

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 116.15(1)(a); and to create NR 116.03(6m) and 116.15(1)(as) to define a deck and provide that the construction of deck is not a modification or addition to a nonconforming structure.

WT-39-03

Analysis Prepared by Department of Natural Resources

Statutory Authority: Statutes that authorize the promulgation of this rule include ss. 87.30(1) and 227.11(2)(a), Stats. These sections grant rule-making authority to the Department to establish minimum floodplain regulations for areas which are mapped in the regulatory floodplain. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted: In promulgating this rule, s. 87.30(1), Stats., has been interpreted as allowing the Department the authority to establish minimum floodplain regulations.

Plain Language Rule Analysis: The Wisconsin legislature in enacting chapter 614, laws of 1965, recognized that floodplain zoning is a necessary tool to protect human life and health and to minimize property damages and economic losses. The purpose of the rules is to provide a uniform basis for the preparation and implementation of sound floodplain regulations for all Wisconsin municipalities. The rules establish criteria for development in floodplain areas, treatment of nonconforming structures and uses, floodproofing standards, and department and municipal responsibilities.

While Chapter NR 116 has always permitted the addition of decks to structures in floodplain areas, the term "deck" has never been defined, but has always been treated as a structure. Currently, if a deck is added to an existing structure, it is treated as a structural addition to that structure and the cost of the deck is included in the 50% lifetime cap on modifications and additions to the structure. The proposed revisions would define "deck" for the first time and would provide that the construction of a deck which met specific criteria would not be considered a modification or addition to a nonconforming structure.

Federal Regulatory Analysis: While there are national flood insurance standards for floodplain structures, these standards do not specifically address "decks."

Adjacent States: While all adjacent states have adopted the minimum national flood insurance standards, none have adopted standards to specifically address decks in floodplain areas.

A Summary Of Factual Data: The proposed revisions were promulgated in response to a request from the Joint Committee for the Review of Administrative Rules. The definition is similar to that used by the state Department of Commerce.

Regulatory Flexibility Analysis: To the extent that small businesses have structures in floodplain areas, those businesses would be subject to the provisions of these rules.

SECTION 1. NR 116.03(6m) is created to read:

NR 116.03(6m) "Deck" means an unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.

SECTION 2. NR 116.15(1)(a) is amended to read:

NR 116.15(1)(a) No extension of a nonconforming use, or modification or addition to any building with a nonconforming use or to any nonconforming building, may be permitted unless they are made in conformity with the provisions of this section. For the purposes of this section, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, rebuilding or replacement of any ~~such~~ existing building, accessory building or accessory use, except as provided in pars. (am) and (as).

~~(1)(am) Ordinary~~ For the purposes of this section, ordinary maintenance repairs are not considered ~~structural repairs, modifications or additions~~ an extension, modification or addition; such ordinary maintenance repairs include internal and external painting, decorating, paneling, the replacement of doors, windows and other nonstructural components; and the maintenance, repair or replacement of existing private sewage systems, water supply systems or connections to public utilities;

SECTION 3. NR 116.15 (1)(as) is created to read:

NR 116.15(1)(as) For the purposes of this section, the construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the principal structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

SECTION 4. EFFECTIVE DATE. This rule shall take effect 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. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 28, 2004.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)