

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.
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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.

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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 the 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.), Stats.

SECTION 5. Board adoption. The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 6, 2006 and September 26, 2007.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

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