

Report From Agency

REPORT TO LEGISLATURE

Chapter NR 40, Wis. Adm. Code
Invasive Species Identification, Classification and Control

Board Order No. IS-07-10
Clearinghouse Rule No. 10-016

Basis and Purpose of the Proposed Rule

Invasive species threaten Wisconsin's traditions, environment and economy in every corner of our lands and waters. Section 23.22 (1) (c), Stats., defines "invasive species" to mean nonindigenous species whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Section 23.22 (2) (a) and (b) 6., Stats., directs the Department to establish a statewide program to control invasive species, and to promulgate rules to identify, classify and control invasive species for purposes of the program. Those rules took effect Sep. 1, 2009 and are found in ch. NR 40, Wis. Adm. Code.

With the subsequent enactment of 2009 Wisconsin Act 55, effective Nov. 12, 2009, portions of 2 provisions of ch. NR 40 (relating to overland transport and launching of a vehicle, boat, trailer or equipment with aquatic plants or animals attached) became unnecessary and duplicative of statutory language, and must be removed from the rule. In addition, ch. NR 40 has some species classification boundary descriptions that are incomplete or incorrectly described, some species scientific names that are incorrect, some definitions and informational Notes that need editing or clarification, and some other style and format corrections and "housekeeping" changes that should be made in order to better communicate the department's intent and purpose in adopting the chapter. The purpose of the proposed rule is to make these corrections.

Rule Summary

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 Public Comments

A public hearing was held on Thursday, March 11, 2010 in room G09 of the State Natural Resources Office Building (GEF 2) in Madison. No one attended the hearing. The deadline for submittal of written comments was March 21, 2010. No written comments were received.

Modifications Made

None.

Appearances at the Public Hearing

None.

Changes to Rule Analysis and Fiscal Estimate

The only modification made was a spelling correction in the Rule Analysis, made in response to a comment by the Legislative Council Rules Clearinghouse.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse report set out two comments. The Clearinghouse comments and the Department's responses are as follows:

Comment

5. a. The proposed definition of "aquatic invasive species" under s. NR 40.02 (3m) would include many non-aquatic organisms which may inhabit wetlands when no standing water is present. Is this the department's intent?

Response

Yes, to the extent that such wetlands are "waters of the state" under s. 281.01 (18), Stats. "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction. The proposed definition is equivalent to the current definition of the same term in ch. NR 198, which relates to aquatic invasive species prevention and control grants. Although ch. NR 40 and ch. NR 198 were adopted under two different statutes and therefore could define the same term differently, both chapters deal with invasive species control, so to reduce potential confusion the Department believes that the proposed ch. NR 40 definition should be equivalent to the ch. NR 198 definition.

Comment

5. b. In the plain language analysis, in the description of SECTION 14, "complement" should replace "compliment."

Response

The spelling error has been corrected.

Final Regulatory Flexibility Analysis

1. Describe the 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.

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

3. Describe the type of professional skills necessary for compliance with the rule. No new professional skills are needed to comply with the proposed rule.

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