

Notice of Hearing

The Department of Natural Resources announces that it will hold a public hearing on a permanent rule WA-07-20 to create chapter NR 159 to regulate fire fighting foam that contains certain contaminants. In accordance with s. 227.17, Wis. Stats., the DNR is seeking public comment and feedback on WA-07-20 at the time and virtual location shown below.

Hearing Information

Date: November 4, 2021

Time: 1:00 p.m.

Virtual Location Link:

- Join Zoom Meeting: <https://us02web.zoom.us/j/89268373553>
- Join by phone: +1 312 626 6799
- Find your local number: <https://us02web.zoom.us/u/kbWacKoE51>

Meeting ID: 892 6837 3553

Rule Information

The department is proposing the creation of ch. NR 159, Wis. Adm. Code. The purpose of this rulemaking is to implement the non-statutory provisions under 2019 Wisconsin Act 101 (“Act 101”), which created s. 299.48, Wis. Stats.

Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are a group of synthetic chemicals used in industry and consumer products worldwide since the 1950s. They do not break down in the environment for extremely long periods of time and they accumulate in the human body. Exposure to certain PFAS may cause adverse health effects. Some firefighting foams currently used to extinguish flammable liquid fires, including Class B and Class A/B foams, include intentionally added PFAS, meaning PFAS is a constituent of the foam.

Section 299.48(1), Wis. Stats., prohibits the use of Class B firefighting foams with intentionally added PFAS, including for training exercises. Section 299.48(2), Wis. Stats., provides the use of foam is allowed for emergency firefighting, fire prevention operations, and testing purposes so long as certain requirements are met. These prohibitions and requirements are included in the proposed permanent rule and apply to foam that is in concentrate or that is mixed with water or other liquids. Discharge of foam is prohibited to a storm or sanitary sewer or to the environment unless the discharge meets the requirements of the proposed permanent rule.

Accessibility

For the hearing or visually impaired, non-English speakers, or those with other personal circumstances which might make communication at the meeting/hearing difficult, DNR will, to the maximum extent possible and with reasonable advance notice, provide aids including an interpreter, or a non-English, large-print, or recorded version of hearing documents. To access these resources, please contact the email address or phone number listed below as soon as possible.

Appearances at the Hearing and Submittal of Written Comments

The public has the opportunity to testify at the hearing. To register and join the hearing online or by phone, use the information provided above. Pre-registration is also available and is strongly encouraged if you plan to provide spoken comments during the hearing. To pre-register, either use the Zoom link above or download and complete the fillable [Hearing Appearance form](#) and send it to Jason.Lowery@wisconsin.gov.

Comments on the proposed rule must be received on or before November 11, 2021. Written comments may be submitted by U.S. mail, E-mail, or through the internet and will have the same weight and effect as oral statements presented at the public hearing. **Written comments and any questions on the proposed rules should be submitted to:**

Department of Natural Resources
Attn: Jason Lowery
Department of Natural Resources
101 S. Webster Street
PO Box 7921
Madison, WI 53707
Jason.Lowery@wisconsin.gov

The rule may be viewed at: <https://dnr.wi.gov/news/input/ProposedPermanent.html>

Comments can be made at: DNRAAdministrativeRulesComments@wisconsin.gov

The rule may be reviewed, and comments made at: <http://docs.legis.wisconsin.gov/code/chr/hearings>.

Initial Regulatory Flexibility Analysis

Small Business Impact

The department does not know how many of the potentially impacted entities meet the statutory definition of small business. Without actual data on how many of these entities are small businesses, the department cannot estimate the actual cost to these entities as a share of the total compliance cost of this proposed permanent rule. However, in an effort to develop a conservative estimate, the department assumed a majority are small businesses. Based on this assumption, the department reasonably expects that the impact on small businesses will be less than the average compliance cost to all businesses (\$2,300,000 per year with \$4,000,000 per year as the higher end of the range for all businesses impacted).

Small businesses impacted by this proposed permanent rule include various facilities that use Class B firefighting foam in their fixed fire suppression systems. These would be facilities that have a need for suppression of possible liquid (gasoline, oil) fires. Small businesses would also be entities using foam for testing, including foam and foam equipment testing facilities that test firefighting foam effectiveness or test a firefighting foam delivery system or equipment; and entities that contain, treat, and dispose or store foam from a testing facility or generated as a result of testing foam.

Containment, treatment and disposal: moderate economic impact expected, additional estimates under solicitation and evaluation by the department. It is estimated that there are approximately 150-200 fixed fire suppression systems within public and private facilities that utilize Class B firefighting foam. A limited survey of facilities with fixed foam systems indicated that these fixed systems are primarily in areas with existing containment, resulting in minimal to no economic impact. Industry experts estimated that system testing and resultant foam disposal costs will increase for these facilities, and cost approximately \$3,000 to \$20,000 per facility. Assuming 200 facilities in the state, the statutory and rule requirements would range in impact from approximately \$600,000 to \$4,000,000 per year, with the midpoint estimate of \$2,300,000. This is a high cost estimate because some of these costs would already be incurred as a result of s. 299.48, Wis. Stats., which prohibits discharging foam into a storm or sanitary sewer. Costs are also expected to lessen over time with adoption of alternative methods such as surrogate and water equivalency testing and using replacement foams that do not contain PFAS.

Additionally, some manufacturers with foam testing operations in Wisconsin have been phasing out the use of PFAS in foam products and testing, which may increase as alternatives become more readily available. Any current system tests that generate Class B foam with intentionally added PFAS must use appropriate containment, treatment, and disposal or storage methods. Although they are not small businesses, the department is aware of only a few foam manufacturing facilities in Wisconsin that would conduct testing. One manufacturer is developing its own treatment facility and others may be using contractors to collect and manage foam generated from testing.

Agency Small Business Regulatory Coordinator

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