

Wisconsin Administrative Register

No. 595



Publication Date: July 31, 2005

Effective Date: August 1, 2005



Revisor of Statutes Bureau
Suite 800, 131 West Wilson Street
Madison, Wisconsin 53703-3233

The 2003 – 04 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2003 – 04 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u>	Hard Cover <u>Without Postage</u>	Soft Cover <u>With Postage</u>	Soft Cover <u>Without Postage</u>
\$152.00	\$146.00	\$130.00	\$124.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

WisLaw[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, WI 53707–7840

Table of contents

Emergency rules now in effect.**Pages 4 to 7**

Elections Board:

Rules relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee.

Health and Family Services:

Health, Chs. HFS 110—

Rules relating to certification of first responders.

Rules relating to operation of the health insurance risk-sharing plan.

Insurance:

Rules relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2005.

Natural Resources:

Environmental Protection—Water Regulation, Chs. NR 300—

Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Rules relating to shore erosion control on rivers and streams.

Revenue:

Rules relating to assessment of agricultural land.

Workforce Development:

Labor Standards, Chs. DWD 270–279

Rules relating to overtime pay for employees performing companionship services.

Rules relating to increasing Wisconsin's minimum wages.

Scope statements.**Pages 8 to 9**

Natural Resources:

Rules affecting Ch. NR 46 (Managed Forest Law) and Ch. NR 47 (Private Forest Landowner Grant Program).

Public Service Commission:

Rules affecting the process for establishing capital cost ratemaking principles for certain rate base electric generating facilities.

Revenue:

Rules creating s. Tax 1.15, relating to the discretion that the department will follow in the enforcement of rules and guidelines as they relate to small businesses.

Submittal of rules to legislative council clearinghouse.**Pages 10 to 11**

Administration:

Rules affecting chs. Adm 20 and 21, relating to architecture, engineering and construction solicitation, bidding and contracting.

Natural Resources:

Rules affecting ch. NR 20, relating to regulations for the Lake Winnebago sturgeon spearing season.

Rules affecting ch. NR 24, relating to open seasons for commercial clamming on the Wisconsin–Iowa boundary waters and the Mississippi River portion of the Wisconsin–Minnesota boundary waters.

Rules affecting ch. NR 58, relating to implementation and administration of grants for endangered resources.

Rules affecting ch. NR 243, relating to animal feeding operations.

Rules affecting ch. NR 485, relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment.

Tourism:

Rules affecting ch. Tour 1, relating to the joint effort marketing program.

Rule–making notices.

Pages 12 to 21

Agriculture, Trade and Consumer Protection:

Hearings to consider rules affecting chs. ATCP 99, 100 and 101, relating to agricultural producer security.

Natural Resources:

Hearing to consider rules affecting ch. NR 20, relating to regulations for the Lake Winnebago sturgeon spearing season.

Hearing to consider rules affecting ch. NR 24, relating to closing the open seasons for commercial clamming on the Wisconsin–Iowa boundary waters and the Mississippi River portion of the Wisconsin–Minnesota boundary waters.

Hearing to consider rules affecting ch. NR 58, relating to the implementation and administration of grants for endangered resources, including the Landowners Incentive Program grants.

Hearing to consider rules affecting ch. NR 64, relating to an all–terrain vehicle registration exemption.

Hearing to consider rules affecting ch. NR 64, relating to an all–terrain vehicle noise testing procedure.

Hearings to consider rules affecting ch. NR 243, relating to animal feeding operations.

Hearing to consider rules affecting ch. NR 485, relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment.

Tourism:

Hearing to consider rules to revise s. Tour 1.03 (4) relating to the joint effort marketing program.

Submittal of proposed rules to the legislature.

Page 22

Commerce:

CR 05–038 – Ch. Comm 2, relating to miscellaneous fee schedule changes.

Health and Family Services:

CR 05–048 – Ch. HFS 113, relating to certification of first responders.

Natural Resources:	CR 04–106 – Chs. NR 400, 406, 407 and 410, relating to providing the interface of the state air permitting programs with federal changes to air permitting program.
	CR 04–137 – Ch. NR 47, relating to the gypsy moth suppression program.
	CR 05–018 – Ch. NR 488, relating to regulations concerning activities during the salvage and transport of equipment containing refrigerants that damage the atmosphere.
	CR 05–030 – Ch. NR 46, relating to administration of the forest crop law and the managed forest law.
	CR 05–031 – Ch. NR 10, relating to permitting and applications, hunting, trapping, captive wildlife, agricultural damage and nuisance wildlife.
Public Instruction:	CR 04–076 – Ch. PI 35, relating to financial reporting requirements under the Milwaukee Parental Choice Program.
Transportation:	CR 01–156 – Ch. Trans 100, relating to safety responsibility and damage judgment suspension of operating privileges and motor vehicle registration.
Rule orders filed with the revisor of statutes bureau.	Page 23
Dietitians Affiliated Credentialing Board:	CR 05–021 – An order affecting chs. DI 2 and 3, relating to filing applications for temporary certificates and examinations.
Natural Resources:	CR 04–107 – An order affecting chs. NR 400, 406, 407 and 410, relating to implementing general and registration air permit programs.
Veterinary Examining Board:	CR 04–125 – An order affecting chs. VE 1, 7, 9 and 10, relating to renewal, conduct and continuing education for veterinarians and veterinary technicians.
Workforce Development:	CR 05–056 – An order affecting ch. DWD 272, relating to increasing Wisconsin’s minimum wages.
Rules published with this register and final regulatory flexibility analysis.	Pages 24 to 25
Sections affected by rule revisions and corrections.	Page 26
Executive orders.	Page 27
Public notices.	Page 28
Natural Resources:	Notice of availability of a legislative report relating to Wisconsin’s Air State Implementation.

Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Elections Board

Rules adopted creating **s. EIBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee's account to the candidate's state campaign committee account and finds that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi-Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s.532(3) and 532(4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be

transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

Publication Date: February 3, 2005
Effective Date: February 3, 2005*
Expiration Date: July 3, 2005
Hearing Date: May 18, 2005

* On February 9, 2005, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

Health and Family Services (2) (Health, Chs. HFS 110—)

1. Rules adopted revising **ch. HFS 113**, relating to certification of first responders.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting this emergency are:

Currently, first responders are restricted in their provision of emergency medical services (EMS) to performing defibrillation. These amended rules are primarily being published by emergency order to allow first responders to also use the following 2 potentially life-saving skills:

1. Non-visualized airway, to treat patients who are either not breathing or their airway has been compromised due to trauma or other means; and
2. The administration of epinephrine, for patients who have suffered a severe allergic reaction.

The Department intends to immediately follow this emergency rule with an identical proposed permanent rulemaking order.

Publication Date: June 6, 2005
Effective Date: June 6, 2005
Expiration Date: November 3, 2005
Hearing Date: June 27, 2005

2. Rules adopted amending **ss. HFS 119.07 (6) (b) to (d) and 119.15 (1) and (3)**, relating to operation of the health insurance risk-sharing plan.

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2), Stats., by using emergency rulemaking procedures, except that the

Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk-Sharing Plan (HIRSP) Board of Governors on April 22, 2005 regarding the rules, as required by s. 149.20, Stats.

The State of Wisconsin in 1980 established a Health Insurance Risk-Sharing Plan (HIRSP). HIRSP provides major medical health insurance for persons who are covered under Medicare because they are disabled, persons who have tested positive for HIV, and persons who have been refused coverage or who cannot get coverage at an affordable price in the private health insurance market because of their mental or physical health conditions. Also eligible for coverage are persons who recently lost employer-sponsored insurance coverage if they meet certain criteria. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs, except for costs associated with premium and deductible reductions. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co-equal amounts.

HIRSP Plan 1 is for policyholders that do not have Medicare. Ninety-one percent of the 18,530 HIRSP policies in effect in February 2005 were enrolled in Plan 1. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 15.0% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 12.1%. Rate increases for individual policyholders within Plan 1 range from 7.0% to 16.8%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. By law, Plan 1 rate increases reflect and take into account the increase in costs associated with Plan 1 claims.

HIRSP Plan 2 is for persons eligible for Medicare because of a disability or because they become age-eligible for Medicare while enrolled in HIRSP. Plan 2 has a \$500 deductible. Nine percent of the 18,530 HIRSP policies in effect in February 2005 were enrolled in Plan 2. The rate increases for Plan 2 contained in this rulemaking order increase an average of 20.3% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 17.3%. Rate increases for individual policyholders within Plan 2 range from 11.2% to 22.2%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 premiums are set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

Publication Date: June 15, 2005
Effective Date: July 1, 2005
Expiration Date: November 28, 2005
Hearing Date: July 11, 2005

Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2005.

Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish fund fees is first available in December of each year. It is not possible to complete the permanent fee rule process in time for the injured patients and families compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2005.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 05-028, will be filed with the secretary of state in time to take effect October 1, 2005. Because the fund fee provisions of this rule first apply on July 1, 2005, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 17, 2005.

Publication Date: June 27, 2005
Effective Date: July 1, 2005
Expiration Date: November 28, 2005

Natural Resources (2) (Environmental Protection – Water Regulation, Chs. NR 300—)

1. Rules adopted revising **ch. NR 326**, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring

property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

- Rules adopted creating **ch. NR 328, subch. III**, relating to shore erosion control on rivers and streams.

Finding of emergency

SECTION 2. FINDING. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit.

To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2005 construction season, with specific standards for shore erosion control structures on rivers and streams.

Publication Date: April 8, 2005
Effective Date: May 1, 2005
Expiration Date: September 28, 2005
Hearing Date: May 16, 2005

Revenue

Rules adopted revising **s. Tax 18.07**, relating to the assessment of agricultural land.

Finding of emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin

Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5-year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium-sized, 1-year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three-year lag in determining the 5-year average. Thus, the 2003 use value is based on the 5-year average corn price, cost and yield for the 1996-2000 period, and the capitalization rate is based on the 5-year average interest rate for the 1998-2002 period. The 2005 use value is to be based on the 5-year average corn price, cost and yield for the 1998-2002 period, and the capitalization rate is to be based on the 2000-2004 period.

The data for the 1998-2002 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1998-2002 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2005.

Publication Date: December 29, 2004
Effective Date: December 29, 2004
Expiration Date: May 28, 2005
Hearing Date: May 26, 2005
Extension Through: September 24, 2005

Workforce Development (2) (Labor Standards, Chs. DWD 270-279)

- Rules adopted revising **ss. DWD 274.015 and 274.03** and creating **s. DWD 274.035**, relating to overtime pay for employees performing companionship services.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that "no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person's life, health, safety or welfare." Section 103.01 (3), Stats., defines "place of employment" as "any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel."

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such

services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

Publication Date: March 1, 2004
Effective Date: March 1, 2004*
Expiration Date: July 29, 2004

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

2. Rules adopted revising **ch. DWD 272**, relating to increasing Wisconsin’s minimum wages.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The federal minimum wage has fallen to its lowest inflation-adjusted value of all time. When wages are so low that workers and their families can’t afford their most basic needs, society, particularly taxpayers, bears tremendous costs due to poverty-related educational failure, workforce failure, and citizenship failure. An adequate minimum wage supports workers, helps strengthen families and communities, and promotes the state’s overall economic and fiscal health.

Publication Date: May 25, 2005
Effective Date: June 1, 2005
Expiration Date: October 29, 2005
Hearing Date: June 14, 2005

Scope statements

Natural Resources

Subject

Objective of the rule. Changes to the Managed Forest Law management plan process have been proposed in the 05/07 budget bill (2005 AB100). These changes if passed will require changes in Subchapter III Chapter NR 46 (Managed Forest Law) and Subchapter VII Chapter NR 47 (Private Forest Landowner Grant Program).

These changes deal with the responsibility for preparing management plans for Managed Forest Law including those received after May 31, 2005 and by July , 2005 (entry effective Jan 1, 2007). The process for handling plans and fees for these petitions will be needed as soon as possible so emergency rule adoption will be requested followed by permanent rules.

Policy analysis

DNR MFL plan preparation fee: The department must annually establish the fee to be charged for plans which the department agrees to prepare. The proposal is to establish a formula that can be used annually to set the fee.

Establish a process/parameters to determine which plans the department will agree to prepare: This may include a process for referring plans to independent certified plan writers.

Cost sharing modifications: including changes to address additional cost sharing for MFL Stewardship plans.

Misc clean up: Including new/revised definitions, correction of existing wording.

Statutory authority

Section 77.82 (2m) (am) (as proposed in 2005 AB100), and 227.11 (2) (a) Wis. Stats.

Staff time required

350 hours from department central office and field staff, and an additional 30 hours from non-department individuals consulted on the proposed changes.

Comparison with federal requirements

There are no existing or proposed federal regulations relating to these rule changes.

Public Service Commission

Subject

2005 Wisconsin Act 7 creates Wis. Stat. § 196.371, which authorizes the Public Service Commission (Commission) to specify the ratemaking principles which may be applicable to the proposed purchase or construction of electric generating facilities. The statute sets forth the procedures for the application for and review and approval of these principles. Newly-created Wis. Stat. § 196.371 (4) directs the Commission to promulgate rules for administering the process for obtaining Commission orders regarding these capital cost ratemaking principles.

Policy analysis

2005 Wisconsin Act 7 authorizes a public utility that proposes to build or purchase an electric generating facility to request that the Commission determine, in advance and by order, the underlying principles by which the Commission will treat the recovery of the capital costs of the facility in setting rates for the utility. These costs include the purchase price and any necessary modifications or improvements to the facility made at the time of purchase. The Commission may issue an order if it finds that the proposed principles provide a sufficient degree of certainty to the utility, investors, and ratepayers with respect to future recovery of the facility's costs and that the order is otherwise in the public interest.

In requesting an order for the advance determination of ratemaking principles, the utility must describe its proposal for cost recovery, including all of the following:

The economic useful life of the facility.

The proposed return on equity and rate of return for the facility.

The proposed financing mechanisms for the facility.

The proposed method for determining the costs that may be recovered in rates.

Any other proposals or information that are necessary to provide certainty for the utility, investors, and ratepayers in future ratemaking proceedings.

Any other information specified by the Commission.

The Commission is promulgating rules to administer the new procedure, and to describe the administrative process that will apply. The rules will identify the information that the Commission will require in an application.

There are no existing policies that directly apply to the new statutory provision; the rules are intended to inform potential applicants of the filing requirements and the procedure the Commission will follow to consider an application.

Statutory authority

Wis. Stat. §§ 196.02 (3), 196.371 (4) and 227.11 (2).

Staff time required

The Commission estimates less than 200 hours of staff time will be required to develop these rules. No additional resources are likely to be needed in order to complete this project.

Entities affected by rule

The rules apply to public utilities, as defined in Wis. Stat. § 196.01 (5).

Comparison with federal requirements

Not applicable.

Revenue

Subject

S. Tax 1.15, relating to the discretion that the department will follow in the enforcement of rules and guidelines as they relate to small businesses.

Entities affected by rule

Small businesses, as defined in s. 227.114 (1), Stats., but not including an entity defined in ss. 48.685 (1) (b) or 50.65 (1) (c), Stats.

Comparison with federal requirements

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Policy analysis

Objective of the rule. The objective of the proposed rule is to meet the requirement set forth in s. 895.59 (2), Stats., to disclose in advance the discretion that the department will

follow in the enforcement of rules and guidelines as they apply to small businesses.

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect the creation by 2003 Wisconsin Act 145 of s. 895.59 (2), Stats. If the rules are not changed, they will be incorrect in that they will not be in compliance with current law.

Statutory authority

Sections 227.11 (2) (a) and 895.59 (2), Stats.

Staff time required

The department estimates it will take approximately 100 hours to develop this rule order.

Submittal of rules to legislative council clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Administration

Rule Submittal Date

On June 30, 2005, the Wisconsin Department of Administration submitted a proposed rule order to amend Chapters Adm 20 and 21 of the Wisconsin Administrative Code to the Wisconsin Legislative Council Rules Clearinghouse.

Subject

Statutory Authority: ss. 16.004 (1) and 16.855 (15), Stats.

Statutes Interpreted: ss. 16.85, 16.855 and 16.87, Stats.

The Department proposes to amend the rules in order to simplify and update the Department's requirements for architect and engineer selection and construction contracting. The proposed rule amendments update dollar threshold values for selection committee interview and contract signature requirements as well as updating for consistency with recent statutory changes. The proposed amendments also recognize current business practices and provide flexibility for conducting business in an electronic format.

Agency Procedure for Promulgation

The Department will hold a public hearing on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Department's Division of State Facilities is primarily responsible for promulgation of this rule.

Contact Information

If you have any questions regarding the proposed rule, please contact:

Donna Sorenson

Department of Administration

Telephone: (608) 266-2887

E-Mail: Donna.Sorenson@doa.state.wi.us

Natural Resources

Rule Submittal Date

On July 12, 2005 the Department of Natural Resources submitted a proposed rule order to the Legislative Council Rules Clearinghouse.

Subject

The rule affects Ch. NR 20, relating to regulations for the Lake Winnebago sturgeon spearing season.

Agency Procedure for Promulgation

A public hearing will be held August 17, 2005.

Contact Information

Joe Hennessy

Bureau of Fisheries Management and Habitat Protection

(608) 267-9427

Natural Resources

Rule Submittal Date

On July 12, 2005 the Department of Natural Resources submitted a proposed rule order to the Legislative Council Rules Clearinghouse.

Subject

The rule affects Ch. NR 24, relating to open seasons for commercial clamming on the Wisconsin-Iowa boundary waters and the Mississippi River portion of the Wisconsin-Minnesota boundary waters.

Agency Procedure for Promulgation

A public hearing will be held August 16, 2005.

Contact Information

Joe Hennessy

Bureau of Fisheries Management and Habitat Protection

(608) 267-9427

Natural Resources

Rule Submittal Date

On July 12, 2005 the Department of Natural Resources submitted a proposed rule order to the Legislative Council Rules Clearinghouse.

Subject

The rule affects Ch. NR 58, relating to implementation and administration of grants for endangered resources.

Agency Procedure for Promulgation

A public hearing will be held August 23, 2005.

Contact Information

Jennifer Bardeen

Bureau of Endangered Resources

(608) 266-7012

Natural Resources

Rule Submittal Date

On July 12, 2005 the Department of Natural Resources submitted a proposed rule order to the Legislative Council Rules Clearinghouse.

Subject

The rule affects Ch. NR 243, relating to animal feeding operations.

Agency Procedure for Promulgation

Public hearings will be held August 15, 17, 18, 22 and 25, 2005.

Contact Information

Tom Bauman

Bureau of Watershed Management

(608) 266-9993

Natural Resources**Rule Submittal Date**

On July 12, 2005 the Department of Natural Resources submitted a proposed rule order to the Legislative Council Rules Clearinghouse.

Subject

The rule affects Ch. NR 485, relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment.

Agency Procedure for Promulgation

A public hearing will be held on August 23, 2005.

Contact Information

Chris Bovee
Bureau of Air Management
(608) 266-5542

Tourism**Rule Submittal Date**

On July 11, 2005 the Department of Tourism submitted a proposed rule modification to the Legislative Council Rules Clearinghouse amending s. Tour 1.03 (4), Wis. Adm. Code, relating to the joint effort marketing program.

Subject

Statutory Authority: s. 41.17 (4) (g), Stats.

Statutes Interpreted: s. 44.17, Stats.

The Joint Effort Marketing program provides for grants to non-profit organizations engaged in tourism activities that are directed at increasing tourism spending in Wisconsin. Grant funds may be used for the development of publicity, the production and media placement of advertising and direct mailings that are part of a project and overall advertising plan of the applicant organization intended to increase tourism in Wisconsin.

Funding may be used for advertising of an event, for advertising of a sales promotion and for destination marketing advertising that is not tied to an event or promotion, but which is directed at extending the tourism market for the applicant and which has been identified by the Department as a market for the state.

The proposed modification would allow the department to grant an additional consecutive year of funding to projects described in s. Tour 1.02 (6) (b) and (c).

Agency Procedure for Promulgation

A public hearing is required and scheduled for Thursday August 11, 2005 at 10:00 a.m. in conference room 2b, 201 W. Washington Avenue, Madison, Wisconsin.

Contact Person

For additional information or to obtain a copy of the proposed rule contact Abbie Hill, Joint Effort Marketing Program Coordinator, Tel: 608/261-6272; Email ahill@travelwisconsin.com

Rule-making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 05-068]

(Reprinted from Mid-July 2005 Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed amendment to chs. ATCP 99, 100 and 101, Wis. Adm. Code, relating to Agricultural Producer Security. The hearings will be held at the times and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until **August 30, 2005**, for additional written comments.

Hearing Dates and Locations

Wednesday, August 10, 2005

10:30 a.m. to 12:30 p.m.

DATCP Northwest Regional Office
Conference Room

3610 Oakwood Hills Pkwy.

Eau Claire, WI 54701-7754

Handicapped accessible.

Friday, August 12, 2005

10:30 a.m. to 12:30 p.m.

DATCP Headquarters (Prairie Oak State Office Building)
Board Room (CR-106)

2811 Agriculture Drive

Madison, Wisconsin, 53718-6777

Handicapped accessible.

Tuesday, August 16, 2005

10:30 a.m. to 12:30 p.m.

DATCP Northeast Regional Office
Room 152A

200 N Jefferson Street

Green Bay, Wisconsin, 54301

Handicapped accessible.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **August 1, 2005**, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4928. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Written Comments and Copies of Rule

Written comments should be sent to the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection attention Kevin LeRoy, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708. Written comments can be submitted via email to kevin.leroy@datcp.state.wi.us.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4928 or emailing kevin.leroy@datcp.state.wi.us. Copies will also be available

at the hearings. To view the proposed rule online, go to:
<https://apps4.dhfs.state.wi.us/admrules/public/Home>

Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory authority: Sections 93.07 (1), 126.15 (1) (intro.), 126.30 (1) (intro.), 126.46 (1) (intro.), 126.60 (1) (intro.), 126.81 and 126.88 (intro.), Stats.

Statutes interpreted: Chapter 126, Stats.

The Department of Agriculture, Trade and Consumer Protection ("DATCP") administers the agricultural producer security program under ch. 126, Stats. DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt rules related to programs under its jurisdiction. DATCP has specific authority under ch. 126, Stats., to adopt rules for the agricultural producer security program.

This rule modifies current rules related to the agricultural producer security program under ch. 126, Stats. The program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") who procure agricultural commodities from producers.

This rule does all of the following:

- It permits a licensed contractors to file *voluntary* security for the benefit of producers if the contractor's estimated default exposure exceeds the maximum amount payable from the Wisconsin agricultural producer security fund. A contractor who files voluntary security may pay lower fund assessments and make more favorable disclosures to producers. A voluntary security filing does not relieve a contractor of any other duty to file security or pay fund assessments.
- It changes and simplifies the disclosures that contractors must give to producers.
- It clarifies current grain warehouse keeper record keeping requirements.

Background. Under current law, contractors must be licensed by DATCP. Most contractors must contribute to an agricultural producer security fund (the "fund"). Fund assessments are based on contractor size, financial condition and risk practices. If a *contributing contractor* defaults, DATCP will pay producers out of the fund. The total payment may not exceed 60% of the fund balance at the time of default (the current fund balance is approximately \$5.5 million).

The current fund capacity is adequate to cover most, but not all, potential defaults by contributing contractors. Some large contractors have an "estimated default exposure" that exceeds current fund capacity (in some cases, by a very large amount). Some of these contractors are currently required to file security to cover at least part of the difference, but others are not (DATCP lacks statutory authority to require security filings for some of the contractors).

Voluntary Security. Under this rule, a licensed contractor may file *voluntary* security with DATCP if the contractor's estimated default exposure exceeds the maximum amount payable from the fund (this rule does not change current *mandatory* security filing requirements). A contractor who files security with DATCP may pay lower fund assessments and make more favorable disclosures to producers.

Reduced Fund Assessment. Under current rules, certain contractors who file security with DATCP are entitled to a reduction in their annual fund assessments (current rules specify the amount of the reduction). Under this rule, certain contractors who file security with DATCP (required or voluntary) may pay reduced fund assessments if their “estimated default exposure” is equal to or less than the sum of the following:

- The maximum amount payable from the fund, if the contractor defaults.
- The total amount of security (required or voluntary) filed by the contractor.

Disclosures to Producers. Under current rules, a contractor must periodically disclose to producers the contractor’s license, security and fund contribution status. The current rules specify the exact language that contractors must use. The disclosures are intended to help producers assess the degree of financial risk involved in dealing with any particular contractor. The current disclosures are rather complex, and in some cases overstate the amount of security coverage afforded to producers.

This rule changes and simplifies the current disclosure requirements. This rule, like the current rules, specifies the exact language to be used. Disclosure requirements vary slightly between grain, milk and vegetable contractors, because of differences in the security program for each industry. But for all contractors, the disclosure alternatives are basically as follows:

- If the contractor’s “estimated default exposure” is *equal to or less than* the amount of fund coverage and security on file, the disclosure states that the security program may provide full compensation for producers if the contractor defaults (subject to statutory limits).
- If the contractor’s “estimated default exposure” is *greater than* the amount of fund coverage and security on file, the disclosure states that the security program may provide *some* compensation for producers if the contractor defaults. But compensation may cover only a fraction of a producer’s loss.
- If the contractor does not contribute to the fund or file any security with DATCP, the disclosure states that the security program will provide *no compensation* to producers if the contractor defaults.

Definition of “Affiliate.” Under current rules, contractor financial statements must disclose accounts and notes payable from “affiliates.” These accounts and notes are excluded from the balance sheet before financial ratios are calculated. An “affiliate” is currently defined as an owner, major stockholder, partner, officer, director, member, employee or agent (or a person owned, controlled or operated by one of those persons). This rule clarifies an “affiliate” also includes any other person who has significant control or influence over the contractor.

Grain Warehouse Records. This rule clarifies current grain warehouse record keeping requirements. Under current law, warehouse keepers must keep “daily position” records related to grain in storage. This rule clarifies that daily position records must identify all grain kept by the warehouse keeper, whether in licensed or unlicensed storage. Records must clearly distinguish between grain owned by the warehouse keeper and that held for others. Records must also show the amount of grain entering and leaving storage each day. Records must be based on individual grain transaction records required under current law.

Fiscal Impact

This rule will have no significant fiscal impact on DATCP or local government.

Business Impact

This rule will affect agricultural producers, grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. Many of these businesses are small businesses.

This rule will have a minimal impact on most affected businesses, and effects will be positive in many cases (especially for agricultural producers). The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). DATCP has limited authority to change these requirements by rule.

This rule will make minor changes to current rules. Among other things, this rule:

- Allows licensed contractors to file voluntary security (it does not change current *mandatory* security requirements).
- Allows some contractors to pay reduced fund assessments.
- Changes and simplifies current contractor disclosures to producers. In some cases, current disclosures overstate the amount of security coverage afforded to producers. Some contractors may incur one-time costs to change their disclosure forms.
- Clarifies current grain warehouse record keeping requirements (this rule does not add major new record keeping requirements).

This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but it will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Wisconsin’s Security Program

Wisconsin has an agricultural producer security program for grain, milk and vegetables. The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). Contractors must be licensed by DATCP, and most contractors must contribute to an agricultural producer security fund administered by DATCP. A few contractors must also file security with DATCP.

Federal Programs

There is no federal producer security program related to milk. The U.S. department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program provides little or no protection against financial defaults by *grain dealers*. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also

hold a state grain dealer license if they engage in grain dealing.

USDA proposes to regulate grain *dealer* activities (grain “merchandising”) by federally licensed warehouse keepers, to the exclusion of state regulation. But USDA has not yet finalized its regulations. In any case, the federal regulations would not apply to state–licensed grain warehouses, or to grain dealers who do not operate a warehouse.

There is a federal security program for vegetables. This security program is mainly limited to fresh market vegetables, and consists of a priority lien against vegetable–related assets. Wisconsin’s vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations). There may be some limited overlap between the Wisconsin and federal programs (the overlap may be justified because the scope of federal coverage is not entirely clear).

State Comparisons

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume *and financial condition*.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin’s vegetable security program includes, but is not limited to, potatoes.)
- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.

Agency Contact

Questions or comments related to this rule may be sent to the following address:

Dept. of Agriculture, Trade and Consumer Protection
Trade and Consumer Protection Division
Bureau of Trade Practices
P.O. Box 8911
Madison, WI 53708–8911
Attn.: Kevin LeRoy
Telephone: (608) 224–4928
E–Mail: Kevin.Leroy@datcp.state.wi.us

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 05–073]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1) and 227.11 (2) (a), Stats., interpreting ss. 29.041 (1), 29.192 and 29.237, Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 20.10 and 20.20, Wis. Adm. Code, relating to regulations for the Lake Winnebago sturgeon spearing season. The proposed rule contains the following changes to the Lake Winnebago system sturgeon spearing rules:

1. Upriver lakes: creates a random–permit drawing system for an annual sturgeon spear fishery on the upriver lakes beginning in 2007.

2. “Fast start” season 100% closure trigger: beginning in 2006, allows the spearing season to be closed at the end of a spearing day should any one of the three harvest caps (juvenile females, adult females, males) be reached or exceeded that day.

3. “Slow finish” season 90% closure trigger: beginning in 2006, increases the season closure trigger from 80% to 90%.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department’s Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us
or by calling (608) 266–1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department’s consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

August 17, 2005 Meeting Room A
Wednesday at 7:00 p.m. Winnebago Co. Coughlin Bldg.
625 E. County Rd. Y
Oshkosh

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Joe Hennessy at (608) 267–0548 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

This rule calls for implementation of a random permit–drawing system to distribute sturgeon spearing licenses for Lakes Poygan, Winneconne, and Butte des Morts (the “Upriver Lakes”) in the Lake Winnebago System. This drawing system will enable the Department to create an annual, limited–access sturgeon spear fishery in the Upriver Lakes while preserving the traditional open–access sturgeon spear fishery in Lake Winnebago. Currently the upriver lakes are only open to spearing every 5th year.

There are developmental costs associated with creating the application form, modifying the ALIS system to incorporate permit applications, and tools to track and recall permit application status (\$10,000, based on Bureau of Customer Service and Licensing estimates). Cost estimates for creating a drawing system, maintaining the applicant database and conducting the annual drawing are expected to be approximately \$1120 for creation (40 hours time, Staff Specialist \$28/hour) and \$1120 annually for maintenance and conducting the drawing (40 hours time, Staff Specialist).

A \$3 application fee will be charged to each applicant who makes an Upriver Lakes permit request. This fee will recoup the costs of permit and license issuance; estimates are based on 2000 applications annually (\$6000 revenue, \$6000 expense). Postcards (\$0.50/ ea, including printing, postage,

and handling) will be sent to approximately 800 successful applicants annually (\$400). Sturgeon spearing carcass tags are \$20 for both Lake Winnebago and the Upriver Lakes. Development, implementation, and maintenance of the permit-drawing system will be paid for by sturgeon license funds.

Written Comments and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Joe Hennessy, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 23, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Hennessy.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 05-074]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.041, 29.547 (8) (a) and 227.11 (2) (a), Stats., interpreting ss. 29.041, 29.014 (1) and 29.537 (8) (a), Stats., the Department of Natural Resources will hold public hearings on the amendment of s. NR 24.06 (1) (a) and (b), Wis. Adm. Code, relating to closing the open seasons for commercial clamming on the Wisconsin-Iowa boundary waters and the Mississippi River portion of the Wisconsin-Minnesota boundary waters. Wisconsin's commercially harvestable native freshwater mussel stocks are in significant decline, especially in waters infested with zebra mussels. Surveys done since 1998 in river reaches where mussels were historically harvested have demonstrated extreme reductions in population densities and near absence of recruitment. These recent stock reductions compound reductions documented since 1980 from commercial overharvest and mussel kills. No commercial licenses have been sold since 2001 when a single license was sold.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us
or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

August 16, 2005
Tuesday at 11:00 a.m.

Robers Room
Todd Wehr Memorial Library
815 S. 9th Street
La Crosse

August 16, 2005
Tuesday at at 5:00 p.m.

Conference Room #2
City Hall
214 E. Blackhawk
Prairie du Chien
(Use back entrance)

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Joe Hennessy at (608) 267-0548 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

No commercial clam shelling licenses have been sold since 2001. The official closure of the commercial clam shelling season will have no fiscal impact on state or local government revenues or expenditures.

Written Comments and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Joe Hennessy, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 1, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Hennessy.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 05-071]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) and 227.11, Stats., interpreting ss. 23.09 (2) and 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 58, Wis. Adm. Code, relating to the implementation and administration of grants for endangered resources, including the Landowner Incentive Program grants. The Landowner Incentive Program, funded through a grant from the U.S. Fish and Wildlife Service, will provide technical and financial assistance to private landowners with federally listed, state listed or other at-risk species and rare or declining natural communities on their land. The ultimate goal of the program is to support the recovery of these rare species and natural communities and to prevent their further decline.

Chapter NR 58, subch. III is created to establish this new program. The program is intended for management, restoration and protection of private land with habitat for at-risk species. At-risk species are defined by the Department to include species listed as endangered, threatened, candidate or special concern at the state or federal level; species identified by the Comprehensive Wildlife Conservation Plan; or species otherwise determined by the state to be in decline. The new program will provide a 25%

cost—share to private landowners and organizations who meet the criteria of the program.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us
or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

August 23, 2005 Gathering Waters Conference Room
Tuesday at 6:00 p.m. DNR South Central Region Hdqrs.
3911 Fish Hatchery Road
Fitchburg

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jennifer Bardeen at (608) 266-8736 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Jennifer Bardeen, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 25, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Bardeen.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 05-053]

NOTICE IS HEREBY GIVEN that pursuant to s. 227.11 (2) (a), Stats., interpreting s. 23.33 (2) (b) 5., Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 64.03 (10), Wis. Adm. Code, relating to an all-terrain vehicle (ATV) registration exemption. 2003 Wisconsin Act 251 created s. 23.33 (2j), Stats., that requires all out-of-state ATVs not registered in Wisconsin to display a nonresident trail pass. Prior to operating an ATV in Wisconsin, current law requires all ATVs to be registered in Wisconsin unless exempted. The proposed rule for a registration exemption is necessary because s. 23.33 (2j), Stats., mandating the display of a nonresident trail pass did not

address nonresident concerns whose home state, such as Illinois and Michigan, did not have an ATV registration program. The proposed rule will also require that the nonresident trail pass be permanently affixed to the forward half of the ATV in manner that is visible at all times.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us
or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

September 8, 2005 Video conference participation is
Thursday at 10:00 a.m. available at:

Room 8F, State Office Building
101 E. Wilson Street
Madison

Room 220, UW Marathon Center
518 South 7th Avenue
Wausau

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Karl Brooks at (608) 266-7820 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

This fiscal estimate is based on a proposed ATV registration exemption rule that would affect out of state ATV operators who bring nonresident ATVs (specifically Michigan and Illinois) to Wisconsin. Instead of requiring the display of a home-state registration, the rule would require the nonresident ATV to display only a Wisconsin nonresident trailpass on the machine, unless they opted to continue to register the ATV in WI.

Currently, nonresident ATV operators from Michigan and Illinois are required to register their machines in WI because of a legal requirement stemming from an irregularity in the law. If the states of Michigan and Illinois had a registration program, the residents of those states would not be affected by the irregularity. However, because of the irregularity, those ATVs cannot simply ride their ATVs in Wisconsin displaying only a nonresident trailpass, and at this time, the purchase of a nonresident trail pass by Michigan or Illinois ATVs is a cost that affords no legal riding benefit.

The rule change could affect Wisconsin's registration of 9,218 ATVs from Illinois and 367 ATVs from Michigan. The combined total of Wisconsin registered ATVs from those states is 9,585. Each Wisconsin registration costs \$30 for a two-year period, which generates \$287,550 biennially. Since all ATV registrations don't expire at the same time every two

years, only about 50% of the 9,585 registrations expire annually, or 4,793 registrations, which equals \$287,550 and \$143,775 respectively. The proposed rule could initially be viewed as a negative impact to the registration program; however, those machines not registering in WI would in turn be required to display a nonresident trail pass. The cost of a nonresident trail pass costs \$18 annually.

Written Comments and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Karl Brooks, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 16, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Brooks.

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 05–054]

NOTICE IS HEREBY GIVEN that pursuant to s. 227.11 (2) (a), Stats., interpreting s. 23.33 (6m), Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 64.07 (3) and (4), Wis. Adm. Code, relating to an all-terrain vehicle (ATV) noise testing procedure. 2003 Wisconsin Act 251 created a new law regarding ATV noise emissions, s. 23.33 (6m), Stats., which prohibits a person or manufacturer from selling, renting or operating an ATV if the noise level from the ATV exceeds 96 decibels on the A scale in a manner prescribed under rules promulgated by the DNR. The A scale is a measuring technique that uses a sound meter to measure noise in the same manner that a human ear interprets noise. The Department proposes to use an existing noise-measuring standard (SAE 1287) that is approved by the Society of Automotive Engineers. This standard is consistently used by governing agencies that regulate noise laws.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us
or by calling (608) 266–1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

September 8, 2005
Thursday at 10:00 a.m.

Video conference participation is available at:

Room 8F, State Office Building
101 E. Wilson Street
Madison

Room 220, UW Marathon Center
518 South 7th Avenue
Wausau

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Karl Brooks at (608) 266–7820 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

State statute 23.33 (6m) pursuant to Wisconsin 2003 Act 251 restricted noise levels from ATVs. The Act did not prescribe a method to measure the noise. The method was to be promulgated in a rule by the department. Funding to acquire the noise measuring equipment was also provided in Act 251 as was operating dollars for patrol and training. The rule is procedural and any unanticipated costs will be absorbed by the ATV program.

Written Comments and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Karl Brooks, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 16, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Brooks.

Notice of Hearing

Natural Resources

(Environmental Protection– Pollution Discharge System, Chs. NR 200—)

[CR 05–075]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2), 281.16, 281.19, 281.41, 281.65, 283.001, 283.11, 283.13, 283.31 and 283.37, Stats., interpreting ss. 227.11 (2), 281.16, 281.19, 281.41, 281.65, 283.001, 283.11, 283.13, 283.31 and 283.37, Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of ch. NR 243, Wis. Adm. Code, relating to animal feeding operations. Included in ch. NR 243 are requirements for large, medium and small concentrated animal feeding operations (CAFOs) under the Wisconsin Pollutant Discharge Elimination System (WPDES) permit program. The major provisions of the code revision are:

- Animal units: The Department is proposing changes to animal unit equivalencies used to determine the size thresholds for CAFOs (large, medium and small). These changes are primarily the result of changes to federal animal unit numbers and mostly impact operations with heifers or veal calves or poultry operations with a non-liquid manure handling system.

- General permits: The proposed revisions outline application and general eligibility and coverage requirements for issuance of a general WPDES permit that could be used to cover CAFOs.
- Standard CAFO requirements: The rule changes include a number of standard requirements designed to address potential water quality impacts from CAFOs and to incorporate federal requirements. Some of these include managing areas of the operations where animals are not held in confinement (CAFO outdoor vegetated areas), mortality management, restrictions on chemical disposal in storage or containment facilities, stormwater controls and development of an emergency response plan.
- Nutrient management and NRCS 590: The Department is proposing to incorporate an updated version of the Natural Resources Conservation Service (NRCS) technical standard for nutrient management (NRCS 590, November 2004) as well as other nutrient management requirements.
- Surface Water Quality Management Area (SWQMA) restrictions: The proposed revisions identify conservation practices to be implemented within the SWQMA (1,000 feet of a lake, 300 feet of a stream) to protect against acute manure runoff events and long-term nutrient delivery to surface waters. These provisions are also intended to address federal requirements mandating a 100-foot setback from navigable waters/conduits to navigable waters (or equivalent) or a 35-foot vegetated buffer.
- Manure application restrictions on frozen or snow-covered ground: Key proposed revisions include: (1) A prohibition on surface applications of liquid manure on frozen or snow-covered ground at all times; and (2) A prohibition on surface applications of solid manure on frozen or snow-covered ground in February and March. Proper incorporation or injection of liquid and solid manure would be allowed under frozen or snow-covered ground conditions at all times. These liquid manure restrictions would become effective on January 1, 2010 for existing source CAFOs and upon permit issuance for new source CAFOs.
- Phosphorus delivery: All CAFOs would be required to implement phosphorus-based nutrient management. In addition to the phosphorus requirements in NRCS Standard 590, the proposed revisions add additional restrictions intended to address phosphorus delivery to surface waters.
- Groundwater protection: The proposed revisions include increased setbacks from karst features, drinking water supply wells and additional application restrictions based on separation distances to groundwater and bedrock.
- Manure stacking: The proposed rule revisions allow for the temporary unconfined stacking of solid manure with 16% solids or greater during winter months in lieu of storage in a designed storage facility.
- Responsibility for CAFO manure: The revisions identify the circumstances under which CAFOs are not considered to be responsible for the disposal/land application of the manure they generate.
- Monitoring/inspections/reporting: The revisions reflect federal monitoring, self-inspection and reporting requirements as well as additional requirements for maintaining and determining compliance with nutrient management requirements.
- Small/medium CAFOs: The revisions reflect federal and state authority to define and designate small and medium size animal feeding operations that have discharges to navigable waters as CAFOs and to issue WPDES permits

for those discharges. The revisions also outline permit requirements for permits issued to small and medium CAFOs.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rules may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Animal feeding operations
- b. Description of reporting and bookkeeping procedures required: In accordance with revised federal rule requirements, permittees must conduct frequent inspections of water lines (daily), storm water diversions (weekly) and storage facilities and runoff control systems (weekly) at the animal production area. These inspections are then summarized in a quarterly report and these quarterly reports are submitted to the Department on an annual basis. For land application activities, the proposed code requires periodic manure and soil sampling, daily spreading logs documenting spreading activities, and a weather log. Permittees summarize this information and submit it to the Department as part of an annual report. In general, the required bookkeeping procedures are designed to document that an operation is complying with the regulations. For permitted operations, the revised code proposal does not significantly alter current code requirements, aside from the addition of certain types of self-inspections that are required and the maintenance of a weather log. The Department is in the process of creating standardized reporting forms that will increase the ease and consistency of reporting. Permitted operations must keep all records on-site for five years. Since these are federal requirements, the Department may not waive or provide less stringent requirements.
- c. Professional skills necessary: The requirements of the proposed rule changes are similar to the type of requirements currently in the rules, so the type of professional skills required to comply with the rule are not expected to be significantly different. Depending on the knowledge, training, qualifications and time available of an owner or operator of a given permitted operation, a nutrient management plan may or may not require involvement of a hired certified agronomist or other qualified professional. Most large CAFOs already have professional agronomists develop their nutrient management plans. Smaller operations are more likely to need outside assistance given time and resource restrictions. Many, if not most, large CAFOs hire professional engineers to design their structural facilities and systems. Given the size, complexity and technical nature of the design of systems and structures, it is difficult for permittees to comply with design requirements associated with the permit, short of basic earth-moving, without the involvement of a professional with expertise in the area of design and construction. For example, a manure storage facility for a 2000 animal unit dairy designed to provide six months of storage has a volume of approximately 5.5 million gallons. All size operations may, if available, have access to design and technical assistance from counties or NRCS staff free of charge.

The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us
or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has prepared an Environmental Assessment in accordance with s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, that has concluded that the proposed rule is not a major state action which would significantly affect the quality of the

human environment and that an environmental impact statement is not required.

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold an informational session from 4:00 p.m. to 5:30 p.m. prior to each hearing. Department staff will be available to answer questions regarding the proposed rule revisions.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

August 15, 2005 Monday at 6:00 p.m.	Roosevelt Room Ramada White House 1450 Veterans Drive Richland Center
August 17, 2005 Wednesday at 6:00 p.m.	UW-Extension Jefferson County Office 864 Collins Road Jefferson
August 18, 2005 Thursday at 6:00 p.m.	Room 103 Chippewa Valley Tech. College, Business Education Center Clairemont Campus 620 West Clairemont Avenue Eau Claire
August 22, 2005 Monday at 6:00 p.m.	Room E101/E102 Northcentral Tech. College 1000 W. Campus Drive Wausau
August 25, 2005 Thursday at 6:00 p.m.	Auditorium Bay Beach Wildlife Sanctuary 1660 E. Shore Drive Green Bay

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tom Bauman at (608) 266-9993 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The fiscal impacts of revisions to ch. NR 243 falls into two major areas—increasing the amount of review time required for nutrient management plans and increasing the number of reviews for manure storage facilities.

The estimated impact is as follows:

(A) Nutrient management plans. The Department estimates that an additional 10 hours of staff time will be required for each annual review of a nutrient management plan. This type of work is typically done by a Wastewater Specialist – Senior. Assume 235 CAFOs * 10 hours each = 2,350 additional staff hours per year. This equates to 1.3 FTE (2,350 hours/1800 hours per FTE = 1.3 FTE) and associated salary-related costs (excluding fringes) of \$53,369 (2,350 hours * \$22.71/hr = \$53,369).

(B) Manure storage facilities. The Department estimates that there will be a 40% increase in the number of manure storage facilities and that each facility will require 8 hours of review time. This type of work is typically done by a Water Resources Engineer – Senior. Assume 235 CAFOs * 40% increase in storage facilities = 94 new storage facilities * 8 hours review per facility = 752 additional hours over a 5-year period/5 years = 150 additional staff hours per year. This equates to approximately 0.1 FTE per year (150 hours/1800 hours per FTE = 0.1 FTE) and associated salary-related costs

(excluding fringes) of \$2755 (150 hours * \$25.03/hr = \$3755).

Other State and Local Agencies. Since the WPDES permit program is administered solely by the Department, other state and local agencies should not expect increased costs associated with administering the changes to WPDES permit requirements. Other state (primarily, the Department of Agriculture, Trade and Consumer Protection) and local agencies (primarily Land Conservation Departments) may experience additional requests for assistance from CAFOs in developing nutrient management plans and design of storage and runoff control facilities; however, the modifications to NR 243 do not require such assistance given that private consultants can provide the same services.

Private Sector. Fiscal impacts on the private sector primarily relate to phosphorus-based nutrient management requirements and to storage design requirements for solid and liquid manure. The Department estimates that the total annual statewide fiscal impact on CAFOs will range from \$1.8 million to \$6.1 million over each of the first five years of the revised rule. The great majority of costs are associated with manure storage requirements.

Using a variety of assumptions, the Department estimates a total annual statewide increase in costs associated with phosphorus-based nutrient management requirements of about \$90,000 over each of the first five years of the revised rule. In estimating the cost impact, the Department assumed that 32% (75 operations) of existing and new operations over the next five years would fall under phosphorus-based nutrient management planning requirements for the first time as a result of the revised rules. Only 11% (8 operations) of these operations would experience increased costs based on soil test levels. Based on an estimated cost of \$5.63 per animal unit per year for phosphorus-based management and an average of 2,000 animal units per CAFO, annual increases in costs associated with the new rule total \$90,000 for proposed phosphorus-based nutrient management requirements.

The Department estimates total annual statewide costs associated with manure storage requirements at \$1.8 million to \$6.1 million per year over each of the first five years of the revised rule. This cost estimate assumes that 50–70% of all current and future CAFOs have or will have 6 months of liquid manure storage regardless of the proposed revisions to ch. NR 243 and would not be impacted by the storage provisions in the proposed rule changes. The remaining 30–50% would need to build some amount of storage to comply with the proposed rule changes. If one assumes that a 2,000 animal unit operation produces 736,100 cubic feet of manure and process wastewater in a 6 month period, the range of manure storage construction costs would be \$257,700 to \$404,900 for six months of storage. If 30–50% of the current and future CAFOs would have otherwise built at least a 3 month storage, irrespective of the new NR 243 requirements, total cost is estimated at \$1.8 million to \$3.0 million/year. If 30–50% of the current and future CAFO would not have otherwise built any storage and are required to construct 6 month storage, total cost is estimated at \$3.7 million to \$6.1 million/year.

Written Comments and Copy of Rule

The proposed rule, fiscal estimate and environmental assessment may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Tom Bauman, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 9, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A

personal copy of the proposed rule, fiscal estimate and environmental assessment may be obtained from Mr. Bauman. The information is also available on the Department's website at:
<http://dnr.wi.gov/org/water/wm/nps/rules/nr243/nr243.htm>

Notice of Hearing
Natural Resources
(Environmental Protection—
Air Pollution Control, Chs. NR 400—)
[CR 05–072]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1) and 285.30 (2) and (6) (b), Stats., interpreting ss. 285.11 (6) and 285.30 (2) and (6) (b), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 485.04 and 485.06, Wis. Adm. Code, relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment. The Department's State Implementation Plan will be revised as a result of this revision. A motor vehicle inspection and maintenance (I/M) program has been in effect in southeastern Wisconsin since 1984. The program is presently operating in the seven counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. To meet requirements for I/M programs in the federal Clean Air Act Amendments of 1990, Wisconsin started "enhanced" emission inspections on December 4, 1995. The enhanced inspection procedures (transient emission test and gas cap integrity test) are more effective in identifying high-emitting vehicles and in diagnosing the causes of excess emissions than were the original inspection procedures.

The emission limitations ("cutpoints") subject to this proposed revision are pass/fail standards for the I/M program. The Department proposes to revise certain cutpoints for specific categories of vehicles as follows:

1. Relax the cutpoints for oxides of nitrogen (NOx) for some groups of trucks and older cars to account for some deterioration of the emission control systems for these vehicles;
2. Establish new cutpoints for model year 2005 and newer heavy-duty trucks to account for new federal certification standards for these vehicles; and
3. Simplify the cutpoints for some categories of model year 1994 to 1996 vehicles so that the lane inspector would not need to decode data under the vehicle's hood in order to determine the proper cutpoints.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rules may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Small businesses that own nonexempt motor vehicles customarily kept in the 5-county I/M program area and small businesses that repair motor vehicles that fail the I/M inspection. Under the proposed rule, slightly fewer vehicles would fail the I/M inspection. This may lower vehicle repair costs for some small businesses that own motor vehicles, but may also result in a slight decrease in business for small businesses that repair motor vehicles.

b. Description of reporting and bookkeeping procedures required: Other than the requirements for vehicles to report

at inspection stations, there are no reporting, bookkeeping or other procedures required for compliance with the rule.

c. Description of professional skills required: No professional skills are necessary.

The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us
 or by calling (608) 266–1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

August 23, 2005 Room 140–141
 Tuesday at 1:00 p.m. DNR Southeast Region Hdqrs.
 2300 N. Dr. Martin Luther King Jr.
 Drive
 Milwaukee

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266–2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The proposed rule is not expected to increase costs to state or local government nor have a significant fiscal effect on the private sector. Under certain circumstances, the proposed rule may decrease costs to state or local government, since slightly fewer vehicles will fail the emissions test:

(1) The 500 fewer failed vehicles would result in about 600 fewer retests (considering "dropouts" and multiple retests) and that reduction in the number of retests could reduce the Department of Transportation's (DOT's) payment to the I/M program contractor by as much as \$10,000 per year. However, based on the terms of the DOT's contract with the I/M program contractor, in order for this savings to be realized, the actual number of tests per year would need to deviate from the number of tests estimated in the contract by more than 3% (in either direction). The likelihood that a deviation that large would occur is uncertain.

(2) Slightly fewer vehicles owned by state or local government may fail the emission test, possibly leading to lower repair costs. However, the repair costs for failed vehicles are often offset by improved fuel efficiency or increased vehicle durability.

Since both of these possibilities for reduced costs are subject to considerable uncertainty, a conservative assessment of the fiscal effect is "no state fiscal effect" and "no local government costs."

Written Comments and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Chris Bovee, Bureau of Air Management, P.O. Box 7921, Madison,

WI 53707. Comments may be submitted until September 2, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained by contacting Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, phone: (608) 266-7118; FAX: (608) 267-0560.

Notice of Hearing
Tourism
[CR 05-070]

NOTICE IS HEREBY GIVEN that pursuant to s. 41.17 (4) (g), Stats., the Wisconsin Department of Tourism will hold a hearing at the time and place shown below to consider a proposed order to revise s. Tour 1.03 (4) relating to the joint effort marketing program.

Hearing Information

The hearing will be held at the Department of Tourism, Meeting Room 2B, 201 West Washington Avenue, Madison, Wisconsin, on Thursday **August 11, 2005** at 10:00 a.m.

Written Comments

Written comments on the proposed rules may be sent to the contact person by Monday August 1, 2005. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

Analysis Prepared by the Department of Tourism

Section 41.17, Stats., creates a joint effort marketing program and s. 41.17 (4) (g), Stats., authorizes the Department to adopt rules required to administer the program. The Joint Effort Marketing program provides for grants to non-profit organizations engaged in tourism activities that are directed at increasing tourism spending in a local area. Grant funds may be used for the development of publicity, the production and media placement of advertising and direct mailings that are part of a project and overall advertising plan of the applicant organization intended to increase tourism in Wisconsin.

Funding may be used for advertising of an event, for advertising of a sales promotion and for destination marketing advertising that is not tied to an event or promotion, but which is directed at extending the tourism market for the applicant and which has been identified by the Department as a market for the state.

If the project advertises an existing event, the rules require that the advertising be placed in a new geographic market, or

reach a new demographic market, or the use of media where advertising for the event has not previously been placed. Existing Event projects are limited to one year of funding.

The proposal would allow the department to fund a second consecutive year of an existing event project.

Initial Regulatory Flexibility Analysis

NOTICE IS HEREBY GIVEN that pursuant to 227.14 Stats., the proposed rule will have minimal impact on small businesses. The initial regulatory flexibility analysis as required by 227.17 (3) (f), Stats., is as follows:

- (1) Type of small business affected by the rule: None
- (2) The proposed reporting, bookkeeping and other procedures required for compliance with the rule: None
- (3) The types of professional skills necessary for compliance with the rule: None.

Fiscal Estimate

The proposed rule has no fiscal effect.

Contact Person

For additional information about or copies of the proposed rules contact:

Abbie Hill, Joint Effort Marketing Program Coordinator
Telephone: 608/261-6272
Wisconsin Department of Tourism
P.O. Box 8690
Madison, WI 53708-8690
Email: ahill@travelwisconsin.com

Pursuant to the authority vested in the Department of Tourism, by s. 41.17 (4) (g), Stats., and interpreting s. 41.17, Stats., the Department hereby amends the rules as follows:

SECTION 1. TOUR 1.03 (4) is amended to read:

TOUR 1.03 (4) A project described in s. Tour 1.02 (6) (a), or (f), may receive up to 3 years of funding, and the 3 years are not required to be consecutive. A project described in s. Tour 1.02 (6) (b) (c) (d), may receive up to 2 consecutive years of funding. A recipient of funding for a project described in s. Tour 1.02 (6) (d) may apply for another project under s. Tour 1.02 (6) (d) no earlier than the third fiscal year following the fiscal year during which funding was granted. ~~Projects described in s. Tour 1.02 (6) (b) and (c) are limited to one year of funding unless the department determines that a second year of funding is necessary because severe weather, some other natural event or act of God had a substantial negative impact upon the prior year operation of the event.~~ For each year of funding requested, an application shall be submitted and a determination made as provided under this chapter.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Commerce

(CR 05–038)

Ch. Comm 2, relating to miscellaneous fee schedule changes.

Health and Family Services

(CR 05–048)

Ch. HFS 113, relating to certification of first responders.

Natural Resources

(CR 04–106)

Chs. NR 400, 406, 407 and 410, relating to providing the interface of the state air permitting programs with federal changes to air permitting program.

Natural Resources

(CR 04–137)

Ch. NR 47, relating to the gypsy moth suppression program.

Natural Resources

(CR 05–018)

Ch. NR 488, relating to regulations concerning activities during the salvage and transport of equipment containing refrigerants that damage the atmosphere.

Natural Resources

(CR 05–030)

Ch. NR 46, relating to administration of the forest crop law and the managed forest law.

Natural Resources

(CR 05–031)

Ch. NR 10, relating to permitting and applications, hunting, trapping, captive wildlife., agricultural damage and nuisance wildlife.

Public Instruction

(CR 04–076)

Ch. PI 35, relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Transportation

(CR 01–156)

Ch. Trans 100, relating to safety responsibility and damage judgment suspension of operating privileges and motor vehicle registration.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Dietitians Affiliated Credentialing Board (CR 05-021)

An order affecting chs. DI 2 and 3, relating to filing applications for temporary certificates and examinations. Effective 9-1-05.

Natural Resources (CR 04-107)

An order affecting chs. NR 400, 406, 407, and 410, relating to implementing general and registration air permit programs. Effective 9-1-05.

Veterinary Examining Board (CR 04-125)

An order affecting chs. VE 1, 7, 9 and 10, relating to renewal, conduct and continuing education for veterinarians and veterinary technicians. Effective 9-1-05.

Workforce Development (CR 05-056)

An order affecting ch. DWD 272, relating to increasing Wisconsin's minimum wages. Effective 9-1-05.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the July 31, 2005, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

For subscription information, contact Document Sales at (608) 266-3358.

Commerce (CR 04-072)

An order affecting ch. Comm 91, relating to equal speed of access to toilets at facilities where the public congregates. Effective 1-1-06.

Summary of Final Regulatory Flexibility Analysis

Section 101.128, Stats., directs the department to promulgate rules to ensure gender equity in use of toilets at facilities where the public congregate, which is defined as spaces serving more than 500 people. Examples of the types of facilities covered include state or local parks, county or district fairs, and open arenas without a permanent structure for assembly. The proposed rules apply when separate-gender toilet facilities are provided and the code permits unisex toilet facilities to serve the number of people present at these types of facilities where the public congregates. It is anticipated that these rules would not affect small businesses.

The proposed rules of Clearinghouse Rule No. 04-072 are minimum requirements to meet the directives under s. 101.128, Stats., and any exceptions for small businesses would be contrary to the statutory objectives, which are the basis of the rules.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce (CR 05-011)

An order affecting ch. Comm 5, relating to welder, electrician and plumber credentials. Effective 8-1-05.

Summary of Final Regulatory Flexibility Analysis

Sections 101.02 (15) (h) to (j) and 145.14, Stats., grant the Department authority for protecting the health, safety and welfare of the public in public buildings and at places of employment and for licensing of plumbers through the promulgation of administrative rules. The proposed rules of Clearinghouse Rule No. 05-011 are minimum requirements to meet the directive of the statutes, and any exceptions from compliance for small businesses would be contrary to the statutory objectives which are the basis for the rules.

Summary of Comments by Legislative Review Committees

No comments were received.

Employee Trust Funds (CR 04-104)

An order affecting ch. ETF 10, relating to the receipt of facsimile and electronic mail communications by the department. Effective 8-1-05.

Summary of Final Regulatory Flexibility Analysis

The rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 50 of the statutes administered by the Department of Employee Trust Funds.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 04-128)

An order affecting ch. NR 169, relating to the dry cleaner environmental response program. Effective 8-1-05.

Summary of Final Regulatory Flexibility Analysis

The department believes the rule will have a positive economic impact on many small dry cleaning establishments by allowing costs they are now incurring to be eligible for reimbursement when Dry Cleaner Environmental Response Fund monies are available.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On April 27, 2005, the Assembly Committee on Natural Resources held a public hearing. No requests for modification were received as a result of this hearing.

Natural Resources (CR 04-136)

An order affecting ch. NR 46, relating to the administration of the Managed Forest Law. Effective 8-1-05.

Summary of Final Regulatory Flexibility Analysis

This rule does affect small business. Small private forest landowners and forest industries who have enrolled or wish to enroll in the Managed Forest Law and consulting foresters who want to prepare plans for Managed Forest Law entries will be impacted. The Managed Forest Law is a voluntary incentive program, which replaces the property taxes paid with a lower flat rate in exchange for sound forest management.

**Summary of Comments by Legislative Review
Committees**

The rules were reviewed by the Assembly Committee on Forestry and the Senate Committee on Natural Resources and Transportation. There were no comments.

**Transportation
(CR 05-019)**

An order affecting ch. Trans 28, relating to expanding eligibility for Harbor Assistance Program grants to private owners of harbor facilities. Effective 8-1-05.

Summary of Final Regulatory Flexibility Analysis

This proposed rule should not impact small businesses

**Summary of Comments by Legislative Review
Committees**

No comments were received.

**Workforce Development
(CR 04-123)**

An order affecting chs. DWD 12 and 56, relating to public assistance overpayment collection. Effective 8-1-05.

Summary of Final Regulatory Flexibility Analysis

This rule affects small businesses as defined in s. 227.114, Stats., but will not have a significant economic impact on a substantial number of small businesses.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **July 2005**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Commerce

Ch. Comm 5

- S. Comm 5.34 (4) (intro.), (a), (b) and (d)
- S. Comm 5.35 (5) (intro.), (b) and (c)
- S. Comm 5.40 (2)
- S. Comm 5.92 (6) (b) to (d)

Ch. Comm 91

- S. Comm 91.01
- S. Comm 91.02 (1)
- S. Comm 91.03 (1) to (9)
- S. Comm 91.14

Employee Trust Funds

Ch. ETF 10

- S. ETF 10.30 (8) (a)
- S. ETF 10.75 (2) (a)
- S. ETF 10.82 (1) (a), (am) and (2)

Natural Resources

Ch. NR 46

- S. NR 46.15 (2m), (20m), (21) and (27)
- S. NR 46.16 (1), (2) (a) and (e) and (7)
- S. NR 46.165
- S. NR 46.18 (5) and (6)
- S. NR 46.19
- S. NR 46.23 (2) and (4)

S. NR 46.26

Ch. NR 169 (entire chapter)

Pharmacy Examining Board

Ch. Phar 6

S. Phar 6.08

Transportation

Ch. Trans 28

- S. Trans 28.02 (5), (8) and (11)
- S. Trans 28.03
- S. Trans 28.04 (2)
- S. Trans 28.05 (1) (b), (2) (e) and (g)
- S. Trans 28.06 (1)
- S. Trans 28.07 (1) and (3)
- S. Trans 28.08 (2) (intro.), (a), (c), (4) (b) and (5) (intro.)
- S. Trans 28.09 (2) (a), (e), (3) and (4)
- S. Trans 28.10

Workforce Development

Ch. DWD 12

S. DWD 12.23

Ch. DWD 56

- S. DWD 56.02 (9)
- S. DWD 56.04 (2m), (3), (5) (a), (b), (e) and (f)

Editorial corrections

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing.

Employee Trust Funds

Ch. ETF 10

S. ETF 10.01 (7)

S. ETF 10.72

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 106. Relating to the creation of the Governor's Task Force on Waste Materials Recovery and Disposal.

Executive Order 107. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Lance Corporal John Mattek Jr. of the United States Marine corps who lost his life during Operation Iraqi Freedom.

Executive Order 108. Reaffirming executive branch practice relating to the employment of apprentices on state construction projects.

Executive Order 109. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Former Governor and Senator Gaylord Nelson.

Executive Order 110. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Specialist Charles Kaufman of the Wisconsin Army National Guard who lost his life during Operation Iraqi Freedom.

Executive Order 111. Relating to a proclamation declaring a state of emergency relating to drought conditions.

Public notices

Natural Resources

Notice of Availability of a Legislative Report Relating to Wisconsin's Air State Implementation Plan

All interested persons are advised that the Department of Natural Resources (DNR) intends to submit proposed rules as contained in Natural Resources Board Order AM-32-04 (Clearinghouse Rule No. 04-106) to the United States Environmental Protection Agency (USEPA) for incorporation into Wisconsin's air state implementation plan to meet requirements contained in the Federal Clean Air Act 42 USC 7401, et seq. DNR has submitted these proposed rules to streamline the process for incorporating construction permit conditions into operation permits by allowing for the use of administrative or minor operation permit revisions. All supporting information was supplied as a report to the legislative standing committees for environmental matters as required under s. 285.14 (2), Stats. Information on AM-32-04 can be viewed on the following website: <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmoId=187>

If you are unable to make copies of this information from the website and would like copies of the information supplied to the Wisconsin legislative committees, please call Ralph Patterson, DNR, at 608-267-7546 or send a request via email to Ralph.Patterson@dnr.state.wi.us.

**The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840**

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

*Wisconsin
Administrative
Register*

Dated Material. Please Do Not Delay!