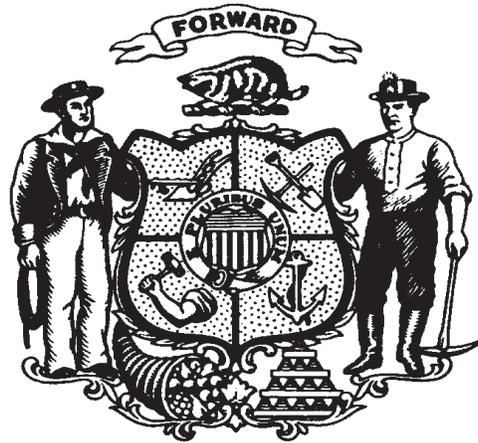


Wisconsin Administrative Register

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Table of contents

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

Commerce:

Fee Schedule, Ch. Comm 2

Rules relating to manufactured home certificate of title fees.

Elections Board:

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

Insurance:

Rules relating to small employer uniform employee application for group health insurance.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

Rules relating to hunter education fees.

Rules relating to master logging certification scholarships.

Rules relating to commercial fishing for lake trout in Lake Superior.

Environmental Protection—Water Regulation, Chs. NR 300—

Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Revenue:

Rules relating to the computation of the apportionment fraction by multistated public utilities and telecommunications companies.

Rules relating to electronic funds transfer, information returns and wage statements.

Technical College System Board:

Rules relating to training program grants.

Transportation:

Rules relating to motor carrier safety regulations.

Workforce Development:

Labor Standards, Chs. DWD 270–279

Rules relating to overtime pay for employees performing companionship services.

Public Works Construction Projects, Chs. DWD 290–294

Rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Scope statements.**Pages 9 to 13**

Agriculture, Trade and Consumer Protection:

Rules affecting Chs. ATPC 140 to 149, relating to agricultural marketing orders, marketing agreements and marketing boards.

Health and Family Services:	Rules affecting Ch. HFS 43, relating to training standards for staff and supervisors involved with the services delivered to children and families in child abuse and neglect cases.
Kickapoo Reserve Management Board:	Rules relating to Ch. KB 1, relating to posted camping limits and exceptions for the payment of user fees at the Kickapoo Valley Reserve.
Natural Resources:	Rules relating to firewood entering and exiting state lands. Rules relating to the establishment of a Forestry Biomass Research and Development Grant Program.
Workforce Development:	Rules affecting Chs. DWD 12, 16 and 17, relating to Wisconsin Works, Emergency Assistance, and Child Care. Rules relating to Ch. DWD 127, unemployment insurance work search requirements. Rules relating to Chs. DWD 218 to 225, procedures for civil rights complaints.
Submittal of rules to legislative council clearinghouse.	Page 14
Agriculture, Trade and Consumer Protection:	Rules relating to plant pest import controls and quarantine. Rules relating to animal diseases and movement.
Rule–making notices.	Pages 15 to 33
Agriculture, Trade and Consumer Protection:	Hearings to consider changes to Ch. ATCP 10, relating to animal diseases and movement. Hearings to consider changes to Ch. ATCP 21, relating to plant pest import controls and quarantine.
Labor, Industry and Review Commission:	Hearing to consider changes to Chs. LIRC 1 to 4 to clarify provisions relating to its rules of procedure.
Revenue:	Hearing to consider changes to Ch. Tax 2, relating to the computation of the apportionment fraction by multistate public utilities and telecommunications companies.
Submittal of proposed rules to the legislature.	Page 34
Educational Approval Board:	CR 05–112 – Ch. EAB 4, relating to student protection fees paid by schools.
Elections Board:	CR 05–093 – Ch. EIBd 11, relating to training and certification of election inspectors.
Technical College System:	CR 05–107 – Ch. TCS 17, relating to skills training or other education related to the needs of business.

Transportation:

CR 05-109 – Ch. Trans 102, relating to the time period within which a person moving to Wisconsin may operate a motor vehicle under a driver license from his or her previous state of residence.

Rule orders filed with the revisor of statutes bureau.

Page 35

Transportation:

CR 05-082 – An order affecting ch. Trans 200, relating to specific information signs.

CR 05-095 – An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Emergency rules now in effect

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

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

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

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

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

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

Commerce

(Fee Schedule, Ch. Comm 2)

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

Exemption From Finding of Emergency

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

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

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

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

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

Elections Board

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

Finding of Emergency

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

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

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

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

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

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

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—)

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

Finding of Emergency

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

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

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

Finding of Emergency

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

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

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

Finding of emergency

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

Publication Date: November 15, 2005
Effective Date: November 15, 2005
Expiration Date: April 14, 2006
Hearing Date: December 12, 2005

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

Finding of Emergency

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

Publication Date: December 15, 2005
Effective Date: December 15, 2005
Expiration Date: May 14, 2006
Hearing Date: January 13, 2006

Natural Resources

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

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

Finding of emergency

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

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

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

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

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

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

Revenue (2)

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

Finding of emergency

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

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

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

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

Publication Date: December 5, 2005
Effective Date: December 5, 2005
Expiration Date: May 4, 2006
Hearing Date: February 27, 2006
 [See Notice this Register]

2. Rules adopted revising **chs. Tax 1 and 2**, relating to electronic funds transfer, information returns and wage statements.

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

Section 71.775, Stats., requires pass–through entities to file and pay withholding tax on the income allocable to their nonresident members. The department has determined that in order to administer this tax in a cost effective manner, it is necessary to require pass–through entities to file and pay the tax by electronic means. The department has also determined that, in the interest of cost effectiveness, a requirement to file Form WT–7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, should also be put in place.

It is necessary to promulgate this rule order to remove the threat of revenue loss to the state as a result of pass–through entities filing or paying withholding tax or employers filing Form WT–7 by other than electronic means.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date: December 28, 2005
Effective Date: December 28, 2005
Expiration Date: May 27, 2006

Technical College System Board

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

Finding of emergency

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

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

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

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

Transportation

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

Finding of emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is on October 1, 2005 the new hours-of-service regulations became effective. The new regulations apply to drivers and carriers transporting property and passengers by commercial vehicles in interstate commerce. It is imperative the industry operates under a single set of regulations. Additionally, the Commercial Vehicle Safety Alliance out-of-service criteria is directly formulated to the new hours-of-service. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding and that funding could be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

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

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 a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

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

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule

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

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

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

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

**Workforce Development
(Public Works Construction Projects, Chs.
DWD 290–294)**

Rules adopted amending ss. DWD 290.155 (1) and DWD

293.02 (1) and (2), relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Finding of emergency

The Department of Workforce Development 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 facts constituting the emergency is:

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

Publication Date: December 27, 2005
Effective Date: January 1, 2006
Expiration Date: May 31, 2006
Hearing Date: February 15, 2006

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Agricultural marketing orders, marketing agreements and marketing boards.

Administrative Code Reference: Chapter ATCP 140, Wis. Adm. Code. This rule may also include changes to the individual marketing orders found at chs. ATCP 141, 142, 143, 144, 145, 147, 148 and 149, Wis. Adm. Code.

Objective of the rule. This rule will make changes to ATCP 140, the general provisions on marketing orders and marketing boards, and to the specific commodity marketing orders (ATCP 141 to 149) to update the rules to promote orderly and efficient marketing of agricultural commodities. The changes will allow the rules to be consistent with current business practices of the marketing boards and the commodity producers they serve. Any change to a marketing order must be approved at referendum by the affected producers and adopted through the administrative rulemaking process.

Statutory authority

Sections 93.07 (1) and 96.15 Stats.

Policy analysis

Chapter ATCP 140 and the individual marketing orders (ATCP 141 to 149) are the regulations governing marketing order board organizations and functions, including procedures for the collection of assessments from agricultural commodity producers in Wisconsin.

Comparison with federal regulations

There are federal marketing order programs for some, but not all, of the commodities for which there are state marketing order programs in Wisconsin. The federal marketing order programs serve to promote orderly and efficient marketing of commodities produced in the United States. The state and federal programs are complementary and for several commodities the programs of the states work in close coordination with the federal program. The Department is not aware of any proposals pending to alter the federal commodity marketing programs.

All Entities Affected by the Rule

This rule will affect all producers of agricultural commodities (cherries, cranberries, corn, milk, soybeans, mint, ginseng and potatoes) produced in Wisconsin.

Policy Alternatives

If DATCP takes no action, current rules will remain in effect. Current rules require the marketing boards to operate under regulations that may inhibit the efficiency and effectiveness of commodity marketing program administration.

Statutory Alternatives

None at this time.

Staff time required

DATCP estimates that it will use approximately .5 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings,

holding public hearings and communicating with affected marketing order boards. DATCP will use existing staff to develop this rule.

DATCP Board Authorization

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

Health and Family Services

Subject

The Department of Health and Family Services proposes to create ch. HFS 43, relating to standards for training required for staff and supervisors involved in the access, initial assessment, and ongoing services delivered to children and families in child abuse and neglect cases.

Policy analysis

Section 48.981 (8) (d), Stats., requires the Department to make available training programs that allow child protective services staff and supervisors to successfully complete training in child abuse and neglect protective services and on recognizing and appropriately responding to domestic abuse. The Department is further directed to promulgate rules that allow it to monitor compliance with training standards. Training is available to child welfare staff through the Wisconsin Child Welfare Training Partnerships and other resources. Rules to monitor compliance have not been promulgated.

During the Child and Family Services Review (CFSR) of the Wisconsin child welfare system conducted by the federal Administration for Children and Families (ACF), a federal agency funding state, territory, local, and tribal organizations to provide family assistance (welfare), child support, child care, Head Start, child welfare, and other programs relating to children and families, federal reviewers identified the lack of mandated initial (pre-service) and ongoing training of child protective services staff working in the state's child welfare system as being a key concern. In response to the findings, the Department developed a Program Enhancement Plan (PEP), which was approved by ACF. In the Program Enhancement Plan, the Department agreed to set minimum training standards by administrative rule. There are no federal regulations mandating pre-service or ongoing training of child protective services staff.

Under proposed ch. HFS 43, the Department intends to establish statewide minimum standards for pre-service training, ongoing training, and supervisory training of child protective services staff. The training targets caseworkers who perform access and initial assessment services and provide ongoing services to children and families in child

abuse and neglect cases. In addition, proposed ch. HFS 43 creates a monitoring process that allows the Department to review and approve training plans submitted by child welfare agencies and monitor compliance by individual staff. The proposed creation of ch. HFS 43 will not have an affect on the Memorandum of Understanding between the Department and the Department of Corrections that allows the intake training required under s. 48.06 (1), Stats., for intake workers to be provided by the Department of Correction and the Wisconsin Juvenile Court Intake Association under ch. DOC 399.

Members of the general public that will be affected by the rule are children and families.

Statutory authority

The Department's authority to promulgate this rule is found at s. 48.981 (8) (d), Stats., and s. 227.11 (2), Stats.

Staff time required

It is anticipated that approximately 40 to 50 hours of staff time will be required for the development, drafting, review, and editing of the proposed rule. In addition, members of the Training Committee that was established as part of the Program Enhancement Plan (PEP) spent time developing the parameters of the rule.

Comparison with federal regulations

There is not a specific requirement in federal law that mandates pre-service or ongoing training of child protective services staff. Authority for the Child and Family Services Review is located at 45 CFR Part 1355.

All Entities Affected by the Rule

The rule will have a direct impact on the Department, including the Bureau of Milwaukee Child Welfare (BMCW), county human and social services agencies, licensed child welfare agencies under contract with the Department or a county department to perform the same public child protective services functions, and the University of Wisconsin Child Welfare Training Partnerships.

Kickapoo Reserve Management Board

Subject

Objective of the rule. The objective of the rule is to amend s. KB 1.09 (8) to coincide to posted camping limits and s. KB 1.10 (1) to eliminate exceptions for the payment of user fees at the Kickapoo Valley Reserve (Reserve).

Policy analysis

Existing Policy: S. KB 1.09 (8) – Limits campsites to 6 persons.

Section KB1.10 (1) – Currently visitors who are hiking/walking, biking, horseback riding or camping are required to pay a fee for visiting the Kickapoo Valley Reserve. Those who are parked on the Reserve to go canoeing, hunting, fishing or snowmobiling are not required to pay the fee.

New Policy: In recent years, Reserve staff has worked with the Department of Health and Family Services to designate and post capacity limits within the Reserve. Capacity limits vary depending on size of the designated area and therefore the rule of “6 persons” is no longer appropriate. Referencing the “posted capacity limits” make the rule more accurate.

The Kickapoo Reserve Management Board (Board) proposes a new policy that is consistent for all users and eliminates the exceptions for certain user groups who visit the Kickapoo Valley Reserve.

Fee amounts are established annually by the Board. Current amounts are: \$4/person per day or \$15 annually; \$10/night camping. All revenues received through fees are used to maintain and improve the Reserve.

Policy Alternative

Continue operations under existing policy.

Statutory Authority

The statutory authority for the rule is s. 41.41 (7) (k), Stats.

Staff Time Required

Approximately 16 hours of staff time to develop the rule.

All Entities Affected by the Rule

Visitors to the Reserve who are parking within the Reserve for canoeing, hunting, fishing or snowmobiling would be affected. The fees would not be new for visitors who hike, bike, ride horses or camp within the Reserve, but they would likely be pleased to see the users of the Reserve treated equally.

Comparison with Federal Regulations

There are no proposed or existing federal regulations that address the activities contemplated by this proposed rule.

Natural Resources

Subject

Firewood entering and exiting state lands.

Objective of the rule. The objective of proposed rule is to regulate firewood entering and exiting state lands to reduce risk of introduction and spread of Emerald Ash Borer and other pests and diseases of trees. Currently, campers at state properties may bring in firewood from any source for use during their stay. Firewood may continue to be collected on state properties by campers and on some state properties firewood many continue to be taken through special sales for home heating purposes. This rule would allow campers to bring in firewood from state approved sources. All other firewood would be prohibited in order to minimize the likelihood of introduction of emerald ash borer (EAB) and other pests and diseases into state properties. It would also prohibit taking firewood from state properties unless approved to prevent transport of EAB or other pests from infested areas.

Policy analysis

EAB is a foreign pest of ash trees that has nearly eliminated ash of all species where it has become established. Ash trees account for 30% of trees in Wisconsin cities and towns. There are approximately 717 million white, green and black ash trees in our forests. Ash is a component of our northern hardwood, central hardwood and lowland forests. There currently are no methods of managing this pest in the forest situation. Insecticides and biological controls are in development but it will be some years before they are ready for use. In order to buy time for the development of management tools and forestall elimination of ash from our urban and rural forests by this pest, it is important to slow the spread of EAB from lower Michigan and adjoining areas where it is established. Where new colonies are detected, eradication is the current response with all ash trees within 1/2 mile of the infested tree(s) cut and destroyed. This is very costly and destructive to community, park and natural forests but is the only control option at this time. Because eradication is so costly and destructive, quarantine efforts are very important to prevent transport of EAB. Federal and State

quarantines have been placed on ash nursery stock and logs and these have been effective in preventing spread by these sources.

Despite federal and state quarantines prohibiting the movement of firewood from lower Michigan and infested areas in Ohio, Indiana, and Ontario, infested firewood is still a significant source of new introductions. The lack of success in limiting firewood movement relative to the success with nursery stock and timber is probably due to the fact that much movement of firewood is by the general public and thus much more difficult to regulate. As firewood quarantines at the source have been leaky, it is prudent to put additional limits to movement of this source of infestation into our public campgrounds and forests.

Comparison with federal regulations

Ontario Province, Canada, prohibits bringing any firewood into their provincial parks from quarantined areas of Canada and the US. We feel that the option of prohibiting movement of non-approved firewood will have less impact on the public than would efforts to eradicate infestations that could be devastating to most campgrounds and does not assure that EAB has not been transported out of the area.

All Entities Affected by the Rule

This rule will impact campers, firewood dealers, and some families who sell small quantities of firewood adjacent to state campgrounds. We are taking actions to minimize these impacts. If the rule is approved, all people who now have or make reservations at state campgrounds will be notified of the new policy on firewood. A public information and notification effort will also be triggered so that people know and understand why we are taking this action to protect their public forests. We will also work with the Department of Agriculture, Trade and Consumer Protection (DATCP) to develop an approval process and make sure that those firewood dealers near or in the parks are selling approved wood before the summer camping season begins.

Statutory authority

Chapter 23.11 (1) provides statutory authority for this proposed rule.

Staff time required

We estimate it will take ten hours of staff time to develop the proposed rule before any public review and 40 hours for public review hearings afterwards to finalize the rule text.

Natural Resources

Subject

The Administrative Rule will establish a Forestry Biomass Research and Development Grant Program, as stipulated in the FY 05-07 State Budget. The grant program will be administered by an organization selected through a request for proposals procurement process.

The grant program is currently unfunded. At its January 25, 2006 meeting, the Joint Committee on Finance approved an emergency request for FY 2006 - 2007 funding for \$500,000 for grants and \$37,500 from the Forestry SEG Account for contracted administration of the program.

It is the intention of the Department to seek adoption of an emergency Administrative Rule to establish this grant program immediately, while concurrently seeking adoption of permanent Administrative Rule.

Policy analysis

The proposed ForestryBiomass Grant Program would be available to organizations and businesses experienced in the commercialization of energy technologies for any of the following projects: a. research and development of technologies for using forestry biomass as energy sources; b. encouraging the use of forestry biomass as an energy source; c. increasing the beneficial use of forestry biomass; d. encouraging the development of biochemicals from forestry biomass.

This grant program will provide funding only for grants that match funding provided by the federal government for forestry biomass research and development.

Groups likely to be impacted or interested in this program include: Forest industry, such as Wisconsin Paper Council, Wisconsin Professional Loggers Assoc., Timber Producers Association of Wisconsin and Michigan, Lakes States Lumber Association; Utilities; Regional Planning Commissions; Resource Conservation and Development Districts; NGOs such as Nature Conservancy, Sierra Club, Wisconsin Environmental Decade; Universities; federal research facilities such as the USDA Forest Products Lab; Wisconsin State agencies and entities such as DOA, DATCP, DOC, Governor's Biorefining Consortium, Public Service Commission.

Statutory authority

The grant program is stipulated in the FY 05-07 State Budget (26.385 Wis. Stats.)

Staff time required

110 hours

Comparison with federal regulations

Not applicable for this grant program.

Workforce Development

Subject

Wisconsin Works, Emergency Assistance, and Child Care.

Policy Analysis

Section 49.147 (6), Stats., provides that an individual who meets other Wisconsin Works (W-2) eligibility requirements may receive a job access loan needed to obtain or continue employment and address an immediate and discrete financial crisis. Section DWD 12.17 (2) provides that the amount of the loan to an individual may not be less than \$25 and not more than \$1600 in any 12-month period. The W-2 agency must ensure that the average of all amounts loaned in any 12-month period does not exceed \$800. The proposed rule will eliminate the requirement that the average of all job access loans issued by a W-2 agency in a 12-month period not exceed \$800. The Legislative Audit Bureau report on the W-2 program issued in April 2005 stated that W-2 agencies report it is time-consuming to calculate ongoing job access loan amounts to comply with this requirement.

The W-2 worker training rules in Chapter DWD 17 currently provide various training requirements for W-2 agency financial and employment planners (FEPs) and resource specialists. The proposed rule will amend Chapter DWD 17 to require that the training curriculum include information on child welfare issues and require that W-2 agency supervisors attend training.

Section 49.138, Stats., provides for a program of emergency assistance to families with needy children in cases

of fire, flood, natural disaster, homelessness, impending homelessness, and energy crisis. Prior to 2005 Wisconsin Act 25, a family could receive emergency assistance once in a 12–month period in cases of need due to fire, flood, natural disaster, homelessness, or energy crisis and once in a 36–month period for need due to impending homelessness. 2005 Wisconsin Act 25 amended s. 49.138, Stats., to provide that a family may be eligible for emergency assistance once in a 12–month period in all cases, including impending homelessness. The emergency assistance rules in Chapter DWD 16 will be updated to reflect this statutory change.

Section 48.625 (c) 1g., as affected by 2005 Wisconsin Act 25, creates a new program of subsidized guardianship. This program allows guardians who were licensed as the child’s foster parents to receive payments in the same amount that they received as foster parents if, among other things, the child has been placed outside of his or her or her home for a cumulative period of one year or longer, and, despite reasonable efforts to return the child to his or her home, reunification of the child with the child’s parent or parents is unlikely or contrary to the best interests of the child. The program also allows for monthly subsidized guardianship payments to an interim caretaker on the death, incapacity, resignation, or removal of a guardian receiving payments.

Section 49.155 (1m) 1g., as affected by 2005 Wisconsin Act 25, provides that when an agency determines financial eligibility for a child care subsidy for a subsidized guardian or interim caretaker of the child, the agency must use the same procedure as is used for determining financial eligibility for a foster parent of a child. The Department proposes to also treat subsidized guardians and interim caretakers the same as foster parents in determining the child care copayment amount. Section DWD 56.08 (2) (b) provides that foster parents do not have a copayment responsibility for the foster children in their care. The proposed rule will also provide a zero copay for subsidized guardians and interim caretakers.

Statutory authority

Sections 49.145 (2) (c), 49.147 (6), 49.155 (5), 103.005 (17), 227.11 (2), Stats.

Entities affected by the rule

W–2 agencies, county and tribal economic support agencies, applicants for and recipients of Emergency Assistance, and subsidized guardians.

Comparison with federal requirements

There are no federal requirements on the changes in the proposed rules.

Staff time required

100 hours

Workforce Development

Subject

Chapter DWD 127, Unemployment insurance work search requirements.

Policy analysis

Section 108.04 (2), Stats., provides that, among other things, an unemployment insurance claimant must conduct a reasonable search for suitable work. The Department may waive this requirement under certain stated conditions. Chapter DWD 127 currently provides that the Department shall waive the work search requirement for a given week if

certain specified circumstances apply to a unemployment insurance claimant and may waive the work search requirement for a given week when others apply. The proposed rule will make all waivers of the work search requirement mandatory if any of the specified circumstances apply.

The proposed rule will also modify two of the waiver criteria. Currently, the Department may waive a claimant’s work search requirement if the claimant has a reasonable expectation of starting work with a new employer within 4 weeks after the week in which he or she initiates a claim or in which an eligibility review is conducted. Under the proposed rule, the Department will waive the work search requirement if the claimant has an offer of work that begins within 4 weeks regardless of when this occurs. In addition, currently the Department waives a claimant’s work search requirement if the claimant’s most recent employer failed to post or maintain any notice as to claiming unemployment benefits. Under the proposed rule, this provision will be modified to clarify that this waiver does not apply if the claimant was aware of the work search requirement.

The proposed rule will also make various technical corrections. 2005 Wisconsin Act 86 repealed the provision that self–employed individuals shall not be eligible for benefits for any week in which the individual worked at self–employment, unless the individual establishes that the or she has made an active and bona fide search for employment. Self–employed claimants are now subject to the same work search requirements and waivers as non–self–employed claimants. The proposed rule will repeal s. DWD 127.09 relating to self–employment.

2003 Wisconsin Act 197 provides that the work search requirement does not apply to an individual if the Department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. The proposed rules will repeal an obsolete provision that limited the work search waiver based on a reasonable expectation of reemployment to 12 weeks after the claimant initiated the claim or 6 weeks after an eligibility review is conducted. The proposed rule will also repeal an obsolete provision that limited the work search waiver to 18 months under certain conditions when the layoff was due to a disaster or the temporary closing of the employer’s worksite for refurbishing or relocation of the worksite and the Department believed that a customary work search would impose a hardship on employers in the labor market and would not be likely to result in suitable employment for a substantial number of the affected employees.

The proposed rule will also update certain rule provisions to reflect changes in 1999 Wisconsin Act 15. Section 108.04 (2) (a) 3., as affected by 1999 Wisconsin Act 15, provides that the requirement that the individual conduct a reasonable search for work during the week must include 2 actions that constitute a reasonable search. The current rule does not specify 2 actions. The proposed rule will also update an obsolete reference to sexual harassment in s. 108.04 (7) (i), Stats., that is now included with good cause attributable to the employing unit in s. 108.04 (7) (b), Stats.

Statutory authority

Sections 108.04 (2), 108.14 (2), and 227.11, Stats.

Entities affected by the rule

Unemployment insurance claimants

Comparison with federal requirements

There is a federal requirement that UI claimants search for work, but there is no federal law on the specific issues addressed in the proposed rule.

Staff time required

100 hours

Workforce Development**Subject**

Ch. DWD 218 to 225, Procedures for Civil Rights Complaints.

Policy analysis

Section 101.055 (8), Stats., provides protection for public employees exercising their rights under the Public Employee Safety and Health Law, which is otherwise administered by the Department of Commerce. Section 101.055 (8) (b), Stats., provides that employees who believe they have been discharged or discriminated against because they have exercised rights under the law may file a complaint with the Equal Rights Division. The Division proposes to create a new rule chapter at Chapter DWD 223 to provide procedures for processing these complaints. The proposed rules will be similar to the fair employment rules in Chapter DWD 218, except several of the time frames will be shorter due to statutory requirements. The statute also provides that decisions and orders of the Equal Rights Division are subject to judicial review under Chapter 227, Stats., and not review by the Labor and Industry Review Commission.

All rules administered by the Civil Rights Bureau will be amended to provide that complaints and other documents may be filed by facsimile transmission. Documents may not be filed by electronic mail unless expressly authorized by the equal rights officer or the administrative law judge assigned to the case. All rules will also be amended to provide that hearings may be recorded with either digital equipment or tape recording equipment.

Section 106.50 (6) (c) 2., Stats., as affected by 2005 Wisconsin Act 25, amended the Wisconsin Open Housing Law to provide that the Attorney General shall represent complainants in cases in which the Equal Rights Division has made an initial determination of probable cause. The proposed rules will amend the open housing rules in Chapter DWD 220 to reflect this new requirement.

Section 106.54, Stats., provides that certain types of complaints received by the Equal Rights Division are to be processed in the same manner as employment discrimination complaints under s. 111.39, Stats. The proposed rules will amend the fair employment rules in Chapter DWD 218 to specify that these other types of complaints are also covered by the rules. The additional types of complaints that will be specified in the rules are retaliation for reports to the Board on Aging and Long–Term Care; retaliation for reporting the

abuse of an elderly person to a state or county agency; retaliation for reporting abuse in care and service residential facilities; retaliation against a health care worker who reports that the quality of health care provided by a health care facility or provider violates any law, rule, or standard established by a professionally recognized accrediting or standard–setting body and poses a potential risk to public health or safety; and failure to comply with re–employment rights after National Guard, state defense force, or public health emergency service.

Section 106.56 (4) (a), Stats., relating to discrimination because of a physical condition or developmental disability in post–secondary education, provides that the Department shall review and investigate complaints and shall have the same review process as public accommodations cases under s. 106.52 (4) (b), Stats. The proposed rule will amend the public accommodations rules in Chapter DWD 221 to provide that complaints under s. 106.56, Stats., will be processed in the same manner as complaints under the public accommodations law.

Statutory authority

Sections 103.005 (1), 106.50 (1s), 106.52 (2), 111.37 (4) (a) 1., 111.375 (1), 230.89 (1) and 227.11 (2) (a), Stats.

Entities affected by the rules

Employees and employers; public employees and governmental entities; health care workers, providers, and facilities; residents, employees, management, and owners of care and service residential facilities; persons who provide information to the Board on Aging and Long–Term Care or persons on whose behalf another person has provided information to the Board; persons who report elder abuse to the designated county agency or to any state official and persons on whose behalf another person has made a report; veterans of the National Guard, state defense force, or public health emergency service; open housing complainants and respondents; family or medical leave complainants and respondents; public accommodation law complainants and respondents; and post–secondary institutions and students of these institutions who have a physical condition or developmental disability.

Comparison with federal requirements

Employment discrimination complaints may be filed by mail or in person at the nearest Equal Employment Opportunity Commission office. Fair housing complaints may be filed by online form, telephone, or mail with the Department of Housing and Urban Development. Complaints regarding disability discrimination against students in a post–secondary institution may be filed with the Office of Civil Rights in the Department of Education by online form, mail, fax, or in person. The Office of Civil Rights encourages customers to use e–mail or fax to communicate with staff when possible.

Staff time required

175 hours.

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On January 26, 2006, the Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to 227.15, Stats.

Subject

Plant pest import controls and quarantine.

Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The department's Agricultural Resource Development Division is primarily responsible for this rule.

Contact Information

If you have questions, you may contact Krista Lambrecht at (608) 224–4594.

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On January 26, 2006, the Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to 227.15, Stats.

Subject

Animal diseases and movement.

Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The department's Animal Health Division is primarily responsible for this rule.

Contact Information

If you have questions, you may contact Melissa Mace at (608) 224–4883.

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 06-009]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule that consolidates, reorganizes, and clarifies current rules related to animal diseases and movement. This rule also changes current rules related to aquaculture, poultry disease monitoring, Johne's disease control, intrastate movement of sheep and goats, and fairs and exhibitions, and makes other technical changes to the rules.

DATCP will hold five 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 Wednesday, March 22, for additional written comments. Comments may be sent to the Division of Animal Health at the address below or by e-mail to hearingcommentsAH@datcp.state.wi.us.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4883 or emailing Melissa.mace@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to:

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

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing-impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by October 22, 2004, by writing Melissa Mace, Division of Animal Health, 2811 Agriculture Drive, Madison, WI 53708-8911, telephone 608-224-4883. Alternatively, you may contact the DATCP TDD at 608-224-5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Tuesday February 28, 2006

7 p.m. to 9 p.m.

Dept. of Natural Resources

West Central Region Headquarters

Room 158/185

1300 W. Clairemont Ave

Eau Claire, WI 54701

Wednesday, March 1, 2006

11 a.m. to 1 p.m.

University of Wisconsin Marathon County

Lecture Hall 180

518 South 7th Ave

Wausau, WI 54401

Wednesday, March 1, 2006

6 p.m. to 8 p.m.

Fox Valley Technical College

Room A161A

1825 North Bluemound Drive

Appleton, WI 54914

Monday, March 6, 2006

1 p.m. to 3 p.m. and 6 p.m. to 8 p.m.

Prairie Oak State Office Building

Board Room

2811 Agriculture Drive

Madison, WI 53708

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

This rule consolidates, reorganizes and clarifies Wisconsin's current animal health and disease control rules, so that the rules will be easier to read and understand. This rule does *not* significantly alter the substance of the current rules, except that this rule:

Provides more cost-effective disease monitoring options for small poultry producers who cannot easily participate in the national poultry improvement plan.

Adopts federal standards for voluntary Johne's disease testing and herd management, and expands producer eligibility for reimbursement of testing and herd management costs (based on the availability of federal funding).

Requires official individual identification of sheep and goats sold or moved within this state, consistent with federal standards (slaughter animals are exempt, if neutered or under 12 months old). This change will facilitate exports of Wisconsin sheep and goats.

Strengthens and clarifies disease control standards related to fairs and livestock exhibitions, including organized swap meets, which can spread serious disease if not properly managed. This rule clarifies the responsibilities of exhibition organizers and exhibitors.

Coordinates animal health rules with Wisconsin's new livestock premises identification law. For example, certificates of veterinary inspection must include livestock premises identification numbers *if any*. This rule does *not* expand current premises registration requirements or sanctions.

Modifies current regulations related to fish farms, fish imports and fish health. This rule eliminates the requirement of an annual health certification for fish farms. This rule streamlines and clarifies current fish import requirements, and creates a \$50 fee for a fish import permit. DATCP must approve a fish health certificate before a person imports fish, or introduces fish to waters of the state, based on that health certificate.

Updates the current list of reportable diseases (deletes 4 diseases).

Makes minor technical changes in current rules related to farm-raised deer.

Makes minor updates and technical changes to other rules, as necessary.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and (10), 95.18, 95.19, 95.197, 95.20, 95.22, 95.23, 95.25, 95.26, 95.27, 95.30, 95.32, 95.33, 95.35, 95.36, 95.37, 95.38, 95.41, 95.42, 95.43, 95.45, 95.46, 95.48, 95.49, 95.50, 95.51, 95.55, 95.57, 95.60, 95.65, 95.68, 95.69, 95.71, 95.715 and 95.72, Stats.

Statute Interpreted: s. 93.07 (10), 95.18, 95.19, 95.197, 95.20, 95.22, 95.23, 95.25, 95.26, 95.27, 95.30, 95.32, 95.33, 95.35, 95.36, 95.37, 95.38, 95.41, 95.42, 95.43, 95.45, 95.46, 95.48, 95.49, 95.50, 95.51, 95.55, 95.57, 95.60, 95.65, 95.68, 95.69, 95.71, 95.715 and 95.72, Stats.

DATCP has broad general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07 (1), Stats.). DATCP is specifically authorized to adopt rules to protect the health of animals in this state, and to prevent, control and eradicate communicable diseases among animals.

Background

The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases affecting domestic animals, humans and wild animals. DATCP does the following things, among others:

- Monitors for disease outbreaks.

- Regulates the import, sale and movement of animals to prevent the spread of serious diseases.

- Regulates animal identification and tracking, vaccination, disease testing, records and reporting.

- Regulates animal–related businesses, including animal markets, animal dealers, animal truckers, farm–raised deer herds and fish farms.

- Certifies the disease status of animal herds or flocks, to facilitate sale, movement and export of animals.

- Conducts disease investigations, issues quarantines, condemns animals affected with serious contagious diseases, and pays indemnities to owners of certain condemned animals (as provided by statute).

- Serves as the state clearinghouse for certificates of veterinary inspection and other health certificates issued in connection with the import or movement of animals.

- Responds to disease emergencies and bio–security threats.

- Coordinates animal health programs with the United States department of agriculture, animal and plant health inspection service (“federal bureau”).

DATCP has adopted extensive rules, under chs. ATCP 10 and 11, Wis. Adm. Code, related to animal disease and movement. These rules provide the foundation for Wisconsin animal disease control programs. This rule consolidates, reorganizes and clarifies the current rules, so that the rules will be easier to read and understand.

This rule does *not* significantly alter the substance of the current rules, except as noted below. This rule does *not* change current rules related to animal markets, dealers, or truckers (ch. ATCP 12, Wis. Adm. Code), except that this rule makes minor technical changes to those rules.

Key Rule Changes

Rule Reorganization

This rule consolidates current rules contained in chs. ATCP 10 (animal diseases) and ATCP 11 (animal movement) into a single new ch. ATCP 10 (animal diseases and movement). The new rule is organized by animal species. This will make it much easier for affected persons to find and understand the rules that apply to them. The redraft simplifies and clarifies current rules, eliminates redundant material, and improves

internal consistency. This rule does *not* change the substance of the current rules, except as provided below.

New Options for Poultry Producers

This rule provides new, more cost–effective, disease monitoring options for small poultry producers. Current rules restrict the sale or movement of poultry or eggs for breeding, hatching or exhibition unless producers are enrolled in the national poultry improvement program. But the national program is designed mainly for large poultry operations, and may not be cost–effective for small operations. This rule provides more cost–effective alternatives for small producers. These voluntary alternatives may result in more disease monitoring and market access by small producers.

Under this rule, a flock owner who is not enrolled in the national poultry improvement program may nevertheless sell or move poultry for breeding, hatching or exhibition if the flock is enrolled as a *Wisconsin tested flock* or *Wisconsin associate flock*. A flock may be enrolled as a *Wisconsin tested flock* if the flock owner tests annually for pullorum, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. A flock may be enrolled as a *Wisconsin associate flock* if it consists entirely of birds obtained from a Wisconsin tested flock. There is no charge to enroll in either program. DATCP will issue certificates that flock owners can use to document enrollment.

State–Federal Consistency

This rule coordinates state disease testing and certification programs with federal programs, to ensure consistent state and federal standards where possible. These technical changes will eliminate conflicting regulatory requirements, and will have no adverse impact on Wisconsin producers. The technical changes will facilitate disease control and animal movement, and will have no adverse impact on disease control.

Johne’s Disease; Voluntary Testing and Herd Management

Johne’s disease is a serious and widespread disease that affects Wisconsin’s dairy and cattle industries. The disease also affects goats. Wisconsin has a voluntary program for Johne’s disease herd testing, herd classification and herd management. This rule changes the Wisconsin program, so that it will be consistent with federal program standards. This will help ensure the continued availability of federal funds.

Based on the availability of federal funds, this rule expands producer eligibility for reimbursement of costs related to voluntary Johne’s disease testing and herd management. Under current state rules, a producer may claim reimbursement of testing costs *only*, and then *only* if the producer participates in the Johne’s disease herd classification program. Under this rule, producers may *also* claim reimbursement of costs for herd risk assessments, herd management plans and herd vaccination.

A producer is eligible for cost reimbursement under this rule, *regardless* of whether the producer participates in Wisconsin’s herd classification program for Johne’s disease. Participation in the herd classification program is voluntary, but may facilitate sales of cattle under current state law. Under this rule, a producer who chooses to participate in the herd classification program must have a herd risk assessment and management plan (per federal standards).

This rule simplifies current standards for Johne’s disease sample collection and testing (per federal standards), and gives participating producers more testing and management options. These changes may encourage more voluntary testing and herd management. This rule preserves the confidentiality of Johne’s disease herd records, per current law.

Johne’s Disease Reactors

Under current rules, an animal that tests positive for Johne's disease must be permanently identified as Johne's positive. This rule removes that requirement. The federal program does not require reactor identification, nor do a majority of other states.

Johne's Disease; Certified Veterinarians

Under this rule, DATCP may reimburse producers for Johne's disease herd risk assessments, herd management plans and vaccinations, but only if the work is done by veterinarians who complete training provided by DATCP.

Sheep and Goats; Identification

This rule requires official individual identification of sheep and goats sold or moved within this state, consistent with federal standards (slaughter animals are exempt, if neutered or under 12 months old). This change will facilitate exports of Wisconsin sheep and goats.

Fairs and Exhibitions; Disease Control

This rule strengthens and clarifies disease control standards related to fairs and exhibitions, including organized swap meets, which can spread serious diseases. This rule clarifies the responsibilities of exhibition organizers and exhibitors.

Under this rule, a "fair" means a state, county or district fair. An "exhibition" means an organized fair, swap meet, rodeo, trail ride, show or other organized event at which animals owned by different persons are brought together from different premises and exhibited on the same premises. An "exhibition" does not include any of the following:

An animal market or animal dealer premises (animal markets and dealers are currently regulated under ch. ATCP 12).

An exhibition operated by an institution accredited by the American association of zoological parks and aquariums.

A wild animal exhibition operated pursuant to a permit from the Wisconsin department of natural resources.

Under this rule, a person who exhibits an animal at a fair or exhibition must do all of the following:

Comply with current applicable requirements related to the movement and exhibition of animals (disease testing, etc.). This rule does not change current requirements.

Provide all of the following to the organizer of the fair or exhibition:

The exhibitor's name and address.

Identification of the animals exhibited, including number, type and description.

Documentation to show compliance with applicable animal health requirements related to animals shown at fairs or exhibitions (this rule does not change current requirements).

The livestock premises code, if any, of the premises from which the animals originate.

Under this rule, the organizer of a fair or exhibition must do all of the following:

Take reasonable steps to ensure that exhibitors comply with their disease control obligations (see above).

Review and keep copies of exhibitor information (see above). The organizer must keep copies for at least 5 years, and must make them available to the department for inspection and copying upon request.

Appoint a licensed veterinarian to do all of the following on behalf of the organizer, if the fair or exhibition lasts for more than 24 hours:

Conduct a daily inspection of the exhibited animals.

Review exhibitor information (see above).

Livestock Premises Codes

This rule coordinates animal health rules with Wisconsin's new livestock premises identification law. For example, certificates of veterinary inspection must include livestock premises codes, *if any*. This rule does *not* expand current premises registration requirements or sanctions.

Certificates of Veterinary Inspection

This rule updates and standardizes current requirements related to certificates of veterinary inspection. Under this rule:

All certificates are valid for 30 days (90–day validity for animals imported to fairs or exhibitions is eliminated).

Certificates must include livestock premises codes, *if any*.

A certificate must include relevant herd certification numbers, if the certificate represents an animal originates from a certified disease–free herd.

Fish Farms; Annual Health Certificate

Under current rules, fish farms in this state must file an annual health certificate with DATCP. A veterinarian or qualified inspector must issue the certificate, based on an inspection of the fish farm. This rule eliminates the annual health certificate requirement, which will save an average of \$200 per year for each fish farm operator.

Fish Imports

This rule modifies current requirements related to live fish imports to this state. Under current rules and this rule, a DATCP import permit is required (there are limited exceptions). DATCP must grant or deny an import permit within 30 days after DATCP receives a complete application.

Under current rules, an import permit expires on December 31 of the year in which it is issued. Under this rule, an import permit expires one year from the date on which it is issued, unless DATCP specifies an earlier expiration date in the import permit. Under current rules, there is no fee for a fish import permit. This rule sets a fee of \$50 per import permit.

Under current rules, a health certificate issued by a qualified fish health inspector must accompany every import shipment. Under this rule, the health certificate must also be included with the import permit application. DATCP must approve the health certificate before it issues the import permit. DATCP may set an import permit expiration date that conforms to the expiration date of the health certificate.

Under current rules and this rule, a health certificate must be based on one of the following:

An inspection of the fish farm from which the import shipment originates. Under this rule, this type of health certificate expires one year after it is issued (unless DATCP specifies an earlier expiration date). The health certificate must include the name and address of the fish farm operator, the name and address of the fish farm, and the fish farm's livestock premises code *if any*.

An inspection of the import shipment itself. Under this rule, this type of health certificate expires 30 days after it is issued (unless DATCP extends the expiration date). The health certificate must describe the source and contents of the inspected shipment.

This rule clarifies that a person may not import fish or fish eggs based on an expired health certificate.

Fish Introduced into Waters of the State

Under current rules, no person may introduce fish or fish eggs to waters of the state unless a qualified fish health inspector issues a health certificate for those specific fish or fish eggs, or for the fish farm from which they originate. A fish farm health certificate, if any, must be issued no earlier

than January 1 of the year prior to the year in which the fish are introduced into waters of the state.

This rule changes current rules related to fish health certificates required for the introduction of fish or fish eggs into waters of the state, so that those rules are consistent with rules for health certificates related to fish imports. Under this rule:

DATCP must approve the health certificate before the person introduces the fish or fish eggs into waters of the state. DATCP must grant or deny approval within 30 days after the health certificate is filed with DATCP. If the fish or fish eggs are being imported from another state, DATCP may grant approval when it issues an import permit for those fish or fish eggs (see above).

The health certificate must be based on one of the following:

An inspection of the fish farm from which the fish or fish eggs originate. This type of health certificate expires one year after it is issued (unless DATCP specifies an earlier expiration date). The health certificate must include the name and address of the fish farm operator, the name and address of the fish farm, and the fish farm's livestock premises code *if any*.

An inspection of the fish or fish eggs. This type of health certificate expires 30 days after it is issued (unless DATCP extends the expiration date). The health certificate must describe the inspected fish or fish eggs, and must identify the source from which they originate.

A person may not introduce fish or fish eggs to waters of the state based on an imported health certificate.

Fish Health Certificate Forms

Under current rules, a fish health certificate must be issued on a form provided by DATCP. The form may specify information to be included in the health certificate. This rule clarifies that the form may require certain lab test results, to support the conclusions stated in the health certificate. Health certificate requirements are orders reviewable in contested case proceedings under ch. 227, Stats., unless they are adopted by rule.

Qualified Fish Health Inspectors

Under this rule, as under the current rule, fish health certificates must be issued by qualified fish health inspectors. This rule clarifies that the following individuals are considered qualified fish health inspectors unless disqualified by DATCP:

An individual who is currently certified by the American fisheries society as a fish health inspector or fish pathologist, and who has completed fish health inspection training approved by DATCP.

An individual who is currently authorized by a state to conduct official fish health inspections in that state, and who has completed a fish health inspection training program approved by DATCP.

A Wisconsin certified veterinarian who has completed a fish health inspection training program approved by DATCP.

For purposes of an action taken outside this state, any accredited veterinarian.

Under this rule, DATCP may disqualify a fish health inspector for cause, including violations of this rule or the issuance of unreliable health certificates. The state veterinarian may issue a disqualification notice on behalf of DATCP. The notice must specify the reason for disqualification.

Qualified Fish Health Laboratories

Fish health tests required under this rule must be performed by qualified laboratories. This rule clarifies that the following

laboratories are considered qualified laboratories unless disqualified by DATCP:

A laboratory approved by the federal bureau for purposes of disease testing related to interstate movement of fish or fish eggs.

A laboratory approved by DATCP.

A federal or state veterinary diagnostic laboratory.

Under this rule, DATCP may disqualify a fish health laboratory for cause, including violations of this rule or unreliable test results. The state veterinarian may issue a disqualification notice on behalf of DATCP. The notice must specify the reason for disqualification.

Farm-Raised Deer

This rule modifies current rules related to farm-raised deer. Among other things, this rule does the following:

It requires persons collecting chronic wasting disease test samples to submit those samples for testing within 10 days after they are collected.

It clarifies and updates standards and procedures that apply under the (renamed) chronic wasting disease herd status program, including standards and procedures related to the suspension, revocation and reinstatement of enrollment.

It changes the deadline for reporting escaped farm-raised deer from 48 hours to 24 hours after the escape is discovered.

Circus, Rodeo and Menagerie Animals

This rule clarifies that imports of circus, rodeo and menagerie animals must comply with import requirements that apply to other animals of the same species, as well as any special requirements that apply to circus, rodeo and menagerie animals.

Reportable Diseases

This rule deletes, from the current list of diseases that must be reported to DATCP within 10 days, the following diseases:

Leptospirosis

Atrophic rhinitis of swine

Porcine reproductive and respiratory syndrome

Transmissible gastroenteritis (swine)

Technical Changes

This rule makes a large number of technical and drafting changes. These changes have little or no substantive impact.

Fiscal Impact

The rule changes will have no fiscal impact on local government, but it will have a slight fiscal impact on DATCP.

This rule will have little net impact on DATCP revenues or workload, except that this rule will cause a slight increase in workload under the aquaculture and poultry disease control programs.

This rule will expand reimbursement of producer costs for Johne's disease testing and herd management, but the increased reimbursement will be financed with federal funds.

This rule creates a \$50 fee for a fish import permit. DATCP estimates that this fee will generate approximately \$5,000 in program revenue to help support program activities related to fish farms, fish imports and fish health certification.

This rule requires DATCP, for the first time, to review and approve health certificates related to fish imports and the introduction of fish to waters of the state (current rules require health certificates but do not require DATCP approval). This increased workload will have an associated cost of \$5,400 and will be handled by current staff.

DATCP will incur added staff and administrative costs to administer the new voluntary poultry flock certification program created by this rule. DATCP expects to absorb this

additional workload with existing staff and appropriations. There is no fee for flock owners to enroll in the program.

Business Impact

This rule affects the following businesses, many of which are “small businesses:”

Poultry producers. This rule will help small poultry operators, and will have little or no effect on large operators. Current rules prohibit the sale or distribution of poultry or eggs, for breeding, hatching or exhibition, unless they originate from flocks enrolled in the national poultry improvement plan and meet disease-free classification standards under that plan. However, the national poultry improvement plan is primarily designed for large poultry operators, and may not be cost-effective for small operators. This rule provides cost-effective disease monitoring options that will provide greater market access for small operators.

Dairy, cattle and goat producers. This rule will assist dairy, cattle and goat producers by expanding reimbursement of producers costs for voluntary Johne’s disease herd testing, herd risk assessment, herd management plans, and vaccination (current rules provide for reimbursement of testing costs only). Participation in the Johne’s disease program is voluntary. This rule removes some existing barriers to participation, and provides more testing and management options for producers. This may encourage participation, and may help to control a very serious disease threat to the Wisconsin dairy and livestock industry.

Fish farm operators. This rule will streamline fish import regulations, to make them more workable and effective. This rule will create a modest \$50 fee for a fish import permit, to facilitate better review of fish health certificates related to fish imports and fish stocking to waters of the state (the fee will affect only 2% of registered fish farms). This rule eliminates the current requirement for an annual health inspection of fish farms in this state, which will save every fish farm operator an average of \$200 per year.

Sheep and goat owners. This rule requires official individual identification of sheep and goats that are sold or moved in commerce, consistent with standards under the federal scrapie control program. This may increase costs for some sheep and goat owners. However, it will facilitate interstate export of sheep and goats, and will provide better disease control and traceback. This rule allows for various forms of official individual identification, some of which can be easily applied by sheep and goat owners themselves at little or no cost.

Organizers and exhibitors at fairs and exhibitions. This rule clarifies and strengthens current animal health rules related to fairs and exhibitions, including events such as organized swap meets and trail rides. This rule clarifies the obligations of event organizers and exhibitors. Exhibitors must comply with current animal health rules related to fairs and exhibitions, and must document compliance to the event organizer. Organizers must keep a record of exhibited animals, and must review and keep a record of relevant animal health documentation. Events lasting over 24 hours must have an attending veterinarian. This rule will not have a significant impact on most fairs and exhibitions, except that it may affect certain events such as organized swap meets that may not be adhering to current rules related to fairs and exhibitions.

Farm-raised deer keepers. This rule makes minor technical changes to current rules related to farm-raised deer. The rule changes will have little if any impact on most farm-raised deer keepers.

Wisconsin certified veterinarians and their clients. This rule may affect veterinarians in the following ways:

It makes slight changes to current rules governing certificates of veterinary inspection (the changes should have little impact on veterinarians or their clients, but will improve animal health documentation).

It expands reimbursement of veterinary costs related to Johne’s disease testing, herd management and vaccination, but only if the services are provided by specially trained veterinarians. The reimbursement will be very beneficial for veterinarians and their clients, but veterinarians must complete training to qualify. Any veterinarian may take the brief (less than one day) required training course offered by DATCP.

It eliminates annual fish farm health certification requirements. This will save each fish farm operator an average of \$200 per year. Veterinarians who perform certification inspections may experience some loss of income.

Persons who raise, ship and market animals. This rule consolidates, reorganizes and clarifies current animal health rules, so that the rules will be easier to read and understand. This will benefit everyone involved in raising, shipping and marketing animals. It will improve disease control, facilitate commerce, and promote efficient administration of animal health programs.

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. A complete Business Impact Analysis is attached.

Federal and Surrounding State Programs

Federal Programs

DATCP administers animal disease control programs in cooperation with the United States Department of Agriculture, Animal and Plant Health Inspection Service (“the federal bureau”). The federal bureau has well-established control programs for historically important diseases such as tuberculosis and brucellosis. Federal rules for these programs spell out standards for disease testing, disease control, international and interstate movement of animals, certifying the disease status of states, and certifying the disease status of individual herds.

The federal bureau operates national veterinary diagnostic laboratories, and coordinates multi-state responses to major disease epidemics. The federal bureau exercises disease control authority, including quarantine and condemnation authority, and provides funding for indemnity payments to certain owners of condemned animals. The federal bureau operates state and regional offices, and coordinates field operations with states.

The federal bureau has less well-developed programs for new or localized diseases, or emerging animal-based industries. States often take a lead role in developing programs to address new animal health issues and disease threats (farm-raised deer and fish diseases, for example), particularly if those issues or threats have a more local or regional focus. Wisconsin’s program related to farm-raised deer is perhaps the leading program in the nation, and has provided the model for a proposed federal program.

The federal bureau may provide grant funding, regulatory incentives, or other assistance in support of state programs and regulation. For example, the federal bureau provides funding for voluntary Johne’s disease testing and herd management, based on federal program standards. Under the federal scrapie program, the federal bureau permits easier interstate movement of sheep and goats from states that require official individual identification for intrastate movement.

States have independent authority to regulate animal health and movement, including imports from other states. However, states strive for reasonable consistency, based on standards spelled out in federal regulations. Where well–established federal standards and procedures exist, state disease control programs typically incorporate those federal standards. However, states may independently address new and emerging disease issues, especially if those issues have a state or regional focus and are not a priority for the federal bureau.

Surrounding State Programs

General

Surrounding state animal health programs are broadly comparable to those in Wisconsin, but vary in a variety of ways. Differences in disease regulations and control programs may reflect differences in animal populations, animal–based industries, and disease threats in the different states. Programs for historically important diseases, such as tuberculosis and brucellosis, tend to be fairly similar between states and are based on well–established federal standards. Programs for newer forms of agriculture, such as farm–raised deer and aquaculture, tend to be more variable.

Aquaculture

All of the surrounding states regulate aquaculture, to some degree:

Minnesota requires fish import permits, and licenses fish farms and fish dealers (annual license fees range from \$70 to \$210). Health certification is required for fish imports, but not for fish farms. Bait imports are prohibited.

Iowa requires fish import permits, and licenses fish farms (annual license fees range from \$26 to \$57). Health certification is required for fish imports, but not for fish farms.

Illinois licenses fish farms (\$50 annual license) and fish dealers (annual license fee range from \$10 to \$100). An import permit and health certification is required for certain fish imports (salmonids). There is limited regulation of fish transport vehicles.

Michigan licenses fish farms (annual license fees range from \$75 to \$100). Health certification is required for fish imports.

Johne’s Disease

All of the surrounding states (Illinois, Michigan, Iowa and Minnesota) have adopted a voluntary Johne’s disease testing and herd management program, based on the federal program. Wisconsin is proposing a similar program under this rule.

Sheep and Goat Identification

All of the surrounding states (Illinois, Michigan, Iowa and Minnesota) require official individual identification of sheep and goats moved in intrastate commerce, consistent with standards specified in the federal scrapie program. Wisconsin is proposing equivalent identification requirements in this rule. This will permit freer export of Wisconsin sheep and goats.

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 standards in full in this rule:

- “Uniform Program Standards for the Voluntary Bovine Johne’s Disease Control Program,” federal bureau publication 91–45–016 (November 2005).
- “Brucellosis Eradication: Uniform Methods and Rules,” federal bureau publication 91–45–013 (October 1, 2003).

- “Brucellosis in Cervidae: Uniform Methods and Rules,” federal bureau publication 91–45–16 (September 30, 2003).

- “Bovine Tuberculosis Eradication: Uniform Methods and Rules,” federal bureau publication 91–45–011 (January 1, 2005).

- “Swine Brucellosis Control and Eradication: State–Federal–Industry Uniform Methods and Rules,” federal bureau publication 91–55–042 (April, 1998).

- “Pseudorabies Eradication: State–Federal–Industry Program Standards,” federal bureau publication 91–55–071 (November 1, 2003).

Copies of these standards will be on file with the department, the secretary of state and the revisor of statutes. Rule *notes* explain how readers may obtain copies of the standards.

Fiscal Effect

This rule creates a \$50 fee for a fish import permit. DATCP estimates that this fee will generate approximately \$5,000 in program revenue.

This rule requires DATCP, for the first time, to review and approve health certificates related to fish imports and the introduction of fish to waters of the state. (Current rules require health certificates but do not require DATCP approval). This increased workload will have an associated cost of \$5,400 in staff salary and administrative expenses. DATCP will absorb this workload with current staff. Revenues generated will be used to offset additional costs to the program.

This rule will allow poultry flocks to obtain a testing status other than participation in the national poultry improvement plan. Flock owners will submit proof of adequate testing and other information to the department for review and approval to receive their status. DATCP will incur costs for staff and administrative expenses. However, DATCP will absorb these costs with existing staff and appropriations.

Business Impact Analysis¹

Rule Subject: Animal Diseases and Movement

Adm. Code Reference: ATCP 10–12

Rules Clearinghouse #: Not yet assigned

DATCP Docket #: 04–R–10

This rule consolidates, reorganizes and clarifies Wisconsin’s current animal health and disease control rules, so that the rules will be easier to read and understand. This rule does *not* significantly alter the substance of the current rules, except that this rule:

Provides more cost–effective disease monitoring options for small poultry producers who cannot easily participate in the national poultry improvement plan.

Adopts federal standards for voluntary Johne’s disease testing and herd management, and expands producer eligibility for reimbursement of testing and herd management costs (based on the availability of federal funding).

Requires official individual identification of sheep and goats sold or moved within this state, consistent with federal standards (slaughter animals are exempt, if neutered or under 12 months old). This change will facilitate exports of Wisconsin sheep and goats.

Strengthens and clarifies disease control standards related to fairs and livestock exhibitions, including organized swap meets, which can spread serious disease if not properly managed. This rule clarifies the responsibilities of exhibition organizers and exhibitors.

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under s. 227.114, Stats.

Coordinates animal health rules with Wisconsin's new livestock premises identification law. For example, certificates of veterinary inspection must include livestock premises identification numbers *if any*. This rule does *not* expand current premises registration requirements or sanctions.

Modifies current regulations related to fish farms, fish imports and fish health. This rule eliminates the requirement of an annual health certification for fish farms. This rule streamlines and clarifies current fish import requirements, and creates a \$50 fee for a fish import permit. DATCP must approve a fish health certificate before a person imports fish, or introduces fish to waters of the state, based on that health certificate.

Updates the current list of reportable diseases (deletes 4 diseases).

Makes minor technical changes in current rules related to farm-raised deer.

Makes minor updates and technical changes to other rules, as necessary.

Business Impact

This rule will have a generally positive impact on business. This rule will have few, if any, negative impacts on business. Negative impacts, if any, will be limited. This rule affects the following businesses in the following ways (many of these businesses are "small businesses"):

Poultry producers. This rule will help small poultry operators, and will have little or no effect on large operators. Current rules prohibit the sale or distribution of poultry or eggs, for breeding, hatching or exhibition, unless they originate from flocks enrolled in the national poultry improvement plan and meet disease-free classification standards under that plan. However, the national poultry improvement plan is primarily designed for large poultry operators, and may not be cost-effective for small operators. This rule provides cost-effective disease monitoring options that will provide greater market access for small operators.

Under this rule, a flock owner who is not enrolled in the national poultry improvement program may nevertheless sell or move poultry for breeding, hatching or exhibition if the flock is enrolled as a *Wisconsin tested flock* or *Wisconsin associate flock*. A flock may be enrolled as a *Wisconsin tested flock* if the flock owner tests the flock annually for pullorum, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. A flock may be enrolled as a *Wisconsin associate flock* if it consists entirely of birds obtained from a Wisconsin tested flock. There is no charge to enroll in either program. DATCP will issue certificates that flock owners can use to document enrollment.

Dairy, cattle and goat producers. This rule will assist dairy, cattle and goat producers by expanding reimbursement of producers costs for voluntary Johne's disease herd testing, herd risk assessment, herd management plans, and vaccination (current rules allow reimbursement of testing costs only). Participation in the Johne's disease program is voluntary. This rule removes some existing barriers to participation, and provides more testing and management options for producers. This may encourage participation, and may help to control a very serious disease threat to the Wisconsin dairy and livestock industry.

In order to be eligible for cost reimbursement, herd owners must have a herd risk assessment and management plan that meet federal standards. However, this will not be a significant burden because:

Over half of the herds currently enrolled in the Johne's disease program already have approved herd risk assessments and management plans.

This rule provides for reimbursement of costs to prepare herd risk assessments and management plans.

Herd risk assessments and management plans, if followed, will improve herd health and productivity.

This rule sets maximum reimbursement amounts for laboratory testing fees, but expands reimbursement for other activities including herd risk assessment, herd management plans and vaccination. This will be a net plus for participating herd owners.

This rule changes reimbursement procedures, so that DATCP can reimburse herd owner costs in a timelier manner. Currently, herd owners may wait over a year for reimbursements.

This rule removes the requirement for Johne's disease reactors to be permanently identified. This requirement is difficult to enforce and it devalues animals at slaughter. Other states have been removing this requirement as well.

This rule preserves the confidentiality of Johne's disease herd records, per current law.

Fish farm operators. This rule eliminates the current requirement for an annual health inspection of fish farms in this state, which will save every fish farm operator an average of \$200 per year.

This rule streamlines fish import regulations, to make them more workable and effective. This rule establishes a modest \$50 fee for a fish import permit, to facilitate better review of fish health certificates related to fish imports (the fee will affect only 2% of registered fish farms). In many cases, DATCP issues permits that cover multiple shipments from an inspected source.

Under this rule, permits expire one year from the date of issuance, rather than on a calendar year basis. DATCP may shorten permit expiration dates, and may set those dates to correspond to health certificate expiration dates. This will avoid confusion, but may require additional permits in some cases. The change will have a limited effect on importers.

Under current rules, qualified veterinarians or fish health inspectors must issue fish health certificates for fish imports and stocking to waters of the state. Under this rule, the fish health certificates must also be pre-approved by DATCP. This may delay the import or stocking process in a few limited cases. But most import and stocking operations will not be adversely affected, and delays if any will be short (DATCP has a maximum of 30 days to approve).

This rule requires fish health inspectors and laboratories to report all test results for certain diseases, not just positive test results. This will not impose a significant burden, and will provide better statewide information on disease testing and test findings.

Sheep and goat owners. This rule requires official individual identification of sheep and goats that are sold or moved in commerce, consistent with standards under the federal scrapie control program. This may increase costs for some sheep and goat owners. However, it will facilitate interstate export of sheep and goats, and will provide better disease control and trace back. This rule allows for various forms of official individual identification, some of which can be easily applied by sheep and goat owners themselves at little or no cost.

Organizers and exhibitors at fairs and exhibitions. This rule clarifies and strengthens current animal health rules related to fairs and exhibitions, including events such as

organized swap meets and trail rides. This rule clarifies the obligations of event organizers and exhibitors. Exhibitors must comply with current animal health rules related to fairs and exhibitions, and must document compliance to the event organizer. Organizers must keep a record of exhibited animals, and must review and keep a record of relevant animal health documentation. Events lasting over 24 hours must have an attending veterinarian. This rule will not have a significant impact on most fairs and exhibitions, except that it may affect certain events such as organized swap meets that may not be adhering to current rules related to fairs and exhibitions.

Farm–raised deer keepers. This rule makes minor technical changes to current rules related to farm–raised deer. The rule changes will have little if any impact on most farm–raised deer keepers.

Wisconsin certified veterinarians and their clients. This rule may affect veterinarians in the following ways:

It makes slight changes to current rules governing certificates of veterinary inspection (the changes should have little impact on veterinarians or their clients, but will improve animal health documentation).

It expands reimbursement of veterinary costs related to Johne’s disease testing, herd management and vaccination, but only if the services are provided by specially trained veterinarians. The reimbursement will be very beneficial for veterinarians and their clients, but veterinarians must complete training to qualify. Any veterinarian may take the brief (less than one day) required training course offered by DATCP. There is a \$200 cost for initial certification and \$100 for the renewal certification that is required every 3 years. Training is currently financed by federal grant funds, so there is no cost to veterinarians.

It eliminates annual fish farm health certification requirements. This will save each fish farm operator an average of \$200 per year. Veterinarians who perform annual fish farm health inspections may experience some loss of income.

Persons who raise, ship and market animals. This rule consolidates, reorganizes and clarifies current animal health rules, so that the rules will be easier to read and understand. This will benefit everyone involved in raising, shipping and marketing animals. It will improve disease control, facilitate commerce, and promote efficient administration of animal health programs.

Steps to Assist Small Business

Many of the businesses affected by this rule are “small businesses.” For the most part, this rule does not make special exceptions for “small businesses,” because disease is no respecter of business size. However, this rule does include provisions that are specifically designed to benefit small poultry producers (see above).

This rule includes many provisions that will benefit large and small businesses alike. For example, this rule:

Expands current reimbursement of Johne’s disease testing and herd management costs (dairy, beef and goat herds), and makes program participation more attractive.

Eliminates current annual fish farm health inspection requirement (this will save every fish farm approximately \$200 per year).

Makes fish import permits more workable and flexible.

Provides cost–effective disease monitoring options for poultry producers, so that more producers (especially small producers) can get more market access.

Reorganizes and redrafts current rules, to make them easier to read and understand. The changes also make the rules more consistent and transparent.

Conclusion

This rule will help protect Wisconsin’s major livestock industry from devastating disease threats. This rule will make it easier for livestock operators to read and understand the rules that apply to them.

This rule will generally benefit affected businesses, including “small businesses.” Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

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.

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 06–008]

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapter ATCP 21, Wis. Adm. Code, relating to Plant Pest Import Controls and Quarantine.

DATCP will hold three 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 Monday, April 3, 2006 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email to: krista.lambrechtdatcp.state.wi.us

or online at:

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

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4594 or emailing krista.lambrechtdatcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to:

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

To provide comments or concerns relating to small business, please contact DATCP’s small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224–5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by February 21, 2006, by writing to Deb Bollig, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4584. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Dates and Locations:

Tuesday, February 28, 2006

6:00 p.m. to 8:00 p.m.

Marathon County Public Library
300 North First Street, 3rd Floor–Wausau Room
Wausau, WI 54403

Wednesday, **March 1, 2006**

6:00 p.m. to 8:00 p.m.

Lee Sherman Dreyfus Building
141 NW Barstow Street, Room 314
Waukesha WI 53187–0798

Thursday, **March 2, 2006**

6:00 p.m. to 8:00 p.m.

Department of Agriculture, Trade and Consumer
Protection

2811 Agriculture Drive, Board Room (CR–106)
Madison, Wisconsin, 53718–6777

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

This rule regulates the import and movement of host materials that may spread infestations of Emerald Ash Borer, Asian Longhorn Beetle, *Phytophthora ramorum* (Sudden Oak Death, ramorum leaf blight or ramorum dieback) or Hemlock Woolly Adelgid. Each of these pests has been found in the United States, and each poses a major threat to Wisconsin’s forest and urban landscapes. None of these pests has yet been found in Wisconsin.

This rule regulates imports of host materials, to Wisconsin, from known infested areas. If any of these pests is ever found in Wisconsin, this rule will also affect the movement of host materials from infested areas in this state. This rule is part of a coordinated federal–state framework to control serious plant pests. DATCP works with other agencies including the United States department of agriculture, animal and plant health inspection service (USDA–APHIS), to control serious plant pests.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and (12) and 94.01, Stats.

Statutes Interpreted: ss. 93.07 (12) and 94.01, Stats.

The department of agriculture, trade and consumer protection (“DATCP”) has general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07(1), Stats.). DATCP is specifically authorized to adopt rules to prevent the introduction and spread of injurious plant pests, including plant diseases (*see* ss. 93.07(12) and 94.01(1), Stats.).

Background

This rule regulates the import and movement of certain host materials from areas infested with Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid. Regulated host materials vary, depending on the pest in question, but include things like nursery stock, firewood, untreated lumber and mulch.

This rule is designed to prevent the introduction and spread of Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* and Hemlock Woolly Adelgid. These pests pose a grave threat to Wisconsin forest and urban landscapes. This rule will help protect Wisconsin industries, by helping to protect the resources on which they depend.

Rule Contents

Emerald Ash Borer

Emerald Ash Borer, *Agrilus planipennis* Fairmaire, is a wood–boring beetle that attacks and eventually kills ash trees. Ash is a major urban and forest tree species in Wisconsin. An estimated 628 million ash trees in this state are at risk of destruction by Emerald Ash Borer.

Emerald Ash Borer, which is native to Asia, has been found in 3 states and one Canadian province. Thirty–nine counties in Michigan, 9 counties in Ohio, and 2 counties in Indiana have infestations (20 counties in Michigan and one in Ohio are considered “generally infested”). An infestation was recently found, for the first time, in the Upper Peninsula of Michigan. As many as 14 million ash trees have already died as a result of infestations in Michigan, Ohio and Indiana.

Emerald Ash Borer can be spread by the movement of ash host materials, including firewood, nursery stock, trees, logs, bark chips, and any lumber or wood with bark attached. This rule prohibits the import or intrastate movement of ash host materials from infested areas designated by USDA–APHIS, unless a pest control official inspects the materials and certifies that they are free of Emerald Ash Borer.

USDA–APHIS publishes a list of infested areas in the Code of Federal Regulations (CFR), and updates the CFR listing as necessary. This rule regulates the import or movement of host materials from infested areas that are currently listed in the CFR, or that may be listed in the future.

Asian Longhorned Beetle

The Asian Longhorned Beetle, *Anoplophora glabripennis* (Motschulsky), infests and kills several types of deciduous trees including maple, a highly important tree species in Wisconsin. The Asian Longhorned Beetle is a serious threat to Wisconsin’s lumber, maple syrup, nursery, commercial fruit and tourism industries.

Infestations have caused the destruction of more than 10,000 trees in New York, New Jersey and Illinois (Cook County). Preemptive destruction of trees is the only known reliable method for controlling the Asian Longhorned Beetle.

This rule prohibits the import or intrastate movement of host materials from infested areas designated by USDA–APHIS, unless a pest control official inspects the materials and certifies that they are free of Asian Longhorned Beetle. Host materials include:

Cut firewood of all non–coniferous species.

Nursery stock, logs, green lumber, stumps, roots, branches or debris from any of the following trees: maple, buckeye, mimosa, birch, hackberry, ash, sycamore, poplar, willow, mountain ash and elm.

USDA–APHIS publishes a list of infested areas in the Code of Federal Regulations (CFR), and updates the CFR listing as necessary. This rule regulates the import or movement of host materials from infested areas that are currently listed in the CFR, or that may be listed in the future.

Phytophthora ramorum

Since 1995, thousands of oaks in California and Oregon have died of *Phytophthora ramorum* (Werres *et al.*, 2001), also known as Sudden Oak Death, ramorum leaf blight, and ramorum dieback. *Phytophthora ramorum*, the pathogen that causes these diseases, is harbored in a large number of different plant species. The pathogen is also found in soil in infested areas.

This rule restricts the import or intrastate movement of host materials from infested areas designated by USDA–APHIS, unless a pest control official inspects the materials and certifies that they are free of *Phytophthora ramorum*. Host materials include:

Nursery stock, unprocessed wood, and unprocessed wood and plant products (including bark chips, firewood, logs,

lumber, mulch, wreaths, garlands and greenery) from species designated in this rule. The designated species include a large variety of different trees and plants, including for example: fir, maple, buckeye, heather, camellia, chestnut, hazelnut, wood fern, beech, ash, witch–hazel, holly, laurel, oak, tanoak, honeysuckle, Douglas fir, rhododendron, sumac, rose, raspberry, blackberry, huckleberry, willow, redwood, lilac, yew, poison ivy, viburnum, magnolia and sumac.

Soil and potted media.

Any other material that could reasonably harbor *Phytophthora ramorum*.

USDA–APHIS publishes a list of infested areas in the Code of Federal Regulations (CFR), and updates the CFR listing as necessary. This rule regulates the import or movement of host materials from infested areas that are currently listed in the CFR, or that may be listed in the future.

Hemlock Woolly Adelgid

Hemlock Woolly Adelgid, *Adelges tsugae* (Annand), is a serious pest that kills native and ornamental hemlock trees, an important Wisconsin resource. Infestations of Hemlock Woolly Adelgid currently exist in 17 states. DATCP rules currently limit the import and movement of Hemlock Woolly Adelgid host materials from infested areas identified in the current rules.

USDA–APHIS does not have a formal regulatory program for the Hemlock Woolly Adelgid, but the United States Forest Service maintains and updates a list of infested areas. Because the Forest Service does not publish its list in the Code of Federal Regulations (CFR), DATCP lists the infested areas in its rule (rather than by reference to the CFR).

The current DATCP rule is based on an outdated Forest Service list. This rule updates the current DATCP list to conform to the most recent Forest Service list. This rule makes no other changes to current DATCP rules.

Fiscal Impact

This rule will have little fiscal impact on Wisconsin state government in the short term, and no fiscal impact on local government. DATCP will incur some costs to provide information and education to affected businesses. However, DATCP expects to absorb those costs.

The attached fiscal estimate is based on the *current* distribution of the regulated pests, which have not been found in Wisconsin to date. There could be a much more dramatic fiscal impact on state government in the future, if any of the regulated pests is ever found in Wisconsin. However, that impact will largely result from the infestation itself, *not* this rule. This rule will help to prevent increased costs, by helping to prevent the introduction of pests to this state.

If an infestation is ever found in this state, DATCP may experience the following fiscal impacts *with or without this rule*:

Substantial costs and personnel demands for detection, monitoring and control efforts. Costs cannot be accurately predicted at this time, and will depend on the aggressiveness of the state's control effort. However, control programs could be comparable to the gypsy moth control program which currently costs Wisconsin approximately \$3.6 million per year (including federal grant funds to Wisconsin, but not including direct federal services). Michigan reportedly hired at least 140 additional staff to control infestations of Emerald Ash Borer in that state.

Greatly increased demand for state inspection and certification of commodities (host materials) shipped from infested areas, to satisfy buyers that the commodities are free of relevant pests. DATCP can charge fees to cover its cost to

perform requested inspections, but would need legislative authorization to hire additional inspectors. The number of inspection requests cannot be accurately predicted at this time. However, the number could be large, given the importance of the nursery, landscaping and forest–based industries in this state.

Increased costs for information and education.

If infestation occurs in this state, local governments may also experience dramatically increased costs related to dying trees and pest control. However, those costs will result from the infestation itself, and not from this rule. This rule will not, by itself, impose significant costs on local government. By helping to prevent the introduction and spread of serious pests, this rule will help to minimize local costs.

Business Impact

This rule will help protect Wisconsin industries, by helping to protect the resources on which they depend. This rule may have some adverse impact on some individual businesses, but that adverse impact is greatly outweighed (even for those businesses) by the protection that this rule affords.

None of the pests regulated by this rule have been detected in Wisconsin to date, so the initial impact of this rule will be limited to businesses that may be importing host materials from infested areas outside this state. The negative effects on those businesses will be small. The rule will help protect Wisconsin importers from pest infestations that could destroy their businesses.

If any of the regulated pests is ever found in this state, the infestation may have a major impact on affected businesses such as nursery growers and dealers, lumber mills, paper mills, firewood sellers, landscapers and loggers. Businesses in infested areas will incur added costs, and some may lose markets for their products. But those consequences will result from the infestation itself, *with or without* this rule. This rule may add some incremental costs for businesses in infested areas, but will protect businesses in other areas. It will also forestall a more general federal quarantine that could limit exports from the entire state (including exports from uninfested areas). A complete Business Impact Analysis is attached.

Environmental Impact

This rule will positively impact the environment by helping to prevent the introduction and spread of serious plant pests that threaten key tree species in Wisconsin. The primary environmental consequences of no action are increased risk of pest spread and elevated environmental risks from uncoordinated application of pesticides to limit damage from the emerald ash borer. Also, introductions of these pests would lead to changes in the composition and age structure of forests resulting from the no action alternative and could have long–term effects on the ecological relationships in the forested areas. A complete environmental assessment is attached.

Federal Regulations

USDA–APHIS regulates plant pests and diseases at the federal level. Wisconsin and other states work with USDA–APHIS to prevent the introduction and spread of plant pests and diseases.

States may regulate *intrastate* movement within their own territory, and may also restrict imports of host materials from infested areas in other states. States may act on their own authority (independent of USDA–APHIS), and may restrict imports and movement from infested areas other than those designated by USDA–APHIS. However, a coordinated federal–state program promotes consistent regulation of interstate commerce throughout the United States.

The federal–state regulatory scheme may vary, depending on the type of pest or disease. In the case of Emerald Ash

Borer, Asian Longhorned Beetle and *Phytophthora ramorum*, it takes the following general form:

USDA–APHIS lists infested areas (such as counties) in the Code of Federal Regulations (CFR), and updates the list from time to time.

If a state fails to quarantine an infested area listed by USDA–APHIS in that state, USDA–APHIS may quarantine the *entire state*. The threat of a statewide federal quarantine is an incentive for state action. A statewide federal quarantine restricts exports from the entire state (not just infested areas), but does not affect the movement of materials within the state.

If a state quarantines infested areas that USDA–APHIS has listed for that state, USDA–APHIS also quarantines those areas (*not* the entire state). The state and federal quarantines restrict interstate *and intrastate* movement from the quarantined areas, but do *not* affect interstate exports from other parts of the state.

State and federal quarantines prohibit the movement of potential host materials (such as firewood and untreated lumber) from quarantined areas. State quarantines must meet federal standards, in order to be recognized by USDA–APHIS for federal quarantine purposes.

USDA–APHIS does not have a formal regulatory program for the Hemlock Woolly Adelgid, but the United States Forest Service maintains and updates a list of infested areas. DATCP lists infested areas in its current rule (rather than by reference to the CFR), because the Forest Service does not publish its list in the CFR. DATCP must modify its rule if it wishes to incorporate changes in the Forest Service list.

Regulation in Surrounding States

Emerald Ash Borer

Michigan regulates the import and movement of host materials from infested areas designated by USDA–APHIS. Thirty–nine counties are currently affected by state and federal quarantines.

Emerald Ash Borer has not been detected in any of the other states surrounding Wisconsin (Illinois, Iowa or Minnesota). None of those states has adopted regulations related to Emerald Ash Borer. However, Illinois has adopted a readiness plan, and Minnesota has implemented a detection program.

Asian Longhorned Beetle

Illinois is the only state, adjacent to Wisconsin, in which Asian Longhorned Beetle has been detected to date. Over 1,500 trees have been destroyed in Cook County since 1998 (tree destruction is the only effective method of control). Illinois and USDA–APHIS have established quarantines in Cook County. Quarantines prohibit the movement of host materials from the quarantined area.

The Asian Longhorned Beetle has not been detected in Iowa, Michigan or Minnesota. Those states have not adopted any regulations related to Asian Longhorned Beetle.

Phytophthora ramorum

Phytophthora ramorum has not been found in Michigan, Illinois, Iowa or Minnesota (only Illinois and Minnesota have implemented nursery inspection programs for the pathogen). None of the states surrounding Wisconsin has adopted regulations related to *Phytophthora ramorum*.

Hemlock Woolly Adelgid

Wisconsin is one of five states that currently regulate the import and movement of Hemlock Woolly Adelgid host materials. The other states are Michigan, Maine, New Hampshire and Vermont. Michigan, like Wisconsin, has large populations of native hemlock. Michigan successfully

eradicated its only finding of Hemlock Woolly Adelgid to date (an isolated nursery finding).

Minnesota and Illinois have no large populations of native hemlock, and Iowa has no native hemlock. None of those states regulates the import or movement of Hemlock Woolly Adelgid host materials.

Business Impact Analysis²

Rule Subject: Plant Pest Import Controls and Quarantines

Adm. Code Reference: ATCP 21

Rules Clearinghouse #: Not yet assigned

DATCP Docket #: 04–R–09

Rule Description

This rule regulates the import and movement of host materials that may spread infestations of Emerald Ash Borer, Asian Longhorn Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid. Each of these pests has been found in the United States, and each poses a major threat to Wisconsin’s forest and urban landscapes. None of these pests has yet been found in Wisconsin.

This rule is designed to prevent and limit the spread of these pests, by regulating imports of host materials, to Wisconsin, from known infested areas. If any of these pests is ever found in Wisconsin, this rule will also affect the movement of host materials from infested areas in this state.

Businesses Affected

This rule regulates the import and movement of certain host materials from areas infested with Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid. Regulated host materials vary, depending on the pest in question, but include things like nursery stock, firewood, untreated lumber and mulch.

This rule affects a variety of businesses such as nursery growers and dealers, lumber mills, paper mills, firewood sellers, landscapers and loggers. This rule applies to large and small businesses alike. The Department of Agriculture, Trade and Consumer Protection (“DATCP”) estimates that 50–60% of the affected businesses are “small businesses.”

This rule is designed to prevent the introduction and spread of Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* and Hemlock Woolly Adelgid. These pests pose a grave threat to Wisconsin forest and urban landscapes. This rule will help protect Wisconsin industries, by helping to protect the resources on which they depend. This rule may have some adverse impact on some individual businesses, but that adverse impact is greatly outweighed (even for those businesses) by the protection that this rule affords.

None of the pests regulated by this rule have been detected in Wisconsin to date, so the initial impact of this rule will be limited to businesses that may be importing host materials from infested areas outside this state. The negative effects on those businesses will be small. The rule will help protect Wisconsin importers from pest infestations that could destroy their businesses.

If any of the regulated pests is ever found in this state, the *infestation* may have a major impact on affected businesses. Businesses in infested areas will incur added costs, and some may lose markets for their products. But those consequences will result from the infestation itself, *with or without* this rule.

This rule may add some incremental costs for businesses in infested areas, but will protect businesses in other areas. It will also forestall a more general federal quarantine that could limit exports from the entire state (including exports from uninfested areas).

² This analysis includes, but is not limited to, a small business analysis (under s. 227.114, Stats..)

Key Rule Provisions

This rule includes the following key provisions:

Emerald Ash Borer

This rule prohibits the import or intrastate movement of host materials from infested areas designated by USDA–APHIS in the Code of Federal Regulations (CFR), unless a pest control official inspects the materials and certifies that they are free of Emerald Ash Borer. Host materials include:

Ash trees.

Ash limbs, branches and roots.

Ash logs, slabs or untreated ash lumber with bark attached.

Cut firewood of all non–coniferous species.

Ash chips and ash bark fragments (both composted and uncomposted) larger than one inch in diameter.

Asian Longhorned Beetle

This rule prohibits the import or intrastate movement of host materials from infested areas designated by USDA–APHIS in the Code of Federal Regulations (CFR), unless a pest control official inspects the materials and certifies that they are free of Asian Longhorned Beetle. Host materials include:

Cut firewood of all non–coniferous species.

Nursery stock, logs, green lumber, stumps, roots, branches or debris from any of the following trees: maple, horse chestnut, mimosa, birch, hackberry, ash, sycamore, poplar, willow, mountain ash and elm.

Phytophthora ramorum

This rule restricts the import or intrastate movement of host materials from infested areas designated by USDA–APHIS in the Code of Federal Regulations (CFR), unless a pest control official inspects the materials and certifies that they are free of *Phytophthora ramorum*. Host materials include:

Nursery stock, unprocessed wood, and unprocessed wood and plant products (including bark chips, firewood, logs, lumber, mulch, wreaths, garlands and greenery) from species designated in this rule. The designated species include a large variety of different trees and plants, including for example: fir, maple, buckeye, heather, camellia, chestnut, hazelnut, wood fern, beech, ash, witch–hazel, holly, laurel, oak, tanoak, honeysuckle, Douglas fir, rhododendron, sumac, rose, raspberry, blackberry, huckleberry, willow, redwood, viburnum, magnolia, lilac, yew, and poison–ivy.

Soil and potted media.

Any other material that could reasonably harbor *Phytophthora ramorum*.

Hemlock Woolly Adelgid

DATCP rules currently limit the import and movement of Hemlock Woolly Adelgid host materials from infested areas identified in the current rules. The current DATCP rule is based on an outdated Forest Service list. This rule updates the current DATCP list to conform to the most recent Forest Service list. This rule makes no other changes to current DATCP rules.

Effects on Businesses

Asset Protection and Loss Prevention

This rule is designed to protect Wisconsin forest and landscape resources, on which many Wisconsin businesses rely. The rule will help prevent or delay pest infestations that would deprive Wisconsin businesses of key raw materials and markets, and drive up business costs in a variety of ways.

Pest infestation costs are difficult to predict, and may depend on the nature, timing, location, scope and spread of the infestation. However, the pests regulated by this rule would likely be at least as destructive as the gypsy moth, which currently infests large portions of Wisconsin. The gypsy moth infestation has cost Wisconsin businesses an estimated \$48,000 in 2005, and the cost will continue to grow over time. This rule is designed to prevent or delay business costs of this sort.

Costs to Comply

None of the pests regulated by this rule have been detected in Wisconsin to date, so the initial impact of this rule will be limited to businesses that may be importing host materials from outside this state. Importers may not import host materials from infested areas in other states, unless a pest control official in the state of origin inspects the materials and certifies that they are free of the relevant pest.

This may increase costs or limit supply options for some materials. However, there are many alternative supply options at this time, so this rule is expected to have a very limited impact on Wisconsin businesses in the short term. In any case, this rule merely duplicates and reinforces existing federal rules related to interstate movement. It also protects Wisconsin importers from pest infestations that could destroy their businesses.

This rule may have a larger impact on in–state business if any of the regulated pests is ever found in this state. The rule could then affect a variety of in–state businesses including nursery growers and dealers, lumber mills, paper mills, firewood sellers, landscapers and loggers. Businesses would not be able to move host materials from infested areas unless a state inspector first inspected the materials and certified that they were pest free. There is a flat fee of \$50 for an inspection certificate.

Businesses in infested areas would likely incur added costs, and could lose some markets for their products. However, those consequences would result from the infestation itself, *with or without* this rule. This rule might add some incremental costs, but would provide a mechanism by which commerce could continue subject to regulation. The rule would protect businesses and forest resources in other areas of the state, and would forestall more general federal quarantines that could limit exports from the entire state (including exports from non–infested areas).

Wisconsin importers affected by this rule must make sure that import shipments from infested areas have been properly inspected and certified. This rule does not impose additional recordkeeping requirements, and does not require affected businesses to hire additional professional services or pest experts. But *with or without* this rule, businesses would benefit from increased knowledge of plant pest threats. DATCP will work with affected industries to provide helpful information and education.

Small Business Impact

Approximately 50–60% of the businesses affected by this rule are small businesses. Because none of the regulated pests has yet been found in this state, only a small percentage of these businesses (those importing host materials from outside this state) will be affected by this rule in the short term. The effect, even for those businesses, will be minimal.

This rule may have a larger impact on small in–state business if any of the regulated pests is ever found in this state. Businesses would not be able to move host materials from infested areas unless a state inspector first inspected the materials and certified that they were pest free (see inspection charges above). Small businesses would need to comply, just like large businesses.

Small businesses in infested areas would likely incur added costs, and could lose some markets for their products. However, those consequences would result from the infestation itself, *with or without* this rule. This rule might add some incremental costs, but would provide a mechanism by which commerce could continue subject to regulation.

Steps to Assist Small Business

This rule will help, not harm, small businesses in this state. This rule will not have a significant adverse economic impact on small business. An exemption for small business would undermine the effectiveness of the rule in preventing the introduction and spread of harmful pests. DATCP will provide information and education to help small businesses recognize pest threats, and protect their businesses from those threats. DATCP will also provide training and assistance related to compliance with this rule.

Conclusion

This rule will help protect Wisconsin industries, by helping to protect the resources on which they depend. This rule may impose additional costs on some businesses, including small businesses, but the costs are minimal, and are greatly outweighed (even for those businesses) by the protection that this rule affords. Most costs would result from the pest infestations themselves, and not from this rule.

Assumptions Used in Arriving at Fiscal Estimate

This rule will be administered by the Division of Agricultural Resource Management of the Department of Agriculture, Trade and Consumer Protection. The following estimate is based on the cost for administering and enforcing conditions for the movement of regulated items at risk of spreading or introducing plant pests under state or federal law. The financial impact is based on the current status and distribution of emerald ash borer, Asian longhorned beetle and *Phytophthora ramorum*. Administration and enforcement of the import controls imposed by this rule will involve minimal additional costs to DATCP in terms of notifying affected industries; it may be possible to absorb the costs within the agency's budget. The department will present information through development of written material, press releases, and cooperative efforts with affected industries. Ongoing duties would be to monitor industry compliance with the rule. Industry compliance is already monitored for other sections of ch. ATCP 21 and this new section would be a small addition.

Long – Range Fiscal Implications

If an infestation is ever found in this state, DATCP may experience substantial costs and personnel demands for detection, monitoring and control efforts. Costs may vary, depending on the nature and scope of the infestation, and cannot be accurately predicted at this time. Increased cost would be generated *with or without* this rule.

Environmental Assessment of Proposed Rule

Rule Subject: Import controls and quarantine for Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* and Hemlock Woolly Adelgid.

Administrative Code Reference: ATCP 21

Rules Clearinghouse #: Not yet assigned

DATCP Docket #: 04-R-09

Purpose and Content of Proposed Rule

This rule regulates the import and movement of host materials that may spread infestations of Emerald Ash Borer, Asian Longhorn Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid. Each of these pests has been found in the United States, and each poses a major threat to Wisconsin's

forest and urban landscapes. None of these pests has yet been found in Wisconsin. This rule is designed to prevent and limit the spread of these pests, by regulating imports of host materials, to Wisconsin, from known infested areas. If any of these pests is ever found in Wisconsin, this rule will also affect the movement of host materials from infested areas in this state.

This rule will protect the environment by preventing the infestation and loss of tree species in Wisconsin. This rule includes the following key provisions:

Emerald Ash Borer

This rule prohibits the import or intrastate movement of host materials from infested areas designated by USDA-APHIS in the Code of Federal Regulations (CFR), unless a pest control official inspects the materials and certifies that they are free of Emerald Ash Borer. Host materials include:

Ash trees.

Ash limbs, branches and roots.

Ash logs, slabs or untreated ash lumber with bark attached.

Cut firewood of all non-coniferous species.

Ash chips and ash bark fragments (both composted and uncomposted) larger than one inch in diameter.

Asian Longhorned Beetle

This rule prohibits the import or intrastate movement of host materials from infested areas designated by USDA-APHIS in the Code of Federal Regulations (CFR), unless a pest control official inspects the materials and certifies that they are free of Asian Longhorned Beetle. Host materials include:

Cut firewood of all non-coniferous species.

Nursery stock, logs, green lumber, stumps, roots, branches or debris from any of the following trees: maple, horse chestnut, mimosa, birch, hackberry, ash, sycamore, poplar, willow, mountain ash and elm.

Phytophthora ramorum

This rule restricts the import or intrastate movement of host materials from infested areas designated by USDA-APHIS in the Code of Federal Regulations (CFR), unless a pest control official inspects the materials and certifies that they are free of *Phytophthora ramorum*. Host materials include:

Nursery stock, unprocessed wood, and unprocessed wood and plant products (including bark chips, firewood, logs, lumber, mulch, wreaths, garlands and greenery) from species designated in this rule. The designated species include a large variety of different trees and plants, including for example: fir, maple, buckeye, heather, camellia, chestnut, hazelnut, wood fern, beech, ash, witch hazel, Christmas berry, California holly, laurel, oak, tanoak, honeysuckle, Douglas fir, rhododendron, sumac, rose, raspberry, blackberry, blueberry, willow, coast redwood, Lilac, yew, poison ivy and poison oak.

Soil and potted media.

Any other material that could reasonably harbor *Phytophthora ramorum*.

Hemlock Woolly Adelgid

DATCP rules currently limit the import and movement of Hemlock Woolly Adelgid host materials from infested areas identified in the current rules. The current DATCP rule is based on an outdated Forest Service list. This rule updates the current DATCP list to conform to the most recent Forest Service list. This rule makes no other changes to current DATCP rules.

Who is Affected, and How?

The rule could affect a variety of in–state businesses, including nursery growers and dealers, lumber mills, paper mills, firewood sellers and dealers, landscapers and loggers. However, because none of the pests regulated by this rule have been detected in Wisconsin to date, the initial impact of this rule will be limited to businesses that may be importing host materials from outside this state. If any of the regulated pests is ever found in this state, this rule may have a larger impact on in–state business. These businesses would not be permitted to move host materials from infested areas unless a state inspector first inspected the materials and certified that they were pest free. DATCP estimates that 50–60% of the businesses affected by this rule are “small businesses.”

Costs to Comply

This rule will add costs for some affected businesses. Affected businesses may incur costs related to:

Inspection and certification. Businesses would not be able to move host materials from infested areas unless a state inspector first inspected the materials and certified that they were pest free.

The current inspection certificate charge is \$50.

Businesses in infested areas would likely incur added costs, and could lose some markets for their products. Those consequences would result from the infestation itself, *with or without* this rule. This rule might add some incremental costs, but would provide a mechanism by which commerce could continue subject to regulation. The rule would protect businesses and forest resources in other areas of the state, and would forestall more general federal quarantines that could limit exports from the entire state (including exports from uninfested areas).

Small Business Impact

Approximately 50–60% of the businesses affected by this rule are small businesses. Only a small fraction, 10% at most, of these nurseries, landscapers, firewood producers and dealers, mulch producers and dealers, loggers, lumber mills, paper mills, wood manufacturers, and wood recycling or disposal facilities request an inspection certificate to ship or move host plant materials interstate or internationally. The 168 nursery growers, representing about 10% of the total number of nurseries in the state, would be the most affected by this rule. The current \$50 cost for a plant health certificate would apply to businesses exporting host materials out of an infested area.

Small businesses in infested areas, like large businesses, would likely incur added costs, and could lose some markets for their products. However, those consequences would result from the infestation itself, with or without this rule. This rule might add some incremental costs, but would provide a mechanism by which commerce could continue subject to regulation. An exemption for small business would undermine the effectiveness of the rule in preventing the introduction and spread of harmful pests. This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats.

Farmers

Farmers will not be directly affected by this rule.

General Public

This rule will positively impact the general public, by helping to prevent the introduction and spread of serious plant pests that threaten key urban and residential tree species in Wisconsin. If enacted, this rule would help to minimize the impact of the plant pests on the public, to lessen damage and

losses that could result in reductions in private property value when tree removal is mandated.

Environmental Impact

This rule will positively impact the environment by helping to prevent the introduction and spread of serious plant pests that threaten key tree species in Wisconsin. The primary environmental consequences of no action are increased risk of pest spread and elevated environmental risks from uncoordinated application of pesticides to limit damage from the emerald ash borer. Also, introductions of these pests would lead to changes in the composition and age structure of forests resulting from the no action alternative and could have long–term effects on the ecological relationships in the forested areas.

Economic Effects

This rule will prevent the economic effects that would be caused by an infestation. The cost of tree removal and the subsequent lowering of property values would be significant.

Social and Cultural Effects

This rule will not have significant social or cultural effects, except that it will help to prevent the disruption of local communities that can result from urban tree removal. Further it will help to protect black ash which is a sacred material used by Wisconsin Indian Tribes for making baskets.

Alternatives to this Rule

No Action

Under the no action alternative, DATCP would not implement measures to prevent the import and movement of Emerald Ash Borer, Asian Longhorn Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid. Left unchecked, these pests would spread throughout Wisconsin and the U.S., having severe environmental and economic impacts. In the case of Emerald Ash Borer it is certain that all affected ash trees would die or lose commercial value within just a few years.

The absence of control or containment measures would lead to an increase in Emerald Ash Borer, Asian Longhorn Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid populations, and an increase in long–term, continuing costs for detection and removal of infested host plants. Local business owners and area residents could attempt to control damage from infestations by removing the infested trees or plants from their properties.

In addition, the spread of these pests would lead to loss of valuable ornamental and commercial trees, loss of associated forest products, and private or uncoordinated use of pesticides to control the pest with associated adverse impacts to the environment. The wide distribution of host plants for these pests suggests the danger of spread across much of the country with increases in damage and losses commensurate with the spread. The damage and losses to commercial trees would lower the value and production of timber and tree products such as lumber used in the production of furniture.

Lastly, control measures would likely be taken by USDA–APHIS if DATCP does not act; those actions would not be under DATCP’s control and would likely result in a statewide quarantine.

Modify Rule Provisions

Under this alternative, DATCP would enact import control and quarantine to restrict the movement of firewood, green lumber, and other living, dead, cut or fallen material, including nursery stock, logs, stumps, roots, and branches from any host trees. These materials may be moved within the quarantine area but would be restricted from moving outside the area.

Controversial Public Issues

DATCP does not anticipate major public controversy related to this rule. However, some industry members may express concern about possible increased costs for inspections or limited markets. The controversial issues would be certain in the absence of this rule and the associated necessity of tree removal.

This rule will improve protection for the public at large.

Conclusion

This rule will have a positive effect on the environment, and will not have any significant negative effects. This rule may increase costs for some businesses, including small businesses, but the costs are minimal, are greatly outweighed (even for those businesses) by the protection that this rule affords. There are no preferable alternatives to this rule. This rule is not a "major action significantly affecting the quality of the environment," for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats. or ch. ATCP 3, Wis. Adm. Code.

Notice of Hearing

Labor and Industry Review Commission

[CR 05-092]

NOTICE IS HEREBY GIVEN That pursuant to ss. 103.04 (2), Stats., and interpreting ss. 40.65 (2), 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21 of the statutes, the Wisconsin Labor and Industry Review Commission will hold a public hearing at Room B103 of the GEF I State Office Building, 201 East Washington Avenue, in the City of Madison, Wisconsin, on the **8th day of March, 2006**, at 10:30 a.m., to consider the repeal, amendment and recreation of rules relating to the procedures applicable to review of decisions by the commission.

Analysis Prepared by Labor and Industry Review Commission

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

Text of Rule

Section 1. LIRC 1.01 is amended to read:

LIRC 1.01 General. The labor and industry review commission has jurisdiction for review of cases arising under ss. 40.65 (2), 66.191, 1981 Stats., 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, Stats.

Section 2. LIRC 1.015 is created to read:

LIRC 1.015 Definitions. (1) In chapters LIRC 1 to 4, "commission" means the Wisconsin labor and industry review commission.

(2) In chapters LIRC 1 to 4, "department" means the Wisconsin department of workforce development.

Section 3. LIRC 1.02 (intro.) is amended to read:

LIRC 1.02 Petitions for commission review; appeal period. All petitions for commission review shall be received, or, in unemployment compensation, received or postmarked, filed

within 21 days from the date of mailing of the administrative law judge's findings and decision or order, except as provided under this section. "Received" means physical receipt. A mailed petition postmarked on or prior to the last day of an appeal period, but received on a subsequent day is not a timely appeal, except in unemployment compensation. All petitions shall be in writing. The last day of an appeal period shall be that the petition may be filed on the next business day if the last day for filing 21st day falls on any of the following:

Section 4. LIRC 1.025 is repealed and recreated to read:

LIRC 1.025 Petitions for review; filing. (1) Petitions for review may be filed by mail or personal delivery. A petition for review filed by mail or personal delivery is deemed filed only when it is actually received by the commission or by the division of the department to which the petition is mailed, except that petitions for review in unemployment insurance cases under s. 108.09 or 108.10, Stats. which are filed by mail or personal delivery are deemed filed when received or postmarked as provided for in s. LIRC 2.015.

(2) Except as provided for in subs. (3) and (4), petitions for review may not be filed by e-mail or by any other method of electronic data transmission.

(3) Petitions for review may be filed by facsimile transmission. A petition for review transmitted by facsimile is not deemed filed unless and until the petition is received and printed at the recipient facsimile machine of the commission or of the division of the department to which the petition is being transmitted. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission. A petition for review transmitted by facsimile is deemed filed on the date of transmission recorded and printed by the facsimile machine on the petition.

(4) Except in the case of petitions for review in fair employment and public accommodations cases under s. 106.52 or 111.39 (5), Stats., petitions for review may be filed electronically through the internet website of the commission, at the page found at:

<http://www.dwd.state.wi.us/lirc/petition.htm>.

Successful filing of a petition for review electronically through the internet website of the commission will result in a display on the petitioner's internet browser of a message confirming that the petition has been successfully filed. A petition for review transmitted electronically through the website of the commission is not deemed filed unless and until the confirmation message is displayed. The commission is not responsible for errors in transmission that result in failure of a petition to be successfully filed electronically through the website of the commission. A petition for review filed electronically through the internet website of the commission is deemed filed on the date of filing stated on the commission's electronic record of the filing.

(5) Petitions for review may not be filed by telephone.

Section 5. LIRC 1.04 is repealed and recreated to read:

LIRC 1.04 Record used for review. Review by the commission shall be based on the record of the case including the evidence previously submitted at hearing before the department. The record of the hearing may be in the form of a written synopsis or a transcript, and may include an audio recording of the hearing. The form of the record of the hearing which the commission uses in its review shall be determined as follows:

(1) Except as provided in subs. (2) through (5) of this section, the commission shall base its review on a written synopsis of the testimony taken at the hearing. The synopsis shall be prepared by the department, by the commission, or by an outside contractor, from an audio recording of the hearing or from notes taken at the hearing by the administrative law

judge. In those cases any party may obtain a copy of the synopsis as provided for in s. LIRC 1.045.

(2) The commission shall base its review on a transcript of the hearing rather than a synopsis if a transcript was prepared and was used by the administrative law judge in deciding the case. In such cases any party may obtain a copy of the transcript as provided for in s. LIRC 1.045.

(3) Except in unemployment insurance cases, the commission shall base its review on a transcript of the hearing rather than a synopsis if a party timely requests the commission in writing to conduct its review on the basis of a transcript, the party certifies in such request that it has ordered preparation of a transcript at the party's own expense, and the party thereafter files a copy of the transcript with the commission and serves a copy of the transcript on all other parties. To be timely under this subsection, a request must be made no later than 14 days after the requesting party's receipt from the commission of written confirmation that a petition for commission review has been filed.

(4) The commission shall base its review on a transcript of the hearing rather than a synopsis if a party shows to the commission that the synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken. In those cases the commission shall direct the preparation of a transcript at its own expense and provide a copy of the transcript to each party without charge.

(5) On its own motion, the commission may base its review on a transcript of the hearing in addition to a synopsis. In those cases the commission shall direct the preparation of a transcript at its own expense and provide a copy of the transcript to each party without charge.

(6) A transcript used pursuant to subs. (2) to (5) shall be prepared by an independent court reporter or transcriptionist and shall include a certification by the court reporter or transcriptionist that the transcript is an original, verbatim transcript of the proceedings.

(7) On its own motion, the commission may base its review on an audio recording of the hearing in addition to a synopsis or transcript.

Section 6. LIRC 1.045 is amended to read: LIRC 1.045 Obtaining copy of record. A party in a case before the commission may request the commission to provide a copy of the synopsis or transcript of the testimony, exhibits received at the hearing, or other documents in the file materials. The commission shall furnish the materials copies upon request but may charge a fee for photocopying of 20 cents per page. Upon proper showing of financial inability to pay for photocopying, the commission may waive the fee.

Section 7. LIRC 2.01 is repealed and recreated to read: LIRC 2.01 Petitions for review; where filed. (1) Except as provided in subs. (2) and (3), a petition for commission review of an appeal tribunal decision under s. 108.09 or 108.10, Stats., shall be filed with any of the following:

(a) The division of unemployment insurance of the department, at any of the following locations:

1. The Madison hearing office, at 1801 Aberg Ave., Suite A, P.O. Box 7975, Madison, Wisconsin 53707-7975 (FAX: 608-242-4813).

2. The Milwaukee hearing office, at 819 N. 6th St., Rm. 382, Milwaukee, Wisconsin 53203-1606 (FAX: 414-227-4264).

3. The Eau Claire hearing office, at 715 S. Barstow St., Suite 1, Eau Claire, Wisconsin 54701-3880 (FAX: 715-836-1360).

4. The Fox Valley hearing office, at 926 Westhill Blvd., Appleton, Wisconsin 54914 (FAX: 920-832-5434).

5. The central administrative office of the division's bureau of legal affairs, at P.O. Box 8942, Madison, Wisconsin 53708 (FAX: 608-266-8221).

(b) The commission, at its office at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708 (FAX: 608-267-4409).

(2) A petition filed by an interstate claimant may be filed at one of the locations in sub. (1) or with a qualified employee of the agent state in which the interstate claimant files his or her claim.

(3) A petition by the department shall be filed only at the office of the commission.

Section 8. LIRC 2.015 is amended to read:

LIRC 2.015 Timeliness of petitions. For purposes of s. 108.09 (6) (a), Stats., "received or postmarked" means the words "received" and "postmarked" have the following meanings:

(1) If the petition is personally delivered, the petition is "received" when the division of unemployment insurance of the department or the commission physically receives the petition.

(2) If the petition is mailed and bears only a United States postal service postmark, the petition is "postmarked" on the date of that postmark.

(3) If the petition is mailed and bears both a United States postal service postmark and a private meter mark, the petition is "postmarked" on the date of the United States postal service postmark.

(4) If the petition is mailed and bears only a private meter mark, the petition is "postmarked" on the date of that mark.

(5) If the petition is mailed and bears no mark, or bears an illegible mark, the petition is "postmarked" 2 business days prior to the date the petition was physically received by the division of unemployment insurance of the department or the commission.

(6) If the petition is sent using a delivery service other than the United States postal service, and bears a delivery service mark which is the equivalent of a United States postal service postmark, the petition is "postmarked" on the date of that delivery service mark.

(7) If the petition is sent using a delivery service other than the United States postal service, and does not bear a delivery service mark which is the equivalent of a United States postal service postmark, or bears an illegible delivery service mark, the petition is "postmarked" 2 business days prior to the date the petition was physically received by the division of unemployment insurance of the department or the commission.

Section 9. LIRC 2.03 is repealed.

Section 10. LIRC 2.04 is repealed.

Section 11. LIRC 3.01 is repealed and recreated to read:

LIRC 3.01 Petitions for review; where filed. A petition for commission review of the findings or order of a department administrative law judge under s. 102.18, Stats., shall be filed with any of the following:

(1) The worker's compensation division of the department, at any of the following locations:

(a) 201 East Washington Avenue, P.O. Box 7901, Madison, Wisconsin 53707 (FAX: 608-267-0394).

(b) 819 North Sixth Street, Milwaukee, Wisconsin 53203 (FAX: 414-227-4012).

(c) 1500 North Casaloma Drive, Suite 310, Appleton, Wisconsin 54915 (FAX: 920-832-5355).

(2) The commission, at its office at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708 (FAX: 608-267-4409).

Section 12. LIRC 3.02 is repealed.

Section 13. LIRC 3.04 is amended to read:

LIRC 3.04 Compromise settlements. Compromise settlements of worker's compensation claims are solely within the jurisdiction of the worker's compensation division, department of workforce development, according to governed by s. 102.16, Stats., and s. DWD 80.03. Under s. 102.18 (4) (d), Stats., if a compromise is reached while a case is pending commission review, the compromise shall be submitted to the commission, and the commission shall remand the case to the worker's compensation division of the department for consideration of the compromise. If the compromise is not approved, the party who filed the petition for commission review may reinstate its petition by notifying the commission. Under s. 102.24 (2), Stats., if a compromise is reached while a case is pending court review of a commission order, remand shall be to the commission and the commission shall then remand the case to the department for consideration of the compromise.

Section 14. LIRC 4.01 is amended to read:

LIRC 4.01 Petitions for commission review; where filed. A petition for commission review of the findings and order of a department administrative law judge under s. 106.52 or 111.39 (5), Stats., shall be received within 21 days from the date of mailing of the findings and order to the parties by filed with the equal rights division of the department at any of the following locations:

(1) The equal rights division, 819 North Sixth Street, Milwaukee, Wisconsin 53203, or (FAX: 414-227-4981).

(2) The central administrative office of the equal rights division, at 201 East Washington Avenue, P.O. Box 8928, Madison, Wisconsin 53708 (FAX: 608-267-4592).

Section 15. LIRC 4.02 is repealed.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

Repeal of LIRC 2.04 eliminates fees of \$1.00 per page (\$25 minimum) for a transcript prepared by or for the Commission and substitutes a 20 cents per page photocopying fee under LIRC 1.045. Based on averaging and estimating fees collected for transcripts requested in recent years, the loss in fees would amount to approximately \$1100 to \$1200 per year.

Estimate: 20 transcripts per year

70 pages (\$70)

\$1400 minus 20 cents per page offset for photocopying (\$250) = \$1120

Initial Regulatory Flexibility Analysis

The commission's rules of procedure affect small businesses when they are parties to cases pending before the commission. The proposed rule changes primarily serve to clarify existing procedural rules. The changes in procedure made by the proposed rules will create an additional method by which a petition for review may be filed, and reduce the charge for obtaining copies of certain documents. These changes are not anticipated to have any significant effect on small businesses.

Notice of Hearing

Revenue

[CR 05-117]

Notice is hereby given that, pursuant to ss. 71.04 (8) (c) and 71.25 (10) (c), Stats., and interpreting ss. 71.04 (8) (b) and (c) and 71.25 (10) (b) and (c), Stats., the Department of Revenue

will hold a public hearing at the time and place indicated below, to consider the repeal and recreation and creation of rules relating to the computation of the apportionment fraction by multistate public utilities and telecommunications companies.

Hearing Information

The hearing will be held at 9:00 A.M. on Monday, **February 27, 2006**, in the Events Room (1st floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than March 6, 2006, and will be given the same consideration as testimony presented at the hearing.

Contact Persons

Small Businesses:	Others:
Tom Ourada	Dale Kleven
Department of Revenue	Department of Revenue
Mail Stop 624-A	Mail Stop 6-40
2135 Rimrock Road	2135 Rimrock Road
P.O. Box 8933	P.O. Box 8933
Madison, WI 53708-8933	Madison, WI 53708-8933
Telephone (608) 266-8875	Telephone (608) 266-8253
Email tourada@dor.state.wi.us	Email dkleven@dor.state.wi.us

Analysis by the Department of Revenue

Statutes interpreted: ss. 71.04 (8) (b) and (c) and 71.25 (10) (b) and (c), Stats.

Statutory authority: ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

Explanation of agency authority: The net business income of public utilities and telecommunications companies requiring apportionment shall be apportioned pursuant to rules of the department of revenue.

Related statute(s) or rule(s): ss. 71.04 (4), (4m), (5), (6), and (7) and 71.25 (6), (6m), (7), (8), and (9), Stats., ss. 71.04 (5), (6), and (7) and 71.25 (7), (8), and (9), 2001 Stats., and s. Tax 2.39.

Plain language analysis: This proposed rule order prescribes the method to be used for apportioning the apportionable income of the following business entities:

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

Section 1. The special apportionment formula for interstate public utilities, other than telecommunications companies, is being eliminated. For taxable years beginning before 2006, the three factors will be equally weighted in the apportionment formula. The phase-in of the single sales factor apportionment formula will apply to public utilities, other than telecommunications companies.

Section 2. Interstate telecommunications companies will compute their property, payroll, and sales factors under the 2001 statutes and rules. The three factors will be equally weighted in the apportionment formula. Gross receipts from the use of computer software and from services will continue to be included in the numerator of the sales factor based on the location of the income-producing activity. The phase-in of

the single sales factor apportionment will not apply to telecommunications companies.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states:

Illinois does not have a special apportionment formula for interstate public utilities and telecommunications companies. Their apportionment formula consists solely of a sales factor. Sales of tangible personal property are sourced on a destination basis. Sales of services are attributed to the state where the income–producing activity occurred. If the income–producing activity occurred in more than one state, the sale is attributed to the state with the greater costs of performance.

Iowa does not have a special apportionment formula for interstate public utilities and telecommunications companies. The apportionment formula consists solely of a sales factor. Sales of tangible personal property are sourced on a destination basis. Sales of services are sourced where the benefit of the service is received. In the case of the transportation of electricity, “traffic units” are used to determine where the benefit is received. Rules prescribe where the benefit is received for services provided by telecommunications companies.

Michigan does not have a special apportionment formula for interstate public utilities and telecommunications companies. The apportionment formula consists of a three–factor formula with sales weighted 90%, and property and payroll each weighted 5%. Sales of tangible personal property are sourced on a destination basis. Sales of services are sourced where the income–producing activity occurred. If the income–producing activity occurred in more than one state, the sale is attributed to the state with the greater costs of performance.

Minnesota does not have a special apportionment formula for interstate public utilities and telecommunications companies. The apportionment formula consists of a three–factor formula with sales weighted 75%, and property and payroll each weighted 12.5%. Sales of tangible personal property are sourced on a destination basis. Sales of services are sourced where the benefit of the service is received, where the service was ordered, or where the service was billed, depending on the circumstances.

Summary of factual data and analytical methodologies: 2003 Wisconsin Act 37 changed the apportionment formula used by multistate businesses for determining the income taxable by Wisconsin. As a result of this legislation, single sales factor apportionment will be phased in for most businesses, including any public utility that owns or operates any plant, equipment, property, franchise, or license for the production, transmission, sale, delivery, or furnishing of electricity, water, or steam, the rates of charges for goods or services of which have been established or approved by a federal, state, or local government or governmental agency. The phase–in of single sales factor apportionment begins for taxable years beginning on January 1, 2006. 2003 Act 37 also provides that multistate telecommunications companies are to apportion their income under rules of the Department of Revenue. 2005 Wisconsin Act 25 changed how gross receipts from the use of computer software and from services are sourced for purposes of the apportionment formula. Receipts from the use of computer software are sourced to the location where the software is used. Receipts from services are sourced where the benefit of the service is received. The change in the sourcing rules first applies to taxable years beginning January 1, 2005. Telecommunications companies have requested that

in addition to excluding them from single sales factor apportionment as provided by 2003 Act 37, the rule would exclude them from the special sourcing rules for gross receipts from the use of computer software and from services. In consultation with telecommunications company personnel, the department developed language and used it to create this proposed rule order.

Analysis and supporting documents used to determine effect on small business: The department has prepared a fiscal estimate regarding this proposed rule order. It was determined that there is not a significant fiscal effect on small business.

Anticipated costs incurred by private sector: This proposed rule order does not have a significant fiscal effect on the private sector.

Effect on small business: This proposed rule order does not have a significant fiscal effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266–8253 or dkleven@dor.state.wi.us, if you have any questions regarding this proposed rule order.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below no later than one week after the public hearing on this proposed rule order is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
Department of Revenue
Mail Stop 6–40
2135 Rimrock Road
P.O. Box 8933\
Madison, WI 53708–8933

Text of Rule

SECTION 1. Tax 2.50 is repealed and recreated to read:

Tax 2.50 Apportionment of apportionable income of interstate public utilities. (1) SCOPE. A public utility that is engaged in business both in and outside this state shall apportion its apportionable income as provided in this section. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b) 1., Stats.

(2) DEFINITIONS. In this section:

(a) “Payroll factor” means the payroll fraction computed under s. 71.04 (6) or 71.25 (8), Stats., and s. Tax 2.39.

(b) “Property factor” means the property fraction computed under s. 71.04 (5) or 71.25 (7), Stats., and s. Tax 2.39.

(c) “Public utility” means any business entity that owns or operates any plant, equipment, property, franchise, or license for the production, transmission, sale, delivery, or furnishing of electricity, water, or steam the rates of charges for goods or services of which have been established or approved by a federal, state, or local government or governmental agency.

(d) “Sales factor” means the sales fraction computed under ss. 71.04 (4m) and (7) or 71.25 (6m) and (9), Stats., and s. Tax 2.39.

(3) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning after December 31, 2004, a public utility that does business in and outside this state shall determine its net income for state franchise or income tax purposes as provided in this section. The public utility shall first deduct from its total net income its nonapportionable income, less related expenses. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b) 1., Stats. The public utility shall apportion its remaining net income to this state as follows:

(a) For taxable years beginning before January 1, 2006, apportionable income shall be apportioned using an apportionment fraction obtained by taking the arithmetical average of the sales factor, property factor, and payroll factor.

(b) For taxable years beginning after December 31, 2005, and before January 1, 2007, apportionable income shall be apportioned using an apportionment fraction composed of the sales factor, representing 60% of the fraction, the property factor representing 20% of the fraction, and the payroll factor representing 20% of the fraction.

(c) For taxable years beginning after December 31, 2006, and before January 1, 2008, apportionable income shall be apportioned using an apportionment fraction composed of the sales factor representing 80% of the fraction, the property factor representing 10% of the fraction, and the payroll factor representing 10% of the fraction.

(d) For taxable years beginning after December 31, 2007, apportionable income shall be apportioned using an apportionment fraction composed of the sales factor.

Note: The provisions of s. Tax 2.50 first apply for taxable years beginning on January 1, 2005.

Note: Section Tax 2.50 interprets ss. 71.04 (8) (b) and (c) and 71.25 (10) (b) and (c), Stats.

SECTION 2. Tax 2.502 is created to read:

Tax 2.502 Apportionment of apportionable income of interstate telecommunications companies. (1) SCOPE. A telecommunications company that is engaged in business both in and outside this state shall apportion its apportionable income as provided in this section. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b) 1., Stats.

(2) DEFINITIONS. In this section:

(a) "Payroll factor" means the payroll fraction computed under s. 71.04 (6) or 71.25 (8), 2001 Stats., and s. Tax 2.39.

(b) "Property factor" means the property fraction computed under s. 71.04 (5) or 71.25 (7), 2001 Stats., and s. Tax 2.39.

(c) "Sales factor" means the sales fraction computed under s. 71.04 (7) or 71.25 (9), 2001 Stats., and s. Tax 2.39.

(d) "Telecommunications company" means any business entity that owns or operates any plant, equipment, property, franchise, or license for the transmission of communications the rates of charges for goods or services of which have been established or approved by a federal, state, or local government or governmental agency.

(3) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning after December 31, 2004, a telecommunications company that does business in and outside this state shall determine its net income for state franchise or income tax purposes as provided in this section. The telecommunications company shall first deduct from its total net income its nonapportionable income, less related expenses. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b) 1., Stats. The telecommunications company shall apportion its remaining net income to this state using an apportionment fraction obtained by taking the arithmetical average of the property factor, payroll factor, and sales factor.

Note: The provisions of s. Tax 2.502 first apply for taxable years beginning on January 1, 2005.

Note: Section Tax 2.502 interprets ss. 71.04 (8) (b) and (c) and 71.25 (10) (b) and (c), Stats.

Initial Regulatory Flexibility Analysis

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

Submittal of proposed rules to the legislature

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

Educational Approval Board

(CR 05-112)

Ch. EAB 4, relating to student protection fees paid by schools.

Technical College System

(CR 05-107)

Ch. TCS 17, relating to skills training or other education related to the needs of business.

Elections Board

(CR 05-093)

Ch. ElBd 11, relating to training and certification of election inspectors.

Transportation

(CR 05-109)

Ch. Trans 102, relating to the time period within which a person moving to Wisconsin may operate a motor vehicle under a driver license from his or her previous state of residence.

Rule orders filed with the revisor of statutes bureau

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

**Transportation
(CR 05-082)**

An order affecting ch. Trans 200, relating to specific information signs.
Effective 3-1-06.

**Transportation
(CR 05-095)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.
Effective 3-1-06.

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