise test under the J1970 or J34a test method, the test shall be conducted at a minimum of 100 feet from the boat being tested.

SECTION 2. NR 5.125(1)(e) and note are created to read:

NR 5.125(1)(e) When the J34a test is used at a distance of 100 feet, the officer will add 2 decibels (dB) to the test results.

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 3. NR 5.125(6) and note are created to read:

NR 5.125(6) EXEMPTIONS. Any boat being operated for one of the following purposes is exempt from the noise level requirements established for motorboats under s. 30.62(2)(b), Stats.

(a) A boat being used by an authorized agent of the federal, state or municipal government to carry out his or her official duty of enforcement, search and rescue, fire fighting or research programs.

(b) A boat being used for search and rescue or training for search and rescue operations at the request of a governmental agency, while being used under the direction or control of a governmental agency.

Note: Section 30.62(2)(b), Stats., states that no person may operate a motorboat powered by an engine on the waters of this state in such a manner as to exceed a noise level of 86 measured on an "A" weighted decibel scale.

SECTION 4. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 5. Board adoption. The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 6, 2006.

Dated at Madison, Wisconsin _____

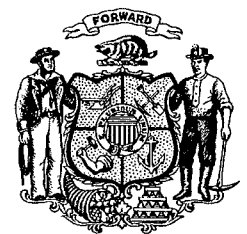
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)



WISCONSIN STATE LEGISLATURE



REPORT TO LEGISLATURE

NR 5, Wis. Adm. Code
Sound testing methods for airboats

Board Order No. LE-23-06
Clearinghouse Rule No. 06-039

Basis and Purpose of the Proposed Rule

At the January 2006 Natural Resources Board meeting, the Board heard comments from the public who were concerned about the noise that airboats make and requested the department enforce noise laws on airboat-type watercraft.

The proposed rule establishes a new procedure for use of the J1970 or J34a Society of Automotive Engineers (SAE) noise level testing methods, requiring these tests to be conducted at a minimum of 100 feet from the boat being tested. When the J34a test is used at a distance of 100 feet, the officer will be required to add 2 decibels (dB) to the test results in order for the test to be comparable to a J34a test being conducted at a distance of 50 feet. Two new exemptions are created from the noise level restrictions found in state statute. One exemption applies to boats being used for search and rescue or that is being used while training for search and rescue operations while being operated under the direction or control of a governmental agency. The other exemption applies to boats used by an authorized agent of the federal, state or municipal government to carry out his or her official duty of enforcement, search and rescue, fire fighting or research programs.

Summary of Public Comments

During the public hearings and written comment period, there were a total of 117 comments on the proposed rule. Of these comments, 51 believed all motorboats regardless of type should be held to the 86 decibel (dB) level. Of the 36 people who appeared at the hearings, 9 were in favor of the rule as written, 7 were opposed, 14 were neutral and 6 did not indicate a position. Of the written comments, 23 suggested that all watercraft be regulated at 50 feet, not 300 feet. The primary issues of concern that were raised during the public hearings and comment period were:

- The distance at which the test was going to be conducted
- The decibel level conversion for tests conducted at distances greater than 50 feet
- A concern that the rule would put small business airboat operators in jeopardy
- How trappers, anglers and other recreational users of airboats may be affected
- How airboats and hovercraft used by or under the direction of governmental agencies will be affected

Modifications Made

The distance at which the test is to be conducted was reduced from 300 feet to 100 feet. Section NR 5.125(1)(e) and (6) were created. Section NR 5.125(1)(e) creates the requirement that the officer conducting the test shall add 2 decibels to the test results. Section 5.125(6) creates the two new exemptions from the noise level requirements.

Appearances at the Public Hearing

May 24, 2006 – Prairie du Chien

In support:

E. G. McLean, 14818 State Road 133, Woodman, WI 53827
James C. Frazier, 15513 Richwood Estates Lane, Blue River, WI 53518
Ken Lukaszewski, 15185 County Road 25, Rollingstone, MN 55969
Dick Hobelsberger, 1719 Market Street, La Crosse, WI 54601
Christopher M. Johnson, 130 Lake Street, Holmen, WI 54636

In opposition:

Eldon Beau, 317 N. Beaumont Road, Prairie du Chien, WI 53821
Joe Frazier, Box 724, Muscoda, WI 53573
Steve Winters, 52606 Coon Bluff, Reedsburg, WI 53959

As interest may appear:

Don Greenwood, P.O. Box 454, Spring Green, WI
DuWayne Carlin, 602 E. LaGrand Street, Boscobel, WI 53805
Jack Williams, 38637 Troy Drive, Prairie du Chien, WI 53821
Paul F. Brandt, 4496 Highway 133E, Boscobel, WI 53805
Rick Williams, 38637 Troy Drive, Prairie du Chien, WI 53821
William H. Howe, 300 S. [street name illegible], Prairie du Chien, WI 53821
Mark Cupp, Lower Wis. State Riverway Board, P.O. Box 187, Muscoda, WI 53573
Tim Morgan, S1499 Sportsman Lane, Stoddard, WI 54658

May, 24, 2006 – La Crosse

In support:

Ken Lukaszewski, 15185 County Road 25, Rollingstone, MN 55969
Dick Hobelsberger, 1719 Market Street, La Crosse, WI 54601
Gary W. Gurske, S5814 Malphy Lane, DeSoto, WI 54624
Russ H. Larson, 2300 West Avenue South, La Crosse, WI 54601
Christopher M. Johnson, 130 Lake Street, Holmen, WI 54636
Robert Mikunda, 7781 25th Street, Colfax, WI 54730
Timothy Maier, W8291 County Road ZB, Onalaska, WI 54650
William Brockman, 1736 Bainbridge, La Crosse, WI 54603
Marion Maier, W8291 County Road ZB, Onalaska, WI 54650

In opposition:

Marvin Christianson, S6357 Christianson, Viroqua, WI 54665
Ed Heberlein, 4490 CTH O, La Crescent, MN 55947
Michael G. Leavitt, 11880 Gray Street, Trempealeau, WI 54661
Tim Colgan, 2605 Del Ray Avenue, La Crosse, WI 54603

As interest may appear:

Mick Rockweiler, 1063 DeFreese Street, Viroqua, WI 54665
William Scott, 22237 Bluebird Avenue, Warrens, WI
Chris Jacobson, W8222 Woodview Drive, Onalaska, WI 54650
Michael W. Lynch, W8026 CTH Z, Onalaska, WI 54650

Ray Heidel, W8043 Hwy. ZN, Onalaska, WI 54650
John N. Hagen, 503 8th Avenue South, Onalaska, WI 54656
Rose Smyrski representing Sen. Kapanke
Joel Miller, W8666 Cty. Z, Onalaska, WI 54650
William Gollon, 240 Dubai Avenue, Stevens Point, WI 54481
Tim Morgan, 1499 Sportsman Lane, Stoddard, WI 54658
Scott Brummond, DOT Bureau of Aeronautics, 4802 Sheboygan Avenue, Madison, WI 53707
Benjamin Gollon, 2450 Torun Road, Stevens Point, WI 54481

June 1, 2006 – Madison

In support:

Dick Hobelsberger, 1719 Market Street, La Crosse, WI 54601
Ken Lukaszewski, 15185 County Road 25, Rollingstone, MN 55969

In opposition:

Chris Cass, 470 Mohawk Road, Janesville, WI
Kevin Isenring, P.O. Box 51, Sauk City, WI 53583

As interest may appear:

Jim Breunig, P.O. Box 231, Wisconsin Dells, WI
David J. Kadinger, Sr., W235 S5923 Big Bend Road, Waukesha, WI 53189
George Meyer, 201 Randolph Drive, Madison, WI 53717
Tim Morgan, S1499 Sportsman Lane, Stoddard, WI 54658

June 1, 2006 – Teleconference

In support – none
In opposition – none

As interest may appear:

James H. Tomczak, 3208 2nd Street East, Ashland, WI 54806
Mike Herrmann, Sawyer County Rescue, 2100 Beaser Avenue, Ashland, WI 54806

Changes to Rule Analysis and Fiscal Estimate

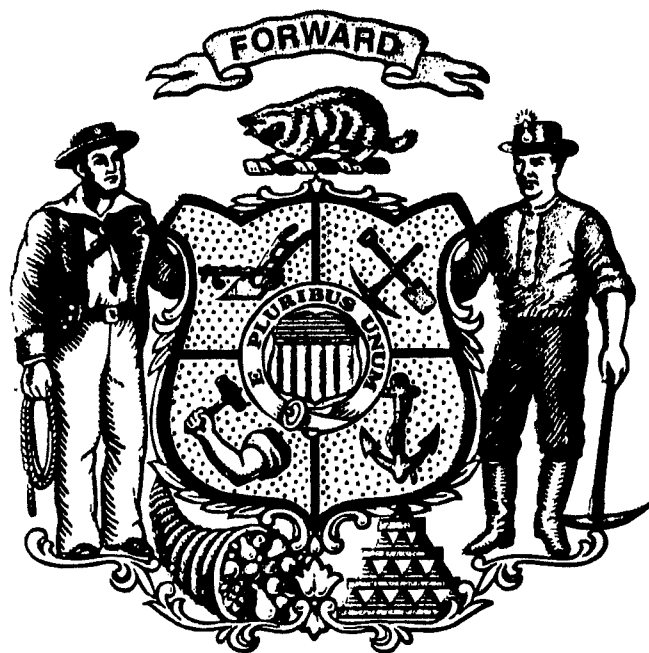
The analysis was changed to reflect the modifications made to the rule. The fiscal estimate did not change.

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The Department determined that the proposed rule will not have a significant economic impact on small businesses. Therefore, a final regulatory flexibility analysis was not required.

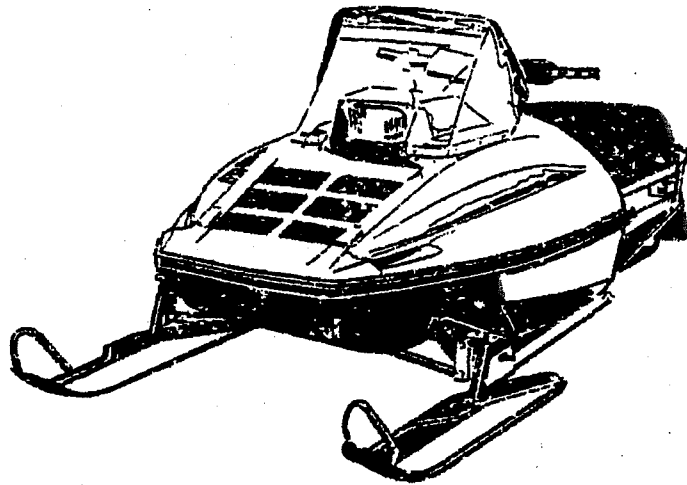
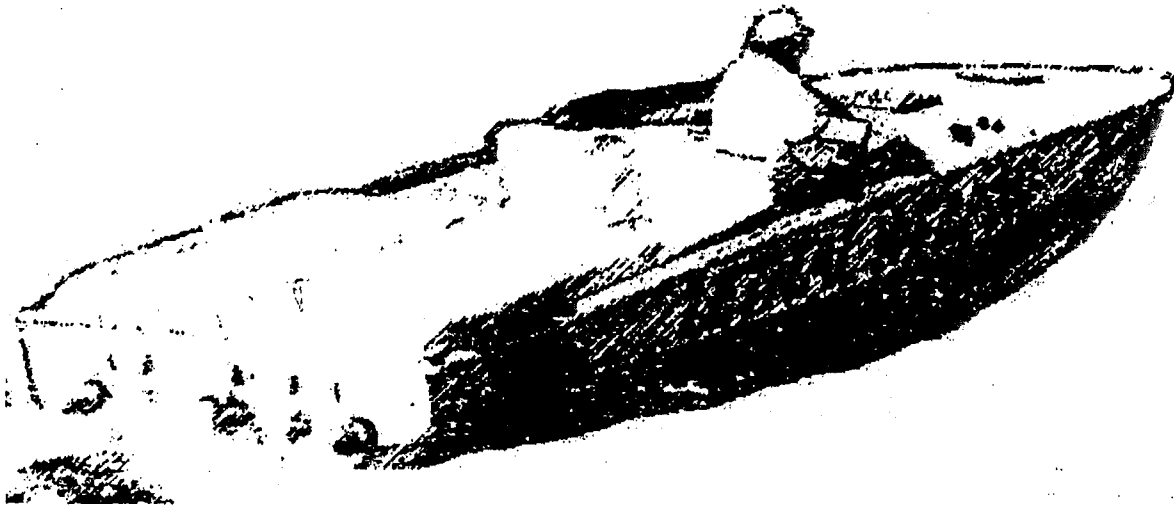


- passed out by Rep. Alberts

SOUND LEVEL MEASUREMENT TRAINING

SNOWMOBILES & WATERCRAFT

MAY 2003



WISCONSIN DEPARTMENT OF NATURAL RESOURCES

TRAINING SESSION AGENDA

1. CLASS SURVEY
2. CLASSROOM TRAINING – GENERAL ACOUSTICS
3. CLASSROOM TRAINING – MARINE MEASUREMENT STANDARDS
4. CLASSROOM TRAINING – SNOWMOBILE MEASUREMENT STANDARDS
5. QUIZ
6. FIELD TRAINING –
 - a. MARINE STATIONARY SOUND MEASUREMENT PROCEDURE
 - b. SNOWMOBILE STATIONARY SOUND MEASUREMENT PROCEDURE
8. STATUTORY REFERENCE



WISCONSIN DEPARTMENT OF NATURAL RESOURCES

3. CLASSROOM TRAINING - MARINE SOUND LEVEL MEASUREMENT STANDARDS

A. STATIONARY SOUND LEVEL MEASUREMENTS [SAE J2005]

- **TEST SITES**
- **INSTRUMENTATION & CALIBRATION**
- **MEASUREMENT TECHNIQUES**
- **DATA RECORDS**

B. PASS BY SOUND LEVEL MEASUREMENTS [SAE J34]

- **[BRIEF REVIEW]**

C. SHORELINE SOUND LEVEL MEASUREMENTS [SAE J1970]

- **[BRIEF REVIEW]**

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

6. FIELD TRAINING

A. BOATS –

- STATIONARY MEASUREMENTS – SAE J2005
- PASSBY MEASUREMENTS – SAE J34
- SHORELINE MEASUREMENTS – SAE J2005 [R]

B. SNOWMOBILES –

- STATIONARY MEASUREMENTS – SAE J2567

WISCONSIN DEPARTMENT OF NATURAL RESOURCES
A BRIEF HISTORY OF FEDERAL AND STATE BOAT & SNOWMOBILE NOISE REGULATIONS

- US EPA
- INDIVIDUAL STATES
- NASBLA/NMMA MODEL NOISE ACT
- WISCONSIN

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

GENERAL ACOUSTICS

- NOISE - ANY UNWANTED SOUND

*Not WLD 5/15/85 of Expenditures
definition - Only DNR's
definition*

- SOUND - ANY PRESSURE VARIATION IN AIR THAT THE EAR CAN DETECT
- FREQUENCY OF SOUND - MEASURED IN HERTZ (HZ), OR CYCLES PER SECOND
- INFRA SOUND - VERY LOW FREQUENCY (INAUDIBLE)
- ULTRA SOUND - VERY HIGH FREQUENCY (INAUDIBLE)

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

"QUIET vs. "NOISY" BOATS & SNOWMOBILES

FOR "UNTREATED" INTERNAL COMBUSTION ENGINES THE PREDOMINANT NOISE SOURCES CAN BE RANKED AS FOLLOWS:

1. EXHAUST NOISE
2. INDUCTION NOISE
3. MECHANICAL NOISE

CONSEQUENTLY, NOISY BOATS AND SNOWMOBILES GENERALLY HAVE ONE COMMON CHARACTERISTIC - - LOUD EXHAUST NOISE THAT IS THE RESULT OF POOR/INADEQUATE EXHAUST MUFFLING.

INAPPLICABLE TO AIRBOATS

UNFORTUNATELY, IT IS VIRTUALLY IMPOSSIBLE TO VISUALLY DETERMINE IF THE EXHAUST SYSTEM IS ADEQUATELY MUFFLED.

THE MOST ACCURATE MEANS OF DETERMINING EFFECTIVENESS OF EXHAUST MUFFLERS IS A FULL-THROTTLE PASS BY TEST. HOWEVER, FULL-THROTTLE PASS BY TESTS ARE DANGEROUS TO PERFORM AND REQUIRE SPECIAL TEST AREAS.

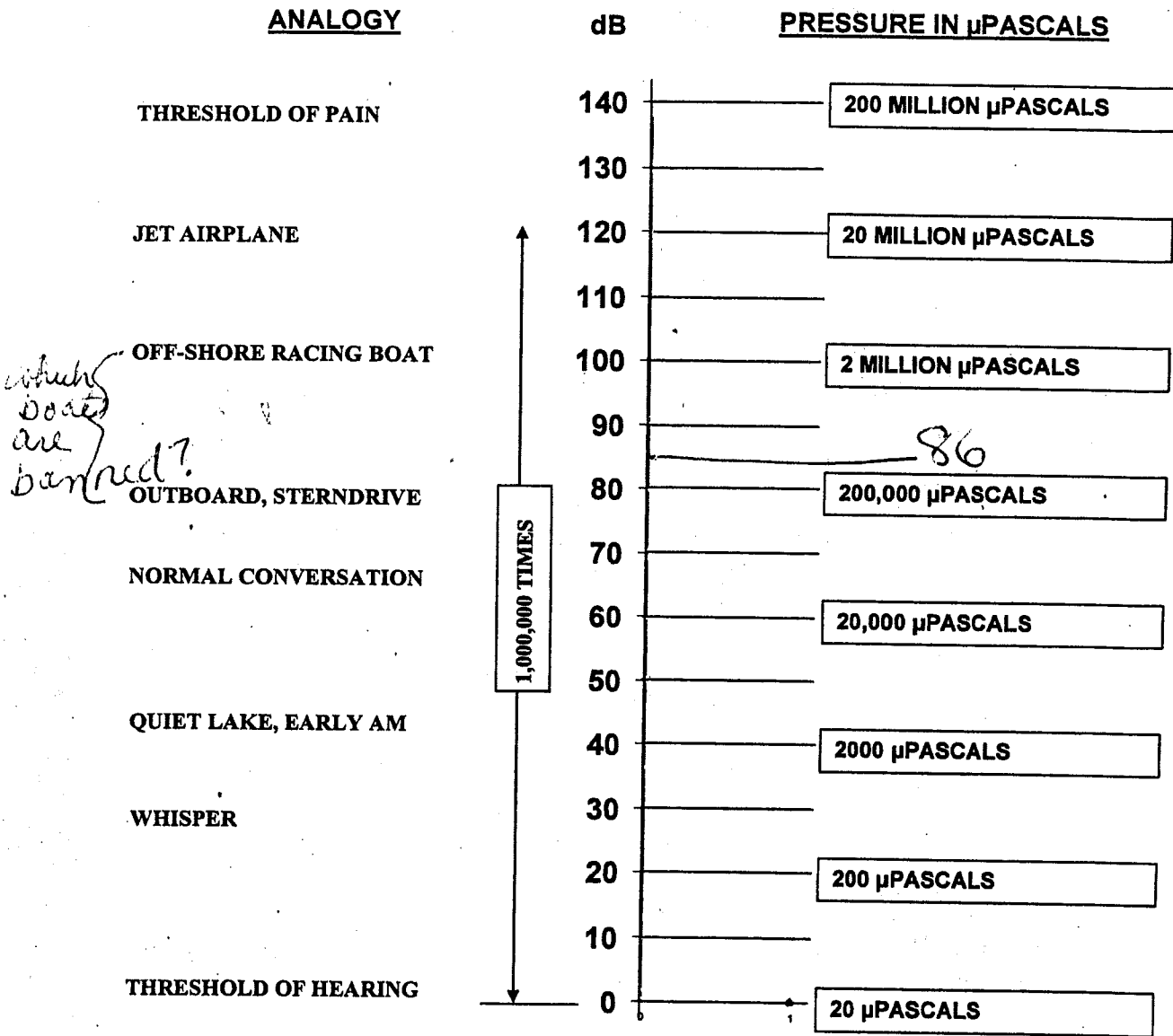
Away from all other noise and people + boats + motor vehicles

A SECOND POSSIBLE TEST FOR EXHAUST NOISE IS AN ACCELERATION TEST. UNFORTUNATELY, ACCELERATION TESTS HAVE NOT YET BEEN DEVELOPED FOR BOATS AND/OR SNOWMOBILES.

STATIONARY TEST MODES CAN BE A REASONABLY EFFECTIVE MEANS OF DETECTING EXCESSIVE EXHAUST NOISE. STATIONARY TEST METHODS ARE CURRENTLY BEING EMPLOYED BY THE MODEL NOISE ACT AND ARE BEING FINALIZED BY WDNR FOR USE IN WISCONSIN.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

THE DECIBEL SCALE - ILLUSTRATING PASCALS



SOME EXAMPLES OF SOUND PRESSURE LEVEL MEASUREMENTS

100 dB = 1,990,000 μ Pascals
 90 dB = 630,000 μ Pascals
 10 dB = 1,360,000 μ Pascals

The difference in μ PASCALS is 1.36 million μ Pascals, or 10 dB.

$$SPL = 20 \log \frac{P}{P_0} \text{ dB}$$

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

SOUND LEVEL MEASUREMENT TECHNIQUES

BRUEL & KJAER SOUND LEVEL METER CALIBRATION

1. REMOVE WINDSCREEN
2. PLACE SOUND LEVEL CALIBRATOR OVER THE MICROPHONE
3. SWITCH THE CALIBRATOR AND THE SLM "ON"
4. SELECT 70 - 130 dBA RANGE
5. SELECT "AUTO" RESET
6. ALLOW READING TO STABILIZE
7. READING SHOULD BE 93.8 ± 0.1 dBA
8. IF NECESSARY, REMOVE PLASTIC PLUG OVER ADJUSTMENT SCREW
AND ADJUST TO READ 93.8 ± 0.1 dBA
9. ALLOW READING TO STABILIZE BEFORE REMOVING CALIBRATOR
10. REMOVE CALIBRATOR AND TURN "OFF"

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

SOUND LEVEL MEASUREMENT TECHNIQUES

- ALWAYS HOLD THE SOUND LEVEL METER [SLM] AT ARM'S LENGTH
- DISCONTINUE SOUND LEVEL MEASUREMENTS WHENEVER OTHER NOISE SOURCES ARE PRESENT. BE ON THE LOOKOUT FOR AIRPLANES, OTHER BOATS, SNOWMOBILES AND OTHER ENGINE-DRIVEN EQUIPMENT IS OPERATING WITHIN THE VICINITY.
- AVOID TALKING AND MOVING ABOUT DURING THE TIME WHEN SOUND LEVEL MEASUREMENTS ARE UNDER WAY.
- IF SOUND LEVEL MEASUREMENTS ARE BEING TAKEN FROM A BOAT, MAKE CERTAIN THAT THE SLM IS HELD AT ARM'S LENGTH OUTSIDE THE CONFINES OF THE BOAT.
- TOLERANCES ARE NECESSARY DUE TO UNAVOIDABLE VARIATIONS IN MEASURING SITES, TEST EQUIPMENT, TEMPERATURE, AND WIND EFFECTS. AN ATV, BOAT OR SNOWMOBILE SHALL NOT BE CONSIDERED IN VIOLATION UNLESS IT EXCEEDS THE REGULATED LIMIT BY 2 dBA OR MORE.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

3. MARINE MEASUREMENT STANDARDS

STATIONARY PROCEDURE - SAE J2005

ANNOYANCE ISSUE -

- EXHAUST NOISE FROM BOATS WITH ABOVE-WATER EXHAUST SYSTEMS
- EXHAUST NOISE IS THE NUMBER 1 NOISE SOURCE FOR IC ENGINES
- MANY OF THESE BOATS DO NOT HAVE "EFFECTIVE" EXHAUST MUFFLING

WISCONSIN REQUIRES "EFFECTIVE" MUFFLERS ON EVERY BOAT WITH ABOVE-WATER EXHAUST

- THERE ARE NO "VISUAL" MEANS FOR EVALUATING "EFFECTIVE" MUFFLER SYSTEMS, SO THE ONLY VIABLE SOLUTION IS TO MEASURE EXHAUST NOISE
- THE STATIONARY TEST APPLIES TO BOATS WITH ABOVE-WATER EXHAUST ONLY. *inboard + outboard Motor Boats*
- THE WI STATIONARY SOUND LEVEL LIMIT FOR BOATS IS 86 dBA AT IDLE SPEED AFTER DEDUCTING 2 DECIBELS FROM THE TEST RESULTS PER NR 5.125 (1)(c) WIS. ADMIN. CODE

PASSBY PROCEDURE - SAE J34

← Generally unsafe

- THE BEST INDICATOR OF OVERALL BOAT NOISE
- MAY BE USED FOR BOATS THAT HAVE EXTENDED SWIM PLATFORMS
- PROCEDURE REQUIRES A SPECIAL TEST COURSE

SHORELINE PROCEDURE - SAE J1970 [R]

- NO SPECIAL TEST COURSE IS REQUIRED
- BEST APPLIED TO RESIDENTIAL SHORELINES ADJACENT TO HIGH TRAFFIC BOATING LANES
- PROMOTES LOW-SPEED OPERATION CLOSE TO SHORE

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

TEST PROCEDURE FOR THE MEASUREMENT OF MOTORBOAT PASS BY NOISE

DATE ___/___/___ TIME ___:___ AM/PM TEST SITE LOCATION _____

OFFICER _____ OBSERVED BY _____ ENFORCEMENT BOAT _____

OWNER/OPERATOR _____ ADDRESS _____ CITY _____ STATE _____

MEASURED BOAT/MODEL _____ LENGTH ___ FT OB ___ SD ___ IB ___ PWC ___

EXHAUST OUTLET UNDERWATER @ IDLE ABOVE-WATER @ IDLE

MEASURED BOAT REG # _____ STATE ___ WIND _____ mph

WATER CONDITIONS- FLAT CALM ___ CHOPPY ___ CHOP HEIGHT _____

SOUND LEVEL METER MFG. _____ MODEL _____ S/N _____ CAL. DATE ___/___/___

CALIBRATOR MFG. _____ MODEL _____ S/N _____ CAL. DATE ___/___/___

SOUND LEVEL TEST DATA

PATROL OFFICER POSITION

- IN PATROL BOAT
- ON SHORE
- ON PIER

SLM Settings for Measurements

- POWER ON
- 70-130 dBA Range
- SLOW Time Weighting
- Manual Reset

SLM Positioning

- 4 ft. Above Water (Minimum)
- Outside of Patrol Boat (where applicable)
- 1 ft. (Minimum) Above Pier (where applicable)
- Microphone Oriented in Direction of Noise Source

PRE-TEST CALIBRATION _____ dBA ___:___ AM/PM

PRE-TEST AMBIENT SPL* _____ dBA ___:___ AM/PM

1st PASS SPL (L-R) (R-L)* _____ dBA

2nd PASS SPL (L-R) (R-L)* _____ dBA

3rd PASS SPL (L-R) (R-L)* _____ dBA

4th PASS SPL (L-R) (R-L)* _____ dBA

AVERAGE OF ANY TWO READINGS WITHIN ± 2 dB _____ dBA

POST-TEST AMBIENT SPL* _____ dBA ___:___ AM/PM

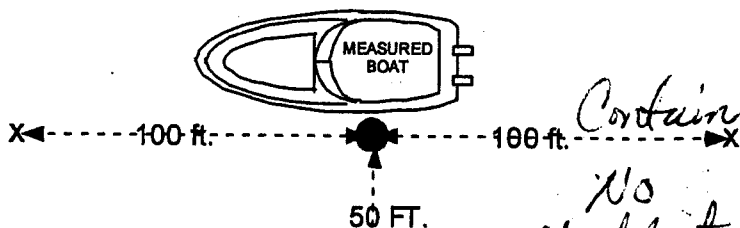
CALIBRATION RE-CHECK _____ dBA ___:___ AM/PM

MAXIMUM READING _____

REPORTED SPL _____ dBA

WISCONSIN SOUND LEVEL LIMIT IS 86 dBA AT A DISTANCE OF 50 FT. OR THE AMBIENT SPL + 10 dB, WHICH EVER IS HIGHER

INDICATE WIND DIRECTION AND SPEED



Contains No Checklist...
 - Is arm properly extended?
 - what other vessels or sounds in the vicinity might contribute to ambient noise?
 - Was your unit on me!

Was another said during the test... 7

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

STATUTORY REFERENCE

Boat

62(2) Muffler requirement and noise level standards.

- (a) **Mufflers.** The engine of every motorboat propelled by an internal combustion engine and used on the waters of this state shall be equipped and maintained with a muffler, underwater exhaust system or other noise suppression device.
- (b) **Maximum noise levels for operation.** No person may operate a motorboat powered by an engine on the waters of this state in such a manner as to exceed a noise level of 86 measured on an "A" weighted decibel scale.
- (c) **Maximum noise levels for sale.** No person may sell, resell or offer for sale any motorboat for use on the waters of the state if the motorboat has been so modified that it cannot be operated in such a manner that it will comply with the noise level requirements under par. (b).
- (d) **Maximum noise level for manufacture.** *2 situations potentially out of one test, to different persons resulting in 2 surcharges etc*
1. No person may manufacture and offer for sale any motorboat for use on the waters of this state if the motorboat cannot be operated in such a manner so as to comply with the noise level requirements under par. (b). *Is a motorboat equal to an airboat?*
 2. The department may promulgate rules establishing testing procedures to determine noise levels for the enforcement of this section. *What if no safe test exists for airboats (on the water)?*
 3. The department may revise these rules as necessary to adjust to advances in technology. *shall*
- (e) **Tampering.** No person may remove or alter any part of a marine engine, its propulsion unit or its enclosure or modify the mounting of a marine engine on a boat in such a manner as to exceed the noise levels prescribed under par. (b).
- (f) **Local ordinances.** No political subdivision of this state may establish, continue in effect or enforce any ordinance that prescribes noise levels for motorboats or which imposes any requirement for the sale or use of marine engines at prescribed noise levels unless the ordinance is identical to the provisions of this subsection or rules promulgated by the department under this subsection.
- (g) **Exemption for specific uses.** This subsection does not apply to any of the following:
1. A motorboat while competing in a race conducted under a permit from a town, village or city or from an authorized agency of the federal government.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

2. A motorboat designed and intended solely for racing, while the boat is operated incidentally to the testing or tuning up of the motorboat and engine for the race in an area designated by and operated under a permit specified under subd. 1.
 3. A motorboat on an official trial for a speed record if conducted under a permit from a town, village or city.
 4. The operation of a commercial or nonrecreational fishing boat, ferry or other vessel engaged in interstate or international commerce, other than a tugboat.
- (h) *Exemption by rule.* The department may promulgate by rule exemptions from compliance with this subsection for certain activities for certain types of motorboats for specific uses and for specific areas of operation.
- (i) *Exemption for certain agents.* This subsection does not apply to an authorized agent of the federal, state or municipal government when operating a motor boat necessary to carry out his or her official duty of enforcement, search and rescue, fire fighting or research programs.

Chapter NR 5

BOAT

NR 5.125 Noise level standards for motor boats.

(1) TESTING REQUIREMENTS.

- Even if message?
- these are noise for boats.
- (a) The operator of any boat, when requested by a law enforcement officer who reasonably suspects a violation of s. 30.62 (2), Stats., shall operate his or her boat in a manner prescribed by the officer, to determine compliance with 30.62 (2), Stats.
- (b) An officer requesting a boat operator to submit to a noise test shall test the boat using testing methods J34a, J1970 or J2005.
- (c) 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.

(2) PROOF OF COMPLIANCE FOR MANUFACTURERS.

- boat manufacturers to provide for exhaust sound, a unit will have to comply.
- (a) The manufacturer of any engine model manufactured after September 1, 1986 and offered for sale in this state will send a letter of compliance to the Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707 (Attention: Boating Safety Section).
- (b) The letter shall contain the following information:

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Even if the
by the time
the requirements
the procedure, if
loaded at max.
weight, may not.

1. The name, address, and phone number of the manufacturer.
 2. A statement that a representative sample of each model or model group, properly installed on a motorboat on which it is typically used, has been tested in accordance with Society of Automotive Engineers Recommended Practice SAE J34a, dated April, 1977, and meets the requirements of s. NR 5.125(2)(b)3.
 3. The description and model designation of each representative engine and the motorboat on which it was tested.
- (c) The department may request additional information from the manufacturer to determine if the engine complies with SAE J34a, dated April, 1977, and s. 30.62 (2), Stats.
- (3)
- (a) *Manufacturer's standard.* The noise level testing procedures of the Society of Automotive Engineers Recommended Practice Report J34a, dated April, 1977, shall be adhered to by manufacturers when submitting proof of compliance according to s. 30.62 (2) (d), Stats.
 - (b) *Operation standard.* Noise level testing procedures J34a, J1970 or J2005 of the Society of Automotive Engineers shall be adhered to by boat operators when requested to submit to one or more of them by officers conducting noise tests on boats operating in the state of Wisconsin.
- (4) **CUTOUT MECHANISMS.** No person may operate a boat that is equipped with a muffler cut out, by-pass switch or similar device unless the operator of the boat can demonstrate at the time of inspection that the boat cannot operate contrary to s. 30.62 (2) (b), Stats.
- (5) **REFUSAL TO ALLOW TESTING.** No operator of any boat may refuse to operate his or her boat in a manner prescribed by the law enforcement officer who reasonably suspects a violation of s. 30.62 (2), Stats.
- inboard/outboard yes - but not
airboats*

NR 5.125 - ANNOT. **Note:** Copies of the Society of Automotive Engineers Recommended Practice Report J34a, entitled "Exterior Sound Level Measurement Procedure for Pleasure Motorboats", dated April, 1977, may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, Pennsylvania 15096 and are also available for inspection at the following offices: The Department of Natural Resources, 101 South Webster, Box 7921, Madison, Wisconsin 53707; The Office of the Secretary of State, Madison, Wisconsin; and The Office of the Revisor of Statutes, Madison, Wisconsin.



NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request modification to Board Order LE-23-06, modifications to NR 5, related to boat noise testing.

FOR: SEPTEMBER 2007 BOARD MEETING

TO BE PRESENTED BY: Roy Zellmer, Boating Law Administrator and Bill Engfer, Section Chief

SUMMARY:

Section 30.62(2)(b), Stats., limits all boat noise to 86 decibels (dB). At the January 2006 Natural Resources Board meeting, the Board heard comments from the public regarding their concerns over boat noise generated by airboats. As a result, the Board adopted LE-23-06 at the December 2006 meeting. Hearings were held in both the Senate and Assembly committees in February 2007. The Department was asked to consider modifying LE-23-06 to include an exemption from s. 30.62(2)(b) Stats., for trappers. The Department proposes to include an exemption for trappers operating airboats or hovercraft while they are actively engaged in trapping, from November 1 through the following March 31. The Department proposes that the exemption have a sunset clause of March 31, 2009 and that the end of the 2 years the exemption be reviewed. Because the noise generated by airboats comes largely from the air propeller used as the method of propulsion, it is very likely many of the airboats and similar craft in the state may not be in compliance with the current statutorily established 86 dB maximum noise level.

This exemption will give trappers the ability to engage in a sport which can and does have a positive economic impact for them and their families and will occur at a time of year with generally reduced outdoor recreational uses on the affected waters.

RECOMMENDATION: Adoption of Modified Board Order LE-23-06, modifications to NR 5, related to boat noise testing and exemptions.

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

<i>Ken R. Brack Acting</i> Bureau Director, <i>Randall J. Stark</i> <i>Ken R. Brack</i>	<u>9/5/07</u>
<i>Randall Stark</i> Administrator, <i>Amy R. Smith</i> <i>Randy Stark - Acting</i>	<u>9/5/07</u>
<i>Matt Frank</i> Secretary, Matt Frank	<u>9/12/07</u>

- | | |
|---------------------------|----------------------------------|
| cc: Laurie J. Ross - AD/5 | Bill Engfer - LE/5 |
| Amy Smith - AD/5 | Roy Zellmer - LE/5 |
| Mike Lutz - LS/5 | Tom Van Haren - LE/5 |
| Carol Turner - LS/5 | Regional LE Supervisors - LE/5 5 |
| Randy Stark - LE/5 | Kristin Turner - LE/5 |

STAFF REVIEW - DNR BOARD AGENDA ITEM

REMINDER

Have the following questions been answered under the summary section of this form?

- Why is the rule needed?
- What are the significant changes?
- What are the key issues/controversies?
- What was the last action of the Board?

LIST OF ATTACHED REFERENCE MATERIAL REQUIRED FOR RULE PROPOSALS:

Hearing authorization:

Final adoption:

Background Memo (if needed)*
 Fiscal Estimate
 Environmental Assessment (if needed)
 Rule


Background Memo (if needed)*
 Response Summary
 Fiscal Estimate
 Environmental Assessment (if needed)
 Rule

* If all the questions listed in the REMINDER section above can be adequately summarized on the Green Sheet (and a second sheet if needed), the Background Memo may be omitted.

Unit	Reviewer	Date	Comments
Environmental Analysis and Review			
Management and Budget	UP	08/22/07	
Legal Services -Program Attorney -Carol Turner	ML CT	8/22/07 8/22/07	w/ corrections noted.
Other (if applicable)			

DATE: September 10, 2007

TO: Natural Resources Board

FROM: Matthew Frank 

SUBJECT: NRB adoption of modified Board Order LE-23-06 pertaining to boat noise level testing.

I am requesting Natural Resources Board modification to Board Order LE-23-06, a rule package pertaining to Chapter NR 5, Wis. Adm. Code, relating to the modification of an existing noise level testing method to provide a safer procedure for testing all noise related to boat operation, including prop noise caused by air boats and to exempt trappers from the requirements of s. 30.62(2), Wis. Stats.

Background

At the January 2006 Natural Resources Board meeting, the Board heard comments from the public who were concerned about the noise that airboats make and requested the department enforce noise laws on airboat type watercraft. In March 2006, the department requested authorization from the Board to hold public hearings on the noise issue and a proposed rule to create a new noise level testing method. The Board adopted LE-23-06 in December 2006. In February 2007, legislative hearings were held on Board Order LE-23-06 by the Senate and Assembly natural resources committees. The Department was asked by the Assembly Natural Resources Committee to consider exempting trappers from s. 30.62(2), Wis. Stats. The Department proposes to exempt trappers from s. 30.62(2), Wis. Stats., with a sunset date of March 2009.

Summary of Rule

The attached rule establishes a new procedure for use of the J1970 or J34a Society of Automotive Engineers (SAE) noise level testing methods, requiring these tests to be conducted at a minimum of 100 feet from the boat being tested. When the J34a test is used at a distance of 100 feet, the officer will be required to add 2 decibels (dB) to the test results in order for the test to be comparable to a J34a test being conducted at a distance of 50 feet. Three new exemptions are created from the noise level restrictions found in state statute. One exemption applies to boats being used for search and rescue or that are being used while training for search and rescue operations while being operated under the direction or control of a governmental agency. The second exemption applies to boats used by an authorized agent of the federal, state or municipal government to carry out his or her official duty of enforcement, search and rescue, fire fighting or research programs. The third (new) exemption pertains to trappers actively engaged in trapping from November 1 through the following March 31. This third exemption is set to end on March 31, 2009, to allow the Department to evaluate any problems or complaints associated with this exemption.

Rule Development

The proposed rules were developed based on public comments, review of current SAE noise level testing methods for boats, and field tests conducted by the department and at the suggestion of legislative committee members.

Small Business and Final Regulatory Flexibility Analysis

None

Environmental Analysis:

The department has determined that these rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

Legislative Clearing House Report:

All comments from the Legislative Council Rules Clearinghouse have been incorporated in the final rule order.

Fiscal Estimate — 2005 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number LE 23-06

Subject
 Proposed rule to create new testing methods for boat noise.

Fiscal Effect
 State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs — May be possible to absorb within agency's budget. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local: No Local Government Costs
 Indeterminate

1. <input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input checked="" type="checkbox"/> Others <u>Inland Lake</u> <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

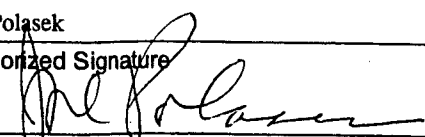
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
---	---

Assumptions Used in Arriving at Fiscal Estimate

Bill Summary:
 Section 30.62(2)(b), Stats., limits all boat noise at 86 decibels (dB). After approval by the DNR and hearings in the Legislature, the Department was asked to consider modifying LE-23-06 to include an exemption from s. 30.62(2)(b) stats, for trappers. The Department agreed to include an exemption for trappers operating airboats or hovercraft from s. 30.62(2)(b) stats, while actively engaged in trapping, from November 1 through the following March 31. This exemption will have a sunset clause of March 31, 2009. At the end of the 2 years the exemption will be reviewed. Because the noise generated by airboats comes largely from the air propeller used as the method of propulsion, it is very likely many of the airboats and similar craft in the state may not be in compliance with the current statutorily established 86 dB maximum noise level.

Fiscal Impact:
 If the modification to LE-23-06 is adopted it will have no significant impact upon enforcement personnel. The Department anticipates complaints to be very low if any, due to the time of year the trappers would be operating their airboats. Any additional work load for DNR Law Enforcement wardens will be absorbed within the agency's budget. Similarly, it is assumed that any increase in local law enforcement will also be minimal.

Long-Range Fiscal Implications
 None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 08-22-07

Fiscal Estimate Worksheet — 2005 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number LE-23-06

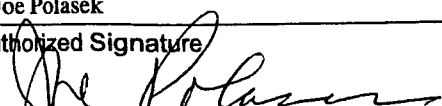
Subject
 Proposed rule to create new testing methods for boat noise.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues	Increased Revenue	Decreased Revenue
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	\$ 0	\$ - 0

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 08-22-07

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING
RULES

The Wisconsin Natural Resources Board proposes an order to create s. NR 5.125 (1) (d), (e), and (6) relating to sound testing methods for boats.

LE-23-06

Analysis Prepared by Department of Natural Resources

1. Statutes interpreted.

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

2. Statutory authority.

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

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

The department is required to enforce the noise statutes found under s. 30.62(2)(b), Stats., but needs a new testing procedure that will allow officers to test boats, such as airboats, which it currently does not have the ability to do in a safer manner under current testing methods. The proposed rule creates a new noise testing method for testing all noise related to boat operation and which the department is authorized to create under s. 30.62(2)(d)2. and 3., Stats. Under s. 30.62(2)(h), Stats., the department has the authority to exempt certain types of motorboats from the noise level requirements for specific uses and specific areas of operation.

4. Related statute or rule.

Section 30.62(2)(b), Stats., and s. NR 5.125, Wisconsin Administrative Code.

5. Plain language analysis of the proposed rule.

The proposed rule will allow the department to safely test airboats and other similar craft to assure that they do not exceed the maximum noise level allowed for operation. This rule simply modifies the procedures used in conducting the J1970 and J34a tests established in Society of Automotive Engineers (SAE). The Department is recommending that when an officer requests a boat operator to conduct a boat noise test under the J1970 shoreline test or the J34a pass-by test method, it will be done at a minimum distance of 100 feet. If the J34a pass-by test is used it will be correlated back to 50 feet requirement of the J34a test by adding 2 dB's to the decibel reading obtained from the test. This rule also creates certain exemptions from the noise level requirements of s. 30.62(2)(b), Stats., to allow the use of boats, such as airboats, hover craft or similar craft used during search and rescue operations and when used by agents of federal, state or municipal governments in the performance of their official duties of enforcement, search and rescue, fire fighting or research programs. A third exemption has been added to this rule order at the request of Assembly Natural Resources Committee. This exemption will sunset on March 31, 2009, and

apply only during the period of November 1 through March 31 each year for persons actively engaged in lawful trapping activities.

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 specific to testing airboat type craft.

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

Of the four states:

Minnesota: Sound laws do apply to airboats, but they are not aware of anyone enforcing the law against airboat prop noise.

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

Iowa: Does not enforce prop noise as their law was not intended for prop noise.

Illinois: Utilizes the J1970 sound test, but they do not 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 many related findings support the regulatory approach chosen for the proposed rule.

Airboats and other air propulsion driven boats are 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 types of craft a method is needed to address the safety concerns of operating these craft at higher rates of speed to test them 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 a commercial or nonrecreational fishing boat, ferry, or other vessel engaged in interstate or international commerce, other than a tugboat from the maximum noise level requirement. We believe that there may be some airboats that are used for commercial trapping which do not involve interstate or international commerce. These boats would most likely be illegal to operate if tested under the proposed rule, unless they had an exemption.

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

The rule is anticipated to affect airboats that are used for trapping fur bearing animals. The noise level test created under this rule order as well as existing noise level maximum limits would apply to such airboats that operate in the waters of this state. It is unlikely that most such airboats will be able to comply with the current maximum noise level limit of 86 decibels established by state statute, regardless of the testing method used. 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: William Engfer – LE/5, 101 S. Webster St., PO BOX 7921, Madison, WI 53707-7921, Phone: (608) 266-0859, Email: William.engfer@dnr.state.wi.us

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

NR 5.125(1)(d) When an officer requests a boat operator to conduct a boat noise test under the J1970 or J34a test method, the test shall be conducted at a minimum of 100 feet from the boat being tested.

SECTION 2. NR 5.125(1)(e) and note are created to read:

NR 5.125(1)(e) When the J34a test is used at a distance of 100 feet, the officer will add 2 decibels (dB) to the test results.

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 3. NR 5.125(6) and note are created to read:

NR 5.125(6) Exemptions. Any boat being operated for one of the following purposes is exempt from the noise level requirements established for motorboats under s. 30.62(2)(b), Stats.

(a) A boat being used by an authorized agent of the federal, state or municipal government to carry out his or her official duty of enforcement, search and rescue, fire fighting or research programs.

(b) A boat being used for search and rescue or training for search and rescue operations at the request of a governmental agency, while being used under the direction or control of a governmental agency.

(c) A boat being used by a trapper for sole purpose of trapping from November 1 thru March 31. This paragraph does not apply after March 31, 2009.

Note: Section 30.62(2)(b), Stats., states that no person may operate a motorboat powered by an engine on the waters of this state in such a manner as to exceed a noise level of 86 measured on an "A" weighted decibel scale.

SECTION 4. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative register as provided in s. 227.22(2)(intro.), Stat.

SECTION 5. Board adoption. The foregoing 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 _____
Matt Frank, Secretary

(SEAL)



March 15, 2007

Scott Hassett, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Inter-Departmental
GEF-2, AD/5

Dear Secretary Hassett,

On March 15, 2007 the Assembly Natural Resources Committee adopted the following motion with respect to Clearinghouse Rule 06-039, relating to sound testing methods for airboats:

MOVED: that the Assembly Committee on Natural Resources, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Natural Resources to consider modifications to Clearinghouse Rule 06-039, relating to sound testing methods for boats, to create an exemption from the statutory noise limits for air boats when the air boats are used by trappers while engaged in trapping during the trapping season.

This motion was adopted on a vote of Ayes, 13; Noes, 0.

If the Department of Natural Resources does not agree to consider modifications to Clearinghouse Rule 06-039, in a letter to the chair of the Assembly Committee on Natural Resources, or fails to respond in writing to this request for modification, by 5:00 p.m., March 19, 2007, the Assembly Committee on Natural Resources objects to Clearinghouse Rule 06-039, pursuant to s. 227.19 (4) (d) 6., Stats., on the grounds that the proposed rule is arbitrary and capricious, and imposes an undue hardship.

Thank you for your consideration of this recommendation.

Sincerely,

Representative Scott Gunderson
83rd District
Wisconsin State Assembly