

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WY-26-20(E) and WY-27-20

Relating to: Updating chapters NR 114, 146, 520 and 524 to allow for third party administration of operator certification examinations

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

Pursuant to s. 227.24 (1)(a), Wis. Stats., the department finds that promulgating rules under this subsection as emergency rules are necessary for the preservation of public peace, health, safety, or welfare. Currently, ch. NR 114, Wis. Adm. Code, requires that the department provide in-person operator certification examinations for water systems, waterworks and wastewater treatment operators; and septage servicing operators. Chapter NR 146, Wis. Adm. Code, requires that the department administer licensing examinations for water well drillers and pump installers. Finally, ch. NR 524, Wis. Adm. Code, requires that the department administer in-person licensing examinations for landfill managers and operators (ch. NR 520, Wis. Admin. Code discusses the fees for landfill operator examinations). This amounts to roughly 1,400 individuals requiring in-person testing administered by department staff each year.

Historically the department has provided exams in-person to large groups across the state, to meet the certification and licensing requirements under chs. NR 114, 146, and 524, Wis. Adm. Code. The current COVID-19 health pandemic has now made it unsafe for groups to gather indoors without risk of contracting COVID-19. As such, the department has not provided in-person examinations since February 2020 and it is unclear when in-person examinations will be able to safely resume. It is paramount that this workforce remains current and properly licensed to ensure proper operation of the essential services they provide for all Wisconsinites (e.g., drinking and wastewater treatment, septage servicing, water well drilling, landfill managers and operators, etc.). Accordingly, the department finds that promulgating emergency (and permanent) updates to chs. NR 114, 146, 520, and 524, Wis. Adm. Codes, to provide the opportunity for online examinations complies with the preservation of health, safety and welfare criteria found in s. 227.24 (1)(a), Wis. Stats.

2. Detailed description of the objective of the proposed rule:

The proposed rule revisions will update the examination requirements found in chs. NR 114, 146, and 524, Wis. Adm. Code, to allow for third party administration of online examinations. Sections NR 114.05 (2), 114.33 (3), and 114.54(2), Wis. Adm. Code, all currently state that the department shall administer in-person examinations for activities related to waterworks, water systems, wastewater treatment plants and septage servicing operators at least twice annually at

multiple locations throughout Wisconsin. Chapter NR 146, which is dedicated to water well drillers, heat exchange drillers and pump installer licensing and registration, requires these types of professionals to pass an exam administered by the department. (ss. NR 146.04(2)(i), NR 146.04(3)(c), NR 146.04(9)(b), Wis. Adm. Code.) Chapter NR 524 requires landfill operators to pass an exam administered by the department, and ch. NR 520 addresses the fees for such examinations (ss. NR 524.08 and NR 520.04, Wis. Adm. Code). The aforementioned administrative code provisions would be updated to allow for a third party organization to provide online exams.

The proposed rule updates will chiefly affect the administration of the actual examination process, but also will positively affect the processing of exam request application materials by allowing a third party to complete the application processing on behalf of the department. The department currently also collects examination fees before providing in-person examinations. Accordingly, additional adjustments of code language will also need to be made to allow for the third party to levy and collect fees as opposed to the department in order to be financially viable to administer the program. Based on market research conducted by department staff when evaluating these types of professional services provided by a third party, the fees currently included in the codes, which are currently different for each category of exam, will likely need to be moderately adjusted upward. In addition, examination fees have not been adjusted for several years and require updating regardless of this particular effort due to fiscal change over time. Additional rule changes may be considered to accomplish the objectives described in this scope statement.

Additionally, the proposed emergency rule may provide the Department of Natural Resources to extend the expiration date of any license issued prior to March 1, 2020, within the discretion of the Department.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing or new policies relevant to the rule:

The existing as well as new policies and practices relevant to the rule have been documented in the sections above. In summary, the department would transition from providing in-person examinations to contracting with a third party to administer the examination process online. This transition would include an exemption to allow for some form of in-person examination for those that demonstrate need. This transition would also see a change in fee administration and amounts as necessary to fund the third party's efforts related to examination administration.

Policy alternatives:

There are two policy alternatives. The first alternative is to continue status quo and wait until public health metrics allow the department to safely return to providing in-person examinations to thousands of individuals annually. This is not a reasonable approach given the uncertainty surrounding the duration of the pandemic. In addition, it leaves an antiquated process in place when more modern and efficient approaches have been identified. The second alternative is that the department administers the process online. This alternative is reasonable, but not efficient. An established marketplace for these types of services currently exists, with online examination practices already in place (e.g., the use of Artificial Intelligence to detect possible cheating by an exam taker, developed software platform to administer the examination, etc.). Many of the DNR

staff currently associated with administering the examination program have multiple other program duties. DNR is not adequately staffed nor does it have an established online examination framework in place to allow for the efficient administration of online examinations. Providing the opportunity for online examinations through a third party organization would be the soundest process to ensure that ch. NR 114, 146, and 524 professionals can obtain and renew necessary certifications.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Department's authorization to require certification examinations is found in ss. 281.17, 280.15, and 289.42, Wis. Stats:

The Department is required by s. 281.17(3), Wis. Stats., to promulgate rules establishing an examining program for the certification of operators of water systems, wastewater treatment plants, and septage servicing. The Department is authorized to charge a fee for certification, although it cannot require individuals who are eligible for the veterans fee waiver program to pay a fee.

Section 280.15(2m), Wis. Stats., governs licensing for well drillers and pump installers, setting prerequisites for the receipt of these licenses. Under ss. 280.15(2m)(e) and 280.15(2m)(f)1 m.a, Wis. Stats., an applicant must demonstrate competency by passing an examination administered by the Department before the Department may issue a driller or pump installer license.

Section 289.42(1)(a), Wis. Stats., states that the department shall, by rule, establish a program for the certification of persons participating in or responsible for the operation of solid waste disposal facilities.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The estimated staff time needed to develop the emergency and permanent rules is approximately 200-300 hours. This includes staff time needed to address the full public input process, develop the economic impact analysis, conduct outreach to stakeholders, and coordinate agency reviews for the permanent rules.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rules would apply to all entities involved with water and waterworks, wastewater treatment, septage servicing, well drillers and water well pump installation in the state. The rules would more specifically apply to the various municipalities and industrial operations that require the services of a certified or licensed professional under chs. NR 114, 146, 520 and 524 Wis. Adm. Code. The proposed rules would also apply to all operating landfill facilities that are required to have a certified facility manager or site operator present.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

42 U.S.C. §300f et. seq. (The Safe Drinking Water Act) requires states to specify minimum standards for certification and recertification of the operators of community and nontransient noncommunity public water systems.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The anticipated economic impact of the emergency and permanent rules is moderate in the first year (approximately \$60,000 in the first year) and minimal in the subsequent years (less than \$50,000 per year in all following years) based on the following assumptions:

- A third party organization will provide online exams using a remote proctor through a personal computer at an estimated cost of \$70 per 2-hour exam session.
- Drinking water and wastewater utility operators take two exams per session on average, and can complete those two exams in one, 2-hour session.
- The average drinking water and wastewater utility operator, who takes two exams at the current cost of \$50 (\$25/exam), will pay a third party organization \$70 for those two exams when completed in one 2-hour session. At an average of 1200 exam takers per year, the cumulative increased cost to utilities statewide is approximately \$24,000 annually.
- Small business operators, e.g., septage haulers, pump installers and well drillers, typically take one exam per session. The impact to small businesses would generally be an increase to their exam fees from \$25 to \$70 and perhaps even a decrease for some. The majority of these business operators typically take one exam during their career. The previous year (2019) there were 368 exams taken by small business operators statewide, for a cumulative increase of \$16,560 if those exams were to be provided online.
- There will likely be a one-time startup cost incurred by the state of approximately \$15,000 to move 34 exam types into a third party on-line system.
- A yearly maintenance fee of approximately \$1,800 will also be incurred by the state.

The rule may have an economic impact on small businesses, as defined in s. 227.114 (1), Wis. Stats. The anticipated total economic impact of this rule includes the estimated small business impact. DNR estimates that on average 368 exam takers per year (23% of all exam takers) are attributable to small businesses. The cumulative small business impact of this rule will be an approximately \$16,560 annual increase. The department will engage small business and business affiliated associations during the development of the economic impact analysis of this rule.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding a public hearing for the emergency rule in October 2021, or earlier if possible. The hearing will be conducted in Madison with opportunities for stakeholders

around the state to connect to the Madison hearing via teleconference or video conference, and will allow for hearing comments to be submitted in writing.

The department anticipates holding a public hearing for the permanent rule in November 2021. The hearing will be conducted in Madison with opportunities for stakeholders around the state to connect to the Madison hearing via teleconference or video conference, and will allow for hearing comments to be submitted in writing.

Contact Person(s):

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Preston D. Cole, Secretary

Date Submitted