



**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Transportation, Tourism,
Forestry, and Natural Resources (SC-TTFNR)**

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 ... 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**



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 **08-074**

AN ORDER to create chapter NR 40, relating to the identification, classification, and control of invasive species.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

07-15-2008 RECEIVED BY LEGISLATIVE COUNCIL.

08-12-2008 REPORT SENT TO AGENCY.

RNS:LAK

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

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-074

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.]

1. Statutory Authority

a. The department is required in s. 227.14 (2) (a) 1., Stats., to explain its authority to promulgate the rule. The department should explain its statutory and constitutional authority to do the following, as well as any other similar provisions: (1) require a person to allow department access to property owned, controlled, or managed by the person; (2) require a person who owns, controls, or manages property to control invasive species that exist on the property, including paying the cost of control where other funding is not available; (3) recover the reasonable and necessary expenses the department incurs controlling an invasive species. [See s. NR 40.04 (4).]

b. The department should explain its authority to prohibit the transport of all aquatic plants and all animals on highways, instead of just the transport of invasive species, and the reconciliation of that authority with the more limited prohibition under s. 23.245, Stats. [See s. NR 40.06 (5) (a).]

c. The department should explain its authority to include wild rice within the definition of “aquatic plant” despite the specific exclusion of wild rice from this term under s. 30.715 (1) (a), Stats. Note that the rule excludes wild rice from the transport prohibition under s. NR 40.06 (5) (a) during the open season for wild rice harvest, but the statute appears to require its exclusion year-round.

2. Form, Style and Placement in Administrative Code

a. It is suggested that the species lists under the definitions of “Established nonnative fish species and established nonnative crayfish species,” “Fish species in the aquarium trade,” and “Fish species in the aquaculture trade” be taken out of the definitions section and placed directly in the substantive provisions of the code where applicable. These lists may change in the future and may create confusion and misinterpretation of the rule if contained in the definition section.

b. The department should review the defined terms in the proposed rule to determine if each are used in the rule text and need to be defined. For instance, see the term, “natural areas.”

c. In s. NR 40.06 (2) (intro.), “any of the following” should be inserted before the colon. In s. NR 40.05 (3) (intro.), “do any of the following” should be inserted before the colon and in subd. 1., “, or” should be replaced by a period. Section NR 40.07 (intro.) should be sub. (1) and given a subsection title and the remaining subsections should be renumbered. [See s. 1.03 (8), Manual.]

3. Conflict With or Duplication of Existing Rules

The “preventive measures” section [s. NR 40.06] includes a number of provisions that appear to duplicate or conflict with other provisions of the Administrative Code [see chapters NR 19 and 109]. If it is the department’s intent to repeal the provisions in these existing chapters and replace them in this new chapter, it must expressly do so. Also note that there are multiple differences between these duplicated provisions including the lack of a provision in the proposed rule to allow minnows used for bait to be transported away from a body of water, the lack of some provisions related to Viral Hemorrhagic Septicemia in the proposed rule, the lack of some key definitions that are currently contained in ch. NR 19 like the definition of “live fish,” and provisions governing the use of aquatic invasive plant control equipment under s. NR 109.08 (4) (b) (this last conflict is even pointed out in a note following s. NR 40.06 (5) (b) 6., yet does not appear to be addressed by the proposed rule). Finally, if it is the department’s intent to implement the changes reflected by the differences between the proposed rule and existing rule, it should detail these changes in the plain language analysis of the rule summary.

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

a. It is recommended that the defined term “category” be changed to something that provides more of an indication of its intended meaning, like “species category.”

b. If the department intends the word “species” as used in the definition of “category” to mean the same as “species” as defined later in the section, it should remove the explanatory text relating to the meaning of “species” from the definition of “category.” If that is not the intent, it is not clear what different meaning of “species” is intended.

c. It is recommended that the definitions of “prohibited invasive species” and “restricted invasive species” be removed and the substance of these definitions be added to s. NR 40.03 (2)

because these are not actual definitions of the terms, but instead are criteria that are used in determining how to classify a particular species. If some form of these definitions is retained, under the definition of "prohibited invasive species" the purpose of the last sentence is not clear. Is this included as a simple statement of fact (in which case it should be removed from the definition), or is the "feasibility of statewide eradication or containment" of a species a condition of whether the species is included under this classification (in which case this requirement should be clarified)? The same consideration should be made for the last sentence of the definition of "restricted invasive species" if it is retained.

d. It appears that a comma should be inserted between "in this paragraph" and "that have become feral" under s. NR 40.04 (2) (f) 5. r.

e. In ss. NR 40.02 (37) and 40.03 (2) (e) (note), the word "currently" should either be removed or replaced by an actual date, such as the effective date of the rule. [See s. 1.01 (9) (b), Manual.]

f. The lists in ss. NR 40.04 and 40.05 should be alphabetized so that a reader may more easily ascertain whether a particular species is included. If it becomes necessary to add a species in the future, this may be done by use of letters; for example, subd. 15m. could be inserted between subds. 15. and 16. [See s.1.03 (7), Manual.]

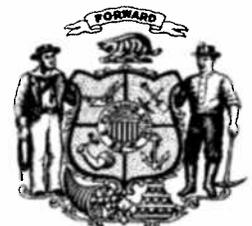
g. What procedure will the department use to determine whether ss. NR 40.04 (3) (b) and 40.05 (3) (b) apply to an individual? Some of the species listed under s. NR 40.05 (2) are very common in this state, and are routinely transported and transferred. For example, many of the listed restricted plants could be "knowingly" incorporated into agricultural products such as hay and silage that are transported and transferred. These agricultural practices appear to require a permit from the department under this rule.

h. Under this rule, it appears that individuals attempting to control restricted plant species would subject themselves to liability if they accidentally allow an invasive species to be "introduced," which is very broadly defined, during their control efforts. [s. NR 40.05 (3) (d)] Section NR 40.05 (3) (b) would not appear to allow the department to look past an inadvertent release that occurs incidental to a control effort because even if the person "introduced" the invasive species accidentally, the person would have still intentionally possessed, and probably intentionally transported, the invasive species in violation of par. (b). Is this the department's intent?

i. Because of the significance of the meaning of the word "attached" under s. NR 40.06 (5), this term should be defined.



WISCONSIN STATE LEGISLATURE



02-16-09
?

C-Rule
08-074 folder

Fiscal Estimate — 2007 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number IS-34-06

Subject
 Creation of NR 40 -- Invasive Species Identification, Classification, and Control

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
 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

Rule Summary: The statutes require the Department to establish a statewide program to control invasive species in this state, including a statewide management plan and rules to identify, classify and control invasive species and to establish procedures and requirements for issuing permits to control invasive species. The proposed rules identify, classify and control invasive species, and lists specific invasive species into two specific categories: prohibited and restricted. The rules prohibit or restrict the transportation (including importation) possession, transfer (including sale) and introduction of invasive species that are listed or identified as "prohibited", with certain exceptions. "Restricted" invasive species are also subject to a conditional ban on transportation, transfer and introduction, but not possession, with certain exceptions.

This estimate focuses on the fiscal effect resulting from implementing NR 40, as distinguished from the effect associated with the underlying authorizing statutory language.

Fiscal Effect-DNR: This rule will be implemented across several Department programs, including Bureaus in the divisions of Land, Forestry, Enforcement & Science, and Water. The Department's costs associated with implementing NR 40 are primarily associated with the permitting, site inspection, monitoring and technical assistance activities inherent in the rule. The Department estimates the workload associated with these tasks across the Department to roughly equal the equivalent of 2.00 FTE and \$120,000 annually in position-related costs. In addition, the Department assumes it will incur \$40,000 annually to supply public informational and educational materials regarding the requirements of the rule.

Fiscal Effect-Local Government & Other State Agencies: Municipalities will incur costs for complying with the rule, while other state agencies that own land may incur compliance costs by following best management practices or very occasionally needing to control prohibited species. Since it is not possible to estimate these additional costs with any degree of specificity, the Department characterizes the impact as "indeterminate".

Long-Range Fiscal Implications

There will also be positive long-term fiscal effects on landowners, land managers, lake users, anglers, and others.

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 21/60/9

Fiscal Estimate — 2007 Session

**Page 2 Assumptions Narrative
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number IS-34-06

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number IS-34-06

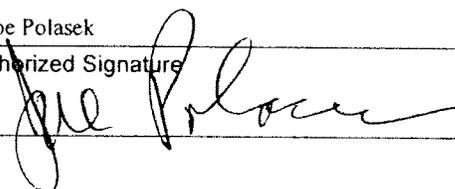
Subject
 Creation of NR 40 -- Invasive Species Identification, Classification, and Control

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		\$ 120,000	\$ -
(FTE Position Changes)		(2.00 FTE)	(- FTE)
State Operations — Other Costs		40,000	-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$ 160,000	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S		160,000	-
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		\$	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 160,000	\$
Net Change in Revenues	\$	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 2/16/09



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:

Board Order Number: IS-34-06
Clearinghouse Number: 08-074
Subject of Rules: The identification, classification and control of invasive species
Date of Transmittal: May 11, 2009

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

**Peter D. Flaherty, Staff Attorney
DNR Bureau of Legal Services
LS/8, 101 South Webster**

**Telephone: 266-8254
e-mail: Peter.Flaherty@Wisconsin.gov**

An electronic copy of the proposed rule submittal may be obtained by contacting Peter Flaherty at Peter.Flaherty@Wisconsin.gov