

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS
ER-10-10

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.27(3)(b) and 227.11(2)(a), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 29, Wis. Adm. Code, relating to fees for providing endangered resources information to those who request it for specific authorized purposes. The Department proposes to update fees for providing Natural Heritage Inventory (NHI) information and data to the public, establish a new expedited endangered resources review service; require education, training, experience, and an exam for requesters of detailed NHI data; establish a pilot certification program; and charge fees for training, exams, and certification to cover Department costs.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

July 13, 2010 Glaciers Edge and Gathering Waters Rooms, DNR South Central Region Headquarters,
3911 Fish Hatchery Road, Fitchburg
Tuesday at 11:00 a.m.

July 14, 2010 Room 163, DNR Service Center, 141 NW Barstow, Waukesha
Wednesday at 11:00 a.m.

July 16, 2010 DNR/DMV Conference Room, DNR Service Center, 5301 Rib Mountain Drive, Wausau
Friday at 11:00 a.m.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Comments may also be submitted via an online form at this website: <http://dnr.wi.gov/org/land/er/review/NR29form.asp>. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Sarah Carter, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707 or by email to sarah.carter@wisconsin.gov. Comments may be submitted until July 16, 2010. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Carter.

Plain Language Analysis: Ch. NR 29, Wis. Admin. Code, outlines mechanisms and fees for sharing Natural Heritage Inventory (NHI) information on rare species and high-quality natural communities with the public. The proposed changes to Ch. NR 29, Wis. Admin. Code, represent recommendations made by stakeholders during a comprehensive program review conducted in 2008-2009.

Fees in Ch. NR 29, Wis. Adm. Code, have not been updated in 20 years. The proposed rule updates fees for one-time NHI information requests (commonly referred to as Endangered Resources (ER) Reviews) from \$20/hour to \$75/hour, and reduces the minimum charge from three hours of staff time (currently \$60) to one hour of staff time (\$75). Wisconsin's proposed \$75 minimum fee is low to average when compared to fees charged by other states both nationally and in the Midwest. Fees for providing access to the detailed NHI data via a formal NHI Data License are updated from a minimum of \$500 to a minimum of \$850, and from a maximum of \$1000 to a maximum of \$1500. The range in fees allows the Department to provide flexibility in costs for users depending on the format and geographic extent of the data requested.

The rule also creates a new expedited endangered resources review service to meet the needs of customers faced with very short deadlines for commencing project activities. The product is provided in a guaranteed, short timeframe (7 working days) for a higher fee: \$140/hour with a minimum charge of three hours (\$420). The ER Review Program has been piloting this service for the last six months. The pilot was accomplished via contract for a similar but slightly lower fee (\$100/hour, \$360 minimum). Based on

the success of the initial pilot and consistent requests from stakeholders for this service, the Department is now proposing this change to allow Department staff to provide this service on a regular basis.

The proposed rule clarifies that users with access to detailed NHI data may be required to take training and/or an exam to ensure that they have the knowledge and skills to correctly access, interpret, apply and ensure the security of these sensitive data, and establishes that the Department may charge fees for training and exams to cover Department costs. The rule also directs the Department to establish a pilot certification program to allow external individuals with a documented biological background who demonstrate specific skills and knowledge be authorized to conduct preliminary evaluations of potential impacts of proposed projects on endangered resources. These changes are a response to training needs that have been identified consistently by both customers and Department staff, and were reiterated by stakeholders in the recent program review. Those requesting direct access to the NHI data are currently required to take online training and an exam before being provided access to the data. However, there is a need to create better and more comprehensive training to allow users to better understand, interpret, and apply these data to their specific projects and uses. There is also a need to continue to ensure that this information has been effectively conveyed and understood through completion of an exam. In anticipation of this proposed rule change, the ER Review Program has been working with two groups of stakeholders since Fall 2009 to develop the certification program. The exam, training, and certification program will all be guided by the recommendations of these two groups. More information about this initiative is available online at <http://dnr.wi.gov/org/land/er/review/proposedChanges.asp>.

Summary of Factual Data and Analytical Methodologies: The proposed rule relates to providing information on rare species (including those classified as endangered and threatened at the state and federal levels) and high-quality natural communities to the public. Providing this information to the public facilitates compliance by the regulated community with state and federal endangered species laws. This information is also provided to Department staff, facilitating compliance of all activities that the Department conducts, funds, and approves with endangered species laws. These rules do not relieve individuals from any restrictions, requirements or conditions of state or federal laws or regulations related to endangered species.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Sarah Carter at (608) 264-8968 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary