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**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RECREATING AND AMENDING, AND CREATING RULES**

The statement of scope for this rule, SS 018-13, was approved by the Governor on February 18, 2013, published in Register No. 687, on March 14, 2013, and approved by the Natural Resources Board on April 24, 2013. This rule was approved by the Governor on August 30, 2103.

The Wisconsin Natural Resources Board proposes an order to repeal NR 10.06 (9) (b), to amend NR 10.01 (1) (v); to repeal and recreate NR 10.01 (1) (b) to (u), and 10.12 (3) (c); and to create NR 10.12 (3) (e), related to migratory bird hunting regulations.

WM-07-13(E)

Analysis Prepared by the Department of Natural Resources

Statutory Authority: The chapter on wild animals and plants, in s. 29.014, Stats., “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to promulgate rules related to migratory game bird hunting. Additional statutory authority is found in ss. 23.11, 29.192 and 29.041, Stats. The emergency rule making process is established in s. 227.24, Stats.

Statutes Interpreted and Explanation of Agency Authority: Special regulations on the taking of certain wild animals are authorized under s. 29.192, Stats., including specific language that authorizes rules related to Canada goose hunting.

Wisconsin’s boundary waters with other states are popular waterfowl hunting locations. Specific authority to regulate hunting in and on all interstate boundary waters and outlying waters is established in s. 29.041, Stats.

Sections 23.11 and 29.014, Stats. allow for the protection of natural resources, establish general department powers on lands it manages including migratory bird refuges, and authorize the establishment of hunting and trapping regulations on department managed lands.

Related Statute or Rule: This rule order establishes the season length, bag and possession limits for the Wisconsin migratory game bird seasons. In odd numbered years, similar permanent rules are promulgated and the board order number for that related rule is WM-03-13. This emergency rulemaking process is necessary to have regulations in place for the fall hunting season while following the federal and state rule procedures.

Plain Language Analysis: SECTION 1 of this rule order establishes the season length and bag limits for the migratory game bird seasons. For ducks, the state is divided into three zones, each with 60-day seasons as allowed by federal rule under liberal season frameworks. The proposed seasons in each zone are:

North duck zone - the season begins at 9:00 a.m. on September 21 through November 19

South duck zone - the season begins at 9:00 a.m. September 28 until October 6, closed from October 7-11 and then reopens on October 12 – December 1.

Mississippi River duck zone - the season begins at 9:00 am on September 21-29, closed September 30-October 11 and then reopens on October 12-December 1.

The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 2 canvasbacks, 3 wood ducks, 3 scaup, 2 pintails and 2 redheads.

For Canada geese, the state is apportioned into 2 goose zones for the regular hunting season, Horicon and Exterior, each with a 92 day season. The Mississippi River Subzone is a special goose management subzone within the Exterior Zone. Season dates are:

Horicon Zone – Two hunting periods, the first period September 16-October 27 and the second October 28-December 16

Exterior Zone in the northern duck zone - September 16 – December 16

Exterior Zone in the southern duck zone – September 16- October 6 and October 12-December 21

Mississippi River subzone – September 21-29 and October 12- January 2

The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the regular open seasons within the zones.

Finally, this SECTION establishes that the possession limit for migratory birds is three times the daily bag limit instead of two.

SECTION 2 establishes the youth waterfowl hunting season dates.

SECTION 3 lifts a sunset of special migratory bird hunting regulations at the Mead and Zeloski Marsh Wildlife Management Areas.

SECTION 4 Expands open water hunting opportunities for migratory birds by adding 10 lakes to the list of those where open water hunting is allowed if the hunter is more than 1,000 feet from the shoreline and islands.

SECTION 5 relaxes the prohibition on hunting waterfowl in open water for holders of permits for hunters with disabilities.

Summary of, and Comparison with, Existing or Proposed Federal Regulations: Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service (USFWS) regulations process. As part of the Federal rule process, the USFWS proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest-management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals.

Wisconsin Canada goose harvest is supported by two different Canada goose populations; the local giant Canada geese which are part of the Temperate Breeding Population (TBP) of the Mississippi Flyway provide about 40% of our fall harvest while the Mississippi Valley Population (MVP) that breeds in northern Ontario provide about 60% of the fall harvest. These two populations are managed under cooperative management plans developed by several states and provinces. The TBP population has steadily grown and management goals are to provide additional harvest opportunity and control population growth. In contrast, the MVP population has been on a slow decline so management objectives are to maintain a lower rate of harvest and have a stable or increasing population. These contrasting goals create a challenge in the development of hunting regulations. In order to improve our harvest management, the Mississippi Flyway Council tested the use of a standard season framework for 5 years while monitoring population size and harvest rates for the MVP and TBP. From 2007 - 2011, season lengths and bag limits for each MVP harvest state were unchanged. Each state retained the flexibility to schedule the timing of their Canada goose season. At the winter 2012 flyway meeting, analysis of the impacts of these 5 years of stable regulation were reviewed and the results were mixed with regard to the management objectives. It was decided among the member states that a cautious and slow approach should be taken toward continued liberalization of Canada goose hunting seasons.

The proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the USFWS in 50 CFR 20.

Comparison with Rules in Adjacent States: Since migratory bird species are managed under federal law, each region of the country is organized in a specific geographic flyway which represents an individual migratory population of migratory game birds. Wisconsin along with Minnesota, Michigan, Illinois and Iowa are members of the Mississippi Flyway. Each year the states included in the flyways meet to discuss regulations and guidelines offered to the flyways by the USFWS. The USFWS regulations and guidelines apply to all states within the Flyway and therefore the regulations in the adjoining states closely resemble the rules established in this rule order, and only differ slightly based on hunter desires, habitat and population management goals. However, these variations fall within guidelines and sideboards established by the USFWS.

Summary of Factual Data and Analytical Methodologies: In the past, the department has annually promulgated emergency and permanent rules establishing the same year's migratory bird hunting regulations. The emergency rule is necessary because migratory game bird hunting is regulated by the United States Fish & Wildlife Service which offers a final season framework to Wisconsin on approximately August 1 each year. This timeframe does not allow for promulgation of a permanent rule prior to the hunting season. The department has promulgated permanent rules in the past so that information related to zones, tagging requirements for geese, and other regulations remain relatively current. However, season dates and bag limits established in the administrative code reflect the prior season frameworks and are not useful, current information.

For the regular duck season, a data based process called Adaptive Harvest Management is used annually by the USFWS and the Flyways to determine which of 3 framework alternatives best matches the current year's data on populations and habitat (data from the spring pond and duck survey). The option of a closed season is also possible if survey conditions indicated that this is necessary for the management of duck populations. The determination of which alternative is selected is based in part on the spring wetland conditions on the breeding grounds and the Mid-Continent Mallard population. These data come from the May Pond and Breeding Waterfowl Population Surveys conducted by the USFWS and Canadian Wildlife Service on traditional survey areas as well as surveys from select states, including Wisconsin. In addition, harvest strategies have been developed to inform hunting season decisions for other individual duck species such as scaup, canvasback and pintail which could drive annual changes in bag limits or season lengths for those species.

In 2011 the USFWS gave states the option of reconfiguring duck hunting zones and after an 11 month public input process Wisconsin implemented changes for a 5 year period. Waterfowl hunters have been supportive of the new zone configuration and this proposal contains the same zone configuration that was in effect for the 2011 season. The department's position has been that the configuration of duck zones is an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations.

The parameters of Wisconsin's regular goose seasons are guided by the Mississippi Flyway management plans for the MVP and TBP Canada goose populations and approved by the Mississippi Flyway Council and the USFWS. The health of these populations is measured with spring breeding population surveys, survival data and harvest rates obtained from banding and production studies. The surveys and studies are conducted annually and are supported by the State of Wisconsin as part of the MFC. The primary elements of Wisconsin's waterfowl regulatory process include conducting spring waterfowl surveys, participation in MFC meetings, commenting on federal proposals, and soliciting input from the public. The state process begins with Flyway meetings in February and March each year where staff provide input to the development of federal framework alternatives and requests related to the early seasons. In spring and summer, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

In early July, staff shared available breeding status information with stakeholders via website, committee contacts and GovDelivery email notices encouraging feedback. In addition, Department staff attended the July 11 waterfowl meeting of the LaCrosse County Conservation Alliance to share status information and hear feedback from waterfowl hunters. Department staff then attended the MFC Technical and Council meetings in Indiana from July 21-26. At these meetings, staff were provided status information and the proposed framework alternative from the USFWS. Department staff work with the other states in our Flyway to discuss and develop proposals and recommendations that are voted upon by the MFC. Proposals that passed at the MFC meeting were forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting on July 31 and August 1. The USFWS announced its final waterfowl season framework recommendation on August 1. Department staff then held a meeting of the Migratory Game Bird Migratory Committee that consists of stakeholders, regional wildlife staff and representatives of various Department programs on August 2. On August 3, Department staff summarized waterfowl status and regulation information and presented this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post-Flyway Meeting) of interest groups and individuals. Staff gathered public input and citizen suggestions at those meetings for the development of Wisconsin's waterfowl regulations, given the federal framework. A draft season proposal was finalized on August 4 and then posted on the Department website on August 5. Public hearings were held from August 5-8 around the state to solicit additional input on the proposed annual waterfowl rule.

Wisconsin has a long tradition of restricting waterfowl hunting to the near shore and marsh areas of lakes and flowages. This provides safe open water resting areas for migrating waterfowl and helps keep ducks on water bodies for a longer period during the hunting season. However, "open water" hunting is allowed on some large lakes and the Great Lakes where it is believed that open water hunting does not eliminate safe resting areas. This type of hunting may involve specialized boats and other equipment and primarily targets diving species of ducks. All open water blinds must be removed at the close of hunting hours each day. Following a citizen request to increase hunting opportunities by expanding the number of lakes available for open water duck hunting, an ad hoc committee of citizens conducted a statewide review of 130 of the state's largest lakes, held local meetings, and made recommendations for additional open water hunting lakes. Adding the lakes in this proposal will increase areas available to waterfowl hunters and provide more opportunities for a unique type of waterfowl hunting.

This rule will expand opportunity for waterfowl hunters with disabilities. Open water waterfowl hunting is currently prohibited on all but a handful of lakes in WI. A person who is hunting near emergent vegetation as required under current rules is not considered to be hunting from open water. The concern is that those with disabilities may physically not be able to get into a smaller boat, skiff, or blind and that it may be difficult or impossible to place an accessible boat or blind near enough vegetation capable of meeting the rule's requirements. This proposal will make it possible for disabled permit holders, and their companions, to hunt from a craft such as a pontoon boat, which may be impossible to locate within three feet of required emergent vegetation.

Closing migratory bird hunting hours early on managed public hunting areas in some states has been shown to provide good hunting across an entire property rather than just near refuges, hold ducks in an area for a longer period of time, and provide better hunting opportunities throughout the season. An experimental early closure has been applied at the Mead Wildlife Area in Marathon and Wood counties and at Zeloski Marsh, Lake Mills Wildlife Area in Jefferson. The regulation has been in place only during the early part of the season when hunting pressure is heaviest. The regulation has sunset after a three year trial period. There continues to be support for the special regulations and reauthorization by rule is needed for them to remain in effect.

Anticipated Private Sector Costs: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no costs are associated with compliance to these rules.

Effects on Small Business: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have an economic impact on a substantial number of small businesses under s. 227.24(3m) Stats.

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Deadline for Written Comments: The deadline for written comments was August 8.

SECTION 1. NR 10.01 (1) (b) to (u), are repealed and recreated to read:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
NR 10.01 (1) (b) <i>All species of wild duck</i>	Entire state	As established by zone	6 ducks to include not more than 4 mallards of which only 1 may be a hen mallard, 1 black duck, 2 pintails, 2 canvasbacks, 2 redheads, 3 scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.	Three times the daily bag limit through the entire season except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	Northern zone as established in s. NR 10.32	9:00 a.m September 21- November 19		
	Southern zone as established in s. NR 10.32	9:00 a.m. September 28 – October 6, October 12- December 1		
	Mississippi River zone as established in s. NR 10.32	9:00 am. September 21- 29, October 12- December 1		

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
NR 10.01 (1) (c) <i>Coots and moorhens</i>	Entire state	Concurrent with the open season for ducks established in par. (b)	15	45 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
Note: Moorhen is synonymous with gallinule.				
NR 10.01 (1) (e) <i>Sora and Virginia rails</i>	Entire state	Concurrent with the open season for ducks established in par. (b)	25	75 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
NR 10.01 (1) (f) 1. <i>Snipe</i>	Entire state	Concurrent with the open season for ducks established in par. (b)	8	24 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
NR 10.01 (1) (f) 2. <i>Woodcock</i>	Entire state	Beginning on the Saturday nearest Sept. 22 and continuing for 45 consecutive days	3	9 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
NR 10.01 (1) (g) <i>Geese</i> 1. Canada geese and its subspecies except on the first day of the duck season in par. b. when goose hunting is not allowed until 9:00 a.m.	a. Entire state	September 1 — September 15	5	15 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	b. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	September 16 – December 16.	2	6 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	c. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 1. d. and e.	September 16 - October 6, October 12-December 21	2	6 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	d. Horicon zone	Two permit periods		Equivalent to the seasonal limit established by the department except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
		September 16 – October 27	2	
		October 28-December 16	2	
	e. Mississippi River subzone	September 21– 29, October 12-January 2	2	6 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
2. Snow or blue and Ross' geese except on the first day of the duck season in par. b. when goose hunting is not allowed until 9:00 a.m.	Entire state	As established by zone	20	60 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	September 16 – December 16		
	b. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 2. e. and g.	September 16 – October 6, October 12-December 21		
	c. Horicon zone	September 16 – December 16		
	d. Mississippi river subzone	September 21– 29, October 12- January 2		

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
3. All other geese except on the first day of the duck season in par. b. when goose hunting is not allowed until 9:00 a.m.	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	September 20 – December 16	1 white-fronted goose	3 white-fronted geese except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit
	b. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in this subd. 3.c. and d.	September 20 – October 6, October 12-December 21		
	c. Horicon zone	September 20 – December 16		
	d. Mississippi River subzone	September 25– 29, October 12- January 2		

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
4. Brant except on the first day of the duck season in par. b. when brant hunting is not allowed until 9:00 a.m.	Entire state	As established by zone	1	3 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	September 16 – December 16		
	b. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 3. c. and d.	September 16 – October 6, October 12-December 21		
	c. Horicon zone	September 16 – December 16		
	d. Mississippi River subzone	September 21– 29, October 12- January 2		
10.01 (1) (h) <i>Mourning dove</i>	Entire State	Sept. 1 – Nov. 9	15	45

SECTION 1. Continued.

NR 10.01 (1) (u) Falconry special season. Any person possessing a valid falconry permit and hunting license shall be restricted to the following migratory game bird seasons:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
1. All species of wild ducks, mergansers and coots except on the first day of the duck season in par. b. when hunting is not allowed until 9:00 a.m.	Northern zone as established in s. NR 10.32	Sept. 14 – Sept. 15, Sept. 21 at 9:00 a.m. – Nov. 19 and Jan. 10 – Feb. 23	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	Southern zone as established in s. NR 10.32	Sept. 14 – Sept. 15, Sept. 28 at 9:00 a.m. October 6, October 12- Dec. 1 and Jan. 10 – Feb. 23	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	Mississippi River zone as established in s. NR 10.32	Sept. 14 – Sept. 15, Sept. 21 at 9:00 a.m. – 29, October 12- December 1 and Jan. 10 – Feb. 23	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
2. Gallinules, Sora rail, Virginia rail, common snipe and woodcock	Entire state	Sept. 1 – Dec. 16	3 in aggregate with those species listed under subd. 1.	9 in aggregate with those species listed under subd. 1. except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
3. Geese except on the first day of the duck season in par. b. when hunting is not allowed until 9:00 a.m.	Within the zones and subzones established in s. NR 10.31	Concurrent with the open season for geese established in par. (g) for each zone or subzone	As established in par. (g) for each zone or subzone	As established in par. (g) for each zone or subzone

SECTION 2. NR 10.01 (1) (v) is amended to read:

NR 10.01(1) (v) *Special youth waterfowl hunt event.* Persons under the age of 16 may hunt all species of wild duck, mergansers, geese, coots, and moorhens statewide for 2 consecutive days starting on September ~~17~~ 14. Approvals under ch. 29, Stats., are not required pursuant to s. 29.197 (1), Stats., except for registration in the harvest information program under s. NR 10.12 (11) and a Canada goose hunting permit for the season or zone where goose hunting, as listed in par. (g) 1., if hunting Canada geese. Daily bag limits are those described under pars. (b), (c) and (g), except that the daily bag limit for the zone or subzone being hunted as listed in par. (g) 1 .a. to h., on that date shall apply to Canada geese, and all other waterfowl hunting regulations apply. Hunters shall be accompanied by an adult 18 years of age or older and be in compliance with ss. 29.592 and 29.593, Stats. One adult may not accompany more than 2 hunters and pursuant to s. 29.592, Stats., not more than one of the 2 hunters may be age 10 or 11, or be a person who does not possess a certificate of accomplishment under s. 29.591, Stats., or its equivalent from another state, country or province.

SECTION 3. NR 10.06 (9) (b) is repealed.

SECTION 4. NR 10.12 (3) (c) is repealed and recreated to read:

10.12 (3) (c). *Large Lakes.* Blinds in open waters of the following lakes if more than 1,000 feet from any shoreline including islands provided blinds are securely anchored: Beaver Dam Lake in Dodge County (excluding Rakes and Trestle Works Bays), Castle Rock Lake in Adams and Juneau counties (south of railroad bridge and county road G), Fence Lake in Vilas County, Grindstone Lake in Sawyer County, North Twin Lake in Vilas County, Petenwell flowage in Adams, Juneau and Wood counties (north of state highway 21 and south of state highway 73), Lake Puckaway in Marquette and Green Lake counties (the waters west of the west end of the dredge bank, excluding the waters east of the west end of the dredge bank), Shawano Lake in Shawano County, Trout Lake in Vilas County, Lake Winnebago, Lake Wisconsin in Sauk and Columbia counties (north of railroad bridge), and Lake Wissota in Chippewa County (south of county road S and north of county road X).

SECTION 5. NR 10.12 (3) (e) is created to read:

NR 10.12 (3) (e) Persons holding a Class A or B disabled permit that authorizes hunting from a stationary vehicle and which has been issued for more than 1 year, and any person who assists the disabled hunter in the same boat, may hunt more than 3 feet from emergent vegetation that provides the required 50 % concealment of the hunters and boat, but not farther than necessary to maintain the minimum depth of water necessary for operation of the boat being used by the hunters.

SECTION 6. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

SECTION 7. This rule shall take effect upon publication in the Wisconsin state paper pursuant to s. 227.24(1)(c).

SECTION 8. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 14, 2013.

9/3/13

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____.

Cathy Stepp, Secretary

(SEAL)

Final Regulatory Flexibility Analysis

Natural Resources Board Order WM-07-13(E)

The revisions to Chs. NR 10 and 45, Wis. Administrative Code, related to hunting, trapping and the management of department lands are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m) Stats., a final regulatory flexibility analysis is not required.