

# Wisconsin Administrative Register

No. 592



Publication Date: April 30, 2005

Effective Date: May 1, 2005



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

# The 2003 – 04 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*<sup>®</sup> CD-ROM

## Bound Volumes:

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

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

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

## *WisLaw*<sup>®</sup> CD-ROM:

Up-to-date *WisLaw*<sup>®</sup> CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*<sup>®</sup> contains:

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

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

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

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

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

---



---

## Table of contents

---



---

**Emergency rules now in effect.****Pages 4 to 8**

## Commerce:

Financial Assistance for Businesses and Communities, Chs. Comm 105—  
Rules relating to technology commercialization programs.

## Elections Board:

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

## Insurance:

Rules relating to vehicle protection plans.

## Natural Resources:

Fish, Game, etc., Chs. NR 1—  
Rules relating to the closure of sturgeon spearing on the Lake Winnebago system.

Environmental Protection—Water Regulation, Chs. NR 300—  
Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Rules adopted revising **ch. NR 326**, relating to shore erosion control on rivers and streams. **[First Appearance]**

## Public Instruction:

Rules relating to the payment of state aid under the student achievement guarantee in education (SAGE) program.

## Regulation and Licensing:

Rules relating to the licensure and regulation of athlete agents.

## Revenue:

Rules relating to assessment of agricultural land.

## Transportation:

Rules relating to the issuance of single and multiple trip oversize and overweight permits.

## Veterans Affairs:

Rules relating to the veterans assistance program.

## Workforce Development:

Labor Standards, Chs. DWD 270–279  
Rules relating to overtime pay for employees performing companionship services.

Public Works Construction, Chs. DWD 290–294  
Rules adopted revising ch. DWD 290, relating to adjustment of prevailing wage thresholds.

**Scope statements.****Pages 9 to 12**

## Health and Family Services:

Rules affecting ch. HFS 119, relating to health insurance risk-sharing plan (HIRSP).

Rules affecting ch. HFS 132, relating to hospitals.

Rules affecting ch. HFS 149, relating to WIC.

Natural Resources:	Rules affecting ch. NR 190, relating to streamlining an expanded citizen lake monitoring network.
	Rules affecting ch. NR 20, relating to proposed Winnebago system sturgeon spearing rule changes.
Revenue:	Rules affecting ch. Tax 18, relating to the administration of agricultural use–value assessment.
Workforce Development:	Rules affecting ch. DWD 278, relating to garnishment.
<b>Submittal of rules to legislative council clearinghouse.</b>	<b>Pages 13 to 14</b>
Commerce:	Rules affecting chs. Comm 2, 5 and 41, relating to boilers and pressure vessels.
Elections Board:	Rules relating to s. EIBd 1.39, the use of federal campaign funds in a campaign for a Wisconsin elective office.
Health and Family Services:	Rules relating to chs. HFS 105 and 107, relating to coverage of services provided by dentists and dental hygienists under the Medical Assistance Program.
Hearing and Speech Examining Board:	Rules relating to definitions, temporary trainees, continuing education, temporary licenses and unprofessional conduct.
Insurance:	Rules relating to annual patients compensation fund and mediation fund fees for fiscal year beginning July 1, 2005.
Natural Resources:	Rules affecting chs. NR 10, 12, 16, 17 and 19, relating to permitting and applications, hunting, trapping, captive wildlife, agricultural damage and nuisance wildlife.
	Rules affecting ch. NR 46, relating to the administration of the forest crop law and managed forest law.
	Rules affecting ch. NR 590 and the ch. NR 600 series, relating to hazardous waste management.
Pharmacy Examining Board:	Rules relating to the return or exchange of health items.
Transportation:	Rules affecting ch. Trans 196, relating to convenience fee for telephone vehicle registration renewal.
<b>Rule–making notices.</b>	<b>Pages 15 to 23</b>
Elections Board:	Hearing to consider rules affecting ch. EIBd 1, relating to use of federal campaign funds in a campaign for a Wisconsin elective office.
Insurance:	Hearing to consider rules affecting ch. Ins 17, relating to annual patients compensation fund and mediation fund fees for fiscal year beginning July 1, 2005.
Natural Resources – Fish, Game, etc.	Hearing to consider rules affecting chs. NR 10, 12, 16, 17 and 19, relating to permitting and applications, hunting, trapping, captive wildlife, agricultural damage and nuisance wildlife.
	Hearing to consider rules affecting ch. NR 46, relating to the administration of the Forest Crop Law and Managed Forest Law.

Natural Resources – Environmental Protection—Water Regulation: Hearing to consider emergency rules affecting ch. NR 328, subch. III, relating to shore erosion control on rivers and streams.

Natural Resources – Environmental Protection Hearings to consider rules relating to chs. NR 590 and NR 600 to 690, regulating the generation, transportation, recycling, treatment, storage and disposal of used oil, universal waste and hazardous waste.

Pharmacy Examining Board: Hearing to consider rules affecting ch. Phar 7, relating to the return of exchange of health items.

**Submittal of proposed rules to the legislature. Page 24**

Natural Resources: CR 04–077 – Chs. NR 500, 504, 506, 507, 512, 514, 516 and 520

CR 04–128 – Ch. NR 169

CR 04–136 – Ch. NR 46

**Rule orders filed with the revisor of statutes bureau. Page 25**

Gaming: CR 04–073 – An order affecting chs. Game 42 and 44, relating to bingo and raffle events.

Natural Resources: CR 04–061 – An order affecting ch. NR 809, relating to reporting of analytical data and the procedure for returning to compliance following an MCL violation of the nitrate, nitrite, or combined nitrate and nitrite standards.

CR 04–101 – An order affecting chs. NR 106, 149 and 219, relating to the whole effluent toxicity (WET) test methods.

CR 04–111 – An order affecting ch. NR 20, relating to trout fishing in Richland and Vernon counties.

Regulation and Licensing: CR 04–097 – An order affecting chs. RL 4 and 31, relating to criminal background investigations and fingerprinting of applicants.

Workforce Development: CR 05–007 – An order affecting ch. DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates.

**Rules published with this register and final regulatory flexibility analyses. Pages 26 to 29**

**Sections affected by rule revisions and corrections. Pages 30 to 31**

**Executive orders. Page 32**

---



---

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

---

### Commerce

#### (Financial Assistance for Businesses & Communities, Chs. Comm 105—)

Rules were adopted creating **ch. Comm 129**, relating to technology commercialization programs.

#### Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of a rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. In accordance with sections 560.205 (3) and 560.275 (7), Stats., the department has the responsibility to promulgate rules to administer an Early Stage Business Investment Program and a Technology Commercialization Grant and Loan Program.

2. Section 560.205 (1) and (2), Stats., makes available certain tax benefits for investors in early stage businesses for tax years beginning after December 31, 2004.

3. Section 560.275 (2), Stats., makes available grant and loan program funds appropriated as of July 1, 2004.

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has historically ranked low in the development of new start-ups and in the attraction of risk capital.

5. The department recognizes that promulgating this emergency rule will alleviate the need for investors to defer investments into qualified new businesses while they wait for the promulgation of the permanent rule. Such a circumstance would effectively halt new investment into early stage high tech companies in Wisconsin, a result that would be contrary to the intent of the legislation.

6. In addition, the department recognizes that without promulgating this emergency rule, the department would likely be unable to fully utilize the funds made available to benefit early stage businesses.

7. Finally, the department recognizes that without promulgating this emergency rule, Wisconsin's early stage businesses would be unable to compete fairly to attract much-needed risk capital and federal research dollars to Wisconsin.

**Publication Date: December 2, 2004**

**Effective Date: December 2, 2004**

**Expiration Date: May 1, 2005**

**Hearing Date: January 12, 2005**

---

### Elections Board

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

#### Finding of Emergency

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

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

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under

circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

**Publication Date:** February 3, 2005  
**Effective Date:** February 3, 2005\*  
**Expiration Date:** July 3, 2005  
**Hearing Date:** May 18, 2005  
 [See Notice This Register]

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

---

**Insurance**

Rules were adopted creating **ch. Ins 14**, Wis. Adm. Code, relating to vehicle protection plans.

**Finding of Emergency**

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

The statute requiring these changes is effective on December 1, 2004. The length of the rulemaking process has not permitted OCI to finish promulgating the rule. This emergency implementation will allow vehicle protection businesses to start getting registered and selling their products. Many of these products are promoted as safety related such as glass etching, the “club,” vehicle entry warning sirens and others. Consumer would then be able obtain the promoted safety benefits of these products as soon as the legislature permitted them.

**Publication Date:** December 10, 2004  
**Effective Date:** December 10, 2004  
**Expiration Date:** May 9, 2005

---

**Natural Resources**  
**(Fish, Game, etc., Chs. NR 1–)**

Rules were adopted revising **s. NR 20.33 (5) (c)**, relating to the closure of sturgeon spearing on the Lake Winnebago system.

**Finding of emergency**

The Department of Natural Resources find that an emergency exists and a rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

During the 2004 sturgeon spearing on Lake Winnebago, spearers harvested a record 1,303 sturgeon on opening day, exceeding the season harvest cap for adult female sturgeon. the spearing season lasted only two days and resulted in an overall harvest of 1,854 sturgeon. The total harvest included 822 males, 348 juvenile females, and 684 adult females, 509 of which came on opening day, exceeding the harvest cap of 425. Population reduction due to overharvest of lake sturgeon could take years to reverse given the life history of lake sturgeon.

**Publication Date:** February 2, 2005  
**Effective Date:** February 2, 2005  
**Expiration Date:** July 2, 2005  
**Hearing Date:** February 23, 2005

---

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

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

**Finding of emergency**

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

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

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

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

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

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

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

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

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

#### **Finding of emergency**

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

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

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

**Publication Date:** April 8, 2005  
**Effective Date:** May 1, 2005  
**Expiration Date:** September 28, 2005  
**Hearing Date:** May 16, 2005  
 [See Notice this Register]

---

### **Public Instruction**

Rules adopted repealing **s. PI 24.02 (3)** and repealing and recreating **subchapter II of chapter PI 24**, relating to the payment of state aid under the student achievement guarantee in education (SAGE) program.

#### **Finding of emergency**

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

Section 118.43 (6m), Stats., requires the department to promulgate rules to implement and administer the payment of state aid under s. 118.43 (6), Stats. Because the next deadline for pupil reporting requirements occurs in January 2005, the rule must take effect as soon as possible to give eligible schools enough notice to meet such requirements.

**Publication Date:** December 20, 2004  
**Effective Date:** December 20, 2004  
**Expiration Date:** May 19, 2005

---

### **Regulation and Licensing**

Rules adopted creating **ch. RL 150 to 154**, relating to the licensure and regulation of athlete agents.

#### **Exemption from finding of emergency**

SECTION 4. Nonstatutory provisions of 2003 Wisconsin Act 150 states in part:

(2) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.9935 of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide findings of emergency for rules promulgated under this subsection.

#### **Analysis prepared by the Department of Regulation and Licensing**

Statutes authorizing promulgation: s. 227.11 (2), Stats., and ss. 440.99, 440.991, 440.915, 440.992, 440.9925, 440.993, 440.9935, 440.994, 440.9945, 440.995, 440.9955, 440.996, 440.9975, 440.998 and 440.999, Stats., as created by 2003 Wisconsin Act 150.

Statutes interpreted: Chapter 440, Subchapter XII.

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 150. This Act grants the Department of Regulation and Licensing the authority to create rules relating to the licensure and regulation of athlete agents.

In this order adopting emergency rules the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. These rules are as a result of 2003 Wisconsin Act 150 which enacted the Uniform Athlete Agents Act. Chapters RL 150 to 154 establish requirements and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for temporary and permanent registration, renewal requirements, and prohibited conduct for athlete agents.

SECTION 1 creates Chapter RL 150 which sets forth the statutory authority and the definitions for the proposed rules.

SECTION 2 creates Chapter RL 151 which sets forth the application process and requirements for an initial certificate of registration, including the application process for a temporary certificate of registration.

SECTION 3 creates Chapter RL 152 which sets forth the application process and requirements for renewal of a certificate of registration.

SECTION 4 creates Chapter RL 153 which outlines the standards of practice which apply to a credential holder.

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

**Publication Date:** October 5, 2004  
**Effective Date:** October 5, 2004  
**Expiration Date:** March 4, 2005  
**Hearing Date:** November 12, 2004  
**Extension Through:** May 2, 2005

## Revenue

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

### Finding of emergency

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

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5-year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium-sized, 1-year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

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

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

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

**Publication Date:** December 29, 2004  
**Effective Date:** December 29, 2004  
**Expiration Date:** May 28, 2005

## Transportation

Rules adopted creating **ss. Trans 254.12 (6) and 255.12 (17)**, relating to the issuance of single and multiple trip oversize and overweight permits.

### Finding of emergency

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public safety and welfare. Although the Department will pursue promulgation of this rule through normal procedure, the Department finds an emergency exists for the following reasons: (1) current administrative rules have size limitations that prevent the use of the Milwaukee Expressway for vehicles or load or dimensions greater than 11 feet in width, 13½ feet in height, or 100 feet in length on the Milwaukee Freeway; (2) structural beams and girders that exceed the above transport limits are currently being manufactured for the initial stages of construction of the Marquette Interchange Reconstruction project; and (3) these steel and concrete bridge components must be delivered to the construction site beginning in February 2005 to keep the project on time and on-budget. Routing these oversized loads

on the Milwaukee surface street system may not be possible due to the load lengths and the turning radiuses required. If the street geometry does allow the movement, these street systems may not be designed to carry the weight of such loads. Doing so will result in unsafe and possible permanent damage to the surface street system. Without this rule amendment, the other alternative is to reduce the size of these structural members (beams and girders) to meet these existing size limitations which will significantly increase the total projects costs and the time required to complete the project because of the necessary redesign.

**Publication Date:** February 1, 2005  
**Effective Date:** February 1, 2005  
**Expiration Date:** July 1, 2005  
**Hearing Date:** March 1, 2005

## Veterans Affairs

Rules adopted creating **ss. VA 13.02 (2) (e), 13.04 (3), and 13.06**, relating to the veterans assistance program.

### Finding of emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the finding of emergency is:

The department operates two community-based residential care facilities and a residential care apartment complex facility in Union Grove. As a condition of admission and continued residency at the facilities a veteran must be able to pay the full cost of his or her care from income and other resources.

Care rates at the facilities were raised across-the-board in October 2004. Several current residents do not now have sufficient income or other resources to fully pay their cost of care. Furthermore, several recent applicants with limited income and resources have been denied admission because they fall just short of meeting their care costs. Both groups of veterans do not have adequate housing available for their needs, other than residency at the Union Grove facilities.

In light of these circumstances, the department determines that the health and safety of the current and prospective residents is threatened unless adequate funding is made available. Enactment of the emergency will permit the department to provide the subsidy necessary to address these concerns.

**Publication Date:** January 3, 2005  
**Effective Date:** January 3, 2005  
**Expiration Date:** June 1, 2005  
**Hearing Date:** February 16, 2005

## Workforce Development (Labor Standards, Chs. DWD 270–279)

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

### Finding of emergency

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

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

### **Analysis Prepared by the Department of Workforce Development**

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

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

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s.

DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

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

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

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

---

## **Workforce Development**

### **(Public Works Construction, Chs. DWD 290–294)**

A rule was adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

#### **Finding of emergency**

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

**Publication Date:** December 20, 2004  
**Effective Date:** January 1, 2005  
**Expiration Date:** May 30, 2005  
**Hearing Date:** February 14, 2005

---



---

## Scope statements

---



---

### Health and Family Services

#### Subject

The Department proposes to develop a rulemaking order that modifies ch. HFS 119 regarding the Wisconsin Health Insurance Risk-Sharing Plan (HIRSP). Modifications to ch. HFS 119 are needed to reflect an actuarially driven update of HIRSP policyholder health insurance premiums and insurer and provider assessments for the time period beginning July 1, 2005.

#### Policy analysis

HIRSP is a longstanding state program for Wisconsin citizens who are at high medical risk. The Department has amended ch. HFS 119 each year since 1998. The amended rule will address HIRSP policyholder premiums, and insurance and provider assessments. Updated rules are necessary per increased HIRSP costs and funding requirements, generally accepted accounting principles, statutory requirements, Wisconsin's biennial budget, and actions taken by the HIRSP Board of Governors at its April 13, 2005 meeting. By law, the HIRSP Board has a diverse membership that includes consumers, insurers, health care providers, small business representatives and other affected parties.

Health insurers and providers of medical services subsidize the premium rates offered by HIRSP. Wisconsin citizens who are at high medical risk are thereby better able to obtain insurance coverage and good health. Health care providers are better able to serve more customers. Absent HIRSP, the health care marketplace is such that insurers would find it difficult to serve people who routinely experience high medical risk. HIRSP increases the number of people with high medical needs with health insurance.

#### Statutory authority

Sections 149.143 (2) (a) 2., 3., and 4., and 227.11 (2) Stats.

#### Staff time required

The estimated DHCF staff time and other resources needed to develop and promulgate these rules is about 130 hours. This estimate includes the time required to make the actuarial calculations, rule drafting and promulgation.

#### Entities affected by the rule

The entities affected by this rule are HIRSP policyholders, health insurers who are required by law to fund a portion of HIRSP costs, and health care providers who serve HIRSP policyholders, who are also required to fund a portion of HIRSP costs.

#### Comparison with federal requirements

There are no existing or proposed federal regulations that address HIRSP premium rates and insurer and provider assessments.

### Health and Family Services

#### Subject

The Department proposes to amend ch. HFS 132, rules relating to nursing homes.

#### Policy analysis

The Department proposes to update ch. HFS 132 to reflect current standards of care and practice; enhance the Department's authority relating to the initial licensing of nursing homes; and remove provisions that duplicate applicable federal requirements. The proposed changes do not compromise the care and safety to nursing home residents.

Section 50.02 (2) (a), Stats., gives the Department the authority to establish and enforce regulations and standards for the care, treatment, health, safety, rights, welfare and comfort of residents in nursing homes. It also authorizes the Department to promulgate and enforce administrative rules that provide the conditions of licensure for nursing homes.

Effective November 1, 2004, revisions were made to ch. HFS 132 to reflect changes that have occurred in service delivery (e.g. pain management and quality assurance) and technology (e.g. electronic records and physical environment), to remove overly prescriptive rules and to make the rules more reflective of and compatible with the comparable federal regulations.

Through this rulemaking initiative, the Department is continuing the rule revision process by further updating the rule to recognize changes in service delivery and technology and by eliminating or modifying state regulations that are already addressed in ch. 50, Stats.; chs. Comm 61 to 65, also known as the Wisconsin Commercial Building Code; and 42 CFR 483, the federal regulatory requirements for nursing homes. The Department's intent is to streamline ch. HFS 132, while ensuring a nursing home's responsibility to provide quality care and meet the needs of its residents. In addition, eliminating rules that duplicate federal regulations would reduce the number of citations issued for the same violation.

The Department is also proposing to enhance its authority relating to approving licenses under s. HFS 132.14. These changes are intended to ensure that new operators applying for a Wisconsin nursing home license are qualified professionals and have demonstrated fiscal responsibility in the operation of health care facilities.

#### Statutory authority

Sections 50.02 (2) (a), (bm), (bn), (d), (3) (c) and (d), and 227.11 (2), Stats.

#### Staff time required

The Department estimates that it will take approximately 640 hours of staff time to promulgate the proposed changes to ch. HFS 132.

**Entities affected by rule**

The entities affected by the proposed rules are all licensed nursing homes in Wisconsin.

**Comparison with federal requirements**

Federal conditions of participation for nursing homes are in the Code of Federal Regulations, 42 CFR 483. The federal regulations and existing ch. HFS 132 address largely similar regulatory areas. Generally, ch. HFS 132 provides more specificity than the comparable federal regulations for nursing homes.

**Health and Family Services****Subject**

The Department proposes to amend ch. HFS 149, rules relating to the selection and monitoring of vendors for the special supplemental food program for women, infants and children (WIC).

**Policy analysis**

Under the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the federal government provides supplemental foods and nutrition education through payment of cash grants to states that administer the program through local agencies at no cost to eligible persons. The WIC program serves as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems. In Wisconsin, the WIC program has 112,000 certified participants, comprised of low-income pregnant and breastfeeding women, infants and children under 5 years of age. Seventy local WIC projects (located in city and county public health departments, private non-profit organizations, and one hospital) administer WIC in designated project service areas. These services include health screening, nutrition assessment and counseling, referrals to other health and social services, and vouchers to purchase nutritious foods at authorized grocery stores and pharmacies (vendors).

The Wisconsin WIC program is responsible for the authorization of some 1,000 vendors to provide food to WIC participants. Applications are screened for basic store and management information, business integrity, and the selection of WIC authorized foods at competitive prices, as determined by prices charged by all stores in a project service area.

Currently applicants for WIC vendor authorization are required under s. HFS 149.03 (2) (c) to charge a price that is no more than 115% of the average price charged for a standardized combination of foods by other applicants in the project service area in which the grocery store or pharmacy is located. The average price is determined by the Department and based on reported prices of large and small stores statewide for the standardized combination of foods during the previous 6-month period. The Department believes that this method of computing average price may impede the ability of smaller stores to obtain or maintain WIC vendor authorization, due to the smaller stores' inability to offer prices that are competitive with that of larger stores.

The Department proposes to amend s. HFS 149.03 (2) (c) to remove the requirement that store prices be competitive with all other stores within a project service area to require that prices be competitive with stores within its vendor peer group of similar stores located throughout the state. This change would result in the Department being able to compute average price based on reported prices of the vendor peer

group and, therefore, a more equitable process for small store applicants. Prices of these stores will no longer be compared to the prices of larger stores, who can offer lower prices than their smaller counterparts due to economies of scale.

The Department also proposes to amend s. HFS 149.03 (7) to change the duration of authorization from every two years to every three years. Instead of ending on October 31 of even-numbered years regardless of when authorization was granted, the authorization would end on October 31 of every third year. This is now allowed per federal regulation and would lessen the burden of reauthorization for both the vendors and the state WIC office. In addition, the Department proposes to eliminate the one-year initial certification period, allowing new vendors' authorization period to extend to October 31 of every third year. The one-year certification has not proven to be effective in addressing fraud, and is burdensome for both the vendor and the state WIC office.

**Statutory authority**

The Department's authority to amend these rules is found in ss. 46.016, 227.11 (2) (a), and 253.06 (5) (a), Stats.

**Staff time required**

The Department estimates it will take 40 hours of staff time to develop the proposed amendments.

**Entities affected by the rule**

The entities that will be directly affected by the proposed amendments are Wisconsin grocery stores and pharmacies.

**Comparison with federal requirements**

The Wisconsin WIC program operates under a State Plan pursuant to 7 CFR 246. The Department does not know of any proposed regulations that address the subject of the proposed rules.

**Natural Resources****Subject**

*Objective of the rule.* The Bureau of Fisheries Management and Habitat Protection is requesting authorization to draft rules for implementing 2003 WI Act 275 that allows the Department to use up to 10% of the annual lake protection grant appropriation to fund a citizen lake monitoring network through contracts to groups and individuals. Rules are needed to specify the eligible activities and qualifications for participation in the network and other details for administering the contracts.

**Policy analysis**

In 1986 the Department created the Self Help Lake Monitoring Program to enlist citizens in the monitoring of lake ecosystems. The program was funded through a portion of the operational budget (lake segregated account) for lake management. By 1995 participation in the program had reached its funding capacity though the need for, and interest in, the program continued to grow. In 2000, ch. NR 190 was amended to allow individual small-scale grants to fund expanded participation in the program. However, the administration and tracking of hundreds of individual grants in addition to managing the existing program-funded network became problematic. Rule promulgation will reduce workload and stream line an expanded citizen lake monitoring network.

**Statutory authority**

Authority for the rule comes from s. 281.68 (3) Stats. and general Department rule making authority under s. 227.11 (2) (a), Stats.

**Staff time required**

Since the Department has been operating and evolving this program for nearly 20 years, promulgation of the rule will require a minimal investment in staff time.

**Entities affected by the rule**

Lake organizations and the department will benefit from an expanded and streamlined monitoring network. It will enable more citizens and lake organizations to become involved in the monitoring and stewardship of the State's lake resources. Expanded citizen lake monitoring is an essential component of the Water Division's Monitoring Strategy. Switching funding to the grant appropriation will allow operational funds to be used for other lake management activities helping to compensate for other budget reductions. Teaching and training institutions, laboratories, data processing consultants and equipment vendors who may be eligible for contracts to assist in the network will be interested in rule development.

**Comparison with federal requirements**

There are no existing or proposed federal regulations that are applicable to the rule though the data collected through the network will assist the Department in complying with its obligations under the Clean Water Act.

Contacts for more information on the proposal are Carroll Schaal, Lake Partnership Team Leader (608) 261-6423 or Carroll.Schaal@dnr.state.wi.us

**Natural Resources****Subject**

*Objective of the rule.* The objective of the proposed rules is to address sturgeon spearing harvest issues on the Lake Winnebago System.

**Policy analysis**

The Department is beginning the administrative process of developing Lake Winnebago System sturgeon spearing regulation changes that we anticipate taking to public hearings in summer 2005.

The regulations will strive to control sturgeon exploitation rates, while continuing to maintain an open access fishery. Harvest levels have been maintained at acceptable levels, however in recent years the season has been cut short due to spearers reaching harvest limits in short time periods. Five Public meetings and two meetings with the Winnebago Citizen's Sturgeon Advisory Committee in the three weeks following the close of the 2005 sturgeon spearing season reaffirmed the most critical issues to be: 1) maintaining the sturgeon harvest at an acceptable level, 2) maintaining an open fishery on Lake Winnebago, 3) addressing the excessive pressure on the Upriver Lakes, and 4) ensuring more regular longer spearing seasons. The department wishes to promulgate rules relating to the Winnebago System sturgeon spearing season taking into account these critical issues.

**Statutory authority**

Sections 29.014, 29.024, and 227.11, stats.

**Staff time required**

Approximately 260 hours will be needed by the Department to develop these rules.

**Entities affected by the rule**

These proposed regulation changes would affect and are of interest to sturgeon spearers in the state, and could be of interest to those in the tourism industry involved in fishing.

New regulations may result in increased law enforcement, fisheries and customer service work load.

**Comparison with federal requirements**

There are no federal regulations regarding recreational fishing regulations. That authority is given to the State.

**Revenue****Subject**

The Department proposes to revise ch. Tax 18, relating to the administration of agricultural use-value assessment.

*Objective of the rule.* The revisions to ch. Tax 18 will prescribe an agricultural land assessment methodology that is in accord with s. 70.32 (2r) (c), Stats., and ensures positive and stable values for 2006 and thereafter.

**Policy analysis**

Pursuant to s. 70.32 (2r) (c), Stats., "... agricultural land shall be assessed according to the income that could be generated from its rental for agricultural use." Wisconsin Chapter Tax 18 specifies a methodology that estimates the agricultural income on a per acre basis. Net income is defined as yield per acre multiplied by the market price per unit of output, less yield per acre multiplied by the cost of output per unit. Data is averaged over a five-year period. Net income is then divided by a capitalization rate that is based on a 5-year average interest rate for medium-sized, 1-year adjustable rate mortgages and net tax rate for the property tax levy two years prior to the assessment year.

Stemming from decreasing market prices and increasing production costs, the use-value calculation has produced negative values. In response, the Department has promulgated emergency rules that held the 2004 and 2005 use values at 2003 levels.

The Department's amendments to ch. Tax 18 will create a use-value methodology that maintains adherence to state statutes while producing positive and stable values for 2006 and thereafter. The rule will specify the amended calculation process, the underlying components, and the sources of information.

**Statutory authority**

The Department's authority to amend ch. Tax 18 is found in s. 227.11 (2), Stats.

**Staff time required**

The Department estimates it will take 200 hours of staff time to develop the proposed amendments.

**Entities affected by the rule**

The current ch. Tax 18, as well as the forthcoming amended version, affects agricultural land owners.

**Comparison with federal requirements**

Property taxation is governed by Wisconsin's constitution and statutes, as such there are no current or pending federal regulations regarding agricultural land assessment.

**Workforce Development****Subject**

Chapter DWD 278, Garnishment.

**Policy analysis**

Section 812.18 (2) (a) 2., 1991-92 Stats., provided a subsistence allowance that was exempt from garnishment of an amount equal to 30 times the federal minimum wage for each full week of the debtor's pay period. Section 812.18 (2)

(a) 3., 1991–92 Stats., directed DWD’s predecessor agency, the Department of Industry, Labor and Human Relations, to prescribe by rule a subsistence allowance computed so that it was the equivalent of subd. 2. for earnings for a period other than a week.

1993 Wisconsin Act 80 repealed s. 812.18 (2), 1991–92 Stats., and earnings exempt from garnishment are now computed pursuant to s. 812.34, Stats. The Department no longer has any statutory authority regarding garnishment and

proposes to repeal this obsolete rule.

**Entities affected by the rule**

None.

**Statutory authority**

Section 812.18 (2) (a) 3., 1991–92 Stats., and s. 227.11 (2), Stats.

**Staff time required**

6 hours.

---



---

## Submittal of rules to legislative council clearinghouse

---



---

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

### Commerce

#### Rule Submittal Date

On March 30, 2005, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject Matter

The proposed rule affects chs. Comm 2, 5 and 41 and relates to boilers and pressure vessels.

#### Agency Procedure for Promulgation

A public hearing is required and is scheduled for May 2, 2005. The Department's Division of Safety and Buildings, is the organizational unit responsible for promulgation of the proposed rule.

#### Contact Information

Joe Hertel  
608-266-5649  
jhertel@commerce.state.wi.us

### Elections Board

#### Rule Submittal Date

On April 6, 2005, the State Elections Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Subject Matter

The proposed rule affects s. ElBd 1.39, relating to the use of federal campaign funds in a campaign for a Wisconsin elective office.

#### Agency Procedure for Promulgation

Pursuant to the ten-day notice procedure, the Elections Board intends to hold a public hearing on May 18, 2005.

#### Contact Information

George A. Dunst is the agency person responsible for internally processing this rule.  
George A. Dunst  
608-266-0136

### Health and Family Services

#### Rule Submittal Date

On April 13, 2005, the Department of Health and Family Services submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject Matter

The proposed rules affect chs. HFS 105 and 107, relating to coverage of services provided by dentists and dental hygienists under the Medical Assistance Program.

### Federal Statutes or Regulations Relevant to the Rules

42 CFR Part 440 addresses Medical Assistance, including required and optional services provided under state plans.

#### Agency Procedure for Promulgation

A public hearing is required, however, one has not yet been scheduled for this proposed rule.

#### Contact Information

For substantive questions on rules contact:  
Andy Snyder  
608-266-9749  
snydea@dhfs.state.wi.us

For small business considerations contact:  
Rosie Greer  
608-266-1279  
greerrj@dhfs.state.wi.us

For rules processing information contact:  
Rosie Greer  
608-266-1279  
greerrj@dhfs.state.wi.us

### Hearing and Speech Examining Board

#### Rule Submittal Date

On March 31, 2005, the Hearing and Speech Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Subject Matter

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), 459.12, 459.24 (5m) and (6) (c), Stats.

The proposed rule-making order relates to definitions, temporary trainees, continuing education, temporary licenses and unprofessional conduct.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on May 2, 2005, at 2:00 p.m. in Room 180, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

#### Contact Information

Pamela Haack, Paralegal  
Office of Legal Counsel  
608-266-0495  
pamela.haack@drl.state.wi.us

### Insurance

#### Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on April 8, 2005.

**Subject Matter**

These changes will affect Section Ins 17.01 (3) , 17.28 (6), Wis. Adm. Code, relating to annual patients compensation fund and mediation fund fees for fiscal year beginning July 1, 2005.

**Agency Procedure for Promulgation**

The date for the public hearing is May 19, 2005.

**Contact Information**

A copy of the proposed rule may be obtained from the WEB site at:

<http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Alice M. Shuman-Johnson at (608) 266-9892 or e-mail at [Alice.Shuman-Johnson@oci.state.wi.us](mailto:Alice.Shuman-Johnson@oci.state.wi.us) in the OCI Legal Unit.

**Natural Resources****Rule Submittal Date**

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

**Subject Matter**

The proposed rule affects chs. NR 10, 12, 16, 17 and 19, relating to permitting and applications, hunting, trapping, captive wildlife, agricultural damage and nuisance wildlife.

**Agency Procedure for Promulgation**

A public hearing will be scheduled at a later date.

**Contact Information**

Kurt Thiede, Bureau of Wildlife Management  
(608) 267-2452

**Natural Resources****Rule Submittal Date**

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

**Subject Matter**

The proposed rule affects ch. NR 46, relating to the administration of the Forest Crop Law and Managed Forest Law.

**Agency Procedure for Promulgation**

A public hearing is scheduled for May 12, 2005.

**Contact Information**

Carol Nielsen, Bureau of Forestry  
(608) 266-8019

**Natural Resources****Rule Submittal Date**

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

**Subject Matter**

The proposed rule affects ch. NR 590 and the ch. NR 600 series, relating to the hazardous waste management.

**Agency Procedure for Promulgation**

A public hearing is scheduled for May 12, 2005.

**Contact Information**

Pat Chabot, Bureau of Waste Management  
(608) 888-8888

**Pharmacy Examining Board****Rule Submittal Date**

On April 7, 2005, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Subject Matter**

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats.

The proposed rule-making order relates to the return or exchange of health items.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on June 22, 2005, at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

**Contact Person**

Pamela Haack, Paralegal  
Office of Legal Counsel  
(608) 266-0495.  
[Pamela.haack@drl.state.wi.us](mailto:Pamela.haack@drl.state.wi.us)

**Transportation****Rule Submittal Date**

On March 15, 2005, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule affects ch. Trans 196 of the Wisconsin Administrative Code and relates to convenience fee for telephone vehicle registration renewal.

**Agency Procedure for Promulgation**

A public hearing is required and a hearing is scheduled for April 13, 2005. The Department's Division of Motor Vehicles, Bureau of Vehicle Services, is the organizational unit responsible for promulgation of the proposed rule.

**Contact Information**

Julie A. Johnson, Paralegal  
608-266-8810

---



---

## Rule-making notices

---



---

### Notice of Hearing Elections Board [CR 05-027]

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., and interpreting ss. 11.01 (1), (6), (15), (16), 11.05 (1), (7), 11.06 (1), (3), (4), (12), 11.07, 11.10 (4), 11.24 (2), 11.26 (4), (10), 11.38 (1), Stats., the State Elections Board will hold a public hearing on the adoption of the rule proposed in this notice on Wednesday, **May 18, 2005**, beginning at 9:30 a.m., at the Brookfield City Hall, Common Council Chambers, located at 2000 North Calhoun Road, in the City of Brookfield, Wisconsin, on the 18<sup>th</sup> of May, 2005, at 9:30 a.m., to consider amendment of rule s. EIBd 1.39, relating to use of federal campaign funds in a campaign for a Wisconsin elective office.

#### Analysis Prepared by State Elections Board

Statutory authority: ss. 5.05 (1) (f) and 227.11 (2) (a)

Statutes interpreted: ss. 11.01 (1), (6), (15), (16), 11.05 (1), (7), 11.06 (1), (3), (4), (12), 11.07, 11.10 (4), 11.24 (2), 11.26 (4), (10), 11.38 (1), Stats.

This amended rule interprets ss. 11.01(1), (6), (15), (16), 11.05 (1), (7), 11.06 (1), (3), (4), (12), 11.07, 11.10 (4), 11.24 (2), 11.26 (4), (10), 11.38 (1), Stats. The rule prohibits the conversion of federal campaign committees into state campaign committees and limits the contributions from federal campaign committees to state campaign committees to the maximum contribution allowable from a single committee to a candidate for the office sought.

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

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, s. EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations. Prohibiting conversions and restricting such transfers to the maximum permissible for any other single committee to a candidate for the same office is found to be in the public interest.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f) and 227.11 (2) (a), Stats., the Elections Board proposes to amend s. EIBd 1.39 interpreting ss. 11.01 (1), (6), (15), (16), 11.05 (1), (7), 11.06 (1), (3), (4), (12), 11.07, 11.10 (4), 11.24 (2), 11.26 (4), (10), 11.38 (1), Stats., as follows:

SECTION 1. EIBd 1.39 is amended to read:

EIBd 1.39 Conversion of federal campaign committee to state committee prohibited.

(2) A candidate's federal campaign committee may not convert to a state campaign committee and but may use funds collected for federal purposes in the candidate's a state or local campaign, not to exceed the maximum amount that may be contributed by a single committee to a candidate for the same office, by filing a campaign finance registration statement, pursuant to s. 11.05, Stats., with the appropriate filing officer and simultaneously filing a campaign finance disclosure report showing the sources of all funds on-hand being contributed at the time of the report, pursuant to the requirements of s. 11.06 (1) (a), (b), (c), (d) and (f), Stats. In determining the sources of funds on-hand being contributed and allocating those funds among the sources, the funds shall be treated on a last-in, last-out basis, so that they will be attributed in the report to the most recent sources, in the full amount received from each source.

#### Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

#### Fiscal Estimate

The creation of this rule has no fiscal effect.

#### Contact Person

George A. Dunst  
Legal Counsel, State Elections Board  
17 West Main Street, P.O. Box 2973  
Madison, Wisconsin 53701-2973  
Phone 266-0136

### Notice of Hearing Insurance [CR 05-028]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Sections Ins 17.01 (3) and 17.28 (6), Wis. Adm. Code, relating to annual injured patients and families compensation fund fees for fiscal year beginning July 1, 2005.

#### Hearing Information

Date: **Thursday, May 19, 2005**

Time: 10:00 a.m.

or as soon thereafter as the matter may be reached

Place: OCI, Room 223

125 South Webster St 2<sup>nd</sup> Floor

Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at: <https://adminrules.wisconsin.gov> on the proposed rule will be considered. The deadline for submitting comments is 4:00 p.m. on the day after the date for the hearing stated in this Notice of Hearing.

Written comments should be sent to:

Alice M. Shuman–Johnson

Legal Unit – OCI Rule Comment for Rule Ins 17285 PCF fee rule

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707–7873

### Summary of Proposed Rule & Fiscal Estimate

For a summary of the rule see the analysis contained in the attached proposed rulemaking order. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

### Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

Statutes interpreted: s. 655.27 (3), Stats.

Statutory authority: ss. 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Stats.

Explanation of the OCI's authority to promulgate the proposed rule under these statutes: The commissioner of insurance, with the approval of the board of governors (board) of the injured patients and families compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund.

Related Statutes or rules: None.

The plain language analysis and summary of the proposed rule: This rule establishes the fees which participating health care providers must pay to the fund for the fiscal year beginning July 1, 2005. These fees represent a 30 % decrease compared with fees paid for the 2004–05 fiscal year. The board approved these fees at its meeting on February 23, 2005, based on the recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation mediation system, based on the recommendation of the director of state courts. This rule implements the funding level recommendation of the board's actuarial and underwriting committee by establishing mediation panel fees for the next fiscal year at \$34.00 for physicians and \$2.00 per occupied bed for hospitals, representing an decrease from 2004–05 fiscal year mediation panel fees.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule: To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or activities.

Comparison of similar rules in adjacent states as found by OCI: To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule: None. This rule establishes annual fund fees pursuant to the requirements of the

above-noted Wisconsin statutes—no new regulatory approach is involved.

Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114: None. Fund fees are being decreased in this rule.

If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule: This rule change will have no significant effect on the private sector.

A description of the Effect on Small Business: This rule will have little or no effect on small businesses.

Agency contact person: A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the WEB sites at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53702

Mail: PO Box 7873

Madison WI 53707–7873

Place where comments are to be submitted and deadline for submission: The deadline for submitting comments is 4:00 p.m. on the day after the date for the hearing stated in the Notice of Hearing.

### Mailing address

Alice M. Shuman–Johnson

Legal Unit – OCI Rule Comment for Rule Ins 17285 PCF fee rule

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707–7873

### Street address:

Alice M. Shuman–Johnson

Legal Unit – OCI Rule Comment for Rule Ins 17285 PCF fee rule

Office of the Commissioner of Insurance

125 South Webster St – 2<sup>nd</sup> Floor

Madison WI 53702

WEB Site: <http://oci.wi.gov/ocirules.htm>

### Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

### OCI Small Business Regulatory Coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266– 7843 or at email address [Eileen.Mallow@oci.state.wi.us](mailto:Eileen.Mallow@oci.state.wi.us)

### Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, OCI, at: Inger.Williams@OCI.State.WI.US, (608) 264–8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707–7873.

**Notice of Hearing**  
**Natural Resources**  
**(Fish, Game, etc., Chs. NR 1—)**  
**[CR 05–031]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.024 (5), 29.885 (2), 29.889 (2), 169.02, 169.15 (5), 169.19 (6), 169.25 (6) and 227.11, Stats., interpreting ss. 29.014, 29.024 (5), 29.885 (2), 29.889 (2), 169.02, 169.15 (5), 169.19 (6), 169.20 (4) and 169.25 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 10, 12, 16, 17 and 19, Wis. Adm. Code, relating to permitting and applications, hunting, trapping, captive wildlife, agricultural damage and nuisance wildlife. These rule changes are minor in nature and non-controversial. The Department is proposing changes that clarify current rules, update definitions, increase management efficiency and alter limitations on hunters. This rule:

- Clarifies that cylinder loading black powder handguns may be used for hunting species other than deer or bear
- Clarifies that doves are included under the definition of migratory game birds
- Clarifies that a waterfowl blind also must be partially concealed when waterfowl hunting
- Creates a definition for rifle
- Clarifies that hen pheasants held under ch. 29 or 169, Stats., authority are not considered protected
- Clarifies that those unprotected species identified in ch. 169, Stats., may be taken live from the wild
- Codifies the department position that pigeons are not considered wild animals
- Clarifies that air guns may not be used for deer or bear hunting
- Updates references to the submission of special permit applications necessary due to modified hours of operation for service centers
- Codifies the issuance of special permits for those who incorrectly tag a deer
- Clarifies that a structure, for the purposes of dry land body gripping type traps, is a single unit or structure
- Updates rule language pertaining to use of cable restraints
- Clarifies rules pertaining to turkey tagging and tag validation
- Clarifies wildlife damage program regulations

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be reached at SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266–1959.

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

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

**May 17, 2005**  
 Tuesday

Room 511, GEF #2  
 101 South Webster Street, Madison  
 at 1:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kurt Thiede at (608) 267–2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 20, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Thiede.

**Notice of Hearing**  
**Natural Resources**  
**(Fish, Game, etc., Chs. NR 1—)**  
**[CR 05–030]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 77.06 (2), 77.91 (1) and 227.11 (2) (a), Stats., interpreting ss. 77.06 (2) and 77.91 (1), Stats., the Department of Natural Resources will hold a public hearing on the repeal and recreation of s. NR 46.30 (2) (a) to (c), Wis. Adm. Code, relating to the administration of the Forest Crop Law and Managed Forest Law. Sections 77.06 (2) and 77.91, Stats., require that the Department establish stumpage rates (values) used in calculating severance and yield taxes on timber harvested from land enrolled in the Forest Crop Law (FCL) and the Managed Forest Law (MCL). This rule would repeal and recreate s. NR 46.30 (2) (a) to (c) to revise the stumpage values to be used in calculating severance taxes and yield taxes for timber harvested during the period of November 1, 2005 and October 31, 2006. Thirteen separate zones reflect varying stumpage values for different species and products across the state. The average change for sawtimber is a 0.6% increase over current rates. The pulpwood prices, on average, would decrease 0.06%.

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

- a. Types of small businesses affected: Small private forest landowners and forest industries enrolled under the Forest Crop Law and Managed Forest Law
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills

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

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch.

NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

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

**May 12, 2005**      Wausau Service Center  
Thursday          5301 Rib Mountain Drive, Wausau  
at 10:00 a.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Carol Nielsen at (608) 266-8019 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Ms. Carol Nielsen, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 13, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Nielsen.

**Notice of Hearing**  
**Natural Resources**  
**(Environmental Protection—Water**  
**Regulation, Chs. NR 300—)**

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12 (1) and (1p), 30.2035, 30.206, 227.11 (2) and 227.24, Stats., interpreting ss. 30.12 (1), (1g), (3) and (3m) and 30.206, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-16-05(E) pertaining to the creation of ch. NR 328, subch. III, Wis. Adm. Code, relating to shore erosion control on rivers and streams. This emergency order takes effect on May 1, 2005.

The purpose of this emergency order is to establish two general permits with appropriate conditions, and to establish standards for projects that may be authorized under an individual permit. There are no statutory exemptions for the placement of shore erosion control on the banks of rivers and streams. Standards for general permits and individual permits in this section are based on the science of fluvial geomorphology for determining erosive conditions at a site. Fluvial geomorphology involves studying the influence of flowing surface water on stream channels through the processes of erosion and deposition. This order establishes general permits for biological erosion control and integrated bank protection on waterways less than 35 feet wide and allows placement of these structures in "areas of special natural resource interest".

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

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

**May 16, 2005**      Room 413, GEF #2  
Monday              101 South Webster Street, Madison  
at 1:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Liesa Lehmann at (608) 266-2997 with specific information on your request at least 10 days before the date of the scheduled hearing.

The emergency rule and fiscal estimate may be reviewed and at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the rule may be submitted via U.S. Mail to Ms. Mary Ellen Vollbrecht, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 27, 2005. Written comments will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Lehmann.

**Notice of Hearing**  
**Natural Resources**  
**(Environmental Protection)**  
**[CR 05-032]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 289.05, 289.06, 289.21, 289.24, 289.30, 289.31, 289.33, 289.41, 289.43, 289.61, 289.63, 291.05, 291.07, 291.25, 299.53, 227.11 (2) (a) and 227.14 (1m), Stats., and interpreting Sections 227.14 (1m), 289.06, 289.24, 289.30, 289.41, 289.46 and 289.67, Stats., ch. 291, Stats., and s. 299.53, Stats., the Department of Natural Resources will hold public hearings on proposed Natural Resources Board Order No. WA-10-05 to repeal and recreate chs. NR 590 and NR 600 to 690, Wis. Adm. Code, regulating the generation, transportation, recycling, treatment, storage and disposal of used oil, universal waste and hazardous waste.

The proposed rules define the types of materials that are regulated as hazardous waste, universal waste and used oil. The rules describe the standards that apply to anyone who generates, transports or recycles these wastes, as well as to the facilities that treat, store and dispose of the wastes. Generators of hazardous waste are subject to a varying degree of regulation depending on the amounts and types of waste generated. Hazardous waste transporters are subject to licensing requirements and operating standards. Owners and operators of hazardous waste treatment, storage or disposal facilities are subject to licensing requirements that include department review and approval, and input from the public before receiving a license to operate the facilities. Recyclers of hazardous waste are conditionally exempt from most of the facility licensing requirements to encourage the recycling and reuse of hazardous waste that would otherwise be sent for disposal.

The proposed rules increase the hazardous waste plan review, license and manifest fees. The majority of the proposed fee increases represent about a 3% increase per year since 1994 to account for inflation, although some proposed fees represent a higher percentage increase and some fees are decreasing or being eliminated. In addition, the proposed rules create a per vehicle fee for vehicles under a Hazardous Waste Transportation Service License and increase the manifest fee from \$2 to \$6 per manifest.

The format for the proposed rules is similar to the federal regulations published in the code of federal regulations by

U.S. Environmental Protection Agency (EPA). The proposed revisions incorporate updates based on federal rules that are already in effect. These revisions include provisions to facilitate legitimate recycling, paperwork reduction for business and flexibility in design and operation of hazardous waste management facilities. Some revisions are necessary to retain authorization from EPA to implement the federal hazardous waste program in Wisconsin.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rules may have a direct impact on small businesses.

### Initial Regulatory Flexibility Analysis

1. Describe the type of small business that will be affected by the rule. Small businesses that generate or transport hazardous waste will be affected by the proposed rules. The proposed rules reduce regulation in several areas, including reductions in paperwork and also provide conditional exemptions from the rules for businesses that legitimately recycle their wastes. Examples of the types of small businesses that could be affected by the rules are dry cleaners, automotive repair shops, printing companies that use certain solvent based inks or cleaners, and metal finishing companies, which includes electroplaters.

2. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule. Under both the current and proposed rules, entities that generate very small quantities of hazardous waste (less than 220 pounds per month) are exempt from most of the hazardous waste requirements. They must comply with the management standards for the safe storage of wastes in containers and tanks and properly recycle or dispose of wastes. For recordkeeping, very small quantity generators are only required to submit copies of final, signed manifests for hazardous waste shipped to out-of-state treatment, storage or disposal facilities, and keep final copies of the manifests for three years if the generator uses a manifest (the use of a manifest is not required). Additional recordkeeping requirements for businesses that are considered small quantity hazardous waste generators (220 to 2200 pounds per month) include submitting annual reports to the department. The reports summarize the amounts and types of waste generated, and how the waste was managed. These reports are significantly reduced in scope as compared to the reporting requirements for large quantity generators. There are also fewer administrative requirements for small generators than large generators. Examples are reduced requirements for employee training, and preparedness and prevention for emergency situations.

3. Describe the type of professional skills necessary for compliance with the rule. There are no special professional skills necessary to comply with the rules. No new skills are required to comply with the rules. Familiarity with computers and access to the Internet are helpful, but not essential. The rules are available from the Revisor, in print and on the department's web page. Guidance documents on a number of related topics are available on the department's web page, and staff in the DNR regional offices are available to provide assistance and answer questions.

Send email to: SmallBusinessReg.Coordinator@dnr.state.wi.us to contact the Department's Small Business Regulatory Coordinator, or call (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments

received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

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

Wednesday, **May 11, 2005** at 9:00 a.m.  
Room 413  
WI Dept. of Natural Resources  
101 South Webster Street  
Madison

Thursday, **May 12, 2005** at 2:30 p.m.  
**Video conference participation available at:**  
Room 139, State Office Building  
718 W. Clairemont Ave.  
Eau Claire

Room 220, Main Building  
UW-Marathon Center  
518 S. 7<sup>th</sup> Ave.  
Wausau

Friday, **May 13, 2005** at 9:00 a.m.  
Room 151, State Office Building  
141 NW Barstow Street  
Waukesha

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provisions of informational materials in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Pat Chabot at (608) 264-6015 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rules may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Electronic comments must be entered into the Administrative Rules System by May 30, 2005. Written comments on the proposed administrative rules may be submitted via U.S. Mail to Ms. Pat Chabot - WA/3, Bureau of Waste Management, P. O. Box 7921, Madison, WI 53707-7921. To be considered, written comments must be postmarked or received by 4:30 p.m. on May 30, 2005. Written and electronic comments will have the same weight and effect as oral statements presented at the hearings. Copies of the proposed rules and fiscal estimate may be obtained from Ms. Chabot.

## Notice of Hearing Pharmacy Examining Board [CR 05-029]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Wis. Stats., and interpreting s. 450.09 (7m), Wis. Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend Phar 7.04

(2) (intro.) and (b); and to create Phar 7.04 (1) (c) to (f), (2) (d) and (e), (3m), (5), and two Notes following Phar 7.04 (5), relating to the return of exchange of health items.

### Hearing Date, Time and Location

**Date:** June 22, 2005  
**Time:** 9:30 A.M.  
**Location:** 1400 East Washington Avenue  
 Room 179A  
 Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708. Comments must be received on or before July 6, 2005, to be included in the record of rule-making proceedings.

### Analysis prepared by the Department of Regulation and Licensing.

Statute interpreted: Section 450.09 (7m), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats.

Explanation of agency authority: The Wisconsin Pharmacy Examining Board is granted the authority to protect the public health, safety and welfare by establishing security standards for pharmacies, enforcing chapters 450 and 961, Stats, and establishing minimum standards for the practice of pharmacy and the dispensing of drugs. The return or exchange of health items is addressed specifically in the instance of state prisons, s. 450.09 (7m), Stats. The board also regulates this area of pharmacy practice in the non-state prison context in s. Phar 7.04.

Related statute or rule: Cancer drug returns and redispensing are allowed provided the pharmacy follows the requirements in proposed ch. HFS 148, which has not become final.

Plain language analysis: The Pharmacy Examining Board is amending the requirements of s. Phar 7.04, pertaining to the return or exchange of health items, to allow for their return or exchange from community-based residential facilities (CBRFs), jails, and juvenile secured facilities. The amended rules set forth those circumstances under which a return or exchange of health items is allowed.

SECTION 1 adds new definitions for "original container," "resident health care patient," "secured institutional health care patient," and "tamper-resistant package."

SECTION 2 clarifies that health item returns may only be made to the pharmacy that dispensed them, and substitutes the term "beyond use date" for "expiration."

SECTION 3 lists the requirements for when health items may be returned to a pharmacy that dispensed them for the purpose of redispensing. The rule allows returns and redispensing of health items from secured institutional or resident health care patients, and for prepackaged non-narcotic, non-prescription drugs from any patient. Secured institutional patients include both jail inmates subject to the Department of Corrections approved policy and procedures manual for the control and administration of medications and juvenile patients residing in certain secured institutions whose health items are maintained by Department of Corrections staff.

For returns of health items from secured institutional health care patients, the rules also require those items to be segregated and prohibits the pharmacy from redispensing those items other than to a secured institutional health care patient.

Exempted from the definition of a "return" is the delivery to a pharmacy of a drug or device that was previously dispensed if the purpose of the delivery is for destruction at the pharmacy or by another authorized person or entity.

Also added are two notes referring to cancer drug returns and state prison pharmacy returns, which are governed by different statutory and rule authority.

Summary of, and comparison with, existing or proposed federal regulation: 21 U.S.C. § 360 (g) (1) (registration and manufacturers) provides: The foregoing subsections of this section **shall not apply to**—

(1) pharmacies which maintain establishments in conformance with any applicable local laws regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs or devices, upon prescriptions of practitioners licensed to administer such drugs or devices to patients under the care of such practitioners in the course of their professional practice, and which do not manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail; (emphasis added)

2. Section 374(a)(2)(A) (inspection) (the Exemption) provides:

(2) The provisions of the third sentence of paragraph (1) **shall not apply to**—

(A) pharmacies which maintain establishments in conformance with any applicable local laws regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs or devices, upon prescriptions of practitioners licensed to administer such drugs or devices to patients under the care of such practitioners in the course of their professional practice, and which do not, either through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail; (emphasis added)

3. The Drug Enforcement Agency does not permit the return of controlled substances from non DEA registrants.

### Comparison with rules in adjacent states

Minnesota

6800.2700 RETURN OF DRUGS AND DEVICES.

Subpart 1. **Reuse.** Pharmacists and pharmacies are prohibited from accepting from patients or their agents for reuse, reissue, or resale any drugs, prescribed medications, chemicals, poisons, or medical devices; except that in a hospital with a licensed pharmacy, drugs, devices, or other items dispensed for hospital inpatient use may be returned to the pharmacy for disposition by a pharmacist in accordance with good professional practice.

Subp. 2. **Drugs from nursing homes.** Drugs from nursing homes may be returned to the dispensing pharmacy if:

A. the consultant pharmacist can assure proper storage conditions for the drugs in the facility as specified in the United States Pharmacopeia, (United States Pharmacopeial Convention, Inc., Rockville, Maryland);

B. the drugs are returned to the pharmacy which dispensed the drugs;

C. the integrity of such packaging remains intact (no reconstituted drugs, drugs requiring refrigeration, or controlled substances may be so returned); and

D. the drugs are received by the pharmacy in the original manufacturer's packaging or pharmacist packager's unit-dose, unit-of-use, or strip packaging with each tablet or capsule individually wrapped and labeled, or in blister cards, which indicate the drug name and strength, the packager's name, and the manufacturer's or packager's lot or batch number. Drugs packaged by a pharmacy may be returned only if the pharmacy can demonstrate to the board that its packaging material and procedures will provide a package that will meet or exceed the criteria for class B packaging established by the United States Pharmacopeia, (United States Pharmacopoeial Convention, Inc., Rockville, Maryland), and that procedures have been developed and implemented to prevent the commingling of dosage units of different lot numbers.

Subp. 3. **Commingling.** Commingling of returned medication or mixing of lot numbers of returned medication, upon or prior to repackaging, shall result in such medication being deemed misbranded and subject to embargo under Minnesota Statutes, section 151.38. This prohibition shall not apply to the return of medical devices provided that proper sanitary procedures are used prior to the reuse, resale, or rerent thereof.

STAT. AUTH: MS s. 151.06

HIST: 18 SR 1145

Current as of 10/27/03

Illinois:

#### Section 1330.91 Division I Pharmacies

a) Retail pharmacies which engage in general community pharmacy practice and are open to, or offer pharmacy service to, the general public shall, in addition to any other requirements of the Act and this Part, comply with Section 1330.91. A retail pharmacy which, in addition to offering pharmacy services to the general public, provides pharmacy services to an institution or facility listed in Sections 1330.92 (a) need not register as a Division II pharmacy if the sales do not exceed 49% of total sales, but the pharmacy shall comply with requirements of Sections 1330.92 (b), (c) and (d).

f) Pharmacists and pharmacies are prohibited from accepting from patients or their agents for reuse, reissue or resale any dispensed medications, chemicals, poisons or medical devices except for:

1) Medical devices which can be properly sanitized prior to reuse, resale or rerent; and

2) Medications and medical devices that are dispensed and stored under conditions defined and supervised by the pharmacist and are unopened in sealed, intact and unaltered containers that meet the standards for light, moisture and air permeation as defined by the current United States Pharmacopoeia (U.S.P.)/National Formulary or by the United States Pharmacopoeial Convention, Inc.

#### Section 1330.92 Division II Pharmacies

a) Pharmacies which are not located in the facilities they serve and whose primary service is to provide services to patients or residents of facilities licensed under the Nursing Home Care Reform Act of 1979 or the Hospital Licensing Act, or the University of Illinois Hospital Act shall, in addition to any other requirements of the Act and this Part, comply with this Section.

f) Pharmacists and pharmacies are prohibited from accepting from patients or their agents for reuse, reissue or resale any dispensed medications, chemicals, poisons or medical devices except for:

1) Medical devices which can be properly sanitized prior to reuse, resale or rerent; and

2) Medications and medical devices that are dispensed and stored under conditions defined and supervised by the pharmacist and are unopened in sealed, intact and unaltered containers that meet the standards for light, moisture and air permeation as defined by the current United States Pharmacopoeia (U.S.P.)/National Formulary or by the United States Pharmacopoeial Convention, Inc.

#### Section 1330.93 Division III Pharmacies

a) Pharmacies which are located in facilities licensed under the Nursing Home Care Reform Act of 1979, the Hospital Licensing Act, or the University of Illinois Hospital Act, or are operated by the Department of Human Services or the Department of Corrections, and which provide pharmacy services to residents, patients, employees, prescribers and students of these facilities, shall, in addition to other requirements of the Act and this Part, comply with this Section.

#### d) Staffing of the Pharmacy

8) Pharmacists and pharmacies are prohibited from accepting from patients or their agents for reuse, or resale dispensed medications, chemicals, poisons or medical devices except for:

A) Medical devices which can be properly sanitized prior to reuse, resale or rerent; and

B) Medications that are dispensed and stored under conditions defined and supervised by the pharmacist and are unopened in sealed, intact and unaltered containers that meet the standards for light, moisture and air permeation as defined by a current United States Pharmacopoeia/National Formulary published by the United States Pharmacopoeial Convention, Inc.

#### Section 1330.94 Division IV Pharmacies

a) Pharmacies which provide and/or offer for sale radiopharmaceuticals shall in addition to any other requirements of the Act and this Part comply with this Section 1330.94.

(NONE)

#### Section 1330.95 Division V Pharmacies

#### a) Pharmacies Required to Hold Division V Licenses

1) Pharmacies which are located in or provide service to ambulatory care facilities, schools of veterinary medicine or other institutions or facilities. In addition to other requirements of the Act and this Part, these pharmacies shall comply with this Section.

2) Pharmacies that hold Division II licenses and provide pharmacy services to the general public. In addition to other requirements of the Act and Rules, these pharmacies shall comply with Section 1330.92 and this Section.

3) Pharmacies that hold Division III licenses and provide pharmacy services to the general public. In addition to other requirements of the Act and Rules, these pharmacies shall comply with Section 1330.93 and this Section.

f) Pharmacists and pharmacies are prohibited from accepting from patients or their agents for reuse, or resale any dispensed medications, chemicals, poisons or medical devices except for:

1) Medical devices that can be properly sanitized prior to reuse, resale or rerent; and

2) Medications and medical devices that are dispensed and stored under conditions defined and supervised by the pharmacist and are unopened in sealed, intact and unaltered containers that meet the standards for light, moisture and air permeation as defined by the current United States Pharmacopoeia (U.S.P.)/National Formulary or by the United States Pharmacopoeial Convention, Inc.

## IOWA:

657—6.15(124,126) Return of drugs and other items. For the protection of the public health and safety, prescription drugs and devices, controlled substances, and items of personal contact may be returned to the pharmacy for reuse or resale only as herein provided:

**6.15(1) Integrity maintained.** Prescription drugs and devices may be returned, exchanged, or resold only if, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised.

**6.15(2) Controlled substances.** Under no circumstances shall pharmacy personnel accept from a patient or a patient's agent any controlled substances for return, exchange, or resale except to the same patient.

**6.15(3) Noncontrolled substance returns.** Prescription drugs, excluding controlled substances, may be returned and reused as authorized in 657—subrule 11.1(6).

**6.15(4) Personal contact items.** Pharmacy personnel shall not accept for reuse or resale any items of personal contact nature that have been removed from the original package or container after sale.

## Indiana—returns

856 IAC 1–21 Resale of returned substances

Authority: IC 25–26–13–4

Affected: IC 25–26–13–25

Sec. 1. (a) This section implements and interprets IC 25–26–13–15(h) concerning the resale or redistribution of medications.

(b) For a medication to have been properly stored and securely maintained according to sound pharmacy practices, the storage and administration of medications in the institutional facility must be under the immediate control of licensed nursing personnel.

(c) If the medication was originally packaged by the dispensing pharmacy, it cannot be resold or redistributed unless:

(1) the medication has been repackaged into unit-dose packaging using packaging materials that meets Class A or Class B standards, found in the United States Pharmacopeia (U.S.P.), page 1574, published by the United States Pharmacopeia, 22<sup>nd</sup> Revision, January 1, 1990, United States Pharmacopeia Convention, Inc., 12601 Twinbrook Parkway, Rockville, Maryland 20852, which standards are incorporated herein by reference; and

(2) the repackaging process complies with the standards as found in the “Proper Treatment of Products Subjected to Additional Manipulations, Section 1191” of the United States Pharmacopeia, page 1705, 22<sup>nd</sup> Revision, 1990, which section is incorporated herein by reference.

(d) A medication repackaged under the provisions of subsection (c) shall be labeled with an expiration date of not greater than one (1) year until the manufacturer's expiration date, whichever is earlier. (*Indiana Board of Pharmacy; Reg 21, Sec 1; filed Jun 18, 1962, 10:00 a.m.: Rules and Regs. 1963, p. 128; filed Mar 31, 1992, 5:00 p.m.: 15 IR 1391; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1334*)

## Michigan—returns

R 338.472 Prescription drugs and devices; returns or exchange for resale prohibited,

Rule 2. For the protection of the public health and safety, prescription drugs or devices which have been dispensed and which have left the control of the pharmacist shall not be returned or exchanged for resale.

Summary of factual data and analytical methodologies: In view of rising health care costs in general and the escalating cost of pharmaceuticals in particular, the Pharmacy Examining Board recognized the need to change its rules to allow for the return and redispensing of prescription drugs and devices that were previously destroyed. The board considered correspondence from policy makers and legislators, the experience of its own members, expertise provided by other state agencies, and legal counsel summarization of current rules and regulations that apply to resident health care patients and secured institutional health care patients, in addition to recent legislation governing the return of cancer drugs and drugs from patients in state prisons.

Determination of significant fiscal effect on the private sector: The department finds that this rule has no significant fiscal effect on the private sector.

**Fiscal estimate**

The proposed rule will have no impact on the department's funds.

Effect on small business: These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [christopher.klein@drl.state.wi.us](mailto:christopher.klein@drl.state.wi.us), or by calling (608) 266–8608.

**Agency contact person**

Pamela Haack

Department of Regulation and Licensing

Office of Legal Counsel

1400 East Washington Avenue, Room 171

P.O. Box 8935

Madison, Wisconsin 53708–8935

Telephone: (608) 266–0495

Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)

**Place where comments are to be submitted and deadline for submission**

Comments may be submitted to Pamela Haack, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before July 6, 2005 to be included in the record of rule-making proceedings.

**TEXT OF RULE**

SECTION 1. Phar 7.04 (1) (c) to (f) are created to read:

Phar 7.04 (1) (c) “Original container” means the container in which a health item was sold, distributed or dispensed.

(d) “Resident health care patient” means a patient residing in a community-based residential facility that controls a resident's prescribed and over-the-counter medications as specified by s. HFS 83.33 (3) (b) 2.

(e) “Secured institutional health care patient” means any of the following:

1. A jail inmate patient whose dispensed health items are maintained under the custody and control of the jail pursuant to an approved policy and procedure manual under s. DOC 350.17, containing policies and procedures for the control and administration of medications complying with s. DOC 350.20.

2. A juvenile patient who resides in a secured correctional facility, as defined in s. 938.02 (15m), Stats.; a secured child caring institution, as defined in s. 938.02 (15g), Stats.; a secured group home, as defined in s. 938.02 (15p), Stats.; a

secured detention facility, as defined in s. 938.02 (16), Stats.; or a juvenile portion of a county jail whose dispensed health items are maintained under the custody and control of the health services staff as defined in s. DOC 316.02 (6) and provided to a juvenile patient under the provisions of s. DOC 316.03.

(f) “Tamper-resistant package” means a container that is sealed so that the contents cannot be used without obvious destruction of the seal.

SECTION 2. Phar 7.04 (2) (intro.) and (b) are amended to read:

Phar 7.04 (2) (intro.) No health items after taken from a pharmacy where sold, distributed or dispensed, may be returned to that pharmacy, except for any of the following:

(b) Where the health items were dispensed in error, were defective, adulterated, misbranded, or dispensed beyond their expiration beyond use date.

SECTION 3. Phar 7.04 (2) (d) and (e), (3m), (5) and two Notes following Phar 7.04 (5) are created to read:

Phar 7.04 (2) (d) For a secured institutional health care patient or resident health care patient where:

1. The health item was never in the possession and control of the patient.

2. The health item was sold, distributed or dispensed in a tamper-resistant package and for a drug includes the beyond use date and manufacturer’s lot number.

3. The health item is not commingled with a different health item unless the health item will be repackaged and redispensed to the same patient.

4. The health item is in its original container and the pharmacist determines the contents are not adulterated or misbranded.

(e) A non-narcotic nonprescription drug that is prepackaged for consumer use and labeled in compliance with all applicable state and federal laws where:

1. The pharmacist determines that the original package is unopened, sealed and intact and that package labeling is unaltered.

2. In the professional judgment of the pharmacist the contents are not adulterated.

(3m) Health items returned from a secured institutional health care patient to a pharmacy pursuant to sub. (2) (d), must be segregated in the pharmacy and may not be sold, resold, or repackaged and sold or resold, given away, or otherwise sold, distributed or redispensed other than to a secured institutional health care patient.

(5) It is not a “return” for a patient or agent of a patient to deliver a previously dispensed drug or device to a pharmacy for the purpose of destruction at the pharmacy or other disposal by an authorized person or entity.

Note: Cancer drug returns and redispensing pursuant to ch. HFS 148 are allowed provided the pharmacy follows the requirements in ch. HFS 148.

Note: A prescription drug that is returned to a pharmacy that primarily serves patients confined in a state prison not addressed in this rule may be redispensed to a patient in a state prison provided the requirements of s. 450.09 (7m), Stats., are satisfied.

---

---

## Submittal of proposed rules to the legislature

---

---

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

**Natural Resources**

**(CR 04-077)**

Chs. NR 500, 504, 506, 507, 512, 514, 516 and 520,  
relating to landfilling of solid waste.

**Natural Resources**

**(CR 04-136)**

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

**Natural Resources**

**(CR 04-128)**

Ch. NR 169, relating to the dry cleaner environmental  
response program.

---

---

## Rule orders filed with the revisor of statutes bureau

---

---

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

**Gaming****(CR 04-073)**

An order affecting chs. Game 41, 42 and 44, relating to bingo and raffle events.  
Effective 6-1-05.

**Natural Resources****(CR 04-061)**

An order affecting ch. NR 809, relating to reporting of analytical data and the procedure for returning to compliance following an MCL violation of the nitrate, nitrite, or combined nitrate and nitrite standards.  
Effective 6-1-05.

**Natural Resources****(CR 04-101)**

An order affecting chs. NR 106, 149 and 219, relating to the whole effluent toxicity (WET) test methods.  
Effective 6-1-05.

**Natural Resources****(CR 04-111)**

An order affecting ch. NR 20, relating to trout fishing in Richland and Vernon counties.  
Effective 6-1-05.

**Regulation and Licensing****(CR 04-097)**

An order affecting chs. RL 4 and 31, relating to criminal background investigations and fingerprinting of applicants.  
Effective 6-1-05.

**Workforce Development****(CR 05-007)**

An order affecting ch. DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates.  
Effective 6-1-05.

---



---

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

---



---

*The following administrative rule orders have been adopted and published in the April 30, 2005, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

### **Commerce (CR 04-130)**

An order affecting ch. Comm 113, relating to allocation of volume cap on tax-exempt private activity bonds. Effective 5-1-05.

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

There are no small businesses that will be affected by the proposed rules.

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

No comments were received.

### **Natural Resources (CR 02-099)**

An order affecting ch. NR 328, relating to shore erosion control of inland lakes and impoundments. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit, small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. Following the public hearing, both Committees requested modifications. On March 8, 2005, the Natural Resources Board adopted modifications that would allow a site to be eligible for a general permit for rock armoring where, despite proper installation of biological shore erosion control, recession is measured at the site equal to or greater than 0.5 foot per year. The Committees did not request any further modifications to the rule.

### **Natural Resources (CR 04-060)**

An order affecting ch. NR 198, relating to grants for the control of aquatic invasive species. Effective 5-1-05.

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

Small business is not directly affected by the rule because grants are issued only to governmental units or nonprofit

organizations. Therefore, under s. 227.114, Stats., a regulatory flexibility analysis is not required.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. The Assembly Committee on Natural Resources held a public hearing on February 2, 2005. No modifications were requested.

### **Natural Resources (CR 04-062)**

An order affecting ch. NR 329, relating to miscellaneous structures in navigable waterways. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit, small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. No modifications were requested as a result of the hearing.

### **Natural Resources (CR 04-063)**

An order affecting ch. NR 325, relating to boathouses and fixed houseboats in navigable waterways. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit, small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. No modifications were requested as a result of the hearing.

### **Natural Resources (CR 04-064)**

An order affecting ch. NR 323, relating to fish and wildlife habitat structures in navigable waterways. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit, small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. No modifications were requested as a result of the hearing.

### **Natural Resources (CR 04-065)**

An order affecting chs. NR 300, 310 and 322, relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit, small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. Subsequent to that public hearing the Department submitted germane modifications to the proposed rule incorporating the Natural Resources Board's December 8, 2004, motion directing the Department to evaluate the performance of the rules, involving key stakeholders and reporting to the Board and the Senate and Assembly Natural Resources Committees. The Committees did not request any modifications to the proposed rule.

### **Natural Resources (CR 04-066)**

An order affecting ch. NR 1, relating to Natural Resources Board policies on protection and management of public waters. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit, small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee

on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. Subsequent to that public hearing the Department submitted germane modifications to the proposed rule incorporating the Natural Resources Board's December 8, 2004, motion directing the Department to evaluate the performance of the rules, involving key stakeholders and reporting to the Board and the Senate and Assembly Natural Resources Committees. The Committees did not request any modifications to the proposed rule.

### **Natural Resources (CR 04-078)**

An order affecting chs. NR 10 and 19, relating to the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis. Effective 5-1-05.

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

The proposed revisions to chs. NR 10 and 19, which regulate baiting and feeding of deer, impose no compliance or reporting requirements for small businesses, nor are there any design or operational standards contained within the proposed rule. However, prior to April 2002, recreational feeding of deer was unregulated, and now that restrictions on recreational feeding are in place, it may impact the profits of small businesses.

In accordance with s. 227.114, Stats., the Department has considered the possible implications of these rules on small business; however, under the authority of s. 227.114 (3), Stats., any modification of the rules would undermine the effectiveness of the rule. In addition, the Department weighed the economic impact to the state of a potential collapse of the deer herd, which is an increased risk under continued baiting and feeding, against the economic burden that is placed on feed mills in the state with the baiting and feeding ban.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 2, 2005, the Assembly Committee on Natural Resources held a public hearing. As a result of the hearing, the Department was requested to make a modification that would allow a person to place, use or hunt over a maximum of 2 gallons per 40 acres. This 2 gallons may be placed at one site, or the bait could be placed in a series of smaller sites around the property. A similar change was proposed for the regulations of feeding. The proposed modification would allow no more than 2 gallons to be placed per owner-occupied residence or business, rather than just one feed site per residence or business.

The Natural Resources Board adopted the suggested modifications.

### **Natural Resources (CR 04-084)**

An order affecting ch. NR 320, relating to the regulation of bridges and culverts in or over navigable waterways. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit,

small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. No modifications were requested as a result of the hearing.

#### **Natural Resources (CR 04-085)**

An order affecting chs. NR 340 and 341, relating to regulation of grading on the bank of a navigable waterway. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit, small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. No modifications were requested as a result of the hearing.

#### **Natural Resources (CR 04-086)**

An order affecting chs. NR 340 and 343, relating to regulation of construction, dredging and enlargement of an artificial water body. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit, small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. No modifications were requested as a result of the hearing.

#### **Natural Resources (CR 04-087)**

An order affecting ch. NR 345, relating to dredging in navigable waterways. Effective 5-1-05.

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

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permits. To obtain a permit,

small businesses follow the same requirements as other waterfront property owners.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. On February 23, 2005, the Committees held a joint public hearing. No modifications were requested as a result of the hearing.

#### **Natural Resources (CR 04-091)**

An order affecting ch. NR 10, relating to deer management unit population goals and boundaries. Effective 5-1-05.

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

The proposed revisions to ch. NR 10 pertain to modifications of overwinter deer population goals and deer management unit boundary revisions, which assist the Department of Natural Resources with the management of the state' deer herd. These rule changes impose neither compliance nor reporting requirements for small businesses, nor are there any design or operational standards contained within the proposed rule.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. The Assembly Committee on Natural Resources held a public hearing on February 2, 2005. No modifications were requested.

#### **Natural Resources (CR 04-092)**

An order affecting chs. NR 1 and 45, relating to use of department properties. Effective 5-1-05 and 8-1-05.

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

The proposed rules do not regulate businesses; therefore a final regulatory flexibility analysis is not required.

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

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. The Assembly Committee on Natural Resources held a public hearing on February 2, 2005. No modifications were requested.

#### **Regulation and Licensing (CR 04-120)**

An order affecting ch. RL 87, Appendix I, relating to the 2005 edition of the Uniform Standards of Professional Appraisal Practice (USPAP). Effective 5-1-05.

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

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.14 (1) 9a), Stats.

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

No comments were received.

**Revenue  
(CR 04-049)**

An order affecting ch. Tax 1, relating to electronic funds transfer. Effective 5-1-05

**Summary of Final Regulatory Flexibility Analysis**

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Revenue  
(CR 04-083)**

An order affecting ch. Tax 61, relating to improvements to the language of and including changes to the Retailer Performance Program (RPP). Effective 5-1-05 and 7-2-05.

**Summary of Final Regulatory Flexibility Analysis**

This order does not have a significant economic impact on a substantial number of small businesses, and does not generate new costs for any small businesses. This order does simplify and clarify a number of small business processes between the state and lottery retailers, and also improves the retailer performance program in ways which make the expected performance clearer and more consistent with state policy and lottery retailer activities.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation  
(CR 04-090)**

An order affecting ch. Trans 135, relating to creation of a school bus oxidation catalyst grant program in certain counties. Effective 5-1-05.

**Summary of Final Regulatory Flexibility Analysis**

The rule is expected to have no significant effect on business practices or net worth of participating small bus companies. This assessment is based on consultations with diesel oxidation catalyst vendors, affected school bus companies, and representatives of other state grant programs.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation  
(CR 04-114)**

An order affecting ch. Trans 302, relating to vehicle marking and affecting small businesses. Effective 5-1-05

**Summary of Final Regulatory Flexibility Analysis**

Small motor carrier businesses based in Wisconsin will benefit from the repeal of ch. Trans 302 through the elimination of inconsistencies related to vehicle marking. The small businesses that provide intrastate motor carrier services will have only one source of regulations, thus making their efforts to comply easier. Small businesses that provide

both intrastate and interstate motor carrier services will be able to simultaneously comply with both Wisconsin and federal regulations thus making their efforts easier.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation  
(CR 04-117)**

An order affecting ch. Trans 112, relating to medical standards for driver licensing and general standards for school bus endorsements. Effective 5-1-05

**Summary of Final Regulatory Flexibility Analysis**

This rule making will prohibit some skillful drivers from obtaining a school bus endorsement, and employment as a school bus driver. To the extent that this rule reduces the pool of school bus drivers, DOT expects that the cost of employing school bus drivers will rise. DOT has no factual data to determine how many bus drivers will be made ineligible by this rule. In its fiscal estimate for 2003 Senate Bill 350 prepared in January 2004, DOT stated that it issues approximately 2,000 school bus driver endorsements each year, and projected 2,000 background checks per year. DOT has no information regarding how many applicants have resided in other states within the previous two years, or of how many school districts and school bus companies might already be employing criminal background checks as part of their ordinary employment practices.

**Summary of Comments by Legislative Review Committees**

No written comments were received.

**Transportation  
(CR 04-122)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways. Effective 5-1-05.

**Summary of Final Regulatory Flexibility Analysis**

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses that are shippers or carriers using the newly-designated routes.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation  
(CR 04-132)**

An order affecting ch. Trans 129, relating to motorcycle licensing and courses. Effective 5-1-05.

**Summary of Final Regulatory Flexibility Analysis**

There will be no impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

---



---

## Sections affected by rule revisions and corrections

---



---

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

### Revisions

#### Commerce

##### **Ch. Comm 113**

- Ch. Comm 113.02 (5)
- Ch. Comm 113.05
- Ch. Comm 113.06 (1) (d)
- Ch. Comm 113.07 (3) (intro.), (4) (intro.) and (i), (5), (6) (intro.) and (c)

#### Natural Resources

##### **Ch. NR 1**

- SS. NR 1.05 to 1.07
- S. NR 1.29
- S. NR 1.30 (1) (e)

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

- S. NR 10.001 (1r), (2s), (7e), (9b) to (10n), (12) and (23e)
- S. NR 10.01 (2) (f)
- S. NR 10.07 (1) (g), (2) and (2m)
- S. NR 10.104 (4) (b) and (5) (b)
- S. NR 10.11 (1) (a)
- S. NR 10.28

##### **Ch. NR 19**

- S. NR 19.001 (1m), (4), (4m), (6d), (6h), (12e) and (15m)
- S. NR 19.60

##### **Ch. NR 45**

- S. NR 45.03 (6m), (9c), (9i), (9k), (14m), (15m), (16r), (16v), (18f), (18t) and (21g)
- S. NR 45.04 (1) (a) and (3) (t)
- S. NR 45.06 (1) and (4) (b)
- S. NR 45.09 (5) (intro.), (a) and (10)
- S. NR 45.10 (1), (2) (b), (c), (2m) (a), (d), (3) (intro.), (a) and (b)
- S. NR 45.11 (4) (mm)
- S. NR 45.12 (1) (b), (2) (a), (b), (c), (3), (d), (4) (g) and (h)
- S. NR 45.13 (1) (c), (2) (a), (10m), (14m), (23) and (24) to (26)

##### **Ch. NR 51**

- S. NR 51.73 (1) and (2)

##### **Ch. NR 198** (Entire chapter)

##### **Ch. NR 300**

- S. NR 300.01
- S. NR 300.04 (1) to (3), (4) (a), (b), (d) to (g)
- S. NR 300.05 (1), (3) (e)
- S. NR 300.06 (1)

##### **Ch. NR 310** (Entire chapter)

##### **Ch. NR 320** (Entire chapter)

##### **Ch. NR 322** (Entire chapter)

##### **Ch. NR 323** (Entire chapter)

##### **Ch. NR 325**

- S. NR 325.01
- S. NR 325.03 (5k), (7), (9), (10)
- S. NR 325.06
- S. NR 325.065
- S. NR 325.07 (1), (5) to (7)
- SS. NR 325.08 to 325.13

##### **Ch. NR 328**

- Ss. NR 328.01 to 328.09

##### **Ch. NR 329** (Entire chapter)

##### **Ch. NR 340**

- S. NR 340.02 (2), (8), (18), (19) and (20)

##### **Ch. NR 341** (Entire chapter)

##### **Ch. NR 343** (Entire chapter)

##### **Ch. NR 345** (Entire chapter)

#### Revenue

##### **Ch. Tax 1**

- S. Tax 1.12 (4) (a)

##### **Ch. Tax 61**

- S. Tax 61.02 (2) through (4) and (8) through (10)
- S. Tax 61.04 (1) (b) through (d)
- S. Tax 61.05 (1) and (2)
- S. Tax 61.08 (11) (c) and (h), (12), (13) (a), (c), and (d), (14) (d), (15), (16) (a), (17) (a) and (21) (c)
- S. Tax 61.085 (2) (a) through (i), (4) (a) through (d), (5) (a), (am), and (b), (6) (a) through (e), and (7)

#### Transportation

##### **Ch. Trans 112**

- S. Trans 112.01
- S. Trans 112.02 (1m)
- S. Trans 112.06 (3) (b)
- S. Trans 112.07 (3) (b)
- S. Trans 112.12 (3) (b)
- S. Trans 112.15
- S. Trans 112.155
- S. Trans 112.16 (4)
- S. Trans 112.18
- S. Trans 112.20 (2)

**Ch. Trans 129**

- S. Trans 129.08 (1) (d)
- S. Trans 129.09 (1) (b) and (2) (a)
- S. Trans 129.13 (1) (c) and (e)

**Ch. Trans 135** (Entire chapter)

- Ch. Trans 276**
- S. Trans 276.07 (6) and (31g)
- Ch. Trans 302** (Entire chapter)

**Editorial corrections**

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

**Commerce**

- Ch. Comm 113**
- S. Comm 113.02 (8) (c)

S. NR 51.05 (1) (g)

- Ch. NR 302**
- S. NR 302.07
- Ch. NR 327**

**Natural Resources**

- Ch. NR 1**
- S. NR 1.92 (1) (a)
- Ch. NR 10**
- S. NR 10.101 (2) (e)
- S. NR 10.31 (1) (intro.) and (3) (intro.)
- Ch. NR 51**
- S. NR 51.002 (5m)

- S. NR 327.01 (1)
- Ch. NR 350**
- S. NR 350.02

**Transportation**

- Ch. Trans 112**
- S. Trans 112.02 (3)

---

---

## Executive orders

---

---

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

**Executive Order 91.** 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 Staff Sergeant Andrew Bossert of the United States Army who lost his life during Operation Iraqi Freedom.

**Executive Order 92.** Relating to the creation of the Governor's Council on Financial Literacy.

**Executive Order 93.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff in remembrance of Pope John Paul II.

**Executive Order 94.** Relating to the creation of the Autism Advisory Council.

**Executive Order 95.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Sergeant First Class Donald Eacho of the United States Army who lost his life during Operation Iraqi Freedom.

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

**First Class**

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

**First Class Mail**

*Wisconsin  
Administrative  
Register*

**Dated Material. Please Do Not Delay!**