

Report From Agency

REPORT TO LEGISLATURE

NR 8, Wis. Adm. Code
Implementation of the wildlife violator compact

Board Order No. LE-07-07
Clearinghouse Rule No. 07-056

Basis and Purpose of the Proposed Rule

Prior to the authority granted by 2005 Act 282, a person who had their hunting, trapping or fishing privileges suspended in another state could still obtain an approval and engage in those activities in this state. Under Act 282, the department has been authorized to enter into a Wildlife Violator Compact with other states. Doing so will allow the department to treat nonresidents who are from a state which is a member of the compact the same as a resident when they commit a violation in this state.

The mobility of many violators necessitates the maintenance of channels of communication among the various states. Usually, if a person is cited for a wildlife violation in a state other than the person's home state, one or more of the following occur:

- a. The violator is required to post collateral or a bond to secure appearance for a trial at a later date.
- b. The violator is taken into custody until the collateral or bond is posted.
- c. The violator is taken directly to court for an immediate appearance.

The purpose of these enforcement practices is to ensure compliance with the terms of a wildlife citation by the violator who, if permitted to continue on his or her way after receiving the citation, could return to his or her home state and disregard the terms of the citation. These practices may cause inconvenience and hardship for the violator who is unable at the time to post collateral, furnish a bond, stand trial, or pay a penalty, and thus is compelled to remain in custody until some alternative arrangement is made. This practice can consume a substantial amount of law enforcement time.

States that are members of the compact must agree to recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat the suspension as if it had occurred in the home state. In addition, each member state must allow a violator to accept a wildlife citation and, without delay, proceed on his or her way, whether or not a resident of the state in which the citation was issued, if the violator's home state is party to this compact.

New rules are required pursuant to Act 282 to assure due process is afforded to individuals subject to administrative suspensions in this state or who are suspended in a member state. When all necessary rules and procedures are in place, the department will apply to become a member state.

The purpose of this rule order package is to develop procedures which will allow the Department of Natural Resources to become a member of the Wildlife Violators Compact. These rules will be located in s. NR 8, Wis. Adm. Code.

Before the department can become a member of the compact, new rules and procedures need to be developed which allow the department to administer a program that will:

1. Assure all residents receive notification when their license has been suspended by this state or any other member state,
2. Assure the exchange of information between the department, the district attorneys and the clerks of court, and
3. Provide an administrative appeal process by which the department can establish if sufficient grounds exist to deny a persons application or suspend their approvals.

Summary of Public Comments

The department held a hearing on this rule on July 26, 2007. There were no public appearances or written comments received at the hearing. Because the Clerks of the Circuit Courts were the ones most affected by these rules, the Department also shared a copy of the proposed rules with the Clerk of Courts Association, Wisconsin Supreme Court Operations Staff, as well as members of the Consolidated Court Automation Program (CCAP). The department met with members of these groups and listened to their questions and concerns. The clerks and Court Operations Staff expressed concern about several parts of the proposed rules. Specifically the concerns related to the number of notices to the clerks would be required to provide the Department when a violator fails to pay or appear, the information that must be included in the notices, the deadline required for the clerks to provide the department with such notices and the reference to Clerks of Court being too broad.

Modifications Made

As a result of the department's meeting and follow-up contacts with the Clerks of Court, CCAP and Supreme Court Operations staff, the department modified the rules to simply require the clerks to provide the Wildlife Violator Compact Administrator with one notice after a violator fails to comply with the conditions of a default judgment for failure to pay or appear in court. A follow-up notice will also be required when a violator has paid or otherwise resolved the charge against them. It was determined that there was not a need to notify the department both when the violator first fails to appear or pay their fine or forfeiture on or before their initial court date and again after the violator fails to pay by any second deadline provide by the court.

The department removed the list of required information that the clerks needed to provide in a default judgment notice to a violator, and instead simply listed the information the Clerks need to provide the department when a violator fails to pay or appear in court. The department also defined the term clerk to mean a clerk of the circuit court with jurisdiction over a wildlife related violation. Clarifications were also made to several definitions in this rule order based on comments from the clerks and Court Operations staff. Based on comments for Court Operations staff, we have also consolidated 2 separate sections in the initial rule order that both related to denial of applications for approvals and preference points by the department during a period of revocation.

Appearances at the Public Hearing

There were no appearances at the public hearing.

Changes to Rule Analysis and Fiscal Estimate

The analysis was modified slightly to reflect the modifications. The fiscal estimate is unchanged.

Response to Legislative Council Rules Clearinghouse Report

The recommendations as they related to the revised rule have been incorporated.

Final Regulatory Flexibility Analysis

The revisions to ch. NR 8, Wis. Adm. Code, pertain to the revocation of hunting, fishing and trapping privileges and approvals of individuals who violate the Wildlife laws in this state or any other state that is a

member of the Wildlife Violators Compact. These rules are applicable to individuals who hunt, fish and trap and do not impose compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule for small businesses. Therefore, under s. 227.19(3m), Stats., a final regulatory flexibility analysis is not required.