

**BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES**

**NOTICE OF PUBLIC HEARING  
IS-07-10**

**NOTICE IS HEREBY GIVEN** that pursuant to Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 23.28 (3), 27.01 (2) (j), 29.014 (1), 29.039 (1) 29.041, and 227.11 (2) (a), Stats., interpreting s. 23.22 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on proposed revisions to ch. NR 40, Wis. Adm. Code, relating to the identification, classification and control of invasive species. The proposed revisions are “housekeeping” in nature.

**NOTICE IS HEREBY FURTHER GIVEN** that the hearing will be held:

Thursday, March 11, 2010      Room G-09, Wisconsin Natural Resources Building (GEF 2),  
at 10:00 a.m.                      101 S. Webster Street, Madison, Wisconsin

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov> . Written comments on the proposed rule may be submitted by U.S. mail to Ms. Kelly Kearns, Bureau of Endangered Resources, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921 or email to [DNRNR40Comments@wisconsin.gov](mailto:DNRNR40Comments@wisconsin.gov) . Written comments may be submitted until March 21, 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 hearing. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Kearns.

**Rule analysis:** The proposed rule makes several “housekeeping” changes to ch. NR 40 relating to the identification, classification and control of invasive species.

SECTION 1. of the proposed Order creates a definition for the term “aquatic invasive species.” The definition is needed for clarification of an existing rule that authorizes the department to remove detrimental fish and other aquatic invasive species from waters of the state.

SECTION 2. revises the current definitions of “established ” and “propagules,” to clarify that they apply to organisms other than plants, such as disease-causing microorganisms. It also modifies the definition of “wild animal” to clarify that crayfish as well as fish are excluded from that term, consistent with the regulatory approach taken in the rest of ch. NR 40 regarding invasive fish and crayfish species.

SECTIONS 3. and 8. of this proposed Order revise the descriptions of the boundary lines for 6 split-listed invasive plant species (i.e., plants that are listed both as “prohibited” in one part of the state and as “restricted” in another part of the state). In order to be consistent with other split-listed invasive plant species described in ch. NR 40, the prohibited and restricted area descriptions for these 6 plants are changed from areas marked by boundary lines consisting of highways to areas that are defined by named counties. SECTIONS 3. and 8. also revise the “prohibited” and “restricted” invasive plant species listings for *Conium maculatum* (Poison hemlock). The plant currently is listed as “prohibited” in all counties except Iowa and Grant counties, where it is listed as “restricted.” The plant’s status in Crawford, Dane, Green, Lafayette, Rock, Richland and Sauk counties is changed from “prohibited” to the reduced regulatory status of “restricted” due to its recently discovered relative abundance in those counties. The revisions also correct the order of the county names to be alphabetical.

SECTION 4. corrects the scientific name of snakehead fish, corrects inconsistencies in the use of Italic font for species scientific names, corrects the revised list of prohibited fish species to be in alphabetical order, specifically lists or names the snakehead fish species that are considered viable in Wisconsin waters, and adds an informational Note that identifies nonnative fish species that the department has determined are not viable.

SECTIONS 5., 6., 7., 9., 10., 11., 12., 13. and 15. create or amend informational Notes to various provisions of ch. NR 40. The Notes are created or revised to reflect changes made by 2009 Wisconsin Act 55 or changes made elsewhere in this proposed rule, or to correct staff position titles, email addresses or Internet links or other similar information.

SECTION 14. revises the current bans in ch. NR 40 on the highway transport or launching of any vehicle, boat, boat trailer or other equipment that has an aquatic plant or aquatic animal attached. The revisions remove code language made largely redundant by the adoption of s. 30.07, Stats., as created by 2009 Wisconsin Act 55, effective November 12, 2009. Section 30.07, Stats., includes a ban on the placement or operation in navigable waters of any vehicle, watercraft or equipment with aquatic plants or aquatic animals attached to the exterior. As a compliment to s. 30.07, Stats., the proposed rule retains and revises language in ch. NR 40 banning the placement or operation in wetlands or non-navigable waters of any vehicle, watercraft or equipment with aquatic plants or aquatic animals attached to the exterior. The proposed rule exempts native duckweed and wild rice like s. 30.07, Stats., but unlike the statute, the proposed rule retains an exemption for vehicles, watercraft and equipment engaged in fire suppression.

SECTION 16. of the proposed rule removes an unnecessary regulatory permit requirement that duplicated an existing statutory requirement relating to the introduction of nonnative aquatic plants. References to nonnative aquatic plants are removed from s. NR 40.07 (7) and the remaining rule is revised, for consistency, to require a ch. NR 40 permit instead of a “written exemption” to introduce nonnative algae and cyanobacteria to waters of the state. A Note is added referring to the existing statutory permit requirement under s. 23.24, Stats., for introduction of nonnative aquatic plants.

**Summary of and preliminary comparison with existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:** There are no directly comparable federal regulations.

**Comparison with similar rules in adjacent states (Minnesota, Iowa, Illinois, and Michigan):** Because the proposed rule consists only of unique “housekeeping” revisions to existing administrative rules, no comparison is possible.

**Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:** Department staff and members of the public identified drafting errors and potential problems in ch. NR 40 after it was adopted effective September 1, 2009. In addition, a review of ch. NR 40 was conducted after the enactment of 2009 Wisconsin Act 55 (effective November 12, 2009) to identify how ch. NR 40 should be revised to conform to the Act.

**Analysis and supporting documentation that the agency used in support of the agency’s determination of the rule’s effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report:** The proposed rule is intended to correct drafting errors, clarify existing code language, harmonize the existing code with new statutory provisions by eliminating redundancies, and accomplish other, similar “housekeeping” changes. It does not establish any new requirements.

**Summary of the State and Local fiscal estimate required under s. 227.14 (4), Stats.:** Local: No Local Government costs. State: None anticipated.

**NOTICE IS HEREBY FURTHER GIVEN** that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses but is not expected to have a significant adverse effect on a substantial number of small businesses and may have favorable effects on a number of businesses by correcting and clarifying existing rules and by adding informational Notes to ch. NR 40. The department's initial regulatory flexibility analysis is as follows:

**Type of small business that will be affected by the rule.** Small businesses that may be affected by the proposed rule include the plant nursery industry, seed and agriculture industries, fish farmers, bait dealers, aquarium and ornamental fish dealers, businesses that own or manage land, and commercial fishers.

**Reporting, bookkeeping and other procedures required for compliance with the rule.** No new reporting, bookkeeping or other procedures are created by the proposed rule.

**Type of professional skills necessary for compliance with the rule.** No new professional skills are needed to comply with the proposed rule.

The department's Small Business Regulatory Coordinator may be contacted by calling (608) 266-1959 or by email at [Linda.Haddix@wisconsin.gov](mailto:Linda.Haddix@wisconsin.gov).

**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 Ms. Kelly Kearns at (608) 267-5066 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin February 5, 2010

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary