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Emergency Rules Now in Effect

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

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

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

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

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

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

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade and Consumer Protection (3)

1. EmR1038 — Rule adopted to create **section ATCP 21.21**, relating to restricting the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees into this state.

Finding of emergency

(1) Thousand cankers disease is an emerging fungal disease that can be carried by the walnut twig beetle (the beetle is native to this country). The disease poses a serious threat to black walnut trees, an important forest species in Wisconsin. Black walnut is known for its highly valuable lumber, which is used for finished products such as furniture, musical instruments and gun stocks. There are approximately 18.5 million black walnut trees in Wisconsin, with over 13% of them located in the southeastern part of the state. Wisconsin businesses export over \$4 million in black walnut products annually.

(2) Thousand cankers disease was first observed in New Mexico in the 1990's. The disease has spread throughout the western United States, causing dieback and mortality in black walnut trees. In July, 2010, the disease was also confirmed in the Knoxville, Tennessee area. The Tennessee infestation is

the first confirmed infestation east of the Mississippi River, the native range of the black walnut tree.

(3) Thousand cankers disease is currently known to exist in the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Tennessee, Utah and Washington. The disease has not yet been found in Wisconsin.

(4) Thousand cankers disease may be spread by the movement of firewood, nursery stock, and unfinished or untreated wood products. It is important to restrict the import of host materials from infested areas, to prevent the disease from being introduced into Wisconsin. The disease, if introduced into Wisconsin, could cause great damage to Wisconsin's economically-important and environmentally important walnut forest resource.

(5) It is important to restrict the import of host materials from infested areas as soon as possible. Without this emergency rule, host materials may be imported into Wisconsin from infested areas without adequate safeguards to prevent the introduction of thousand cankers disease into this state.

(6) It would take over a year to adopt the necessary import restrictions by the normal rulemaking procedure prescribed in ch. 227, Stats. DATCP is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of a more "permanent" rule by the normal rulemaking procedures. This temporary emergency rule is necessary to protect the public peace, health, safety and welfare, and to help prevent the introduction of a serious plant disease in this state, pending the adoption of a "permanent" rule by the normal procedure.

Publication Date: November 1, 2010

Effective Dates: November 1, 2010 through March 30, 2011

Hearing Date: January 26, 2011

2. EmR1040 — Rule adopted to create **Chapter ATCP 53**, relating to agricultural enterprise areas.

Exemption from Finding of Emergency

Under s. 91.84(2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural preservation area or modifying or terminating the designation of an agricultural preservation area. Notwithstanding s. 227.24(1)(c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24(1)(a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

The department views s. 91.84(2) as authority to adopt permanent rules that shall be published immediately in the Wisconsin Administrative Code.

Publication Date: November 9, 2010

Effective Dates: January 1, 2011 until the Department modifies or repeals the rule

3. EmR1048 — Rule adopted to repeal and recreate **Chapter ATCP 20**, relating to seed labeling and sales.

Finding of Emergency

Pursuant to sections 93.07(1) and 94.45(6), Stats. This emergency rule is also adopted pursuant to the nonstatutory provision in 2009 Wis. Act 28, section 9103(3).

2009 Wis. Act 28 repealed outdated seed standards effective January 1, 2011, and authorized DATCP to adopt new standards by rule. A non-statutory provision, contained in section 9103(3) of Act 28, authorized DATCP to adopt interim rules by the emergency rulemaking procedure under s. 227.24, Stats., without a finding of emergency. Under this non-statutory provision, the interim rules may remain in effect until July 1, 2011 or until the effective date of proposed “permanent” seed rules, whichever date is earlier.

Publication Date: January 1, 2011
Effective Dates: January 1, 2011 through July 1, 2011
Hearing Date: January 11, 2011

Children and Families (2)

Safety and Permanence, Chs. DCF 37–59

1. EmR1034 — Rule adopted to create **sections DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

Exemption From Finding of Emergency

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

Publication Date: September 2, 2010
Effective Dates: September 2, 2010 through the date permanent rules become effective
Hearing Date: October 21, 2010

2. EmR1050 — Rule adopted to repeal **Chapter DCF 38** and revise **Chapter DCF 56**, relating to foster care.

Finding of Emergency

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

In the Child and Family Services Review of Wisconsin’s child welfare system this past year, the federal Administration for Children and Families found that Wisconsin is not operating in substantial conformity with a number of federal requirements. In response to this review, the department has submitted a program improvement plan that commits the department to complete implementation of the levels of care system and the child assessment tool throughout the first quarter of 2011. Implementation must begin immediately to

meet this deadline and subsequent dependent deadlines in the remaining 2 years of the program improvement plan.

Publication Date: January 1, 2011
Effective Dates: January 1, 2011 through May 30, 2011
Hearing Dates: February 8, 15, 28, 2011

Commerce (4)

Financial Resources for Businesses and Communities, Chs. Comm 104—

1. EmR1019 — Rule adopted to create **Chapter Comm 135**, relating to tax credits for investments in food processing plants and food warehouses.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Under sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes, as created in 2009 Wisconsin Act 295, a taxpayer may claim a tax credit for investments in food processing plants and food warehouses during taxable years beginning after December 31, 2009.

Section 560.2056 (4) of the Statutes, as likewise created in 2009 Wisconsin Act 295, requires the Department to (1) implement a program for certifying taxpayers as eligible for the food processing plant and food warehouse investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2009 Wisconsin Act 295, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been or will be incurred during taxable years that began after December 31, 2009. In addition, section 71.07 (3rm) of the Statutes includes a \$1,000,000 tax-credit allocation that became available on May 27, 2010, and expires on June 30, 2010.

Although the Department of Commerce has begun promulgating the permanent rule that is required by 2009 Act 295, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to accommodate allocating the tax credits for the 2009–10 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that will be eligible for the allocation that expires on June 30, 2010.

Publication Date: June 8, 2010
Effective Dates: June 8, 2010 through November 4, 2010
Extension Through: March 11, 2011
Hearing Date: August 17, 2010

2. EmR1026 — Rule adopted creating **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by Section 45 (1) (b) of 2009 Wisconsin Act 265, exempts the Department from providing evidence

that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: July 2, 2010
Effective Dates: July 2, 2010 through November 28, 2010
Extension Through: March 28, 2011
Hearing Date: October 13, 2010

3. EmR1041 — Rule adopted creating **Chapter Comm 103**, relating to certification of disabled–veteran–owned businesses, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by SECTION 101 (1) in 2009 Wisconsin Act 299, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: November 14, 2010
Effective Dates: November 15, 2010 through April 13, 2011
Hearing Date: February 15, 2011

4. EmR1044 — Rule adopted to revise **Chapter Comm 139**, relating to rural outsourcing grants.

Exemption From Finding of Emergency

The Legislature, by SECTION 45 (1) (b) of 2009 Wisconsin Act 265, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: November 28, 2010
Effective Dates: November 28, 2010 through April 26, 2011
Hearing Date: February 16, 2011

Government Accountability Board (2)

1. EmR1035 — Rule adopted to repeal and recreate **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

The Government Accountability Board repeals and recreates chapter GAB 4, Election observers, to establish guidelines for election inspectors and observers alike regarding observation by “any member of the public” of the public aspects of the voting process and regarding the conduct of observers at polling places and other locations where observation of the public aspects of the voting process may take place. The Board finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

Pursuant to s. 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board’s May 5, 2008 decision to decline to reaffirm the

administrative rule EIBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct by which observers must abide.

The Board further finds that given the public interest in the 2010 General Election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers’ conduct and that an emergency rule governing observer conduct must be adopted prior to the General Election to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date: September 24, 2010
Effective Dates: September 24, 2010 through February 20, 2011
Hearing Date: December 13, 2010

2. EmR1049 — Rule adopted to amend **section GAB 1.28**, relating to the definition of the term “political purpose.”

Finding of Emergency

The Government Accountability Board amends s. GAB 1.28(3)(b), Wis. Adm. Code, relating to the definition of the term “political purpose.” Section GAB 1.28 as a whole continues to clarify the definition of “political purposes” found in s. 11.01(16)(a)1., Stats., but repeals the second sentence of s. GAB 1.28(3)(b) which prescribes communications presumptively susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

This amendment to s. GAB 1.28(3)(b) is to the rule that was published on July 31, 2010 and effective on August 1, 2010, following a lengthy two year period of drafting, internal review and study, public comment, Legislative review, and consideration of U.S. Supreme Court decisions. Within the context of ch. 11, Stats, s. GAB 1.28 provides direction to persons intending to engage in activities for political purposes with respect to triggering registering and reporting obligations under campaign financing statutes and regulations. In addition, the rule provides more information for the public so that it may have a more complete understanding as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly.

Pursuant to §227.24, Stats., the Government Accountability Board finds an emergency exists as a result of pending litigation against the Board and two decisions by the United States Supreme Court: *Federal Election Commission (FEC) v. Wisconsin Right to Life, Inc. (WRTL II)*, 550 U.S. 549 (2007) and *Citizens United v. FEC*, 558 U.S. ___, (No. 08–205)(January 21, 2010). Following the effective date of the August 1, 2010 rule, three lawsuits were filed seeking a declaration that the rule was unconstitutional and beyond the Board’s statutory authority: one in the U.S. District Court for the Western District of Wisconsin, one in the U.S. District Court for the Eastern District of Wisconsin, and one in the Wisconsin Supreme Court. On August 13, 2010, the Wisconsin Supreme Court temporarily enjoined enforcement of the August 1, 2010 rule, pending further order by the Court.

In the lawsuit in the U.S. District Court for the Western District of Wisconsin, the parties previously executed a joint stipulation asking the Court to permanently enjoin application and enforcement of the second sentence of s. GAB 1.28(3)(b). On October 13, 2010, the Court issued an Opinion and Order

denying that injunction request. In denying the injunction, the Court noted that “G.A.B. has within its own power the ability to refrain from enforcing, or removing altogether, the offending sentence from a regulation G.A.B. itself created” and emphasized that “removing the language—for example, by G.A.B. issuing an emergency rule—would be far more ‘simple and expeditious’ than asking a federal court to permanently enjoin enforcement of the offending regulation.” *Wisconsin Club for Growth, Inc. v. Myse*, No. 10–CV–427, slip op. at 2 (W.D. Wis. Oct. 13, 2010). The Court further noted that staying the case would give the Board time to resolve some or all of the pending issues through further rulemaking. *Id.*, slip op. at 14.

In addition, the Board, through its litigation counsel, has represented to the Wisconsin Supreme Court that it does not intend to defend the validity of the second sentence of s. GAB 1.28(3)(b) and that it would stipulate to the entry of an order by that Court permanently enjoining the application or enforcement of that sentence.

This amendment brings s. GAB 1.28(3)(b) into conformity with the above stipulation, with the representations that have been made to the Wisconsin Supreme Court, and with the suggestions made in the October 13, 2010, Opinion and Order of the U.S. District Court for the Western District of Wisconsin. The Board finds that the immediate adoption of this amendment will preserve the public peace and welfare by providing a simple and expeditious clarification of the meaning of s. GAB 1.28 for litigants, for the regulated community, and for the general public and by doing so in advance of the 2011 Spring Election and any other future elections.

Publication Date: January 7, 2011
Effective Dates: January 7, 2011 through June 5, 2011
Hearing Date: February 16, 2011

Insurance (3)

1. EmR1042 — Rule to create **section Ins 3.35**, relating to colorectal cancer screening coverage and affecting small business.

Finding of Emergency

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

Beginning December 1, insurers offering disability insurance policies and self-insured governmental plans are required to offer coverage for colorectal cancer screening. In order to ensure there is no gap in coverage the office needs to promulgate guidance as directed s. 632.895 (16m) (d), Stats., in advance of the initial implementation date.

Publication Date: November 29, 2010
Effective Dates: November 29, 2010 through April 27, 2011
Hearing Date: January 25, 2011

2. EmR1043 — Rule to amend **section Ins 3.37 (1) to (5) (intro)**; and to create **sections Ins 3.37 (2m), (3m), (4m) and (5m), and 3.375**, relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business.

Exemption From Finding of Emergency

The legislature by s. 632.89 (4) (b) 2., Stats., provides an exemption from a finding of emergency for adoption of the rule. Section 632.89 (4) (b) 2., Stats., reads as follows:

632.89 (4) (b) 2. Using the procedure under s. 227.24, the commissioner may promulgate the rules under subd. 1., for the period before the effective date of any permanent rules promulgated under subd.1., but not to exceed the period authorized under 227.24 (1) (c) and (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the commissioner is not required to provide evidence that promulgating a rule under this subdivision as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to make a finding of emergency for a rule promulgated under this subdivision.

Publication Date: November 29, 2010
Effective Dates: November 29, 2010 through April 27, 2011
Hearing Date: January 25, 2011

3. EmR1101— Rule adopted to revise **section Ins 6.07 (4) and (9)**, relating to readability and electronic access to insurance policies and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the cost of implementing the Flesch scores and electronic access to policies significantly exceeded anticipated costs for the insurance industry; a review of state resources indicates insufficient staff to timely review the volume of health insurance policy filings resulting from the flesch score requirement; and it is anticipated the federal department of Health and Human Services (“HHS”) will use National Association of Insurance Commissioners recommendations for the development of standards for a uniform summary of benefits and coverage explanation for all potential policyholders and enrollees. Repealing these provisions now before costly system overhauls will save both the industry and the state significant resources. Further, although it was anticipated that the National Association of Insurance Commissioners was planning to implement a national readability standard, such movement has stalled negating the amendment to prior Flesch readability scores.

The changes contained in this emergency rule will restore prior standards and ease financial constraints for the insurance industry.

Publication Date: February 9, 2011
Effective Dates: February 9, 2011 through July 8, 2011

Natural Resources (4)

Fish, Game, etc., Chs. NR 1—

1. EmR1036 — Rule adopted to create **section NR 40.04 (2) (g)** relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health,

safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: September 29, 2010
Effective Dates: September 29, 2010 through: *See bold text above*
Hearing Dates: October 25 to 29, 2010

2. EmR1037 — Rule adopted to create **section NR 27.03 (3) (a)** relating to adding cave bats to Wisconsin's threatened species list.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Wis. Stats., is necessary and justified in establishing rules to protect the public welfare. The proposed rule change seeks to provide protection to Wisconsin cave bat species, which face the imminent threat of white-nose syndrome. White-nose syndrome has spread across 14 states and 2 Canadian provinces in the last 3 years, spreading up to 800 miles per year. Mortality rates of affected bat colonies reach 100%. The disease was located last spring within 225 miles of the Wisconsin's southern boarder and 300 miles from the northern boarder. Because the known dispersal distance of the little brown bat is 280 miles, an affected cave is now located within the dispersal range of Wisconsin little brown bats. Listing the cave bat species before white-nose syndrome has been detected in Wisconsin will allow the Department time to work collaboratively with stakeholders to ensure that appropriate conservation measures are developed and in place when white-nose syndrome is first detected. Because of the speed of white-nose syndrome, the Department would not have time to develop appropriate conservation measures if normal rule-making procedures were used and listing was delayed until after white-nose syndrome was detected in Wisconsin. Based on the current location and known rate of spread of the disease, we anticipate the presence of white-nose syndrome in Wisconsin as early as January 2011.

Publication Date: September 29, 2010
Effective Dates: September 29, 2010 through February 25, 2011
Hearing Dates: October 25 to 29, 2010

3. EmR1039 (DNR # IS-49-10(E)) — Rule adopted to create **sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)** relating to the identification, classification and control of invasive bat species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the

procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: November 3, 2010
Effective Dates: November 3, 2010 through *See bold text above*
Hearing Date: November 29, 2010

4. EmR1045 (DNR # IS-07-11(E))— Rule to repeal **section NR 40.02 (28m)**; to amend **section NR 40.04 (3m)**, **and to repeal and recreate section NR 40.07 (8)**, (all as created by Natural Resource Board emergency order EmR1039, DNR # IS-49-10(E)), relating to the identification, classification and control of invasive species.

Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

Publication Date: December 13, 2010
Effective Dates: December 13, 2010 through *See bold text above*

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400—

EmR1046 (DNR # AM-48-10(E)) — The Wisconsin Natural Resources Board proposes an emergency order to amend **section NR 407.02 (4) (b) (intro.), and Table 3 in 407.05 (5)** and to create **sections NR 400.02 (74m), 400.03 (3) (om), and (4) (go) and (ki), 405.02 (28m), 405.07 (9), 407.02 (8m) and 407.075**, relating to major source permitting thresholds for sources of greenhouse gas emissions and affecting small business.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the forgoing rules into effect prior to the

time that it would take if the Department complied with normal procedures.

On April 1, 2010, the U.S. EPA promulgated the first emission standard for gases contributing to climate change, i.e., greenhouse gases or GHG, which will become effective on January 2, 2011. While these standards target automobile emissions, under the Clean Air Act, this action will unintentionally subject stationary sources across the country to complex prevention of significant deterioration (PSD) and Title V permitting and emission control requirements. U.S. EPA attempted to mitigate this unintended effect by promulgating additional rules, which became effective on June 3, 2010, limiting applicability of the permitting requirements. However, Wisconsin sources will not be affected by the new U.S. EPA rules since existing state statute and administrative code do not contain the same applicability limiting provisions. State rules consistent with those at the federal level must be in effect on January 2, 2011 in order to provide the relief U.S. EPA intended for Wisconsin sources. Without these proposed emergency rules, many sources, including municipal landfills, hospitals, asphalt plants, wastewater treatment plants, small wood fired boilers and agricultural digesters, will be considered major emissions sources of GHG, and therefore subject to the permit and emission control requirements for GHG. These permit and control requirements were never intended or designed to address the type or size of sources that could now be affected. Without the proposed changes, the existing rules would have the potential to overwhelm DNR permitting staff, divert resources away from significant environmental issues, and delay issuance of construction permits for critical projects for expanding businesses.

Therefore, the Department finds that the proposed emergency rules are necessary and appropriate for the preservation of the public welfare.

Publication Date: December 15, 2010
Effective Dates: December 15, 2010 through May 15, 2011
Hearing Date: January 21, 2011

Public Instruction

EmR1051 — Rule adopted to create **Chapter PI 46**, relating to training requirements for individuals administering nonprescription and prescription drug products to pupils.

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:

Section 118.29 (6), Stats., requires the department to approve training in administering nonprescription drug products and prescription drugs. The statute also specifies that no school bus driver, employee, or volunteer may administer a nonprescription drug product or prescription drug, use an epinephrine auto-injector, or administer glucagon unless he or she has received such training. Because the statutory requirement becomes effective March 1, 2011, administrative rules must be in place as soon as possible so that training programs can be established prior to the effective date of the statutes.

Publication Date: December 28, 2010
Effective Dates: December 28, 2010 through May 26, 2011
Hearing Date: January 12, 2011

Regulation and Licensing (4)

1. EmR0827 — Rule adopted creating **section RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Dates: November 26, 2008
 April 13, 2009

2. EmR0828 — Rules adopted to amend **section RL 181.01 (2) (c)**; and to create **sections RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Date: November 26, 2008

3. EmR1031 — Rule adopted revising **Chapters RL 110 to 116**, relating to the regulation of professional boxing contests.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

Publication Date: August 25, 2010
Effective Dates: September 1, 2010 through January 28, 2011
Extension Through: March 29, 2011
Hearing Date: September 20, 2010

4. EmR1032 — Rule adopted creating **Chapters RL 192 to 196**, relating to the regulation of mixed martial arts sporting events.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

Publication Date: August 26, 2010
Effective Dates: September 1, 2010 through January 28, 2011
Extension Through: March 29, 2011
Hearing Date: September 20, 2010

Regulation and Licensing — Barbering and Cosmetology Examining Board

EmR1047 — Rule adopted to revise **Chapters BC 9 and 11**, relating to late renewal and continuing education.

Finding of Emergency

The rule as currently promulgated fails to adequately protect the public to the extent that several provisions are underdeveloped, ambiguous or silent. As a result, inconsistent interpretations and contradictory information has led to significant confusion within the profession. Given that the rules require licensees to comply by March 31, 2011, the errors and omissions need to be addressed immediately so licensees can receive adequate training to provide safe and competent services to the public, and comply with the requirements for renewal of a license.

Publication Date: December 23, 2010
Effective Dates: December 23, 2010 through May 21, 2011

Technical College System Board

EmR1025 — Rule adopted to amend **Chapter TCS 17**, relating to training program grant funds.

Finding of Emergency

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

In May 2010, the Wisconsin C.O.R.E. Jobs Act provided an additional \$1 million GPR for the training program grants authorized in Wis. Stats. §§ 20.292 (1) (eh) and 38.41. 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, with a special emphasis on advanced manufacturing and welding.

The WTCS Board is required to award these funds by June 30, 2011, the end of the current 2009–11 biennium. In addition, s. TCS 17.06 (1), Wis. Adm. Code, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in-kind matching funds, equal to at least 25% of total approved project costs.

Due to the sustained decline in economic conditions and reduction in business revenues, technical college districts report that employers are withdrawing participation in approved training grants because of an inability to fund the 25% match. Therefore, to ensure that business and incumbent workers in need of skills training and other education may access these services and that appropriated funds are distributed to technical college districts for this purpose before the end of the fiscal year, emergency administrative rules eliminating the 25% match requirement must be established immediately.

Publication Date: July 2, 2010
Effective Dates: July 2, 2010 through November 28, 2010
Extension Through: March 28, 2011
Hearing Date: September 28, 2010

Scope Statements

Commerce *Electrical, Ch. Comm 16*

Subject

Revises Chapter Comm 16, relating to electrical standards.

Objective of the Rule

In keeping with the statutory requirement to use nationally recognized standards, the objective of the rulemaking project is to incorporate by reference the 2011 edition of the *National Electrical Code* (NEC) into Chapter Comm 16, Electrical Code. The proposal also may clarify and update the department's administrative rules in Comm 16 relating to the practical safeguarding of persons and property from hazards arising from the installation and use of electricity. This update may be incorporated into more than one rule packages and may include revisions to other chapters affected by the proposal.

The overall objective of the rulemaking project is to have a clearly understood code that reflects the application of current electrical practices, products, standards and materials. To ensure the health, safety and welfare of Wisconsin citizens, it is important that the code and adopted standards are viable and current.

Policy Analysis

Currently, Chapter Comm 16 references the 2008 edition of the NEC which is published by the National Fire Protection Association (NFPA). This rule project will update the state electrical code to the 2011 edition of the NEC while evaluating the electrical requirements in Chapter Comm 16 that add to or modify the requirements in the NEC. The Wisconsin electrical code has incorporated the NEC by reference since 1972.

The alternative of not updating these rules would result in Chapter Comm 16 not being up-to-date with current nationally recognized standards for the design, installation and operation of electrical conductors and equipment in all buildings and structures. Not updating the rules could jeopardize the health, safety and welfare of Wisconsin citizens.

Statutory Authority

Sections 101.63 (1), 101.73 (1), 101.82 (1), Stats.

Comparison with Federal Regulations

There are several existing federal regulations that relate to the installation of electrical wiring and equipment. Some of these regulations require compliance with various editions of the *National Electrical Code* (NEC). An internet-based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to the activities to be regulated by the rule.

- *Title 29 CFR, Part 1910 – Occupational Safety and Health Standards*. Subpart S of this regulation in the Department of Labor contains design safety standards for electrical systems, safety-related work practices and maintenance requirements and safety requirements for

special electrical equipment to safeguard employees in their workplaces. Subpart R contains industrial lighting requirements and safe practices relating to lockouts and emergency lighting requirements for the safety of employees working in special industries.

- *Title 29 CFR, Part 1926 — Safety and Health Regulations for Construction*. Subpart K of this regulation in the Department of Labor contains installation safety requirements, safety-related practices, safety-related maintenance and environmental considerations and safety requirements for special equipment necessary to safeguard employees involved in construction work.

- *Title 30 CFR, Part 75 — Mandatory Safety Standards—Underground Coal Mines*. Subpart F of this regulation in the Department of Labor contains electrical safety requirements for the protection of employees working in underground coal mines.

- *Title 30 CFR, Part 57 — Safety and Health Standards—Underground Metal and Nonmetal Mines*. Subpart K of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground metal and nonmetal mines.

- *Title 24 CFR, Part 3280 — Manufactured Home Construction and Safety Standards*. Subpart I of this regulation in the Department of Housing and Urban Development covers electrical systems in manufactured homes, and requires compliance with the 2005 NEC.

- *Title 7 CFR, Part 1755 — Telecommunications Standards and Specifications for Materials, Equipment and Construction*. This regulation in the Department of Agriculture applies to telecommunications wiring and equipment, and requires compliance with the NEC.

The Occupational Safety and Health Administration (OSHA) revised the general industry electrical installation standard found in Subpart S of Title 29 CFR, Part 1910, effective on August 13, 2007. The Agency determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, and that the requirements in the revised standard, which draw heavily from the National Fire Protection Association's (NFPA) Electrical Safety Requirements for Employee Workplaces (NFPA 70E), and the National Electrical Code (NEC), are reasonably necessary to provide protection from these hazards. This revised standard focuses on safety in the design and installation of electric equipment in the workplace. In the October 29, 2008, *Federal Register*, the Agency revised the regulatory text to clarify OSHA's scope and corrected some typographical errors.

Entities Affected by the Rule

These rules will affect any building, structure or premises where the installation of electrical wiring will be undertaken, other than those buildings, structures or premises regulated by the Public Service Commission. The rule will also affect any designer, installer or inspector of electrical wiring along with owners and frequenters of buildings, structures or premises where electrical wiring is installed. Any entity involved with the electrical industry will be affected.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to be about 1,000 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to develop the rules.

Commerce

Fire Department Safety and Health, Ch. Comm 30
Public Employee Safety and Health, Ch. Comm 32

Subject

Revises Chapters Comm 30 and 32, relating to safety and health standards for public employees and fire department employees.

Objective of the Rule

The potential rulemaking projects are intended to review and update the rules and standards establishing minimum safety and health requirements for public employees and public fire department employees covered under chapters Comm 32 and 30. Under the statutory mandates of s. 101.055, the rules and standards are to provide protection at least equal to that provided for private sector employees under standards promulgated by the federal occupational safety and health administration.

The objectives of this rule project may be incorporated into more than one rule package, and may include revisions to other chapters affected by or associated with the proposal.

Policy Analysis

Chapter Comm 30 establishes safety and health standards for public sector fire department employees. The rules are based upon, reference and adopt several National Fire Protection Association, NFPA, standards:

- Standard for Fire Fighter Professional Qualifications, NFPA 1001
- Standard for Fire Apparatus Driver/Operator Professional Qualifications, NFPA 1002
- Standard for Fire Officer Professional Qualifications, NFPA 1021
- Standard on Live Fire Training Evolutions in Structures, NFPA 1043
- Standard for Automotive Fire Apparatus, NFPA 1901
- Standard for Service Test of Pump Systems on Fire Department Apparatus, NFPA 1911
- Standard for Testing Fire Department Aerial Devices, NFPA 1914
- Standard on Protective Ensemble for Structural Fire Fighting, NFPA 1971
- Standard on Open-Circuit Self-Contained Breathing Apparatus for the Fire Service, NFPA 1981
- Standard on Personal Alert Safety Systems, NFPA 1982
- Standard on Fire Service Life Safety Rope and System Components, NFPA 1983

The standard editions are from the late 1990's with newer editions now available.

Chapter Comm 32 establishes safety and health standards for public sector employees. The rules reference and adopt several OSHA regulations:

- Recording and Reporting Occupational Injuries and Illnesses, Title 29 CFR Part 1904
- Occupational Safety and Health Standards, Title 29 CFR Part 1910
- Occupational Safety and Health Standards for Shipyard Employment, Title 29 CFR Part 1915
- Occupational Safety and Health Standards for Construction, Title 29 CFR Part 1926
- Occupational Safety and Health Standards for Agriculture, Title 29 CFR Part 1928

The OSHA regulations reflect those in effect on July 1, 2003.

Not evaluating and updating these chapters to the latest national standards and federal regulations would potentially expose public employees to greater risks than those encountered by private sector employees and would not fulfill the statutory mandates under s. 101.055, Stats.

Statutory Authority

Sections 101.02 (1) and (15) (a), 101.055, and 101.11, Stats.

Comparison with Federal Regulations

The various OSHA standards that serve as the basis for the Department's safety and health standards are revised, by subject matter, on a periodic basis. The latest editions of the OSHA standards adopted under chapter Comm 32 available in print are dated July 1, 2010.

Entities Affected by the Rule

The current rules of Chapters Comm 30 and 32 affect all public sector employers. By statutory definition, a public employer is the state, any agency or any political subdivision of the state.

Estimate of Time Needed to Develop the Rule

The department estimates approximately 600 hours will be needed to perform the review and develop any needed rule changes. This time includes meeting with various advisory councils, if necessary, drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

Natural Resources

Environmental Protection — General, Chs. NR 100—

DNR # WT-31-10

Subject

Revises Chapter NR 106, Wis. Adm. Code, to ensure consistency with federal regulations and other updates to the rules related to cooling water additives, mercury reasonable potential, surface water intakes, mixing zones, and other minor clarifications and corrections that may be necessary.

Objective of the Rule

To revise Chapter NR 106 so it is consistent with federal regulations and other updates to the rules used by the Bureau of Watershed Management.

Policy Analysis

The proposed changes and reasons for these changes to ch. NR 106 are as follows:

(1) Remove exempt status of cooling water containing chlorine or chemical additives present at levels consistent with those in public water supplies from regulation. The EPA has objected to permits with this provision. The November 6, 2000 Federal Register, which describes deficiencies of Wisconsin's Permit Program for compliance with the Great Lakes Water Quality Initiative (GLI), identifies this as one issue.

(2) Remove special definition of "representative data" for purposes of determining reasonable potential to exceed effluent limitations for mercury. The EPA, in its review of our Mercury Rule, identified this provision as not consistent with federal regulations.

(3) Modify provisions that regulate pollutant discharges when a pollutant is also (or solely) present in the surface water intake used as the water supply for industrial and municipal dischargers. This is another item that EPA identified as a deficiency in the November 6, 2000 Federal Register.

(4) Develop language consistent with EPA regulations in the Great Lakes Initiative that phases out (with some exceptions) mixing zone allowances for discharge of bioaccumulating chemicals of concern (BCCs) in the Great Lakes Basin by November 13, 2010. While Wisconsin is already adhering to this provision in the GLI, it should be formally adopted in our regulations. When Wisconsin last made changes to NR 106, a footnote in the rule indicated that we would promulgate such changes by the deadline date.

(5) Other minor clarifications and cross-referencing corrections to codes for uniformity.

Statutory Authority

Chapter 283, Stats.

Comparison with Federal Regulations

We intend to make our rules consistent with federal regulations.

Entities Affected by the Rule

The interested and impacted groups will be municipal and industrial permittees.

Estimate of Time Needed to Develop the Rule

The department estimates that approximately 200 hours of existing staff time will be needed to develop these recommended rule changes.

Contact Information

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Revenue

Subject

Creates section Tax 2.957, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

Objective of the Rule

As required under ss. 71.05 (6) (b) 47. e., 71.28 (9s) (d) 2., and 71.47 (9s) (d) 2., Stats., as created by 2011 Wisconsin Act 3, S. Tax 2.957 will provide for the administration of the income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

Policy Analysis

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

Statutory Authority

Sections 71.05 (6) (b) 47. e., 71.28 (9s) (d) 2., and 71.47 (9s) (d) 2., Stats., as created by 2011 Wisconsin Act 3.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Businesses relocating or considering relocating to Wisconsin.

Estimate of Time Needed to Develop the Rule

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

Contact Information

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Revenue

Subject

Creates section Tax 3.05, relating to the job creation income and franchise tax deduction.

Objective of the Rule

As required under ss. 71.05 (6) (b) 47. (renumbered 47m. under s. 13.92 (1) (bm) 2., Stats.), 71.26 (1) (h), and 71.45 (1) (c), Stats., as created by 2011 Wisconsin Act 5, Tax 3.05 will provide for the administration of the job creation income and franchise tax deduction.

Policy Analysis

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

Statutory Authority

Sections 71.05 (6) (b) 47. (renumbered 47m.), 71.26 (1) (h), and 71.45 (1) (c), Stats., as created by 2011 Wisconsin Act 5.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Businesses creating or considering creating jobs in Wisconsin.

Estimate of Time Needed to Develop the Rule

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

Contact Information

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Submittal of Rules to Legislative Council Clearinghouse

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

Natural Resources

Fish, Game, Forestry, Recreation, Chs. NR 1—

CR 11–006

DNR # FH–03–11

On February 7, 2011, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 20, 23, and 26, relating to the 2011 annual spring hearings relating to fishing regulations on inland, outlying, and boundary waters of Wisconsin.

Agency Procedure for Promulgation

Public hearings will be held April 11, 2011 in each county. The Bureau of Fisheries Management is primarily responsible for promulgation of the rules.

Contact Information

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Bureau of Fisheries Management
(608) 266–0828

Natural Resources

Fish, Game, Forestry, Recreation, Chs. NR 1—

CR 11–007

DNR # WM–01–11

On February 7, 2011, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 10 and 45, relating to the 2011 annual spring hearings relating to hunting, trapping and the management of department lands.

Agency Procedure for Promulgation

Public hearings will be held April 11, 2011 in each county. The Bureau of Wildlife Management is primarily responsible for promulgation of the rules.

Contact Information

Scott Loomans
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(608) 267–2452

Natural Resources

Fish, Game, Forestry, Recreation, Chs. NR 1—

CR 11–008

DNR # FH–50–10

On February 14, 2011, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 25, relating to the use and marking of commercial fishing trap nets in Lake Michigan and Lake Superior.

Agency Procedure for Promulgation

Public hearings will be held March 14 and 16, 2011. The Bureau of Fisheries Management is primarily responsible for promulgation of the rules.

Contact Information

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Natural Resources

*Environmental Protection — Air Pollution Control,
Chs. NR 400—*

CR 11–005

DNR # AM–44–10

On February 4, 2011, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 400, 419, 421, 422, 423, 439, and 484, relating to revisions to reasonably available control technology rules for volatile organic compound to address deficiencies identified by the U.S. Environmental Protection Agency, and affecting small businesses.

Agency Procedure for Promulgation

A public hearing will be held March 14, 2011. The Bureau of Air Management is primarily responsible for promulgation of the rules.

Contact Information

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Rule-Making Notices

Notice of Hearings

Natural Resources

Fish, Game, Forestry, Recreation, Chs. NR 1—

CR 11-006, CR 11-007

DNR # WM-01-11, DNR # FH-03-11

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.039, 29.041, 29.053, 29.531, and 29.533, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapters NR 20, 23 and 26, Wis. Adm. Code, relating to fishing on the inland, outlying, and boundary waters of Wisconsin. The proposed rules will:

CR 11-006

1. Establish a continuous hook and line fishing season for cisco (lake herring), whitefish, and hybrids in the Wisconsin-Michigan boundary waters with a possession and daily bag limit of 10 in total and no size limit.
2. Require using a quick-strike rig when fishing with a 10-inch or longer minnow as bait.
3. Increase the statewide minimum size restriction to 40 inches for muskellunge on all waters currently at a 34-inch minimum size restriction and decrease the minimum size restriction to 28 inches for muskellunge on ten waters: English and Mineral lakes (Ashland county), Bearskin, Booth, Julia, and Squaw lakes (Oneida county), Butternut and Solberg lakes (Price county), Spider lake (Sawyer county), and Upper Gresham lake (Vilas county).
4. Increase the minimum size restriction from 15 to 18 inches and decrease the daily bag limit from 5 fish to 3 fish in aggregate for walleye, sauger, and hybrids for all waters in 19 southern Wisconsin counties (Columbia, Dane, Dodge, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Milwaukee, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Walworth, Washington, and Waukesha counties), and Lake Michigan tributaries and waters south of a line due east from the eastern terminus of Waldo boulevard in the City of Manitowoc. The minimum size restriction for walleye in the Kickapoo river downstream of the Gays Mills dam (Crawford county) will also change to 18 inches with a 15-inch minimum size restriction on sauger and hybrids in order to be consistent with Lower Wisconsin river regulations. The Mississippi and Wisconsin rivers (including Lake Wisconsin), Madison lakes including the Yahara River downstream to Dunkirk Dam, and Yellowstone Lake would not be affected by this proposal.
5. Increase the minimum size restriction from 40 to 50 inches for muskellunge in Rice and Stump lakes (Barron county).
6. Establish a protected slot for largemouth and smallmouth bass in Lilly lake (Brown county) that allows hook and line fishing from the first Saturday in May to the first Sunday in March, a daily bag limit of 3 in total, and no minimum length, except the possession of fish from 14 through 18 inches is prohibited and only 1 may be longer than 18 inches.
7. Reduce the daily bag limit from 25 to 10 fish in aggregate for panfish in Lilly lake (Brown county).
8. Eliminate the 15-inch minimum size restriction on walleye, sauger and hybrids in the Lower Fox river (Brown county) to make regulations consistent with the adjacent waters of the Lower Fox river (Outagamie and Winnebago counties).
9. Eliminate the minimum size restriction for largemouth and smallmouth bass in all waters of Burnett County except Namekagon, St. Croix, and Totagatic rivers which would retain a minimum size restriction of 14 inches, and all waters of Washburn County except Balsam, Birch, Red Cedar and Shell lakes, Trego Flowage, and Namekagon and Totagatic rivers which would retain a minimum size restriction of 14 inches. The minimum size restriction is eliminated for all Burnett and Washburn county border boundary lakes and flowages and the dates of the open seasons do not change.
10. Modify hook and line fishing for catfish in all waters of Green Lake and Marquette counties, which includes a continuous open season for channel catfish and an open season from the first Saturday in May to September 30 for flathead catfish; a daily bag limit of 25 in total but only 1 may be flathead catfish regardless of whether caught on hook and line, set or bank pole, or setline; and no minimum size restriction except 30 inches for flathead catfish and possession of flathead catfish from 36 to 42 inches is prohibited.
11. Re-establish a closed area for set or bank pole and setline fishing for catfish within Lake Winnebago system waters from Lake Butte des Morts upstream to Eureka dam.
12. Re-establish an open area for set or bank pole and setline fishing for catfish on the Fox river 500 feet above the first dam upstream from Princeton to Wicks Landing at Fox River Drive (Green Lake and Marquette counties) from the Saturday nearest May 20 to September 30. There will be no bag limit, but only 1 may be a flathead catfish regardless of whether caught on hook and line, set or bank pole, or setline, and no minimum size restriction except 30 inches for flathead catfish and possession of flathead catfish from 36 to 42 inches is prohibited.
13. Alter the boundaries of an existing fish refuge on the Peshtigo river (Marinette county) because the existing privately-owned foot bridge boundary marker will be removed, and extend the end date of the fish refuge from May 15 to May 31.
14. Increase the minimum size restriction from 40 to 50 inches for three spotted muskellunge brood stock lakes: Archibald and Anderson lakes (Oconto county), and Big Elkhart lake (Sheboygan county).
15. Eliminate the current 14-inch minimum size restriction for largemouth and smallmouth bass, and increase the minimum size restriction from 15 to 18 inches and

- decreases the daily bag limit from 5 fish to 3 fish for walleye, sauger, and hybrids in the Minocqua Chain (Oneida county).
16. Add the Appleton Memorial pond (Outagamie county), the Kohler-Andrae State Park pond (Sheboygan county), and the Delafield Rearing pond (Waukesha county) to the State's urban fishing program.
 17. Establish a year-round fish refuge in the Milwaukee river within the fishway at the Thiensville-Mequon dam, located at river mile 20 (Ozaukee county).
 18. Increase the minimum size restriction from 40 to 50 inches for muskellunge in Redstone lake (Sauk county).
 19. Decrease the minimum size restriction from 28 to 18 inches and increase the daily bag limit from 1 fish to 3 fish for walleye, sauger, and hybrids in Black Dan and Island lakes (Sawyer county).
 20. Establish a protected slot size for largemouth and smallmouth bass in Glen and Squaw lakes (St. Croix county) that allows hook and line fishing from the first Saturday in May to the first Sunday in March with a bag limit of 3 fish in total and no minimum length, but the possession of fish from 14 through 18 inches is prohibited, and only one may be longer than 18 inches.
28. Require that, if asked, bear hunters must provide carcass samples to the Department at the time of harvest registration for purposes of research.
 29. Allow the use of rifles, in addition to shotguns, for firearm deer hunting in all of Waupaca County.
 30. Allow firearm deer hunting at Copper Falls State Park during the traditional nine day and muzzleloader only seasons.
 31. Include Manitowoc, Pierce and St. Croix in the list of counties where the discharge of firearms on Department lands is prohibited except while hunting, dog training, or at established ranges.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that at **7:00 p.m. on Monday, April 11, 2011**, the Wisconsin Conservation Congress will hold its election of county delegates in each county. Upon completion of the delegate elections, the joint Spring Hearing/Conservation Congress meeting will convene to take comments on the foregoing rule modifications and Department and Conservation Congress advisory questions.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on **Monday, April 11, 2011, at 7:00 p.m.** at the following locations:

CR 11-007

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 23.09 (2) (p), 23.11, 29.011, 29.014, 29.059 and 29.089 Stats., the Department of Natural Resources will hold public hearings on revisions to Chapters NR 10 and 45, Wis. Adm. Code, relating to hunting, trapping, and the management of Department lands. The proposed rules will:

21. Repeal the sunset of a two year trial period for the extended fall turkey hunting season so that this December hunt will become permanent.
 22. Extend each of the six consecutive five day spring turkey hunting seasons by two days. New seasons would run from Wednesday through the following Tuesday.
 23. Eliminate the archery deer hunting season closure during the traditional November nine day gun deer season.
 24. Repeal the requirement that elk hunters must wear blaze orange except when a firearm deer season is open.
 25. Establish a September firearm and archery hunting season for elk. The season would run concurrently with the first 30 days of the archery deer hunting season.
 26. Allow a landowner, lessees or occupant of private land, or any other person with permission of the landowner, lessee or occupant, to shoot a cougar that is in the act of killing, wounding or biting a domestic animal and require that the carcass of the cougar be turned over to the Department. Department rules already allow landowners, lessees or occupants to shoot a wolf in the same situation, although the authority is currently pre-empted by federal rule. These sections clarify that, in addition to the landowner, lessee or occupant, the authority to shoot a wolf also applies to employees and family members should wolves be delisted at the federal level.
 27. Allow normal hunting hours for pheasants on weekends at stocked properties that otherwise close at 2:00 p.m.
- | | |
|-----------------|---|
| Adams | Adams County Courthouse
County Board Room A230, 402 Main Street
Friendship, WI 53934 |
| Ashland . . . | Ashland Senior High School
1900 Beaser, Ashland, WI 54806 |
| Barron | Old Barron County Courthouse
Lower Level Auditorium, 330 E. LaSalle Ave.
Barron, WI 54812 |
| Bayfield . . . | Drummond High School Auditorium
52440 Eastern Ave., Drummond, WI 54832 |
| Brown | Northeast Wis. Technical College (SC132)
2740 W. Mason St., Green Bay, WI 54313 |
| Buffalo | Alma High School Gymnasium
S1618 STH 35, Alma, WI 54610 |
| Burnett | Burnett County Government Center
Room 165, 7410 County Road K
Siren, WI 54872 |
| Calumet . . . | Calumet County Courthouse
Rm. B025, 206 Court Street
Chilton, WI 53014 |
| Chippewa . . . | Chippewa Falls Middle School Auditorium
750 Tropicana Blvd.
Chippewa Falls, WI 54729 |
| Clark | Greenwood High School Cafeteria
306 W. Central Ave., Greenwood, WI 54437 |
| Columbia . . . | Wayne E. Bartels Middle School
2505 New Pinery Rd., Portage, WI 53901 |
| Crawford . . . | Crawford Co. Courthouse, Room 200
220 N. Beaumont Rd.
Prairie du Chien, WI 53821 |
| Dane | Schwan Performing Arts Center
Monona Grove High School
4400 Monona Dr., Monona, WI 53716 |
| Dodge | Horicon City Hall, 404 E. Lake St.
Horicon, WI 53032 |

Door	Sturgeon Bay High School Auditorium 1230 Michigan St., Sturgeon Bay, WI 54235	Menominee	Menominee County Courthouse Basement Courthouse Lane, Keshena, WI 54135
Douglas . . .	Solon Springs High School 8993 E. Baldwin Ave. Solon Springs, WI 54873	Milwaukee .	Nathan Hale High School 11601 W. Lincoln Ave., West Allis, WI 53227
Dunn	Dunn County Fish and Game Club 1900 Pioneer Ave., Menomonie, WI 54751	Monroe . . .	Tomah Senior High School, Cafeteria 901 Lincoln Ave., Tomah, WI 54660
Eau Claire . .	South Middle School Auditorium 2115 Mitscher Ave., Eau Claire, WI 54701	Oconto	Suring High School, Cafeteria 411 E Algoma St., Suring, WI 54174
Florence . . .	Florence Natural Resource Center 5631 Forestry Dr., Florence, WI 54121	Oneida	James Williams Middle School, Auditorium 915 Acacia Lane, Rhinelander, WI 54501
Fond du Lac	Theisen Middle School, 525 E Pioneer Rd. Fond du Lac, Wisconsin 54935	Outagamie .	Riverview Middle School Auditorium 101 Oak St., Kaukauna, WI 54130
Forest	Crandon High School Auditorium 9750 US HWY 8 West, Crandon, WI 54520	Ozaukee	Webster Middle School Commons W75 N624 Wauwatosa Road Cedarburg, WI 53012
Grant	Lancaster High School, Hillary Auditorium 806 East Elm St., Lancaster, WI 53813	Pepin	Pepin County Government Center County Board Room, 740 7th Ave. West Durand, WI 54736
Green	Monroe Middle School, 1510 13th Avenue Monroe, WI 53566	Pierce	Ellsworth Senior High School Auditorium 323 Hillcrest, Ellsworth, WI 54011
Green Lake	Green Lake High School, Small Gym 612 Mill St., Green Lake, WI 54941	Polk	Unity High School, 1908 150th St. Hwy 46 Balsam Lake, WI 54810
Iowa	Dodgeville High School Gymnasium 912 Chapel Street, Dodgeville, WI 53533	Portage	Ben Franklin Junior High School Auditorium 2000 Polk St., Stevens Point, WI 54481
Iron	Iron County Courthouse, 300 Taconite Street Hurley, WI 54534	Price	Price County Courthouse Board Room 126 Cherry St., Phillips, WI 54555
Jackson . . .	Black River Falls Middle School, LGI Room 1202 Pierce Street Black River Falls, WI 54615	Racine	Union Grove High School Performance Ctr. 3433 S. Colony Ave., Union Grove, WI 53182
Jefferson . .	Jefferson County Fair Park Activity Center 503 N. Jackson, Jefferson, WI 52549	Richland . .	Richland County Courthouse, Courtroom 181 West Seminary Richland Center, WI 53581
Juneau	Olson Middle School Auditorium 508 Grayside Avenue, Mauston, WI 53948	Rock	Pontiac Convention Center 2809 N Pontiac Dr., Janesville, WI 53545
Kenosha . . .	Bristol Elementary School 20121 83rd Street, Bristol, WI 53104	Rusk	Ladysmith High School Auditorium 1700 E. Edgewood Ave. Ladysmith, WI 54848
Kewaunee .	Kewaunee High School Auditorium 911 Third Street, Kewaunee, WI 54216	Saint Croix	St Croix Central High School Commons 1751 Broadway St., Hammond, WI 54015
La Crosse .	Onalaska High School 700 Hilltopper Place, Onalaska, WI 54650	Sauk	UW Baraboo Sauk County, Lecture Hall A4 1006 Connie Road, Baraboo, WI 53913
Lafayette . .	Darlington High School Auditorium 11838 Center Hill Road Darlington, WI 53530	Sawyer	Hayward High School Auditorium 10320 Greenwood Lane, Hayward, WI 54843
Langlade . .	Antigo High School, Volm Theater 1900 10th Ave., Antigo, WI 54409	Shawano . .	Shawano Middle School, LGI Room 1050 S. Union St., Shawano, WI 54166
Lincoln . . .	Tomahawk Elementary School 1048 East King Road, Tomahawk, WI 54487	Sheboygan .	Sheboygan Falls High School Auditorium 220 Amherst Ave. Sheboygan Falls, WI 53085
Manitowoc .	UW-Manitowoc Theatre/Auditorium 705 Viebahn Street, Manitowoc, WI 54220	Taylor	Fair Grounds, Multi Purpose Building Hwy 64/ Hwy 13, Medford, WI 54451
Marathon . .	D.C. Everest Middle School Auditorium 9302 Schofield Avenue, Schofield, WI 54476	Trempealeau	Whitehall City Center 36245 Park St., Whitehall, WI 54773
Marinette . .	Crivitz High School Auditorium 400 South Avenue, Crivitz, WI 54114	Vernon	Viroqua High School Commons 100 Blackhawk Drive, Viroqua, WI 54665
Marquette .	Montello High School Community Room 222 Forest Lane, Montello, WI 53949	Vilas	St. Germain Elementary School 8234 Hwy 70 West, Saint Germain, WI 54558

- Walworth . . Delavan–Darien High School
150 Cummings St., Delavan, WI 53115
- Washburn . . Spooner Agricultural Research Station,
W6646 Highway 70, Spooner, WI 54801
- Washington Washington County Fair Park
3000 Cty Hwy PV, West Bend, WI 53095
- Waukesha . . Waukesha County Technical College
Richard Anderson Ed. Center
800 Main Street, Pewaukee, WI 53072
- Waupaca . . Waupaca High School Auditorium
E 2325 King Rd., Waupaca, WI 54981
- Waushara . . Waushara County Court House
2nd Floor Old Court Rm., 209 S. St. Marie St.
Wautoma, WI 54982
- Winnebago Webster Stanley Middle School Auditorium
915 Hazel Street, Oshkosh, WI 54901
- Wood Pittsville High School Auditorium
5459 Elementary Avenue, Pittsville, WI 54466

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 Kari Lee–Zimmermann at (608) 266–0580 with specific information on your request by **April 4, 2011**.

Copies of Proposed Rules and Submittal of Written Comments

The proposed rules and fiscal estimates may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed hunting and trapping regulations may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Written comments on the proposed fishing regulations may be submitted via U.S. mail to Ms. Kate Strom–Hiorns, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707. Written comments shall be postmarked not later than **April 11, 2011**. Written comments whether submitted electronically or by U.S. mail will be summarized for the Natural Resources Board, however, they will not be tallied along with the responses received at the county hearings.

Effect on Small Business

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses.

The Department’s Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266–1959.

Environmental Impact

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.

Fiscal Estimate

None of the proposed changes are expected to have fiscal impacts.

Agency Contact Person

Questions relating to proposed fishing regulations should be directed to:

Kate Strom–Hiorns
Bureau of Fisheries Management
(608) 266–0828

Questions relating to proposed hunting and trapping regulations should be directed to:

Scott Loomans
Bureau of Wildlife Management
(608) 267–2452

Notice of Hearings

Natural Resources

Fish, Game, Forestry, Recreation, Chs. NR 1—

CR 11–008

DNR # FH–50–10

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 29.014 (1), 29.041, 29.519 (1m) (b), and 227.11, Wis. Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 25, Wis. Adm. Code, relating to the use and marking of commercial fishing trap nets in Lake Michigan and Lake Superior. Please note that this public hearing is intended to obtain input on alternatives or variations to the proposed rule for consideration by the Department and the Natural Resources Board.

Hearing Information

The hearings will be held on:

- | | |
|--|--|
| March 14, 2011
Monday
at 5:00 p.m. | University of Wisconsin–Sheboygan
1 University Drive
Sheboygan, WI 53081 |
| March 16, 2011
Wednesday
at 5:00 p.m. | Bayfield Lakeside Pavilion
2 East Front Street
Bayfield, WI 54814 |

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 William Horns at (608) 266–8732 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rules and Submittal of Written Comments

The proposed rules and fiscal estimates may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate, may also be obtained from William Horns, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707 or by e–mail to William.Horns@wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to William Horns. Comments may be submitted until **March 18, 2011**. 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.

Analysis Prepared by the Department of Natural Resources

Statutes interpreted

Sections 23.11 (1), 29.014 (1), 29.041, 29.519 (1m) (b), 227.11 (2) (a), and 30.74 (2) (a), Wis. Stats.

Statutory authority

Sections 29.014 (1), 29.041, 29.519 (1m) (b), and 227.11 Wis. Stats.

Summary of proposed rule

The proposed rule will:

1. Establish net-marking requirements for Lake Superior that are identical to the net-marking requirements for Lake Michigan.

2. Add the month of June to the summer period when no more than 3 entrapment nets may be used south of 44°52'30" by each licensed commercial fisher in Lake Michigan.

3. Change the times and locations when and where commercial trap nets may be used during the summer. Commercial trap nets would be allowed in areas within 5 nautical miles north and south of harbors at Two Rivers, Manitowoc, or Sheboygan only from Labor Day to May 31.

4. Revise net-marking requirements for Lake Michigan by requiring that staffs be marked with reflective tape and that the staff marking the inside or shallow lead end of the net be marked with a flashing amber light and a 48" diameter float.

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Michigan and Green Bay or Lake Superior. Trap nets are not used in Illinois or Minnesota waters of the Great Lakes, and Iowa has no Great Lakes waters. The State of Michigan has uniform trap net marking requirements for all of its Great Lakes Waters (parts of Lakes Superior, Michigan, Huron, and Erie). Those net-marking requirements are similar but not identical to those proposed here for Wisconsin waters of Lakes Michigan and Superior. The Michigan Department of Natural Resources and Environment has the authority to limit trap netting by individual license holders if and when conflicts arise. Pursuant to that authority the MDNRE prohibits trap nets during June, July, and August in one area near Tawas on Lake Huron.

This rule is of interest to commercial fishers and was initiated in response to the expressed concerns of recreational fishers. The rule will be enforced by department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers and follow up investigations of citizen complaints.

Effect on Small Business

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses. Small businesses engaged in commercial fishing and wholesale fish dealing may be affected by the rule. However, the Department currently has no basis for quantifying the economic impacts of the rule.

Small business regulatory coordinator

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Environmental Impact

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.

Fiscal Estimate

The proposed rule changes the times and places where commercial trap nets may be used in Lake Michigan and changes net marking requirements for trap nets in both Lake Superior and Lake Michigan. The rule will have no fiscal impact at either the state or local level.

Agency Contact Person

William Horns
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921
Telephone: (608) 266-8782
E-mail: William.Horns@wisconsin.gov

Notice of Hearing Natural Resources

***Environmental Protection — Air Pollution Control,
Chs. NR 400—
CR 11-005
DNR #AM-44-10***

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.16 and 227.17, Stats., the Department of Natural Resources, hereinafter the Department, will hold a public hearing on proposed revisions to Chapters NR 400, 419, 421, 422, 423, 439 and 484, relating to the correction of deficiencies identified by the U.S. Environment Protection Agency in reasonably available control technology rules for volatile organic compound emissions on the date and at the time and location listed below.

The proposed revisions relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11 (6), Stats., will be revised.

Hearing Information

<u>Date and Time</u>	<u>Location</u>
March 14, 2011	WI DNR Southeast Region Hdqrs.
Monday	Room 140-141
at 10:30 AM	2300 N. Dr. Martin Luther King Jr. Dr. Milwaukee, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7),

101 S. Webster St, Madison, WI 53707; by E-mail to Robert.Eckdale@wisconsin.gov; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rules

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Robert Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St, Madison, WI 53703, or by calling (608) 266-2856.

Submittal of Written Comments

Comments on the proposed rule must be received on or before **March 24, 2011**. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Joseph Hoch, DNR

Bureau of Air Management (AM/7)

101 S. Webster St, Madison, WI 53703

Phone: (608) 267-7543

Fax: (608) 267-0560

E-mail: Joseph.Hoch@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm>

Analysis Prepared by Department of Natural Resources

Statute interpreted

Section 285.11 (1) and (6), Stats. The State Implementation Plan (SIP) developed under s. 285.11 (6), Stats., is revised.

Statutory authority

Sections 227.11 (2) (a) and 285.11 (1) and (6), Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., gives state agencies general rule-making authority. Section 285.11 (1), Stats., gives the Department the authority to promulgate rules implementing and consistent with ch. 285, Stats. Section 285.11 (6), Stats., requires the Department to develop a plan for the prevention, abatement and control of air pollution. The plan must conform to the Clean Air Act and federal regulations for ozone control. These proposed rule revisions are necessary for federal approval of Wisconsin's SIP and consistent with s. 285.11 (6), Stats.

Related statute or rule

There are no related statutes that are not identified above.

Plain language analysis

The Department is required to implement volatile organic compound (VOC) reasonably available control technology (RACT) regulations in moderate or worse ozone

nonattainment areas to comply with the federal Clean Air Act. Wisconsin's moderate ozone nonattainment counties include Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. VOC RACT rules were previously adopted by the Board on March 25, 2009 based on U.S. Environmental Protection Agency (EPA) Control Techniques Guideline (CTG) documents. The Bureau of Air Management understood that these rules would satisfy the federal requirements. However, on April 22, 2010, the U.S. EPA notified the Department of outstanding deficiencies. The U.S. EPA identified these deficiencies based on a comparison of the rules with their CTGs for various RACT categories.

Federally approved VOC RACT rules are required for Wisconsin's ozone SIP and are a prerequisite for redesignation of the state's remaining nonattainment areas for the 1997 8-hour ozone national ambient air quality standards (NAAQS) to attainment. The counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha constitute the current ozone nonattainment areas. In addition to a delay in the redesignation of these counties, an incomplete SIP could result in federal sanctions, including withholding of federal highway funds and the potential implementation of a federal air management plan.

In order to avoid federal sanctions and ensure timely redesignation of the state's remaining ozone nonattainment areas, the Department is proposing rule revisions for a portion of the current synthetic organic chemical manufacturing (SOCMI), industrial wastewater collection and treatment (IWCT) and industrial solvent cleaning VOC RACT rules. The Bureau of Air Management has convened stakeholder groups, including representatives from the potentially affected industrial sectors and the U.S. EPA, to discuss the need to revise the rules and the feasibility of complying with the proposed revisions.

Comparison with existing or proposed federal regulations

The Clean Air Act requires the Department to implement RACT for major VOC emission source categories in areas classified as moderate or worse for nonattainment of the ozone NAAQS. The U.S. EPA has published CTGs for several VOC RACT source categories. The Department is required to ensure the state's VOC RACT rules are consistent with these CTGs.

Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota)

VOC RACT rules are only required in states that have areas classified as moderate or worse for the ozone NAAQS. Iowa and Minnesota have no nonattainment areas and Michigan does not have any areas that are classified as moderate or worse. Illinois is in a similar situation as Wisconsin. The U.S. EPA has identified deficiencies with Illinois' current VOC RACT rules and they must be corrected to meet the requirements of the Clean Air Act.

Summary of factual data and analytical methodologies

The proposed rule revisions are based on the following U.S. EPA CTGs: (1) Automobile and Light-Duty Truck Assembly Coatings; (2) Flat Wood Paneling Coatings; (3) Flexible Package Printing; (4) Industrial Cleaning Solvents; (5) Industrial Wastewater Collection and Treatment Operations; (6) Large Appliance Coatings; (7) Metal Furniture Coatings; (8) Miscellaneous Industrial Adhesives; (9) Miscellaneous Metal and Plastic Parts Coatings; (10) Offset Lithographic Printing and Letterpress Printing; (11) Paper, Film, and Foil Coatings; and (12) Reactor Processes and Distillation Operations in SOCMI.

Analysis and supporting documents used to determine the effect on small business

Based on the control requirements, the applicability threshold for the rule and the relatively small number of facilities that will be subject to revised VOC RACT rules, there should be minimal, if any, impact on small businesses.

An economic impact report was not requested.

Effect on Small Business

The Department does not believe that the proposed rule revisions will have a significant economic impact for individual small businesses. For industrial solvent cleaning operations, the applicability threshold is 3 tons of actual VOC emissions from a facility on a 12 consecutive month rolling basis, with all control equipment inoperative. The Department believes that this threshold will not affect the majority of small businesses. Due to the nature and complexity of IWCT and SOCMI facilities it is highly unlikely that a small business, as defined in 227.114 (1), Stats., would have an operation that triggers the emission reduction requirements for those source categories in the proposed rule.

Small business regulatory coordinator

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us, or by calling (608) 266-1959.

Environmental Impact

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate***State fiscal impact***

The proposed rule revisions should not create a significant effect on state government because the majority of sources affected are already inspected, permitted and otherwise regulated by the Department. However, the Department estimates that these modifications to the industrial solvent cleaning rules will result in 75 tons per year (tpy) future reduction in reported VOC emissions. Therefore, the Department may lose up to \$2,700 (75 tpy * \$35.71/ton VOC)

in emission fee revenue annually. The U.S. EPA control technology guidance (CTG) for industrial cleaning solvents estimates that there are 97 affected sources in Wisconsin with baseline VOC emissions from solvent use of 1,791 tpy. The Department concluded in Natural Resources Board Order AM-19-08 that implementation of recommendations in the industrial solvent cleaning CTG would result in an estimated 400 tpy future reduction in reported VOC emissions in Wisconsin. These proposed rule revisions to address the deficiencies identified by the U.S. EPA should only affect approximately 18 of the 97 facilities identified in the CTG. This is based on the number of participants at stakeholder meetings held by the Department in Milwaukee and Waukesha. Therefore, the Department estimates that proposed rule revisions will result in an estimated 75 tpy future reduction in reported VOC emissions rather than the U.S. EPA estimate of 1,791 tpy.

Private sector fiscal impact

The Department does not expect any large fiscal impacts to the private sector from the proposed revisions to the industrial solvent cleaning regulations. In fact, the U.S. EPA has stated in their industrial solvent cleaning CTG that affected sources may either incur minimal additional costs or realize a savings, depending primarily on facts such as how much they currently spend to operate with high-VOC content solvent. Based on Natural Resources Board Order AM-24-08, for the industrial wastewater facilities, if controls were necessary, they would largely be designed to reduce VOC emissions by restricting the waste stream's exposure to ambient air. This is accomplished by installing water seals at those process points (drains, junction boxes, man holes, etc.) where the waste stream is exposed to the ambient air. According to a report on industrial wastewater, there would be a cost (amortized over 10 years) between \$1900 and \$4300 per ton VOC reduction to install these control devices. However, the Department is not aware of any facilities that would be subject to these control requirements. The Department does not expect any large fiscal impacts to the private sector from the proposed SOCMI rule revisions because the rule changes are relatively minor.

Agency Contact Person

Joseph Hoch, DNR
Bureau of Air Management (AM/7)
P.O. Box 7921, Madison, WI 53707-7921
Phone: (608) 267-7543
Fax: (608) 267-0560
E-mail: Joseph.Hoch@wisconsin.gov

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection

CR 10-107

Revises Chapter ATCP 20, relating to seed labeling and sales.

Health Services

*Management, Technology and Strategic Finance,
Chs. DHS 1—*

CR 10-146

Revises Chapter DHS 1, relating to the records status and retention period for records of clients who have unpaid liability to the department or counties.

Health Services

Community Services, Chs. DHS 30—

CR 10-145

Revises Chapter DHS 88, relating to resource center referrals by licensed adult family homes.

Natural Resources

Fish, Game, Forestry, Recreation, Chs. NR 1—

CR 10-118

DNR # PR-36-10

Revises Chapters NR 1 and 45, relating to the Ice Age and North Country Trails.

Public Instruction

CR 10-139

Revises section PI 6.06, relating to public library system audit requirements.

Public Instruction

CR 10-140

Revises section PI 6.03, relating to public librarian certification.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in this 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.

Public Service Commission

CR 08-070

(PSC # 1-AC-224)

Revises Chapter PSC 116, relating to a fuel cost rate adjustment process for electric utility service. Effective 3-1-11.

Summary of Final Regulatory Flexibility Analysis

The rule will have no effect on small business.

Summary of Comments by Legislative Review Committees

No comments were reported.

Public Service Commission

CR 10-057

(PSC # 1-AC-231)

Creates Chapter PSC 128, relating to the siting of wind energy systems. Effective 3-1-11.

Summary of Final Regulatory Flexibility Analysis

It is possible that the rule may have an effect on small

business, as defined in Wis. Stat. s. 227.114 (1). The business entities this rule may affect are wind energy system developers, owners, or operators. The commission cannot estimate how many of these entities qualify as a small business.

Small businesses are more likely to be constructing small wind energy systems than other businesses. The rule establishes lesser requirements for small wind energy systems, defined as a system that has a capacity of 300 kilowatts or less and consists of one or more wind turbines each 100 kilowatts or less. These requirements are described in the analysis and rule, as well as the reporting, bookkeeping, and procedures applicable to a small business. The rule does not impose any additional professional skill requirements.

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **February 2011**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Public Service Commission

Ch. PSC 4

Table 3

Ch. PSC 116 (Entire Chapter)

Ch. PSC 128 (Entire Chapter)

Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Children and Families

Ch. DCF 150

Appendix C, Appendix D

Commerce

Ch. Comm 82

(Reprinted to correct Table of Contents)

Health Services

Ch. DHS 12

(Reprinted to add Notes)

DHS 12.03 (12), (17) (a), (22)

Insurance

Ch. Ins 8

Ins 8.44 (3)

Public Service Commission

Ch. PSC 128

PSC 128.16 (1) (a)

PSC 128.60

Ch. PSC 135

PSC 135.019 (3)

Ch. PSC 160

PSC 160.071 (1) (f)

PSC 160.115 (1) (c)

Ch. PSC 165

PSC 165.052 (5) (title)

Ch. PSC 173

PSC 173.01

PSC 173.02 (4), (7), (11), (13), (14), (15)

PSC 173.07 (1), (2) (a), (b)

PSC 173.08 (1) (c), (e)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 1. Relating to a Special Session of the Legislature.

Executive Order 2. Relating to the Creation of the Governor's Commission on Waste, Fraud and Abuse.

Executive Order 3. 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 Victims of the Tragedy in Tucson, Arizona.

Executive Order 4. Relating to a Special Session of the Legislature and Amending Executive Order # 1.

Executive Order 5. Relating to a Requirement that Cabinet Secretaries Meet Regularly with Frontline Workers to Identify Waste, Fraud, and Abuse.

Executive Order 6. Relating to the Recreation of Non-Statutory Committees.

Executive Order 7. Relating to a Requirement that Each Administrative Department and Independent Agency Create a Team to Assist the Commission on Waste, Fraud and Abuse.

Executive Order 8. Relating to Creation of the Governor's Juvenile Justice Commission.

Executive Order 9. Relating to the Creation of the State of Wisconsin Citizen Corps Council.

Executive Order 10. Relating to the Creation of the Office of Free Market Health Care.

Executive Order 11. Relating to a Proclamation Declaring a State of Emergency in Response to Severe Winter Weather with Blizzard Conditions.

Executive Order 12. Relating to the Closure of State Government Offices to the Public Due to Extreme Winter Weather Conditions.

Executive Order 13. Relating to the Closure of State Government Offices to the Public and Amending Executive Order # 12.

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