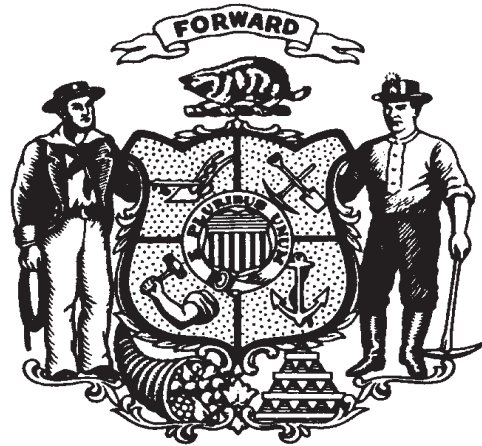


# Wisconsin Administrative Register

No. 600



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## Emergency rules now in effect

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*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](http://www.legis.state.wi.us/rsb/code).*

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### Commerce

A rule adopted creating **s. Comm 2.33 (5)**, relating to manufactured home certificate of title fees.

#### Exemption From Finding of Emergency

Section 76 (2) of 2005 Wisconsin Act 45 permits the Department of Commerce to promulgate rules required under sections 101.9205 (3), 101.9208 and 101.9213 (8), Stats., as amended by 2005 Wisconsin Act 45, by using the emergency rulemaking procedure under section 227.24, Stats., except that the department is not required to provide evidence that the emergency rule is necessary for the preservation of public peace, health, safety or welfare and is not required to provide a finding of emergency.

The current statutes establish specific minimum fees that the department must charge for conducting a file search, for providing various services related to the titling of manufactured homes, and for providing certain notices related to security interests in manufactured homes. 2005 Wisconsin Act 45 removes those fees, effective December 1, 2005, from the statutes and requires the department to establish, by rule, the fees for those services. The emergency rule establishes the required fees in the department's fee schedule, chapter Comm 2, without any changes in the fees that have been charged under the current statutes.

The Act also requires the department to assess a new fee to fund a manufactured housing rehabilitation and recycling grant program. The emergency rule establishes that fee to be

approximately the same as the environmental impact fee that is no longer assessed.

**Publication Date:** November 29, 2005  
**Effective Date:** December 1, 2005  
**Expiration Date:** See section 76 (2) 2005 Wis. Act 45.  
**Hearing Date:** January 6, 2006

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### Elections Board

Rules adopted creating **s. ElBd 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, s. ElBd 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.



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## Insurance

Rules adopted amending s. **Ins 8.49 Appendix 1**, Wis. Adm. Code, relating to small employer uniform employee application for group health insurance.

### Finding of emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The federal government will be implementing Medicare Part D insurance for prescription drugs effective January 1, 2006, therefore s. **Ins 8.49 Appendix 1** needs to reflect accurately the status of applicants as it relates to Medicare Part D enrollment. Further, also effective January 1, 2006, the federal government requires employers or insurers to provide an employee specific information on how to elect insurance coverage after a qualifying event subsequent to have waived coverage in accordance with 45 CFR 146.117 (c) (1). In order to have these changes in place prior to January 1, 2006, the rule must be promulgated to add these modifications.

These changes include the ability for the employee applicant to indicate that they carry Medicare Part D effective January 1, 2006 and amends one sentence in the notice portion of the wavier section of the application to add information on how an employee following a qualifying event may opt to obtain health insurance coverage after initially waiving insurance coverage through the small employer group health insurance plan.

**Publication Date:** November 4, 2005

**Effective Date:** November 4, 2005

**Expiration Date:** April 3, 2006

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## Natural Resources (4) (Fish, Game, etc., Chs. NR 1—)

- Rules adopted revising **chs. NR 46 and 47**, relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules that govern the managed forest law. The state legislature has delegated the appropriate agencies rule-making authority to administer the managed forest law. State statute governing the managed forest law was amended on July 25, 2005 with an initial applicability date of June 1, 2005. This order is designed to bring the administrative code into conformity with the state statutes that govern the managed forest law. Normal rule-making procedures will not allow the establishment of changes necessary to continue processing petitions for managed forest law received from June 1, 2005 to July 1, 2005 (petition deadline). Failure to process these petitions will result in a delay in designation of these lands as managed forest land and a failure to meet statutory deadlines for designation.

**Publication Date:** October 4, 2005

**Effective Date:** October 4, 2005

**Expiration Date:** March 3, 2006

**Hearing Date:** October 19, 2005

- Rules were adopted amending s. **NR 19.50** relating to hunter education fees.

### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate fees for safety education courses. The state legislature has delegated to the appropriate agencies rule making authority to regulate and administer these courses. The department must comply with state law. This order is desired to provide necessary funding for continuation of our quality hunter education program. Normal rule-making procedures will not allow the establishment of the changes by September 1. Failure to modify our rules will result in lost revenues and added expense to the hunter education program.

**Publication Date:** October 3, 2005

**Effective Date:** October 3, 2005

**Expiration Date:** March 2, 2006

**Hearing Date:** October 12, 2005

- Rules were adopted amending **ch. NR 47** relating to relating to master logging certification scholarships.

### Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule-making to the Department of Natural Resources. Normal rule-making procedures will not allow the establishment of the rules in time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost revenues and added expense to the Master Logger Certification program.

**Publication Date:** November 15, 2005

**Effective Date:** November 15, 2005

**Expiration Date:** April 14, 2006

**Hearing Date:** December 12, 2005

- Rules were adopted amending **ch. NR 25** relating to commercial fishing for lake trout in Lake Superior.

### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. Failure by the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the



agreement, putting the entire Lake Superior fishery at risk of litigation.

**Publication Date:** December 15, 2005  
**Effective Date:** December 15, 2005  
**Expiration Date:** May 14, 2006  
**Hearing Date:** January 13, 2006  
 [See Notice this Register]

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.

## Natural Resources

### (Environmental Protection – Water Regulation, Chs. NR 300—)

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

## Public Instruction (2)

1. 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:** December 29, 2005  
**Hearing Date:** August 31, 2005

2. 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:** December 29, 2005

## Revenue

Rule adopted revising **s. Tax 2.50** and creating **s. Tax 2.502**, relating to the computation of the apportionment fraction by multistated public utilities and telecommunications companies.

#### Finding of emergency

The Department of Revenue finds that an emergency exists and that a rule order is necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of the following business entities:

- interstate public utilities, other than telecommunications companies, and
- interstate telecommunications companies.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate public utilities.

**Publication Date:** December 5, 2005  
**Effective Date:** December 5, 2005  
**Expiration Date:** May 4, 2006

vehicles in interstate commerce. It is imperative the industry operates under a single set of regulations. Additionally, the Commercial Vehicle Safety Alliance out-of-service criteria is directly formulated to the new hours-of-service. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding and that funding could be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

**Publication Date:** December 1, 2005  
**Effective Date:** December 1, 2005  
**Expiration Date:** April 30, 2006  
**Hearing Date:** February 13, 2006

### Technical College System Board

Rules were adopted creating **ch. TCS 17**, relating to training program grants.

#### Finding of emergency

The Wisconsin Technical College System Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting an emergency is:

The 2005 Wis. Act 25 (the 2005–2007 biennial budget bill) created the training program grants under Wis. Stats. §§ 20.292 (1) (eh) and 38.41. An annual appropriation of \$1,000,000 GPR in was established. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health.

The Act requires the WTCS Board to promulgate rules to implement and administer the awarding of these grants. The Board has begun the permanent rule making process for establishing administrative rules for these grants, but cannot complete the required public hearing and review of these rules prior to the middle of the fiscal year. Therefore, to ensure that business in need of skills training and other education may access these services as soon as possible and that appropriated funds are distributed to technical college districts for this purpose, emergency administrative rules must be established immediately.

**Publication Date:** October 7, 2005  
**Effective Date:** October 7, 2005  
**Expiration Date:** March 6, 2006  
**Hearing Date:** January 4, 2006

### Transportation

A rule adopted amending **s. Trans 325.02**, relating to motor carrier safety regulations.

#### Finding of emergency

The Department of Transportation finds that an emergency exists and 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 on October 1, 2005 the new hours-of-service regulations became effective. The new regulations apply to drivers and carriers transporting property and passengers by commercial

### Veterans Affairs (2)

1. 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:** December 30, 2005  
**Hearing Date:** October 21, 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.

**Publication Date:** August 2, 2005  
**Effective Date:** August 2, 2005  
**Expiration Date:** December 30, 2005  
**Hearing Date:** October 21, 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.

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## Scope statements

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### Agriculture, Trade and Consumer Protection

#### Subject

Food and dairy license fees.

Administrative Code Reference: Chapters ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85, Wis. Admin. Code (Existing).

#### Statutory authority

DATCP has broad authority, under s. 93.07 (1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has specific authority under ss. 93.09 (10), 93.12 (7), 97.17 (4), 97.175 (2), 97.20 (2c) (b), (2g) (b), (2n) (b), (2w) and (4), 97.21 (4m) and (6), 97.22 (2) (b), (4) (am) and (8), 97.27 (3m) and (5), 97.29 (3) (am), (cm) and (5), 97.30 (3m) and (5), and 98.146 (4), Stats., to establish dairy and food license and reinspection fees.

Objective of the rule. Provide adequate funding for state food safety programs without creating excessive fund balances. This rule could increase or decrease license fees for any or all of the following:

- Food processing plants
- Food warehouses
- Retail food establishments
- Dairy plants
- Milk producers (owning or operating dairy farms)
- Buttermakers and cheesemakers
- Milk and food laboratories and water laboratories
- Certified (laboratory) analysts
- Bulk milk tankers
- Bulk milk weighers and samplers
- Cheese graders and butter graders

#### Policy analysis

The Department of Agriculture, Trade and Consumer Protection enforces Wisconsin's food safety laws. Among other things, the department licenses and inspects food processing plants, retail food establishments, food warehouses, dairy plants, dairy farms, buttermakers and cheesemakers, milk and food testing laboratories, water testing laboratories, certified laboratory analysts, bulk milk tankers, bulk milk weigher and samplers, cheese graders and butter graders. These programs are designed to safeguard public health and ensure a safe and wholesome food supply. They also facilitate the sale of Wisconsin dairy and food products in interstate and international markets.

Wisconsin's food safety programs are funded by general tax dollars (GPR) and industry license fees (PR). In 1991, license fees funded about 40% of program costs. The 1993–95 biennial budget act reduced GPR funding and required a higher percentage (50%) of license fee funding. Annual program costs increase due to external factors, such as inflation and statewide pay increases, which are not under the department's control. Because of these factors, fees were raised again in 1998. Due to increased expenses and reductions in GPR, fees were again raised in 2006. The department estimates a balance at the end of FY 2007–2008 that is less than one month's operating expenses. In FY

2007–2008 or the following year, new fee schedules may need to be in place to ensure the account has sufficient revenues and is not in a deficit.

The department is not yet able to determine whether, or to what extent, specific license fee increases may be needed, but it will seek fee increases if it concludes that revenues will not be sufficient to maintain adequate food safety inspection services in FY 2007–2008 or the following year. The department could also decrease license fees if excessive fund balances are projected, although that does not appear likely at this time.

#### Comparison with federal requirements

There are no existing or proposed federal regulations related to the licensing fees of DATCP–licensed food processing plants, food warehouses, retail food establishments, dairy plants, milk producers, buttermakers, cheesemakers, milk and food testing laboratories, water testing laboratories, certified laboratory analysts, bulk milk tankers, bulk milk weighers and samplers, cheese graders or butter graders operating in Wisconsin.

#### Entities affected by the rule

License fee changes could affect any of the following: milk producers, dairy plants, food processing plants, food warehouses, retail food stores, milk and food testing laboratories, water testing laboratories, certified laboratory analysts, milk haulers, buttermakers, cheesemakers, butter graders, or cheese graders licensed by DATCP. Many of these licensed entities are "small businesses."

#### Policy Alternative:

- Keep food and dairy license fees at their current levels. If the department continues to inspect food and dairy establishments at the current frequency, this may produce a deficit in the food safety program revenue account beginning in FY 2007–08.

- Reduce the current frequency of food safety inspection. This could have the following consequences:

- Increased food safety risks. In 1990, a Food Safety Task Force found that the department was not inspecting food establishments with adequate frequency, and recommended increased inspection for food safety. (This finding was limited to food, not dairy, establishments.) As a result, during the past decade, as the number of dairy farms has decreased, inspection resources have been reallocated to other, higher risk food inspection activities (e.g., food processors and food retail establishments that process potentially hazardous food).

- Interstate sales of milk and dairy products would be jeopardized. Wisconsin sells approximately 85 percent of its dairy output in interstate commerce. Dairy inspection frequency is dictated by the interstate Pasteurized Milk Ordinance (PMO), and cannot be unilaterally altered by the State of Wisconsin. If the department fails to inspect at the frequency dictated by the PMO, the federal Food and Drug Administration will decertify the state, and other states may then refuse to accept shipments of grade A milk and dairy products from Wisconsin. This will cripple Wisconsin's dairy industry.

Statutory Alternatives: None.



**Staff time required**

The department estimates that it will use approximately 0.5 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, consulting with stakeholders, holding public hearings, and communicating with other affected persons and groups. The department will assign existing staff to develop this rule.

**Barbering and Cosmetology Examining Board****Subject**

Creating an administrative rule relating to practice standards for barbering and cosmetology licensees when they are performing services outside of a licensed establishment. In today's society, there is a demand for licensed barbers and cosmetologists to provide services in nontraditional settings. The value of sanitation and cleanliness remains a concern in these settings outside of a licensed establishment. The board wishes to address these concerns by rule.

**Policy analysis**

*Objective of the rule.* To ensure that licensees comply with all practice standards, including sanitation and cleanliness, when such services are performed in a nontraditional setting outside of a licensed establishment. This rule would serve to protect the public when receiving cosmetology services outside of a licensed establishment.

**Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives.**

Current rules provide that barbering and cosmetology licensees shall not provide personal care services outside of a licensed establishment except for persons who are unable to leave their homes because of illness or disability, persons in hospitals, nursing homes, and correctional or other institutions. Current rules also state that licensees shall comply with all practice standards for services taking place outside of a licensed establishment. This proposed rule would explicitly state that these practice standards that must be complied with outside of a licensed establishment would be required whether or not such services were performed in return for compensation.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2) and 454.08, Stats.

**Comparison with federal requirements**

There is none.

**Entities affected by the rule**

Barbering and cosmetology licensees.

**Staff time required**

300 hours.

**Barbering and Cosmetology Examining Board****Subject**

Creating a rule change to s. BC 2.03, Barbering and Cosmetology Practice Standards, to prohibit discrimination in the providing of services by licensees. The Barbering and Cosmetology Examining Board has determined that assuring equal opportunity to obtain services is a valid goal of the profession.

**Policy analysis**

*Objective of the rule.* Currently, there does not exist in the form of an administrative rule, a prohibition of discrimination towards a prospective client by licensed barbers or cosmetologists. The objective of the rule is to provide equal access to barbering and cosmetology services to the citizens of Wisconsin. This rule will also provide enforcement personnel within the Department of Regulation and Licensing with specific language regulating this area that is consistent with Wisconsin law. This language would prohibit licensees from discriminating on the basis of age, race, color, sex, religion, creed, national origin, ancestry, disability, or sexual orientation.

**Existing Policies Relevant to the Rule, New Policies Proposed and Analysis of Policy Alternatives.**

Section BC 2.03 (1) and (7) relate to unprofessional conduct and sexual harassment respectively. These rules could at times be applicable to a situation involving discrimination in the practice of barbering and cosmetology. This rule will provide an explicit prohibition against discrimination.

**Statutory authority**

Sections 15.08 (5) (b) and 227.11 (2), Stats.

**Comparison with federal requirements**

There is none.

**Entities affected by the rule**

Barbering and cosmetology licensees.

**Staff time required**

300 hours.

**Barbering and Cosmetology Examining Board****Subject**

The field of electrology presents unique concerns for sanitation and cleanliness. Creating an administrative rule relating to sanitation and safety standards for electrolysis performed in a licensed cosmetology establishment will assist in clarifying those rules uniquely addressing electrology services.

**Policy analysis**

*Objective of the rule.* To expand the electrologists' sanitation and sterilization guidelines that are pertinent to their own profession. The guidelines will allow a practitioner to develop a knowledge base of infection control and client safety, maintain a state of cleanliness to minimize the transmission of microorganisms and demonstrate expert skills in cleaning and sterilizing reusable instruments and disposal of used needles.

**Existing policies relevant to the rule, new policies proposed and analysis of policy alternatives**

Currently, chapter BC 4 addresses sanitation and safety standards for barbers and cosmetologists. Section BC 4.09 addresses standards of electrolysis. Wisconsin applicants are tested on American Electrology Association and the Centers for Disease Control sanitation and safety standards when applying for licensure, but these standards are not addressed in the Wisconsin code.

Standards need to be developed for use for electrologists and electrology instructors and emphasize the need 1) to consider all clients as potentially infectious, 2) to adhere to infection control precautions for minimizing the risk of exposure to blood or body fluids of all clients, and 3) to reduce

the risk of transmission of infection and disease from client to client, practitioner to client, and client to practitioner.

#### **Statutory authority**

Sections 15.08 (5) (b) and 227.11 (2), Stats.

#### **Comparison with federal requirements**

There is none.

#### **Entities affected by the rule**

Barbering and cosmetology licensees.

#### **Staff time required**

300 hours.

## **Commerce**

#### **Subject**

*Objective of the rule.* The objective of the rule is to create administrative rules under chapter Comm 131 in response to 2005 Wisconsin Act 25. This Act directs the Department of Commerce to develop rules to administer a diesel truck idling reduction grant program. This chapter will address at least the following:

- An explanation of what is meant by auxiliary power unit
- Program eligibility criteria
- Application requirements
- Contract terms and conditions
- Reporting requirements
- Grant disbursement process

#### **Policy analysis**

*Existing policies.* The Department recognizes that there is a need to lower emissions of air contaminants and to decrease energy use from diesel truck engines.

*New policies.* This is a new Wisconsin initiative to encourage the use of idling reduction units on diesel truck engines to reduce the long-duration idling of the truck engine.

*Policy alternatives*

The alternative of not creating this administrative code chapter would result in non-compliance with the statutory mandate in 2005 Wisconsin Act 25.

#### **Statutory authority**

Section 560.125 (5m), Stats., as created by 2005 Wisconsin Act 25.

#### **Staff time required**

The Department estimates that it will take approximately 200 hours to develop this rule. This time includes meeting with affected industry groups, 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.

#### **Entities affected by the rule**

The rule will affect common motor carriers, contract motor carriers, and private motor carriers that transport freight and who apply for a grant under the diesel truck idling reduction grant program.

#### **Comparison with federal requirements**

Although the program is being undertaken in conjunction with the EPA's voluntary SmartWay Transport Partnership, there are no existing or proposed federal regulations that address or impact the activities to be regulated by this rule.

## **Employee Trust Funds**

#### **Subject**

This proposed rule concerns appeals of determinations made by the Department of Employee Trust Funds which are authorized under ch. 40 of the statutes. In particular, this rule will remove the current absolute prohibitions against basing a finding of fact upon hearsay.

#### **Policy analysis**

The purpose of this rule is to allow the Boards hearing appeals of determination made by the Department of Employee Trust Funds to take advantage of any discretion regarding their reliance upon hearsay evidence that may be allowed to administrative tribunals under the Supreme Court decision in *Gehin v. Wisconsin Group Insurance Board*, 278 Wis.2d 111, 692 N.W.2d 572 (2005), or future court decisions interpreting or expanding upon that precedent.

The proposed rule permits the Board hearing the appeal to base its findings of fact upon hearsay when that hearsay is corroborated by other non-hearsay evidence, or in any other circumstances in which Wisconsin courts determine that reliance upon hearsay evidence is permissible in administrative proceedings.

The proposed rule removes the current prohibition in s. ETF 11.12 (2) (b) that, "[n]o finding of fact may be based upon hearsay." The proposed rule adds to the responsibilities of the legal advisor during the Board's quasi-judicial deliberations on an administrative appeal before the Board. The counsel to the Board will have an express duty to advise the board concerning any hearsay evidence in the record and whether the board may rely upon that evidence to make factual findings.

#### **Statutory authority**

Wis. Stat. s. 40.03 (2) (i).

#### **Staff time required**

The Department estimates that state employees will spend 4 hours to develop this rule.

#### **Entities affected by the rule**

The Department of Employee Trust Funds and any person appealing from a determination made by the Department of Employee Trust Funds are potentially affected by this rule. Typically, appellants are participants in the Wisconsin Retirement System, a participant's beneficiary or a dependant covered under one of the other benefit plans administered by the Department of Employee Trust Funds who has been denied a benefit, or who takes issue with the computation of the amount of the benefit or with some other aspect of the Department's administration of the benefit plan.

#### **Comparison with federal requirements**

Aside from the constitutional obligation to provide due process, there is no federal law or regulation applicable to appeals of determinations made by the Department of Employee Trust Funds.



## Natural Resources

### Subject

*Objective of the rule.* This rule change will allow the department to issue turkey tags remaining after the initial drawing in accordance with state statute, which is first-come, first-served. Additionally, this rule updates code language to accurately describe how permits are currently issued (by zone and by time period) and establishes that no person may obtain more than one turkey carcass tag per day.

Authority to promulgate an emergency rule to implement this system was specifically granted in the 2005–07 state budget. A follow-up permanent rule will be presented to the public by way of the 2006 Spring Fish and Wildlife Hearings.

### Policy analysis

The 2005 – 07 state budget created a provision to allow the department to issue turkey permits, remaining after the initial permit drawing, over the counter on a first-come, first-served basis at the cost of \$10 for residents and \$15 for non-residents. The department's intent is to prevent any one individual from hoarding permits, and at the same time make sure that there are a limited number of left over permits that go unused. The intent of the budget proposal was to make sure permits are issued to those who have the ability and desire to use the permits. Therefore, the department recommends that turkey permits remaining after the initial drawing, be made available to customers at a rate of 1 permit per day, with no limit on the number of permits that an individual hunter may obtain in a given license year. By limiting the permits to one per day per hunter it will avoid hoarding and allow hunters equal opportunities at available permits.

### Statutory authority

ss. 29.014, 29.164 (4) (b), and 227.24, Stats.

### Staff time required

131 hours.

### Entities affected by the rule

Turkey hunters will be interested in the outcome of this rule proposal.

### Comparison with federal requirements

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

## Natural Resources

### Subject

*Objective of the rule.* The department will be presenting a rule package pertaining to the eradication and control of CWD in Wisconsin. This rule may include modifications to the deer hunting seasons, management zones and other deer hunting related regulations. This rule is necessary to update rules that were approved by the NRB last year, in order to adapt and modify CWD management strategies based on testing results and hunter success.

### Policy analysis

Adaptive management is essential to effective management and control of Chronic Wasting Disease (CWD) in Wisconsin. Since the discovery of CWD in February of 2002, our wildlife health and wildlife management staff have made major strides in what is known about the extent of the disease in the state, what is known about the hunters attitudes regarding the disease and its management, and through research done here and abroad, what is known about the disease. By annually reviewing, and when necessary modifying zones, harvest strategies and regulations, we are able to adapt our management strategies to more effectively react and use what information is available to our managers. In 2006, we will be forwarding a rule package that will be developed based on hunter surveys, 2005 post-harvest deer season results and population data, and testing results. Proposed changes will not deviate from the previous CWD rule order. The modifications proposed will be consistent with the Department's and the Board's policy of aggressive measures to control the spread of the disease, prevent new areas of disease establishment and to eradicate the disease in areas of known infection.

### Statutory authority

ss. 29.014, 29.063, 29.089, 29.335, 29.336 (2) and 167.31, Stats.

### Staff time required

524 hours.

### Entities affected by the rule

Groups likely impacted will be landowners in close proximity to CWD positive cases, deer hunters, meat processors and other hunting related businesses.

### Comparison with federal requirements

Provided state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of Federal statutes and regulations, regulation of hunting and trapping of native species has been delegated to state fish and wildlife agencies. No federal regulations regarding CWD hunting seasons, zones or harvest regulations have been drafted or implemented. Additionally, none of the proposed rules exceed the authorities granted the states in 50 CFR 10.

## Natural Resources

### Subject

*Objective of the rule.* The Bureau of Wildlife Management recommends promulgating administrative rules that modify sections of chapters NR 10 and 45. These hunting and trapping related rule changes are minor and non-controversial in nature. The intent of these rule changes is to provide clarification to existing rules, simplify regulations, and update administrative code language and references. Specifically, these rules will correct management unit boundaries, clarify trapping requirements, correct cross-references, and update rules on the identification of tree stands on state lands resulting from a change requested by the legislature in 2005.

### Policy analysis

There are no significant policy issues associated with this rule package. Every year the department promulgates a rule order that contains changes that are considered to be minor and non-controversial. This package known as the annual housekeeping order helps to correct inaccuracies and clarify existing regulations.

**Statutory authority**

s 29.014, Stats.

**Staff time required**

152 hours.

**Entities affected by the rule**

Groups likely interested in the outcome of these rule changes include deer hunters, turkey hunters and trappers. However, because of the corrective and non-controversial nature of these changes no groups will be significantly impacted.

**Comparison with federal requirements**

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

## Regulation and Licensing

**Subject**

Wis. Stats. 440.03 (13), Stats. requires that investigations of criminal backgrounds of applicants for or holders of credentials issued by the department or affiliated examining boards be made only pursuant to rules promulgated by the department. The Board of Nursing and other affiliated Boards have expressed a need to expand the scope of criminal background investigations currently authorized by rule for applicants.

**Policy analysis**

*Objective of the rule.* To modify the processes by which the department investigates applications to require criminal background checks for applicants for specified credentials.

The department currently requires routine criminal background checks only for applicants for a private detective license or a private security permit. Under current rules, the department may require an applicant for other professions to be photographed and fingerprinted as a part of the credentialing process, only if there exists reason to believe that the applicant has failed to accurately describe his or her conviction record.

The practice of certain professions impacts so directly upon public health, safety and welfare that criminal background checks should be routinely performed. The Wisconsin board of nursing needs to perform criminal background checks for its applicants to maintain its status as a compact state in the Nurse Licensure Compact (Membership provides for multistate licensure privileges for nursing and increases the availability of nurses throughout the country).

**Statutory authority**

Wis. Stats. ss. 227.11 (2) and 440.03 (13).

**Staff time required**

180 hours.

**Comparison with federal requirements**

The federal government does not directly involve itself in the licensing and regulation of the professions regulated by the Department of Regulation and Licensing.

**Entities affected by the rule**

Applicants for various professions (including nurses and nursing home administrators) will be required to undergo a criminal background check prior to obtaining licensure.

## Transportation

**Subject**

*Objective of the rule.* This rule making will create a new provision in ch. Trans 510, relating to the Transportation Facilities Economic Assistance and Development (TEA) Program. The 2005-2007 Biennial Budget created s. 84.185 (8r), Stats., which requires ethanol plant construction to be competitively bid in order for ethanol plant transportation improvements to be eligible for TEA grants. This information supplements a rule effort and Scope Statement previously published on 11-1-04, incorporating other legislative changes to the program.

**Policy analysis**

While all other public transportation improvements receiving TEA funds must be competitively bid, this will require private entities building ethanol plants to competitively bid plant construction in order to be eligible for TEA funds. States adjoining Wisconsin (IA, IL and MI) which have transportation infrastructure economic development grant programs do not require ethanol plant construction to be competitively bid.

All ethanol plant construction in Wisconsin is currently done by two major contractors located outside Wisconsin. These companies also provide start up assistance and expertise to run these plants early on before turning the plants over for owner operation. Wisconsin contractors have complained that, though qualified, they are not allowed to bid on ethanol plants, that market being controlled by two firms.

Requiring private construction of ethanol plants to be competitively bid in order to receive TEA funds will allow Wisconsin business to compete for this work. It will also likely reduce the cost of ethanol plant construction. Unqualified bidders can still be dismissed, and Wisconsin business can hire expertise to provide ethanol plant start up services. We see the rule change as only good for Wisconsin.

**Comparison with federal requirements**

Not applicable.

**Entities affected by the rule**

Wisconsin communities filing TEA grant or loan applications, engineering consulting firms, Wisconsin concrete contractors, existing ethanol plant construction contractors.

**Statutory authority**

s. 84.185, Stats.

**Staff time required**

40 hours.

## Workforce Development

**Subject**

The adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

**Policy analysis**

When a state agency or local governmental unit constructs a public works project, it must obtain a prevailing wage rate

determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Sections 66.0903 (5) and 103.49, Stats., set initial estimated project cost thresholds for application of prevailing wage rates and require that DWD adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the threshold adjustments are based on changes in the construction cost index published in the *Engineering News-Record*, a construction trade publication. The thresholds for application of the prevailing wage rate laws will be adjusted based on a 4.639% increase in the construction cost index since the thresholds were last adjusted.

Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing materials for a public improvement or public work. Section 779.14 (1s), Stats., requires that the Department adjust the thresholds for application of various requirements in proportion to any change in construction costs since the last adjustment. Pursuant to s. DWD 293.01, these threshold adjustments are

based on changes in the construction cost index published in the *Engineering News-Record*. The thresholds for the payment and performance assurance requirements will be adjusted based on a 12.75% increase in the construction cost index since the thresholds were last adjusted.

**Statutory authority**

Sections 66.0903 (5), 103.49 (3g), 779.14 (1s), and 227.11, Stats.

**Entities affected by the rule**

State agencies, local governmental units, employers in the construction industry who contract for public works projects, and employees of these employers.

**Comparison with federal requirements**

The threshold for application of the federal prevailing wage law is a contract greater than \$2,000. The threshold for application of the federal contractor payment and performance bond requirements is \$100,000. These thresholds are in statute and are rarely adjusted.

**Staff time required**

60 hours.

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## Submittal of rules to legislative council clearinghouse

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

### Commerce

#### Rule Submittal Date

On December 5, 2005, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject

The proposed amends chs. Comm 2, 20–21 and 60–61, relating to erosion control, sediment control and storm water management for the construction of buildings.

#### Agency Procedure for Promulgation

A public hearing will be held on January 18, 2006.

#### Contact Information

If you have questions, please contact:

Lynita Docken

Program Manager

(608) 785–9349

ldocken@commerce.state.wi.us

### Employee Trust Funds

#### Rule Submittal Date

On December 5, 2005, the Wisconsin Department of Employee Trust Funds submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject

The proposed rule revises s. ETF 10.12, relating to separate retirement system investments in the fixed and variable retirement investment trusts.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on January 24, 2006, at 3:00 p.m. in the downstairs Conference Room GA at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, WI.

The department's Office of Legal Services is primarily responsible for this rule.

#### Contact Information

Robert Weber, Chief Counsel

(608) 266–5804

### Natural Resources

#### Rule Submittal Date

On December 8, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject

The proposed rule affects s. NR 25.06, relating to commercial fishing for lake trout in Lake Superior.

#### Agency Procedure for Promulgation

A public hearing on the proposed rule is required and will be held January 13, 2006.

The Bureau of Fisheries Management & Habitat Protection is primarily responsible for the promulgation of the proposed rule.

#### Contact Information

Bill Horns

(608) 266–8782

### Natural Resources

#### Rule Submittal Date

On December 8, 2005, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject

The proposed rule affects chs. NR 439, 460, 462 and 484, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters.

#### Agency Procedure for Promulgation

A public hearing on the proposed rule is required and will be held January 18, 2006.

The Bureau of Air Management is primarily responsible for the promulgation of the proposed rule.

#### Contact Information

Eric Mosher

(608) 266–3010

### Revenue

#### Rule Submittal Date

On December 9, 2005, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject

The proposed rule repeals and recreates Tax 2.50 and creates Tax 2.502, relating to the computation of the apportionment fraction by multistate public utilities and telecommunications companies.

#### Agency Procedure for Promulgation

A public hearing on the proposed rule is required and will be scheduled.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

#### Contact Information

If you have questions, please contact:

Dale Kleven

Income, Sales and Excise Tax Division

Telephone (608) 266–8253

E-mail dkleven@dor.state.wi.us



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## Rule-making notices

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### Notice of Hearing

#### Commerce

#### (Fee Schedule Uniform Dwelling Code Commercial Building Code)

[CR 05-113]

NOTICE IS HEREBY GIVEN that pursuant to ss.101.02 (15) (h) to (j), 101.1205, 101.63 (1) and 101.653 Stats., the Department of Commerce will hold a public hearing on proposed rules under chapters Comm 2, 20, 21, 60 and 61 relating to erosion control, sediment control and storm water management for the construction of buildings.

#### The public hearing will be held as follows:

Date and Time: Wednesday, **January 18, 2006** at 1:00 p.m.

Location: Room 3B, Thompson Commerce Center,  
201 West Washington Avenue, Madison

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. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until January 31, 2006 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. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at [jquast@commerce.state.wi.us](mailto:jquast@commerce.state.wi.us).

This hearing is held in accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 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 of Proposed Rules

##### 1. Statutes Interpreted.

Sections 101.02 (15) (h) to (j), 101.1205, 101.63 (1), and 101.653, Stats.

##### 2. Statutory Authority.

Sections 101.02 (15) (h) to (j), 101.1205 and 101.653, Stats.

##### 3. Related Statute or Rule.

Sections 59.693, 60.627, 61.354, 62.234, 281.16, 281.33, 283.33, Stats.

Chapters NR 151 and NR 216, Wis. Adm. Code

##### 4. Explanation of Agency Authority.

Section 101.02 (15) (h) to (j), Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for public buildings and places of employment. Section 101.63 (1), Stats., grants the Department of Commerce general authority to establish

construction standards for the construction of one- and 2-family dwellings.

Section 101.1205 (1), Stats., directs the department to establish statewide standards for erosion control for constructing public buildings and places of employment.

Section 101.653 (1), Stats., directs the department to establish standards for erosion control for constructing one- and 2-family dwellings. Section 101.653 (2), Stats., directs the department to promulgate rules regarding the administration of erosion control by municipalities.

##### 5. Summary of Proposed Rules.

The Uniform Dwelling Code, chapters Comm 20-25, currently contains standards for the design and construction of one- and 2-family dwellings. The code includes provisions addressing erosion control during construction. The Commercial Building Code, chapters Comm 61-65, contains standards for the design and construction of commercial buildings that serve as public buildings or places of employment. Currently, this code has minimal provisions regarding erosion control and storm water management. The provisions reference Department of Natural Resources rules under chapter NR 216. Chapter Comm 2 contains the fees for various services and processes administered by the Department of Commerce.

The proposed rules consist of updating the Uniform Dwelling Code and the Commercial Building Code in order to reflect current standards under chapters NR 151 and 216. The following is a summary of the major changes being proposed. [The numbers in the brackets indicate where the change can be found in the proposed rules.]

1. Establishing a fee for processing notices of intent regarding the land disturbing construction activities involving one acre or more for commercial building sites. [Comm 2.36]

2. Clarifying that provisions relating to storm water management are not minimum and the codes do not affect municipal authority to enact more stringent ordinances on the subject. [Comm 20.02 (2) (b) and Comm 60.01]

3. Acknowledging that municipalities may enforce more stringent erosion and sediment control provisions in order to comply with obligations under federal Environmental Protection Agency regulations or targeted standards of the Department of Natural Resources, or when the provisions were preexisting prior to January 1, 1994. [Comm 20.02 (2) (e) and Comm 60.10]

4. Establishing a mandate to employ practices that address specific potential sources of soil or sediment deposition. [Comm 20.125 (1) (b) and Comm 60.20 (2)]

5. Establishing performance standards for practices to address erosion and sediment control on sites where less than one acre of land disturbing construction activity is to occur and sites where one or more acres of land disturbing construction activity is to occur. [Comm 20.125 (1) (c) and Comm 60.20 (3)]

6. Establishing monitoring and maintenance provisions for erosion and sediment control. [Comm 20.125 (1) (e) and (f) and Comm 60.21 and 60.22]

7. Establishing storm water management provisions by referencing section NR 151.12. [Comm 20.125 (2) and Comm 60.30]

#### 6. Summary of, and Comparison with Existing or Proposed Federal Regulations.

Under the Federal Clean Water Act, the Environmental Protection Agency has established erosion and sediment control regulations, 40 CFR Parts 9, 122, 123 and 124, for land disturbing activities involving one or more acres at construction sites. The regulations establish a permitting process under the National Pollutant Discharge Elimination System, NPDES, that may be implemented by state jurisdictions. The regulations require the design, implementation and maintenance of best management practices to improve water quality by reducing pollutants in storm water runoff.

The Department of Natural Resources under chapter NR 216 implements the EPA permitting process mandate in Wisconsin. Under section NR 216.42 (4), the Department of Natural Resources recognizes commercial building construction falling under Department of Commerce rules as complying with the Wisconsin Pollutant Discharge Elimination System permitting. That recognition in turns helps to achieve the state's implementation of the EPA permitting process for construction site erosion control.

#### 7. Comparison with Rules in Adjacent States.

The rules of all of the neighboring states, Illinois, Iowa, Michigan and Minnesota basically emulate the regulations of the federal Environmental Protection Agency with respect to permits and the implementation of best management practices for erosion and sediment control for land disturbing construction activities and post construction storm water management. In addition, Minnesota requires that the one-acre disturbed sites utilize some method to treat at least a ½ inch volume of the post-construction storm water runoff. Iowa has established a performance standard of 80 percent of sediment reduction in post construction storm water runoff.

In these states local municipalities have the ability to enact more stringent erosion and sediment control or storm water management provisions.

#### 8. Summary of Factual Data and Analytical Methodologies.

There were no factual data or analytical methodologies used to develop the proposed rules.

#### 9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The proposed rules should have a minimal additional impact on small business. Under current federal expectations and obligations, all businesses are to implement best management practices when undertaking land disturbing construction activities involving one acre or more. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

### Initial Regulatory Flexibility Analysis

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

Any small business that constructs a new building or alters an existing building where land disturbing activity is to occur during the construction will be affected by these rules.

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

If the land disturbing construction activity involves one or more acres, the owner or the owner's agent is required to file a Notice of Intent with the department or an agent municipality certified by the department. In most cases

erosion and soil control plans need to be prepared to indicate the type and location of the control practices to be utilized on the construction site. Also, if the land disturbing construction activity involves one or more acres, a post construction storm water management needs to be developed and implemented. When one or more acres are disturbed, a log needs to be maintained documenting the periodic monitoring and maintenance of the erosion and sediment control practices on the site.

Although these procedures are the legal responsibility of the owner, these are typically delegated to the general contractor undertaking the actual construction. These procedures are mandated under current rules as well as obligations mandated by the federal Environmental Protection Agency. These procedures are standard practice for many building projects.

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

Businesses involved with the construction of buildings will have to become familiar with erosion and sediment control and storm water management or will have to contract with someone who has the expertise.

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

No. Rules not submitted to Small Business Regulatory Review Board

### 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.

### Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

James Quast

Division of Department of Commerce

P.O. Box

Madison, Wisconsin 53701

Telephone (608) 266-9292

or TTY (608) 264-8777

Written comments will be accepted until January 31, 2006

### Fiscal Estimate

Based upon past data, it is anticipated that 600 Notices of Intent will be annually filed with the Department for the construction of commercial building where one or more acres of land disturbing activity will occur. This will result in a revenue increase of \$15,000 per year. This revenue will offset the development and maintenance of a web-based Notice form and filing process.

The proposed rules will not change the Department's administration and enforcement activities with respect to erosion and sediment control and storm water management.



The administration and enforcement of the proposed rules are within the current capabilities of the Department with respect to staffing levels and resources.

Local municipalities may enforce the provisions of the Uniform Dwelling Code, chapters Comm 20–25, and the Commercial Building Code, chapters Comm 60–65, and have the ability and authority to offset enforcement costs by charging the appropriate fees.

The proposed rules will not have a significant fiscal effect on the private sector.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at [www.commerce.wi.gov/SB/](http://www.commerce.wi.gov/SB/). Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), or at telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

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

## Notice of Hearing Employee Trust Funds [CR 05–114]

A public hearing on a proposed revision to ch. ETF 10, relating to separate retirement system investments in the fixed and variable retirement investment trusts will be held on Tuesday, **January 24, 2006**, at 3:00 PM in Conference Room GA at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

### Analysis Prepared by the Department of Employee Trust Funds

Statutes interpreted: Wis. Stat. ss. 40.015 and 40.03 (1) (n) and (2) (q).

Statutory authority: Wis. Stat. s. 40.03 (2) (q).

Explanation of agency authority: The Secretary of the Department of Employee Trust Funds is required to promulgate rules governing the times when separate retirement systems, such as the Milwaukee Public Schools Retirement System, may send or deliver funds to be invested as if part of the fixed or variable retirement investment trust, the withdrawal of those funds, the amounts of money that may be sent, delivered or withdrawn, the valuation of money that has been sent, delivered or withdrawn, and the distribution of investment income among the retirement systems. The Secretary's rules may also modify the basis for accounting or valuation and the investment earnings distribution procedures of the Wisconsin retirement system to the extent necessary to achieve equity among the various retirement systems.

Related statute or rule: Wis. Stats. s. 40.03 (1) (n).

Plain language analysis: The proposed rule revision would better mirror the investment performance of the fixed and variable retirement investment trusts for purposes of valuing the investment accounts of separate retirement systems. The proposed rule will also better assure full compliance with the requirement of Wis. Stats. s. 40.03 (2) (n) that each separate retirement system will pay for the costs of investing and administering funds sent to the Department of Employee Trust Funds.

The main purpose of the proposed rule revision in s. ETF 10.12 is to change the formulas used to value investments of separate retirement system accounts to be consistent with recommended financial industry practice. The revisions will also fine tune transaction definitions to facilitate the most effective implementation of the new formulas. For example, the rules concerning deposits are revised to allow deposits only on the last day of the month rather than the first day.

Section ETF 10.12 currently prescribes an investment valuation formula that is not totally consistent with recommended practice or conducive to establishing levels of process quality assurance. For example, the current rule does not enable a rate of earnings comparison between the separate accounts with the rate of earnings of the trust fund as a whole. Since the existing rule was first implemented, departmental experience and guidance from financial experts of the State of Wisconsin Investment Board have identified ways to improve the valuation method and to add procedures that will help ensure complete and accurate valuations.

In order to avoid violation of the exclusive benefit rule of 26 U.S. Code s. 401 (a) and Wis. Stats. s. 40.015 (1) the proposed rule will also limit the separate retirement systems who may invest in the Public Employee Trust Fund to those retirement systems, as defined by Wis. Stats. s. 40.02 (51), providing additional pension benefits for employees covered by the Wisconsin Retirement System.

Summary of, and comparison with, existing or proposed federal regulations: In order to be qualified under 26 U.S. Code §401(a)(2), A trust forming part of an employer pension plan must be for the exclusive benefit of the employees or their beneficiaries. It is prohibited to use or divert any part of the trust corpus or income for any other purposes.

Comparison with rules in adjacent states: Permitting discretionary investment of a separate trust fund in the public employee's retirement trust appears to be unique to Wisconsin, at least among neighboring states.

Summary of factual data and analytical methodologies: The investment valuation calculation was developed in consultation with the State of Wisconsin Investment Board staff to more accurately mirror the investment performance of the Public Employee Trust Fund as a whole, to adopt industry best practices and to enable the investment and administrative costs for each separate retirement system's funds to be assessed.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: Wis. Stat. s. 40.02 (51) defines "retirement system" in a manner that necessarily excludes all private businesses. So the proposed rule has no effect whatsoever on small businesses.

Anticipated costs incurred by private sector: None.

Effect on small business: No effect.

Agency contact person: Please direct any questions about the proposed rule to Robert Weber, Chief Legal Counsel, telephone (608) 266–5804, e-mail address: [rob.weber@etf.state.wi.us](mailto:rob.weber@etf.state.wi.us), or Bob Willett, Director, Office of Trust Finance and Data Analysis, telephone (608) 266–0904, e-mail [bob.willett@etf.state.wi.us](mailto:bob.willett@etf.state.wi.us). The mailing address for both Mr. Weber and Mr. Willett is Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707.

Place where comments are to be submitted and deadline for submission: Written comments on the proposed rule may be submitted to Robert Weber, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707–7931. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 PM on Wednesday, January 25, 2006.

### Initial Regulatory Flexibility Analysis

The proposed rule has no effect on small businesses.

### Fiscal Estimate

The proposed rule has no fiscal impact on the liabilities or revenues of any county, city, village, town, technical college district or sewerage district and the only school district affected is the Milwaukee Public Schools. That is because, at present, Milwaukee Public Schools is the only separate retirement system investing its assets as permitted under Wis. Stat. § 40.03 (1) (n).

The effect of the proposed rule on the revenues and liabilities of the funds invested by the Milwaukee Public School retirement system, compared to the prior method of valuation is unpredictable and varies under different circumstances. However, the proposed rule more accurately reflects the actual investment experience of the fixed and variable retirement investment trusts of the Public Employee Trust Fund in which the funds are invested.

### Free Copies of Proposed Rule

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707-7931, telephone (608) 266-1071.

## Notice of Hearing Natural Resources (Fish, Game, etc.)

### [CR 05-115]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.041, 29.519 (1) (b) and 227.11 (2) (a), Stats., interpreting ss. 29.014 (1), 29.041, 29.516 (2) and 29.519 (1) (b), Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 25.06 (1) (a), Wis. Adm. Code, relating to commercial fishing for lake trout in Lake Superior. The harvest of lake trout from Wisconsin waters of Lake Superior is guided by the State-Tribal Lake Superior Agreement among the Department and the Red Cliff and Bad River Bands of Lake Superior Chippewa. The Department allocates the State's share of the total harvest of 68,000 lake trout between sport and commercial fishers. The proposed increase in the annual total allowable harvest of lake trout by state-licensed commercial fishers is proportional to the 21.3% increase in the overall State share of the harvest. The proposed rule reserves 2,150 lake trout for state-licensed commercial harvest in Zone W-1 and reserves 8,600 lake trout from Zone W-2. These changes will result in an increase from 886 to 1,075 lake trout in the harvest quota assigned to each state commercial license.

The proposed rule also removes a provision in the calculation of allowable gill net fishing effort by which allowable effort is reduced substantially when lake trout catch rates are unusually high during one fishing period; clarifies the original intent of setting a minimum mesh size in trap nets; alters the boundaries of an area where commercial fishing is prohibited; and changes the boundaries of the Gull Island and Devils Island refuges.

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: Lake Superior commercial lake trout fishers
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills

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 pursuant to ss. 29.014 (1), 29.041, 29.519 (1) (b), 227.11 (2) (a) and 227.24, Stats., interpreting ss. 29.014 (1), 29.041, 29.516 (2) and 29.519 (1) (b), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-46-05(E) relating to commercial fishing for lake trout in Lake Superior. This emergency order took effect on December 15, 2005. This emergency order implements the revised allocation of lake trout to commercial fishers agreed to in the recent amendment of the State-Tribal Lake Superior Agreement.

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

Friday, **January 13, 2006** at 1:00 p.m.

Video conference participation will be available at:

Room 1, CESA #12

618 Beaser Avenue

Ashland

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 Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

### Fiscal Estimate

No fiscal impact anticipated at the state or local level.

The proposed rule, emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until January 25, 2006. 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, emergency rule and fiscal estimate may be obtained from Mr. Horns.

**Notice of Hearing**  
**Natural Resources**  
**(Environmental Protection – Air Pollution**  
**Control)**  
**[CR 05–116]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11 (1), Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 439, 460, 462 and 484, Wis. Adm. Code, relating to incorporation of federal amendments in National Emission Standards for Hazardous Air Pollutants (NESHAP) for industrial, commercial and institutional boilers and process heaters into chs. NR 460 and 462.

The proposed rule will incorporate federal changes to NESHAP for industrial, commercial and institutional boilers and process heaters promulgated by U.S. EPA on September 13, 2004 into ch. NR 463 and make the state rule consistent with the federal rule. The proposed rule establishes 9 subcategories of boilers and process heaters based on size (large, limited use and small) and fuel type (solid, liquid and gaseous). Fuel combustion sources not affected by this rule include electric utility steam generating units, municipal waste combustors, hospital/infection waste incinerators, commercial and industrial solid waste incineration units, and recovery boilers.

The proposed rule specifies emission limits, work practice standards and operating limits for the 9 subcategories of boilers and new vs. existing sources. Emission limits are specified for particulate matter or total selected metals, hydrogen chloride, mercury and carbon monoxide.

The proposed rule is identical to the federal NESHAP, except for punctuation, capitalization, numbering and non-substantive wording and organizational changes made to accommodate state rule form and style requirements and, in some cases, to improve clarity.

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 at:

Wednesday, **January 18, 2006** at 11:00 a.m.  
 Room 511, GEF #2  
 101 South Webster Street  
 Madison

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 Park at (608) 266–1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

There are no anticipated state or local fiscal impact.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Eric Mosher, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until February 3, 2006. 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 AM–28–05 and fiscal estimate may be obtained from:

Proposed Rules  
 Bureau of Air Management  
 P.O. Box 7921  
 Madison, WI 53707  
 Phone: (608) 266–7718  
 FAX: (608) 267–0560

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## Submittal of proposed rules to the legislature

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

### **Agriculture, Trade and Consumer Protection**

**(CR 05–068)**

Chs. ATCP 99, 100 and 101, relating to agricultural producer security.

### **Natural Resources**

**(CR 04–088)**

Ch. NR 326, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways.

### **Natural Resources**

**(CR 05–032)**

Chs. NR 590 and 600 to 690, relating to hazardous waste management.

### **Natural Resources**

**(CR 05–072)**

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

### **Natural Resources**

**(CR 05–083)**

Ch. NR 10, relating to deer hunting season at Straight Lake State Park.

### **Natural Resources**

**(CR 05–085)**

Chs. NR 20 and 25, relating to sport and commercial fishing for yellow perch in Green Bay waters.

### **Natural Resources**

**(CR 05–086)**

Ch. NR 10, relating to deer hunting season and permit issuance regulation changes.

### **Natural Resources**

**(CR 05–088)**

Ch. NR 19, relating to establishing hunter education fees.

### **Transportation**

**(CR 05–095)**

Ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

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## Rule orders filed with the revisor of statutes bureau

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*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.*

**Insurance****(CR 05-066)**

An order affecting ch. Ins 42, relating to actuarial opinions and summaries and affecting small business.  
Effective 3-1-06.

**Natural Resources****(CR 05-039)**

An order affecting chs. NR 460 and 463, relating to the incorporation of federal amendments in national emission standards for hazardous air pollutants.  
Effective 3-1-06.

**Natural Resources****(CR 05-040)**

An order affecting chs. NR 400, 460, 465 and 484, relating to national emission standards for hazardous air pollutants for the surface coating of plastic parts and products and of miscellaneous metal parts and products.  
Effective 3-1-06.

**Natural Resources****(CR 05-073)**

An order affecting ch. NR 20, relating to Lake Winnebago sturgeon spearing.  
Effective 2-1-06.

**Pharmacy Examining Board****(CR 05-078)**

An order affecting ch. Phar 7, relating to prescription records and transfer of prescription order information.  
Effective 2-1-06.

**Transportation****(CR 05-062)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.  
Effective 2-1-06.



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## Rules published with this register and final regulatory flexibility analyses

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*The following administrative rule orders have been adopted and published in the **December 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.*

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

An order affecting chs. ATCP 60, 69, 70, 71, 75, 77, 80, 82 and 85, relating to food and dairy license and reinspection fees. Effective 1-1-06.

#### **Summary of Final Regulatory Flexibility Analysis**

The Department of Agriculture, Trade and Consumer Protection ("DATCP" or "department") licenses and inspects a variety of food processing and handling establishments and individuals in Wisconsin. This rule changes current license fees paid by dairy and food businesses licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). This rule:

- Increases annual license fees, beginning in 2006.

This rule increases existing license fees for milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders.

Wisconsin's food safety programs are funded by a combination of general tax dollars (GPR) and program revenue from industry license fees (PR). In 1991, license fees funded about 40% of program costs. The 1995-97 biennial budget act reduced GPR funding, and increased the percentage of PR funding to 50%. A modest increase in operating costs, recent, significant reductions in GPR, and a significant increase in PR cost caused by the transfer of the grade A milk certification program to DATCP have caused the PR funding proportion to increase to 60%. Because of these shifts in funding and the lapse of a significant amount of PR during the previous two biennia, the department projects a deficit in its food safety budget in FY 2005-06. Fees have not been increased since 1998.

#### **Small Businesses Affected by This Rule**

This rule affects all milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders licensed by the department, including many businesses that would be considered a "small business" as defined in s. 227.114(1)(a), Stats, or under the definition of "small business" as defined in s. 227.114(1), Stats. as amended by 2003 Act 145.

#### **Effects on Small Business**

Increasing license fees as proposed in this rule will affect small businesses. License fees for all categories of milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders will increase.

Small businesses exist in each category of food and dairy establishment, handler or individual.

#### **Steps to Assist Small Business**

The department has attempted to accommodate small businesses and provide a reasonably fair and equitable license fee schedule. This is done by basing fees on the actual costs associated with each category of licensed establishment and then determining further subcategories of establishments based on the size or volume of each establishment and the food products processed or handled by the establishment. Smaller establishments processing and handling food with less potential food safety risks pay lower license fees than large establishments handling foods with higher food safety risks.

#### **Conclusion**

This rule increases food safety license fees, but does not substantially alter the existing license fee requirements for food establishments. This rule requires no additional recordkeeping or other procedures for small businesses. Small businesses will need no additional professional skills or assistance in order to comply with this rule.

#### **Summary of Comments by Legislative Review Committees**

On August 29, 2005, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform and to the Assembly Committee on Agriculture. The Assembly Committee on Agriculture held a hearing on October 13, 2005 and sent the rule back to DATCP requesting modifications to the rule. The department considered this request and made the following modifications to the rule:

- Provisions that would have allowed annual adjustment of license fees have been deleted.
- Provisions that increase the Grade A milk procurement fee rate have been modified to phase in the originally proposed increase over an 18 month period. As modified, this procurement fee rate will increase from \$0.0006/cwt to \$0.0086/cwt of grade A milk on January 1, 2006 and from \$0.0086/cwt to \$0.0096/cwt on July 1, 2007.
- Provisions relating to increases in license fees paid by retail food establishments have been modified to decrease the amount of the fee increase for each retail category. The amount of the decrease matches amounts contained in Table 4 of a memo prepared for Representative Ott by the Legislative Fiscal Bureau on October 21, 2005.

The requested modifications were approved by the DATCP Board and returned the Assembly Committee on Agriculture on November 9, 2005. After receiving the rule with the requested modifications, neither the Assembly nor the Senate Committee took further action.



**Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyor Examining Board  
(CR 04-118)**

An order affecting ch. A-E 6, relating to the names of examinations for land surveyors. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

Pursuant to s. 227.114 (1) (a), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The department's Small Business Regulatory Review Coordinator may be contacted by email at christopher.klein@drl.state.wi.us or by calling (608) 266-8608.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyor Examining Board  
(CR 04-119)**

An order affecting ch. A-E 4, relating to the barrier free design parts of the board's examinations for professional engineers. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

Pursuant to s. 227.114 (1) (a), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The department's Small Business Regulatory Review Coordinator may be contacted by email at christopher.klein@drl.state.wi.us or by calling (608) 266-8608.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Health and Family Services  
(CR 05-080)**

An order affecting ch. HFS 149, relating to Selection and Monitoring of Vendors for the Special Supplemental Food Program for Women, Infants and Children (WIC). Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

The department determined during the initial regulatory flexibility analysis that the proposed rules will affect a substantial number of small grocers and pharmacies, however, the proposed rules will not have a significant economic impact on these small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Insurance  
(CR 05-023)**

An order affecting ch. Ins 3, relating to mortgage guaranty insurance. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore, a final regulatory flexibility analysis is not required.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Marriage and Family Therapy, Professional Counseling and Social Work Examining Board  
(CR 05-041)**

An order affecting ch. MPSW 3, relating to expiration of a temporary credential issued by the Social Worker Section. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

Pursuant to s. 227.114 (1), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The department's Small Business Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us or by calling (608) 266-8608.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Marriage and Family Therapy, Professional Counseling and Social Work Examining Board  
(CR 05-042)**

An order affecting chs. MPSW 2 and 3, relating to postgraduate education and field experience for licensure as a clinical social worker. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

Pursuant to s. 227.114 (1), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The department's Small Business Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us or by calling (608) 266-8608.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Marriage and Family Therapy, Professional Counseling and Social Work Examining Board  
(CR 05-043)**

An order affecting ch. MPSW 20, relating to recordkeeping by marriage and family therapists, professional counselors and social workers. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

Pursuant to s. 227.114 (1), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The department's Small Business Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us or by calling (608) 266-8608.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Natural Resources  
(CR 05-037)**

An order affecting chs. NR 329 and 345, relating to miscellaneous structures and dredging in navigable waterways. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

Any person or small business conducting an activity in navigable waters can qualify for an exemption of apply for a general permit or individual permit. To obtain a permit, small businesses follow the same requirements as other waterfront property owners: complete an application form and submit information to describe their project and demonstrate that it complies with statutory and code requirements to receive a certification.

**Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On September 28, 2005, the Assembly Committee on Natural Resources held a public hearing. No comments or modification requests were received as a result of this hearing.

**Natural Resources  
(CR 05-055)**

An order affecting chs. NR 400, 424, 438 and 445, relating to excluding additional organic compounds for the volatile organic compound (VOC) definition and to VOC emission limits for yeast manufacturing. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rule does not have a significant economic impact on a substantial number of small businesses because it does not impose any new mandates on affected businesses, but, to the contrary, removes the compounds either entirely or in part from regulation as a VOC. Only the recordkeeping and reporting requirement for one compound, t-butyl acetate, could be considered as an additional requirement compared to the current requirement. The only yeast manufacturer in Wisconsin affected by the proposed changes to s. NR 424.05 is not considered to be a small business.

**Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On September 28, 2005, the Assembly Committee on Natural Resources held a public hearing. No comments or modification requests were received as a result of this hearing.

**Natural Resources  
(CR 05-057)**

An order affecting ch. NR 10, relating to the migratory game bird seasons. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

**Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On September 28, 2005, the Assembly Committee on Natural Resources held a public hearing. No comments or modification requests were received as a result of this hearing.

**Pharmacy Examining Board  
(CR 05-029)**

An order affecting ch. Phar 7, relating to the return or exchange of health items. Effective 1-1-06.

**Summary of Final Regulatory Flexibility Analysis**

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us or by calling (608) 266-8608.

**Summary of Comments by Legislative Review Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in **December 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

#### **Agriculture, Trade and Consumer Protection**

##### **Ch. ATCP 60**

S. ATCP 60.02 (4)

S. ATCP 60.04 (2)

##### **Ch. ATCP 69**

S. ATCP 69.01 (5)

S. ATCP 69.02 (6)

##### **Ch. ATCP 70**

S. ATCP 70.03 (2), (2m), (2n), (2r), and (3)

##### **Ch. ATCP 71**

S. ATCP 71.01 (6m) and (8m)

S. ATCP 71.02 (2), (3), (5) (b), (7) (a)

S. ATCP 71.10

##### **Ch. ATCP 75**

S. ATCP 75.02 (2), (3), and (4) (b)

##### **Ch. ATCP 77**

S. ATCP 77.06 (2) (intro.), (4), and (5) (c)

S. ATCP 77.23 (3) (intro.)

##### **Ch. ATCP 80**

S. ATCP 80.04 (1) (a), (b), (2) (b), (3) (b), (5), and (6)

##### **Ch. ATCP 81**

S. ATCP 81.01 (13m)

S. ATCP 81.02

##### **Ch. ATCP 82**

S. ATCP 82.02 (2) (intro.), (3) (b), (4), and (5)

S. ATCP 82.04 (5)

##### **Ch. ATCP 85**

S. ATCP 85.07

#### **Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board**

##### **Ch. A-E 4**

S. A-E 4.05 (1) (c), (2) (b), (3) (c) and (4) (c)

S. A-E 4.08 (1) (c)

##### **Ch. A-E 6**

S. A-E 6.05 (1) and (2) (b)

S. A-E 6.07 (1) and (2)

#### **Health and Family Services**

##### **Ch. HFS 149**

S. HFS 149.02 (6), (14m), (17) and (23)

S. HFS 149.03 (2) (c) and (7) (a), (d) and (e)

#### **Commissioner of Insurance**

##### **Ch. Ins 3**

S. Ins 3.09 (19) (c) and (21)

#### **Marriage & Family Therapy, Counseling & Social Worker**

##### **Ch. MPSW 2**

S. MPSW 2.01 (9) (intro.) and (b)

##### **Ch. MPSW 3**

S. MPSW 3.09 (1)

S. MPSW 3.11 (5)

##### **Ch. MPSW 20**

S. MPSW 20.02 (18)

#### **Natural Resources**

##### **Ch. NR 10**

S. NR 10.01 (1) (b), (g), (u) and (v)

##### **Ch. NR 329**

S. NR 329.01

S. NR 329.02

S. NR 329.03 (9) to (15)

S. NR 329.04 (2) (b), (j) and (k)

##### **Ch. NR 345**

S. NR 345.03 (7k)

S. NR 345.04 (1) (d), (2) (a), (b) and (f) to (j)

##### **Ch. NR 400**

S. NR 400.02 (162) (a) to (z)

##### **Ch. NR 424**

S. NR 424.05 (2) (a) and (c) and (6) (a) and (b)

##### **Ch. NR 438**

S. NR 438.03 (1) (a), (am) and Tables 1 and 2

##### **Ch. NR 445**

S. NR 445.06 (2) (a)

#### **Pharmacy Examining Board**

##### **Ch. Phar 7**

Phar 7.04 (1) (c) to (f), (2) (b) to (d), (3m) and (5)

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## Executive orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 130.** 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 Sergeant First Class Matthew Kading of the United States Army Reserve who lost his life during Operation Iraqi Freedom.

**Executive Order 131.** 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 Benjamin Smith of the United States Army who lost his life during Operation Iraqi Freedom.

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## Public notices

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### Department of Agriculture, Trade and Consumer Protection

#### Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under Wis. Stat. s. 779.41 (1), mechanics or repair businesses who transport, repair or perform any work on personal property at the request of the owner have a statutory lien on the property for the just and reasonable charges associated with the work, and may retain possession of the property until the charges are paid.

Generally, a mechanic's lien under Wis. Stat. s. 779.41, has priority over any previously recorded security interest in the personal property but only for the appropriate charges at the specified dollar amounts below.

Under Wis. Stat. s. 779.41 (1m), the Department is required to annually publish adjusted dollar amounts for charges on repairs to personal property subject to mechanic's liens. The adjustments are based on the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

The Department has determined that current dollar amounts specified under Wis. Stats. ss. 779.41 (1), (1) (a), (1) (b), and (1) (c) shall be increased by 2.66%, according to the prior year annual change in the consumer price index. Thus, the dollar amounts for charges under the mechanic's lien law are adjusted as follows:

Under Wis. Stat. s. 779.41 (1), mechanic's liens generally, \$1,840.

Under Wis. Stat. s. 779.41 (1) (a), mechanic's liens on a trailer or semi-trailer designed for use with a road tractor, \$5,515.

Under Wis. Stat. s. 779.41 (1) (b), mechanic's liens on road machinery, including mobile cranes, trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment, \$9,190.

Under Wis. Stat. s. 779.41 (1) (c) 1. to 4., mechanic's liens on vehicles:

1. More than 10,000 and less than 20,000 pounds, \$3,675.
2. 20,000 pounds or more, but less than 40,000 pounds, \$7,260.
3. 40,000 pounds or more, but less than 60,000 pounds, \$11,030.
4. 60,000 pounds or more, \$14,270.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2005 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

Contact Information:

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