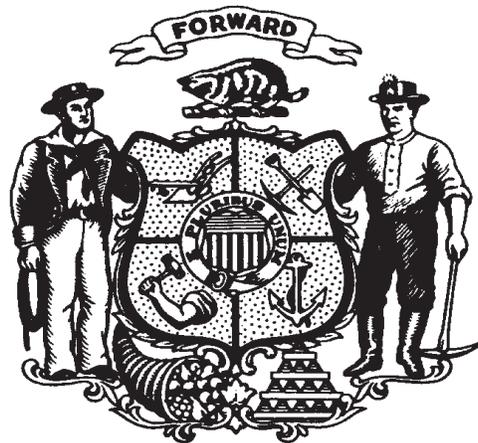


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Table of contents

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:

Fish, Game, etc., Chs. NR 1—

Rules revising **ch. NR 10**, relating to the 2005 migratory game bird seasons. **[First Appearance]**

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.

Public Instruction:

Rules relating to the private school proration process.

Rules relating to prorating under the Milwaukee Parental Choice Program.

Veterans Affairs:

Rules relating to the veterans tuition reimbursement program.

Rules relating to the assistance to needy veterans program.

Workforce Development:

Labor Standards, Chs. DWD 270–279

Rules relating to overtime pay for employees performing companionship services.

Scope statements.**Pages 8 to 13**

Commerce:

Rules affecting ch. Comm 2, relating to boiler program fees.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board:

Rules regarding certification of substance abuse professionals transferring to the Department of Regulation and Licensing.

Natural Resources:

Rules affecting ch. NR 10, relating to the regulation of student fees for hunter education.

	Rules affecting ch. NR 108, relating to plan submittal requirements for sewerage systems and water supply systems.
	Rules affecting ch. NR 135, relating to regulation of nonmetallic mining reclamation.
	Rules affecting chs. NR 432 to 435, relating to NO _x and SO ₂ reductions from major stationary sources in Wisconsin to address interstate transport of pollutants.
Regulation and Licensing:	Rules affecting ch. RL 87, Appendix I, to incorporate by reference the revisions to the appraisal standards that will be published in the 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).
	Rules affecting the transfer of credentialing authority of substance abuse counselors, clinical supervisors and prevention specialists (“substance abuse professionals”) to the Department of Regulation and Licensing.
Transportation:	Rules affecting ch. Trans 128, relating to the traffic violation and registration program (TVRP).
Veterans Affairs:	Rules affecting ch. VA 2, relating to a new educational grant program for veterans.
	Rules affecting s. VA 2.01, relating to a new assistance program for needy veterans.
Submittal of rules to legislative council clearinghouse.	Page 14
Commerce:	Rules affecting ch. Comm 48, relating to petroleum products.
Transportation:	Rules affecting ch. Trans 200, relating to specific information signs.
Rule–making notices.	Pages 15 to 18
Commerce:	Hearing to consider revision to ch. Comm 48, relating to petroleum products.
Transportation:	Hearing to consider revision to ch. Trans 200, relating to specific information signs.
Submittal of proposed rules to the legislature.	Page 19
Agriculture, Trade and Consumer Protection:	CR 05–044 – Chs. ATCP 59, 60, 70, 71, 75, 77, 80, 81, 82 and 85, relating to food and dairy fees.
Elections Board:	CR 05–061 – Ch. ElBd 1, relating to identification of individual contributors on campaign finance reports.
Insurance:	CR 05–059 – Chs. Ins 3, 9 and 18, relating to revising requirements for insurers offering defined network plans, preferred provider plans and limited services health organization plans.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board:

CR 05-043 – Ch. MPSW 20, relating to recordkeeping by marriage and family therapists, professional counselors and social workers.

Rule orders filed with the revisor of statutes bureau.

Page 20

Commerce:

CR 05-025 – An order affecting chs. Comm 2, 5 and 41, relating to boilers and pressure vessels.

CR 05-038 – An order affecting ch. Comm 2, relating to fee schedule.

Insurance:

CR 05-028 – An order affecting ch. Ins 17, relating to annual patients compensation fund and mediation fund fees.

Natural Resources:

CR 04-137 – An order affecting ch. NR 47, relating to the gypsy moth suppression program.

CR 05-004 – An order affecting ch. NR 12, relating to the payment program for damage caused by endangered and threatened species.

CR 05-015 – An order affecting ch. NR 20, relating to fishing on the inland, outlying, and boundary waters of Wisconsin.

CR 05-017 – An order affecting chs. NR 10, 12, 15 and 45, relating to hunting and trapping regulation changes.

CR 05-030 – An order affecting ch. NR 46, relating to the administration of the Forest Crop Law and the Managed Forest Law.

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 (Fish, Game, etc., Chs. NR 1—)

Rules adopted revising **ch. NR 10**, relating to the 2005 migratory game bird seasons.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 31, 2005
Effective Date: August 31, 2005
Expiration Date: January 28, 2006

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

Public Instruction (2)

- Rules adopted revising **ch. PI 35**, relating to the private school proration process.

Finding of emergency

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents. Further, procedures must be in place prior to the beginning of the 2005–06 school year to avoid removing pupils from private schools that have lost seats after the prorating process is completed.

Publication Date: August 1, 2005
Effective Date: August 1, 2005
Expiration Date: November 29, 2005
Hearing Date: August 31, 2005

- Rules adopted amending emergency rules revising **ch. PI 35**, relating to prorating under the Milwaukee Parental choice Program.

Finding of emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents.

The rules contained in this order do not apply after December 29, 2005, unless an extension is granted under s. 227.24 (2), Stats.

Publication Date: August 9, 2005
Effective Date: August 9, 2005
Expiration Date: November 29, 2005

Veterans Affairs (2)

- Rules adopted repealing **s. VA 2.04** and repealing and recreating **s. VA 2.02**, relating to the veterans tuition reimbursement program.

Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the veterans tuition reimbursement program under the emergency rule procedure without providing evidence of the necessity of the preservation of the public peace, health, safety, or welfare at sec. 9153 (1) of 2005 Wis Act 25.

Publication Date: August 2, 2005
Effective Date: August 2, 2005
Expiration Date: November 30, 2005

2. Rules adopted repealing and recreating s. VA 2.01, relating to the assistance to needy veterans program.

Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the assistance to needy veterans program under the emergency rule procedure without providing evidence of the necessity of the preservation of the public peace, health, safety, or welfare at sec. 9135 (3k) of 2005 Wis Act 25.

This rule shall take effect on the date of publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Publication Date: August 2, 2005
Effective Date: August 2, 2005
Expiration Date: November 30, 2005

Workforce Development (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.

Scope statements

Commerce

Subject

Chapter Comm 2, relating to boiler program fees.

Objective of the rule. To adjust the boiler program fees so that the revenues collected will cover the department's administration and enforcement costs, and private contractor's costs for inspections conducted on behalf of the department.

Policy analysis

Section 101.19, Stats., requires the department to fix and collect fees by rule which shall, as closely as possible, equal the cost of providing services such as plan examination, inspections, and certification of inspectors. The Department's fees for the boiler program inspection services are contained in chapter Comm 2. The last revision to these fees was initiated in 1999 and went into effect in 2000. At that time, the boiler inspection fees were set at levels that did not cover the cost of providing the inspection services. Fees for permits to operate were set at levels that would allow underwriting of the boiler inspection services provided by the department. This underwriting discourages private contractors from providing the inspections because by contract they cannot charge more than the artificially low inspection fees charged by the department.

This code project will analyze lowering the permit to operate fees and increasing the inspection fees so that both the department's costs and private contractor's costs are covered.

The alternative of not adjusting the boiler program fees will result in the loss of private contractors performing boiler inspections because they cannot recover their actual costs of providing the inspections.

Entities affected by the rule

The rule will affect any entity that owns an object that receives an inspection and a permit to operate under the boiler program. The rule will also affect a private contractor that currently provides, or that proposes to provide, boiler program inspections.

Comparison with federal requirements

There is no existing or proposed federal regulation that addresses the activities to be regulated by the rule.

Statutory authority

Section 101.19 (1) (b), Stats.

Staff time required

The department estimates that it will take approximately 100 hours to develop this rule. This time includes research and analysis in preparing a fiscal estimate, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

Subject

Amendment of rules of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board to reflect the transfer of credentialing authority of substance abuse counselors, clinical supervisors and prevention specialists ("substance abuse professionals") from the Department of Health and Family Services to the Department of Regulation and Licensing. The amendment will change cross references to Wis. Admin. Code ch 75 regarding certification of substance abuse professionals to certification by the Department.

Objective of the rule. To implement the statutory provisions of 2005 Wisconsin Act 25 §§ 2337am.

Policy analysis

The amendment of administrative rules of the MPSW Board relating to certification as substance abuse professionals is necessary to implement newly created Subchapter VII of chapter 440 of the Wisconsin Statutes pursuant to 2005 Wisconsin Act 25 §§ 2337am.

Statutory authority

Wis. Stat. § 227.11 (2) and subchapter VII of chapter 440, Stats., as created by 2005 Wisconsin Act 25 §§ 2337am.

Comparison with federal requirements

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Entities affected by the rule

County community substance abuse prevention and treatment services programs, clinics, hospitals and other providers of alcohol and other drug abuse counseling.

Staff time required

Total hours: 25.

Natural Resources

Subject

Regulation of student fees for hunter education.

Objective of the rule. Instructors would be allowed to charge students a fee and to keep up to 50% (or up to \$5) of that fee to offset expenses. The remainder of the fee (at least \$5) is to be returned to the department. The department is now required to develop administrative code before the fee can be implemented. Meanwhile, the funding to reimburse instructors has been eliminated. This is a time sensitive issue, as we have many classes going on currently.

Policy analysis

This rule will create a fee of \$10 for all of the hunter education courses. It also requires instructors to return any part of the fee not used for expenses in providing the courses.

Comparison with federal requirements

None

Statutory authority

Language in the recent Budget Bill changed the statutes requiring the Department to promulgate a rule establishing a fee. The new statutory language is listed below.

2005 Wis. Act 25

29.591 (3) INSTRUCTION FEE. The department shall promulgate a rule establishing a fee for the course of instruction under the hunter education program and the bow hunter education program. If the department offers an advanced hunter education course or an advanced bow hunter education course, the rule may authorize the department to charge an additional fee for those courses. The instructor conducting a course under this subsection shall collect the instruction fee from each person who receives instruction. The instructor may retain up to \$5 for each person who receives instruction from that instructor for allowable costs of instruction, as determined by the department. The instructor shall remit the remainder of the fee, or if nothing is retained, the entire fee, to the department.

Staff time required

This rule requires immediate attention to address the matter of instructor expenses to provide the basic hunter and bowhunter education courses.

Authorization to proceed to public hearing is also requested for the permanent rule.

Natural Resources**Subject**

Chapter NR 108, relating to plan submittal requirements for sewerage systems and water supply systems.

Objective of the rule. The Bureaus of Watershed and Drinking Water and Groundwater both have plan review programs for sewerage and water supply systems per s. 281.41, Statutes. The Records Retention/Disposition Authorizations (RDAs) for both programs classify plan review files as permanent records. These records are of use and are made available to Department staff and to the general public.

In the past, plan review files have been stored in microfiche format but an investigation has now been initiated to assess converting to electronic file storage. In conjunction with this effort it is desirable to investigate possible NR 108 revisions that would give the Department the discretion to require plan submittals in an electronic format or other media or format.

Groups affected would primarily be municipal entities and consulting firms. Plan submittals may also come from private entities that own sewerage or water systems. The Department intends to survey municipalities and consulting firms with regard to their preferences, costs and capabilities with regard to providing electronic plan submittals.

Policy analysis

The policy change to be evaluated is changing from microfiche to electronic records. The Bureaus believe it may be cost-effective to make this change and that electronic records would provide benefits in terms of records accessibility and possible integration with computer databases or web-based systems.

Comparison with federal requirements

Proposal conforms with federal regulations.

Statutory authority

Section 281.41, Stats.

Staff time required

Total staff time is estimated to be 144 hours.

Natural Resources**Subject**

Chapter NR 135, relating to regulation of nonmetallic mining reclamation.

Policy analysis

The proposed rule changes would modify existing procedures regarding administration of the nonmetallic mining reclamation program as implemented through Chapter NR 135, Wis. Adm. Code.

Chapter NR 135, Wis. Adm. Code, has been in effect since December 2000. In that time, all required counties and numerous local units of government have successfully begun implementation of nonmetallic mining reclamation programs as provided by statute. As a result of nearly five years of experience gained in administration of the program, the need for refinement of certain procedures and clarification of existing language has become apparent. These rule changes will address those needs as well as remove “start-up” language from the rule that is no longer applicable.

A significant rule change concerns the timing of submittal of annual reports and fees and also the basis of the amount of the fees. Currently operators must pay fees to the regulatory authority on or before December 31st of each year. The amount of the fee is based on a projection of unreclaimed acres that will exist at the end of the following year. In addition, shortly after the end of each calendar year, operators are required to submit an annual report documenting the actual unreclaimed acreage that exists at the end of that year. The need for two separate submittals and projection of unreclaimed acres has led to confusion on the part of operators and regulatory authorities. Modifying the procedures so that only one submittal is required and basing the fees on actual unreclaimed acreage at the end of a calendar should help to clarify the situation.

Potentially significant changes involve review and possible modification of the requirements related to financial assurance mechanisms and also in regard to conflict resolution and appeal procedures. Various stakeholders have raised concern with the current requirements and have suggested that modifications should be considered.

Lastly, various minor changes will involve removal of provisions that are no longer operative and minor wording changes to address very specific issues that have arisen over the past five years. Numerous provisions were included in the rule to address special permitting and review processes for operations that were active at the time of rule promulgation. Examples of wording changes and clarifications include incorporating counties into the definition of “municipality”, and clarifying the one-acre exemption provision.

The rule changes will be developed in consultation with the Nonmetallic Mining Advisory Committee, a nine-member advisory body created by administrative rule. In addition, it may also be necessary to form a dedicated Technical Advisory Committee in order to effectively solicit input from affected stakeholders. If formed, a Technical Advisory Committee

would likely include representatives from county and local units of government, nonmetallic mine operators, environmental groups, consultants and interested citizens.

Entities affected by the rule

The parties most affected by the proposed rule changes include nonmetallic mine operators and county and municipal nonmetallic mining reclamation regulatory authorities.

Comparison with federal requirements

There are no comparable federal regulations pertaining to nonmetallic mining reclamation.

Statutory authority

Sections 295.12 and 227.11, Stats.

Staff time required

Approximately 250 hours of staff time will be required to complete the rule.

Natural Resources

Subject

Chapters NR 432 to 435, relating to an enforceable program to meet US EPA identified budgets (“Caps”) for Wisconsin’s statewide NO_x and SO₂ emissions in 2009, 2010 and 2015.

Objective of the rule. The proposed rule involves the development and adoption of an emission control program to address US EPA’s Clean Air Interstate Rule (CAIR) (<http://www.epa.gov/cair/index.html>). CAIR imposes requirements based on a finding of contribution of Wisconsin’s statewide emissions to 8-hour ozone and PM–2.5 nonattainment areas in other states. The federal rule sets summer season and annual NO_x emission budgets and annual SO₂ emission budgets for Wisconsin to address the state’s impact on the ability of downwind nonattainment areas to reach attainment.

The federal CAIR rule provides two basic options for plan development. The state may adopt a model NO_x and SO₂ cap and trade emissions allocation market structure for all electric generating units (EGUs) greater than or equal to 25 MW which US EPA will operate. Alternatively, the state may adopt an enforceable program to obtain an equivalent level of emission reductions from 2009 CAIR baseline emissions projections. Such a program could include a larger universe of sources using a state (or multi–state) program not administered by US EPA. In the later approach, the state must ensure that total emissions will not exceed the CAIR–specified NO_x and SO₂ budgets and the states must also annually track emissions from the electric generating units. A particular monitoring system is required for all the large electric generating units whether or not they are part of the EPA–operated trading program.

The state CAIR Plan is due as a State Implementation Plan (SIP) submittal to EPA by September 10, 2006. The emission reductions necessary to meet the NO_x and SO₂ budgets will also become part of the state’s required SIP for demonstration of attainment for the state ozone nonattainment areas which is due to US EPA by June, 15, 2007. The 2007 Attainment SIP must demonstrate a modeled attainment in Wisconsin areas between 2009 and 2010. To meet these requirements emission controls must be implemented during the prior ozone seasons – as early as 2008 for Basic ozone areas and 2009 for Moderate ozone areas.

There are additional related requirements that the state will need to pursue during the same timeframe to address large stationary source emissions in regard to regional ozone, regional PM–2.5 and regional haze. These programs include:

1. Reasonably Available Control Technology (RACT),
2. Reasonably Available Control Measures (RACM),
3. Best Available Retrofit Technology Program (regional haze),

A multi–state agreement between some or all of the states in the Lake Michigan region may be needed to provide the additional levels of emission reduction necessary to meet ozone, PM–2.5 and visibility improvement progress and attainment objectives. However, these programs are not part of this rule package.

The new regulatory requirements to address CAIR will be either an all new NR 400 series of chapters (e.g. ch NR 412–414 or NR 432–435), or, may be partially incorporated into ch. NR 428, Wis. Adm. Code “Control of Nitrogen Compound Emissions”; and, NR 417 “Control of Sulfur Emissions” or NR 418 “Sulfur Emissions Control in Specific Geographic Areas”.

Policy analysis

A requirement in the Clean Air Act (CAA), Section 110 (a)(2)(D) [42 USC 410(a)(2)(D)], calls for the state to ensure that emissions from the state do not contribute to nonattainment or impede maintenance of attainment status in areas outside the state. In CAIR, US EPA has made a finding that Wisconsin’s emissions significantly contribute to downwind nonattainment areas for both ozone and PM–2.5. In CAIR, US–EPA sets future year budgets for two precursors of ozone and PM–2.5 – NO_x and SO₂ – based on a level of control for large electric generating units shown in EPA analyses to be highly cost–effective. CAIR calls for a revision to the state plan (SIP) to ensure a reduction in NO_x and SO₂ emissions sufficient to meet the specified budgets in the years and ozone seasons noted. The state may adopt a model EPA program contained in CAIR that impacts only the electric generation units, or, the state may choose another enforceable mechanism to ensure equivalent reductions occur on an equivalent schedule.

A regional demonstration of attainment for ozone and PM–2.5 will likely require more stringent controls than provided by the average EGU control target(s) contained in EPA’s model rule. Additionally, BART, RACM and RACT requirements may apply to some of the EGU sources and other source categories.

The extent to which NO_x and/or SO₂ controls would go beyond the CAIR budget levels for EGUs relate to costs, health benefits and other air quality effects. The overall control achievable and implemented by the stationary source program(s) for attainment will also be balanced against NO_x reductions in other emitting sector categories (mobile, area, etc.) and potentially from regional and more local sources of volatile organic compounds (VOCs). Other factors in setting EGU and other sector reduction targets may relate to visibility (regional haze) improvement planning needs, Industrial Boiler MACT, state and federal mercury regulation, federal requirements promulgated during rule development, and regional Governors’ agreements addressing regional emission reductions.

Entities affected by the rule

Facilities affected by the rule could include any facility operating a combustion process such as electric generation (EGU), industrial steam generation, process heating, internal combustion engines, or incinerator. The model EPA program

specifically addresses EGUs. Any alternative program addressing the NO_x or SO₂ budgets would focus extensively, but not necessarily exclusively on EGUs due to the high fraction of NO_x and SO₂ emissions that come from power plants.

Comparison with federal requirements

The “NO_x SIP” call, developed in 1998 and applicable in the other Lake Michigan states (but not in WI), provides the most recent indication of a roughly equivalent initial year (2009) level of control expected by Wisconsin EGUs under the CAIR model cap and trade program. The CAIR budgets include a summer season NO_x budget slightly more stringent on average than the NO_x SIP call program. States that adopt the model rule will substitute the CAIR program for the NO_x SIP call program. CAIR calls for an additional level of control by 2015 on an annual basis, beyond the NO_x SIP call. The NO_x SIP call applies to twenty–one eastern states (excluding Wisconsin) to address regional NO_x transport affecting 1–hour ozone attainment. The CAIR program addresses 8–hour ozone, PM–2.5 and regional haze reduction and affects 28 states including Wisconsin.

A major component of the NO_x SIP call is a 70 to 80% emission reduction for the electric utility sector characterized by USEPA as “highly–cost effective”. In comparison, the minimum RACT control required for the Wisconsin control program is defined by the CAA as reasonably available and cost–effective. This definition leads to an expectation that RACT controls would have an allowable cost greater than the highly cost–effective NO_x SIP call control levels. Therefore, electric utility control levels for RACT in the Wisconsin control program are expected to be equivalent to or greater than those which are the basis of CAIR’s control levels.

The federal Acid Rain program allocated emission allowances for annual SO₂ emissions at a level roughly 1/3 below the average uncontrolled levels in 1990. Many Wisconsin and upper–midwest facilities substituted lower sulfur coal to achieve a large increment of their average emission reductions. Many other high emission rate facilities in the eastern US installed scrubber technology that achieved an average 85–95% reduction. CAIR sets regional caps at an average 50% below 2002 Acid Rain allowance levels for 2010 and 65% below the 2002 levels for 2015. In the target years, assuming use of the model cap and trade program, actual emissions could average 45% (2010) and 56% (2015) below otherwise projected acid rain allowance levels on a 28 state regional basis. Because of interstate trading of allocations, current EPA projections suggest actual Wisconsin EGU SO₂ emission reductions under the model program could vary substantially from the overall average 28–state projected levels.

Statutory authority

Clean Air Act Sections 110(a)(2)(D) and 126 [42 USC 410(a)(2)(D) and 42 USC 7426], and ss. 285.11(6) and 285.14 Wis. Stats.

Staff time required

The department estimates approximately 1,200 to 1,500 hours will be required to develop a CAIR NO_x and SO₂ control program and rules.

Regulation and Licensing

Subject

The 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

Objective of the rule. Repeal and recreate Ch. RL 87, Appendix I, to incorporate by reference the revisions to the appraisal standards that will be published in the 2006 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

Policy analysis

Under s. RL 86.01 (2), all appraisals performed by licensed and certified appraisers must conform to the Uniform Standards of Professional Appraisal Practice that is in effect at the time the appraisals are prepared. These rules will incorporate, by reference, the most up–to–date version of USPAP.

Comparison with federal requirements

The Federal Institutions Reform, Recovery, and Enforcement Act (“FIRREA”), 12 U.S.C. 3331 et seq., (Title XI) was enacted in 1989. Under FIRREA, insured financial institutions and insured credit unions are required to obtain the services of a State certified or licensed appraiser for appraisals conducted in connection with “federally related transactions.”

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council is authorized under FIRREA to monitor the requirements established by States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions. *21 USC 3333; Appraisal Subcommittee – Policy Statements Regarding State Certification and Licensing of Appraisers.*

Under FIRREA, real estate appraisals performed in connection with federally related transaction are required to be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. *21 USC 3339; Appraisal Subcommittee – Policy Statements Regarding State Certification and Licensing of Appraisers, Statement 3.*

The appraisal standards promulgated by the ASB are contained in the Uniform Standards of Professional Appraisal Practice (USPAP) and is available on the Appraisal Foundation’s website at:

<http://www.appraisalfoundation.org>.

Statutory authority

The Department of Regulation and Licensing has the statutory authority under ss. 227.11 (2) and 458.24, Stats., to promulgate rules to reflect revisions to the Uniform Standards of Professional Appraisal Practice.

Staff time required

15 hours.

Regulation and Licensing

Subject

Creation of rules to reflect newly created statutory requirements for the transfer of credentialing authority of

substance abuse counselors, clinical supervisors and prevention specialists (“substance abuse professionals”) to the Department of Regulation and Licensing. The rules will establish minimum standards and qualifications for the certification of substance abuse professionals, as well as create definitions of scope of practice, and bases for discipline of credential holders.

Policy analysis

Objective of the rule. To implement the statutory provisions of 2005 Wisconsin Act 25 §§ 2337am.

Policy analysis

The creation of administrative rules for the regulation of substance abuse professionals is necessary to implement newly created Subchapter VII of chapter 440 of the Wisconsin Statutes pursuant to 2005 Wisconsin Act 25 §§ 2337am governing the certification of substance abuse counselors, clinical supervisors and prevention specialists. The proposed rules will implement required credentialing requirements, definitions of scopes of practice and definitions of acts constituting unprofessional conduct.

Statutory authority

Wis. Stat. § 227.11 (2) and subchapter VII of chapter 440, Stats., as created by 2005 Wisconsin Act 25 §§ 2337am.

Comparison with federal requirements

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Entities affected by the rule

County community substance abuse prevention and treatment services programs, clinics, hospitals and other providers of alcohol and other drug abuse counseling.

Staff time required

Estimate the amount of state employee time and any other resources will be necessary to develop the rule.

Total hours: 1150.

Transportation

Subject

Chapter Trans 128, relating to the traffic violation and registration program (TVRP).

Objective of the rule. As authorized by s. 85.13, Stats., ch. Trans 128 establishes policies and procedures regarding operation of the Traffic Violation and Registration Program (TVRP). This program permits local units of government to collect unpaid parking tickets by suspending the registration (license plate) for any vehicle that was ticketed for a parking violation if the ticket is not paid. Unlike traffic citations, parking tickets are issued to vehicles because the driver is usually not present at the time the citation is issued. Accordingly, the collection activities of the local unit of government are directed at the vehicle registrant.

On April 1, 2005, WisDOT published a statement of scope to amend ch. Trans 128 so that it complied with the requirements of 2003 Wis. Act 201 and allows local units of government to suspend vehicle registrations to collect unpaid towing and storage charges associated with nonmoving traffic violations. In working on the rule, staff explained that DMV intends to permit electronic submission of TVRP documentation by program participants. The Department intends to propose to permit electronic submission of TVRP

documentation as part of the rule making in addition to the changes discussed in the earlier statement of scope.

Policy analysis

The Department proposes to permit local units of government to submit TVRP documentation electronically. This should be more efficient both for the local program participants and DMV.

Entities affected by the rule

Any parking authority that participates in the TVRP program that wishes to submit TVRP documentation electronically will be affected. Those that wish to continue to submit paper documentation will be permitted to do so.

Comparison with federal requirements

No federal regulation applies to this case.

Statutory authority

Sections 85.13, 227.11, 345.28 and 345.47 (1) (d), Stats.

Staff time required

40 hours.

Veterans Affairs

Subject

Chapter VA 2, relating to a new educational grant program for veterans.

Objective of the rule. The amendment would implement the legislature’s authorization to administer a new educational grant program for veterans. The legislature authorized the program in the 2005 Wis. Act 25. The objective is to provide implementation criteria for the new program.

Policy analysis

The legislature abolished the two prior educational grant programs upon enactment of the budget bill. The enactment of s. 45.20, Stats., required the department to promulgate rules that promoted the legislative intent. The proposed rules seek to accomplish that goal.

Comparison with federal requirements

The educational grant program is entirely administered under the authority of state law. There is no existing or proposed federal regulation that has any bearing upon the proposed rule.

Statutory authority

Section 45.03 (2), Stats.

Staff time required

Approximately 20 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

Veterans Affairs

Subject

Section VA 2.01, relating to a new assistance program for needy veterans.

Objective of the rule. The repeal and recreation of s. VA 2.01 would implement the legislature’s authorization to administer a new assistance to needy veterans program. The legislature authorized the program in the 2005 Wis. Act 25. The objective is to provide implementation criteria for the new program.

Policy analysis

The legislature abolished the two prior emergency grant programs upon enactment of the budget bill. The enactment

of s. 45.20, Stats., required the department to promulgate rules that promoted the legislative intent. The proposed rules seek to accomplish that goal.

Comparison with federal requirements

The assistance to needy veterans program is entirely administered under the authority of state law. There is no existing or proposed federal regulation that has any bearing

upon the proposed rule.

Statutory authority

Sections 45.03 (2) and 45.40 (3m), Stats.

Staff time required

Approximately 30 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

Submittal of rules to legislative council clearinghouse

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

Commerce

Rule Submittal Date

On August 29, 2005, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

The Department proposes to revise ch. Comm 48, relating to petroleum products.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 28, 2005.

Contact Information

Sam Rockweiler
608–266–0797
srockweiler@commerce.state.wi.us

Transportation

Rule Submittal Date

On August 30, 2005, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

The Department proposes to revise ch. Trans 200, relating to specific information signs.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for October 3, 2005.

Contact Information

Julie A. Johnson
608–266–8810

Rule–making notices

Notice of Hearing

Commerce

(Ch. Comm 48)

[CR 05–081]

NOTICE IS HEREBY GIVEN that pursuant to sections 101.02 (1), 168.04 (1), 168.16 (4), and 227.11 (2) (a) of the Statutes, the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 48 relating to petroleum products.

The public hearing will be held as follows:

Date and Time: **Wednesday, September 28, 2005**

Commencing at 10:30 A.M.

Location: Thompson Commerce Center, Third Floor, Room 3C

201 West Washington Avenue

Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e–mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until October 5, 2005, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E–mail comments should be sent to srockweiler@commerce.state.wi.us. If e–mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708–0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266–0797 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis Prepared by the Wisconsin Department of Commerce

1. Statutes interpreted.

Sections 101.02 (1), 168.04 (1) and (3), 168.05, 168.07, 168.10, 168.11 (1), 168.13, 168.14 (2), and 168.16 (4) of the Statutes.

2. Statutory authority.

Sections 101.02 (1), 168.04 (1) and (3), 168.07 (2), 168.16 (4), and 227.11 (2) (a) of the Statutes.

3. Explanation of agency authority.

Under section 101.02 (1) of the Statutes, the Department is required to adopt reasonable rules relative to the exercise of the Department’s powers and authorities, and to the mode and manner of its inspections. Under chapter 168 of the Statutes, the Department is responsible for inspection of petroleum products that come into Wisconsin. Chapter 168 requires that

these petroleum products meet minimum product–grade specifications as prescribed by rule by the Department; and that the Department’s inspections be conducted, so far as applicable, in accordance with the latest standards produced by ASTM International. The Department also has authority under section 227.11 (2) (a) of the Statutes to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

4. Related statute or rule.

The Department’s grade specifications and inspection requirements for petroleum products are contained in chapter Comm 48. The proposed rule changes for Comm 48 are related to rules in chapter Comm 10 that address inventory controls for motor vehicle fuels, and to rules in chapters Comm 10 and 14 that address storage of flammable and combustible liquids.

5. General summary of proposed rules.

The proposed changes for Comm 48 consist primarily of updating it to be consistent with corresponding changes that are being developed for chapters Comm 10 and 14, and with several recently updated national standards for petroleum products and fuel ethanol. The proposed changes also include several clarifications and refinements relating to administration and enforcement by the Department’s inspectors.

For example, the current rules require identification of a petroleum product as to its name or grade; and prohibit any mixing of dissimilar fuels, dissimilar octane, or dissimilar grade, that would allow fraudulent fuel sales. The rule revision would expand this prohibition to include virtually any unauthorized mixing of these products. This expansion would improve the Department’s ability to verify the inventory control that is required for these products under chapter Comm 10 – because required records of product deliveries could then be directly compared to required records of tank contents and sales volumes, rather than obscured by unknown mixing of fuels with dissimilar grade or dissimilar octane.

The proposed changes for Comm 48 have been developed with assistance from the Department’s Petroleum Products Code Advisory Committee. The members of that citizen advisory committee are as follows:

<u>Name</u>	<u>Representing</u>
Don DeMaster	Wisconsin Small Engine Consortium
Robert S. Elvert	Wisconsin Petroleum Council
Curt Heller	Wisconsin Federation of Cooperatives
Greg Klimek	Wisconsin Motor Carriers Association
Tony Wanta	National Petrochemical & Refiners Assn.
Gary Welch	Renewable Fuels Association
Ed Wolf	Petroleum Marketers Assn. of Wisconsin

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

The Federal Trade Commission establishes requirements for accurate automotive fuel ratings, under Title 16 CFR Part 306, which includes criteria for octane ratings, certification,

and posting. The proposed rule revisions for Comm 48 do not directly address those requirements, and there are no other existing or proposed federal regulations that address the proposed rule revisions.

7. Comparison with rules in adjacent states.

Minnesota, Iowa, Illinois, and Michigan all have requirements addressing the quality of motor vehicle fuels. An Internet–based search showed that Iowa, Illinois, and Michigan similarly apply the most recent, corresponding standards produced by ASTM International. Minnesota and Illinois were found to similarly collect samples of motor fuels, which are then tested appropriately. This search did not reveal whether any of these States similarly prohibit unauthorized mixing of motor fuels, or whether similar efforts are made to verify inventory controls.

8. Summary of factual data and analytical methodologies.

Expanding the current rules to include prohibition of virtually any unauthorized mixing of motor vehicle fuels, and the resulting ability to better verify inventory controls for these products, is based on the Department’s longstanding experience with inspecting these facilities, and on support from the regulated community.

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

An economic impact report was not prepared. Consideration of the potential effects on small business was based on federal guidelines produced by the Small Business Administration’s Office of Advocacy.

10. Detailed summary of proposed rules.

The draft rules include the following substantive changes – and some minor technical revisions, such as renumbering all of the sections.

Comm 48.100 (4) – The included change clarifies that the Department has authority to inspect records, for the purpose of verifying that a facility maintains adequate inventory controls for its petroleum products.

Comm 48.100 (5) – Clarifies that the Department may choose to not investigate minor accidents.

Comm 48.100 (7) (intro.) and 48.300 (10) – Incorporates usage of red tags, into the current Department procedures for stopping sales from noncompliant petroleum storage systems.

Comm 48.100 (7) (c) 6. – Specifies that unauthorized mixing of fuels or fuel grades, as prohibited under Comm 48.590 (1) and (2), is an adequate cause for shutdown of a petroleum storage system.

Comm 48.300 (1) (c) – Adds biofuels to the list of alternative automotive fuels.

Comm 48.300 (3), (5), and (7) – Creates definitions for biofuels, inspection, and motor fuel.

Comm 48.400 – Updates the previously adopted national standards to include the current versions of the standards – and newly adopts ASTM Standards D 1655, 4806, and 5798, for aviation turbine fuels, denatured ethanol fuels, and ethanol fuels, respectively.

Comm 48.500 (1) (d) – Newly requires denatured fuel ethanol and fuel ethanol to comply with ASTM D 4806 and 5798, respectively.

Comm 48.500 (2) (b) – Newly requires aviation turbine fuel to comply with ASTM D 1655.

Comm 48.580 (2) – Adds titles and text to more clearly show how a 100–degree flash point determines whether a fuel must be stored in a labeled, red container, and adds a Note

explaining how the construction of these containers will be addressed in chapters Comm 10 and 14.

Comm 48.590 – Consolidates the code’s currently prohibited actions into one section – and expands the prohibition against unauthorized mixing, to address all mixing, not just mixing that would allow fraudulent sales. In addition, subsection (1) specifically prohibits mixing a lower grade of petroleum product with a higher–labeled grade unless specifically approved in writing by an inspector; subsection (2) allows other blending of dissimilar octane, or dissimilar grades, if specifically approved in writing by an inspector; subsection (3) clarifies that no one may interfere with an inspector’s performance of duties under this code; and subsection (4) clarifies that no one may represent a motor fuel or petroleum product in any manner which conflicts with this code or chapter 168 of the statutes – which would provide a link to the corresponding requirements for biodiesel fuel that are proposed for inclusion in chapter 168, through a draft 2005 bill currently identified as LRB–0240/1.

Comm 48.600 (1) (a) 3. – Deletes sampling and inspection of specialty motor fuels and petroleum products that will not be introduced into the wholesale or retail market stream.

Comm 48.600 (2) (d) – Replaces prescribed sampling times with reasonable sampling times that are determined at the Department’s discretion.

Comm 48.600 (3) (a) (intro.) – Repeals an outdated requirement for the Department to issue an inspection certificate.

Comm 48.600 (3) (b) 1. – Clarifies that a sample container must be closed tightly, and deletes a requirement to take the sample in the presence of a disinterested person.

Comm 48.600 (3) (b) 2. a. – Recognizes that the means of conveyance for an incoming petroleum product may be other than a pipeline or tank car.

Comm 48.600 (3) (b) 3. – Allows sale of a petroleum product that has not been sampled by the Department, if a sample is taken by the recipient in accordance with the code, and the sample is held for seven business days.

Comm 48.650 (1) – Provides reimbursement for the Department, for products that are sent out for testing which cannot be performed by Departmental equipment.

Comm 48.650 (2) – Specifies fees that will be charged for inspections relating to product–performance complaints, mislabeling, accidents, or explosions.

Comm 48.650 (3) – Waives the above reimbursements and fees where the corresponding product is found to comply with Comm 48.

Comm 48.650 (5) – Prescribes continuation of a shutdown if a reimbursement or fee is not paid.

The proposed rules and an analysis of the rules are available on the Internet at the Department of Commerce Web site, through the following series of hyperlinks: <http://commerce.wi.gov/>, Petroleum & Tanks, and Code Revision Drafts & Info. Paper copies may be obtained without cost from Sheldon Schall at the Department of Commerce, Bureau of Petroleum Products and Tanks, P.O. Box 7837, Madison, WI 53707–7837, or at sschall@commerce.state.wi.us, or at telephone (608) 266–0956 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and

normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The proposed rules may affect any business which brings petroleum products into Wisconsin, or which markets petroleum products within Wisconsin.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No new reporting, bookkeeping or other procedures would be required for compliance with the proposed rules.

3. Types of professional skills necessary for compliance with the rules.

No new professional skills would be necessary for compliance with the proposed rules.

4. Rules have a significant economic impact on small businesses.

No. Rules not submitted to Small Business Regulatory Review Board.

Fiscal Estimate

The proposed rules do not contain any significant changes in the department's fees that are charged for administering and enforcing ch. Comm 48. Also, the proposed rules are not expected to create any additional workload costs. Therefore, the proposed rules are not expected to have any significant fiscal effect on the department.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or at cdunn@commerce.state.wi.us.

Notice of Hearing Transportation [CR 05–082]

NOTICE IS HEREBY GIVEN that pursuant to ss. 84.02 (4) (e) and 86.195, Stats., and interpreting s. 86.195 (6) (b), Stats., the Department of Transportation will hold a public hearing in **Room 501 (Eau Claire Conference Room)** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **3rd day of October, 2005, at 10:00 AM**, to consider the amendment of ch. Trans 200, Wisconsin Administrative Code, relating to specific information signs.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 84.02 (4) (e) and 86.195, Stats.

Statutory authority: s. 86.195 (6) (b), Stats.

Explanation of agency authority: The Department has authority to regulate the number, size and types of specific information signs on signposts near interchanges.

Related statute or rule: Section Trans 200.06 (7) (b) 3., Wis. Admin. Code.

Plain language analysis: The current administrative rule allows for up to two types of motorist services to be displayed on each specific information sign. There are four types of motorist services: GAS, FOOD, LODGING, and CAMPING. The proposed rule change would allow for three types of motorist services per specific information sign. The maximum number of specific information signs per interchange exit is not increased (4). The total number of business signs identifying the motorist service available remains limited to six for each specific information sign structure.

Summary of, and preliminary comparison with, existing or proposed federal regulation: The proposed change would update the administrative rule to allow greater flexibility that is consistent with the Federal *Manual on Uniform Traffic Control Devices*, 2003 edition, Part 2, Chapter 2, Section 2F.02, adopted by the Federal Highway Administration pursuant to 23 USC 109(d) and 23 CFR 655.603.

Comparison with Rules in Adjacent States: Michigan: Michigan allows three categories per sign.

Minnesota: Minnesota allows three categories per sign.

Illinois: Illinois allows only two categories per sign.

Iowa: Iowa allows three categories per sign.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Review of changes in Federal Regulations.

Analysis and supporting documentation used to determine effect on small businesses: The rule change is being requested by small business. The cost impact is minimal and voluntary.

Effect on small business: The proposed rule provides additional participation opportunities for small businesses. Since businesses request that they be identified on state-installed signs, the sign application process will enforce the rule. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438–4585.

Fiscal effect and anticipated costs incurred by private sector: The rule amendment will have only a minor fiscal effect for the state. Any private sector costs are permissive.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Richard Moss, Department of Transportation, Division of Transportation System Development, Program Management Section, Room 501, P. O. Box 7986, Madison, WI 53707–7986. You may also contact Mr. Moss by phone at (608) 267–7830.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 200.06 (7) (b) 3. is amended to read:

Trans 200.06 (7) (b) 3. 'Interchanges with fewer facilities.' At interchanges where not more than 3 qualified facilities are available for each of 2 or more types of motorist

services, business signs for 2 types of motorist services may be displayed on the same specific information sign. Not more than 3 business signs for each type of motorist service shall be displayed in combination on a panel. The name of each type of motorist service shall be displayed above its respective business signs, and the exit number shall be displayed above the names of the types of motorist services. At unnumbered interchanges, the legend “NEXT RIGHT (LEFT)” shall be substituted for the exit number. Business signs shall not be combined on a panel when it is anticipated that additional motorist service facilities will become available in the near

future. When it becomes necessary to display a fourth business sign for a type of motorist service displayed in combination, the business signs involved shall then be displayed in compliance with subs. 1. and 2. At interchanges where not more than 2 qualified facilities are available for each of 3 or more types of motorist services, business signs for 3 types of motorist services may be displayed on the same specific information sign. Not more than 2 business signs for each type of motorist service shall be displayed in combination on a panel with 3 or more types of motorist services.

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection (CR 05-044)

Chs. ATCP 59, 60, 70, 71, 75, 77, 80, 81, 82 and 85,
relating to food and dairy fees.

Elections Board (CR 05-061)

Ch. ElBd 1, relating to identification of individual
contributors on campaign finance reports.

Insurance (CR 05-059)

Chs. Ins 3, 9 and 18, relating to revising requirements for
insurers offering defined network plans, preferred
provider plans and limited services health organization
plans.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

(CR 05-043)

Ch. MPSW 20, relating to recordkeeping by marriage
and family therapists, professional counselors and social
workers.

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.

**Commerce
(CR 05-025)**

An order affecting chs. Comm 2, 5 and 41, relating to boilers and pressure vessels.
Effective 11-1-05.

**Commerce
(CR 05-038)**

An order affecting ch. Comm 2, relating to fee schedule.
Effective 11-1-05.

**Insurance
(CR 05-028)**

An order affecting ch. Ins 17, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2005.
Effective 11-1-05.

**Natural Resources
(CR 04-137)**

An order affecting ch. NR 47, relating to the gypsy moth suppression program.
Effective 11-1-05.

**Natural Resources
(CR 05-004)**

An order affecting ch. NR 12, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to hunting dogs and pets.
Effective 1-1-06.

**Natural Resources
(CR 05-015)**

An order affecting ch. NR 20, relating to fishing on the inland, outlying, and boundary waters of Wisconsin.
Effective 12-1-05 and 4-1-06.

**Natural Resources
(CR 05-017)**

An order affecting chs. NR 10, 12, 15 and 45, relating to hunting and trapping regulation changes.
Effective 11-1-05 and 2-1-06.

**Natural Resources
(CR 05-030)**

An order affecting ch. NR 46, relating to the administration of the Forest Crop Law and the Managed Forest Law.
Effective 11-1-05.

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