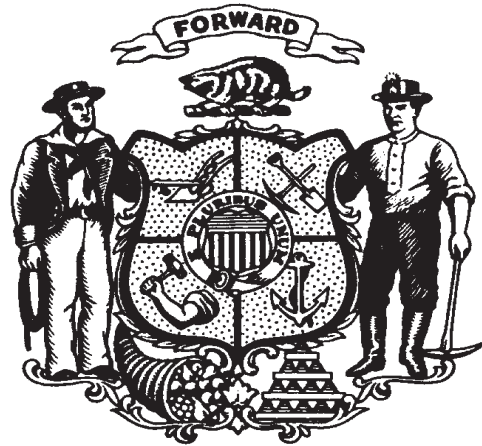


Wisconsin Administrative Register

No. 603



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Table of contents

Emergency rules now in effect.	Pages 5 to 10
Agriculture, Trade and Consumer Protection:	Rules relating to a poultry flock certification program.
Commerce:	<u>Commercial Buildings, Chs. Comm 61 to 65</u> Rules revising ch. Comm 62 , relating to automatic fire suppression for student housing facilities serving colleges and universities. [First Appearance]
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:	<u>Fish, Game, etc., Chs. NR 1—</u> 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. Rules relating to the issuance of turkey hunting permits. Rules revising ch. NR 47 , relating to the forestry research and development grant program. [First Appearance] <u>Environmental Protection—Water Regulation, Chs. NR 300—</u> 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:	<u>Labor Standards, Chs. DWD 270–279</u> Rules relating to overtime pay for employees performing companionship services.
	<u>Public Works Construction Projects, Chs. DWD 290–294</u> Rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.
Scope statements.	Pages 11 to 16
Commerce:	Rules affecting ch. Comm 62, relating to automatic fire sprinkler systems for student housing facilities.
Elections Board:	Rules relating to the procedure for the administration of voter registration throughout Wisconsin. Rules relating to requiring vendors to identify those portions of the software that are specifically used to count and tabulate votes.
Employee Trust Funds:	Rules relating to not requiring a termination of employment for disability annuity or long-term disability insurance benefits.
Marriage and Family Therapy, Professional Counseling and Social Work Examining Board:	Rules relating to psychotherapeutic counseling.
Natural Resources:	Rules affecting ch. NR 10, relating to seasons and daily bag limits for migratory game bird hunting. Rules affecting ch. NR 1, relating to procedures for updating the reference document which identifies and discusses generally accepted forestry management practices.
Revenue:	Rules relating to uncollected cigarette and tobacco products taxes and repossessions. Rules relating to relating to apportionment of apportionable income.
Transportation:	Rules relating to establishing a network of highways on which long combination vehicles may operate, by adding two highway segments to the network.
Workforce Development	Rules affecting chs. DWD 100–150, relating to unemployment insurance technical corrections.
Submittal of rules to legislative council clearinghouse.	Page 17
Agriculture, Trade and Consumer Protection:	Rules affecting several chapters, relating to minor remedial drafting changes to various department rules.
Health and Family Services:	Rules affecting ch. HFS 157, rules relating to radiation protection to reflect state experience and changes in federal regulations and technology, and to increase annual registration fees for x-ray installations.
Veterans Affairs:	Rules affecting ch. VA 16, relating to the county transportation services grant program.

Rule-making notices.

Pages 18 to 31

Agriculture, Trade and Consumer Protection:

Hearing to consider emergency rule changes relating to a poultry flock certification program.

Hearing to consider rules relating to minor remedial drafting changes of department rules.

Health and Family Services:

Hearings to consider rules affecting ch. HFS 157, relating to the regulation of radiation producing devices and radioactive materials and affecting small businesses.

Natural Resources:

Hearings to consider rules affecting chs. NR 10, 15, 17-19, 20 & 25, relating to deer and turkey hunting, fishing, hunting and trapping techniques, permit and license issuance, dog training and learn-to-hunt programs.

Hearing to consider rules affecting ch. NR 45, relating to the regulation of firewood entering and exiting department lands.

Hearing to consider rules affecting ch. NR 46, relating to the administration of the Forest Crop Law and the Managed Forest Law.

Hearings to consider rules affecting ch. NR 47, relating to the forestry research and development grant program.

Hearings to consider rules affecting chs. NR 135 & 340, relating to the reclamation of nonmetallic mining sites.

Hearing to consider rules affecting to chs. NR 127, 128, 160 & 166, relating to the Safe Drinking Water Loan Program.

Hearings to consider rules affecting chs. NR 504, 506, 512, 514, 516 & 520, relating to landfilling of solid waste.

Hearings to consider rules affecting ch. NR 520, relating to balances in the Waste Management Program Revenue Account.

Veterans Affairs:

Hearing to consider rules relating to the county transportation services grant program.

Submittal of proposed rules to the legislature.

Page 32

Employment Relations Commission:

CR 02-037 – Chs. ERC 1-18, 19, 20-25, 26-28, 30-33, 40 and 50, relating to the administration of collective bargaining laws.

Revenue:

CR 05-117 – Ch. Tax 2, relating to the computation of the apportionment fraction by multistate public utilities and telecommunications companies.

Veterans Affairs:

CR 05-103 – Ch. VA 13, relating to the veterans assistance program.

Rule orders filed with the revisor of statutes bureau.

Page 33

Agriculture, Trade and Consumer Protection:	CR 05–014 – An order affecting ch. ATCP 51, relating to livestock facility siting.
	CR 05–068 – An order affecting chs. ATCP 99, 100 and 101, relating to agricultural producer security.
Educational Approval Board:	CR 05–112 – An order affecting ch. EAB 4, relating to student protection fees.
Insurance:	CR 05–099 – An order affecting ch. Ins 8, relating to the small employer uniform employee application to group health insurance.
Technical College System Board:	CR 05–107 – An order affecting ch. TCS 17, relating to training program grants.
Workforce Development:	CR 02–137 – An order affecting ch. DWD 100, relating to unemployment insurance availability.
	CR 05–067 – An order affecting ch. DWD 278, relating to garnishment.

Rules published with this register and final regulatory flexibility analyses. **Page 34**

Sections affected by rule revisions and corrections. **Page 35**

Executive orders. **Page 36**

Public Notices. **Pages 37 to 38**

Health and Family Services: Medical assistance reimbursement of nursing homes.
Medical assistance reimbursement of hospitals.

Notice of suspension of administrative rules. **Page 39**

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.

Agriculture, Trade and Consumer Protection

Rules adopted revising **chs. ATCP 10 and 11**, relating to a poultry flock certification program.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including the national poultry improvement program (NPIP). The NPIP is designed to prevent the spread of *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. NPIP is governed by 9 CFR 145 and 147. NPIP enrollment is voluntary, but non-enrolled flocks are subject to certain movement restrictions.

(2) Current DATCP rules prohibit the import, use, sale or movement of poultry, farm-raised game birds or their eggs for breeding or hatching unless they originate from flocks that are enrolled in NPIP and meet NPIP standards. Current DATCP rules also prohibit the exhibition of poultry or farm-raised game birds at a fair, exhibition or swap meet unless they originate from an NPIP “*pullorum*-typhoid clean” or equivalent flock, or are individually tested for *pullorum*-typhoid.

(3) NPIP is primarily designed for large commercial flocks that move birds or eggs in interstate commerce. NPIP requires yearly testing of all sexually mature birds, and routine inspections. Fees for enrollment in the program differ based on flock size and purpose, and range from \$20 to \$200. NPIP enrollment and testing may be cost-prohibitive for small flocks. Current rules restrict market access and exhibition by

small producers of poultry and farm-raised game birds, and impose an unnecessary burden on those producers. Some small producers may be tempted to ignore or subvert current rules, in order to market or exhibit their poultry or farm-raised game birds. That may, in turn, create unnecessary risks of disease.

(4) It is urgently necessary to provide alternative disease monitoring options for small producers of poultry and farm-raised game birds, so that those producers can legally and economically move, market and exhibit their birds. The current lack of alternatives creates an unnecessary economic hardship, and an unnecessary risk of disease spread.

(5) DATCP has proposed rules which would create practical disease monitoring alternatives for small producers of poultry and farm-raised game birds. DATCP is proceeding to adopt those rules by normal rulemaking procedures. However, normal rulemaking procedures require at least a year to complete. A temporary emergency rule is needed to eliminate unnecessary hardship and risk in the short term, and to provide practical and effective disease monitoring for this year’s fair and exhibition season.

Publication Date:	March 3, 2006
Effective Date:	March 3, 2006
Expiration Date:	July 31, 2006
Hearing Dates:	March 31, 2006

Commerce

(Commercial Buildings, Chs. Comm 61–65)

Rules adopted revising **ch. Comm 62**, relating to automatic fire suppression for student housing facilities serving colleges and universities.

Finding of Emergency

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

1. In accordance with sections 101.14 (4) (b) 3., Stats., and the provisions under 2005 Wisconsin Act 78, the department has the responsibility to promulgate rules requiring the installation of automatic fire sprinkler systems in various student housing facilities serving colleges and universities.

2. 2005 Wisconsin Act 78 was published on January 6, 2006, making January 7, 2006 the effective date of the Act.

3. Various provisions of the Act specified the effective date as the trigger to install the automatic fire sprinkler systems.

4. The department recognizes that promulgating this emergency rule will incorporate under the commercial building code, chapters, Comm 61 to 65, specific design and construction standards for new student housing facilities that are consistent with the intent of the Act.

5. The department recognizes that without promulgating this emergency rule, there could be confusion in design of any new student housing to be constructed in the very near future. The omission of the automatic fire sprinkler system during the initial design and construction would potentially place lives at greater risk.

6. In addition, the department recognizes that without promulgating this emergency rule, the confusion in omitting the automatic fire sprinkler system would result in additional costs to retrofit the installation of the system in order to fulfill the statutory obligation based upon the effective date of the Act.

Publication Date: March 4, 2006

Effective Date: March 4, 2006

Expiration Date: August 1, 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 Dates: 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 waiver 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 (6) (Fish, Game, etc., Chs. NR 1—)

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 Dates: October 19, 2005

Extension Through: May 1, 2006

2. 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 Dates: October 12, 2005
Extension Through: April 30, 2006

3. 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 Dates: December 12, 2005
Extension Through: June 12, 2006

4. 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 Dates: January 13, 2006

5. Rules were adopted revising **s. NR 10.25**, relating to the issuance of turkey hunting permits.

Plain Language Analysis

This rule change will allow the department to issue turkey tags remaining after the initial permit drawing in accordance with state statute, which is first-come, first-served. Additionally, this rule updates code language to accurately describe how permits are currently issued (by zone and by time period) and establishes that no person may obtain more than one turkey carcass tag per day.

Exemption from finding of emergency

2005 Wisconsin Act 25, allowed the department to utilize the procedure under s. 227.24, Stats., to promulgate rules implementing s. 29.164, Stats., for the period before the date on which permanent rules take effect, but may not exceed the period authorized under s. 227.24 (1) (c) and (2), Stats. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), Stats., the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Publication Date: February 13, 2006
Effective Date: March 1, 2006
Expiration Date: July 29, 2006
Hearing Dates: April 10, 2006

6. Rules were adopted revising **ch. NR 47**, relating to the forestry research and development grant program.

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 opportunity for Wisconsin interests to compete for federal grants that improve the public health, public good and the environment through the development of alternative renewable energy and biochemical sources from forestry biomass.

Publication Date: March 16, 2006
Effective Date: March 16, 2006
Expiration Date: August 13, 2006
Hearing Dates: April 24 & 26, 2006
 [See Notice This Register]

**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 Dates: 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 Dates: February 27, 2006

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
Hearing Dates: March 15, 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 Dates: January 4, 2006
Extension Through: May 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 Dates: 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 Dates: February 15, 2006

Scope statements

Commerce

Subject

Ch. Comm 62, relating to automatic fire sprinkler systems for student housing facilities.

Policy analysis

Objective of the rule. In accordance with s. 101.14 (4) (b) 3., Stats., and the provisions under 2005 Wisconsin Act 78, the Department of Commerce has the responsibility to promulgate rules requiring the installation of automatic fire sprinkler systems in various student housing facilities serving colleges and universities. The rules are to reflect statutory mandates requiring the installation of automatic fire sprinkler systems in certain existing facilities, specifically housing facilities greater than 60 feet in height and sororities, fraternities and similar housing, within specific timeframes. The rules are to require automatic fire sprinkler systems in any new student housing facilities.

Policy issues. Under the authority of s. 101.02 (1) and (15), Stats., the Department of Commerce has the responsibility to establish standards for the design and construction of public buildings and places of employment in order to protect public health, safety and welfare. The Department fulfills this responsibility by promulgating the Commercial Building Code, chapters Comm 61 to 65. Previous legislation under s. 101.14 (4) (b) 3., Stats., effective in 2000, mandated the installation of automatic fire sprinkler systems for certain types of housing within the University of Wisconsin System. The rules are to make permanent emergency rules that reflect statutory mandates, therefore, no policy alternatives are available.

Statutory authority

Sections 101.14 (4) (b) 3., Stats., as affected by 2005 Wisconsin Act 78, and s. 101.02 (15) (j), Stats.

Staff time required

The Department estimates approximately 80 hours will be needed to develop the rule revisions. This time includes drafting the revisions and processing the changes through public hearings, legislative review, and adoption. The Department will assign existing staff to develop the rule revisions. No additional resources will be needed.

Entities affected by the rule

The proposed rules would affect any university, college, organization or entity that owns and operates student housing facilities including the following:

- Dormitories.
- Sororities and fraternities.
- Private student residential buildings.

Comparison with federal regulations

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

Elections Board

Subject

Ch. ElBd 3, relating to the procedure for the administration of voter registration throughout the State of Wisconsin.

Policy analysis

Objective of the rule. To implement the requirements of the Help America Vote Act and the plan adopted by the State Elections Board to implement the Help America Vote Act and the legislature's directive in s. 6.26, Stats., that the board shall, by rule, prescribe procedures "to promote increased registration of electors consistent with the needs of municipal clerks and boards of election commissioners to efficiently administer the registration process."

Because ch. ElBd 3 consists of one rule, ElBd 3.02, which is out-dated and not consistent with the current registration system, that rule needs to be repealed and replaced with new rules that establish the current registration procedures.

Policy issues. Registration of voters in Wisconsin has been conducted by municipal clerks and municipal boards of election commissioners and has been required only for electors residing in municipalities having a population greater than 5,000 persons. As a result of 2003 Wisconsin Act 265, registration is required for all electors in the State of Wisconsin and a system of statewide voter registration is required to be established and maintained by the state elections board. Rules are necessary to provide direction to the election officials who administer registration. The scope of this rule includes the components of voter registration

The Elections Board's current rule administering registration, ElBd 3.02 has been superceded by the requirements of the new system of voter registration. The proposed new policies establish a system of statewide voter registration that is administered by both municipal clerks and boards of election commissioners and also by the state elections board. The proposed registration rules will establish the procedures for and requirements of the new system of voter registration and will include the training and appointment of special registration deputies to facilitate statewide voter registration.

Statutory authority

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

Staff time required

35 – 45 hours of staff time

Entities affected by the rule

The rule will affect not only voters who seek to register to vote in Wisconsin, but also municipal clerks, boards of election commissioners and special registration deputies who are, or become, responsible for registering those voters.

Comparison with federal regulations

Statewide voter registration and the system to implement statewide voter registration emanates from the federal Help America Vote Act. 2003 Wisconsin Act 265, is part of the plan to implement that act. Under that legislation, registration is

required for all electors in the State of Wisconsin and a system of statewide voter registration is required to be established and maintained by the State Elections Board. The proposed rules are part of the Board's plan and the state's compliance with the federal law.

Elections Board

Subject

EIBd 7.03 (2), relating to requiring vendors to identify those portions of the software that are specifically used to count and tabulate votes.

Policy analysis

Objective of the rule. To amend the rules governing the escrow, with the State Elections Board or other Escrow Agent, of the software or source code for software, prior to the Board's approval for sale and use in Wisconsin elections of voting equipment that uses that software or source code.

Policy issues. Under s. 5.91, Stats., "No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the [Elections] board." Also, "the board may revoke its approval of any ballot, device, equipment or materials at any time for cause." The statute further provides that "No such ballot, voting device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills . . . [certain] requirements" that are spelled out in subsections (1) through (18) of s. 5.91, Stats.

One of the Elections Board's rules, s. EIBd 7.03 (2) of the Wis. Adm. Code provides that "a copy of the programs, documentation and source code used for any election" shall be placed in escrow with an agent designated by the Elections Board. The new rule will require vendors to identify those portions of the escrowed software that are specifically used to count and tabulate votes.

Statutory authority

Sections 5.05 (1) (f) and 227.11 (2) (a), Stats

Staff time required

At least 20 hours of state employees' time.

Entities affected by the rule

The rule will affect all businesses that manufacture and sell voting equipment and will also affect political or public interest organizations that are involved in voter ballot accessibility issues.

Comparison with federal regulations

Although federal does not dictate what voting equipment may be used in state elections, the Help America Vote Act (HAVA) has mandated that each polling place being used in an election at which candidates for federal office are on the ballot must have at least one piece of voting equipment that is accessible to persons with disabilities. In many instances, compliance with that requirement has dictated the use of an electronic voting system. Assuring the security of those systems, by assuring that the vote-counting and tabulating components have been escrowed is the primary purpose of the rule.

Employee Trust Funds

Subject

The subject of the proposed rulemaking concerns the eligibility criteria to receive a disability annuity under Wis. STATS. s. 40.63, or long-term disability insurance benefit under Wis. ADMIN. CODE ch. 50, specifically concerning whether the employee must actually terminate participating employment in the Wisconsin Retirement System.

Policy analysis

At present, the Department of Employee Trust Funds interprets Wis. STATS. ss. 40.22 (26) and (46), 40.23 (1) (a) and 40.63 (1) (intro.) and (c), (8) (intro.) and (f) to permit a disabled employee, who is on a leave of absence and not expected to return to service, to file an application for a disability annuity benefit. However, actual termination of employment is necessary in order for disability annuity payments to commence.

This rulemaking is prompted by an internal review of the current policy following requests from the American Federation of State, County and Municipal Employees-Council 24, the Wisconsin Education Association Council and several local government employers and employee representatives. These parties have indicated that disabled employees who are not expected to return to service should be allowed remain on leave of absence and thereby continue to receive benefits provided by their employer, such as health insurance, while simultaneously receiving monthly disability annuity payments from the Wisconsin Retirement System.

The rule-making will address the status of future disability annuitants with regard to the Wisconsin Retirement System and other fringe benefits under ch. 40 of the statutes. Employer participation in these benefits plans varies from program to program. For example, if a disabled employee is deemed to have terminated employment for all ch. 40 purposes, the effect on that person's health insurance and premiums would vary depending on whether the employer participated in the Group Insurance Board's health insurance under ch. 40 or if the employer offered other health insurance.

Long-term disability insurance (LTDI) benefits replaced disability annuity benefits for employees not continuously employed since before October 16, 1992. Under Wis. ADMIN. CODE s. ETF 50.54 (2) (b), LTDI benefits are already available for employees on leave of absence. This rule-making will conform the eligibility criteria regarding termination of employment for both LTDI and disability annuities.

Statutory authority

Wis. Stats. ss. 40.03 (2) (i) and 227.11 (2) (a).

Staff time required

The Department estimates that state employees will spend 100 hours to develop this rule.

Entities affected by the rule

The proposed rule would affect present and future participating employees in the Wisconsin Retirement System who become disabled to the extent that they are unable to engage in substantial gainful activity.

Comparison with federal regulations

The only federal regulations that may be implicated by this rulemaking, so far as the Wisconsin Retirement System is

affected, are provisions of the Internal Revenue Code regulating qualified pension plans. Wis. STATS. s. 40.015 requires the WRS to be maintained as a qualified plan. As a general rule, pension plans are supposed to provide benefits at retirement. For that reason, so-called “in service distributions,” meaning a distribution to a participant who has not reached normal retirement age or terminated employment, can disqualify a pension plan. See Treas. Reg. §1.401-1(b)(i). However, this same Treasury regulation states that a pension plan may provide for the payment of a pension due to disability. The Wisconsin Retirement System already provides for disability pensions under Wis. STATS. s. 40.63. This rule-making will be interpreting the applicable Wisconsin Statutes concerning eligibility for disability pension benefits.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

Subject

Repeal of s. MPSW 13.01, psychotherapeutic counseling.

Policy analysis

Objective of the rule. The Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board proposes to repeal s. MPSW 13.01, prior to its scheduled effective date of January 1, 2007. Currently, licensed professional counselors (LPCs) may practice psychotherapy independent of supervision. After the rule’s effective date, LPCs who wish to independently practice psychotherapy, will be required to pass the National Counselor Mental Health Certification Examination (NCMHCE), have completed at least 6 semester credits, or 9 quarter credits, of post-bachelor’s education in psychotherapy modalities, and have completed at least 3,000 hours of post-master’s supervised clinical professional counselor practice, including at least 1,000 hours of face-to-face client contact, including DSM diagnosis and treatment of individuals.

Existing policies relevant to the rule, new policies proposed and analysis of policy alternatives

Currently, independent practice of psychotherapy is within the scope and practice of LPCs as per existing statutes and rules. If an LPC is not qualified to practice without supervision because of a lack of adequate education, training or experience, they are prevented from doing so by existing rules on Unprofessional Conduct pursuant to s. MPSW 20.02 (1). Repeal of the rule would preserve existing policy.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 457.03, Stats.

Existing or proposed federal legislation.

There is no applicable existing federal legislation.

Entities affected by the rule

Existing LPCs who are practicing independently or plan to apply for independent practice.

Staff time required

160 hours.

Natural Resources

Subject

Chapter NR 10 pertaining to seasons and daily bag limits for migratory game bird hunting.

Policy analysis

This rule order will establish the 2006 migratory bird hunting seasons. In late July Department staff attend the Mississippi Flyway Council (MFC) Technical and Council meetings. At this meeting staff will be provided status information and the proposed framework alternative from the U.S. Fish and Wildlife Service (FWS). Staff then work with the other states in our Flyway to discuss and develop proposals and recommendations that are voted upon by the MFC. Proposals that are passed at the MFC meeting are forwarded to the FWS for consideration by the Service Regulations Committee (SRC) in late July. Department staff contact the FWS following the SRC meeting to obtain the latest season recommendations.

Once the FWS’s final framework is available, Department staff can summarize waterfowl status and regulation information for Wisconsin citizens. This information is presented to the Migratory Committee of the Conservation Congress on and a public meeting (Post-Flyway Meeting) of interest groups and individuals. Staff receive input at these meetings regarding citizen suggestions for the development of Wisconsin’s waterfowl seasons given the federal framework. The following week, public hearings are held around the state to solicit additional input to the state regulatory process. The Department then promulgates a permanent and emergency rule simultaneously in order to open the waterfowl seasons in late September.

Statutory authority

s. 29.014, Stats.

Staff time required

Approximately 460 hours will be needed by the Department to develop the rule prior to and following the hearings.

Entities affected by the rule

These rules will impact migratory game bird hunters and those who enjoy viewing waterfowl in the state of Wisconsin.

Comparison with federal regulations

Preliminary Federal Regulatory Analysis: Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the FWS regulations process. As part of the Federal rule process, the FWS proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest-management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while FWS believes that the NAWMP’s population goals would tend to exert a conservative influence on overall duck harvest-management, other factors, such as habitat, also need to be considered. The Regular Canada goose season is based on the allowable Mississippi Valley Population (MVP) harvest which will be determined based on the spring breeding population goal for that population and the spring population estimate obtained from an aerial survey

of the MVP breeding range. All the proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the Fish and Wildlife Service in 50 CFR 20.

Natural Resources

Subject

Objective of the rule. The Department proposes to create section NR 1.25, Wis. Admin. Code, to define “generally accepted forestry management practices” as required by s. 823.075 (1) (d), Wis. Stats. The proposed rule will include procedures for updating the reference document which identifies and discusses generally accepted forestry management practices.

Policy analysis

Sections 59.69 (4) (a), 60.61 (2) (a), and 62.23 (7) (b), Wis. Stats., provide that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Also, under this legislation, a zoning ordinance may not prohibit forestry operations that are in accordance with generally accepted forestry management practices.

Section 823.075 (1) (d) requires the Department to define by rule “generally accepted forestry management practices” and allows the Department to incorporate by reference the most recent version of “Wisconsin Forest Management Guidelines” (FMG).

The Department continues to use the FMG solely as a guidance document. It was developed with a process that relied heavily on public participation. A draft edition of the FMG was distributed for public review between October 2002 and March 2003. Hundreds of comments were received in the course of five open houses and from letters. These comments were carefully considered during the development of the FMG. The new statutory provisions allow a landowner complying with the guidance to be protected from challenge that the operation constitutes a public nuisance.

At the time of publication, it was recognized that the FMG would need updates as opportunities for improvement were identified. However, a formal process and schedule for updating the FMG has not been developed. Public comments, including suggestions regarding the process for updating the FMG, will be an integral part of this rule making process.

Statutory authority

Section 823.075 (1) (d), Wis. Stats., as created by 2005 Wisconsin Act 79

Staff time required

Department staff will need approximately 75 hours for this rule revision, not including time and travel for three proposed public hearings.

Comparison with federal regulations

There are no known federal rules which define generally accepted forestry management practices or which establish when a forestry operation can be declared a nuisance.

Entities affected by the rule

Forest landowners, foresters, loggers and county, city and village zoning officials may be interested in these changes. Groups that are likely to participate in this process include Wisconsin Council on Forestry, Wisconsin Woodland Owners Association, Wisconsin Professional Loggers

Association, Wisconsin Counties Association, and Wisconsin Towns Association.

Revenue

Subject

Section Tax 9.70, relating to uncollected cigarette and tobacco products taxes and repossessions.

Policy analysis

Objective of rule. The objective of the proposed rule is to clarify when and how a distributor required to be licensed by the department may recover the cigarette and tobacco products tax from the department when the distributor is unable to collect the tax from another permitted wholesaler or a retailer.

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

Statutory authority

Section 227.11 (2) (a), Stats.

Staff time required

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

Entities affected by the rule

Distributors who are required to pay the Wisconsin cigarette and tobacco products tax.

Comparison with federal regulations

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Revenue

Subject

S. Tax 2.39, relating to apportionment of apportionable income.

Policy analysis

Objective of the rule. The objective of the proposed rule is to reflect law changes relating to the apportionment of apportionable income.

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

Entities affected by the rule

Companies that are engaged in business both in and outside of Wisconsin and whose method of apportioning income is not otherwise prescribed in ch. Tax 2. Also affected will be entities that prepare Wisconsin franchise or income tax returns for these companies.

Comparison with federal regulations

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

Statutory authority

Section 227.11 (2) (a), Stats.

Staff time required

The department estimates it will take approximately 300 hours to develop this rule order.

Transportation

Subject

Objective of the rule. This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding two highway segments to the network. The actual segments being proposed are:

STH 49 from Waupaca to Iola

STH 161 from Nelsonville to Symco

Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a request from C. H. Robinson Worldwide, Inc., to add these highway segments.

Comparison with federal regulations

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

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

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended s. 348.07 (2), Stats., and s. 348.08 (1), Stats. This act created ss. 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created s. 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

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

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

Entities affected by the rule

The rule will affect the requester of the route to be designated and other operators of commercial motor vehicles.

Statutory authority

Section 348.07 (4), Stats.

Staff time required

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

Workforce Development

Subject

Unemployment insurance technical corrections, ss. DWD 145, 120.02, 105, and 107.

Policy analysis

Section 108.02 (15) (k) 14., Stats., as repealed by 2005 Wisconsin Act 86, provided that employees who were engaged in the processing of fresh perishable fruits or vegetables were not entitled to receive unemployment insurance benefits based upon employment within the active processing season for the fruit or vegetable being processed as determined by the department, unless certain exceptions applied. 2005 Wisconsin Act 86 deleted this coverage exclusion, and claimants are now eligible to claim UI benefits based upon the performance of food processing services.

The proposed rules will repeal Chapter DWD 145, which specifies the active processing seasons for fresh perishable fruit and vegetables. The proposed rules will also repeal s. DWD 120.02, which requires an employer engaged in the processing of fresh perishable fruits and vegetables to give special notice to any employee who will work during the active processing season that wages earned in processing employment may be excluded in determining his or her eligibility for unemployment insurance.

The proposed rules will also correct inaccurate statutory references in Chapter DWD 105, on the relationship of carriers and contract operators, and Chapter DWD 107, on employment relationships in the logging industry. 1995 Wisconsin Act 118 affected the definition of employee in s. 108.02 (12), Stats., including renumbering s. 108.02 (12) (b) 1. and 2., Stats., to s. 108.02 (12) (c) 1. and 2., Stats. Chapters DWD 105 and 107 have not been updated to reflect this change and inaccurately refer to s. 108.02 (12) (b) 1. and 2., Stats., when the correct reference should be paragraph (c). The proposed rules will update DWD 105 and 107 to include the correct statutory reference.

Statutory authority

Section 108.02 (15) (k) 14., Stats., as repealed by 2005 Wisconsin Act 86; s. 108.02 (12) (c) 1. and 2., Stats., as renumbered by 1995 Wisconsin Act 118; s. 108.14 (2), Stats.; and s. 227.11 (2), Stats.

Entities affected by the rule

The proposed rules make technical corrections. No entities

are affected.

Comparison with federal regulations

There are no comparable federal requirements.

Staff time required

25 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

On March 10, 2006, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Proposal to modify chs. ATCP 1, 11, 13, 17, 29, 40, 42, 50, 55, 69, 70, 80, 81, 82, 85, 88, 92, 97, 105, 111, 113, 131, 134, 155 and 158, relating to minor remedial drafting changes to various department rules.

Agency Procedure for Promulgation

The department will hold public hearings on April 13, 2006.

The department's Office of Legal Counsel is primarily responsible for this rule.

Contact Persons

If you have questions, you may contact Karen Schultz at (608) 224-5023.

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P.O. Box 2659
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For small business considerations contact:

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Health and Family Services

On March 8, 2006, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Proposal to modify ch. HFS 157 rules relating to radiation protection to reflect Agreement State experience and changes in federal regulations and technology, and to increase annual registration fees for x-ray installations.

Agency Procedure for Promulgation

Federal statutes or regulations which require adoption of or are relevant to the substance of proposed rules:

42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2014; 10 CFR Pts. 19, 20, 31, 33-36, 39, 40, 70, 71 and 150; 49 CFR relating to transportation; and 21 CFR Pt. 1020.

Court decisions directly relevant to the proposed rule:
None known.

Public hearings: Public hearings are scheduled to be held on April 18, 2006, 10:00 a.m. to 11:30 a.m. at the Medical College of Wisconsin 8710 Watertown Plank Rd., Rm. HRC 1210, Milwaukee, WI; April 20, 2006, 10:00 a.m. to 11:30 a.m. at DHFS, 1 W. Wilson St., Rm. B139 Madison, WI; and April 27, 2006, 10:00 a.m. to 11:30 a.m. at Westwood Conference Center 1800 W. Bridge St., Atrium Rm., Wausau, WI.

Contact Persons

For substantive questions on rules contact:

Veterans Affairs

On March 10, 2006 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ss. VA 16.01 (3), 16.02 (1), (1) (a), (b), and (c), and (3) and creating s. VA 16.02 (4), of the Wisconsin Administrative Code. The proposed rule relates to the county transportation services grant program.

Analysis

The creation of the proposed rules will require counties that have an ongoing veterans transportation grant program and who do not intend to expand the program by more than 50% to provide data for a prior 12-month period. The change will provide more accuracy to the computation process and ease the administration of the grant program.

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

Agency Procedure for Promulgation

A public hearing is required and will be held on April 21, 2006. The Office of the Secretary is primarily responsible for preparing the rule.

Contact Person

John Rosinski
Chief Legal Counsel
(608) 266-7916

Rule-making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

(reprinted from 3/15/06, Wis. Adm. Register)

The Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on an emergency rule relating to a poultry flock certification program. This emergency rule authorizes more cost-effective disease monitoring options for small poultry producers who cannot feasibly comply with requirements under the national poultry improvement plan, which is designed for large commercial operations. This rule will allow small poultry producers to sell, move and exhibit poultry, and will increase poultry disease control and monitoring in this state.

DATCP will hold one hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Thursday, April 6, 2006, 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 the hearing. Please make reservations for a hearing interpreter by March 22, 2006, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

Hearing Date and Location

Friday, **March 31, 2006** 12:30 p.m. to 1:30 p.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room

Madison, WI 53708

Handicapped accessible

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

This emergency rule authorizes more cost-effective disease monitoring options for small poultry producers who

cannot feasibly comply with requirements under the national poultry improvement plan, which is designed for large commercial operations. This rule will allow small poultry producers to sell, move and exhibit poultry, and will increase poultry disease control and monitoring in this state.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and (10), 95.18, 95.19, 95.20, 95.22, 95.45, 95.51, 95.57, and 95.68, Stats.

Statute Interpreted: s. 93.07 (10), 95.18, 95.19, 95.20, 95.22, 95.45, 95.51, 95.57, and 95.68, 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. This emergency rule creates a new poultry flock certification program for small poultry producers, in order to provide more cost-effective disease control and monitoring.

Background

The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers Wisconsin's animal health and disease control programs, including programs to prevent diseases in poultry. Under current DATCP rules, all poultry and farm-raised game birds imported or moved for purposes of breeding or hatching must comply with the national poultry improvement plan, or an equivalent program.

Under current DATCP rules, poultry and farm-raised game birds exhibited at fairs, swap meets and like events must be tested prior to the event, or must originate from a flock enrolled in the national poultry improvement plan. This national plan requires routine flock inspections, and yearly testing of all sexually mature birds. Plan enrollment fees vary by flock size and type, and range from \$20 to \$200. The flock owner must also pay all testing costs.

The national poultry improvement plan is designed for large commercial operations, and compliance costs for small poultry producers may be prohibitive. Small producers who cannot afford to enroll in the national plan are effectively prohibited from selling, moving or exhibiting their birds in many cases.

This rule provides new, more cost-effective disease monitoring options for small poultry producers. This will allow more small producers to sell, move and exhibit their birds. It will encourage more disease testing and monitoring by small producers, and will reduce illegal movement and exhibition of birds. These changes will improve the overall control and monitoring of poultry diseases in this state, and will help to protect human and animal health. DATCP is adopting this rule as an emergency rule so that the improvements can be implemented as soon as possible, and in time for the 2006 fair and exhibition season.

Key Rule Changes

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 *Salmonella 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.

Fiscal Impact

This rule will have no fiscal impact on local government and an insignificant impact on DATCP. DATCP will incur added staff and administrative costs to administer the new poultry flock certification program, but expects to absorb the additional workload with existing staff and appropriations. There is no fee for flock owners to enroll in the program.

Business Impact

This rule affects poultry producers, many of which are “small businesses.” This rule will have a positive impact on small poultry producers, and will have little or no effect on large producers. 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 producers, and may not be cost-effective for small producers. This rule provides cost-effective disease monitoring options that will provide greater market access for small producers.

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 has proposed a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

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”). DATCP and the federal bureau cooperate in the administration of the national poultry improvement plan, which is governed by 9 CFR 145 and 147. The plan is primarily designed for large poultry producers, and may be cost-prohibitive for small producers.

Plan participation is voluntary, but poultry producers must enroll their flocks in order to move birds in interstate commerce. Current Wisconsin rules further limit movement and exhibition of poultry within this state, except from enrolled flocks. This rule provides more cost-effective alternatives for small poultry producers, giving them more market access.

Surrounding State Programs

Poultry programs in surrounding states are broadly comparable to those in Wisconsin.

All surrounding states (Iowa, Michigan, Minnesota, and Illinois) require testing of poultry for *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. For in-state movement, for purposes other than exhibition, poultry other than turkeys must originate from flocks that have a *pullorum*-typhoid clean rating under the national poultry improvement plan. Turkeys must be tested for *Mycoplasma gallisepticum* according to the national poultry improvement plan.

Poultry testing requirements for exhibition vary slightly between states. Generally speaking, exhibited poultry must originate from flocks that comply with the national poultry improvement plan, or they must test negative for *pullorum*-typhoid (and, in the case of turkeys, for *Mycoplasma gallisepticum*) within 90 days of the exhibition.

DATCP Contact

Questions and comments related to this rule may be directed to:

Melissa Mace

Department of Agriculture, trade and Consumer Protection
P.O. Box 8911

Madison, WI 53708-8911

Telephone (608) 224-4883

E-Mail: hearingcommentsAH@datcp.state.wi.us

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 06-028]

Rule related to minor remedial drafting changes of department rules.

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on a proposed rule that make minor remedial drafting changes to a number of department rules.

DATCP will hold one public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, April 21, 2006 for additional written comments. Comments may be sent to the Office of Legal Counsel, at the address below, by email to karen.schultz@datcp.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, Office of Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5023 or emailing karen.schultz@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 April 5, 2006, by writing to Karen Schultz, Office of Legal Counsel, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5023. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Thursday, April 13, 2006

1:00 p.m. to 3:00 p.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Room 172

Madison, WI 53718

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

This rule makes technical changes to a number of current rules administered by the Department of Agriculture, Trade and Consumer Protection (“DATCP”), related to a variety of topics. This rule describes the discretion that DATCP may exercise in the enforcement of regulations against small business.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 92.05 (3) (c), 92.14 (8), 93.50 (2) (f), 94.72 (13) (a), 95.197 (2), 95.71 (8), 97.09 (4), 97.20 (4), 97.22 (8), 97.41 (2) and (5), 98.03 (2), 98.18 (2), and 895.59, Stats.

Statutes Interpreted: ss. 92.05, 92.14, 94.72, 95.197, 95.71, 97.20, 97.22, 97.41, 98.03, 98.18, 93.50, and 895.59, Stats.

DATCP has broad authority under 93.07(1) to adopt rules needed to implement laws under its jurisdiction. Under s. 895.59, Stats. (created by 2003 Wisconsin Act 145), DATCP is required to adopt rules describing the discretion that it may exercise in enforcement of its regulations against small businesses. DATCP has specific authority, under the provisions cited above, to adopt rules related to each of the topics addressed by this rule.

Rule Content

Small Business Enforcement Discretion

Under s. 895.59, Stats. (created by 2003 Wisconsin Act 145), state agencies are required to adopt rules describing the discretion they may exercise when enforcing regulations against small businesses. This rule describes the discretion that DATCP may exercise when enforcing regulations against small businesses. DATCP already exercises enforcement discretion, as described in this rule.

Technical Changes to Current Rules

This rule also makes minor technical changes to a number of rules administered by the DATCP. This rule does all of the following:

Conforms fertilizer tonnage fee (agricultural chemical cleanup surcharge) to current statute. The department is currently charging the (lower) statutory fee, not the obsolete (higher) fee that appears in the current rule (ATCP 40).

- Updates technical standards that are incorporated by reference in current commercial feed rules (ATCP 42). The updates refer to the latest edition (2006) of the official publication of the Association of American Feed Control Officials.

Updates current standards for the professional certification of agricultural engineering practitioners. The revised standards address new agricultural engineering practices, and the planning phases of engineering projects. The revisions also make minor changes to job class criteria for some existing practices, reflecting changes in technology and scale of current projects. DATCP coordinated these revisions with the United States Department of Agriculture (NRCS) and county land conservation departments, including practitioners who serve federal, state and county conservation programs.

Clarifies DATCP’s meat holding order and condemnation authority (ATCP 55).

Corrects inconsistent rules related to the legal “shelf life” of smoked fish (one rule says 17 days, the other says 21 days). This rule says 21 days.

- Changes current dairy plant rules (ATCP 80) to make them consistent with current federal standards. This includes minor technical changes related to pasteurization standards,

thermometers and temperature readings, as well as updates to technical standards incorporated by reference (ATCP 80 Appendix). The updates refer to the latest editions of the 3–A Sanitary Standards and Accepted Practices published by the 3–A Sanitary Standards, Inc.

- Updates technical standards that are incorporated by reference in current weights and measures rules (ATCP 92). The updates refer to the latest editions (2006) of current weights and measures handbooks published by the National Institute of Standards and Technology.

Clarifies, per current statutes, that local weights and measures inspectors must be civil service employees (conforms rule to current statute).

Eliminates minor obsolete accounting provisions (in ATCP 105) related to the calculation of cigarette “cost” for purposes of the Unfair Sales Act (“minimum markup law”).

Clarifies the relationship between DATCP’s home improvement code (ATCP 110) and basement waterproofing code (ATCP 111), both of which apply to basement waterproofing services.

Clarifies prohibition against misleading charity claims in coupon book schemes (ATCP 131).

- Repeals current rules related to dairy cattle grades (ATCP 158), because the rules are obsolete and no longer used.

- Corrects typographical errors and cross–references, eliminates obsolete provisions, conforms rules to current statutes, creates clarifying notes, and makes other non–substantive drafting and organizational changes to current rules.

Pursuant to s. 227.21, Stats., DATCP will request permission from the Attorney General and the Revisor of Statutes to incorporate each updated technical standards by reference.

Fiscal Estimate

DATCP already exercises enforcement discretion, as described in this rule, so the effect will be minimal. Fines and forfeitures are paid to the state school fund, not DATCP. Other provisions of this rule will have no fiscal effect on DATCP or local units of government.

Business Impact

DATCP already exercises enforcement discretion, as described in this rule. The current exercise of discretion prevents unnecessary costs to small businesses. The codification of DATCP’s current enforcement policy will not change that policy, or have a major additional impact on business. The other provisions of this rule will have no significant effect on business.

Federal Regulations

Several of the technical changes in this rule will make DATCP rules consistent with current federal standards. Otherwise, there are no existing or proposed federal regulations similar to this rule.

Surrounding State Programs

Surrounding states (Illinois, Indiana, Iowa, Michigan and Minnesota) do not have comparable rules, except that some use comparable technical standards.

Notice of Hearings

Health and Family Services

[CR 06–021]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 254.34 (1) (a), 254.35 (3) (g), 254.365 (4) and 254.37 (3), Stats., and interpreting ss. 254.31 to 254.45, Stats., and 42

USC 2011 to 2114, the Department of Health and Family Services will hold public hearings to consider the proposed creation, repeal, repeal and recreation and amendment of portions of chapter HFS 157 Radiation Protection, relating to the regulation of radiation producing devices and radioactive materials and affecting small businesses.

Hearing Date(s) and Location(s)

Tuesday, **April 18, 2006**, 10:00 – 11:30 a.m.

Medical College of Wisconsin

8701 Watertown Plank Rd. (Rm. HRC 1210)

Milwaukee, WI

Thursday, **April 20, 2006**, 10:00 – 11:30 a.m.

1 W. Wilson St.

Rm. B139

Madison, WI

Thursday, **April 27, 2006**, 10:00 – 11:30 a.m.

Westwood Conference Center

1800 W. Bridge St. (Atrium Room)

Wausau, WI

The hearing site is fully accessible to people with disabilities. If you are hearing or visually impaired, do not speak English, or have circumstances that might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Place Where Written Comments may be Submitted

Written comments may be submitted at the public hearing or submitted to the Department using the Wisconsin Administrative Rule Website at: <http://adminrules.wisconsin.gov> or may be sent to:

Paul Schmidt, Chief

Radiation Protection Section

P.O. Box 2659

Madison, WI 53701-2659

608-267-4792

schmips@dhfs.state.wi.us

Deadline for Comment Submission

The deadline for submitting comments to the Department is **4:30 p.m., May 12, 2006**.

Analysis Prepared by the Department of Health and Family Services

Under s. 254.34 (1) (a) Stats., the Department is responsible for developing and enforcing rules, including registration and licensing of sources of ionizing radiation to prohibit and prevent unnecessary radiation exposure. The Department is also responsible for maintaining compliance with the Agreement signed by Governor Doyle in 2003 and the Nuclear Regulatory Commission (NRC) that transferred regulatory authority over certain radioactive materials from the NRC to the state. Under the Agreement, the Department is responsible for licensing and inspecting radioactive materials commonly used in medicine, industry, research and education. NRC staff periodically evaluates the state regulatory program.

One of the requirements of this Agreement is Wisconsin's assurance that it will revise the radioactive material portions of ch. HFS 157 within 3 years of any applicable changes in Title 10 Code of Federal Regulations. Title 10 CFR has been revised since ch. HFS 157 was last revised in 2002. Therefore, the Department proposes to modify the radioactive material requirements in ch. HFS 157.

In addition, the Department proposes to revise the portions of ch. HFS 157 pertaining to x-rays to reflect new diagnostic and therapeutic technologies, experience with implementing the current rule, changes in comparable federal regulations in 21 CFR Part 1020, and input provided to the Department by an advisory group that included representatives of academic and medical facilities, radioactive materials users, x-ray users and large and small businesses.

Finally, the Department proposes to increase the annual site fee and the x-ray tube fee established under s. 254.35 (3), Stats., to address a projected operating deficit in the x-ray and registration and inspection program for state fiscal year (SFY) 2006 and beyond. To maintain program revenue sufficient to operate the x-ray registration and inspection program, the Department under s. 254.35 (3) (g), Stats., proposes to increase annual registration fees by increasing both the annual site fee and x-ray tube fee for installations required to be registered as follows:

Increase the annual site fee from \$36 to \$50 for all required registrants, including sites serving physicians and clinics, osteopaths and clinics, chiropractors, hospitals, podiatrists, veterinarian, industrial, educational facilities, research projects, and dental sites, and other sites required to be registered.

Increase the annual x-ray tube fee from \$44 to \$50 for all sites, except dental, serving physicians and clinics, osteopaths and clinics, chiropractors, hospitals, podiatrists, veterinarian, industrial sites, educational facilities, research projects, and other sites.

Increase the annual x-ray tube fee from \$30 to \$35 for dental sites.

The proposed revisions to chapter HFS 157 accomplish the following:

- Updates the radiation protection and regulatory requirements for radioactive materials to reflect changes in federal regulations in Title 10, Code of Federal Regulations Parts 19, 20, 31, 33-36, 39, 40, 70, 71 and 150 and applicable portions of Title 49 (transportation), Code of Federal Regulations.

- Updates the radiation safety requirements for x-ray producing devices to reflect new technologies, current federal regulation and the input of an ad hoc advisory group representing a cross-section of regulated users.

- Revises 7 of the 42 radioactive material license fee categories to reflect lessons learned after 1.5 years as an Agreement state. There is no fee increase associated with the materials fee category revision.

- Increases x-ray registration fees to ensure sufficient operating revenue for the x-ray registration and inspection program. The last fee increase occurred in 1996. The x-ray registration and inspection program helps to minimize unnecessary radiation exposure to the general public and device operators by verifying that devices are functioning according to radiation protection requirements in ch. HFS 157.

Pursuant to s. 227.21 Stats., the Department has requested permission from the Attorney General and the Revisor of Statutes to incorporate by reference into ch. HFS 157, the ANSI N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography",

published by the American National Standards Institute. These standards are cited in the proposed rules.

Initial Regulatory Flexibility Analysis

The Department is the state's radiation control agency and is required under ss. 254.34 (1) (a), 254.365 (4), and 254.37 (3), Stats., to promulgate rules pertaining to the use of radiation in Wisconsin. Specifically, the Department is required to promulgate and enforce rules pertaining to sources of ionizing radiation and for registration and licensing sources of ionizing radiation, and enforcement as may be necessary to prohibit and prevent unnecessary radiation exposure.

Sites of ionizing radiation (x-ray devices) are required under s. 254.35 (3), Stats., to register and pay annual registration fees, which consists of a site fee and a fee for each x-ray tube upon registration. The current registration fee is \$66 for dental sites (\$36 site fee; \$30 for each x-ray tube) and \$80 (\$36 site fee; \$44 for each x-ray tube) for all other required registrants, including sites serving physicians and clinics, osteopaths and clinics, chiropractors, hospitals, podiatrists, veterinarian, industrial sites, educational facilities, research projects, and other sites. These industries are represented in the North American Industry Classification System sectors 33–Manufacturing; 42– Wholesale Trade; 44–45 –Retail Trade; 54–Professional Scientific, and Technical Services; 61–Educational Services ; 62–Health Care and Social Assistance; 71– Arts, Entertainment, and Recreation; and 92–Correctional Facilities.

The Department's x-ray registration and inspection program is 100% fee supported by the annual registration fees authorized under s. 254.35 (3), Stats. At current fee levels, the Department projects a program deficit of \$27, 770 in SFY 06 that will increase to \$135, 310 in SFY 07 and continue to increase each subsequent fiscal year if fees are not increased. To maintain program revenue sufficient to operate the x-ray registration and inspection program, the Department under s. 254.35 (3) (g), Stats., proposes to increase annual registration fees by increasing both the annual site fee and x-ray tube fee for installations required to be registered as follows:

Increase the annual site fee from \$36 to \$50 for all required registrants, including sites serving physicians and clinics, osteopaths and clinics, chiropractors, hospitals, podiatrists, veterinarian, industrial, educational facilities, research projects, and dental sites, and other sites.

Increase the annual x-ray tube fee from \$44 to \$50 for all sites, except dental, serving physicians and clinics, osteopaths and clinics, chiropractors, hospitals, podiatrists, veterinarian, industrial sites, educational facilities, research projects, and other sites.

Increase the annual x-ray tube fee from \$30 to \$35 for dental sites.

An analysis of the Department's facility registration data shows that the 2,152 registered dental facilities average 4 x-ray tubes per site at a current cost of \$120 (\$30 x 4) in annual x-ray tube fees and \$36 in site fees for an approximate total of \$156 per year (or \$13 per month) in annual registration fees. Under the proposed fees increase, dental facilities with 4 x-ray tubes per site will pay \$140 (\$35 x 4) in annual x-ray tube fees and \$50 in site fees for an approximate total of \$190 per year (or \$16 per month) in annual registration fees; an increase of \$34 per year. Dental sites account for over 45% of the registered facilities and over 58% of the x-ray tubes, and at least 85% of these facilities may be considered small businesses.

Veterinary services (431 facilities); chiropractors (901 facilities), and podiatrists (119 facilities) average 1 x-ray tube per site at a current cost of \$44 (\$44 x 1) in annual x-ray tube fees and \$36 in site fees for an approximate total of \$80 per

year (or \$7 per month) in annual registration fees. Under the proposed fees increase, these facilities will pay \$50 (\$50 x 1) in annual x-ray tube fees and \$50 site fee for an approximate total of \$100 per year (or approximately \$8 per month) in annual registration fees; an increase of approximately \$20 per year. Veterinarians, chiropractors, and podiatrists account for 30% of the registered facilities and 10.5% of the x-ray tubes and at least 85% of these facilities may be considered small business. Industrial applications; sites serving physicians and clinics and osteopaths and clinics; hospitals; educational facilities; research projects; and other sites including those with security installations, account for the remaining 25% of the registered facilities and 31% of the x-ray tubes. Some or all of these facilities are not small businesses as defined in s. 227.114 (1), Stats.

Based on an analysis of the average gross annual revenues (as given in the 2002 Economic Census) of dental facilities, chiropractic facilities, veterinary facilities, and podiatry facilities, the proposed increase in annual registration fees represents a less than 1% decrease in gross annual revenues of these small businesses.

Annual registration fees have not been increased since SFY1997. The proposed increase in fees will increase program revenues by approximately \$140, 614 if implemented in SFY 07 and ensure adequate program funding thru at least SFY 10. Adequate funding of the x-ray registration and inspection program is important because this program helps to minimize unnecessary radiation exposure to the general public and device operators by verifying that devices are functioning according to the radiation protection requirements in ch. HFS 157, state statutes, federal statutes and regulations, and the radiation protection policy stated in s. 254.33, Stats. If the annual registration fees are not increased the Department would be forced to terminate staff and reduce the frequency in which x-ray inspection are conducted. Reduced inspection frequency is linked to higher rates of non-compliance with radiation safety requirements. Faulty x-ray equipment or x-ray equipment not used as required increases the risk of injuries to skin and organ tissue, and cancer.

Small Business Regulatory Coordinator

Rosie Greer

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608-266-1279

Fiscal Estimate

Under s. 254.34 (1) (a), WI Stats., the Department of Health and Family Services is responsible for developing and enforcing rules, including registration and licensing of sources of ionizing radiation, to prohibit and prevent unnecessary radiation exposure. Sources of ionizing radiation include x-ray producing devices. The Department assesses an annual site registration fee, plus a fee for each x-ray tube, that supports the Department's x-ray registration and inspection program. The Department is authorized under s. 254.35 (3), Stats., to increase the fee by rule. The current x-ray registration fees are as follows:

Physicians and clinics, osteopaths, chiropractors, hospitals: \$36 site fee, \$44 for each x-ray tube

Podiatric or veterinary site: \$36 site fee, \$44 for each x-ray tube

Dental site: \$36 site fee, \$30 for each x-ray tube

Industrial, research or other site: \$36 site fee, \$44 for each x-ray tube.

Since the last fee increase in 1996, program costs have increased annually due to inflation. Revenue from current fees is not sufficient to cover current operating expenses. To

meet current costs, the Department is proposing to increase the annual x-ray site registration and x-ray tube fees, as follows:

Increase the site fee to \$50 from \$36.

For all sites other than dental sites, increase the x-ray tube fee to \$50 from \$44.

For dental sites, increase the x-ray tube fee to \$35 from \$30.

As indicated, revenue from current fees is not sufficient to cover current operating expenses. The Department projects a deficit of (\$27,770) in SFY 06 increasing to (\$135,310) in SFY 07 with no fee increase. The proposed fee increase will nearly eliminate the deficit by SFY 07 and fully eliminate it in SFY 08. The net effect of this rule will be to provide sufficient revenue for the x-ray registration and inspection program to operate as authorized by state law.

The device-based fee structure has the least impact on small business. For example, a dental office with one x-ray tube would pay an additional \$19 in annual fees as a result of the proposed fee increase (\$66 current; \$85 proposed). A medical, chiropractic or podiatry office with one x-ray tube would pay an additional \$20 in annual fees as a result of the proposed fee increase (\$80 current, \$100 proposed).

Obtaining Copies of Rules and Fiscal Estimate

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules website at: <http://adminrules.wisconsin.gov> or by contacting the contact person listed below.

Contact Person

Paul Schmidt, Chief
Radiation Protection Section
P.O. Box 2659
Madison, WI 53701-2659
608-267-4792
schmips@dhfs.state.wi.us

Notice of Hearings

Natural Resources

(Amended from 2/28/06 Register)

[CR 06-011]

[CR 06-012]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (b), 29.014, 29.089 (3), 29.091, 29.164 (4) (b), 29.184 (6) and 29.197 (2), Stats., interpreting ss. 23.09 (2) (b), 29.014, 29.089 (3), 29.091, 29.164 (4) (b), 29.184 (6) and 29.197 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10, 15, 17 and 19, Wis. Adm. Code, relating to deer and turkey hunting, hunting and trapping techniques, permit and license issuance, dog training and learn-to-hunt programs. The proposed changes:

1. Extend the closing date of the ruffed grouse season in Zone A from December 31 to January 31, thereby consolidating ruffed grouse hunting zones from 3 to 2.

2. Expand the fall wild turkey hunting season from October 1 – November 10 to the Saturday nearest September 15 and continuing through the Thursday immediately prior to the opening of the deer gun season. This would be the same as the early archery deer season dates.

3. Create a 2-day youth turkey hunt on the weekend before the regular spring turkey season begins.

4. Extend the ending of the spring wild turkey hunting hours from 5:00 p.m. to sunset.

5. Prohibit possession of electronic turkey calling equipment while turkey hunting, and prohibit possession of electronic waterfowl calling equipment while waterfowl hunting.

6. Create consistent standards for body-gripping type traps, where traps 75 square inches or larger would be illegal as dry land sets, traps between 60 and 75 square inches would be legal only when half the trap is below water at all times, or when at least 5 feet off the ground, or when properly enclosed, and creating a maximum allowable height dimension of 7½ inches for dry land body-gripping traps.

7. Issue turkey carcass tags remaining after the initial special license drawing over-the-counter at a rate of one carcass tag per customer per day.

~~8. Change the “no dog training” period from April 15–July 31 to April 1–July 31.~~

9. Change the minimum age of the Youth Learn to Hunt Program from age 11 to age 10 to be consistent with current department policy.

10. Allow Class A bear licenses to be purchased up to the day prior to the bear season, and allow the purchase of a Class A bear license during the bear season, provided the license is not effective until three days after the date of purchase.

11. Allow the use of rifles in Kewaunee County during the gun deer season.

12. Create a limited entry nine-day shotgun deer gun season, followed by a ten-day muzzleloader season and late archery season at High Cliff State Park.

13. Eliminate the Greenwood “No Entry Wildlife Refuge” in Waushara County.

14. Require a pheasant stamp statewide for anyone who wishes to hunt pheasants.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 29.014 (1), 29.039, 29.041 and 227.11 (2) (a), Stats., interpreting ss. 29.014 (1), 29.039, 29.041, 29.161, 29.204, 29.207, 29.219, 29.228, 29.231, 29.235, 29.531, 29.533 and 29.624, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 20, 21, 23 and 24, Wis. Adm. Code, relating to fishing on the inland, outlying and boundary waters of Wisconsin. The proposed changes:

1. Consider 50” minimum size limit for muskellunge in Lake Winnebago, to be consistent with Great Lakes spotted musky rehabilitation protocol in connected waters.

2. Consider 50” minimum size limit for muskellunge in Little Lake Butte des Morts and the Fox River downstream from the Neenah and Menasha dams to the DePere dam, to be consistent with Great Lakes spotted musky rehabilitation protocol in connected waters.

3. Extend sunset provision of Wisconsin, Lemonwier and Yellow River experimental regulations for walleye and sauger, from the Grandfather dam downstream to the Prairie du Sac dam. The experimental 15” minimum/20–28” no harvest slot will be extended until 2014 to enable the Department to fully evaluate the efficiency of the regulation.

4. Prohibit recreational harvest of live freshwater mussels from inland waters of the state, excluding the Great Lakes and the Mississippi River.

5. Establish a catch-and-release only fishery for lake sturgeon in the Menominee River downstream from the Hattie St. dam, and modify the minimum length limit for lake sturgeon above the Hattie St. dam to coincide with recently approved changes to Michigan regulations.

6. Simplify walleye regulations in the Menominee River below the Hattie St. dam and in waters of Green Bay, to provide consistent regulations for anglers fishing either Wisconsin or Michigan waters.

7. Revise opening date for game fish season on the St. Croix River to provide anglers with an opening date consistent between Wisconsin and Minnesota waters.

8. Revise the minimum length limit for sauger on the St. Louis River to provide anglers with a regulation consistent in Wisconsin and Minnesota waters.]

9. Prohibit possession or use of a sinker release device while fishing in waters of the state.

10. Revise code to allow individuals younger than 16 years old to take, possess and control turtles without the requirement to hold a valid fishing or small game license.

11. Modify removal dates for ice shanties from March 1 (south of Hwy. 64) and March 15 (north of Hwy. 64) to “the first Saturday following March 1 and the first Saturday following March 12, respectively”.

12. Expand the list of waters where bowfishing is permitted between sunset and sunrise.

13. Replace the 14” minimum size limits for largemouth and smallmouth bass in Pigeon Lake, Bayfield County, with a 14–18” no–harvest slot regulation and reduce the daily bag limit from 5 fish to 3 fish.

14. Extend sunset provision for 18” minimum/3 fish daily bag limit for walleye in Beaver Dam Lake, Dodge County, to enable the Department to fully evaluate the impacts of the regulation. This proposal will also encompass all Beaver Dam Lake tributary streams, which were inadvertently excluded from the original rule.

15. Increase the minimum length limit for walleye in Kangaroo Lake, Door County, from 15” to 18” and reduce the daily bag limit from 5 fish to 3 fish.

16. Increase the minimum size limits for largemouth and smallmouth bass in Muskellunge Lake, Lincoln County, from 14” to 18” and reduce the daily bag limit from 5 fish to one fish.

17. Replace the 18” minimum size limits for largemouth and smallmouth bass in Pigeon Lake, Bayfield County, with a 14–18” no–harvest slot regulation and increase the daily bag limit from one fish to 3 fish.

18. Increase the minimum size limit for muskellunge in Pelican Lake, Oneida County, from 34” to 50”.

19. Replace the current 14” minimum size limits for largemouth and smallmouth bass with no minimum size limit in Big Butternut Lake, Polk County.

20. Replace the 14” minimum size limits for largemouth and smallmouth bass with no minimum size limit in Nelson Lake, Sawyer County.

21. Increase the minimum length limit for northern pike in Nelson Lake, Sawyer County, from “no minimum” to 32”, and reduce the daily bag limit from 5 fish to one fish.

22. Reduce the daily bag limit for panfish in Smith lake, Sawyer County, from 25 fish to 10 fish.

23. Increase the minimum size limits for largemouth and smallmouth bass in Kentuck Lake, Vilas County, from 14” to 18” and reduce the daily bag limit from 5 fish to one fish.

24. Increase the minimum size limits for smallmouth bass in Palette Lake, Vilas County, from 16” to 22” and reduce the daily bag limit from 2 fish to one fish.

25. Extend open trout season in Gilbert, Pine and Pearl Lakes, Waushara County, to coincide with regular gamefish season.

26. Remove special regulations for northern pike and muskellunge in Long Lake, Waushara County, and revert to statewide standard regulations.

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

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

NOTICE IS HEREBY FURTHER GIVEN that at 7:00 p.m. on Monday, **April 10, 2006**, the County Conservation Congress for each county will hold its election of delegates. Upon completion of the delegate election, the joint Spring Hearing/Conservation Congress meeting will convene to take comments on the foregoing rule modifications.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on Monday, April 10, 2006 at 7:00 p.m. at the following locations:

Adams – Adams–Friendship Middle School, Gymnasium, 420 North Main Street, Friendship

Ashland – Ashland Senior High School, Auditorium, 1900 Beaser Avenue, Ashland

Barron – Barron County Courthouse, Auditorium, 330 E. Lasalle Ave., Barron

Bayfield – Bayfield County Courthouse, 117 E. 5th, Washburn

Brown – West High School, Auditorium, 966 Shawano Avenue, Green Bay

Buffalo – Alma High School, Auditorium, S1618 STH 35, Alma

Burnett – Room #165, Siren Government Center, 7410 County Road K, Siren

Calumet – Chilton Public High School, Auditorium, 530 West Main Street, Chilton

Chippewa – Chippewa Falls Middle School, Auditorium A, 750 Tropicana Blvd., Chippewa Falls

Clark – Greenwood High School, West Gym, 306 W. Central Ave., Greenwood

Columbia – Portage Junior High School, 2505 New Pinery Road, Portage

Crawford – Prairie du Chien High School, Auditorium, 800 East Crawford Street, Prairie du Chien

Dane – Alliant Energy Center, 1919 Alliant Energy Way, Madison

Dodge – Horicon City Hall, 404 E. Lake Street, Horicon

Door – Sturgeon Bay High School, Auditorium, 1230 Michigan Street, Sturgeon Bay

Douglas – Solon Springs High School, Gymnasium, 8993 E. Balwin Ave., Solon Springs

Dunn – Dunn County Fish & Game Club, 1900 Pine Ave., Menomonie

Eau Claire – South Middle School, Auditorium, 2115 Mitscher Ave., Eau Claire

Florence – Florence Natural Resource Center, Large Conference Room, Highway 101/70, Florence

Fond du Lac – Theisen Jr. High School, Auditorium, 525 E. Pioneer Rd., Fond du Lac

Forest – Crandon High School, Auditorium, 970 USH 8 W, Crandon

Grant – Lancaster High School, Hilary Auditorium, 806 E. Elm St., Lancaster

Green – Monroe Middle School, Auditorium, 1510 13th Street, Monroe

Green Lake – Green Lake High School, Multi-purpose room, 612 Mill Street, Green Lake

Iowa – Dodgeville High School, Gymnasium, 912 West Chapel Street, Dodgeville

Iron – Mercer Community Center, 2448 West Margaret, Mercer

Jackson – Black River Falls Middle School, LGI Room, 1202 Pierce Street, Black River Falls

Jefferson – Jefferson County Fair Park, Activity Center, 503 N. Jackson, Jefferson

Juneau – Mauston High School, Gymnasium, 800 Grayside Ave., Mauston

Kenosha – Bristol Grade School, Gym, 20121 83rd Street, Bristol

Kewaunee – Kewaunee High School, Theatre, 911 3rd Street, Kewaunee

La Crosse – Onalaska High School, Auditorium, 700 Wilson Street, Onalaska

Lafayette – Darlington High School, Auditorium, 11838 Center Hill Road, Darlington

Langlade – Antigo High School, Volm Theater, 900 10th Avenue, Antigo

Lincoln – Tomahawk Elementary School, Auditorium, 1048 E. Kings Road, Tomahawk

Manitowoc – UW–Manitowoc, Theater, 705 Viebahn Street, Manitowoc

Marathon – Wausau West High School, 1200 West Wausau Ave., Wausau

Marinette – Crivitz High School, Auditorium, 718 Hall Hay Street, Crivitz

Marquette – Montello High School, Varsity Gym, 222 Forest Lane, Montello

Menominee – Menominee County Courthouse, Basement, Courthouse Lane, Keshena

Milwaukee – Bayfield High School, Auditorium, 2751 South Lenox Street, Milwaukee

Monroe – Tomah High School, Gym, 901 Lincoln Avenue, Tomah

Oconto – Suring High School, Cafeteria, 411 E. Algoma Street, Suring

Oneida – James Williams Junior High, Auditorium, 915 Aracia, Rhinelander

Outagamie – Riverview Middle School, Auditorium, 101 Oak Street, Kaukauna

Ozaukee – Webster Middle School, Commons, W75 N624 Wauwatosa Rd., Cedarburg

Pepin – Pepin County Government Center–Co., Board Room, 740 7th Avenue, W. Durand

Pierce – Ellsworth Senior High School, Auditorium, 323 Hillcrest, Ellsworth

Polk – Unity High School, Gymnasium, 1908 150th Street/Hwy 46, Balsam Lake

Portage – Ben Franklin Jr. High School, Auditorium, 2000 Polk Street, Stevens Point

Price – Phillips High School, Auditorium, 990 Flambeau Avenue, Phillips

Racine – Union Grove High School, Auditorium, 3433 S. Colony Avenue, Union Grove

Richland – Richland Center High School, Auditorium, 23200 Hornet High Drive, Richland Center

Rock – Loyal Order of Moose Lodge, 2701 Rockport Road, Janesville

Rusk – Ladysmith High School, Cafeteria, 1700 Edgewood Avenue East, Ladysmith

Saint Croix – Indianhead Technical College, Cashman Auditorium, 1019 S. Knowles Ave., New Richmond

Sauk – UW–Baraboo/Sauk County, 1006 Connie Road, Room A4, Baraboo

Sawyer – Winter High School, Auditorium, 6585 Grove Street, Winter

Shawano – Shawano Community Middle School, LG 1, 1050 S. Union Street, Shawano

Sheboygan – Sheboygan Falls High School, Auditorium, 220 Amherst Ave., Sheboygan Falls

Taylor – Taylor County Multi-Purpose Building, Intersection of Hwy 64&13, Medford

Trempealeau – Whitehall City Center, Gymnasium, 36245 Park Street, Whitehall

Vernon – Viroqua High School, Auditorium, Viroqua

Vilas – Sayner Community Center, Golf Course Road, Sayner

Walworth – Delavan/Darien High School, 150 Cummings, Delevan

Washburn – WI Ag Research Station, Conference Room, W6646 Hwy 70, Spooner

Washington – Washington County Fair Park, Exhibit Hall, 3000 Hwy PV, West Bend

Waukesha – Waukesha South High School, Auditorium, 401 E. Roberta Ave., Waukesha

Waupaca – Waupaca High School, Auditorium, E2325 King Road, Waupaca

Waushara – Waushara County Courthouse, County Board Room, 2nd Floor, Room 265, 209 S. St. Marie St., Wautoma

Winnebago – Webster Stanley Middle School, Auditorium, 915 Hazel St., Oshkosh

Wood – Pittsville High School, Auditorium, 5459 Elementary Avenue, Pittsville

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call AnnMarie Kutzke at (608) 266-2952 with specific information on your request by April 3, 2006.

The proposed rules and fiscal estimates may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed hunting and trapping regulations may be submitted via U.S. mail to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Written comments on the proposed fishing regulations may be submitted via U.S. mail to Mr. Joe Hennessy, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707. Written comments shall be postmarked not later than April 11, 2006. Written comments whether submitted electronically or by U.S. mail will NOT, however, be counted as spring hearing votes.

Notice of Hearing Natural Resources

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (intro.), 23.091, 23.11 (1), 23.28 (3), 27.01 (2) (j), 227.11 (2) (a) and 227.24, Stats., interpreting ss. 23.09 (2) (intro.), 23.091, 23.11 (4), 23.175, 23.28 (3), 23.393, 27.01 (2) (i) and (j) and 28.04(2), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Order No. FR-20-06(E) creating s. NR 45.04 (1) (g), Wis. Adm. Code, relating to the regulation of firewood entering and exiting Department lands. The effective date of the emergency order is April 1, 2006. The rule prohibits a person from possessing firewood that originates from outside the borders of Wisconsin. Firewood includes all wood, processed or unprocessed, meant for use in a campfire. The purpose of the emergency rule is to regulate firewood entering properties managed by the Department to reduce the risk of introduction and spread of emerald ash borer and other invasive insects and diseases of trees.

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

Monday, **April 17, 2006** at 7:00 p.m.

Video conference participation will be available at:

Room 130, Manufacturing Ed Center, Chippewa Valley Tech., 2320 Alpine Rd., Eau Claire

SC207, Northeastern WI Tech., 2740 W. Mason Street, Green Bay

102 Wing Communications, UW-LaCrosse, 1725 State Street, La Crosse

Room 227, Pyle Center, 702 Langdon Street, Madison

Room S120, MATC-Milwaukee, 700 State Street, Milwaukee

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dr. Andrea Diss Torrance at (608) 264-9247 with specific information on your request at least 10 days before the date of the scheduled hearing.

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the emergency rule may be submitted via U.S. mail to Dr. Andrea Diss Torrance, Bureau of Forest Science, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 5, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Dr. Diss Torrance.

Notice of Hearing Natural Resources

[CR 06-027]

NOTICE IS HEREBY GIVEN that pursuant to ss. 77.06 (2), 77.82 (3) (c), 77.91 (1) and 227.11 (2) (a), Stats., interpreting s. 77.06 (2) and subch. VI, ch. 77, Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 46.18 and 46.30, Wis. Adm. Code, relating to the administration of the Forest Crop Law and the Managed Forest Law. Sections 77.06 (2) and 77.91 (1), Stats., require that the Department establish stumpage rates (values)

used in calculating severance and yield taxes on timber harvested from land enrolled in the Forest Crop Law (FCL) and managed Forest Law (MFL). This rule would repeal and recreate s. NR 46.30 (2) (a) to (c) to revise the stumpage values to be used in calculating severance taxes and yield taxes for timber harvested during the period of November 1, 2005 and October 31, 2006. Thirteen separate zones reflect varying stumpage values for different species and products across the state. The average change for sawtimber is a 7% increase over current rates. The pulpwood prices, on average, would increase 20%. Stumpage values are collected from private, state and county timber sales to be used in calculating the proposed stumpage rates.

In addition to the stumpage value changes, "mixed product" stumpage rates for red pine, white pine and spruce are added to reflect changes in how products are being sold and keep product reporting in line with public land reporting; the weight conversion factor for red pine (green weight) is adjusted from 4700 to 4500 to bring it in line with the weight conversion factor used for public lands; and the mandatory practices related to release from competing vegetation and treatments to insure adequate regeneration are updated.

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

a. Types of small businesses affected: Any business with land enrolled in either the Managed Forest Law or the Forest Crop Law.

b. Description of reporting or bookkeeping procedures required: No procedures not already required.

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

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

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

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

Wednesday, **April 19, 2006** at 1:00 p.m.

Council Chambers, Wausau City Hall, 407 Grant Street, Wausau

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

Fiscal Estimate

There is no fiscal impact to state revenues. There is an estimated increase in local revenues of \$293,000 due to increase in stumpage rates.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the

proposed rule may be submitted via U.S. mail to Ms. Carol Nielsen, Forest Tax Section, Bureau of Forest Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 24, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Nielsen.

Notice of Hearings
Natural Resources
[CR 06-022]

NOTICE IS HEREBY GIVEN that pursuant to ss. 26.385 and 227.11 (2) (a), Stats., interpreting s. 26.385, Stats., the Department of Natural Resources will hold public hearings on the creation of s. NR 47.93, Wis. Adm. Code, relating to the forestry research and development grant program. 2005 Wisconsin Act 25 created s. 26.385, Stats., which authorizes the department to promulgate rules for the forestry research and development grant program. The proposed s. NR 47.93 will establish the purpose, applicability, definitions, grant solicitation and public notice, contractor selection criteria and grant agreement provisions of the program. The intent of the program is to provide grants to organizations experienced in the commercialization of energy technologies related to forestry biomass as energy and biochemical sources. The program will further the development of alternative renewable energy sources to benefit public health and the environment. The forestry research and development grant program will only provide state match grants required for federal grant programs for forestry biomass research and development.

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

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

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 26.385, 227.11 (2) (a) and 227.24, Stats., interpreting s. 26.385, Stats., the Department of Natural Resources will hold public hearing on Natural Resources Board Emergency Order No. FR-17-06(E) relating to the forestry research and development grant program. This emergency order took effect on March 16, 2006. The emergency order is identical to the proposed permanent rule.

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

Monday, **April 24, 2006** at 10:00 a.m.
Council Chambers, Wausau City Hall
407 Grant Street
Wausau

Wednesday, **April 26, 2006** at 9:30 a.m.

Room G09, GEF #2, 101 South Webster Street
Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Terry Mace at (608) 231-9333 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule, emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the rules may be submitted via U.S. mail to Mr. Terry Mace, Bureau of Forestry Services, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 5, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Mace.

Notice of Hearings
Natural Resources
[CR 06-024]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.201, 295.12 and 227.11 (2) (a), Stats., interpreting s. 30.201 and subch. I of ch. 295, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 135 and 340, Wis. Adm. Code, relating to the reclamation of nonmetallic mining sites. The proposed revisions:

Remove "start-up" language from the rule. These rule changes will make some minimal changes to uniform statewide reclamation standards for nonmetallic mines and some important changes to administrative procedures to program administered by county the local government. In addition, the "start-up" language that is no longer applicable will be removed from the rule. Numerous provisions were included in the original rule for special permitting and review processes for nonmetallic mining operations that were active when the mine reclamation program began. These are no longer necessary or applicable and should be removed.

Clarify and simplify through improvements to fee collection and timing of annual report submittal. Currently operators pay fees by anticipating unreclaimed acreage in the upcoming year and provide annual reports based upon the previous year. The proposed language revises s. NR 135.39 so that only one deadline is required for both fee submittal and for the submittal of the annual report. In addition, both fees and the report will now be based on unreclaimed acreage in the previous year.

Fee increase. Fee increase are proposed in the rule to reflect adjustments for inflation. This will affect the portion of the fees collected by regulatory authorities which are forwarded to the DNR to cover its administrative costs. In addition, fees that the DNR would assess if the DNR was forced to become the regulatory authority would also be adjusted. To date the DNR has not been required to assume the contingency role as the regulatory authority.

Dispute resolution. Currently DNR can work to assist in the resolution of disputes between nonmetallic mine operators and their regulatory authority. Under the current rule language, the process and the outcomes of this resolution are vague. The proposed revisions to s. NR 135.52 clarify the roles of each party, the steps to be taken and corresponding timeframes. The proposed revisions will require the DNR to provide a written opinion, but not a binding decision.

Clarify language based on experience. The proposed revisions include various minor wording changes to rule language that address very specific issues which have arisen over the past five years as well as several changes to definitions. One of these changes relates to the safety and stability of slopes that exceed 3:1 after site reclamation. Several minor changes to reclamation plan submittal requirements, public hearings, conditional approvals and explanatory notes are also proposed.

Harmonize financial assurance with ch. NR 340 on nonmetallic mining and reclamation associated with navigable waterways and adjacent areas. The use of additional options that can be employed to satisfy ch. NR 340 financial assurance requirements, as provided in recent statutory changes. The anticipated changes to ch. NR 340 will reflect the mandated changes to s. 30.203, Stats., and will also make the financial assurance provisions of ch. NR 340 more consistent with corresponding provisions of ch. NR 135.

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

- a. Types of small businesses affected: Nonmetallic mines
- b. Description of reporting and bookkeeping procedures required: No new requirements
- c. Description of professional skills required: No new requirements.

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

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

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

Thursday, **April 13, 2006** at 1:00 p.m.

Council Chambers, Wausau City Hall, 407 Grant Street, Wausau

Friday, **April 14, 2006** at 1:00 p.m.

Room G09, GEF #2, 101 South Webster Street
Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Thomas Portle at (608) 267-0877 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Thomas Portle, Bureau of Waste Materials & Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 28, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and

effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Portle.

Notice of Hearings Natural Resources [CR 06-023]

NOTICE IS HEREBY GIVEN that pursuant to ss. 281.59 and 289.61, Stats., interpreting s. 281.59 and 281.61, Stats., the Department of Natural Resources will hold a public hearing on the repeal of chs. NR 127, 128 and 160 and the repeal and recreation of ch. NR 166, Wis. Adm. Code, relating to the Safe Drinking Water Loan Program. Chapters NR 127, 128 and 160 were the rules for grant programs that have been obsolete for more than 10 years due to changes in federal regulations and state statutes. Repealing these codes should eliminate any confusion their existence may cause about available funding programs.

Chapter NR 166 is being repealed and recreated to clarify the eligibility, procurement, amendment and scoring sections of the rule. The updated rule includes new subsections in the eligibility and amendments section of ch. NR 166 to write existing program policies into the rule. In addition, language is added to limit the refinancing of local governmental units' existing debt on projects that are already constructed. Some inconsistencies between ch. NR 162 on the Clean Water Fund program and ch. NR 166 are eliminated making administration of the two programs more efficient.

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

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

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

Wednesday, **April 12, 2006** at 10:00 a.m.

Video conference participation will be available at:

Room G11, GEF #2 State Office Building
101 South Webster St.
Madison

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

Room 318, State Office Building
200 N. Jefferson Street
Green Bay

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable

accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jeanne Cargill at (608) 267-7587 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no state or local fiscal impact.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Jeanne Cargill, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 26, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Cargill.

Notice of Hearings Natural Resources

[CR 06-026]

NOTICE IS HEREBY GIVEN that pursuant to ss. 289.05, 289.06, 289.07 and 227.11 (2) (a), Stats., interpreting ss. 289.24, 289.30 and 289.61, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 504, 506, 512, 514, 516 and 520, Wis. Adm. Code, relating to landfilling of solid waste. The requirement for landfill operators to submit landfill organic stability plans was approved in Natural Resources Board Order No. WA-47-04 (Clearinghouse Rule No. 04-077). When the Natural Resources Board adopted the rule on March 23, 2005, the Board directed DNR staff to draft more detailed rules for the landfill organic stability plans. Landfill organic stability plans will reduce the environmental and public health risks posed by the long-term persistence of undecomposed organic materials in landfills. These rule revisions contain requirements for the minimum contents of the plans; a set of goals for the landfill operator to use to model the chosen strategy for achieving organic stability; monitoring, evaluation and reporting requirements; and definitions specifying to which landfills these rules apply. The proposed rules attempt to establish achievable goals and an even playing field for landfill operators while remaining non-prescriptive about the methods the operators use to achieve the goals.

The proposed rule also corrects non-substantive rule drafting and style errors inadvertently left in the previous rule package. It also makes one substantive but minor change in the testing requirements for the newly installed landfill liners.

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

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

Department's consideration of the impacts of the proposal and reasonable alternatives.

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

Tuesday, **April 11, 2006** at 1:00 p.m.

Room 150 & 185, DNR West Central Region Hdqrs., 1300 W. Clairemont, Eau Claire

Wednesday, **April 12, 2006** at 10:00 a.m.

Room 162 West Wing, State Office Building, 141 NW Barstow, Waukesha

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Janet DiMaggio at (608) 264-6001 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Gene Mitchell, Waste and Material Supervisor, 3911 Fish Hatchery Road, Fitchburg, WI 53711. Comments may be submitted until April 21, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Janet DiMaggio, Bureau of Waste Materials and Management, P.O. Box 7921, Madison, WI 53707.

Notice of Hearings Natural Resources

[CR 06-025]

NOTICE IS HEREBY GIVEN that pursuant to ss. 289.61 and 227.11 (2) (a), Stats., interpreting s. 289.61, Stats., the Department of Natural Resources will hold public hearings on the amendment of s. NR 520.04 (1) (d) 5., Wis. Adm. Code, relating to balances in the Waste Management Program Revenue Account. The intent of the proposed rule is to make the rule more manageable from a budgeting perspective. The current rule requires the Department to modify the landfill license surcharge fee if the account balance is greater than 8% of the expenditure level for the previous fiscal year. The proposed rule will revise the language to require the Department to modify the surcharge fee to more closely align revenues with expenditures if the account balance exceeds 20% of the expenditure level of the program revenue account for 3 consecutive fiscal years.

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

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

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

Tuesday, **April 18, 2006** at 10:00 a.m.
Room 511, GEF #2
101 South Webster Street, Madison

Wednesday, **April 19, 2006** at 10:00 a.m.
Conference Room #1, Portage Co. Courthouse Annex
1462 Strongs Ave., Stevens Point

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dennis Mack at (608) 267-9386 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Dennis Mack, Bureau of Waste Materials and Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 22, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Mack.

Notice of Hearing Veterans Affairs [CR 06-020]

The Wisconsin Department of Veterans Affairs announces that a public hearing will be held on the 21st day of April, 2006, at 9:45 a.m., at the Stone Harbor Resort and Conference Center, 107 North First Avenue, Sturgeon Bay, Wisconsin on amendments to chapter VA 16, Wis. Adm. Code, relating to the county transportation services grant program.

Analysis Prepared by the Department of Veterans Affairs

Statutory authority: ss. 45.03 (2) and 45.83 (2), Stats.

Statute interpreted: s. 45.83, Stats.

Explanation of agency authority: The legislature has authorized the department to award grants to counties not served by the Wisconsin department of Disabled American Veterans to develop, maintain, and expand veterans transportation services. The statute explicitly directs the department to promulgate administrative rules specifying the application procedure and eligibility criteria.

Related statute or rule: None.

Plain language analysis: The proposed order would require counties that have an ongoing transportation program and who do not intend to expand the program by more than 50% to provide data for a prior 12-month period. Under the current rule, counties are required to estimate mileage during the grant year. The amendments will provide more certainty to the grant calculation process.

Summary of, and comparison with, existing or proposed federal regulations: There is no current or pending federal regulation that addresses this initiative.

Comparison with rules in adjacent states: There are no similar rules in adjacent states.

Summary of factual data and analytical methodologies: The department reviewed data from counties receiving the grant over the last several years. Based upon that review, and at the request of the county veterans service officers association, the department determined that using actual data to calculate the grant was appropriate, inasmuch as the existing transportation programs have maintained their relative share of the funding. However, recognizing that some programs may be initiated or significantly expanded, use of prospective data was retained in the rule.

Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact statement: The department has prepared a fiscal estimate in which it was concluded that the rule changes would have no fiscal impact. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal impact upon the private sector.

Effect on small business: None.

Agency Contact

John Rosinski, Chief Legal Counsel, at (608) 266-7916 or john.rosinski@dva.state.wi.us.

Place where comments are to be submitted and deadline for submission: To the agency contact person at Wisconsin Department of Veterans Affairs, 30 West Mifflin Street, P.O. Box 7843, Madison, WI 53707-7843 within 7 days after the public hearing scheduled for April 21, 2006.

Initial Regulatory Flexibility Analysis

The proposed rule has no effect upon small businesses.

Fiscal Estimate

The proposed rule has no fiscal impact. A copy of the full fiscal estimate may be obtained by contacting the agency contact person, John Rosinski, as indicated above.

TEXT OF RULE

SECTION 1. VA 16.01 (3) is amended to read: VA 16.01 (3) "Grant" means a transportation services grant authorized under ~~s. 45.43 (7m)~~ s.45.83, Stats.

SECTION 2. VA 16.02 (1) is amended to read:

VA 16.02 (1) APPLICATION. An applicant shall file an application with the department ~~not later than March 1, 2003 for a grant for calendar year 2003 and by November 1, 2003 and each subsequent calendar year~~ November 1st immediately preceding the calendar year for which a grant is sought. ~~The~~ Except as provided in sub. (4), the application shall provide sufficient information to establish that the applicant meets the eligibility criteria in sub. (2) and shall be submitted with the following items:

SECTION 3. VA 16.02 (1) (a) is amended to read:

VA 16.02 (1) (a) A financial statement, including a report of all expenses and revenue of the applicant relating to the provision of transportation services to veterans to medical appointments arranged or conducted by the U.S. Department of Veterans Affairs during the ~~most recently completed calendar year~~ 12-month period completed on June 30th of the year in which the application is submitted.

SECTION 4. VA 16.02 (1) (b) is amended to read:

VA 16.02 (1) (b) A statement which outlines the applicant's veterans' ~~proposed transportation program for the calendar year for which the grant is sought~~ 12-month period completed on June 30th of the year in which the application is submitted, including an itemization of the amount ~~budgeted~~ expended for the program, a description of the manner in which the applicant ~~will coordinate~~ coordinated and ~~schedule~~ scheduled trips, a description of the methods of transportation, and a statement of the program fees, if any, which ~~will be~~ were assessed to the veteran who receives the transportation services.

SECTION 5. VA 16.02 (1) (c) is amended to read:

VA 16.02 (1) (c) A report that identifies the number of veterans transported and the number of miles veterans were transported during the ~~most recently completed calendar year~~ 12-month period completed on June 30th of the year in which the application is submitted.

SECTION 6. VA 16.02 (3) is amended to read:

VA 16.02 (3) GRANT AMOUNT. The amount of a grant for each applicant shall be determined based upon the number of miles that eligible veterans were transported by the applicant during the 12-month period completed on June 30th of the year in which the application is submitted, or, if the applicant qualifies under sub. (4), the number of miles that eligible veterans are expected to be transported by the applicant during the subsequent calendar year, as determined by the department. Each eligible applicant shall be entitled to a grant based upon its pro rata share of miles among all eligible applicants, except that a grant may not exceed the unreimbursed expenditures of the applicant for transportation services for the grant year.

SECTION 7. VA 16.02 (4) is created to read:

VA 16.02 (4) NEW OR EXPANDED VETERANS' TRANSPORTATION PROGRAMS. If a county did not operate a veterans' transportation program during the entire 12-month period completed on June 30th of the year in which the application is submitted, or if a county proposes to expand an existing program by increasing the number of miles that veterans are transported by at least 50%, it may submit an application based on the number of estimated miles it expects to transport veterans during the subsequent calendar year. The applicant shall submit a statement which outlines the applicant's proposed transportation program for the calendar year for which the grant is sought, including an itemization of the amount budgeted for the program, a description of the manner in which the applicant will coordinate and schedule trips, a description of the methods of transportation, an estimate of the number of miles veterans will be transported during the grant year, and a statement of the program fees, if any, which will be assessed to the veteran who received the transportation services. The department may subsequently reduce future grants to recover any portion of the grant allocated to the amount that the estimated miles exceed actual miles provided by the county.

Submittal of proposed rules to the legislature

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

Employment Relations Commission

(CR 02–037)

Chs. ERC 1–18, 19, 20–25, 26–28, 30–33, 40 and 50, relating to the administration of collective bargaining laws.

Veterans Affairs

(CR 05–103)

Ch. VA 13, relating to the veterans assistance program.

Revenue

(CR 05–117)

Ch. Tax 2, relating to the computation of the apportionment fraction by multistate public utilities and telecommunications companies.

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.

**Agriculture, Trade and Consumer Protection
(CR 05-014)**

An order affecting ch. ATCP 51, relating to livestock facility siting.
Effective 5-1-06 and 7-1-06.

**Agriculture, Trade and Consumer Protection
(CR 05-068)**

An order affecting chs. ATCP 99, 100 and 101, relating to agricultural producer security.
Effective 5-1-06.

**Educational Approval Board
(CR 05-112)**

An order affecting ch. EAB 4, relating to student protection fees paid by schools subject to the approval of the EAB.
Effective 5-1-06.

**Insurance
(CR 05-099)**

An order affecting ch. Ins 8, relating to the small employer uniform employee application for group health insurance.
Effective 5-1-06.

**Technical College System Board
(CR 05-107)**

An order affecting ch. TCS 17, relating to training program grants.
Effective 5-1-06.

**Workforce Development
(CR 02-137)**

An order affecting ch. DWD 100, relating to unemployment insurance availability.
Effective 5-1-06.

**Workforce Development
(CR 05-067)**

An order affecting ch. DWD 278, relating to garnishment.
Effective 5-1-06.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **March 31, 2006**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 05-051)

An order affecting chs. MPSW 16 and 17, relating to supervised clinical practice and temporary licenses issued by the Marriage and Family Therapist section. Effective 4-1-06.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 05-072)

An order affecting ch. NR 485, relating to motor vehicle emission limitations and tampering with motor vehicle air pollution control equipment. Effective 4-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rule may affect small businesses that own motor vehicles subject to inspection and small businesses that repair motor vehicles that fail the I/M inspection. Under the proposed rule, slightly fewer vehicles would fail the I/M inspection. This may lower vehicle repair costs for some small businesses that own motor vehicles but may also result in a slight decrease in business for some small businesses that repair motor vehicles.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 05-085)

An order affecting chs. NR 20 and 25, relating to sport fishing for yellow perch in Green Bay and its major tributaries and all other tributary streams, rivers and ditches to Green Bay, and to commercial fishing for yellow perch in zone 1 (Green Bay). Effective 4-1-06.

Summary of Final Regulatory Flexibility Analysis

Commercial fishing businesses would be directly affected by the rule, but would not be subject to any new reporting, bookkeeping or other procedures. Commercial fishers for yellow perch can expect an increase in income due to the increased quota.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 05-088)

An order affecting ch. NR 19, establishing hunter education fees. Effective 4-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rule does not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **March 2006**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

Ch. MPSW 16
S. MPSW 16.03
Ch. MPSW 17
S. MPSW 17.01

Ch. NR 20

S. NR 20.20 (73) (j)

Ch. NR 25

S. NR 25.06 (2) (b)

Ch. NR 485

S. NR 485.04 Table 1 (4) and (5)
S. NR 485.06 (2)

Natural Resources

Ch. NR 19
S. NR 19.50

Editorial corrections

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

Natural Resources

Ch. NR 20
S. NR 20.03 (28m)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 141. Relating to increased utilization of renewable fuels in vehicles owned and operated by the State of Wisconsin.

Public notices

Health and Family Services (Medical Assistance Reimbursement of Nursing Homes) State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 05–06

The State of Wisconsin reimburses Medicaid–certified nursing facilities for long–term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State’s Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

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

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$3,047,400 all funds, (\$1,762,000 FFP), excluding patient liability.

The proposed change is being implemented to comply with Wisconsin Statutes governing Medicaid payment systems.

The proposed change is as follows:

Disburse \$3,047,499 all funds excluding patient liability, as a one time manual payment, to nursing facilities with active provider numbers as of April 30, 2006 based on the number of Medicaid patient days they incurred during state fiscal year 2004–2005. State– and tribal–owned or operated facilities are excluded from this payment.

Copies of the Proposed Changes:

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing
Attention: Nursing Home Medicaid Payment Plan
P.O. Box 309
Madison, WI 53701–0309

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

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

Written Comments/Meetings:

Written comments on the proposed changes may be sent to the Division of Health Care Financing, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed changes based on comments received at these forums.

Health and Family Services
(Medical Assistance Reimbursement of Hospitals)

The State of Wisconsin reimburses hospitals for medical services provided to Medical Assistance recipients under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the Wisconsin Department of Health and Family Services (the Department), is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect for inpatient hospital services and another section is in effect for outpatient hospital services. The Department is proposing changes to existing sections of the Medicaid state plan for inpatient and outpatient hospital services that describe cost-based funding of governmental hospitals. The changes will be effective April 1, 2006.

Changes in the state plan for reimbursement for inpatient services include modification of Section 8000, Funding of a Medicaid Deficit in Governmental Hospitals to clarify the methodology used to determine a Medicaid loss for qualifying hospitals under the provision. The estimated fiscal effect of these changes in State Fiscal Year 2005–06 is approximately \$3.5 million all funds, comprised of \$2 million federal financial participation (FED) and \$1.5 million state expenditures.

Changes in the state plan for reimbursement for outpatient services include modification of Section 7000, Funding of a Medicaid Deficit in Governmental Hospitals to clarify the methodology used to determine a Medicaid loss for qualifying hospitals under the provision. The estimated fiscal effect of these changes in State Fiscal Year 2005–06 is approximately \$1.5 million all funds, \$900,000 FED and \$600,000 state expenditures.

Copies of Proposed Changes and Proposed Payment Rates

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Hospitals, Physicians and Clinics Section
Division of Health Care Financing
P.O. Box 309
Madison, WI 53701–0309
Fax: (608) 266–1096

Written comments on the proposed changes should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Financing
Room 350, State Office Building
One West Wilson Street
Madison, WI

Notice of suspension of administrative rules

Joint Committee for Review of Administrative Rules

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 1, 2006, and adopted the following motions:

1. The Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 6. and 227.26 (2) (d), Stats., suspends s. Ins 9.32 (2) (c) and (e) 1. and the phrase “(c) and” in s. Ins 9.33.

Motion Carried 10 Ayes, 0 Noes

2. The Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 6. and 227.26 (2) (d), Stats., suspends s. Ins 9.32 (2) (f).

Motion Carried 6 Ayes, 4 Noes

3. The Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 6. and 227.26 (2) (d), Stats., suspends s. Ins 9.25 (4).

Motion Carried 6 Ayes, 4 Noes

4. The Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 1., 3., and 6. and 227.26 (2) (d), Stats., suspends all of the following:

a. Section Ins 9.01 (10m).

b. The phrase “or limited scope plan” in ss. Ins 9.01 (9m), 9.20 (intro.) (second occurrence), and 9.42 (1) (second occurrence).

c. The phrase “or limited scope” in ss. Ins. 9.01 (5) and (13), 9.20 (intro.) (first and second occurrences), 9.41, and 9.42 (1) (first occurrence) and (5) (a).

Motion Carried 8 Ayes, 1 Noes

5. The Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 6. and 227.26 (2) (d), Stats., suspends part of s. Ins 9.32 (2) (a) as follows:

Ins 9.32 (2) (a) Provide covered benefits by participating providers with reasonable promptness with respect to geographic location, hours of operation, waiting times for appointments in provider offices and after hours care. ~~The hours of operation, waiting times, and availability of after hours care shall reflect the usual practice in the local area.~~ Geographic availability shall reflect the usual medical travel times within the community. This does not require an insurer offering a preferred provider plan to offer geographic availability of a choice of participating providers.

Motion Carried 6 Ayes, 4 Noes

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