

# Wisconsin Administrative Register

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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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### Insurance

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

#### Finding of emergency

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

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

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

**Publication Date:** November 4, 2005  
**Effective Date:** November 4, 2005  
**Expiration Date:** April 3, 2006

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

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

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

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

**Publication Date:** October 4, 2005  
**Effective Date:** October 4, 2005  
**Expiration Date:** March 3, 2006  
**Hearing Date:** October 19, 2005

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

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate fees for safety education courses. The state legislature has delegated to the appropriate agencies rule making authority to regulate and administer these courses.

The department must comply with state law. This order is desired to provide necessary funding for continuation of our quality hunter education program. Normal rule-making procedures will not allow the establishment of the changes by September 1. Failure to modify our rules will result in lost revenues and added expense to the hunter education program.

**Publication Date:** October 3, 2005  
**Effective Date:** October 3, 2005  
**Expiration Date:** March 2, 2006  
**Hearing Date:** October 12, 2005

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

**Finding of emergency**

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

**Publication Date:** November 15, 2005  
**Effective Date:** November 15, 2005  
**Expiration Date:** April 14, 2006  
**Hearing Date:** December 12, 2005  
 [See Notice This Register]

**Natural Resources**  
**(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.

## Public Instruction (2)

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

### Finding of emergency

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

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

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

### Finding of emergency

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

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is

required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents.

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

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

## Technical College System Board

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

### Finding of emergency

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

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

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

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

## Veterans Affairs (2)

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

### Exemption From Finding of emergency

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

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

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

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

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

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

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

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

#### **Finding of emergency**

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

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

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

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various

governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

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

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

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

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

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

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

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## Scope statements

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### Commerce

#### Subject

*Objective of the rule.* The objective of the rule is to update the department's administrative rules relating to public swimming pools and water attractions. This code update may result in one or more rule packages to be presented for public hearings, and may include minor changes to other department rules relating to public swimming pools and water attractions.

#### Policy analysis

Chapter Comm 90 applies to the design and construction of public swimming pools and water attractions. The current rules of Chapter Comm 90, which became effective on February 1, 2005, relating to water attractions are based on the draft version of the American National Standards Institute/National Spa and Pool Institute standards for aquatic recreation facilities (ANSI/NSPI – 9). The public swimming pool portion of the code has not yet been revised to reflect the ANSI/NSPI – 1 Public Swimming Pools standard.

The swimming pool portion of Chapter Comm 90 has remained essentially unchanged since at least 1994 when the public swimming pool program was transferred from the Department of Health and Family Services. This code project will evaluate updating the public swimming pool requirements to reflect changing technology and options for design and installation. The target effective date for these revisions is the Spring of 2008.

The alternative of not updating this chapter will result in administrative rules that are not consistent with currently recognized national standards and practices related to public swimming pools.

#### Statutory authority

Section 145.26, Stats.

#### Staff time required

The department estimates that it will take approximately 600 hours to develop this rule. This time includes reviewing the current codes and related national standards, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to perform the review and develop the rule changes. There are no other resources necessary to develop the rule.

#### Entities affected by the rule

This rule will affect any entity that is involved with the public swimming pool industry.

#### Comparison with federal requirements

There are no existing or proposed federal regulations that address or impact the activities to be regulated by this rule.

### Commerce

#### Subject

*Objective of the rule.* The objective of the rule is to update the department's administrative rules relating to plumbing. This comprehensive code update may result in one or more rule packages to be presented for public hearings, and may include minor changes to other department rules relating to plumbing.

#### Policy analysis

The current rules of chapters Comm 81 – 84 apply to the design, installation and inspection of plumbing, and include references to many national standards and reflect national trends.

The plumbing code was last updated in December, 2004. The stormwater section received the majority of the changes from that revision. This code project will evaluate updating the plumbing requirements to reflect changing technology and options. The target effective date for this revision is the Spring of 2008.

The alternative of not updating these chapters will result in administrative rules that are not consistent with currently recognized national standards and practices related to plumbing.

#### Statutory authority

Section 145.02 (3) (d), Stats.

#### Staff time required

The department estimates that it will take approximately 1,000 hours to develop this rule. This time includes reviewing the current codes and related national standards, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to perform the review and develop the rule changes. There are no other resources necessary to develop the rule.

#### Entities affected by the rule

This rule will affect any entity that is involved with the plumbing industry.

#### Comparison with federal requirements

There are several existing federal rules that impact plumbing including the Lead Solder, Pipe and Flux law contained in 42 USC Sec. 300g–6., the Lead Contamination in School Drinking Water law in 42 USC Sec. 300j–24., and the National Pollutant Discharge Elimination System law of 33 USC Sec. 1342. The requirements currently contained in these federal laws are reflected in the Wisconsin Uniform Plumbing Code.

There is one proposed federal regulation concerning plumbing connections to manufactured homes, in Federal Register Vol. 70, No. 79, April 26, 2005. Several of the

proposed requirements exceed the standards of the Wisconsin Uniform Plumbing Code. These include the requirement for a shutoff valve to be located underneath or adjacent to the home, a condition that the water heater be removed for air testing water systems, and a requirement for the installation of a drain cleanout when pipe pitch is 1/8" per foot.

## Elections Board

### Subject

Repeal and re-create ch. EIBd 3 (Mail Registration), establishing a ch. EIBd 3, titled "Voter Registration," relating to registration of electors under the Help America Vote Act and the Statewide Voter Registration System.

### Policy analysis

*Objective of the rule.* To establish rules governing the registration of electors under Wisconsin's new Statewide Voter Registration System, including the registration of electors prior to election day and the registration of electors on election day, and rules governing the qualifications and duties of persons appointed as special registration deputies under s. 6.26 (2), Stats.

Wisconsin will convert to a system of statewide voter registration on January 1, 2006. Previously, Wisconsin had registration on a municipality-by-municipality basis. The rule will establish the procedure and policies that will govern both electors who seek to register to vote and the municipal and county clerks, and special registration deputies, who will assist electors in the registration process.

### Statutory authority

Section 5.05 (1) (f) and s. 227.11 (2) (a), Stats.

### Staff time required

At least 30 hours of state employees' time.

### Entities affected by the rule

The rule will affect every person who seeks to register for voting purposes in the state of Wisconsin, including persons who are registering for the first time and persons who are changing their registration from one ward within the state to another ward within the state. The rule will also affect the municipal and county clerks and special registration deputies who register electors.

### Comparison with federal requirements

Under the Help America Vote Act (HAVA) has mandated that each state establish a system of statewide voter registration by January 1, 2006. It has also established standards applicable to the registration procedure. The State of Wisconsin is in the process of implementing its statewide voter registration system as part of an overall state plan under HAVA. The rule will facilitate the administration of that system and the implementation of the state's plan.

## Elections Board

### Subject

EIBd s. 4.01 Scope of regulated activity: Election observers. Relating to the procedure for authorizing, under s. 7.39 and 7.41, Stats., the appointment of election observers to monitor compliance with election laws by local election officials.

### Policy analysis

*Objective of the rule.* To repeal the Elections Board's existing rule, section EIBd 4.01 Election observers, and recreate it as a new rule implementing the new election observer statute, s.7.41, Stats.: *Public's right to access.*

Description of policies – relevant existing policies, proposed new policies and policy alternatives considered:

Existing ch. EIBd 4 was adopted to implement s. 7.39, Stats., relating to the appointment of election observers at polling places in a municipality. Subsequent to the enactment of s. 7.39, Stats., the legislature enacted a much broader statute, s. 7.41, Stats., that expanded the class of persons who may observe the proceedings at a polling place to include "any member of the public." Because any member of the public has the right to observe merely by being present, appointment as an observer is no longer necessary, thereby rendering s. 7.39, Stats., obsolete, necessitating its repeal. Consequently, the legislature repealed s. 7.39, Stats., in 1999 Wisconsin Act 182.

The Elections Board now needs to promulgate a new rule implementing the new statute by setting forth standards of conduct applicable to persons who are present at a polling place to observe an election.

### Statutory authority

s. 5.05 (1) (f) and s. 227.11 (2) (a), Stats.

### Staff time required

10 – 20 hours of staff time.

### Entities affected by the rule

The rule will affect all persons who wish to observe elections in Wisconsin by maintaining a presence at polling places.

### Comparison with federal requirements

Neither the federal government nor federal law attempts to regulate the right of citizens to observe elections at polling places or attempts to regulate the conduct of persons who act as observers at polling places.

## Natural Resources

### Subject

*Objective of the rule.* The Bureau of Wildlife Management recommends promulgating administrative rules modifying chapters NR 10, 12, 15, 17, and 19 relating to hunting, trapping, dog training, youth hunting, agricultural damage and use of public lands.

### Policy analysis

These rule changes are proposed for inclusion on the 2006 Spring Hearing questionnaire. Specifically, these rules would establish deer hunting seasons, modify hunting hours for specific species, extend game bird hunting seasons, and establish parameters for a youth hunt programs. In addition, this rule proposal would modify hunting methods such as firearm restrictions, electronic calling equipment, and trap sizes and requirements. Also included in this rule package are proposals to modify hunting permit deadlines and issuance requirements. Finally, these rules propose changes to the regulation and use of state properties for hunting and dog training, and modify standards for the agricultural damage program.

These changes do not deviate from existing board policy. The proposed changes to hunting seasons, hunting and trapping equipment and methods, use of public lands, youth hunting, permit and license issuance, and nuisance animal

control are consistent with previous board actions and policies.

#### **Statutory authority**

Sections 1.026 (1) (b), 23.09 (2) (b), 23.091, 29.014, 29.089 (3), 29.091, 29.164 (4) (b), 29.197 and 29.889 (2), Stats.

#### **Staff time required**

444 hours.

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

Deer, bear, turkey, waterfowl, and grouse hunters, trappers, dog trainers, landowners, non-hunting outdoor enthusiasts, state park users and youth hunters will all be affected by these rules.

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

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

### **Natural Resources**

#### **Subject**

*Objective of the rule.* Modifications to portions of ch. NR 20, pertaining to fishing regulations on inland waters, ch. NR 21, pertaining to Wisconsin-Minnesota boundary waters, ch. NR 22, pertaining to Wisconsin-Iowa boundary waters, ch. NR 23, pertaining to Wisconsin-Michigan boundary waters, and ch. NR 24, pertaining to clamming.

#### **Policy analysis**

The Department is beginning the process of recommending changes to Wisconsin administrative code relating to fishing and clamming regulations. The Department anticipates requesting hearings on these changes in January, 2006, and holding approved hearings in April 2006.

#### **Statutory authority**

Sections 29.014, 29.041, and 29.537 Stats.

#### **Staff time required**

The Department anticipates spending approximately 240 hours in the rule development process.

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

Authority to promulgate fishing regulations is granted to States. No federal regulations apply to the proposed changes in regulating recreational fishing and clamming activity.

### **Natural Resources**

#### **Subject**

Chapter NR 46.30, Forest Tax Program, annual timber stumpage rate changes and modifications to the mandatory practices in chapter NR 46.18 (2).

#### **Policy analysis**

The issues needing to be addressed are routine and technical within the Forest Crop Law (FCL) and Managed Forest Law (MFL) program.

The department is required to assess the value of cut wood products from FCL and MFL lands based on the current

stumpage value schedule. Stumpage values are determined each year by surveying industry, private forestry consultants and DNR field staff on the prices obtained the previous year for wood products by species, product type, and zone. These values are recalculated annually using a weighted three-year average and published in NR 46.30. The stumpage value charts are used to determine severance and yield tax for participants in the Forest Tax Law programs. It is important to adjust these values annually so that landowners are not paying too much or too little in yield/severance tax. The monies collected are distributed to the municipalities within which the land is located to help offset reduced property taxes collected from these lands.

The mandatory practices for MFL entries are being reviewed to clarify some inconsistencies in applying sound forestry practices including:

Current mandatory practices include the release of conifers from competing vegetation but not the release of hardwoods. When the mandatory practices were first written almost all seedlings planted for timber production were conifers however that has changed. Hardwoods (oak, maple, walnut, etc.) have been planted for timber production since the early 1990s.

Current mandatory practices include the use of post-sale treatment to insure adequate regeneration but not the use of pre-sale treatment. When managing for species such as oak it is often necessary to carry out practices before the timber sale to promote or insure adequate regeneration (i.e., scraping to expose mineral soil, removal of non-commercial stems to reduce the shade). While some practices can be carried out after or during a timber sale it is easier to carry out the practice prior to the harvest.

Current mandatory practices include soil conservation practices that may be necessary to control any soil erosion that may result from department approved forestry practices. In 1996 Forestry Best Management Practices (BMP) for Water quality were specifically identified. BMPs are part of sound forest management and good soil conservation practices. Including applicable BMPs in the mandatory practices will make the expectations clearer for landowners and plan writers.

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

There are no known federal rules which apply to stumpage rates or the Managed Forest Law Program.

#### **Statutory authority**

Chapter 77, Wis. Stats.

#### **Staff time required**

Approximately 80 hours will be needed by the department.

### **Natural Resources**

#### **Subject**

The proposed rule changes would modify existing procedures regarding administration of the nonmetallic mining reclamation program as implemented through Chapter NR 135, Wis. Adm. Code. Changes to Ch. NR 340, Wis. Adm. Code, would authorize the use of additional forms of financial assurance as provided in recent statutory changes.

#### **Policy analysis**

Chapter NR 135, Wis. Adm. Code, has been in effect since December 2000. In that time, all required counties and numerous local units of government have successfully begun implementation of nonmetallic mining reclamation programs

as provided by statute. As a result of nearly five years of experience gained in administration of the program, the need for refinement of certain procedures and clarification of existing language has become apparent. These rule changes will address those needs as well as remove “start-up” language from the rule that is no longer applicable.

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

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

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

Modifications to Ch. NR 340, Wis. Adm. Code, are necessary to reflect recent statutory changes that allows for additional forms of financial assurance in addition to a performance bond and the other limited alternatives currently allowed under the existing code. The anticipated changes will reflect the statutory changes and will also make the financial assurance provisions of Ch. NR 340, Wis. Adm. Code, more consistent with corresponding provisions of Ch. NR 135, Wis. Adm. Code.

The rule changes will be developed in consultation with the Nonmetallic Mining Advisory Committee, a nine-member advisory body created by administrative rule. In addition, it may also be necessary to form a dedicated Technical Advisory Committee in order to effectively solicit input from affected stakeholders. If formed, a Technical Advisory Committee would likely include representatives from county and local units of government, nonmetallic mine operators, environmental groups, consultants and interested citizens.

#### **Statutory authority**

Sections 30.201, 295.12 and 227.11, Wis. Stats.

#### **Staff time required**

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

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

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

### **Comparison with federal requirements**

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

### **Public Instruction**

#### **Subject**

The 2005–07 biennial budget, 2005 Wisconsin Act 25, appropriated \$1,350,000 in 2006–07 for a new grant program to provide schools/employers with mentoring grants for initial educators. Under s. 115.405 (2m), Stats, the department must award to each person employing an initial educator in a position requiring a teaching license an amount equal to what the employer is spending to provide a mentor for that educator, but not more than \$375. Under s. 115.405 (1), Stats., the existing \$500,000 grant program for peer review and mentoring continues.

Chapter PI 38 will be modified to specify the grant application requirements for both the existing peer review and mentoring grant and the new mentoring for initial educators grant.

#### **Policy analysis**

Teacher licensing requirements under Chapter PI 34.17 require school districts to meet certain requirements when employing an initial educator. These requirements will be cross-referenced as a condition that must be met in order for any entity to receive funds for mentoring programs.

#### **Policy alternatives**

The department could award the \$375 per initial educator without any accountability on the part of grant recipients. However, because the department is required to promulgate rules for the grant program and school districts are required to provide certain activities for initial educators, the proposed rules should be advanced.

#### **Staff time required**

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

### **Transportation**

#### **Subject**

*Objective of the rule.* This rule making will amend chs. Trans 325 and 326, relating to motor carrier safety and hazardous material transportation safety, to bring them into conformance with changes to the Federal Motor Carrier Safety Regulations and Hazardous Material regulations which will go into effect on January 1, 2006. Amendment of these rules will assure State Patrol inspectors and troopers are enforcing the most recent Safety regulations for Interstate Carriers and Hazardous Material (HM) regulations for both interstate and intrastate HM carriers.

1. Trans 325 (Motor Carrier Safety Regulations) – interstate. Amend the rule to include all changes in effect as of January 1, 2006. Changes have been made to the Federal Motor Carrier Safety regulations Title 49, Parts 390 through 397, regulating interstate operations. Amendment to this rule will bring state regulations in compliance with current interstate regulations.

2. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) for interstate and intrastate operations. Amend the rule to include all changes which have been made to Federal Motor Carrier Safety regulations 49 CFR Parts 107, 171, 172, 173, 177, 178, 180 and 385 subparts C & E and in effect as of January 1, 2006. Amendment to this rule will bring state regulations, interstate and intrastate regulations into compliance with current federal regulations.

#### **Policy analysis**

##### **TRANS 325**

The Department annually updates ch. Trans 325 to keep current with the most recent changes and revisions to the Federal Motor Carrier Safety regulations. The revisions allow state inspectors and troopers to enforce the most current safety regulations already in effect for interstate motor carriers. The rule will continue to reference the use of the most recent North American Standard Out-of-Service criteria for placing vehicles and drivers out of service.

##### **TRANS 326**

The Department annually updates ch. Trans 326 to keep current with the most recent changes and updates to the federal hazardous material regulations. The revisions will allow state inspectors to enforce the most current hazardous material (HM) regulations already in effect for interstate and intrastate carriers. The rule will continue to reference the use

of the most recent North American Standard Out-of-Service criteria vehicles and drivers out of service.

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

Trans 325—Trans 325 (Interstate Motor Carrier Safety regulations) adopts Federal regulations 49 CFR parts 390 to 397.

Trans 326— Trans 326 (Motor Carrier Regulations for the Transportation of Hazardous Materials) adopts 49CFR 107, 171, 172, 173, 177, 178, and 190. In addition to the current adopted regulations, it is recommended the adoption 49CFR 385 subparts C (Certification of Safety Auditors, Safety Investigators and Safety Inspectors) and E (Hazardous Materials Safety Permits).

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

Motor Carriers and law enforcement will be affected by this rule.

#### **Statutory authority**

Trans 325 – s. 110.075 and ch. 194, Stats.

Trans 326 – ss. 110.07, 194.38, 194.43 and 346.45(4), Stats.

#### **Staff time required**

It is estimated that state employees will spend 100 hours on the rule making process, including research, committee meetings, drafting and conducting public hearings.

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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.*

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

#### **Rule Submittal Date**

On November 11, 2005, the Wisconsin Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. ATCP 33, Wis. Adm. Code.

#### **Subject**

The proposed rule relates to fertilizer and pesticide bulk storage.

### **Agency Procedure for Promulgation**

Public hearings are required and will be held on January 24, 25 and 26, 2005. The department's Agricultural Resource Management Division is primarily responsible for this rule.

#### **Contact Information**

Duane Klein  
(608) 224-4519

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## Rule-making notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

#### [CR 05-108]

The State of Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule related to Fertilizer and Pesticide Bulk Storage.

DATCP will hold 3 public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until February 17, 2006, for additional written comments.

#### Hearing Locations:

##### Tuesday, January 24, 2006

1 p.m. to 4:00 p.m. and 5 p.m. to 7 p.m.

Prairie Oak State Office Building

2811 Agriculture Drive

Board Room

Madison, WI 53708

Handicapped accessible

##### Wednesday, January 25, 2006

1 p.m. to 4:00 p.m. and 5 p.m. to 7 p.m.

DNR Headquarters (West Central Region)

1300 West Clairemont Ave.

Room 158/185

Eau Claire, WI 54701

Handicapped accessible

##### Thursday, January 26, 2006

1 p.m. to 4:00 p.m. and 5 p.m. to 7 p.m.

Gruenhagen Conference Center, U.W. Oshkosh

208 Osceola Street

Oshkosh, WI 54901

Wolf River Room

Handicapped accessible

#### Free Rule Copy

You may obtain a free copy of this rule in any of the following ways (copies will also be available at the hearings):

By mailing a request to the Wisconsin Department of Agriculture, Trade, and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, Madison, WI 53708-8911.

By e-mailing [matt.laak@datcp.state.wi.us](mailto:matt.laak@datcp.state.wi.us).

By calling 608-224-4518.

By visiting DATCP's website at:

<http://www.datcp.state.wi.us/arm/agriculture/pest-fert/pesticides/accp/containment.jsp>

By visiting the Wisconsin Administrative Rules website at:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

#### Written Comments

You may submit written comments for the hearing record, whether or not you attend any hearing. Written comments must be received no later than February 17, 2006. You may submit written comments in any of the following ways:

By mail to Matt Laak, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, P. O. Box 8911, Madison, WI 53708-8911.

By e-mail to [matt.laak@datcp.state.wi.us](mailto:matt.laak@datcp.state.wi.us).

By visiting the Wisconsin Administrative Rules website at:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>. You will need to register on the website if you wish to submit hearing comments via the website (there is no charge).

#### Small Business Regulatory Coordinator

DATCP's Small Business Regulatory Coordinator is Keeley Moll. You may contact the Small Business Regulatory Coordinator in any of the following ways:

By mail to Keeley Moll, Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of the Secretary, P. O. Box 8911, Madison, WI 53708-8911.

By e-mail at [keeley.moll@datcp.state.wi.us](mailto:keeley.moll@datcp.state.wi.us).

By telephone at 608-224-5039.

#### Hearing Impaired Access

Hearing impaired persons may request an interpreter for these hearings. Requests must be made by Monday, January 11, 2006. You may request an interpreter in any of the following ways:

By writing to Matt Laak, Division of Agricultural Resource Management, 2811 Agriculture Drive, Madison, WI 53708-8911, telephone 608-224-4518. Alternatively, you may contact the DATCP TDD at 608-224-5058.

By mailing a request to the Matt Laak, Division of Agricultural Resource Management, Wisconsin Department of Agriculture, Trade, and Consumer Protection, 2811 Agriculture Drive, Madison, WI 53708-8911.

By e-mailing [matt.laak@datcp.state.wi.us](mailto:matt.laak@datcp.state.wi.us).

By calling 608-224-4518.

By contacting the DATCP TDD at 608-224-5058.

#### Rule Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection ("DATCP") currently regulates fertilizer and pesticide bulk storage facilities. DATCP regulates to ensure safe storage of fertilizer and pesticides, and to prevent spills that may harm persons, property and the environment.

This rule consolidates, reorganizes and modifies current rules. This rule regulates the construction, operation and maintenance of fertilizer and pesticide bulk storage facilities. This rule requires operators to file construction plans with

DATCP before constructing certain bulk storage structures. This rule also creates new construction standards for some facilities.

### Statutory Authority

Statutory Authority: ss. 93.07 (1) and 94.645 (3), Stats.

Statute Interpreted: s. 94.645, Stats.

DATCP has broad authority, under s. 93.07 (1), Stats., to adopt rules to implement laws under its jurisdiction. DATCP has specific authority to regulate fertilizer and pesticide bulk storage under s. 94.645, Stats., and has rule making authority for that purpose under s. 94.645 (3), Stats.

### Rule Coverage

This rule applies to commercial facilities that store unpackaged *bulk* fertilizer or pesticides. This rule does *not* apply to any of the following:

- Manure storage.
- On-farm storage, mixing or loading of fertilizer or pesticides for on-farm use (not for sale or distribution).
- Facilities that store only packaged fertilizer or pesticides.

### Rule Consolidation

DATCP currently administers separate bulk storage rules for fertilizer and pesticides. Since many facilities store fertilizer *and* pesticides, this rule consolidates fertilizer and pesticide bulk storage rules in a single rule chapter. This consolidation will make it easier for storage facility operators to understand and comply with the rules.

### Effect on Existing Facilities

This rule establishes some new construction standards for fertilizer and pesticide storage facilities. But the new standards apply only to structures that are constructed *or substantially altered* on or after the effective date of this rule. Routine maintenance and repair is not considered a *substantial alteration*.

### Spill Prevention and Cleanup Costs

DATCP currently administers an agricultural chemical cleanup program, funded by fertilizer and pesticide license fees. Under that program, DATCP compensates facility operators for fertilizer and pesticide spill cleanup costs. Proper construction and maintenance of storage facilities can reduce spills and spill cleanup costs.

This rule does not change the agricultural chemical cleanup program. But by improving storage facility construction and maintenance, this rule will help minimize spills and spill cleanup costs. That will help to control costs under the agricultural chemical cleanup program.

### Rule Contents

#### Construction Plans

Under current rules, fertilizer and pesticide bulk storage facilities must be constructed to certain standards. A professional engineer is often involved. However, current rules do not *require* plan review by DATCP or a professional engineer.

Under this rule, at least 21 days before an operator constructs or substantially alters a storage facility, the operator must file all of the following with DATCP:

- Plans for the construction or alteration (design specifications).
- A signed written statement by a professional engineer, certifying that the plans comply with this rule.
- The approximate date on which the operator plans to start construction.

DATCP may review and comment on plans filed under this rule, but is not required to do so. A failure to comment does not signify approval. An operator is not required to obtain DATCP approval, but construction must conform to this rule and to the plans filed with DATCP.

An operator may not deviate from the plans without prior written notice to DATCP. DATCP may, in its discretion, inspect the construction (DATCP is not required to inspect). The operator or a person chosen by the operator must inspect the construction of new concrete structures to ensure that the construction conforms to plans filed with DATCP. The operator must file a copy of the inspection report with DATCP.

Under this rule, as under current rules, DATCP may grant a variance from applicable requirements if DATCP finds that a nonconforming feature will provide substantially equivalent protection for waters of the state. This rule clarifies that an operator must submit a variance request in writing. The request must clearly identify the proposed nonconforming feature. If the nonconforming feature affects a secondary containment structure or a mixing and loading pad, a professional engineer must certify that it will provide substantially equivalent protection for waters of the state. DATCP must grant or deny the request within 30 days, but may extend the response deadline for good cause.

### Storage Facility Siting

Under this rule, as under current rules, storage and handling operations must be conducted over a mixing and loading pad or secondary containment structure designed to contain spills. Under this rule, new mixing and loading pads, secondary containment structures and bulk dry fertilizer buildings must be located at least 5 feet above bedrock and groundwater, at least 1,000 feet from any navigable lake, at least 300 feet from any navigable stream, and outside any 100-year floodplain. These siting limitations do not apply to the reconstruction, expansion or alteration of a mixing and loading pad, secondary containment structure or storage building that was in use prior to the effective date of this rule.

### Water Supply Protection

Under this rule, storage facilities must comply with well setback requirements contained in chs. NR 811 and 812, Wis. Adm. Code (the state well code). All water supplies to a storage facility must be protected against back flow. Protection may include an air gap at each water supply outlet, or a back flow protection device that complies with ch. Comm 82, Wis. Adm. Code (the state plumbing code).

### Storage Containers for Liquid Fertilizer or Pesticide

Under this rule, as under current rules, storage containers must be designed and constructed to prevent discharges, and must be located within a secondary containment structure. Storage containers must resist corrosion, puncture and cracking, and must be constructed of materials that do not react with stored products. Storage containers must be strong enough to hold the largest volume of product that may be stored in them.

This rule establishes new requirements related to bladder tanks, tank-in-tanks and field-erected storage containers constructed or substantially altered after the effective date of this rule. The storage containers must comply with construction standards in American Petroleum Institute standard API 650. An inspector certified under American Petroleum Institute Standard API 653 must inspect the storage containers at least once every 5 years, using inspection procedures specified by API 653.

This rule, like the current rules, requires an operator to anchor storage containers. Under this rule, anchor plates may not be embedded in the floor of a secondary containment structure unless the structure is specifically designed to

handle the resulting stresses. Anchor plates may not be embedded in walls of a secondary containment structure.

### Storage Container Appurtenances

This rule, like the current rule, establishes standards for storage container appurtenances such as valves, pipes, pumps, fittings, hoses and metering devices. Under this rule, as under the current rule, storage container connections must be equipped with shutoff valves. Appurtenances must be made of suitable materials, and must be designed to prevent discharges. Pipes and other appurtenances must be properly supported to prevent sagging and breakage.

Under current rules, storage containers must have gauging devices that show the volume of liquid in the containers. Liquid level gauging devices are no longer required under this rule. But *if* a storage container has a liquid level gauging device, the device must meet standards under this rule (the standards are similar to current rules). Under this rule, if a storage container has an external sight gauge, the site gauge must be anchored to the container at intervals of no more than 10 feet. This rule, like the current rules, prohibits external sight gauges on pesticide containers.

This rule establishes some new standards for appurtenances. Under this rule:

- Piping connections must be threaded, welded, fused, permanently band-clamped, or located over a mixing and loading pad or secondary containment structure (to prevent uncontained discharges from insecure connections).
- Piping or appurtenances constructed or substantially altered after the effective date of this rule may not be placed below ground, in concrete, or through any mixing and loading pad or secondary containment structure.
- An operator must annually inspect and pressure test any pipe or appurtenance installed below ground, in concrete (to ensure that there is no hidden discharge to the environment).
- An operator must annually inspect and test the joint between an appurtenance and any containment structure wall through which the appurtenance extends.

### Storage Container Security

Under this rule, as under current rules, an operator must keep storage containers individually locked, or in a secure building or outdoor enclosure. Unlike current rules, this rule does not require individual locking of pesticide storage containers kept in a secure outdoor enclosure. This rule clarifies fencing requirements for outdoor enclosures.

### Filling, Labeling and Venting Storage Containers

Current rules prohibit an operator from filling a storage container beyond capacity. This rule prohibits an operator from filling a storage container beyond 95% of capacity (except mini-bulk containers or containers kept at constant temperature). This rule, like current rules, requires proper labeling and venting of storage containers.

### Underground Storage Prohibited

This rule, like current rules, prohibits underground storage of bulk liquid fertilizer, bulk liquid pesticide, or recovered discharges. Sumps constructed after the effective date of this rule may not be more than 2 feet deep, and may not have a capacity of more than 50 gallons (see below).

### Storage Containers; Inspection and Maintenance

Current rules require weekly inspections of liquid levels and appurtenances, and monthly inspections of vents. Under this rule, an operator is no longer required to make these specific inspections (or keep records of them), but must inspect and maintain storage containers to minimize discharge risks.

### Abandoned Storage Containers

Under this rule, as under the current rules, an operator must clean and rinse any abandoned storage container, and remove all appurtenances from the abandoned container. The operator must remove any underground storage container (including any sump that has a capacity of more than 50 gallons) that is abandoned.

### Storage Structures; Dry Fertilizer or Pesticide

This rule expands and clarifies current requirements related to storage of dry bulk fertilizer or pesticide. Under this rule, dry bulk products must be stored in a fully enclosed building. However, an operator may store the following products outdoors:

- Packaged products that are fully enclosed in durable weatherproof packages or containers.
- Potassium chloride, or other products specifically approved by DATCP, if covered by a waterproof cover and kept on an asphalt concrete or portland cement concrete surface.

Storage structures must be constructed, inspected and maintained to withstand the pressure of stored products, to prevent discharges, and to prevent precipitation from contacting stored product. Stored product must be removed from abandoned storage facilities, and from facilities that fail to meet standards under this rule. Storage bins must be properly labeled to show fertilizer or pesticide contents.

### Mixing and Loading Pads; General

Under this rule, as under current rules, fertilizer and pesticide mixing and loading must be done over a mixing and loading pad designed to catch and contain spills. This rule expands and clarifies current requirements for mixing and loading pads. Under this rule, a mixing and loading pad must comply with all of the following requirements (less rigorous requirements apply if the pad is used only for dry products):

- It must be liquid-tight.
- If constructed after the effective date of this rule, it must have a capacity of at least 1,000 gallons or 125 percent of the capacity of the largest storage container loaded or unloaded at the storage facility, whichever is less.
- It must be constructed of concrete, according to standards specified in this rule. A mixing and loading pad that was in use prior to the effective date of this rule may be constructed of asphalt concrete, but it must be replaced by a portland cement concrete pad on or before December 31, 2009.
- It must be served by a pump and storage container that can be used to recover and store spilled liquid. The pump must be self-activating or easily activated in response to a spill. The storage container must have an *available* capacity of at least 200 gallons at all times.
- It must be designed and constructed to withstand foreseeable load conditions.
- It must be protected from precipitation runoff from surrounding surfaces.
- It may not have a precipitation drain (existing drains must be permanently plugged within 6 months after the effective date of this rule).
- It must be inspected at the time of construction (if constructed on or after the effective date of this rule), to ensure that construction conforms to plans filed with DATCP.
- It must be inspected and maintained on an ongoing basis. An operator must remove a leaking mixing and loading pad unless the pad is repaired and remains liquid-tight for at least 2 years after the repair.

A mixing and loading pad is not required for rail car unloading, or for loading fertilizer or pesticide into anhydrous

ammonia nurse tanks, provided that those operations comply with alternative requirements under this rule.

### Sumps

This rule expands and clarifies current rules related to sumps. Under this rule, if a mixing and loading pad or secondary containment structure drains to a sump, the sump must be all of the following:

- Liquid-tight.
- Served by a pump and storage container that can be used to recover and store spilled liquid. The pump must be self-activating or easily activated. The storage container must have an *available* capacity of at least 200 gallons at all times.
- Inspected at the time of construction (if constructed on or after the effective date of this rule), to ensure that construction conforms to plans filed with DATCP.
- Inspected and maintained on an ongoing basis. An operator must remove a leaking sump unless the sump is repaired and remains liquid-tight.

A sump constructed after the effective date of this rule must:

- Be constructed of concrete.
- Have a capacity of not more than 50 gallons.
- Be no more than 2 feet deep. The sump depth may not exceed the shortest sump width.
- Have walls and floor at least as thick, at every point, as the mixing and loading pad or secondary containment structure floor that drains to the sump.
- Form part of a continuous surface, having an area of at least 15 ft. by 15 ft. and a capacity of 250 gallons, which is free of construction and control joints. If a sump is constructed as part of a concrete mixing and loading pad or secondary containment structure, it must be constructed in a continuous concrete pour with that pad or structure.

### Secondary Containment Structures; General

Under this rule, as under current rules, liquid fertilizer and pesticide storage containers must be located within a secondary containment structure. There are limited exemptions for mobile, mini-bulk and empty storage containers. This rule does not exempt ordinary double-bottom storage containers.

Under this rule, as under current rules, a secondary containment structure must be designed, constructed and maintained to contain potential discharges of liquid fertilizer or pesticide from storage containers. Under this rule, as under current rules, the capacity of the secondary containment structure must be at least equal to the sum of the following:

- 125% of the capacity of the largest storage container located within the structure, or 110% if the structure is fully covered by a roof.
- The total volume of discharged liquid that would be displaced by the submerged portions of all other storage containers, equipment or fixtures located within the structure if the structure were filled to capacity with discharged liquid.

Under this rule, a secondary containment structure must be designed to withstand the full hydrostatic head of any liquid that may be discharged to the structure. The structure must have a coefficient of permeability of not more than  $1 \times 10^{-6}$  cm/sec. Structure walls may not be taller than 4 feet (there are limited exceptions).

This rule, like current rules, prohibits liquid bulk pesticide storage in an outdoor secondary containment structure that also holds bulk fertilizer. Under this rule, all storage

containers must be located at least 24 inches from the walls of the secondary containment structure and at least 24 inches from each other (there are some limited exceptions).

### Secondary Containment Structures; Construction Alternatives

This rule expands and clarifies construction standards for secondary containment structures. Under this rule, a secondary containment structure may consist of one of the following:

- Portland cement concrete structure. A secondary containment structure may be made of portland cement concrete. A portland cement concrete structure constructed after the effective date of this rule must be constructed according to standards specified in this rule. The operator or a person chosen by the operator must inspect the construction to ensure that construction conforms to plans filed with DATCP.
  - Block wall structure. A secondary containment structure may have concrete block walls if all of the following apply:
    - The floor is made of poured portland cement concrete.
    - The wall blocks are filled with portland cement concrete and joined with mortar.
    - The structure was in use prior to the effective date of this rule.
    - The structure is not used for more than one year after the effective date of this rule.
  - Synthetic liner. A secondary containment structure may be constructed of earth or other materials, and lined with a synthetic liner, if all of the following apply:
    - The liner meets standards specified in this rule, and is installed to manufacturer specifications. A manufacturer's representative must supervise the installation.
    - The liner manufacturer certifies that the liner is chemically compatible with all products stored within the structure, and guarantees liner effectiveness until a specified date. The operator must remove and inspect the liner by that date, and at least once every 5 years thereafter.
    - The operator repairs and maintains the liner as necessary, according to manufacturer specifications.
    - The liner rests on a proper base and is protected from potential damage above and below, as prescribed by this rule.
  - Prefabricated basin. A secondary containment structure may consist of one or more prefabricated basins constructed of steel or rigid synthetic material if the basins meet standards specified in this rule.
  - Steel structure constructed in place. A secondary containment structure may be constructed of steel if the structure meets standards specified in this rule. Structures built after the effective date of this rule must be at least 1/2 inch thick at every point.
  - Earthen structure with earthen liner. A secondary containment structure may consist of an earthen structure with an earthen liner if all of the following apply:
    - The liner contains only fertilizer (not pesticide) storage containers and, if the structure is built after the effective date of this rule, all of the storage containers were constructed on site.
    - The liner meets specific rule requirements. The liner must be constructed of specified materials, must be at least 6 inches thick, must have a coefficient of permeability of not more than  $1 \times 10^{-6}$  cm/sec., and must be covered by an inorganic soil layer at least 6 inches thick. It must be maintained to prevent cracking and must be reconstructed at least once every 15 years.

- Building floor; mobile and mini-bulk containers. A building floor may serve as a secondary containment structure for mini-bulk containers, and for mobile containers stored on the floor for less than 7 days, if the building is capable of containing a discharge from those containers.

- Mixing and loading pad. A mixing and loading pad may serve as a secondary containment structure if it meets all of the requirements under this rule for a mixing and loading pad and secondary containment structure.

Tank-in-tank. A tank-in-tank system may serve as a secondary containment structure if all of the following apply:

The tanks are designed to meet the API 650 standards.

A liquid level monitoring device is installed to prevent overfilling.

The tank-in-tank is equipped with an effective leak detection system.

The leak detection system is inspected at least monthly.

If a leak were to occur, the leak must be reported to the department, and the tank be emptied and cleaned in agreement with the department conditions and inspected and repaired in compliance with API 653.

Bladder Tank. A bladder tank system may serve as a secondary containment structure if all of the following apply:

The tank is designed to meet the API 650 standard.

The bladder within the tank is at least 40 mils thick and chemically compatible with the products it is used to store.

A qualified installer installs the bladder tank.

A specially-designed shut-off valve and system is used.

A liquid level monitoring device is installed to prevent overfilling.

The bladder is protected with a soft liner.

The tank-in-tank is equipped with an effective leak detection system.

The leak detection system is inspected at least monthly.

If a leak occurs in the bladder, the leak is reported to the department, the tank is emptied and cleaned in agreement with the department conditions and the bladder repaired by a qualified person.

### **Secondary Containment Structures; Inspection and Maintenance**

Under this rule, an operator must routinely inspect and maintain each secondary containment structure to ensure that the structure complies with this rule and does not leak. An operator must remove a leaking secondary containment structure unless the structure is repaired and remains liquid-tight.

### **Discharge Response**

Under this rule, an operator must do all of the following whenever there is a discharge of fertilizer or pesticide at a storage facility:

- Take immediate and appropriate action to contain and recover the discharge, and to mitigate risks to public health and the environment.

- Report the discharge to the department of natural resources if a report is required under ch. NR 706 (a report is not required if the discharge is fully contained in a mixing and loading pad, sump or secondary containment structure).

If a discharge is fully contained within a mixing and loading pad, sump or secondary containment structure, the operator may recover the discharge at any time before the end of the business day, except that:

- The operator must recover discharged material from a mixing and loading pad, and rinse the pad, before allowing vehicles to drive through the discharge.

- The operator must recover liquid (including discharges, rinse water or precipitation runoff) from a mixing and loading pad, sump or secondary containment structure whenever necessary to mitigate health or environmental risks, maintain available discharge containment capacity, or prevent corrosion or instability of storage containers.

### **Storage, Use and Disposal of Recovered Material**

Under this rule, an operator must safely use or dispose of discharges, rinsate and precipitation runoff recovered from a mixing and loading pad, sump or secondary containment structure. Use and disposal must comply with applicable federal, state and local regulations. Under this rule:

An operator may deposit recovered material into a manure storage pit if the material contains no pesticide residue.

Recovered liquid, if held by the operator pending use or disposal, must be held in a storage container that complies with this rule.

Recovered liquid may be used as fertilizer or pesticide mix water if the resulting product complies with ATCP 40 (fertilizer) or ATCP 29 (pesticide).

Recovered fertilizer material may be applied to land free of charge, or distributed free of charge for application to land (the operator must disclose fertilizer or pesticide contents to the landowner). However, any other sale or distribution of the recovered material, as a fertilizer or pesticide, must comply with ATCP 40 (fertilizer) or ATCP 29 (pesticide).

Under current rules (ATCP 35), an operator needs a DATCP permit to landspread material recovered from the environment, as part of an environmental cleanup. But this requirement does not apply to material recovered from a mixing and loading pad, sump or secondary containment structure.

### **Discharge Response Preparedness**

Under this rule, as under current rules, an operator must have a written discharge response plan for a storage facility. The operator must keep a copy of the plan at the storage facility (and nearest local office), and must make the plan available to the department and local emergency responders upon request. The operator must keep the plan current at all times.

Under this rule, as under current rules, a discharge response plan must include all of the following:

- The name and telephone number of a responsible individual.

- A site map showing the location of each storage container or bin, and the type of fertilizer or pesticide stored in that container or bin.

- Procedures for responding to discharges at the facility.

- Procedures for using or disposing of recovered discharges.

Under this rule, a discharge response plan must also include all of the following:

- The Wisconsin spill reporting number (1-800-943-0003).

- A DATCP contact number.

- The names and telephone numbers of 2 local excavation contractors and 2 local earth hauling contractors.

- Procedures for responding to discharges from mobile containers shipped from the facility.

Under this rule, as under current rules, an operator must have personnel, equipment and supplies available for

discharge responses. Equipment must include pumps, recovery containers and personal protective equipment. Personnel must be trained in emergency response procedures.

### **Transporting Bulk Fertilizer or Pesticide**

This rule creates new requirements related to the transportation of bulk fertilizer and pesticides by a storage facility operator. Under this rule:

- An operator must transport bulk fertilizer and pesticides in a manner that prevents reasonably foreseeable and preventable hazards to persons, property and the environment.
- Mobile containers must be securely anchored to transport vehicles. Other equipment on the transport vehicle that could come in contact with the mobile container must also be securely anchored to the vehicle.
- Mobile containers must be protected from damage and unauthorized access.
- An operator may not transport bulk fertilizer or pesticides in visibly broken, damaged or improperly sealed containers.

### **Environmental Assessments**

Under this rule, an operator must check for possible environmental contamination whenever a mixing and loading pad, sump or secondary containment structure leaks, is removed, or remains out of service for over 5 years:

As part of the environmental assessment, the operator must sample and analyze soils, groundwater and other media, as necessary, to determine the existence, nature and scope of possible contamination. The operator must report the results of the environmental assessment to DATCP.

### **Recordkeeping**

Under this rule, as under current rules, an operator must keep records related to a storage facility. This rule modifies current record keeping requirements. Under this rule, an operator must keep records related to all of the following:

- Required API 653 inspections of bladder tanks, tank-in-tanks, and large storage containers constructed on-site (inspections, by a certified inspector, are required during construction and every 5 years after construction).
- Required pressure tests of buried or embedded piping.
- Required inspection and maintenance of storage containers and structures (this rule requires an operator to inspect and maintain storage containers and structures, as necessary, to maintain compliance with this rule).

This rule eliminates current record keeping requirements related to the following activities:

- Annual inventory reconciliation (this rule repeals annual inventory reconciliation requirement).
- Weekly inspections of liquid levels and appurtenances (this rule repeals weekly inspection requirements).
- Discharges to the environment (an operator must report discharges to DNR per DNR rules, and must provide DATCP with the operator's environmental assessment related to any leaking storage container).

Under this rule, an operator must:

- Keep API 653 inspection records for as long as the operator owns or operates the storage facility.
- Keep records of pressure tests, inspections and maintenance for at least 3 years.
- Keep the records at the storage facility or nearest local office.
- Make the records available to DATCP for inspection and copying upon request.

### **Real Estate Sale or Lease; Disclosure**

Under this rule, an operator must do all of the following before the operator sells or leases storage facility real estate for a different use (this rule does not limit other disclosures that may be required under other applicable law):

- Notify DATCP of the impending sale or lease.
- Disclose to the purchaser or lessee that the real estate has been used as a storage facility.

### **Inspection and Enforcement**

DATCP may inspect a storage facility for compliance with this rule, and may take enforcement action as necessary. Under current state statutes, DATCP is authorized to do all of the following as necessary:

- Conduct investigations and issue warning notices.
- Inspect facilities, and collect product and environmental samples for testing.
- Inspect and copy records.
- Issue subpoenas and investigative demands.
- Issue orders to correct violations of this rule. DATCP may issue orders on a summary basis, without prior notice or hearing, if necessary to protect public health or the environment.
- Seek court action to enforce this rule or a DATCP order. This may include actions for injunction, or for a civil forfeiture of up to \$1,000 per violation (each day of violation constitutes a separate offense). DATCP may also seek criminal penalties if appropriate (fine of up to \$200 and 6 months in jail, or both).
- Deny, suspend, revoke the operator's license as a fertilizer manufacturer or distributor or pesticide application business.

- Order an operator to investigate and clean up environmental contamination resulting from a discharge. DATCP may order removal of structures, as necessary, for the environmental cleanup.

- Deny reimbursement of environmental cleanup costs for which the operator would otherwise be eligible (for example, if a discharge occurs because of an intentional or grossly negligent violation of storage rules).

### **Standards Incorporated by Reference**

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and revisor of statutes to incorporate the following standards by reference in this rule, without reproducing the complete standards in this rule:

- American Petroleum Institute standard 650, *Welded Steel Tanks for Oil Storage*, 10<sup>th</sup> edition (September 1, 2003).
- American Petroleum Institute standard 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 3<sup>rd</sup> edition (December 1, 2001).
- Wisconsin Minimum Design Standards for Concrete Agrichemical Containment (February, 2005), written by Professor David W. Kammel, Department of Biological Systems Engineering, University of Wisconsin-Extension.

Copies of these standards will be kept on file with DATCP, the secretary of state and the revisor of statutes. Copies are not reproduced in this rule.

### **Fiscal Estimate**

This rule will increase DATCP costs by approximately \$24,400 per year. Additional staff time will be needed to train storage facility operators, review and comment on storage facility construction plans, and monitor compliance with construction standards and other requirements. This rule will not generate any new revenue to cover the increased costs, so

DATCP will need to absorb the increase at the expense of other program activities. A complete fiscal estimate is attached.

This rule does not increase industry fees. By minimizing agricultural discharges to the environment, this rule may limit the long-term growth of reimbursement claims under the agricultural chemical cleanup program. That would have a positive effect on DATCP's agricultural chemical cleanup fund, which is financed by industry fees. However, DATCP cannot accurately estimate the impact at this time.

### Business Impact

This rule applies to commercial operators who store unpackaged bulk fertilizer or pesticides for sale or distribution. Many of these operators are "small businesses." A complete small business analysis ("initial regulatory flexibility analysis") is attached.

This rule does *not* apply to any of the following:

- Manure storage.
- On-farm storage of fertilizer or pesticide for on-farm use (not for sale or distribution).
- Facilities that store only packaged fertilizer or pesticides.

This rule establishes some new construction standards for fertilizer and pesticide storage facilities. These new standards apply to structures that are constructed *or substantially altered* after the effective date of this rule. This rule will not have a significant impact on an existing facility unless the operator *substantially alters* structures in that facility. Routine maintenance and repair is not considered a *substantial alteration*.

Under this rule, an operator must have construction plans reviewed by a professional engineer, and must submit the construction plans for discretionary review by DATCP. This may entail some additional costs for some operators, but will help prevent much more costly design and construction errors. This rule does *not* require DATCP pre-approval of new construction or alterations. This rule allows design flexibility, consistent with minimum standards.

Improved design and construction of storage facilities will minimize environmental contamination and costly cleanups that pose a large financial risk to storage facility operators. Environmental cleanup costs are typically much higher than preventive design and construction costs. Reduction of cleanup costs will also minimize financial demands on the industry-funded agricultural chemical cleanup program.

This rule reduces the overall recordkeeping burden for affected businesses (it adds some recordkeeping requirements but eliminates others). Consolidation of current fertilizer and pesticide bulk storage rules will make the rules easier to read, understand and implement.

DATCP has worked with University of Wisconsin-Extension to spell out basic design standards for concrete structures, so that engineering firms will not have to design those structures from scratch. That will reduce design costs for facility operators.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

### Environmental Impact

This rule will help prevent environmental damage from fertilizer and pesticide spills at bulk storage facilities. This rule will have no significant adverse environmental impact. An environmental assessment is attached.

## Federal and Surrounding State Programs

### Federal Programs

There are no comparable federal programs to regulate the storage of bulk fertilizer or pesticides (Wisconsin is a national leader).

### Michigan

Michigan's bulk fertilizer and pesticide storage rules are similar to Wisconsin's. Michigan requires mixing and loading pads and secondary containment structures, but does not have minimum design or construction standards for those structures (nor does it require professional engineering review of design specifications).

### Minnesota

Minnesota's bulk *pesticide* storage rules are similar, in many respects, to Wisconsin's. Minnesota has not promulgated bulk *fertilizer* storage rules, but has been enforcing proposed rules that are similar to Wisconsin's. Minnesota requires mixing and loading pads and secondary containment structures and has minimum design and construction standards for those structures. However, Minnesota does not require professional engineering review of design specifications.

### Indiana & Iowa

Indiana and Iowa have rules that are similar to each other, and somewhat similar to Wisconsin's. They require mixing and loading pads and secondary containment structures, but they do not set minimum design or construction standards or require professional engineering review of design specifications.

### Illinois

Illinois has rules that are somewhat similar to Wisconsin's. Illinois requires mixing and loading pads and secondary containment structures, and Illinois also sets minimum design or construction standards or requires professional engineering review of design specifications.

## Notice of Hearings

### Natural Resources

#### (Fish, Game, etc.)

#### [CR 05-104]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.885 (4), 169.20 (4), 169.21 (3), 169.36 (9) (d), 169.39 (2) and (3), Stats., interpreting ss. 29.885 (4), 169.06 (3m), 169.20 (4), 169.21 (3), 169.36 (9) (d), 169.39 (2) and (3), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 12, 16 and 17, Wis. Adm. Code, relating to hound dog training and trialing on captive wild animals. 2003 Wisconsin Act 239 provided the ability to use captive coyote, fox and bobcat to train hunting dogs (hounds). Section 169.39 (2), Stats., requires the Department to promulgate and enforce rules for the housing, care, treatment, enrichment, feeding and sanitation of wild animals subject to regulation under ch. 169, Stats. In addition, this section goes on to state that the wild animals (in this case fox, coyote and bobcat) receive humane treatment, be held in sanitary conditions and that they receive adequate housing, care and food.

The proposed rules allow for the permitted use of nuisance-trapped coyotes in licensed dog training enclosures. The rule also allows for exceptions to the current pen specifications, humane handling, care, treatment and transportation of coyote, fox and bobcat in ch. NR 16. Additionally the rule creates new definitions pertaining to

hound dog training enclosures. The rule goes on to clarify that bobcat, coyote and fox may be used under the authority of a hound dog training, dog club or dog trial license.

The most significant portion of this rule is the creation of the conditions under which coyotes, fox and to a lesser degree rabbits can be used within hound dog training enclosures and establishes a special hound dog training permit. Specifically this rule establishes the enclosure size and fencing requirements, the density of captive wild animals, housing and care requirements as well as disease prevention, and dog use and licensing requirements. The rule requires that, other than the 75 acre requirement, all current facilities will have to obtain an enclosure permit and comply with all provisions including fence sizes and animal densities.

All existing facilities that are operating legally under the authority of a hound dog or dog club training license, that are 60 acres in size, shall be grandfathered under this rule and will be allowed to obtain and renew their hound dog training enclosure permit. However, once the enclosure permit expires and is not renewed, the grandfathered enclosure may not be reissued unless the 75 acre requirement is met.

The rule also establishes the legal sources for obtaining captive coyote, fox, bobcat, raccoon and rabbits for use in dog training and trialing activity. The intent of these rule is to help assure that captive animals with diseases do not get introduced into this state.

Finally, the rule establishes record and reporting requirements for hound dog training and trialing.

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

a. Types of small businesses affected: Hound dog training enclosures that offer training opportunities for individuals seeking to train hounds to track and pursue game, utilizing captive coyote and fox for a fee.

b. Description of reporting and bookkeeping procedures required: Records include a record of all dogs released into the enclosure and records of the number, species and source of all captive wild animals released into the hound dog training enclosure.

c. Description of professional skills required: No professional skills are necessary.

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:

Tuesday, **January 10, 2006** at 6:30 p.m.

John Muir Middle School  
1400 W. Stewart Street  
Wausau

Thursday, **January 12, 2006** at 6:30 p.m.  
Gathering Waters & Glaciers Edge Rooms  
DNR South Central Region Hdqrs.  
3911 Fish Hatchery Road  
Fitchburg

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

#### **Fiscal Estimate**

The proposal will increase agency's cost and will not be absorbed within agency's budget.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until January 13, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Thiede.

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

**[CR 05-106]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 26.39 (7) and 227.11 (2) (a), Stats., interpreting s. 26.39 (7), Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 47.92, Wis. Adm. Code, relating to master logging certification scholarships. 2005 Wis. Act 25 created s. 26.39 (7), Stats., which directs the DNR to promulgate rules that establish criteria for a scholarship grant program to assist individuals who are seeking master logger certification through the Wisconsin Professional Loggers Association (WPLA). The master logger certification program is a performance-based program copyrighted and sanctioned by the American Loggers Council that establishes national standards of performance for the logging profession. Wisconsin's master logger program has been in existence for approximately two years. It is currently being administered through the Wisconsin Professional Loggers Association and s. 26.39 (7), Stats., continues to provide for that arrangement.

The proposed rules establish the purpose, applicability, definitions, application and grant procedure, general provisions, accountability and audit procedures, and termination provisions of the program. Scholarships would pay up to 50% of the cost towards an individual's application fee. It would offset part of the program cost of processing applicants for Wisconsin Master Logger consideration. The funding would be applied as a credit towards an individual's application fee which includes: costs incurred during the audit process, training related to the audit process, information and outreach to prospective applicants, and

record-keeping and administrative costs directly related to the program.

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. 26.39 (7), 227.11 (2) (a) and 227.24, Stats., interpreting s. 26.39 (7), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FR-43-05(E) relating to master logging certification scholarships. This emergency order took effect on November 15, 2005.

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

Monday, **December 12, 2005** at 9:00 a.m.

**Video conference participation** will be available at:

Room 139, State Office Building  
718 W. Clairemont Ave.  
Eau Claire

DNR Regional Headquarters  
107 Sutliff Avenue  
Rhinelander

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 Jeff Barkley at (608) 264-9217 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Estimate**

Proposal will increase agency's cost but can be absorbed within agency's budget.

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 rules may be submitted via U.S. mail to Mr. Jeff Barkley, Bureau of Forest Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until December 15, 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. Barkley.

## **Notice of Hearings Natural Resources (Environmental Protection – General) [CR 05-105]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 281.15, Stats., interpreting ss. 281.11 and 281.15, Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 102.10 and 102.11, Wis. Adm. Code, relating to listing additional waters as Outstanding or Exceptional Resource Waters. Outstanding and Exceptional Resource Waters (O/ERW) are waters which are characterized as being valuable or unique from various standpoints including fisheries, hydrology, geology and recreation.

In August 2004 the Department received a petition from various conservation organizations requesting that the Department designate 100 water segments as Outstanding or Exceptional. Department staff have evaluated available information pertaining to the segments in question, and recommend that 30 segments be added to the existing list of Outstanding Resource Waters in s. NR 102.10 and 12 segments be added as Exceptional Resource Waters in s. NR 102.11. The waters are located in Ashland, Barron, Bayfield, Burnett, Douglas, Forest, Iron, Langlade, Lincoln, Oneida, Price, Rusk, Sawyer, Taylor, Vilas and Washburn counties.

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

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

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold a public information session for one-half hour prior to each hearing. Department staff will be available to answer questions regarding the proposed rule.

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

Wednesday, **January 4, 2006** at 6:30 p.m.

Holiday Inn Express  
668 W. Kemp Street  
Rhinelander

Thursday, **January 5, 2006** at 1:30 p.m.

Room G09, GEF #2  
101 South Webster Street  
Madison

Wednesday, **January 11, 2006** at 6:30 p.m.

Northern Great Lakes Visitor Center  
29270 County Highway G  
Ashland

Thursday, January 12, 2006 at 6:30 p.m.  
Gov. Tommy Thompson Hatchery  
951 W. Maple Street  
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 Ms. Laura Bub at (608) 261-4385 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

There is no expected fiscal effect at the state or local level.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Ms. Laura Bub, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until January 31, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Bub.

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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.*

### **Natural Resources**

#### **(CR 05–053)**

Ch. NR 64, relating to an all-terrain vehicle registration exemption.

### **Natural Resources**

#### **(CR 05–054)**

Ch. NR 64, relating to an all-terrain vehicle noise testing procedures.

### **Natural Resources**

#### **(CR 05–071)**

Ch. NR 58, relating to implementation and administration of grants for endangered resources.

### **Natural Resources**

#### **(CR 05–074)**

Ch. NR 24, relating to open seasons for commercial clamming on the Wisconsin–Iowa boundary waters and the Mississippi River portion of the Wisconsin–Minnesota boundary waters.

### **Regulation and Licensing**

#### **(CR 05–050)**

Ch. RL 1, relating to cheating on an examination and breach of examination security.

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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.*

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

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

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

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

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

An order affecting ch. MPSW 3, relating to expiration of

a temporary credential issued by the Social Worker Section.  
Effective 1-1-06.

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

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

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

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

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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 November 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.*

### **Elections Board (CR 05-027)**

An order affecting ch. ElBd 1, relating to the conversion of a federal campaign committee to a state campaign committee. Effective 12-1-05.

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

The creation of this rule does not affect business.

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

No comments were received.

### **Financial Institutions – Banking (CR 05-065)**

An order affecting ch. DFI-Bkg 80, relating to prohibited bases for discriminating in the extension of consumer credit. Effective 12-1-05.

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

This proposed rule will have no adverse impact on small businesses.

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

No comments were received.

### **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.

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

The proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. The Senate Committee on Natural Resources and Transportation held a public hearing on May 26, 2005, and did not request any modifications. The Assembly Committee on Natural Resources held a public hearing on April 27, 2005, and on May 13, 2005 asked the department to consider modifications. The Committee's concern was related to a motion of the Natural Resources Board that the Department have draft rules on financial responsibility at landfills ready by February 2006. The department requested additional time from the Natural Resources Board and notified the Committee of this request. On August 26, 2005, the Assembly Committee on Natural Resources reported the rule out of committee.

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

No comments were received.

### **Natural Resources (CR 04-106)**

An order affecting chs. NR 400, 406 and 407, relating to providing the interface of the state air permitting programs and establishing "state-only" provisions in construction permits. Effective 12-1-05.

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

It is unlikely that small businesses will be negatively impacted by these rule revisions. The rule revisions are procedural in nature and will act to improve the interface between the construction and operation permits.

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

The rules were reviewed by the Senate Committee on Energy, Utilities and Information Technology and the Assembly Committee on Natural Resources. On August 31, 2005, the Assembly Committee on Natural Resources held a public hearing. There were no requests for modification on the proposed rules.

### **Natural Resources (CR 05-018)**

An order affecting ch. NR 488, relating to revising regulations concerning activities during the salvage and transport of equipment containing refrigerants that damage the atmosphere. Effective 12-1-05.

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

The proposed rule will not have a significant economic impact on a substantial number of small businesses. The majority of entities regulated by this rule are small businesses, and these regulations have been crafted to provide standards to protect both the environment and operators, provide great flexibility for compliance and help to assure the "level playing field" strongly desired by the small businesses in this industry. Affected small businesses include vehicle and appliance salvagers, scrap metal processors, HVAC businesses that retire refrigeration and AC systems; waste haulers and others who collect discarded refrigerated appliances; and demolition contractors who arrange for AC or other equipment at demolition sites to be evacuated before demolition.

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

The rules were reviewed by the Senate Committee on Energy, Utilities and Information Technology and the Assembly Committee on Natural Resources. On August 31, 2005, the Assembly Committee on Natural Resources held a

public hearing. There were no requests for modification on the proposed rules.

**Natural Resources  
(CR 05-031)**

An order affecting chs. NR 1, 10, 12, 16 and 19, relating to permitting and applications, hunting, trapping, captive wildlife, agricultural damage and nuisance wildlife. Part effective 12-1-05.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 93m), Stats., a final regulatory flexibility analysis is not required.

**Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. The Assembly Committee on Natural Resources held a public hearing on August 31, 2005. There were no comments on the proposed rules.

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

An order affecting ch. PI 36, relating to the public school open enrollment. Effective 12-1-05.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Tourism  
(CR 05-070)**

An order affecting ch. Tour 1, relating to the Joint Effort Marketing Program. Effective 12-1-05.

**Summary of Final Regulatory Flexibility Analysis**

The proposed rule will have minimal impact on small businesses.

**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 **November 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

#### Elections Board

##### Ch. EIBd 1

S. EIBd 1.39 (2)

#### Financial Institutions – Banking

##### Ch. DFI–Bkg 80

S. DFI–Bkg 80.85 (1), (2) (intro.) and (5)

#### Natural Resources

##### Ch. NR 1

S. NR 1.18 (8)

##### Ch. NR 16

S. NR 16.12 (3) (b)

S. NR 16.13 (1)

S. NR 16.30 (4) (a) and (b)

S. NR 16.50 (3) (b)

##### Ch. NR 17

S. NR 17.07 (2) (a)

##### Ch. NR 19

S. NR 19.01 (2) (b) to (k)

S. NR 19.13 (3)

S. NR 19.25

##### Ch. NR 27

S. NR 27.05 (2) (d)

##### Ch. NR 400

S. NR 400.02 (64)

##### Ch. NR 406

S. NR 406.075

##### Ch. NR 407

S. NR 407.07 (3) (b)

S. NR 407.11 (1) (e)

S. NR 407.12 (1) (intro.) and (e)

##### Ch. NR 488

S. NR 488.01

S. NR 488.02 (3), (4), and (4m)

S. NR 488.03 (1), (2), (3) (a) and (b)

S. NR 488.04 (1) (intro.), (a) and (2)

S. NR 488.05 (1) (intro.), (a) and (2)

S. NR 488.06 (1) (intro.), (c) and (2)

S. NR 488.08

S. NR 488.09 (1) (a) to (c)

S. NR 488.10 (1)

S. NR 488.11 (1) (a)

S. NR 488.12 (3)

##### Ch. NR 500

S. NR 500.03 (100m), (120g), (120r), (123m), (124e) and (185m)

##### Ch. NR 504

S. NR 504.06 (5) (cm), (d), (dm), (e), (j), (t), (tm), and (6)

S. NR 504.07 (6) (a)

S. NR 504.095

##### Ch. NR 506

S. NR 506.07 (5) (d) to (h)

S. NR 506.135

##### Ch. NR 507

S. NR 507.215

##### Ch. NR 512

S. NR 512.09 (6)

##### Ch. NR 514

S. NR 514.06 (14m)

S. NR 514.07 (1) (L), (6) (c), (7), (8), and (9)

S. NR 514.10

##### Ch. NR 516

S. NR 516.07 (2) (d)

S. NR 516.08

##### Ch. NR 520

S. NR 520.04 (4) (a) and Table 5

#### Public Instruction

##### Ch. PI 36

S. PI 36.03 (1) (d)

S. PI 36.10 (2) (a)

#### Tourism

##### Ch. Tour 1

S. Tour 1.03 (4)

### **Editorial corrections**

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

#### **Administration**

**Ch. Adm 14**

#### **Commerce**

**Ch. Comm 155**

#### **Elections Board**

**Ch. EIBd 4**

S. EIBd 4.01 (1) and (2) (c)

#### **Natural Resources**

**Ch. NR 488**

S. NR 488.11 (1) (b)

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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/](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
Adm 48.01	16.965 (5)	Delete reference
Comm 5.32 (1) (a)	101.92 (2)	Delete reference

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## Executive orders

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

**Executive Order 127.** Relating to a special election for the thirty-third assembly district.

**Executive Order 128.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff in remembrance of Rosa Parks.

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## Public notices

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### Health and Family Services

#### (Medical Assistance Reimbursement for School-Based Services: Cost-Based Reporting to Determine Rates for School District Reimbursement)

The State of Wisconsin reimburses providers for school-based 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 methods for calculating reimbursement for school districts for school-based services. The Department proposes to use cost-based reporting to determine rates for reimbursement for school-based services. No change will be made in the services provided under the school-based services benefit.

#### **Proposed Change**

The proposed change is to use cost-based reporting to determine rates for reimbursement for school-based services. This change is projected to have no fiscal effect on program expenditures.

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. 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.

## Health and Family Services

### (Medical Assistance Reimbursement of Nursing Homes)

#### State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 05-06

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the Federal 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 setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

The Department is proposing a change in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The change is effective January 1, 2006.

The proposed change would establish a pilot program for ventilator-dependent residents. The estimated increase in annual aggregate expenditures attributable to this change is approximately \$500,000 all funds, (\$290,000 FFP), excluding patient liability.

The proposed change is being implemented as a pilot program to end residents' dependency on mechanical ventilation and transition them to the most appropriate setting commensurate with their highest level of independence.

#### **The proposed change is:**

Establish a pilot rehabilitation program to end residents' dependency on mechanical ventilation and transition them to the most appropriate setting commensurate with their highest level of independence. An enhanced payment to fund an intensive rehabilitation program will be provided to a pilot facility for a restricted time period.

#### **Copies of the Proposed Change:**

Copies of the available proposed change may be obtained free of charge by writing to:

Division of Health Care Financing

Attention: Nursing Home Medicaid Payment Plan

P.O. Box 309

Madison, WI 53701-0309

or by faxing James Cobb at 608-264-7720.

The available proposed changes may be reviewed at the main office at any county department of social services or human services.

#### **Written Comments/Meetings:**

Written comments on the proposed change may be sent to the Division of Health Care Financing, at the above address. The 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 changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed change based on comments received at these forums.

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