Form 1100-001
(R 9/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.A.1

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	☐	Fiscal Estimate Required	Yes	☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes	☐	Attached
No	☐	Background Memo	Yes	☑	Attached

APPROVED:

Bureau Director, ~~Randell J. Stark~~ Kyl Brooks — Date 9/5/07

Administrator, ~~Amy R. Smith~~ Randy Stark - Acting — Date 9/5/07

Secretary, Matt Frank — Date 9/12/07

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

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

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.

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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.

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2005 Session

		LRB Number	Amendment Number if Applicable
☒ Original	☐ Updated		
☐ Corrected	☐ 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.

☐ 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

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. Similarily, it is assumed that any increase in local law enforcement will also be minimal.

Long-Range Fiscal Implications

None

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

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2005 Session

Detailed Estimate of Annual Fiscal Effect

		LRB Number	Amendment Number if Applicable
☒ Original	☐ Updated		
☐ Corrected	☐ Supplemental	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:	
A. State Costs by Category	Increased Costs	Decreased Costs
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	Increased Costs	Decreased Costs
GPR	$	$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues — Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
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:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
Joe Polasek	266-2794	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.), Stats.

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