

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board adopt Emergency Board Order FH-27-13(E), proposed rules affecting NR 85 related to establishment of a competitive grant program for cities, villages, towns, and counties; federally recognized Indian tribes or bands located in this state; and fish farms for increasing capacity to raise walleye for stocking in the waters of the state.

FOR: October 2013 Board meeting

PRESENTER'S NAME AND TITLE: Mike Staggs, Fisheries Management Bureau Director

SUMMARY:

2013 Wisconsin Act 20 directed the Department to establish a grant program to award grants on a competitive basis to cities, villages, towns, and counties; to federally recognized Indian tribes or bands located in this state; and to fish farms for the purpose of increasing their capacity to raise walleye for stocking in the waters of the State. The grants may be used to build, improve, or repair any of the following:

- (a) Buildings and structures used as fish hatcheries or for fish rearing.
- (b) Fish rearing ponds.
- (c) Wells or water recirculation systems.
- (d) Biosecurity systems to ensure fish health.
- (e) Holding facilities and equipment used for fish brood stock.
- (f) Equipment used for the distribution of fish or for the collection of fish spawn.

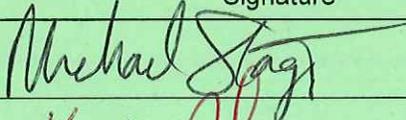
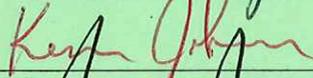
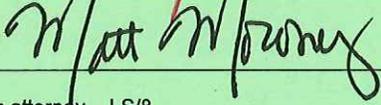
A contract awarding a grant shall state the number of extended growth walleye fingerlings that will be reared as a result of the increased capacity and the purchase price the grantee shall charge to the department for the fingerlings when the construction, improvement, or repair is completed.

This rule would support the efforts of the new "Wisconsin Walleye Initiative," which is intended for state, municipal, tribal, and private fish hatchery operations to increase the production of large walleye fingerlings for stocking in Wisconsin waters.

RECOMMENDATION: That the Board adopt Emergency Board Order FH-27-13(E).

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> background memo | <input type="checkbox"/> Attachments to background memo |
| <input type="checkbox"/> Statement of scope | <input type="checkbox"/> Governor approval of statement of scope |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Mike Staggs, Bureau Director		10/14/2013
Ken Johnson, Administrator		10/15/13
Cathy Stepp, Secretary		10/15/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: October 7, 2013

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Emergency Board Order FH-27-13(E), relating to establishment of a competitive grant program for cities, villages, towns, and counties; federally recognized Indian tribes or bands located in this state; and fish farms for increasing capacity to raise walleye for stocking in the waters of the state.

1. Subject of Proposed Rule:

This emergency rule is necessary to implement the grant program associated with the Wisconsin Walleye Initiative. It will establish a competitive grant program for cities, villages, towns, and counties; federally recognized Indian tribes or bands located in this state; and fish farms for increasing capacity to raise walleye for stocking in the waters of the state.

After emergency rule promulgation, the department expects to accept applications in November and December 2013, make award decisions in January and February 2014, and sign grant contracts in March and April 2014.

2. Why is the rule being proposed?

The 2013-15 state budget directed the department to create by administrative rule a competitive walleye production grant program (s. 29.739) and provided \$1 million annually in a new, biennial appropriation (total of \$2 million for the biennium). In addition, the state budget provided \$500,000 in fiscal year 2014-15 for the department to enter into contracts to purchase fish from a local governmental unit, tribe, band, or fish farm for stocking in waters of the state (s. 29.740).

The budget included nonstatutory language to allow the department to promulgate emergency rules to implement the walleye production grant program and contracts for walleye production. The emergency rules may remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. The department is also not required to provide evidence that promulgating the rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

3. Summary of the rule.

The rule creates chapter NR 85, Walleye Production Grants, that includes the following:

Establishment of rules and procedures for the implementation and administration of a grant program that provides financial assistance to cities, villages, towns, and counties; to federally recognized Indian tribes or bands located in this state; and to private fish farms for increasing a grantee's capacity to raise walleye for stocking in the waters of the state.

A list of eligible and ineligible costs for grant program reimbursement:

- Section 29.739, Wis. Stats., determines that eligible costs include those associated with building, improving, or repairing:
 - buildings and structures used as fish hatcheries or for fish rearing;

- fish rearing ponds;
- wells or water recirculation systems;
- biosecurity systems to ensure fish health;
- holding facilities and equipment used for fish brood stock; and
- equipment used for the distribution of fish or for the collection of fish spawn.
- Ineligible costs include those not directly associated with or not necessary for increasing capacity to raise walleye, including:
 - costs incurred prior to grant approval;
 - land acquisition;
 - permit and application fees associated with required approvals for grant project development;
 - ordinary operating expenses of local government;
 - indirect costs associated with general operating costs;
 - temporary loss of revenue;
 - interest or finance charges; and
 - fines and penalties due to violations of, or failure to comply with, federal, state, or local laws.

Information required on grant applications and criteria and methods the department will use to determine grant awards:

- Applications must include:
 - a description of the grant project, it's expected results, and how the project will increase the capacity to raise walleye for stocking in the waters of the state;
 - the amount of funding requested;
 - a work plan with specific project tasks and a timetable for completing the tasks;
 - a budget containing line items of project costs;
 - a description of the applicants experience producing walleye or other fish species;
 - the expected number and the size and condition of walleye fingerlings that will be produced for purchase by the department as well as for purchase by other customers as a result of the building, improvement, or repair project;
 - the purchase price the applicant shall charge the department for walleye fingerlings to be stocked in waters of the state; and
 - any additional information as deemed necessary by the department.
- Department staff will review all grant applications in consultation with one designee from the University of Wisconsin-Extension aquaculture program and one designee from the U.S. Fish and Wildlife Service, with final approval by the department. Factors used to determine awards will include:
 - extent to which the grant project will increase the applicant's capacity to raise walleye and stock them in the waters of this state;
 - cost-effectiveness of the grant project;
 - grant project management and technical qualifications of the applicant, such as the applicant's experience producing walleye;
 - elements of the project plan, such as whether the project is "shovel-ready" and will result in increased walleye production for stocking in 2014 or 2015, if the project significantly increases the walleye production capacity of the applicant, and whether the proposed budget is adequate to accomplish the grant project;
 - purchase price the applicant shall charge the department for walleye fingerlings to be stocked in waters of the state;
 - geographic location of the applicant's fish production facilities in relation to stocking needs determined by the department; and
 - distribution of grants to a variety of eligible applicants that submit high quality grant project applications.

- The total grant amount per grantee may not exceed \$500,000.

Elements that shall be included in grant agreements:

- Much of the information provided on the grant application will be specified in a grant agreement. In addition, the grantee must agree to obtain and pay for fish health certificates issued in compliance with Department of Agriculture, Trade, and Consumer Protection (DATCP) rules for all fish that will be stocked into waters of the state. This would also be required of Indian tribes or bands that do not register their fish hatcheries with DATCP. Grant agreements must also include:
 - ability for the department to furnish fish eggs or fish to the grantee at a price established by the department;
 - requirements that the grantee make available to the department the expected number of walleye fingerlings that were stated in the grantee's application for department purchase that were reared as a result of the grant project, and the option for the department to purchase from the grantee walleye that meet the size and condition specified by the department, based on available funding, in the subsequent three calendar years;
 - ability for the grantee to distribute or sell any surplus walleye fingerlings that are reared as a result of the grant project and not purchased by the department as long as the distribution or sale of the walleye result in the walleye being stocked in waters of the state; and
 - disbursement details for when and how the grantee will receive reimbursement payments upon successful completion of grant project work.

This rule also allows the department to approve amendments from a grant agreement upon written request of the grantee, to require the grantee to maintain grant project records, and to terminate a grant agreement for just cause.

4. How does this proposal affect existing policy?

The proposals in this rule would support the efforts of the new "Wisconsin Walleye Initiative," which is intended for state, municipal, tribal, and private fish hatchery operations to increase the production of large walleye fingerlings for stocking in Wisconsin waters. The Fisheries Management Bureau does not currently manage a grant program for that purpose, but the department has extensive experience with managing grant programs to private and municipal entities that serve as examples for this program.

5. Has Board dealt with these issues before?

This is a new grant program in the department, as created by the 2013-15 state budget. The Board approved the statement of scope at its September 2013 meeting.

6. Who will be impacted by the proposed rule? How?

Any city, village, town, county; federally recognized Indian tribe or band located in Wisconsin; or private fish farm may be impacted if they apply for and received a grant. In addition, tribal and non-tribal sustenance and recreational fishers will likely benefit from additional walleye stocking opportunities in waters of the state.

7. Soliciting public input on economic impact synopsis

The University of WI-Extension aquaculture staff hosted two "listening sessions" to provide private aquaculture industry with the opportunity to comment or offer suggestions regarding initial grant program plans. The sessions were held in Madison on 8/29/2013 (6-7 people in attendance) and in Wisconsin Rapids on 9/4/2013 (10 people in attendance). The same information was presented to tribal attendees at a Voigt Task Force meeting on 9/5/2013 and at meetings with tribal hatchery staffs in early October 2013.

The department will hold one public hearing in Madison within 45 days after rule promulgation, likely in December 2013 or early January 2014.

8. Environmental Analysis

This is a Type IV action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

9. Small Business Analysis

State general program revenue funds were made available for the walleye production grant program. It is expected that this rule and program will provide an economic benefit for entities that meet grant criteria and are awarded grant funds, including municipal, tribal, and private fish hatcheries. There are no costs expected for entities that are awarded grants, other than potential costs associated with expanded walleye production that are not eligible for grant reimbursement or costs that applicants decide to pay for themselves. Grantees must pay for the grant project and will get reimbursed for eligible costs. Overall, this rule and program is expected to have a positive effect for all anglers in Wisconsin who fish for walleye, as well as small businesses that are supported by fishing.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

New chapter NR 85, Walleye Production Grants

3. Subject

Establishment of a competitive grant program for cities, villages, towns, and counties; federally recognized Indian tribes or bands located in this state; and fish farms for increasing capacity to raise walleye for stocking in the waters of the state.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The 2013-15 state budget provided \$1 million annually in a new, biennial appropriation (total of \$2 million for the biennium) and directed the department to create by administrative rule a competitive walleye production grant program.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The University of WI-Extension aquaculture staff hosted two "listening sessions" to provide private aquaculture industry with the opportunity to comment or offer suggestions regarding initial grant program plans. The sessions were held in Madison on 8/29/2013 (6-7 people in attendance) and in Wisconsin Rapids on 9/4/2013 (10 people in attendance). The same information was presented to tribal attendees at a Voigt Task Force meeting on 9/5/2013 and at meetings with tribal hatchery staffs in early October 2013.

11. Identify the local governmental units that participated in the development of this EIA.

The fiscal estimate is for an emergency rule that does not require consultation with local governmental units for development of an EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule is not expected to have an adverse effect on the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the State. It will have a positive impact by providing \$1 million annually in the 2013-15 biennium to municipal and tribal fish hatcheries and private fish farms through a competitive grant program. Grants will be used for building and improving hatchery buildings, rearing ponds, equipment and other facilities. The rule may also have a positive economic effect on other businesses used by grantees to implement the grant projects, such as construction companies.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

2013 Wisconsin Act 20, the 2013-15 state budget, created s. 29.739, Stats. It included specifications on who is eligible for grants to increase walleye production and for what the grants may be used. Additional elements of this rule and the

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

grant program were developed by department grant and propagation specialists, in consultation with University of Wisconsin aquaculture specialists and through listening sessions with fish farm operators and tribal hatchery operators.

State general program revenue funds were made available for the walleye production grant program. It is expected that this rule and program will provide an economic benefit for entities that meet grant criteria and are awarded grant funds, including municipal, tribal, and private fish hatcheries. There are no costs expected for entities that are awarded grants, other than potential costs associated with expanded walleye production that are not eligible for grant reimbursement or costs that applicants decide to pay for themselves. Grantees must pay for the grant project up front and will get reimbursed for eligible costs. Overall, this rule and program is expected to have a positive effect for all anglers in Wisconsin who fish for walleye, as well as small businesses that are supported by fishing.

14. Long Range Implications of Implementing the Rule

The proposals in this rule would support the efforts of the new "Wisconsin Walleye Initiative," which is intended for state, municipal, tribal, and private fish hatchery operations to increase the production of large walleye fingerlings for stocking in Wisconsin waters.

The department is hiring a limited term employee to help manage the walleye grant production program and a future contracting program. Although this increases total cost for the department, costs will be absorbed by the agency's budget because funding to cover this position was provided in the 2013-15 state budget.

15. Compare With Approaches Being Used by Federal Government

There is no existing or proposed federal regulation that would govern the department's ability to create grant contracts with municipal, tribal, or private fish farms, or that would govern fish stocking in Wisconsin waters.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota and Indiana contract with private fish farms to fulfill some or all stocking within those states. There are no grant programs in other states, that the department is aware of, for capital expenses available to municipalities, Indian tribes, or private fish hatcheries.

<h4>17. Contact Name</h4>	<h4>18. Contact Phone Number</h4>
Mike Staggs, Fisheries Management Bureau Director	608-267-0796

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule change has the potential to impact municipal, tribal, and private fish hatcheries by providing a new source of grant funding for projects that would increase a fish hatchery's capacity to raise walleye for stocking in waters of the state. Except for rule elements that would require tribal grantees to obtain and pay for fish health certificates for all fish that will be stocked into waters of the state, no additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes other than those associated with grant reimbursement requirements.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The University of WI-Extension aquaculture staff hosted two "listening sessions" to provide private aquaculture industry with the opportunity to comment or offer suggestions regarding initial grant program plans. The sessions were held in Madison on 8/29/2013 (6-7 people in attendance) and in Wisconsin Rapids on 9/4/2013 (10 people in attendance). The same information was presented to tribal attendees at a Voigt Task Force meeting on 9/5/2013 and at meetings with tribal hatchery staffs in early October 2013.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

- Quick application and review time to allow grantees to begin project work in a timely manner.
- Enhances opportunities for federally recognized tribes or bands located in the State to work cooperatively to increase walleye populations across Wisconsin for all users.
- Provides the private aquaculture community the opportunity to work closely with the state propagation program to coordinate efforts to rear walleye of the genetic strains and quality needed to maximize the probability of successful walleye fishery development and maintenance.

5. Describe the Rule's Enforcement Provisions

The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES**

The statement of scope for this rule, SS 104-13, was approved by the Governor on August 12, 2013, published in Register No. 692 on September 1, 2013, and approved by the Natural Resources Board on September 25, 2013. This emergency rule was approved by the Governor on _____.

Wisconsin Natural Resources Board proposes an order to create ch. NR 85, relating to development of a competitive grant program for cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms in order to increase the capacity to raise walleye for stocking in Wisconsin waters.

FH-27-13(E)

Analysis Prepared by Department of Natural Resources

1. **Statutes interpreted.** Sections 29.739 and 29.740, Stats.
2. **Statutory authority.** Sections 29.739 and 29.740, Stats.
3. **Explanation of agency authority to promulgate the proposed rules under the statutory authority.** *2013 Wisconsin Act 20*, the 2013-15 state budget, included the following nonstatutory language: The department of natural resources may promulgate emergency rules under section 227.24 of the statutes implementing sections 29.739 and 29.740 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated for walleye population maintenance and enhancement grants remain in effect until June 30, 2016, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Section 29.739, Stats., Grants for walleye production, authorizes the department to establish a grant program for the purpose of increasing a grantee's capacity to raise walleye for stocking in the waters of the state. Grants may be awarded on a competitive basis to cities, villages, towns, and counties; to federally recognized Indian tribes or bands located in this state; and to fish farms. It also requires the department to promulgate rules to implement the grant program.

Section 29.740, Stats., Contracts for walleye production, authorizes the department to enter into contracts with local governmental units, federally recognized Indian tribes or bands located in this state, and fish farms for the purpose of increasing the amount of walleye available for stocking in the waters of the state.

4. Related statutes or rules.

Section 29.709, Stats., State fish hatcheries. The department may operate state fish hatcheries and may do all of the following:

- (1) Breed and propagate fish of such species and varieties as it determines to be of value.
- (2) Distribute information regarding the propagation and conservation of fish.
- (3) Manage the state fish hatcheries and all other property held by the state for the propagation of fish.
- (4) Subject to s. 95.60, receive from any person all fish eggs or fish donated to the state or purchased, and procure, receive, exchange, distribute and dispose of fish eggs and fish.

5. Plain language analysis of the proposed rule.

This emergency rule is necessary to implement the grant program associated with the Wisconsin Walleye Initiative (WWI). WWI is intended to:

- Expand production of large fingerling walleye at state, private, and tribal fish hatcheries for stocking in waters accessible to the public;
- Direct management of the State's walleye populations and fisheries through the Statewide Walleye Management Plan, including cooperative efforts and agreements with Indian tribes on walleye harvest in the waters of the Ceded Territory of Wisconsin;
- Enhance opportunities for federally recognized tribes or bands located in the State to work cooperatively to increase walleye populations across Wisconsin for all users; and
- Provide the private aquaculture community the opportunity to work closely with the state propagation program to coordinate efforts to rear walleye of the genetic strains and quality needed to maximize the probability of successful walleye fishery development and maintenance.

The department will review and modify existing walleye stocking quotas to rear and stock as many large fingerling walleye from state hatcheries as possible beginning in 2013. It will also update walleye stocking guidance for submitting walleye stocking quotas to achieve new WWI goals and utilize increased production capacity in state and private hatcheries for 2014 and beyond.

2013 Wisconsin Act 20, the 2013-15 state budget, directed the department to create by administrative rule a competitive walleye production grant program and provided \$1 million annually in a new, biennial appropriation (total of \$2 million for the biennium). In addition, the state budget provided \$500,000 in fiscal year 2014-15 for the department to enter into contracts to purchase fish from a local governmental unit, tribe, band, or fish farm for stocking in waters of the state. After emergency rule promulgation, the grant program is expected to accept applications in November and December 2013, make award decisions in January and February 2014, and sign grant agreements in March and April 2014.

SECTION 1 of the rule creates ch. NR 85, Walleye Production Grants, that includes the following:

Establishment of rules and procedures for the implementation and administration of a grant program that provides financial assistance to cities, villages, towns, and counties; to federally recognized Indian tribes or bands located in this state; and to private fish farms for increasing a grantee's capacity to raise walleye for stocking in the waters of the state.

A list of eligible and ineligible costs for grant program reimbursement:

- Section 29.739, Wis. Stats., determines that eligible costs include those associated with building, improving, or repairing:
 - buildings and structures used as fish hatcheries or for fish rearing;
 - fish rearing ponds;
 - wells or water recirculation systems;
 - biosecurity systems to ensure fish health;
 - holding facilities and equipment used for fish brood stock; and
 - equipment used for the distribution of fish or for the collection of fish spawn.
- Ineligible costs include those not directly associated with or not necessary for increasing capacity to raise walleye, including:
 - costs incurred prior to grant approval;
 - land acquisition;
 - permit and application fees associated with required approvals for grant project development;

- ordinary operating expenses of local government;
- indirect costs associated with general operating costs;
- temporary loss of revenue;
- interest or finance charges; and
- fines and penalties due to violations of, or failure to comply with, federal, state, or local laws.

Information required on grant applications and criteria and methods the department will use to determine grant awards:

- Applications must include:
 - a description of the grant project, its expected results, and how the project will increase the capacity to raise walleye for stocking in the waters of the state;
 - the amount of funding requested;
 - a work plan with specific project tasks and a timetable for completing the tasks;
 - a budget containing line items of project costs;
 - a description of the applicant's experience producing walleye or other fish species;
 - the expected number and the size and condition of walleye fingerlings that will be produced for purchase by the department as well as for purchase by other customers as a result of the building, improvement, or repair project;
 - the purchase price the applicant shall charge the department for walleye fingerlings to be stocked in waters of the state; and
 - any additional information as deemed necessary by the department.
- Department staff will review all grant applications in consultation with one designee from the University of Wisconsin-Extension aquaculture program and one designee from the U.S. Fish and Wildlife Service, with final approval by the department. Factors used to determine awards will include:
 - extent to which the grant project will increase the applicant's capacity to raise walleye and stock them in the waters of this state;
 - cost-effectiveness of the grant project;
 - grant project management and technical qualifications of the applicant, such as the applicant's experience producing walleye;
 - elements of the project plan, such as whether the project is "shovel-ready" and will result in increased walleye production for stocking in 2014 or 2015, if the project significantly increases the walleye production capacity of the applicant, and whether the proposed budget is adequate to accomplish the grant project;
 - purchase price the applicant shall charge the department for walleye fingerlings to be stocked in waters of the state;
 - geographic location of the applicant's fish production facilities in relation to stocking needs determined by the department; and
 - distribution of grants to a variety of eligible applicants that submit high quality grant project applications.
- The total grant amount per grantee may not exceed \$500,000.

Elements that shall be included in grant agreements:

- Much of the information provided on the grant application will be specified in a grant agreement. In addition, the grantee must agree to obtain and pay for fish health certificates issued in compliance with Department of Agriculture, Trade, and Consumer Protection (DATCP) rules for all fish that will be stocked into waters of the state. This would also be required of Indian tribes or bands that do not register their fish hatcheries with DATCP. Grant agreements must also include:

- ability for the department to furnish fish eggs or fish to the grantee at a price established by the department;
- requirements that the grantee make available to the department the expected number of walleye fingerlings that were stated in the grantee's application for department purchase that were reared as a result of the grant project, and the option for the department to purchase from the grantee walleye that meet the size and condition specified by the department, based on available funding, in the subsequent three calendar years;
- ability for the grantee to distribute or sell any surplus walleye fingerlings that are reared as a result of the grant project and not purchased by the department as long as the distribution or sale of the walleye result in the walleye being stocked in waters of the state; and
- disbursement details for when and how the grantee will receive reimbursement payment upon successful completion of grant project work.

This rule also allows the department to approve amendments from a grant agreement upon written request of the grantee, to require the grantee to maintain grant project records, and to terminate a grant agreement for just cause.

6. Summary of and comparison with existing or proposed federal statutes and regulations.

There is no existing or proposed federal regulation that would govern the department's ability to create grant agreements with municipal, tribal, or private fish farms, or that would govern fish stocking in Wisconsin waters.

7. Comparison with rules in adjacent states.

Minnesota and Indiana contract with private fish farms to fulfill some or all stocking within those states. There are no fish hatchery capital expense grant programs in other states, that the department is aware of, available to municipalities, Indian tribes, or private fish farms.

8. Summary of factual data and analytical methodologies.

2013 Wisconsin Act 20, the 2013-15 state budget, created s. 29.739, Stats., which included specifications on who is eligible for grants to increase walleye production and how the grants may be used. Additional elements of this rule and the grant program were developed by department grant and propagation specialists, in consultation with University of Wisconsin aquaculture specialists and through listening sessions with fish farm operators and tribal hatchery operators.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.

State general program revenue funds were made available for the walleye production grant program. It is expected that this rule and program will provide an economic benefit for entities that meet grant criteria and are awarded grant funds, including municipal, tribal, and private fish hatcheries. There are no costs expected for entities that are awarded grants, other than potential costs associated with expanded walleye production that are not eligible for grant reimbursement or costs that applicants decide to pay for themselves. Grantees must pay for the grant project up front and will get reimbursed for eligible costs. Overall, this rule and program is expected to have a positive effect for all anglers in Wisconsin who fish for walleye, as well as small businesses that are supported by fishing.

The University of WI-Extension aquaculture staff hosted two "listening sessions" to provide private aquaculture industry with the opportunity to comment or offer suggestions regarding initial grant program plans. The sessions were held in Madison on 8/29/2013 (6-7 people in attendance) and in Wisconsin Rapids on 9/4/2013 (10 people in attendance). The same information was presented to tribal attendees at a Voigt Task Force meeting on 9/5/2013 and at meetings with tribal hatchery staffs in early October 2013.

10. Effects on small business.

The rule has the potential to directly impact municipal, tribal, and private fish hatcheries by providing a new source of grant funding for projects that would increase a fish hatchery's capacity to raise walleye for stocking in waters of the state. It may also have a positive economic effect on other businesses used by grantees to implement the grant projects, such as construction companies. Except for rule elements that would require tribal grantees to obtain and pay for fish health certificates for all fish that will be stocked into waters of the state, no additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes other than those associated with grant reimbursement requirements.

11. Comments on rules proposed by the Department of Veterans Affairs. No information

12. Agency contact person.

Mike Staggs, Fisheries Management Bureau Director
Department of Natural Resources
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13. Place where comments are to be submitted and deadline for submission. Comments on this proposed rule may be submitted to the agency contact person listed above. The deadline for written comments is October 23, 2013.

SECTION 1. Chapter NR 85 WALLEYE PRODUCTION GRANTS is created to read:

NR 85.01 **Purpose.** The purpose of this chapter is to establish rules and procedures under s. 29.739, Stats., for the implementation and administration of a grant program that provides financial assistance to cities, villages, towns, and counties; to federally recognized Indian tribes or bands located in this state; and to fish farms for increasing a grantee's capacity to raise walleye for stocking in the waters of the state.

NR 85.02 **Applicability.** This chapter applies to all applicants and recipients of walleye production grants under ss. 29.739, Stats.

NR 85.03 **Definitions.** In this chapter:

- (1) "Applicant" means cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms applying for a grant.

- (2) "Approval" means the signing by the secretary or designee of a grant agreement resulting in encumbering a specified amount of funds for a specific purpose.
- (3) "Cost-effective" means economical in terms of the tangible benefits produced by the money spent, including getting the greatest number of walleye that meet the size and condition specified by the department stocked in the waters of this state for the least cost.
- (4) "DATCP" means the Wisconsin department of agriculture, trade and consumer protection.
- (5) "Department" means the Wisconsin department of natural resources.
- (6) "Fingerlings" means the stage in a fish's life between one inch and the length at one year of age.
- (7) "Fish farm" has the meaning given in s. 95.001 (1) (aj), Stats., and does not include a state or municipal fish hatchery or a private fishing preserve.
Note: "Fish farm" in s. 95.001 (1) (aj), Stats., means a facility at which a person hatches fish eggs or rears fish for the purpose of introduction into the waters of the state, human or animal consumption, permitting fishing, use as bait or fertilizer or any other purpose specified by the department by rule or for sale to another person to rear for one of those purposes.
- (8) "Grant" means funds made available by the department to a grantee in support of a walleye production grant project.
- (9) "Grant agreement" means a contract between the grantee and department setting forth the mutual obligations with regard to a portion or all of a specific grant project.
- (10) "Grant project" means a walleye production project that results in increased capacity to raise walleye.
- (11) "Grantee" means a city, village, town, county, federally recognized Indian tribe or band located in this state, or fish farm that enters into a walleye production grant agreement with the department.

- (12) "Indirect costs" are those costs not directly assignable to a grant project. Such costs are generally administrative in nature, are incurred for a common or joint purpose, or are not readily assignable to a grant project.

Note: Examples of indirect costs include costs such as central office heat, light, utilities, administrative salaries, secretarial services, postage, etc., and other costs not associated with building, improving, or repairing infrastructure.

- (13) "Secretary" means secretary of the Wisconsin department of natural resources.

NR 85.05 Eligibility of applicant. (1) ELIGIBLE APPLICANTS. Cities, villages, towns, counties, federally recognized Indian tribes or bands located in this state, and fish farms shall be eligible to apply for grants through this chapter.

(a) Fish farms must be registered with DATCP under s. 95.60, Stats., and must be in compliance with all applicable state and federal environmental laws and all applicable state and federal laws related to fish health.

(2) REVIEW OF GRANT APPLICANT'S ELIGIBILITY. The department may review an applicant's eligibility for a walleye production grant at any time prior to issuing a grant agreement.

NR 85.07 Eligible and ineligible costs. (1) ELIGIBLE COSTS. The costs for increasing capacity to raise walleye are eligible for grant assistance.

(a) Eligible costs include those associated with building, improving, or repairing:

1. Buildings and structures used as fish hatcheries or for fish rearing.
2. Fish rearing ponds.
3. Wells or water recirculation systems.
4. Biosecurity systems to ensure fish health.
5. Holding facilities and equipment used for fish brood stock.
6. Equipment used for the distribution of fish or for the collection of fish spawn.

(2) INELIGIBLE COSTS. Costs not directly associated with or not necessary for increasing capacity to raise walleye are not eligible for grant assistance under this chapter, including:

- (a) Costs incurred prior to grant approval.
- (b) Land acquisition.

(c) Permit and application fees associated with required approvals necessary for grant project completion.

(d) Ordinary operating expenses of local government, such as salaries and expenses of a mayor or city council members that are not directly related to the hatchery program.

(e) Indirect costs.

(f) Temporary loss of revenue.

(g) Interest or finance charges.

(h) Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws, regulations, rules, and ordinances.

NR 85.08 Grant application and departmental review. (1) APPLICATION CONTENT. An application shall include all of the following:

(a) A detailed description of the grant project, including the grant project's expected results and how it will increase the capacity to raise walleye for stocking in the waters of the state.

(b) The amount of funding requested, which may be for the entire or a portion of the grant project cost.

(c) The name, address, and signature of the principal contact person for the proposed grant project.

(d) A work plan which identifies specific grant project tasks and a timetable for completing the tasks, including the expected date when walleyes will be produced and be ready to stock in waters of the state.

(e) A budget containing line items of grant project costs for which the applicant is seeking reimbursement.

(f) A description of the applicant's experience producing walleye or other fish species, including the number, size, and species of fish produced annually.

(g) The expected number of walleye fingerlings that meet the size and condition specified by the department that will be produced for purchase by the department as well as the expected number of walleye fingerlings that will be produced for purchase by other customers as a result of the grant project.

(h) The purchase price the applicant shall charge the department for walleye fingerlings to be stocked in waters of the state when the building, improvement, or repair is completed.

(i) Current pictures of the property at which the grant project will take place prior to any project work.

(j) Any additional information as deemed necessary by the department on the application form.

(2) APPLICATION METHOD. Applicants shall submit applications by the posted application deadline on forms provided by the department and shall provide the information specified in sub. (1).

Note: Walleye production grant application forms may be obtained as follows:

Mailing Address:

Department of Natural Resources
Community Financial Assistance Bureau
P. O. Box 7921
101 S. Webster Street
Madison, Wisconsin 53707-7921
Phone: 608-266-7555

(3) COMPLETE APPLICATIONS REQUIRED. The department shall review all applications submitted for completeness and compliance with the requirements of this chapter. The department may deny consideration of applications that are incomplete by the submittal deadline. For an application to be deemed complete by the department, all portions shall be correctly and fully answered or provided. The department may require the applicant to provide additional information regarding the application as the department deems necessary. Applicants shall submit additional or missing information to the department within 14 days of the date of the request. Failure of the applicant to provide the requested information by the deadline will result in the department returning the incomplete application to the applicant.

NR 85.10 Grant award determination. The department shall consider all of the following factors when deciding to award a grant under this chapter:

- (1) Whether the applicant and the grant project are eligible under s. 29.739, Stats., and this chapter.
- (2) The extent to which the grant project will increase the applicant's capacity to raise walleye and stock them in the waters of this state.
- (3) The cost-effectiveness of the grant project.
- (4) The grant project management and technical qualifications of the applicant, including the applicants experience producing walleye.
- (5) The adequacy of the grant project plan. Elements may include:
 - (a) Whether the grant project will be completed in time to produce walleye at the size and condition specified by the department for stocking in waters of the state in 2014 or 2015.
 - (b) The extent to which the grant project will significantly increase the walleye production capacity of the applicant, such as numbers, size, and condition of fish.

(c) The adequacy of the proposed budget to accomplish the grant project.

(6) The purchase price the applicant shall charge the department for walleye fingerlings to be stocked in waters of the state.

(7) Geographic location of the applicant's fish production facilities in relation to stocking needs determined by the department.

(8) Distribution of grants to a variety of eligible applicants that submit high quality grant project applications.

(9) Match contributions are not required. Grants may pay for 100 percent of approved grant project costs.

NR 85.11 Distribution of grant assistance. (1) DETERMINATION OF GRANT AWARD. Grant applications shall be reviewed and ranked by department staff in consultation with one designee from the University of Wisconsin-Extension and one designee from the U.S. Fish and Wildlife Service. The department shall make the final award decisions with the goal of balancing assistance among eligible applicants, taking into account the factors established in s. NR 85.10.

(2) DETERMINATION OF GRANT AMOUNT.

(a) The total grant amount per grantee may not exceed \$500,000.

(b) Funds available to the department for grants under this chapter shall be distributed until either all available funds have been depleted or until all eligible grantees have received their maximum awards. Grants under this chapter are subject to the availability of funds provided to the department.

(3) AWARD NOTIFICATION. The department shall notify each successful applicant of the applicant's grant award in writing.

NR 85.14 Grant agreements. (1) AGREEMENT REQUIRED. A successful grant applicant shall enter into a grant agreement with the department before grant project activities may begin and before any grant money is distributed to the applicant.

(2) GRANT AGREEMENT PROVISIONS. A grant agreement shall be reasonably designed to ensure that the grantee carries out his or her obligations with respect to the grant. The grant agreement shall be signed by an authorized department official and by an authorized representative of the grantee. Prior to the end date of a grant agreement, the grantee may request in writing that the grant agreement be amended for grant project scope or time.

(a) The grant agreements shall include:

1. The number of walleye fingerlings that will be reared as a result of the increased capacity and the purchase price the grantee shall charge to the department for the fingerlings when the building, improvement, or repair is completed.
2. A work plan which identifies grant project tasks and a timetable for completing the tasks, including start and end dates of the grant agreement.
3. Requirements that a grantee obtain and pay for all applicable permits before starting work and obtain and pay for fish health certificates issued in compliance with s. ATCP 10.63, Wis. Adm. Code, for all fish that will be stocked into waters of the state.
4. Ability of the department to furnish fish eggs or fish to the grantee at a price established by the department if the grantee wants to obtain fish eggs or fish from the department.
5. Requirements that the grantee make available to the department the expected number of walleye fingerlings that were stated in the grantee's application for department purchase that were reared as a result of the grant project, and the option for the department to purchase from the grantee walleye that meet the size and condition specified by the department, based on available funding, in the subsequent three calendar years.
6. Ability for the grantee to distribute or sell any surplus walleye fingerlings that are reared as a result of the grant project and not purchased by the department as long as the distribution or sale of the walleye result in the walleye being stocked in waters of the state.
7. Ability for the department to inspect grant project work at any time with 24 hours advanced notice.
8. Grant project completion requirements, including that the grantee shall submit a summary of the work completed, at least 3 pictures of the completed project, and all invoices and proof of items for which reimbursement is being requested.
9. Disbursement details for when and in what manner the grantee will receive reimbursement payments, including the manner in which the department will conduct a review of a grantee's project completion materials and that it may conduct an inspection of the grant project area if it deems necessary to finalize grant reimbursements.

NR 85.15 Grantee reimbursements. All reimbursements will be based on documented and inspected completed grant project work. No advance payments are available. Partial payments may be paid on a quarterly calendar basis. The department shall withhold 25 percent of the final reimbursement payment to the grantee until after the department determines that the grantee has met all grant project

completion requirements. Reimbursements shall be paid within 30 days after the department determines that the grantee has met reimbursement requirements.

NR 85.16 Variances. The department may approve variances from a requirement of this chapter or a grant agreement upon written request of the grantee if the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the walleye production grant program. The approval shall be in writing. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the grantee, and financial hardship of the grantee. The department may not grant variances from statutory requirements.

NR 85.17 Grantee accountability. (1) RECORDS MANAGEMENT. Grantees shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards and provides clear reference to source or original documents.

(a) *Accounting procedures.* Financial schedules and statements filed with grant applications and payment requests shall be based on records maintained under generally accepted accounting principles which meet the following minimum requirements:

1. Grant recipient program accounts shall separate grant receipts and eligible expenditures from those allocable to other programs and activities.
2. Receipts and expenditures shall be listed in sufficient detail to provide a basis for accurate and complete program reporting.
3. All program receipts shall be identified in sufficient detail to reflect their source and purpose.
4. Supporting records for all program expenditures shall be itemized in detail to indicate the nature and appropriateness of each disbursement. Proof of payment, such as canceled checks, receipts, or invoices from vendors, shall be maintained.
5. When work is being completed by a grantees' employees, time and attendance records describing the work performed, specifying grant project hours worked by day, signed by the employee and bearing evidence of management approval, shall be maintained, along with computations showing hourly pay rates and allocations of fringe benefits.

(2) **RECORDS RETENTION AND AUDITING.** All grantees are subject to audit by the department. Grantees shall retain all records under generally accepted practices pertaining to their programs for 3 years after the end of the year in which they received a grant.

NR 85.18 **Termination.** The department may terminate a grant agreement and seek any and all remedies under equity and law for failure by the grantee to perform his or her obligations under the grant agreement. The department may initiate the termination with 30 days advance written notice to the grantee. Notice of termination shall be served on the grantee personally or by mail.

(1) ACTION TO INITIATE. Any action undertaken by the department to terminate a grant award shall include the effective date of termination of the grant, the basis for settlement of award termination costs, and the amount and date of payment of any sums due either party.

(a) The department may terminate awards, in whole or in part, upon a finding of one of the grounds specified in par. (b) and in accordance with the following procedure:

1. The department shall attempt to consult with the grantee prior to initiating any termination action. After the department has received and considered the views of the grantee, or 30 days after the grantee has been notified of the department's intent to terminate the grant, the department may terminate the grant in whole or in part.

2. Any termination action taken by the department shall be made in writing and shall state the reasons for termination.

(b) The department may terminate a grant, in whole or in part, if the department determines any of the following:

1. There has been no substantial performance under the terms of the grant agreement by the grantee, without good cause.

2. There is clear and convincing evidence that the grant was obtained by fraud.

3. There is clear and convincing evidence of gross abuse or corrupt practices in the administration of the grant or grant project.

4. The grantee has violated the law in the course of pursuing actions under this grant.

SECTION 2. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)

a private fishing preserve or a fee for an activity that includes the privilege of fishing in a private fishing preserve.

History: 1997 a. 27, 237; 1997 a. 248 s. 579; Stats. 1997 s. 29.738.

29.739 Grants for walleye production. (1) The department shall establish a grant program to award grants on a competitive basis to cities, villages, towns, and counties; to federally recognized Indian tribes or bands located in this state; and to fish farms.

(2) Grants awarded under this section shall be used for the purpose of increasing the grantee's capacity to raise walleye for stocking in the waters of the state. The grants may be used to build, improve, or repair any of the following:

- (a) Buildings and structures used as fish hatcheries or for fish rearing.
- (b) Fish rearing ponds.
- (c) Wells or water recirculation systems.
- (d) Biosecurity systems to ensure fish health.
- (e) Holding facilities and equipment used for fish brood stock.
- (f) Equipment used for the distribution of fish or for the collection of fish spawn.

(3) For a fish farm to be eligible for a grant under this section, the fish farm shall meet all of the following requirements:

- (a) The fish farm is registered with the department of agriculture, trade and consumer protection under s. 95.60.
- (b) The fish farm is in compliance with all applicable state and federal environmental laws and all applicable state and federal laws related to fish health.

(4) A contract awarding a grant under this section shall state the number of fingerlings that will be reared as a result of the increased capacity and the purchase price the grantee shall charge for the fingerlings when the construction, improvement, or repair is completed.

(5) The department shall promulgate rules to implement the program to be established under this section.

History: 2013 a. 20.

29.740 Contracts for walleye production. (1) In this section, "local governmental unit" means a city, village, town, or county.

(2) The department may enter into contracts with local governmental units, federally recognized Indian tribes or bands located in this state, and fish farms for the purpose of increasing the amount of walleye available for stocking in the waters of the state.

(3) The terms of a contract entered into under this section may include all of the following:

- (a) Authorization for the department to furnish fish eggs and fish for free or at cost to a local governmental unit, tribe, band, or fish farm that is a party to the contract.
- (b) Authorization for the department to purchase fish from a local governmental unit, tribe, band, or fish farm that is a party to the contract.

(4) No contract entered into under this section may have a term that is more than 5 years.

History: 2013 a. 20.

29.741 Food in the wild for game birds. No person may, from the public waters of this state, take, remove, sell, or transport any duck potato, wild celery, or any other plant or plant product except wild rice, that is native to these waters and that is commonly known to furnish food for game birds.

History: 1989 a. 359; 1997 a. 248 s. 593; Stats. 1997 s. 29.741; 2001 a. 16, 56.

29.749 Horicon marsh fur farm and dam. (1) The department shall establish a fur farm on the Horicon marsh in Dodge County under the supervision of the department.

(2) The department may maintain a dam in or near the city of Horicon, to control and regulate the flood waters on the Rock

River, and to restore the Rock River on Horicon marsh to the natural levels existing prior to drainage of the marsh.

History: 1997 a. 248 ss. 609 to 612; Stats. 1997 s. 29.749.

29.753 Importation of wild elk. Notwithstanding ss. 95.20 and 95.55 (6) and rules promulgated under those provisions, the department may import and move elk and introduce the elk into Ashland, Bayfield, Jackson, Price, or Sawyer county if all of the following apply:

- (1) The elk are taken from the wild and not raised on a farm.
- (2) The purpose of importing or moving the elk is to protect, develop, or manage wildlife resources in this state.

(3) The department of agriculture, trade and consumer protection determines that the applicable requirements related to chronic wasting disease under ss. 95.20 and 95.55 (6) are met to the fullest extent possible and practical with wild and free-roaming elk.

(4) The department tests each elk for tuberculosis and brucellosis before importing or moving the elk in accordance with the applicable disease testing requirements of the department of agriculture, trade and consumer protection.

(5) The department does not seek a reduction of road access to public lands in connection with importing, moving, or introducing the elk.

History: 2013 a. 20.

SUBCHAPTER XI

CAPTIVE ANIMALS

Cross-reference: See also s. NR 19.01, Wis. adm. code.

29.875 Disposal of escaped deer or elk. (1g) In this section, "deer" means any species of deer.

(1r) The department may seize and dispose of or may authorize the disposal of any deer that has escaped from land owned by a person registered under s. 95.55 or by a person who is subject to s. 169.04 (5m) if the escaped deer has traveled more than 3 miles from the land or if the licensee or person has not had the deer returned to the land within 24 hours of the discovery of the escape.

(2) Notwithstanding sub. (1r), the department may dispose of the deer immediately if the department of agriculture, trade and consumer protection determines that the deer poses a risk to public safety or to the health of other domestic or wild animals.

History: 1991 a. 269; 1995 a. 79; 1997 a. 248 s. 631; Stats. 1997 s. 29.875; 2001 a. 56, 109; 2003 a. 179.

SUBCHAPTER XII

WILDLIFE DAMAGE

Cross-reference: See also s. NR 19.01, Wis. adm. code.

29.885 Removal of wild animals. (1) DEFINITIONS. In this section:

(a) "Damage" means harm to forest products; streams; roads; dams; buildings; orchards; apiaries; livestock; and commercial agricultural crops, including Christmas trees and nursery stock.

(c) "Private property holder" means an owner, lessee or occupant of private property.

(d) "Removal activity" means removing or authorizing the removal of a wild animal that is causing damage or that is causing a nuisance or the removal of a structure of a wild animal that is causing damage or that is causing a nuisance.

(e) "Remove" means capture, shoot, set a trap for, relocate, or otherwise destroy or dispose of.

(f) Notwithstanding s. 29.001 (90), "wild animal" means any undomesticated mammal or bird, but does not include farm-raised deer, farm-raised game birds, or wild animals that are subject to regulation under ch. 169.

(2) DEPARTMENT AUTHORITY. The department may remove or authorize the removal of all of the following: