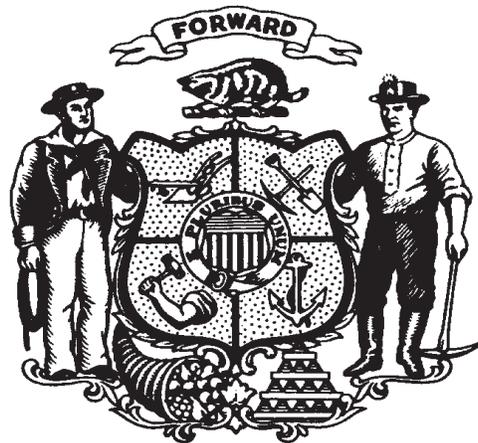


# Wisconsin Administrative Register

No. 597



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## Emergency rules now in effect

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

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

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

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

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

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Elections Board

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

#### Finding of Emergency

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

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

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

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

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

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

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

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

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

#### Finding of emergency

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

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

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

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

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

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

#### Exemption from finding of emergency

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

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

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

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

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

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

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## Insurance

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

### Finding of emergency

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

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

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

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

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

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

### Finding of emergency

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

**Publication Date:** August 31, 2005  
**Effective Date:** August 31, 2005  
**Expiration Date:** January 28, 2006  
**Hearing Date:** October 17, 2005  
 [See Notice This Register]

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

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

### Finding of emergency

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

responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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

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

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

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

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

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

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

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

#### **Finding of emergency**

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

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

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

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

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### **Public Instruction (2)**

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

#### **Finding of emergency**

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

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

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

#### **Finding of emergency**

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

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

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

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

### **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.

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## **Veterans Affairs (2)**

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

### **Exemption From Finding of emergency**

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

**Publication Date:** August 2, 2005  
**Effective Date:** August 2, 2005  
**Expiration Date:** November 30, 2005  
**Hearing Date:** October 21, 2005  
 [See Notice this Register]

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

### **Exemption From Finding of emergency**

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

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

**Publication Date:** August 2, 2005  
**Effective Date:** August 2, 2005  
**Expiration Date:** November 30, 2005  
**Hearing Date:** October 21, 2005  
 [See Notice this Register]

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## **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.

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

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

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## Scope statements

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### Barbering and Cosmetology Examining Board

#### Subject

Creating an administrative rule relating to the disinfection of foot spas within licensed cosmetology establishments. Several states, particularly California and Texas, have experienced an outbreak of severe skin infections developed after the person received pedicures involving the use of a foot spa. Public Health Department officials attribute the cause of the outbreak to the improper cleaning and maintenance of the spa.

*Objective of the rule.* To ensure that foot spas in licensed cosmetology establishments will be properly sanitized and to reduce the risk of the public becoming infected. The rule should minimize the risk of an outbreak of skin infections from the use of foot spas and will create a uniform approach to address foot spa sanitization.

#### Policy analysis

A lack of proper sanitation can lead to the spread of bacteria and infection among customers. The Wisconsin Division of Public Health has published sanitizing recommendations. The Barbering & Cosmetology Board has also published similar recommendations. This is the first proposed rule in this area. Adequate alternatives do not exist to ensure that foot spas will be properly sanitized.

#### Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 454.08 (4), Stats.

#### Comparison with federal requirements

There is none.

#### Entities affected by the rule

Licensed cosmetology establishments.

#### Staff time required

300 hours.

### Educational Approval Board

#### Subject

Section EAB 4.06, relating to student protection. *Objective of rule.* This proposed rule will amend current administrative provisions related to the EAB's student protection fund.

#### Policy analysis

Under s. EAB 4.06, the EAB currently has the authority assess regulated schools a fee for student protection fund. The amount of the fee is based on a rate of \$0.50 per \$1,000 of adjusted gross annual school revenue as reported by the schools. This proposed rule would allow the EAB to set the student protection fee at a rate necessary to protect the viability of the fund, as determined by the board.

#### Policy alternatives

The only policy alternative is to retain current administrative rule, which would put the viability of the fund

in jeopardy should a catastrophic school closure deplete the fund balance.

#### Statutory authority

Sections 38.50 (2), (3), (10) (c) 4. and 227.11 (2)

#### Entities affected by the rule

This proposed rule will only affect those entities that are subject to EAB regulation, as defined in s.38.50 (1)(e) as a postsecondary school.

#### Comparison with federal requirements

The governance of postsecondary education is a responsibility of individual states. There are no existing or proposed federal regulations that are intended to be addressed in the activities regulated by this rule.

#### Staff time required

It is estimated that 10 hours will be required to develop this rule order.

### Natural Resources

#### Subject

*Objective of the rule.* The proposed rule, revising ch. NR 47, will define the purpose, eligibility, application procedures, selection criteria, funding rates, audit procedures and general provisions of the Logging Certification Scholarship program.

#### Policy analysis

This is a new program with no prior policies or rules. The NRB has established administrative rules for several grant-type programs in the past however.

This program will affect individuals seeking Master Logger Certification (MLC). The intended purpose of the scholarship program will be to encourage and maintain participation in the Master Logger certification program. Quality logging professionals help to ensure sound management of our forests. The MLC program will facilitate production of certified forest products from Wisconsin's woodlands. The certified status of Wisconsin's forest products also helps satisfy the growing demand for such products and ensure Wisconsin's place in the global forest products marketplace.

#### Comparison with federal requirements

There are no companion federal regulations for the Master Logger program. The principles and standards of Wisconsin's MLC were patterned after a program established in the State of Maine but federal regulations or funding has not been involved.

#### Statutory authority

The FY05-07 budget created s. 26.39 (7), Wis. Stats. that awards a continuing appropriation to be provided annually to contribute to the cost of logging contractors seeking Master Logger Certification administered through the Wisconsin Professional Loggers Association (WPLA). The allocation for FY06 is to be \$50,000 with subsequent fiscal years being funded at \$150,000.

**Staff time required**

80 hours of Dept. staff time.

**Natural Resources****Subject**

*Objective of the rule.* Outstanding and Exceptional Resource Waters are listed in Chapter NR 102 (Wis. Adm. Code), and are defined as waters which provide valuable fisheries, hydrologically or geologically unique features, outstanding recreational opportunities and unique environmental settings. A revision to Ch. NR 102 – prompted by an August 2004 petition from Midwest Environmental Advocates, River Alliance of Wisconsin, and other conservation groups – is needed to list additional waters as Outstanding or Exceptional. The petition specifically asks the Department to provide additional regulatory protection for 100 of northern Wisconsin's highest quality rivers by designating those streams as Outstanding Resource Water (ORW) or Exceptional Resource Water (ERW). It is probable that a subset of the 100 segments will be recommended for designation. Attached is a pink sheet related to proposed code modifications to sections NR 102.10 and NR 102.11 to allow for the listing of additional waters as Outstanding or Exceptional Resource Waters (O/ERW), respectively. Upon adoption of the proposed revisions, newly designated waters would be afforded the additional regulatory protection that the O/ERW designations provide.

**Policy analysis**

To date, changes made to Outstanding and Exceptional Resource Waters, as listed in NR 102.10 and NR 102.11, have been initiated by the Department. An initial listing of O/ERW waterbodies was established in 1988 and 1989, with subsequent additional designations being made in 1993 and 1998. The receipt of this August 2004 petition is the first time that the Department has addressed a public request to recommend additional waters as Outstanding or Exceptional. In this situation, the Department chose to evaluate those segments listed in the petition and will make a recommendation of those waterbody segments that can appropriately be recommended for O/ERW designation. Alternatively, a decision could have been made to not address the petition, and to continue making updates to NR 102.10 and NR 102.11 at the recommendation of the Natural Resource Board or as otherwise deemed necessary by Department Administration.

**Statutory authority**

Statutes interpreted: ss. 281.15 and 281.11, Stats.

**Staff time required**

To respond to the petition that was presented to the NRB, and to subsequently propose changes to those waters listed in NR 102.10 and NR 102.11, a Department workgroup will need to evaluate each of the waterbodies in question, and determine the appropriateness of classifying them as ORW or ERW. This process could take a significant amount of time, and it is estimated that approximately 800 hours of staff time will be needed to process this rule.

**Comparison with federal requirements**

Under the Clean Water Act, s. 303, the federal government requires the states to adopt water quality standards; however the federal government does not have its own water quality standards.

**Entities affected by the rule**

The listing of additional waterbodies as O/ERW in NR 102, as will result from action on the petition, could potentially affect numerous interest groups.

Various regional and statewide conservation organizations believe that designating specific streams in northern Wisconsin as ORW/ERW will provide additional protection many of the most highly valued waters that were identified by citizens of Northern Wisconsin during the development of the Northern Rivers Initiative of the mid to late-1990's.

Communities interested in expanding eco-tourism as a revenue base may find support by having more waters identified as O/ERW within their area of influence. This may have a positive impact on the economy of these communities.

Developers and others who manage shoreland property on O/ERW waters may be required to comply with provisions of Act 118 that are more restrictive than for those non-O/ERW waters. This is a result of the linkage between O/ERW designation and the "Areas of Special Natural Resources Interest" label that is required of such waters in Act 118.

Existing point source dischargers with a WPDES permit would be restricted in their ability in to **increase** pollution loads unless certain conditions related directly to human health protection were satisfied. These same facilities would not be restricted from their current operating conditions, but would not be allowed to add to their existing waste load without meeting key conditions of Chapter NR 207 of the Wisconsin Administrative Code.

Future point sources seeking a WPDES permit would be restricted to discharging wastewater that is of similar quality to the existing water quality of any stream segment listed as O/ERW. This may require very sophisticated wastewater treatment technology. Similar to existing WPDES Permittees, these prospective dischargers would be provided flexibility under Ch. NR 207 if the discharge to an ERW were needed to prevent contamination of a drinking water supply.

**Natural Resources****Subject**

*Objective of the rule.* The Lake Superior State-Tribal Agreement guides state and tribal fishing on Lake Superior. Among other things, it specifies how many lake trout may be harvested by each of the parties. Recently, Department staff met with tribal representatives and agreed to amend the State-Tribal Agreement to establish new harvest limits. The proposed rule would codify the Anew harvest limits. The rule may also address other issues related to commercial fishing on Lake Superior.

**Policy analysis**

Because the Administrative Code must reflect the amendments to the State-Tribal Agreement, and because those amendments will take effect upon ratification by the parties, the Department will separately propose an emergency order to implement the agreed-upon increases in lake trout harvest limits immediately.

**Statutory authority**

ss. 29.014 (1), 29.519 (1) (b) and 227.11 (2) (a), Stats.

**Staff time required**

Approximately 30 hours of staff time is needed.

**Comparison with federal requirements**

There are no applicable federal regulations.

## Transportation

### Subject

*Objective of the rule.* This rule making will amend ch. Trans 102 to allow persons establishing Wisconsin residency 60 days to apply for a Wisconsin driver license rather than the current 30 days.

### Policy analysis

Documentation required to prove Wisconsin residency is sometimes difficult or not possible to obtain within the currently required 30-day timeframe.

### Comparison with federal requirements

The Department is unaware of any federal regulation requiring a person to obtain an operator's license within a specified time of establishing residency in a jurisdiction.

### Entities affected by the rule

Persons establishing residency in Wisconsin wishing to obtain a Wisconsin driver license.

### Statutory authority

s. 343.05, Stats.

### Staff time required

20 hours.

## Transportation

### Subject

*Objective of the rule.* 2005 Wis. Act 25 (2005–07 Biennial Budget) mandates that all licensed motor vehicle dealers must process title and registration applications for vehicles they sell, unless DOT exempts the dealer from processing. Section 342.16 (1) (am) mandates that DOT promulgate rules to implement and administer the newly created law.

### Policy analysis

This rule making will (1) implement and administer the requirement for licensed dealers to process title and registration applications; (2) specify what categories of dealers are not required to process title and registration applications under the new law, or under what circumstances would a dealer be exempted from processing some of the dealers' transactions; and (3) establish what fee will be charged to dealers for DOT to process title and registration applications, in various circumstances, including not only those dealers or types of transactions that are exempted by DOT, but also dealers who fail to comply with the law. The law and the administrative rule will be effective June 30, 2007.

The Department will consider existing policies that govern the current voluntary automated processing partnership program with third-party partners, existing policies that govern DMV title application processing, and existing policies that govern licensed motor vehicle dealers performance, in developing policies that will govern dealers' title and registration processing. New policies may be required, to account for mandatory dealer processing. Policy analysis will consider the volume of transactions that dealers

process, the cost to dealers for equipment and communication links, cost to DMV to process transactions that dealers do not process, and similar variables.

### Comparison with federal requirements

No federal regulations apply to the activities to be regulated to the proposed rule.

### Entities affected by the rule

All licensed motor vehicle dealers, all persons who purchase motor vehicles from dealers, current and potential vendors of computerized title processing applications, current and potential DMV agents that issue temporary license plates and transmit to DMV title and registration applications.

### Statutory authority

ss. 218.0116 (1) (gr), 218.0146 (4) and 342.16 (1) (a) and (am), Stats.

### Staff time required

It is estimated that 200 hours will be spent to develop the administrative rule.

## Veterans Affairs

### Subject

*Objective of the rule.* The Department seeks to modify the veterans assistance program in two ways. First, to allow funding for eligible veterans that would enable the veteran to pursue vocational activities. Second, to increase the monthly program fee for residents of single room occupancy housing from 25% to 30% of monthly gross income.

### Policy analysis

Under s. 45.357, Wis. Stats., the Department has broad authority to provide assistance to eligible persons who served in the U. S. Armed Forces who have needs based upon homelessness, incarceration, or other circumstances as defined by rule. The Department is authorized to designate the assistance available under the statutory language. The Department has identified a need to provide funding for expenses associated with the vocational activities. Additionally, the Department has determined that a minimal increase in the percentage of gross monthly income is needed to offset the cost of providing the shelter.

### Statutory authority

Section 45.357 (1), Wis. Stats..

### Staff time required

Approximately 10 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

### Entities affected by the rule

The rule will affect recipients of benefits under the veterans assistance program.

### Comparison with federal requirements

The veterans assistance program is operated under the authority of state law. There are no existing or proposed federal regulations that address the activities to be regulated by the rule.

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## Submittal of rules to legislative council clearinghouse

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

### Elections Board

#### Rule Submittal Date

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

#### Subject

The newly proposed rule (EIBd ch. 11), relating to the training and certification of election inspectors.

#### Agency Procedure for Promulgation

the Board will use the procedure under s. 227.16 (2) (e), Stats. (30-day notice) and not schedule a hearing unless petitioned.

#### Contact Information

The agency person responsible for internally processing this rule is George A. Dunst, legal counsel for the State Elections Board.

The name of the person to contact about this rule is George A. Dunst, whose telephone number is (608) 266-0136.

### Labor and Industry Review Commission

#### Rule Submittal Date

On August 29, 2005, the Labor and Industry Review Commission submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Subject

The proposed rules update and reorganize ch. LIRC 1-4 to clarify provisions relating to when, where and how petitions for commission review may be filed, to create a provision allowing petitions for review to be filed electronically through the commission's website in Unemployment Insurance and Workers Compensation cases, to clarify provisions relating to use of hearing transcripts, synopses and summaries of evidence, and to make other minor corrective changes in its rules of procedure.

#### Agency Procedure for Promulgation

A public hearing is required.

#### Contact Information

James T. Flynn  
608-266-9850

### Veterans Affairs

#### Rule Submittal Date

On September 7, 2005 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending VA 2.03 (2) (g) and creating VA 2.03 (2) (i), (j),

and (k) of the Wisconsin Administrative Code. The proposed rule relates to the retraining grant program.

#### Subject

The adoption of the proposed rules will limit the amount of a grant per economic event, establish a lifetime limit on the amount a veteran may receive under the program, impose a course completion verification requirement, and require that a veteran use alternative available resources for payment in lieu of the retraining grant program.

There is no current or pending federal regulation that addresses this initiative. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant impact upon the private sector.

#### Agency Procedure for Promulgation

A public hearing is required. The Office of the Secretary is primarily responsible for preparing the rule.

#### Contact Information

John Rosinski  
Chief Legal Counsel  
Telephone (608) 266-7916

### Veterans Affairs

#### Rule Submittal Date

On September 7, 2005 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending s. VA 17.02 (2) (a) 2 and 3 of the Wisconsin Administrative Code. The proposed rule relates to the military funeral honors program.

#### Subject

The adoption of the proposed rules will limit the maximum payment for full funeral honors to \$35.00.

There is no current or pending federal regulation that addresses this initiative. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant impact upon the private sector.

#### Agency Procedure for Promulgation

A public hearing is required. The Office of the Secretary is primarily responsible for preparing the rule.

#### Contact Information

John Rosinski  
Chief Legal Counsel  
Telephone (608) 266-7916

### Veterans Affairs

#### Rule Submittal Date

On September 14, 2005 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the

Wisconsin Legislative Council Rules Clearinghouse repealing and recreating s. VA 2.01 of the Wisconsin Administrative Code. The proposed rule relates to the assistance to needy veterans program.

**Subject**

The adoption of the proposed rules will implement the administration of the assistance to needy veterans program established in 2005 Wis Act 25.

There is no current or pending federal regulation that addresses this initiative. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant impact upon the private sector.

**Agency Procedure for Promulgation**

A public hearing is required. The Office of the Secretary is primarily responsible for preparing the rule.

**Contact Information**

John Rosinski  
Chief Legal Counsel  
Telephone (608) 266-7916

**Veterans Affairs**

**Rule Submittal Date**

On September 14, 2005 the Wisconsin Department of

Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse repealing s. VA 2.04 and repealing and recreating s. VA 2.02 of the Wisconsin Administrative Code. The proposed rule relates to the tuition reimbursement program.

**Subject**

The adoption of the proposed rules will implement the administration of the tuition reimbursement program established in 2005 Wis Act 25.

There is no current or pending federal regulation that addresses this initiative. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant impact upon the private sector.

**Agency Procedure for Promulgation**

A public hearing is required. The Office of the Secretary is primarily responsible for preparing the rule.

Contact Person  
John Rosinski  
Chief Legal Counsel  
Telephone (608) 266-7916

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## Rule-making notices

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### Notice of Hearing Elections Board [CR 05-093]

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05 (1) (f), 5.93, and 227.11 (2) (a), Stats., and interpreting ss. 7.30, 7.31, 7.33, 7.36, and 7.37, Stats., and according to the procedure set forth in s.227.16 (2) (e), Stats., the State of Wisconsin Elections Board will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, on **October 1, 2005**, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

#### Analysis Prepared by State Elections Board

1. Statutory authority: ss. 5.05 (1) (f), s. 5.93, and 227.11 (2) (a).
2. Statutes interpreted: ss. 7.30, 7.31, 7.33, 7.36, and 7.37, Stats.
3. Explanation of agency authority: The rule implements s. 7.31, Stats., which requires the Elections Board to develop and implement a training and certification program for the chief election inspectors who are responsible for the conduct of elections at Wisconsin polling places.

In Wisconsin, 2001 Wisconsin Act 16 requires the Elections Board to develop and implement a training and certification program for the chief election inspectors who are responsible for the conduct of elections at Wisconsin polling places. To implement the training program, the Elections Board's staff has drafted a set of administrative rules regarding qualification and certification as a chief election inspector. Although the rule is required to be in place immediately, the state's fiscal crisis has delayed the Board's ability to implement the training and certification of the estimated 5000 chief inspectors. Adoption of the rules regarding training and certification is one of the steps in implementation of the statute's command. Training of chief inspectors has already commenced in 2004. Further training and certification will follow.

4. Related statute or rule: The rule interprets ss.7.30, 7.31, 7.33, 7.36, and 7.37, Stats., all of which relate to election inspectors or election officials.

5. Plain language analysis: The rule establishes the procedure for, and the method by which, chief election inspectors are certified to preside at polling places throughout Wisconsin.

Elections in the State of Wisconsin are conducted at an estimated 2500 polling places. Supervision of voting at each polling place is under the direction of the election inspectors and, particularly, the chief election inspector, appointed to serve that polling place.

6. Summary of, and comparison with, existing or proposed federal regulations: Although federal law does not have a comparable provision for the training of poll workers, federal law – the Help America Vote Act of 2002 or “HAVA,” (Public Law 107-252, Oct. 29, 2002) – has mandated the training of

election officials and poll workers in each of the 50 states. Under HAVA, each state receiving federal funds to improve the administration of elections in the state has to develop a plan that includes “programs for election official education and training, and poll worker training which will assist the state in meeting the requirements of Title III” (of the Act). The State of Wisconsin has developed and is implementing such a plan.

7. Comparison with rules in adjacent states: The States of Illinois, Iowa, Michigan and Minnesota each has a statute that requires that persons who conduct elections at polling places (election judges, election inspectors or precinct officials) must receive training on a regular basis. Although Illinois requires certification, the other states only require attendance. Each state accepting federal money under the Help America Vote Act is required to certify the persons who conduct voting at polling places in the state.

8. Summary of factual data and analytical methodologies: Adoption of the rule was predicated on federal and state mandate rather than on any factual data or analytical methodology.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: Preparation of an economic impact report is not required. The Elections Board does not anticipate adoption of rules that will have an economic impact.

10. Effect on small business: The creation of this rule does not affect business.

11. Agency contact person (including e-mail and telephone): George A. Dunst

Legal Counsel, State Elections Board

17 West Main Street

P.O. Box 2973

Madison, Wisconsin 53701-2973; Phone 266-0136

(george.dunst@seb.state.wi.us)

12. Place where comments are to be submitted and deadline for submission: State Elections Board, 17 West Main Street, P.O. Box 2973, Madison, WI 53701-2973; (elections.state.wi.us)

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f), 5.93, and 227 (11) (2) (a), Stats., the Elections Board hereby creates Rule ElBd 11.01, 11.02, 11.03, 11.04, and 11.05, interpreting ss.7.30, 7.31, 7.33, 7.36, and 7.37, Stats.

SECTION 1. Chapter ElBd 11, Training and certification of election inspectors, is created to read:

ElBd 11.01 Certification requirement (1) At each polling place in each municipality in Wisconsin, there shall be a chief election inspector who shall be certified by the Elections Board.

(2) Certification and maintenance of certification of chief election inspectors shall follow the standards set forth in this chapter.

(3) A record of each individual that has been certified by the Elections Board as a chief election inspector for a municipality, under the standards established by this chapter, shall be maintained by the municipality's clerk or board of election commissioners.

EIBd 11.02 Qualification (1) Individuals who have been, or will be, appointed chief election inspector, pursuant to s.7.30, Stats., shall be certified by the Elections Board.

(2) Before they may be certified as a chief election inspector, applicants shall complete an initial training course conducted under the direction of the Elections Board staff.

(3) Each chief election inspector's certificate shall expire at the end of the term for which that inspector has been certified unless the certificate has been renewed before expiration. A chief election inspector's certificate may be revoked by the municipal clerk when the inspector is removed from office pursuant to the provisions of s. 7.30 (6) (c), Stats.

EIBd 11.03 Certification maintenance. (1) To maintain certification as a chief election inspector, an individual shall, during the individual's term of office, attend at least six (6) hours of training approved by the board's executive director.

(2) Compliance with the approved training required by par. (1) may consist of attendance at any combination of the following chief election inspector certification-training courses that have been approved by the board's executive director.

(a) An approved training course for chief election inspectors conducted under the direction of the Elections Board's staff.

(b) An approved training course for chief election inspectors conducted by the Elections Board's staff at a meeting of the Wisconsin County Clerks Association, Wisconsin Municipal Clerks Association, Wisconsin Towns Association or the League of Wisconsin Municipalities.

(c) An approved training course for chief election inspectors conducted by the Elections Board's staff through the University of Wisconsin Extension Local Government Center WISLINE Series.

(d) An approved training course for chief election inspectors conducted by a municipal clerk or municipal board of election commissioners pursuant to s. 7.15 (1) (e), Wis. Stats.

(e) An approved training course for chief election inspectors at a regional or national conference of a professional organization that serves election officials.

(f) Any other chief election inspector certification-training course that has been approved by the board's executive director.

(3) To maintain certification, an individual shall provide to the municipal clerk or municipal board of election commissioners satisfactory proof of completion of an approved certification-training course for chief election inspectors, listing a description of the approved training event, including the date and location of the approved training.

(4) If an individual demonstrates to the clerk or municipal board of election commissioners that he or she has met the maintenance of certification requirements of Para. (1), the clerk or board of election commissioners may renew the certification for the individual's succeeding term.

EIBd 11.04 Election day responsibilities. (1) On Election Day, the chief election inspector shall state on the Inspectors' Statement, (Form EB-104), that the chief election inspector holds a current certification.

(2) Immediately following each election, the municipal clerk or director of the municipal board of election commissioners shall deliver a copy of the Inspectors' Statement (Form EB-104) pursuant to the provisions of s.7.51 of the Wisconsin Statutes.

(3) Immediately following each election, the municipal clerk or director of the municipal board of election commissioners shall review the inspectors' statement to ensure compliance with paragraph (1) and compliance with s. 7.51, Stats.

EIBd 11.05 Certification waiver. In the event of an emergency, after notice to, and approval by, the Elections Board, the municipal clerk or director of a municipal board of election commissioners may use a non-certified chief inspector at a specified polling place, for that election only, if, because of the emergency, a certified chief election inspector is not available to serve that polling place.

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

### **[CR 05-083]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.089 (3) and 227.11, Stats., interpreting ss. 29.014 and 29.089 (3), Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 10.01 (3) (e) 2. h., Wis. Adm. Code, creating a deer hunting season at Straight Lake Wilderness state park, Polk County. The proposed rule creates a deer firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days followed by a muzzleloading firearm season beginning on the following Monday and continuing for 10 consecutive days. This deer season may be modified should the property master plan prescribe an alternative hunting season structure.

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

Wednesday **October 19, 2005** at 6:00 p.m.

UW Ag Research Station

W6646 Highway 70, Spooner

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 Keith Warnke at (608) 264-6023 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Fiscal Estimate**

There may be increased state costs up to \$2,400.

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. Keith Warnke, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 21, 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. Warnke.

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

**[CR 05-085]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.041, 29.519 (1) (b) and 227.11 (2) (a), Stats., interpreting ss. 29.014 (1), 29.041 and 29.519 (1), Stats., the Department of Natural Resources will hold public hearings on amendments to ss. NR 20.20 (73) (j) 1. a. and 3. a. and 25.06 (2) (b) 1., Wis. Adm. Code, relating to sport and commercial fishing for yellow perch in Green Bay. The proposed rule increases the sport fishing bag limit for yellow perch from 10 to 25 fish and increases the annual total allowable commercial harvest from 20,000 pounds to 60,000 pounds. It also eliminates the sunset clause.

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: Commercial perch fishers in Green Bay
- b. Description of reporting and bookkeeping procedures required: No new or revised 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 hearings will be held on:

Wednesday, **October 12, 2005** at 1:30 p.m.

Council Chambers, City Hall  
331 French Street  
Peshtigo

Mary Ann Cofrin Room 208  
UW-Green Bay, 2420 Nicolet Drive  
Green Bay  
at 5:30 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 Bill Horns at (608) 277-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

No state or local government impact is anticipated.

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. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 21, 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. Horns.

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

**[CR 05-087]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 77.82 (2m) (am), (3) (g) and (7) (c) 3. and 227.11 (2) (a), Stats., interpreting s. 26.38 and subch. VI of ch. 77, Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 46, subch. III and ch. NR 47, subch. VII, Wis. Adm. Code, relating to administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program. 2005 Wis. Act 25 (05/07 budget bill) made revisions to subch. VI of ch. 77, Stats., related to Managed Forest Law (MFL) application fees, the authority of the Department to decline to prepare a MFL management plan for enrollment, and a fee to be collected if the Department agrees to prepare the MFL management plan. The changes to statute are aimed at encouraging landowners to seek qualified private foresters (Independent Certified Plan Writers) to prepare their plans thereby freeing up some department foresters' time which can be redirected to critical unmet needs. Certain changes, including the plan preparation fee, apply to petitions received beginning June 1, 2005. This was prior to the July 1, 2005 petition deadline.

The proposed rule changes are directed to accommodate the changes in 2005 Wis. Act 25 and modify the Wisconsin Forest Landowner Grant Program (WFLGP) to address the increased demand to the state's cost share program for management plan preparation. The cost share rate for all practices will be reduced from a maximum of 65% down to 50% in order to extend the available funds and meet other critical forestry needs.

The rules proposed for Managed Forest Law program will:

1. Develop a MFL referral program in which all MFL petitions are referred to Independent Certified Plan Writers (ICPW) for plan preparation. If no offer is made within 45 days, the Department may agree to prepare the plan.
2. Establish a plan preparation fee (PPF) for plans that the department agrees to prepare for enrollment. The formula for the PPF would be established in code and would be a statewide PPF.
3. Modify deadline for draft plan to be submitted as a qualification for the May 15<sup>th</sup> application deadline.

## 4. Define Independent Certified Plan Writer.

## 5. Change from "Certified Plan Writer" to "Independent Certified Plan Writer" where appropriate.

The rules proposed for Wisconsin Forest Landowner Grant cost share program will:

1. Add a fourth batching period of November 1, to make signing up for a plan easier for landowners.

2. Modify distribution of cost share funds to reduce the amount set aside for statewide forestry emergencies from 20% to 10%; limit available funds designated for management plan development (a priority 1 practice) to no more than 50%; limit available funds to no more than 10% for priority 2 practices identified on s. NR 47.86 (3) (c) 3., Wis. Adm. Code; and designate remaining funds (at least 40%) for tree planting and timber stand improvement (other priority 1 practices).

3. Repeal language that allows an assignment of pay, which does not allow the landowner an opportunity to review work completed before payment is made.

4. Modify language to allow cost sharing of mandatory practices in the MFL program..

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:

b. Description of reporting and bookkeeping procedures required:

c. Description of professional skills required:

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

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

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

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 77.82 (2m) (am), (3) (g) and (7) (c) 3., 227.11 (2) (a) and 227.24, Stats., interpreting s. 26.38 and subch. VI of ch. 77, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FR-38-05(E) relating to administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

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

**Wednesday, October 19, 2005 at 10:00 a.m.**

Video conference participation will be available at:

Room 139, State Office Building

718 W. Clairemont Ave.

Eau Claire

Room 618, State Office Building

200 N. Jefferson St.

Green Bay

Room 8F, State Office Building

101 E. Wilson Street

Madison

Room 3, DNR Northern Region Hdqrs.

107 Sutliff Ave.

Rhineland

Conference Room, DNR Northern Region Hdqrs.

810 W. Maple

Spooner

Room 153, State Office Building

151 NW Barstow St.

Waukesha

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 Ms. Carol Nielsen at (608) 266-8019 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Fiscal Estimate

The proposed changes to Subchapter III Chapter NR46 and Subchapter VII Chapter NR47 will have a net increase of \$319,950 in revenues to the STATE.

The changes will have NO FISCAL IMPACT TO COUNTIES AND MUNICIPALITIES. The only impacts may be a slower growth of new lands enrolled under MFL.

The changes proposed are to accommodate the revisions made to the Managed Forest Law in 2005 Wis. Act 25 (05/07 Budget Bill). The changes in the statute by the act included a reduction in the fee for applications submitted without a plan from \$300 to \$20; revision that the department may agree to prepare plans for enrollment in MFL if requested (the department is no longer obligated to prepare the plan); and directs the department to establish a plan preparation fee to be assessed for any plan the department agrees to prepare for enrollment.

For the fiscal estimate it was assumed that the department will receive approximately 1500 applications/year on or before July 1. The 1500 applications will be referred to Certified Plan Writers (CPW). The department may prepare plans for those that do not receive an offer for plan preparation services from a CPW, estimated to be 30% of the applications (450). The average application is for 60 acres.

PLAN PREPARATION FEE (base rate plus cost/acre): The initial rates to be used for 2007 and 2008 MFL entries will be a base rate of \$375/plan plus \$5.60/acre included in the plan. These rates are statewide averages derived from 2005 DNR MFL plan contracting data.

The estimated INCREASE IN STATE REVENUES will be \$319,950 for the 450 plans the department agrees to prepare. The average cost of a plan is \$711 (\$375/plan + \$5.60/ac x 60 ac/plan = \$711). \$711/plan x 450 plans = \$319,950. The revenue generated will be split between the contracting appropriation (\$280/plan) and the forestry fund (plan preparation fee minus \$280).

Although the \$280 per plan the department agrees to prepare appears to be an increase in revenue this is actually offset by a reduction in revenue instituted in the statute. The \$300 application fee for applications submitted without a plan was reduced to \$20 resulting in an estimated \$420,000 decrease in revenue to the contracting appropriation. This is not included in the worksheet as it was as a result of a statutory change not a rule change.

Future rates established annually on July 2 will be an average of cost data submitted by Independent Certified Plan Writers (ICPW) for MFL plans prepared in the previous year.

**PLAN REFERRAL PROCESS:** The referral process will not have a fiscal impact, but any plans prepared by ICPWs will decrease the time required by department staff to prepare plans. The referral process will place all applications received without a plan on a referral list. The list will be distributed to ICPWs who may make an offer for plan preparation services to any of the applicants. If an offer for plan preparation services is not made within 45 days the department may agree to prepare the plan. An estimated 70% (1050) of the applications will be picked up by ICPWs. The department retains the responsibility to review and approve the plans prepared by ICPWs. The review takes an average of 4.65 hrs/plan.

By not preparing the plan the department saves an average of 15.15 hrs/plan (1050 plans x 15.15 hrs/plan = 15,907 hrs). The 15,907 hrs represents 8.7 FTEs (@1820 hrs/FTE) will be available to work on other high priority work. There will be some additional time needed to administer the referral system but it will be relatively small and spread out over both field and central office staff. The goal is to develop a web based referral system which will save time.

**WISCONSIN FOREST LANDOWNER GRANT PROGRAM (WFLGP) CHANGES:** The rule changes proposed for the WFLGP will have NO FISCAL IMPACT.

Cost sharing of MFL management plans prepared by the department foresters or ICPWs does not require any rule changes but it is anticipated that the number of landowners requesting cost sharing for plan development will increase. To ensure that funds will be available to cost share other priority one practices (timber stand improvement, tree planting) and priority two practices (e.g., soil and water protection and improvement, fish & wildlife habitat enhancement) and to make the existing funds go further the following changes have been proposed:

1. Reduce the rate of cost sharing on all practices from a maximum of 65% down to 50% of the actual cost. No rule change is needed. Current wording allows the department to set the maximum rate from 50% to 65%. Approximately \$290,000 would be available to fund additional practices. An additional 80 applications could be funded (\$290,000 / \$3,000 ave. application = 97). This is a 14% increase in number of applications funded annually. There is an additional administrative cost to cover the increased applications of approximately \$2,038 (\$14/hr x 1040 hrs x 14% = \$2,038). This cost was not included on the worksheet as it is a result of an administrative change not a rule change.

2. Limit the cost share funds that can be used for plan development and priority 2 practices to 50% and 10% respectively leaving the balance to timber stand improvement and tree planting. This is a rule change but it has NO FISCAL IMPACT.

A decrease in the available cost share funding for tree planting practices may decrease the demand for nursery stock sales and the revenues it produces. This may be mitigated in two ways:

1. Reducing cost share rates from a maximum of 65% down to 50% as described above, which would increase the number of cost share applications that can be funded.

2. Request for an increase in cost sharing funds (\$400,000) through an emergency funding request as recommended by Governor's note in 2005 Wis. Act 25 (05/07 budget). The success of this request will allow us to maintain current tree planting levels.

### **Fiscal Impact to Private Sector**

Landowners enrolling in MFL will now be responsible for the cost of the management plan but the application fee is reduced to \$20. Their increase in cost would be \$431 per entry (\$711 ave. plan cost – \$280 reduce application fee = \$431). Cost sharing through the Wisconsin Forest Landowner Grant program (WFLGP) is available to cover 50% of the current market rate for preparing a plan (\$711 x 50% = \$355.50). If they take advantage of cost sharing their net increase in cost would be approximately \$75.50 for an average plan (\$431 – \$355.50 = \$75.50).

The referral process will direct more work to the ICPWs who are part of the cooperating forester base in Wisconsin. It is estimated that 70% of the 1500 applications referred will have plans prepared by ICPWs, representing an estimated increase in income of \$746,550 (1050 plan x \$711/plan = \$746,550). The number of plans prepared by ICPWs is expected to increase in the future.

The emergency rule, 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 Forest Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 28, 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 (Fish, Game, etc.)**

**[CR 05-088]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.563 (11) (b) 1. and 29.591 (3), Stats., interpreting ss. 29.563 (11) (b) 1. and 29.591 (3), Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 19.50, Wis. Adm. Code, relating to establishing hunter education fees. Language in the recent budget bill requires hunter education instructors to charge a fee for the hunter education course and that the Department promulgate rules to implement this fee. Instructors will be allowed to charge students \$10.00 and keep up to \$5 of that amount to offset their expenses. The remainder of the fee is to be returned to the Department.

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

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

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

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 29.563 (11) (b) 1., 29.591 (3) and 227.24, Stats., interpreting ss. 29.563 (11) (b) 1. and 29.591 (3), Stats., the Department of Natural Resources will hold a public hearing Natural Resources Board Emergency Order No. LE-40-05(E) relating to establishing hunter education fees. The emergency rule allows instructors to charge students \$10.00 and keep up to \$5 of that amount to offset their expenses. The remainder of the fee is to be returned to the Department.

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

Wednesday, **October 12, 2005** at 8:00 a.m.

Room 717, GEF #2

101 South Webster Street

Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tim Lawhern at (608) 266-1317 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Estimate**

A possible increase in state revenues of up to \$150,000 is anticipated and will be returned to the hunter education program budget.

The proposed rule, emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Tim Lawhern, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 14, 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. Lawhern.

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

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, 29.197 and 227.24, Stats., interpreting ss. 29.04, 29.041 and 29.197, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-20-05(E) pertaining to the 2005 migratory game bird season. This emergency order took effect on August 31, 2005. The significant regulations are:

**Ducks:** The state is divided into two zones each with 60-day seasons. The season begins at noon September 24 and continues for 60 consecutive days in the north, closing on November 22. In the south, the season begins at noon on October 1 and continues through October 9, followed by a 5-day split. It reopens on October 15 and continues through December 4. The daily bag limit is 6 ducks including no more than 4 mallards, of which only one may be a hen, one black

duck, one pintail, one canvasback (from October 15 – November 13 statewide), 2 wood ducks, 2 redheads and 2 scaup.

**Geese:** The state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone – 64 days; Horicon Zone – 92 days; Exterior Zone – 92 days; and Mississippi River Subzone – 70 days. The Burnett County Subzone is closed to Canada goose hunting. The statewide daily bag limit for Canada geese in the Horicon and Collins Zones is 2 birds per day during the open seasons within each zone. In the Exterior Zones and its subzones, the daily bag limit will be on bird per day from September 17 – October 2 and 2 birds per day for the remainder of the season.

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

Monday, **October 17, 2005** at 1:00 p.m.

Room 405, GEF #2 101

South Webster Street

Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kent VanHorn at (608) 266-8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the emergency rule may be submitted to Mr. Kent VanHorn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than October 19, 2005. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule may be obtained from Mr. VanHorn. The emergency rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>.

### **Notice of Hearings Natural Resources (Fish, Game, etc.) [CR 05-086]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.089 (3) and 29.177 (3m), Stats., interpreting ss. 29.014, 29.024 (6), 29.089 (3), 29.173 (3), 29.177, 29.181 and 29.559, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to deer hunting season and permit issuance regulation changes. The revisions include:

1. There will be a 2-day youth either sex gun hunt in September (opening 7 days after the bow season opens). A mentor will be required to accompany a youth (only the youth will be allowed to carry a gun) and the youth hunter will be required to place their regular buck deer carcass tag on an antlered buck (only one buck per youth hunter). Youth hunters would be allowed to harvest as many antlerless deer as they have valid tags for.

2. The late archery season will close the Sunday nearest January 6. This change will ensure that the late bow season will be open during the New Year's holiday every year.

3. There will be a statewide 4-day antlerless gun hunt beginning on the 2<sup>nd</sup> Thursday following the Thanksgiving holiday. The hunt will be open in all units to anyone with a valid antlerless deer permit.

4. In herd control units (currently Zone T and EAB units) antlerless tags will be unrestricted. The first antlerless tag is free with the purchase of a gun or archery license. Additional tags will be available for a minimal handling fee (\$2 unless purchased on-line or over the phone in which case the standard processing fee (\$3) will be applied in addition to the \$2).

5. The archery license would come with two tags valid statewide: one valid for one antlered deer only and the other valid for antlerless only. This change will retain the either sex hunt option for archery while simplifying tagging options. There will be only two types of tags: buck and antlerless. There will be no more either sex tags – except for two very limited exceptions.

6. The Hunter's Choice program would be replaced by the sale of antlerless tags valid in limited quota (regular) units as additional deer. Antlerless permits would be sold first-come, first-serve for \$12 each (\$20 for nonresidents). Tags would be available on August 1 for purchase at a rate of one per hunter per day.

7. There would be no October 4-day antlerless only hunt outside CWD zones in 2006 and 2007. (In the event that the average antlerless:antlered harvest ratio in herd control units statewide is below 1.4 in 2006, the rule may immediately sunset.) In the event that inadequate herd control is realized as a result of this trial, the 4-day October antlerless deer gun hunt would return in 2008. The start date would be the Thursday nearest October 15 and it would occur in DMUs where a regular season of buck plus quota will not bring the population to within 20% of the over-winter goal.

8. The Earn-A-Buck season structure would be an available tool (in 2006 and 2007) for recommendation to the Natural Resources Board based on the criteria currently used (EAB pre-qualification will be implemented).

9. A first-come, first-serve system to sell bonus tags for deer hunting access in state parks open to hunting.

None of these proposed changes apply to the CWD Zones or season structures.

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

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

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

NOTICE IS HEREBY FURTHER GIVEN that in addition to comments on the proposed rules, the Department is seeking public input on a proposal to prohibit all deer baiting and feeding during the 9-day November gun deer season and during the 10 days before the season.

NOTICE IS HEREBY FURTHER GIVEN that the Department will provide an information session on the proposed rules to begin at 6:30 p.m., with testimony on the proposals to begin at 7:00 p.m..

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held at 7:00 p.m. on:

Tuesday, **October 11, 2005**

Room M103 (Auditorium)  
Chippewa Valley Tech. College  
620 W. Clairemont Ave.

Eau Claire

Cooperative Extension Bldg.  
1150 Bellevue Street  
Green Bay

Wednesday, **October 12, 2005**

Auditorium, Theisen Middle School  
525 E. Pioneer Road  
Fond du Lac

Room 151, Dreyfus State Office Bldg.  
141 NW Barstow Street  
Waukesha

Thursday, **October 13, 2005**

Omni Center  
255 Riders Club  
Onalaska

Tuesday, **October 18, 2005**

Alumni Room, University Center  
UW-Stevens Point  
1015 Reserve Street  
Stevens Point

Wednesday, **October 19, 2005**

WITC  
2100 Beaser Avenue  
Ashland

American Family Insurance NHQ  
6000 American Parkway  
Madison

Auditorium, Williams Jr. High School  
915 Acacia Lane  
Rhineland

UW Ag Research Station  
W6646 Highway 70  
Spooner

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 Keith Warnke at (608) 264-6023 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

There may be significant and fiscal impact on state revenues and costs.

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. Keith Warnke, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 21, 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. Warnke.

**Notice of Hearing**  
**Natural Resources**  
**(Environmental Protection—General)**  
**[CR 05–089]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 281.16 and 227.11 (2) (a), Stats., interpreting ss. 281.11 and 281.15, Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 102.10, 102.12 and 207.03, Wis. Adm. Code, relating to the water quality classifications in the Lake Superior basin and the related anti-degradation procedures for WPDES permits. The proposed rules will modify the existing outstanding resource water designation for selected tributaries to include a ¼ mile arc of Lake Superior at the mouth of each of those tributaries. The proposal would also create a ¼ mile outstanding resource water designation for the waters of Lake Superior around the Apostle Islands within the Apostle Islands National Shoreline. A third part would prohibit any new or increased discharges of the targeted pollutants to waters of the basin unless the discharge was the result of utilization of best technology in process and control. This could include process features like production equipment, material substitution, waste minimization, recycling or other pollution prevention techniques or treatment. For municipal dischargers, pretreatment requirements or other municipal programs or treatment technologies could satisfy the requirements on the dischargers. The applicant would be required to provide a certification, as part of the application, that the increased discharge was necessary even after the use of best technology in process and control. There would not be a technical review by the Department.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The future impacts would be directed to new dischargers of the nine toxic pollutants to ensure that they would employ practices and technologies already in use within the basin. For the outstanding resource water designations, applicants seeking permits under ch. 30, Stats., would likely not be eligible for exemptions nor for general permits. Instead individual permits may be needed. New wastewater dischargers to those areas would have to provide high levels of treatment to prevent lowering water quality. 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 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:

Wednesday, **October 12, 2005** at 5:00 p.m.

Great Lakes Visitor Center, Ashland

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Chuck Ledin at (608) 266–1956 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

No state or local government impact is anticipated.

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. Charles Ledin, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 19, 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. Ledin.

**Notice of Hearing**  
**Natural Resources**  
**(Environmental Protection—General)**  
**[CR 05–084]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.27 and 227.11 (2) (a), Stats., interpreting s. 30.27, Stats., the Department of Natural Resources will hold a public hearing on revisions to s. NR 118.04, Wis. Adm. Code, relating to management zone designations in the Lower St. Croix National Scenic Riverway. The proposed revisions will allow the Village of Osceola and the City of St. Croix Falls the flexibility to allow businesses as a permitted use rather than a conditional use. This requires modifying s. NR 118.04 to change the management zone designation for a portion of each of these municipalities from Small Town Historic Management Zone to River Town Management Zone. The remainder of these municipalities will remain in the Small Town Historic Management Zone. No other communities within the riverway are affected by this change.

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

Tuesday, **October 18, 2005** at 5:00 p.m.  
Village Hall, 310 Chieftain Street  
Osceola

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 Dave O'Malley at (608) 264-6285 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Estimate**

The proposed rule has no state fiscal effect and is not expected to increase local government costs. Local government costs may actually decrease as the result of the changes.

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 Dave O'Malley, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 21, 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. O'Malley.

### **Notice of Hearing**

**(expanded comment period)**

#### **Natural Resources (Environmental Protection—WPDES)**

**[CR 05-075]**

NOTICE IS HEREBY GIVEN that the Department of Natural Resources is extending the public comment period on the repeal and recreation of ch. NR 243, Wis. Adm. Code, relating to animal feeding operations to **October 14, 2005**.

The proposed rule, fiscal estimate and environmental assessment 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 Tom Bauman, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. A personal copy of the proposed rule, fiscal estimate and environmental assessment may be obtained from Mr. Bauman. The information is also available on the Department's website at:  
<<http://dnr.wi.gov/org/water/wm/nps/rules/nr243/nr243.htm>>

### **Notice of Hearing**

#### **Transportation**

**[CR 05-095]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of ch. Trans

276, Wis. Adm. Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

**November 4, 2005**

Wisconsin Department of Transportation  
N.W. Region – Eau Claire Office  
718 W. Clairemont Avenue  
Dunn Conference Room  
Eau Claire, Wisconsin  
11:00 AM

(Parking is available for persons with disabilities)

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

#### **Analysis Prepared by Department of Transportation**

Statutory Authority: ss. 85.16 (1) and 348.07 (4), Stats.

Statute Interpreted: s. 348.07 (4), Stats.

Plain Language Analysis and Summary of, and Preliminary Comparison with, Existing or Federal Regulation. This rule amends s. Trans 276.07 (6), Wis. Adm. Code, to add one segment of highway to the designated highway system established under s. 348.07 (4), Stats. This rule adds the newly constructed STH 29 bypass around Chippewa Falls, Wisconsin, to the designated highway system<sup>1</sup>. Prior to construction of the bypass, trucks were required to exit Highway 29 before it entered downtown Chippewa Falls and could re-enter the highway once they passed the town on other roads. With construction of the bypass, STH 29 no longer enters downtown Chippewa Falls, and there is no need to force trucks to exit the highway at Chippewa Falls. The safer and faster means for them to travel is along the new bypass.

<sup>1</sup>This proposed rule achieves this objective by consolidating two segments of Highway 29; one between I-94 and Chippewa Falls and the other between Green Bay and Chippewa Falls into one contiguous segment from I-94 West of Elk Mound to USH 41 in Green Bay.

Additional Historical Background: In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor-semitrailer combinations and to truck tractor-semitrailer-trailer combinations. (See Jan. 6, 1983, Public Law 97-424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination.
- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination.
- No state may limit the length of truck tractors.
- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.
- No state shall prohibit operation of truck tractor-semitrailer-trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended s. 348.07 (2), Stats., and s. 348.08 (1), Stats. This act created ss. 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e), Stats., to implement the federal length requirements. In 1986 the legislature created s. 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle

combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted § 348.07(4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in § 348.07(4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 5 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

The long trucks to which this rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet<sup>2</sup>, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

<sup>2</sup> 45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006b of the Intermodal Surface Transportation Efficiency Act of 1991.

The effect of this rule will be to extend the provisions of ss. 348.07 (2) (f), (fm), (gm) and (gr), and 348.08 (1) (e), Stats., to the highway segment listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highway. Specifically, this means there will be no overall length limitation for a tractor-semitrailer combination, a double bottom or an automobile haulaway on the affected highway segment. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the

tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen. The Department initiated this rule change to accommodate traffic flow along the STH 29 corridor. The need to exempt the section of STH 29 passing through Chippewa Falls ceased to exist upon construction of the new bypass. The bypass was built, in part, to accommodate long truck traffic along STH 29. The public hearing and Department investigation undertaken in preparation for the hearing provide the engineering and economic data needed to make a final decision on whether to withdraw the proposal or proceed to final rule making.

### Comparison with Rules in Adjacent States

None of the states adjacent to Wisconsin (Michigan, Minnesota, Illinois and Iowa) have administrative rules relating to long truck routes in their states.

### Effect on Small Business

The provisions of this rule adding a highway segment to the designated system have no direct adverse effect on small businesses, and will have a favorable effect on those small businesses which are shippers or carriers using the STH 29 bypass around Chippewa Falls. The Department's Regulatory Review Coordinator may be contacted by e-mail at [andrew.ruiz@dot.state.wi.us](mailto:andrew.ruiz@dot.state.wi.us), or by calling (414) 438-4585.

### Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

### Contact Person and Submission of Comments

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Ashwani Sharma, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986. You may also contact Mr. Sharma by phone at (608) 266-1273.

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

## Notice of Hearing

### Veterans Affairs

[CR 05-090]

NOTICE IS HEREBY GIVEN that the Department of Veterans Affairs will hold a public hearing on the **21st day of October, 2005**, at 9:40 a.m., in the 8<sup>th</sup> floor board room at 30 West Mifflin Street in Madison, Wisconsin.

**Analysis prepared by Department of Veterans Affairs**

Statutory authority: s. 45.03 (2), Stats.

Statute interpreted: s. 45.60 (2), Stats.

The proposed rule changes will limit the maximum payment for a stipend under the military funeral honors program to \$35.00.

There is no current or pending federal regulation that has an impact on this issue. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal effect upon the private sector.

**Initial Regulatory Flexibility Analysis**

This rule is not expected to have any adverse impact upon small businesses.

**Fiscal Estimate**

The implementation of the rule will allow the department to reduce expenditures from prior years and reduce any deficit in the amount appropriated for the biennium to approximately \$10,000.

**Copy of Rules**

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski  
Wisconsin Department of Veterans Affairs  
PO Box 7843  
Madison, WI 53707-7843

**Contact Person**

John Rosinski (608) 266-7916

John.rosinski@dav.state.wi.us

**Notice of Hearing  
Veterans Affairs**

**[CR 05-091]**

NOTICE IS HEREBY GIVEN that the Department of Veterans Affairs will hold a public hearing on the **21st day of October, 2005**, at 9:30 a.m., in the 8<sup>th</sup> floor board room at 30 West Mifflin Street in Madison, Wisconsin.

**Analysis prepared by Department of Veterans Affairs**

Statutory authority: ss. 45.03 (2) and 45.21 (3), Stats.

Statute interpreted: s. 45.21, Stats.

The proposed rule changes will limit the amount of a retraining grant per economic event, establish a lifetime limit on the amount a veteran may receive under the program, impose a course completion verification requirement, and require that a veteran use alternative available resources for payment in lieu of the retraining grant.

There is no current or pending federal regulation that has an impact on this issue. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal effect upon the private sector.

**Initial Regulatory Flexibility Analysis**

This rule is not expected to have any adverse impact upon small businesses.

**Fiscal Estimate**

The implementation of the rule is expected to result in savings, based upon FY05 expenditures, of \$25,000 per fiscal year.

**Copy of Rules**

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski  
Wisconsin Department of Veterans Affairs  
PO Box 7843  
Madison, WI 53707-7843

**Contact Person**

John Rosinski (608) 266-7916

John.rosinski@dav.state.wi.us

**Notice of Hearing  
Veterans Affairs**

**[CR 05-096]**

NOTICE IS HEREBY GIVEN that the Department of Veterans Affairs will hold a public hearing on the **21st day of October, 2005**, at 10:00 a.m., in the 8<sup>th</sup> floor board room at 30 West Mifflin Street in Madison, Wisconsin.

**Analysis prepared by Department of Veterans Affairs**

Statutory authority: ss. 45.03 (2) and 45.20 (2) (f) Stats.

Statute interpreted: s. 45.20, Stats.

The proposed rule changes will implement the tuition reimbursement program established under 2005 Wis Act 25.

There is no current or pending federal regulation that has an impact on this issue. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal effect upon the private sector.

**Initial Regulatory Flexibility Analysis**

This rule is not expected to have any adverse impact upon small businesses.

**Fiscal Estimate**

The implementation of the rule has no fiscal impact, based upon the amount appropriated for the new program for the biennium.

**Copy of Rules**

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski  
Wisconsin Department of Veterans Affairs  
PO Box 7843  
Madison, WI 53707-7843

**Contact Person**

John Rosinski (608) 266-7916

John.rosinski@dav.state.wi.us

**Notice of Hearing  
Veterans Affairs**

**[CR 05-097]**

NOTICE IS HEREBY GIVEN that the Department of Veterans Affairs will hold a public hearing on the **21st day of October, 2005**, at 9:50 a.m., in the 8<sup>th</sup> floor board room at 30 West Mifflin Street in Madison, Wisconsin.

**Analysis prepared by Department of Veterans Affairs**

Statutory authority: ss. 45.03 (2) and 45.40 (3m) Stats.

Statute interpreted: s. 45.40, Stats.

The proposed rule changes will implement the assistance to needy veterans program established under 2005 Wis Act 25.

There is no current or pending federal regulation that has an impact on this issue. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal effect upon the private sector.

**Initial Regulatory Flexibility Analysis**

This rule is not expected to have any adverse impact upon small businesses.

**Fiscal Estimate**

The implementation of the rule has no fiscal impact, based

upon the amount appropriated for the new program for the biennium.

**Copy of Rules**

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski  
Wisconsin Department of Veterans Affairs  
PO Box 7843  
Madison, WI 53707-7843

**Contact Person**

John Rosinski (608) 266-7916  
John.rosinski@dav.state.wi.us

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## Submittal of proposed rules to the legislature

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

**Financial Institutions – Banking**  
**Financial Institutions – Savings Banks**  
**Financial Institutions – Savings and Loan**  
**(CR 05–045)**

Chs. DFI–Bkg 3, DFI–SB 16 and DFI–SL 22, relating to debt cancellation contracts and debt suspension agreements.

**Financial Institutions – Credit Unions**  
**(CR 05–046)**

Ch. DFI–CU 74, relating to incidental powers activity authority parity with federal credit unions.

**Natural Resources**  
**(CR 05–020)**

Chs. NR 500 —, relating to landfilling of solid waste.

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

Chs. NR 329 and 345, relating to miscellaneous structures and dredging in navigable waterways.

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

Chs. NR 400, 424 and 438, relating to excluding additional organic compounds for the volatile organic compound (VOC) definition and the VOC emission limits for yeast manufacturing.

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

Ch. NR 10, relating to the 2005 migratory game bird seasons.

**Public Instruction**  
**(CR 05–076)**

Ch. PI 36, relating to the public school open enrollment program.

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## Rule orders filed with the revisor of statutes bureau

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

### **Health and Family Services (CR 05-047)**

An order affecting ch. HFS 119, relating to health insurance risk sharing plan (HIRSP).  
Effective 11-1-05.

### **Health and Family Services (CR 05-048)**

An order affecting ch. HFS 113, relating to First Responders.  
Effective 11-1-05.

### **Natural Resources (CR 04-077)**

An order affecting chs. NR 500, 504, 506, 507, 512, 514,

516 and 520, relating to landfilling of solid waste.  
Effective 12-1-05.

### **Public Instruction (CR 04-076)**

An order affecting ch. PI 35, relating to financial reporting requirements under the Milwaukee Parental Choice Program and affecting small business.  
Effective 11-1-05.

### **Transportation (CR 01-156)**

An order affecting ch. Trans 100, relating to safety responsibility and damage judgment suspension of operating privileges and motor vehicle registration.  
Effective 11-1-05.

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

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

### Agriculture, Trade and Consumer Protection (CR 04-103)

An order affecting chs. ATCP 10 to 12, 17, 55 and 60, relating to the livestock premises registration. Effective 10-1-05.

#### Summary of Final Regulatory Flexibility Analysis

This rule applies to any person or business, large or small, that keeps livestock in Wisconsin. The rule requires affected persons and businesses to register livestock premises annually with DATCP. The registration process is simple, and there is no fee. DATCP will send pre-printed annual renewal forms to registrants, so that the registrant need only update information that has changed, or registrants can choose to register online. This rule will have no significant adverse economic impact on small or large businesses.

This rule will benefit the entire livestock industry and the public at large. Livestock premises registration will strengthen animal disease control, food safety and emergency response. It will also facilitate the marketing of Wisconsin livestock. Premises registration is a first step toward the development of an effective livestock identification and tracking system (this rule does not require livestock identification or tracking).

The livestock premises registration program is designed to prevent and control the spread of disease, which recognizes no size classifications. Small livestock operations are susceptible to disease, just like large operations. Disease originating from small operations can spread to large operations, and vice versa. Disease control will be hampered if some livestock premises are exempt from registration, or if registration information is inaccurate or out-of-date.

#### Summary of Comments by Legislative Review Committees

On March 14, 2005, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform and to the Assembly Committee on Agriculture. The committees had a joint hearing on the rule and requested that the department consider some modifications. The department addressed the request and made modifications to the rule where feasible. Neither committee took any action on the rule during the extended review period. Legislative comments and the department's responses are detailed below.

**Comment:** No fee should be imposed on farmers to support the livestock premises registration program.

**Response:** DATCP does not have any authority to impose a fee, and has not done so in this rule. The program is currently

funded by federal dollars, and the department has applied for a continuation of that funding.

**Comment:** Remove penalties for failing to register.

**Response:** This rule does not create any penalties. Penalties are set by statute and cannot be changed or eliminated by rule. Penalties are the same as for other animal health laws. The department has a longstanding reputation for sound enforcement discretion and for working cooperatively with the affected industry to achieve voluntary compliance. We intend to apply that philosophy to this program as well.

**Comment:** Eliminate requirement for annual registration renewal. Require renewal every other year, or only when species are added or eliminated.

**Response:** Experience in other programs has shown that annual registration is important for maintaining up-to-date premises information that may be critical in the event of a serious disease outbreak. Nearly all department licenses and registrations are annual, and the livestock premises program is designed to dovetail with those annual cycles. Annual registration captures changing ownership and business contact information, as well as changes in livestock species.

The department believes that annual renewal is important, especially in the early years of the program. However, the department will simplify annual renewal by preprinting existing registration information on renewal forms, so that *producers will not have to enter any new information unless prior information has changed*. The department will also offer an online renewal option. There is no fee for initial registration or for annual renewal. The department will reconsider whether annual renewal is still needed after 3 years, when the premises registration database is well established.

**Comment:** Delay rule promulgation until the federal government fully implements the individual animal identification plan.

**Response:** 2003 Wis. Act 229 specified an effective date of November 1, 2005, for the livestock premises registration program. The department is therefore obligated to promulgate the rules on or before that date. This rule already includes slightly delayed effective dates, so that livestock premises registration will be synchronized with current annual license cycles (the delayed effective dates will also give time for industry education and voluntary compliance). The department does not believe that further delays are warranted, given the timetable established by the legislation.

**Comment:** Remove requirement to register premises that temporarily house a small number of "fair animals."

**Response:** Under this rule, a person must register a location at which the person keeps livestock, regardless of the number of livestock or the purpose for which they are kept.

Disease outbreaks often originate from premises that keep small numbers of livestock, and the State Veterinarian has noted that fairs and exhibitions are particularly susceptible to the transmission of disease. From a disease control standpoint, it is especially important to register fairs and exhibitions, and the source locations from which animals are brought to those events. The Wisconsin Association of County and District Fairs supports the proposed rule as drafted, and the department is reluctant to modify the rule at this time.

Comment: Change the term “public health” to “human health.”

Response: The livestock premises registration law (which directs the department to adopt this rule) specifically uses the term “public health.” The department prefers to use the same term in the rule to maintain consistency with the statute and to avoid confusion.

Comment: Remove provisions that allow a contract agent to register premises on behalf of the department.

Response: 2003 Wis. Act 229 specifically authorized the department to contract with an agent to register premises on behalf of the department (see s. 95.51 (8), Stats.). Registration information belongs to the department, not the contract agent. This rule contains extensive provisions to ensure the confidentiality of information, and to prohibit conflicts of interest and misuse of information. The department will incorporate those provisions in the agent contract.

Because WLIC has already completed work on system development, outreach and related materials, it can implement the program in a highly cost-effective manner. It will be substantially cheaper for the department to contract with WLIC, rather than to create its own software systems, materials, outreach networks, staffing and expertise from scratch. DATCP estimates that it could save as much as 35% by using WLIC systems and expertise, rather than by duplicating work that WLIC has already done.

Comment: Clarify the applicability of the rule to “game birds.”

Response: The rule itself clearly provides that captive game birds are covered. However, the plain language analysis is not clear on this point. We will modify the plain language analysis to make it clearer.

### **Agriculture, Trade and Consumer Protection (CR 04-140)**

An order affecting ch. ATCP 40, relating to fertilizer and related products. Effective 10-1-05.

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates the manufacture and sale of *fertilizer* and *soil or plant additives*, as required by ss. 94.64 and 94.65, Stats. DATCP regulates to protect farmers, consumers and honest competitors against unfair and deceptive sales practices. Regulation is designed to prevent fraudulent sales of worthless products, deceptive ingredient and performance claims, and latent safety hazards.

Under current law, companies must be licensed to manufacture or distribute fertilizer and soil or plant additives in this state. License holders file annual tonnage reports and pay tonnage fees. Product-specific permits are required for low-nutrient mixed fertilizers, and for soil or plant additives.

Permit applicants must submit product labels, and must be able to justify label claims.

This rule repeals and recreates DATCP’s current rules related to the manufacture and distribution of fertilizer and soil or plant additives. This rule clarifies standards and procedures related to all of the following:

- Licensing manufacturers and distributors.
- License and tonnage fees (this rule does not increase fees).
- Product labeling and ingredient guarantees.
- Permits for low-nutrient mixed fertilizers and soil or plant additives.
- Substantiation of performance claims.
- Product sampling and analysis.
- Toxic contaminants.
- Enforcement and appeals.

This rule does not regulate the *application* of fertilizer or soil or plant additives. This rule exempts, from regulation, a farmer who sells or distributes manure produced on his or her farm. This rule also exempts federally qualified “organic” products from permit requirements (and from certain labeling and substantiation requirements) under this rule.

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

On June 1, 2005, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform and to the Assembly Committee on Agriculture. Neither the Assembly Committee on Agriculture nor the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform took any action on the rule during their review period.

### **Health and Family Services (CR 04-067)**

An order affecting ch. HFS 57, relating to group foster homes for children. Effective 1-1-06.

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

The proposed rules will affect applicants for licensure and the 120 group homes currently licensed by the Department. Section 48.625, Stats., allows individuals, profit and non-profit corporations, and privately owned licensed child welfare agencies to operate a group home so long as the person or entity is licensed by the Department. A majority of the licensed group homes are operated by private entities. The remaining number of group homes is operated by licensed county agencies.

The Department anticipates that there may be costs incurred by some group foster homes when these rules are implemented, but that the overall costs will not be significant.

The proposed rules establish increased educational requirements for staff. The costs associated with increasing the qualifications of group home staff are not anticipated to be significantly greater than the costs group homes are currently incurring.

The proposed rules establish staff to child ratios and require awake overnight staff. The increased requirements are needed due to increasingly challenging behaviors exhibited by children and youth admitted to group homes and the need to ensure resident and staff safety. Data collected by the Department related to group home serious incidents that

require medical and/or police intervention support the need for increased staffing requirements. A survey of existing group homes shows that nearly 75% currently have two staff on duty during the first and second shifts and nearly 85% have awake overnight staff; providing evidence that licensees themselves recognize the need for close supervision and monitoring of residents. It should also be noted that many group homes (more than 50%) are not operating at capacity. Many are caring for five to six children rather than maintaining a capacity of eight. For group homes that will be required to hire additional staff, the cost is estimated to be about \$42,209 per year (based on an hourly wage comparable to a Resident Care Technician of \$10.309 x 2920 hours for an annual salary of \$30,102 x .4022 fringe benefits = a fringe rate of \$12,107 for a total annual cost of \$41,104 per employee).

The proposed rules establish physical plant requirements related to the required square footage for each resident. These changes are not anticipated to have a significant impact on existing group homes in that the increased square footage requirements will only be necessary for new facilities. For new facilities, the cost will not be significant and will only be a one-time expense.

The proposed rules require that there be two bathrooms in co-ed facilities. A survey of existing group homes indicates that there are only 4 co-ed facilities that do not have two bathrooms. Therefore, this change is not anticipated to have a significant financial impact.

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

The Assembly Committee on Children and Families requested modifications to the final proposed rules. The department made the following modifications consistent with the Committee's request:

HFS 57.16 (4) INFANT AND TODDLER CARE. Before a staff member or volunteer may provide care and supervision for an infant or toddler as defined under s. HFS 57.37 (2) (a) and (b), the staff member or volunteer used to meet staff to child ratios shall complete the training specified under s. HFS 57.37 (4).

Note: This subsection is renumbered. The provision reviewed by the Committee was numbered s. HFS 57.16 (1) (d).

HFS 57.19 (5) (b) The age difference limitation stated in par. (a) does not apply to children admitted to a group home licensed for respite care or for homeless and runaway youth.

HFS 57.21 (1) (a) In a shift-staffed group home, during hours other than sleep, there shall be at least one staff member on duty whenever 5 or fewer residents are present. At least 2 staff, or one staff and one qualified volunteer shall be on duty if there are 6 or more residents present. Whenever residents are asleep, at least one resident care staff or relief help shall be awake unless an alternate means of assuring the safety of residents is provided by the group home and approved by the department. The group home must assure that residents are responded to if needed. The number of resident care staff shall be increased as necessary to provide the care and services identified in the group home's program statement and plan of activities.

(b) Volunteers may be used to meet the staff to resident ratio requirement when 6 or more residents are in care provided they meet staff qualifications under s. HFS 57.14 (4) (c).

Note: Some staffing alternatives for night time hours that may be approved by the department include but are not limited to: use of door alarms, motion detectors, laser or lights.

HFS 57.36 (5) 2. The staff member or volunteer ~~who provides childcare~~ used to meet staff to child ratios as defined in subd. 1. shall have completed the training requirements as set forth under s. HFS 57.37 (4).

HFS 57.40 (6) (a) 2. A group home serving only males or only females shall have at least one full bathroom that contains a toilet, sink, and a tub or shower available for use by residents. A group home initially licensed on or after the effective date of this chapter (revisor to insert effective date), serving males and females shall have 2 full bathrooms that are gender specific, each containing a toilet, sink and a tub or shower, unless the department grants an exception under s. HFS 57.02.

HFS 57.42 (2) (b) b) Evacuation drills shall be conducted with residents at least monthly and documented, including the date and time of the drill, the evacuation time and any problems encountered during the drill. An evacuation drill shall be conducted during sleeping hours, or which, simulates sleeping hours ~~between the hours of 12 a.m. and 6 a.m.~~ at least once every 6 months.

#### **Hearing and Speech Examining Board (CR 05-026)**

An order affecting chs. HAS 2 and 6 to 8, relating to definitions, temporary trainees, continuing education, temporary licenses and unprofessional conduct. Effective 10-1-05.

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

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

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

No comments were received.

#### **Public Service Commission (CR 03-086)**

An order affecting ch. PSC 111, relating to the time period covered by a strategic energy assessment. Effective 10-1-05.

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

The rules being revised apply to an entity that has or expects to have generation in this state greater than 5 megawatts, that provides electric service to end users, or that provides electric transmission service in this state. It is unlikely that any such entity would be a small business as defined in s. 227.114 (1), Stats. Therefore, the proposed rules are not expected to affect small businesses as defined in s. 227.114 91), Stats.

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

No comments were received.

**Transportation  
(CR 05-024)**

An order affecting ch. Trans 196, relating to the convenience fee for telephone vehicle registration renewal. Effective 10-1-05.

**Summary of Final Regulatory Flexibility Analysis**

The Department of Transportation anticipates that this rule making will have no direct adverse effect on small businesses. This rule making establishes no additional compliance, bookkeeping, or reporting requirements for small businesses.

**Summary of Comments by Legislative Review  
Committees**

No comments were received.

**Transportation  
(CR 05-034)**

An order affecting ch. Trans 117, relating to CDL

occupational licenses. Effective 10-1-05.

**Summary of Final Regulatory Flexibility Analysis**

This proposed rule could impact small businesses that employ commercial drivers. Any commercial driver who loses his or her driving privileges may be eligible for a Class D occupational license, however, they will not be able to operate a commercial motor vehicle. In 2004, the Department issued 1,088 occupational licenses for commercial drivers. None of these drivers can be issued or hold an occupational license after September 30, 2005.

If a driver cannot operate a commercial motor vehicle, and it is part of their job duties to do so, the employee must be reassigned to duties that do not require the operation of a commercial motor vehicle. As an alternative, the small business may choose to terminate the employee for being unable to perform his or her job duties and hire someone else with a valid commercial driver's license.

**Summary of Comments by Legislative Review  
Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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

### Revisions

#### Agriculture, Trade and Consumer Protection

##### Ch. ATCP 10

- S. ATCP 10.61 (1) (a) and (5) (f)
- S. ATCP 10.73 (4) (a) and (7) (hm)

##### Ch. ATCP 11

- S. ATCP 11.32 (3) (intro.) and (dm)

##### Ch. ATCP 12

- S. ATCP 12.02 (1) and (3) (fm)
- S. ATCP 12.03 (3) and (4) (dm)
- S. ATCP 12.04 (1) and (3) (dm)

##### Ch. ATCP 17 (Entire Chapter)

##### Ch. ATCP 40 (Entire Chapter)

##### Ch. ATCP 55

- S. ATCP 55.03 (1) and (3) (dm)

##### Ch. ATCP 60

- S. ATCP 60.02 (1) and (2) (am)

#### Health and Family Services

##### Ch. HFS 57 (Entire Chapter)

#### Hearing and Speech Examining Board

##### Ch. HAS 2

- S. HAS 2.01 (2)

##### Ch. HAS 5

- S. HAS 5.02 (2) (g)

##### Ch. HAS 6

- S. HAS 6.02 (1m), (4g), (4m), (5g) and (6b)
- S. HAS 6.03 (7)
- S. HAS 6.09 (1) and (1m)
- S. HAS 6.10
- S. HAS 6.175

- S. HAS 6.18 (2) and (3)

##### Ch. HAS 7

- S. HAS 7.02
- S. HAS 7.03 (1) (d) and (e) and (2) (c) and (d)

##### Ch. HAS 8

- S. HAS 8.03 (1) and (6)
- S. HAS 8.04 (1)

#### Public Service Commission

##### Ch. PSC 111

- S. PSC 111.03 (1) (a), (b) and (3) (b)
- S. PSC 111.11 (2) (a)
- S. PSC 111.13 (2)
- S. PSC 111.21 (1) (c), (d), (e), and (f)
- S. PSC 111.23 (2) (intro.)
- S. PSC 111.25 (2)
- S. PSC 111.31 (1)
- S. PSC 111.33
- S. PSC 111.35 (intro.)
- S. PSC 111.43 (1) (intro.), (3) (a) and (4)

#### Transportation

##### Ch. Trans 117

- S. Trans 117.02 (2) (c) and (d)
- S. Trans 117.025 (8)
- S. Trans 117.03 (2) (e), (f), (k) and (L), (3) (c), (f) to (i), and (5) (a)
- S. Trans 117.05 (4) (d) and (5)
- S. Trans 117.08
- S. Trans 117.09 (3)

##### Ch. Trans 196

- S. Trans 196.04 (1) (d)

### Editorial corrections

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

#### Public Service Commission

##### Ch. PSC 111

- S. PSC 111.01 (17)

### **Errata**

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

#### **Workforce Development**

**Ch. DWD 80**

S. DWD 80.22 (1)

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## Sections affected by revisor's corrections not published

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### Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

**Subscriber's note:** Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, <http://www.legis.state.wi.us/rsb/>, and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
ATCP 50.01 (35)	16.964 (6) (a)	165.91 (1)
ATCP 105.02 (1)	139.30 (1)	139.30 (1m)
EAB 1.01 (23)	45.54 (1) (e)	38.50 (1) (e)
EAB 3.01 (6) (a)	45.54	38.50
EAB 4.01 (1)	45.54 (1) (e)	38.50 (1) (e)
EAB 4.06 (2) (e) and (3) (c)	20.485 (5) (gm)	20.292 (2) (gm)
EAB 4.08 (2) (b) 1.	45.54	38.50
EAB 4.10 (2) (b)	45.54 (10)	38.50 (10)
EAB 6.01 (intro.)	45.54 (7) (f)	38.50 (7) (f)
EAB 6.02 (1)	45.54 (7) (f)	38.50 (7) (f)
EAB 6.03 (1)	45.54 (7) (e)	38.50 (7) (e)
EAB 6.04 (1)	45.54 (7) (d)	38.50 (7) (d)
EAB 8 (beginning Note)	45.54 (7) (e)	38.50 (7) (e)
EAB 10.02 (4)	45.54 (8) (c)	38.50 (8) (c)
EAB 10.04 (1)	45.54 (8) (c)	38.50 (8) (c)
EAB 11.04 (1)	45.54 (1) (e) 8.	38.50 (1) (e) 8.
HFS 108.02 (12) (b) 2. c.	45.351 (1)	45.40 (1)
HFS 120.04 (2) (c)	20.435 (4) (hg) 20.435 (4) (hi)	20.435 (1) (hg) 20.435 (1) (hi)
HFS 139.03 (7)	250.05 (1) (b)	440.98 (1) (b)
HFS 140.03 (3)	250.05	440.98
HFS 160.01	250.05	440.98
HFS 160.08 (1)	250.05 (8)	440.98 (8)
HFS 192.03 (7)	250.05	440.98
Ins 26.05 (1) (f)	45.54	38.50
Ins 26.06 (1) (a)	45.54	38.50
Ins 28.06 (1) (a)	45.54	38.50
PI 34.05 (5)	45.54	38.50
RL 90.02 (3)	45.54	38.50

Location of invalid cross-reference	Invalid cross-reference	Correction
RL 92.01 (3)	45.54	38.50
RL 92.02	45.54	38.50
VA 1.03 (1)	45.35 (17)	45.03 (16)
VA 1.06	45.001 (4)	45.01 (12)
VA 1.08 (2)	45.35 (17) (b)	45.03 (16) (b)
VA 1.10 (1)	45.36 (2) and (3)	45.04 (2) and (3)
VA 1.11 (7)	45.34	45.01 (11)
VA 1.12 (2)	45.71 (9)	45.31 (10)
VA 1.12 (3)	45.351 and 45.71 (9) 45.74 (2)	45.31 (10) and 45.40 45.33 (2) (a) 1.
VA 1.13	45.001 (4)	45.01 (12)
VA 1.14	45.34	45.01 (11)
VA 1.16	45.001 (4)	45.01 (12)
VA 1.19 (1)	45.356	45.42
VA 2.01 (2) (b) 2.	45.351 (1j)	45.40 (2)
VA 2.02 (intro.), (3) and (4)	45.396	45.20
VA 2.03 (2) (b)	45.397	45.21
VA 2.04 (1) (b)	45.001 (4)	45.01 (12)
VA 2.04 (2)	45.25 45.25 (3) (b)	45.20 45.20 (2) (c)
VA 2.04 (3) (a)	45.25 (1m)	45.20 (2) (a) 1.
VA 2.04 (3) (d)	45.25 (4) (a)	45.20 (2) (d)
VA 2.04 (3) (e)	45.25 45.396 (7) (a)	45.20 45.20 (2) (b)
VA 2.04 (3) (g)	45.25	45.20
VA 2.05 (1)	45.25, 45.396, or 45.397	45.20 or 45.21
VA 2.05 (3)	45.25, 45.396, or 45.397 45.351	45.20 or 45.21 45.40
VA 4.01 (intro.)	45.71	45.31
VA 4.01 (12)	45.79	45.37
VA 4.02 (3)	45.74 and 45.77	45.33 and 45.35
VA 4.03 (11), (12), (13)	45.76 (1) (c)	45.34 (1) (c)
VA 4.05 (1)	45.77 (twice)	45.35 (twice)
VA 4.07 (1)	45.76 (1) (c)	45.34 (1) (c)
VA 4.08 (1) (a)	45.76 (1) (c) (twice)	45.34 (1) (c) (twice)
VA 4.08 (2)	45.79 (5) (a) 1.	45.37 (5) (a) 1.

<b>Location of invalid cross-reference</b>	<b>Invalid cross-reference</b>	<b>Correction</b>
VA 4.08 (5)	45.79 (5) (a) 4.	45.37 (5) (a) 4.
VA 4.10 (3)	45.78 (2) (a) and (b)	45.36 (2) (a) and (b)
VA 4.13 (2)	45.72 (9)	45.32 (9)
VA 4.14 (1) and (2) (b)	45.76 (1) (c)	45.34 (1) (c)
VA 6.01 (3)	45.001 (4) 45.34	45.01 (12) 45.01 (11)
VA 6.02 (11)	45.36	45.04
VA 6.05 (8)	45.37 (9)	45.51 (7)
VA 7.01 (4)	45.353	45.41
VA 9.01 (4)	45.348 (2)	45.01 (6)
VA 12.01 (3), (4), (9)	45.356	45.42
VA 12.02 (5)	45.356	45.42
VA 12.02 (16)	45.356 (2) and (8)	45.42 (2) and (7)
VA 12.06 (2)	45.356	45.42
VA 13.01 (3)	45.37 (1a)	45.01 (12)
VA 13.01 (4)	45.357	45.43
VA 14.01 (2)	45.358 (1) (a)	45.01
VA 14.01 (4)	45.358 (3) (f)	45.61 (2)
VA 14.01 (6)	45.358 (1) (b)	45.01 (12)
VA 14.01 (7)	45.358 or 45.37	45.51 or 45.61
VA 14.02 (1) (b)	45.365 or 45.385	45.01 (12m) or 45.50
VA 15.02 (3)	45.001 (4)	45.01 (12)
VA 15.03 (1)	45.43 (5)	45.80 (5)
VA 16.01 (3)	45.43 (7m)	45.83
VA 16.01 (5)	45.001 (4) (a)	45.01 (12)
VA 17.04	45.358 or 45.37	45.51 or 45.61
VA 18.01 (3)	45.365 (7)	45.50 (9)
VA 18.01 (4)	45.001 (4)	45.01 (12)
VA 18.02 (3)	45.25, 45.396, or 45.397	45.20 or 45.21

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## Executive orders

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

**Executive Order 115.** Relating to a proclamation declaring a state of emergency.

**Executive Order 116.** Relating to a proclamation declaring a state of emergency in Executive Order # 115.

**Executive Order 117.** Relating to a proclamation declaring a state of emergency under the Emergency Management Assistance Compact and calling to active duty elements of the Wisconsin National Guard.

**Executive Order 118.** Proclamation of a state of emergency relating to the transportation of emergency relief supplies.

**Executive Order 119.** 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 the late William H. Rehnquist, Chief Justice of the United States.

**Executive Order 120.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff to honor victims of Hurricane Katrina.

**Executive Order 121.** Proclamation of a state of emergency relating to the provision of equipment or services to Hurricane Katrina evacuees relocated to the State of Wisconsin.

**Executive Order 122.** 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 Trevor Diesing of the United States Army who lost his life during Operation Iraqi Freedom.

**Executive Order 123.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Lance Corporal Ryan Nass of the United States Marine Corps who lost his life during Operation Enduring Freedom.

**Executive Order 124.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff to commemorate the four year anniversary of the terrorist attacks on the United States.

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## Public notices

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### Health and Family Services

#### (Medical Assistance Reimbursement for Services Provided by Hospital–Affiliated End Stage Renal Disease Providers)

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The Wisconsin Department of Health and Family Services is proposing to modify the reimbursement rate for services provided by hospital–affiliated end stage renal disease (ESRD) providers. This notice is being published in compliance with 42 CFR § 447.205, which requires the state Medicaid agency to provide public notice of any significant proposed change in its methods and standards for setting payment rates for services. The Department's proposal involves no change in services.

#### Proposed Change

2005 Act 25, the 2006–2007 biennial budget, directed the Department to change the Medicaid reimbursement rate for hospital–affiliated ESRD clinics. The Department will pay hospital–affiliated ESRD providers the Medicare reimbursement rate for the services that they provide.

Wisconsin Medicaid will reimburse hospital–affiliated ESRD providers the full Medicare payment plus the Medicare coinsurance and deductible, minus any applicable Medicaid copayments. A Medicaid–certified hospital–affiliated ESRD provider operates under the common ownership, licensure, or control of a hospital, but is not an outpatient hospital.

The proposed change is to adopt the Medicare reimbursement rate for services provided by hospital–affiliated ESRD providers. The change will apply to dialysis services provided on dates of service on and after November 1, 2005.

For the remainder of FY 06 (from November 1 to June 30<sup>th</sup>, 2006), the projected fiscal effect of these changes is a savings of \$50,200 General Program Revenue and \$70,300 Federal for a total of \$120,500 All Funds. For the full FY 07, the savings will be \$101,000 General Program Revenue and \$140,000 Federal for a total of \$241,000 All Funds.

In September 2005, the Department will also submit to the federal Department of Health and Human Services (HHS) a proposed Medicaid State Plan Amendment reflecting this change. The Amendment is proposed to be effective on November 1, 2005. HHS has 90 days to approve, deny, or request further information about the proposed amendment.

#### Copies of the Proposed Change:

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

#### Regular Mail

Al Matano  
Bureau of Fee–for–Service Health Care Benefits  
Division of Health Care Financing  
P.O. Box 309  
Madison, WI 53701–0309

#### Phone

Al Matano  
(608) 267–6848

#### FAX

(608) 266–1096

Attention: Al Matano

#### E–Mail

matana@dhfs.state.wi.us

A copy of the proposed change are available for review at the main office of any county department of social services or human services.

**Written Comments:**

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Department. The FAX number is (608) 266-1096. The e-mail address is [matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

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