

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: DNR Retrospective Review of Rules Impacting Small Business

FOR: JUNE 2012 **BOARD MEETING**

TO BE PRESENTED BY / TITLE: Eileen F. Pierce, DNR Small Business Ombudsman

SUMMARY:

The Department is conducting a retrospective review of rules consistent with Governor Walker's Executive Order #61 Relating to Job Creation and Small Business Expansion. Items 3 and 4 of the Order require:

--All state agencies to cooperate with the Small Business Regulatory Review Board to identify existing rules hindering job creation and small business growth.

--All state agencies to work with the Small Business Regulatory Review Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them.

The Department has completed the initial phase of this review. As detailed in the attached report to the Small Business Regulatory Review Board, the Department recommends repealing eleven obsolete rules, and amending two rules to align with current statutes. Implementation of these recommendations may occur through the ordinary rule making process as established in ch. 227, Wis. Stats., or through action by the state legislature.

During the next phase of the review (Phase 2), we will review all 3700+ pages of the Department's administrative code along with public input received via web survey. A public comment period will be held in fall 2012. The Phase 2 report will be presented to this Board in February 2013 and to the Small Business Regulatory Review Board by March 2013. This report may include not only recommendations to repeal rules, but also to modify rules or create exemptions.

RECOMMENDATION: Information Item

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input checked="" type="checkbox"/> | Fiscal Estimate Required | Yes | <input type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

Bureau Director,
[Signature]

Administrator,
[Signature]

Secretary, Cathy Stepp

Date
5/18/12

Date
6/7/12

Date

- | | |
|------------------------------|-----------------------|
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DATE: May 18, 2012

TO: Natural Resources Board

FROM: Eileen F. Pierce, DNR Small Business Ombudsman

SUBJECT: DNR Retrospective Review of Rules Impacting Small Business
Phase 1 Report to the Small Business Regulatory Review Board

At the June Board meeting we will present the initial report of recommendations from our retrospective review of rules impacting small business. This is the first of two reports to the Small Business Regulatory Review Board, compiled in response to Governor Walker's Executive Order #61.

With this report the Department recommends repealing eleven obsolete rules, and amending two rules to align with current statutes. These recommendations were developed based on an initial review of rules by program experts within the Department. Details are provided in the attached report. Implementation of these recommendations may occur through the ordinary rule making process as established in ch. 227, Wis. Stats., or through action by the state legislature.

The second report (Phase 2) will include a thorough examination of all rules implemented by the Department. In addition, it will include review of input from the public received via web survey. A public comment period will be held in fall 2012. The final report will be presented to this Board in February 2013, and submitted to the Small Business Regulatory Review Board by March 2013.

Report to the Small Business Regulatory Review Board

Phase 1: Review of Rules

Department of Natural Resources
May 2012



AM-490 2012

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Acknowledgements

I would like to take this opportunity to express my gratitude to my colleagues for their contributions to this project: Allison Hellman, Scott Loomans, Jeffrey Voltz, Isabel Gutierrez-Pils, Mark Giesfeldt, Bill Baumann, Steve Sisbach. It is an honor to work with such dedicated professionals.

Eileen F. Pierce
Small Business Ombudsman

Introduction

In April 2012, the Department of Natural Resources (Department) launched a retrospective review of rules impacting small business.

This review is prompted by Governor Walker's "Executive Order #61 Relating to Job Creation and Small Business Expansion", issued on February 22, 2012. Items 3 and 4 of the Order require:

- All state agencies to cooperate with the Small Business Regulatory Review Board to identify existing rules hindering job creation and small business growth.
- All state agencies to work with the Small Business Regulatory Review Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them.

This review is designed to:

- Examine all existing Department rules to identify those that impact Wisconsin small business.
- Evaluate those that impact Wisconsin small business to determine which are suitable for repeal, modification, or exemption, in order to lessen the burden on Wisconsin small business without creating a negative impact on public health or the environment.
- Consider public input. The initial opportunity for public input via a web survey <http://dnr.wi.gov/business/RulesReview.html> runs through May 31, 2012. A public comment period on the draft report of recommendations will happen in fall 2012.
- Inform the Natural Resources Board of recommendations: Phase 1 in June 2012, Phase 2 in February 2013.
- Report recommendations to the Small Business Regulatory Review Board: Phase 1 by July 2012, Phase 2 by March 2013.

For the purposes of this review, "small business" means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000, [s. 227.114 \(1\), Wis. Stats.](#)

Process

The process for this rules review, as approved by the Department Leadership Team on March 26, 2012, includes two sets of criteria to guide the review; criteria to identify rules for further evaluation, and criteria for development of recommendations.

The criteria to identify rules for further evaluation are as follows:

- The rule impacts small businesses in Wisconsin, as defined in [s. 227.114\(1\), Wis. Stats.](#); and
- The rule places a significant burden on small businesses in Wisconsin, or
- Due to changes over time, the rule is either no longer needed, obsolete, or duplicative, or
- The rule was not really intended to apply to small businesses, and therefore is not currently enforced at small businesses.

Any recommendations developed as a result of this review will meet the following criteria:

- The proposed change (repeal, modify, exempt) will not contravene the intent of the underlying state statute, state constitution, federal regulation or federal mandate, and
- The proposed change will not result in a negative impact on public health or the environment, and
- The proposed change will simplify, reduce, or eliminate the burden for small businesses in Wisconsin.

The review is split into two phases. Phase 1 is designed to identify obsolete rules for repeal, and culminates in this report. Phase 2 is a deeper look, encompassing all 3700+ pages of administrative code and incorporating public input. Due by March 2013, the Phase 2 report may include not only recommendations to repeal rules, but also to modify rules or create exemptions.

Recommendations

The Department recommends repealing **eleven** obsolete rules and amending **two** rules.

These recommendations meet the criteria noted above. None of these recommendations contravenes the intent of the underlying state statute, state constitution, federal regulation or federal mandate. None of these recommendations will result in a negative impact on public health or the environment. Repealing obsolete rules does not have a direct impact on small business, however indirectly it may serve to reduce the burden for small business simply by reducing the number of rules on the books.

1. Zones of Infestation of Forest Pests, ch. NR 35, Wis. Adm. Code.
2. Small Business Administration Tree Planting Program, s. NR 47.30, Wis. Adm. Code.
3. Forestry Research and Development Grants, s. NR 47.93, Wis. Adm. Code.
4. Establishment of Coniferous Plantations, s. NR 1.22, Wis. Adm. Code.
5. Horicon Intensive Management Zone, s. NR 10.12(4)(a), (b), and (c), Wis. Adm. Code.
6. Lake Protection Grants, ch. NR 60, Wis. Adm. Code.
7. Discharges of Organic and Inorganic Mercury, ch. NR 100, Wis. Adm. Code.
8. Indirect Source Air Permit Fee, s. NR 410.03(3), Wis. Adm. Code.
9. State Market Development Priorities for Recycled and Recyclable Materials, ch. NR 543, Wis. Adm. Code.
10. Waste Tire Removal and Recovery, ch. NR 555, Wis. Adm. Code.
11. Contaminated Site Discovery, Screening, and Ranking, ch. NR 710, Wis. Adm. Code (except ss. NR 710.03(1), 710.05, and 710.09).

In addition, the Department recommends amending **two** rules, s. NR 19.001(2), Wis. Adm. Code, pertaining to miscellaneous fur, fish, game and outdoor recreation; and s. NR 546.04, pertaining to the target recycled content of newspaper.

Additional information about these recommendations is provided below.

1. Zones of Infestation of Forest Pests, ch. NR 35, Wis. Adm. Code.
This rule identified designated areas as established zones of infestation of the jack pine budworm. This rule is obsolete and no longer needed. Instead, the Department issues an order under the authority and procedures established in s. 26.30(7), Wis. Adm. Code.
2. Small Business Administration Tree Planting Program, ss. NR 47.30 through 40.40, Wis. Adm. Code.
This rule established the framework for implementation of a federal grant program that ended in 1995. There have been attempts to renew the authorizing federal legislation, but they have failed. Since the federal grant no longer exists, this administrative rule is no longer needed.
3. Forestry Research and Development Grants, s. NR 47.93, Wis. Adm. Code.
This rule established the framework for implementation of a grant program that was authorized for only one year and is now expired. The authorizing statute has since been repealed.

4. Establishment of Coniferous Plantations, s. NR 1.22, Wis. Adm. Code.
This rule directs the Department to encourage the establishment of coniferous plantations. It is now obsolete. This rule does not have a direct impact on small business.
5. Horicon Intensive Management Zone, s. NR 10.12(4)(a), (b), and (c), Wis. Adm. Code
In the past, this rule served to ease crowding by distributing hunters in a heavily hunted area adjacent to the Horicon wildlife refuge. This rule is no longer needed and has become obsolete with the elimination of the Horicon Intensive Management Zone (HIMZ) in 2006. The hunting restrictions in the HIMZ were initiated in 1961 during an era when the Horicon Marsh was the primary location for migrating Canada geese in Wisconsin. The high concentrations of geese in the refuge and hunter interest created a firing line of hunters on private lands adjacent to the refuge. It was believed that this hunter behavior compromised safety and the hunting experience. The restrictions included limiting the number of goose hunting blinds, hunters per blind, the spacing of blinds and the minimum distance from the refuge boundary where hunting could occur. These restrictions provided a quality, controlled hunt that was enjoyed by many hunters. However, as the Canada goose fall populations have increased, good goose hunting opportunities have developed across the state. Because of the expanded opportunities for goose hunting today, the HIMZ was no longer needed.
6. Lake Protection Grants, ch. NR 60, Wis. Adm. Code.
This rule establishes procedures for projects undertaken by lake protection and rehabilitation districts applying for state technical and financial aid. This rule is obsolete, the grants have not been implemented under this chapter in over twenty years. This rule has been superseded by chs. NR 190 and 191 Lake Protection and Classification Grants.
7. Discharges of Organic and Inorganic Mercury, ch. NR 100, Wis. Adm. Code.
This rule establishes limits on the discharge of organic and inorganic mercury compounds to waters of the state. These limits are obsolete. Current water quality based limits for mercury required by other rules are in all cases more restrictive than those contained in this rule.
8. Indirect Source Air Permit Fee, s. NR 410.03(3), Wis. Adm. Code.
This rule establishes a fee for a certain type of air permit, an indirect source permit. These permits were intended to help assure attainment of carbon monoxide ambient air quality standards. Wisconsin is in attainment with those standards and carbon monoxide levels are well below the standard. This indirect source permit program was recently ended when ch. NR 411, Wis. Adm. Code was repealed. However, these rules are approved as part of the Wisconsin State Implementation Plan (SIP), so they remain enforceable by the US EPA until removed from the SIP. So in addition to repeal, we will need to take steps to remove these rules from the Wisconsin SIP.
9. State Market Development Priorities for Recycled and Recyclable Materials, ch. NR 543, Wis. Adm. Code.
This rule establishes a priority system for certain specified grants, rebates, and loans for the development of markets for recycled materials. The programs referenced in this rule have all been repealed, so this rule is obsolete.
10. Waste Tire Removal and Recovery, ch. NR 555, Wis. Adm. Code.
This rule establishes mechanisms for using the state waste tire removal and recovery program funds. The statutory authority for this program was repealed over 15 years ago.

Program funding for waste tire removal no longer exists. This rule is obsolete. If a tire removal and recovery program is needed in the future, statutory or code language can be developed at that time to accomplish the purposes of the new program.

11. Contaminated Site Discovery, Screening, and Ranking, ch. NR 710, Wis. Adm. Code (except ss. NR 710.03(1), 710.05, and 710.09).

This rule establishes procedures that the Department can use to evaluate the overall priority for addressing investigation and clean up of contaminated sites. The statutes have been modified to eliminate the need for portions of the rule. The process set forth in this chapter is no longer used. Repeal as described above is underway, with public hearings scheduled in May 2012.

In addition, the Department recommends amending **two** rules as follows.

First, remove a reference to a repealed law in a rule pertaining to miscellaneous fur, fish, game and outdoor recreation, s. NR 19.001(2), Wis. Adm. Code. This subsection creates a definition for the word "application", including a cross reference to a statute that has been repealed. Specifically, amend this subsection as follows, "Application" means a written request for an approval required to do business in this state as defined in s. 560.41 (2), Stats., and completed in the form required by and acceptable to the department and accompanied by additional plans, information and the appropriate fee." The cross reference is not necessary; amending the rule to remove it will have no impact other than removing a cross reference to a repealed statute.

Second, update the target newspaper recycled content levels to be consistent with statute provisions. The current targets in s. NR 546.04, Wis. Adm. Code, have been superseded by different statutory targets in s. 287.31(3)(c), Wis. Stats. Specifically, amend this section as follows, "Each newspaper publisher shall meet or exceed the target postconsumer recycled content or pay a fee for not meeting the target. The minimum target recycled contents are: 10% in 1992 and 1993, 25% in 1994 and 1995, 35% in 1996 and 1997, 40% 33% in 1998 and 1999, ~~45% in 2000 and thereafter.~~" This makes the rule language consist with statute.

Next Steps

As noted above, this review is split into two phases. Phase 1 is designed to identify obsolete rules for repeal, and culminates in this report. Phase 2 is a deeper look, encompassing all 3700+ pages of administrative code and incorporating public input. A public comment period will be held in fall 2012. Due by March 2013, the Phase 2 report may include not only recommendations to repeal rules, but also to modify rules or create exemptions.

Implementation of these recommendations may occur through the ordinary rule making process as established in ch. 227, Wis. Stats., or through action by the state legislature.