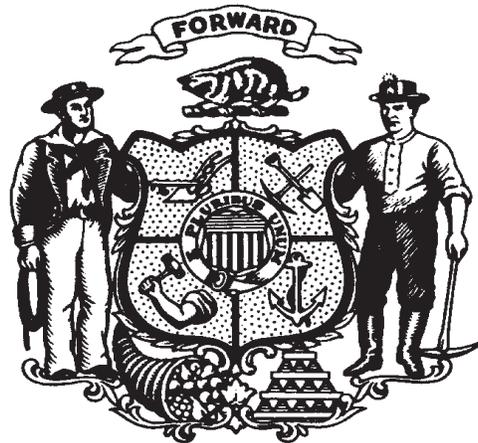


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Emergency rules now in effect

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.

Administration

Rules adopted revising **ch. Adm 10**, relating to cost benefit analyses of contractual services.

Exemption from Finding of Emergency

Section 8(2) of 2005 Wisconsin Act 89 requires the Department of Administration to promulgate rules required under ss. 16.004 (1), 16.705 (2) and 227.11 Stats., by using the emergency rulemaking procedure under s. 227.24, Stats., except that the department is not required to provide evidence that the emergency rule is necessary for the preservation of public peace, health, safety or welfare and is not required to provide a finding of emergency.

Plain language analysis

The department intends to promulgate a rule as required by Act 89 to require a cost–benefit analysis to be completed for each bid or request for proposal to compare the cost of contracting for services versus providing the services with state employees.

Currently, all state agencies and UW System campuses may contract for services between \$25,000 and \$200,000 if they can show that the services can be performed more economically or efficiently by such a contract than by state employees. Currently, if the contractual services would be greater than \$200,000, the contracting agency must complete a more rigorous and detailed cost/benefit analysis to demonstrate that the services can be performed more economically or efficiently by such a contract than by state employees. This more rigorous and detailed analysis includes total cost, quality and nature of services required, specialized

skills, time factors, risk factors and legal barriers. Act 89 requires agencies to conduct uniform cost–benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000 in accordance with standards prescribed in the rules. Cost benefit–analysis is defined to include total cost, quality, technical expertise and timeliness of a service.

Act 89 also requires agencies to review periodically, and before any renewal, the continued appropriateness of contracting under each services agreement involving an estimated expenditure of more than \$25,000. Act 89 requires the department to complete an annual summary report of the cost benefit–analysis prepared by state agencies in the preceding fiscal year and recommendations for elimination of unneeded contractual service procurements and for the consolidation or resolicitation of existing contractual service procurements.

Publication Date: July 1, 2006

Effective Date: July 1, 2006

Expiration Date: See section 8 (2) of 2005 Wis. Act 89.

Hearing Date: August 11, 2006

Agriculture, Trade & Consumer Protection (2)

1. 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 Date: March 31, 2006
Extension Through: September 28, 2006

2. Rules adopted revising **ch. ATCP 136**, relating to mobile air conditioners; reclaiming or recycling refrigerant.

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers s. 100.45, Stats. DATCP has adopted rules under ch. ATCP 136 to implement s. 100.45, Stats. The current rules regulate the sale and installation of mobile air conditioner refrigerants, including "substitute refrigerants" such as R 134A. Among other things, the current rules prohibit the sale of mobile air conditioner refrigerants in containers holding less than 15 lbs. of refrigerant.

(2) On June 28, 2006, the Legislature's Joint Committee for Review of Administrative Rules (JCRAR) voted to suspend all current state rules related to the installation and sale of "substitute refrigerants" of any kind. This broad exemption will become effective on July 7, 2006 unless by that date DATCP adopts a narrower alternative exemption by emergency rule. The narrower exemption specified by JCRAR would apply only to the sale of the "substitute refrigerant" R 134A. The exemption would allow the sale of R 134A to the general public in "do-it-yourself" containers holding less than 15 lbs.

(3) DATCP is adopting this emergency rule for the sole purpose of preventing a broader JCRAR suspension of rules that currently prevent the release of mobile air conditioner refrigerant into the environment.

Publication Date: July 12, 2006
Effective Date: July 12, 2006
Expiration Date: December 9, 2006
Hearing Date: August 15, 2006

Commerce

(Financial Resources for Businesses and Communities, Chs. Comm 105 to 131)

Rule adopted creating **ch. Comm 131**, relating to diesel truck idling reduction grants.

Exemption from Finding of Emergency

The legislature by Section 9108 (1w) in 2005 Wisconsin Act 25, provides an exemption from a finding of emergency for the adoption of this rule.

The rules specify who is eligible for receiving a grant in this program for purchasing and installing diesel truck idling reduction equipment. Eligible costs are also specified, along with how to apply for the grants. Parameters for awarding the grants are likewise specified. These parameters include (1) disallowing grants to any applicant who is failing to comply with any conditions imposed on any previous grant received in this program; and (2) alerting applicants that the Department may (a) refuse to award grants for idling reduction equipment on truck tractors that do not have a sleeper berth, (b) annually allocate up to 25 percent of the grant funding to applicants who own and operate 50 or fewer truck tractors, and (c) set deadlines for submitting applications, and then prorate the awards to the applicants if the total funding requested in the applications exceeds the available revenue.

Publication Date: June 30, 2006
Effective Date: July 1, 2006
Expiration Date: November 28, 2006
Hearing Date: July 25, 2006

Corrections

A rule was adopted creating **s. DOC 332.19**, relating to a sex offender registration fee.

Finding of Emergency

The department of corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is: Under 2005 WI Act 25, the legislature authorized the department to establish a sex offender registration fee. If the rule is not created promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of monitoring probationers, parolees, or persons on extended supervision, which could result in a lessening of supervision due to budget limitations.

The purpose of the emergency rule is to establish an annual sex offender registration fee to partially offset the costs of monitoring persons who are on probation, parole, or extended supervision. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of fees while permanent rules are being developed.

Publication Date: June 8, 2006
Effective Date: June 8, 2006
Expiration Date: November 5, 2006
Hearing Date: July 18, 2006

Elections Board (2)

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

with Wisconsin law if the contribution had been made directly to a state campaign committee.

Finding of Emergency

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

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

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

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: December 3, 2006
Hearing Date: May 18, 2005

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

** The legislative session ended on July 12, 2006, with no action on the bill that would have sustained the suspension action.

- Rules were adopted creating s. EIBd 3.04, relating to election day registration and the requirement to provide a driver's license number or other form of identification to register at the polls.

Finding of Emergency

The Elections Board finds that an emergency exists in the 2002 change in federal law that requires persons who have been issued a current and valid driver's license to list that number in completing a voter registration application or their registration may not be processed.

In 2002, Congress enacted the Help America Vote Act to address problems and issues that surfaced in the 2000 presidential election. Section 303(a)(5)(A)(i) of the Act provided that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number." To comply

with federal law, but also to avoid disenfranchising those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver's license but do not provide that number on their registration form, the Board has adopted s. EIBd 3.04, providing for the issuance of a provisional ballot to those registrants, pursuant to s. 6.97, Stats. Under that statute, the provisional ballot will be counted if the registrant provides, by any means feasible, his or her driver's license number to the clerk of the municipality in which the registrant has voted, not later than 4:00 p.m., on the day following the election.

Previously, the Board's policy had been to process the election day registration of those registrants who failed to list their driver's license number on their registration application, if they had provided, on their registration form, a Wisconsin-issued Identification Card Number or the last four digits of their Social Security Number. Whether that policy complied with federal law had been in issue. Assuring that Wisconsin's practice complies with federal law and obtaining that assurance before election day, by the promulgation of this emergency rule, is found to be in the public interest.

Publication Date: July 31, 2006
Effective Date: July 31, 2006
Expiration Date: December 28, 2006
Hearing Date: October 4, 2006

Emergency Management

Rule adopted creating ch. WEM 7, relating to disaster assistance for local governments.

Finding of Emergency

The Wisconsin Division of Emergency Management 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 an emergency is as follows:

- The 2005 Wis. Act 269 created the major disaster assistance program under Wis. Stats. § 166.03 (2) (b) 9. An annual appropriation of \$3,000,000 SEG A for fiscal years 2005–06 and 2006–07 was established under Wis. Stats. § 20.465 (3) (b) (s) from the petroleum inspection fund. These funds were provided to make payments to local units of government for damages and costs incurred as a result of a major catastrophe. This Act was made retroactive to January 1, 2005.

- The Act requires the Wisconsin Department of Military Affairs, through its Division of Emergency Management, to promulgate rules to implement and establish the application process and the criteria to determine eligibility under the major disaster assistance program. The Division will immediately begin the permanent rule-making process for establishing administrative rules for these payments, but cannot complete the required hearings and review of these rules prior to the lapse of funds retained in the major disaster assistance appropriation for fiscal year 2005–06.

- To ensure that appropriated funds for fiscal year 2005–06 are timely paid to local governmental units for damages and eligible costs incurred as a direct result of major catastrophes, emergency administrative rules must be established immediately.

Publication Date: June 8, 2006
Effective Date: June 8, 2006
Expiration Date: November 5, 2006
Hearing Date: August 14, 15, 16 & 17, 2006

Financial Institutions – Banking

Rules were adopted revising **ch. DFI—Bkg 77**, relating to pawnbrokers.

Finding of Emergency

The effect of 2005 Wisconsin Act 158 is that pawnbrokers licensed by the department under s. 138.09, Stats., are exempt from s. 138.10, Stats., effective October 1, 2006. Under statutory procedures, however, a permanent rule regulating these pawnbrokers is unlikely to be effective until mid-2007, leaving the public without the safeguards of the permanent rule until that time. Thus the preservation of public safety and welfare necessitates enacting the safeguards of the emergency rule until a permanent rule is in effect.

Publication Date: September 25, 2006

Effective Date: October 1, 2006

Expiration Date: February 28, 2007

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

1. Rules were adopted revising **chs. HFS 110 and 111**, relating to licensing emergency medical technicians and affecting small businesses.

Finding of Emergency

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

The facts constituting the emergency are as follows:

In Wisconsin there are approximately 430 ambulance service providers. Approximately 80% are volunteer (not for profit) or owned by private for profit entities. The remaining 20% are government owned. A total of 129 ambulance service providers and 2,812 licensed individuals in 48 counties currently provide emergency medical services at the EMT–basic–IV (74) or EMT–provisional intermediate (55) level to approximately 2.65 million Wisconsin residents. The provider industry estimates that these ambulance service providers are losing approximately \$1.5 million dollars in reimbursement revenues annually due to the codification of the EMT–basic IV services in ch. HFS 110 as basic life support. The loss is likely to increase when the provisional EMT–intermediate is renamed EMT–basic IV effective July 1, 2006, and an estimated 95% of the individuals who are currently licensed and titled as provisional EMT–intermediate will be renamed EMT–basic IV. Ambulance service providers report that they cannot continue to cover the costs of training and operating at the advanced life support level of care while being reimbursed at the basic life support level of care. Consequently, the level of emergency medical services provided in over half of the state's 72 counties may be reduced or become non-existent unless changes are implemented.

To maintain the level of emergency medical services that are currently being provided and to avoid confusion about the skills and level of care provided by the EMT–basic IV licensee, the department in these emergency rules is changing the name of the EMT–basic IV license to EMT–intermediate technician and moving the licensing requirements to ch. HFS 111. These changes will allow ambulance service providers to charge for both at the higher rate of reimbursement. In

addition, these emergency rules will modify the continuing education requirements under ch. HFS 110 to allow ambulance service providers flexibility in providing refresher training to EMT–basic licensees. This change will reduce financial and scheduling burdens on providers by allowing them to use their training dollars more cost effectively.

Publication Date: July 1, 2006

Effective Date: July 1, 2006

Expiration Date: November 28, 2006

Hearing Dates: July 25, 26 and 27, 2006

2. Rules adopted creating **ch. HFS 137**, relating to prescribing forms for use by physicians, technicians and tissue bank employees when removing organs and tissue, other than cardiovascular tissue from decedents.

Exemption from Finding of Emergency

The legislature by 2005 Wisconsin Act 230 requires these rules to be promulgated as emergency rules and exempts the Department from making a finding of emergency or providing evidence that these rules as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare.

Plain language analysis:

The Department is required by 2005 Wisconsin Act 230 to appoint an advisory committee to assist the Department in prescribing, by rule, a form for removal of organs and a form for removal of tissue, other than cardiovascular tissue, for use by physicians, technicians, and tissue bank employees under section 157.06 (4m) (e) of the statutes, as created by Act 230. Section 157.06 (4m) (e), Stats., requires a physician who removes tissue or an organ from a decedent or a technician or tissue bank employee who removes tissue from a decedent under s. 157.06 (4m), Stats., to complete the form created by the Department and transmit the form to the coroner or medical examiner with jurisdiction over the decedent.

As required by section. 12. (1) (b) of Act 230, the Department intends to promulgate permanent rules that are substantially identical to the emergency rules.

Because these rules only prescribe forms, the Department will, as allowed under s. 227.23, Stats., promulgate these rules without adhering to the notice and public hearing requirements set forth under ch. 227, Stats. Also, as allowed under s. 227.23, Stats., the forms prescribed by the proposed rules will not be published in the Wisconsin administrative code or the Wisconsin Administrative Register, but will be listed by title and description with a statement as to how the forms may be obtained.

Publication Date: July 24, 2006

Effective Date: August 1, 2006

Expiration Date: December 29, 2006

Insurance (2)

1. Rules adopted creating **ss. Ins 9.25 (8) and 9.27 (4)**, Wis. Adm. Code, relating to preferred provider plan applicability dates and affecting small business plan limited exemption.

Finding of Emergency

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

The rule identifies a limited group of policies issued by licensed insurers offering preferred provider plans that do not comply with newly promulgated ch. Ins 9, Wis. Adm. Code. In compliance with the request of the Joint Committee for the Review of Administrative Rules (JCRAR), this rule must be issued as an emergency rule and permanent rule. It is not possible to complete the permanent rule process prior to the effective date of the chapter, January 1, 2007, therefore this emergency rule is necessary.

The commissioner has filed a notice of scope for drafting the permanent rule corresponding to this emergency rule and will continue with the permanent rule making process. It is intended that one rule hearing can be held to comply with both the emergency rule and permanent rule requirements.

Publication Date: August 31, 2006
Effective Date: September 1, 2006
Expiration Date: January 29, 2007

- Rules adopted revising s. Ins 6.77, relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.

Finding of Emergency

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

These changes will modify the rule in light of the recent Supreme Court decisions, *Rebernick v American Family Mutual Ins Company*, 2006 WI 27 and *Rocker v USAA Casualty Ins Company*, 2006 WI 26. In *Rebernick*, the court held that s 632.32(4m), Stats, applies to personal umbrella policies. In *Rocker*, the court held that s. 632.32 (6) (a), Stats, applies to commercial general liability policies and commercial umbrella policies. These interpretations are inconsistent with current insurer practices and OCI's expectation of what would be covered in these types of policies.

Compliance with this interpretation would create significant, if not impossible compliance problems for insurers. Many insurers who write umbrella coverage do not write and are not even licensed to write automobile coverage. A second, difficult issue is that the limits for umbrella coverages are generally very high, \$1,000,000. It is unclear how an umbrella policy would reconcile these limits with the underlying auto policy and underinsured motorist coverage. For this reason, OCI had previously by rule exempted umbrella policies from the similar requirements of the uninsured motorist coverages in s. 632.32, Stats. For similar reasons, the same revision is being made for commercial liability policies.

Publication Date: September 22, 2006
Effective Date: September 22, 2006
Expiration Date: February 19, 2007

Natural Resources (2) (Fish, Game, etc., Chs. NR 1—)

- Rules were adopted creating s. NR 45.04 (1) (g), relating to regulation of firewood entering and exiting department lands and affecting small businesses.

Finding of Emergency

It is important to have restrictions on out-of-state firewood entering department lands in place this camping season due to recent developments in efforts to eradicate and quarantine emerald ash borer in the areas where it is currently established. In Michigan, Ohio, Indiana and Ontario, eradication programs are being dramatically scaled back or abandoned entirely for this summer. A recent audit of quarantine efforts in Michigan where emerald ash borer is most abundant and widespread is critical and faults their program for lax enforcement and poor education of the public to the dangers of moving firewood. Given this situation, a need for an external quarantine to protect Wisconsin forest resources, industry, and community trees becomes obvious. The Wisconsin Department of Agriculture, Trade and Consumer Protection has proposed an external quarantine on host material of emerald ash borer and three other invasive pests and diseases and our firewood regulation would help support this effort, provide an opportunity for education of the public and reduce one of the reasons people move firewood: for use while camping.

Publication Date: March 27, 2006
Effective Date: April 1, 2006
Expiration Date: August 29, 2006
Hearing Date: July 5, 2006
Extension Through: October 27, 2006

- Rules adopted revising ch. NR 10, relating to the 2006 migratory game bird seasons.

Finding of Emergency

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

Publication Date: August 31, 2006
Effective Date: August 31, 2006
Expiration Date: January 28, 2007
Hearing Date: October 11, 2006

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

- Rules adopted creating ss. NR 328.31 to 328.36, relating to shore erosion control on rivers and streams.

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 enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The

state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2006 construction season, with specific standards for shore erosion control structures on rivers and streams.

Publication Date: May 5, 2006
Effective Date: May 8, 2006
Expiration Date: October 4, 2006
Hearing Date: June 13, 2006
Extension Through: December 2, 2006

Natural Resources (Environmental Protection – Hazardous Waste, Chs. NR 600—)

Rules adopted revising **chs. NR 660 to 665**, relating to hazardous waste management.

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:

In 2001, EPA proposed regulations to change the hazardous waste manifest requirements under the federal Resource Conservation and Recovery Act (RCRA) to eliminate all state-specific manifest requirements and to require electronic submittal of the manifests. The EPA's final rule was published March 4, 2005, with correcting amendments published on June 16, 2005, and the effective date is September 5, 2006. The new regulations require the use of standardized manifest forms in all states and require certification from EPA in order to print the manifest forms. (Final action on the e-manifest was postponed.) Unlike most RCRA rules, this federal regulation will take effect, nation-wide, on the effective date. The new federal requirements will apply in all states, including Wisconsin, but will not override or supersede Wisconsin's state-specific hazardous waste manifest requirements. Accordingly, the potential exists for conflicting or additional state manifest requirements to exist beginning on that date, and the advantages of a single, uniform nationwide rule will be lost.

The normal administrative rulemaking process cannot be completed in time to conform Wisconsin's hazardous waste manifest requirements to the new EPA manifest regulations by their September 5, 2006 effective date. However, failure to adopt the new federal requirements as state rules by this date may cause legal uncertainty and potential confusion among hazardous waste generators, transporters and treatment, storage and disposal facility operators, as well as state regulatory program staff. This could interfere with

interstate commerce and the orderly functioning of government, imposing unnecessary regulatory costs on Wisconsin individuals and businesses and out-of-state companies doing business in Wisconsin, to the detriment of the public welfare. More importantly, the potential confusion caused by different state and federal manifest requirements could lead to improper transportation and management of hazardous wastes, resulting in a threat to public health or safety and the environment.

Publication Date: September 2, 2006
Effective Date: September 5, 2006
Expiration Date: February 2, 2007
Hearing Date: September 26, 2006

Regulation and Licensing

Rules were adopted creating **chs. RL 164 and 165**, relating to a code of conduct and renewal requirements for substance abuse professionals.

Plain language analysis

The purpose of this emergency rule is to create a code of conduct to facilitate assumption of disciplinary proceedings as part of the transfer of the regulation of substance abuse professionals from the Department of Health and Family Services to the Department of Regulation and Licensing. The emergency rule also sets forth the requirements for renewal.

The Department of Regulation and Licensing must promulgate this emergency rule for the period before the effective date of the permanent rules as promulgated under Wis. Stats. s. 440.88 (3). Under the previous regulatory scheme, the Department of Health and Family Services and the Wisconsin Certification Board had established a code of conduct and restrictions on late renewals. This emergency rule continues the applicability of the rules until the department, with the advice of the Advisory Committee, can establish permanent rules.

Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: "Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, 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: April 15, 2006
Effective Date: April 15, 2006
Expiration Date: September 12, 2006
Hearing Date: June 27, 2006
Extension Through: November 10, 2006

Transportation (2)

1. Rules adopted creating **ch. Trans 515**, relating to contractual service procurement.

Exemption from finding of emergency

The Legislature, by Section 8 of 2005 Wis. Act 89, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis Prepared by the Department of Transportation

The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s.

84.01 (13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

Publication Date: July 1, 2006

Effective Date: July 1, 2006

Expiration Date: See section 8 (2) of 2005 Wis. Act 89

Hearing Date: August 8, 2006

- Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit.

Exemption from finding of emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65–foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin’s old default 65–foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65–foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such “65–foot restricted routes.”

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate “long truck routes” upon which no overall length limits apply. The Department designates the state’s long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new “default” 75–foot overall length limit applies on state highways that are neither designated as 65–foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department’s view, deserve special legislative attention. First, Act 363 did not grant any authority for 75–foot vehicles using the new 75–foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75–foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65–foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75–foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double–bottom tractor–trailer combinations to the state’s long–truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats., by the Act’s amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double–bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double–bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re–inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

Publication Date: September 15, 2006

Effective Date: September 15, 2006

Expiration Date: See section 7 (2) of 2005 Wis. Act 363

Hearing Date: October 4, 2006

Workforce Development

Rules adopted amending **s. DWD 59.07 (2) (d) 2.**, relating to grants supporting community child care initiatives.

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:

Under the Grants Supporting Community Child Care Initiatives program, the Department distributes federal Child Care Development Funds to local governments and tribes. The funding period for the grants is the federal fiscal year of October 1 to September 30. The Department cannot release the 2006–2007 grants scheduled to begin October 1 until the change in this emergency rule is effective. These grants will provide \$2.5 million of federal funds to support activities such as accommodation of children with disabilities, education of providers, and staff retention strategies.

The change in this rule and other changes to Chapter DWD 59 are included in a proposed permanent rule that is expected to be effective by the end of the year.

Publication Date: October 2, 2006

Effective Date: October 2, 2006

Expiration Date: March 1, 2007

Hearing Date: October 26, 2006

[See Notice this Register]

Scope statements

Commerce

Subject

Objective of the rule. The proposed rules would implement the provisions of 2005 Wisconsin Act 483 that relate to accreditation of film productions, for the purposes of obtaining tax credits as created by that Act.

Policy Analysis

The Department currently has no involvement in accrediting film productions. The proposed rules are expected to address (1) applications for accreditation, (2) determining the viability of plans for commercially distributing finished productions, and (3) determining the amount of expenditures that are directly used to produce an accredited production. The proposed rules may also address Departmental certification for any investment credit claimed by a film production company for expenses relating to establishing the company in Wisconsin. The alternative of not promulgating rules for accrediting film productions would conflict with a directive in section 21m of 2005 Act 483, which requires this promulgation in consultation with the Department of Revenue.

Statutory authority

Section 560.206 (4), as created in 2005 Wisconsin Act 483, and section 227.11 (2) (a).

Staff time required

The staff time needed to develop the rules is expected to range from 200 to 500 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Entities affected by the rule

The proposed rules may affect entities that incur expenses relating to film production services or to establishing a film production company.

Comparison with federal regulations

An Internet-based search for “film production tax credit” in the *Code of Federal Regulations* and in the 2005 and 2006 volumes of the *Federal Register* did not identify any existing or proposed federal regulation that addresses this subject.

Natural Resources

Subject

Objective of the rule. The Department proposes revision of the private forestry policy to require referral of all timber sale requests from private landowners to cooperating foresters. DNR foresters would not provide timber harvest set up assistance to private landowners, regardless of the size of the forest tract, unless help is not reasonably available from private enterprise cooperators. By limiting DNR forester assistance on private lands, they may direct further efforts to DNR’s lands and addressing the allowable cut as provided for in 2005 Act 166.

Policy Analysis

Under the rule adopted in 1989, department foresters were allowed to set up private timber sales that did not exceed 20 acres of sawtimber or 40 acres of pulpwood within certain timing or frequency limitations for an individual landowner. Sales larger than those limitations could be set up by department foresters only if service was not reasonably available from cooperators.

Growing demand for private forestry assistance from existing department staff has required the department to focus on the highest priority forestry services in our niche. Workload issues prompted the department to institute an interim policy in 2001 to refer all private timber sale requests. Since the private sector has the capacity and financial incentive to service timber sale set up requests, it is more efficient for the department to make referrals. The trial policy has opened up new opportunities for small businesses and improved relations between DNR and Cooperating Foresters. Data indicate that more landowners are using the services of professional foresters for timber sale establishment than before the interim policy was adopted. Stakeholders appear to be ready for a rule change that adopts the interim policy. DNR foresters will continue to be involved in timber sale guidance (as opposed to set up and marketing), providing advice about whether a harvest is needed and how to implement it.

Statutory authority

Statutory Authority: ss. 23.09 (2) (h), 26.35, 28.07 and 227.11 (2), Wis. Stats.

Statutes Interpreted: § 26.35 and 28.07, Wis. Stats.

Staff time required

Department staff will need approximately 26 hours for this rule development, not including time and travel for public hearings.

Comparison with federal regulations

None.

Entities affected by the rule

Groups likely to be affected or interested include private woodland owners, cooperating foresters and forest industry.

Natural Resources

Subject

Objective of the rule. The Department proposes creation of section NR 1.25, Wis. Administrative Code, to authorize contracting with private cooperating foresters for services to establish state land timber harvests, with payment coming from the timber sale proceeds. The rule would identify timber sale related tasks that could be contracted and other activities that would remain the responsibility of the department to assure consistency and to protect land for the purposes for which it was acquired. The rule would define a method for calculating the portion of timber sale revenue that would be paid for the timber harvest services. Section NR 1.21 (2) (e) would also be revised to make the educational requirements for cooperating foresters consistent with those for department foresters under s. 28.045 (1), Wis. Stats.

Policy Analysis

Section 28.025, Wis. Stats., created by of 2005 Act 166, directs the department to establish an annual allowable timber harvest for state forest lands and to prepare a biennial report on conformance with the established harvest goals. Timber harvesting can be a critical tool for maintaining the health of forests or for achieving the purposes for which the state acquired the land. The primary purpose for the law is to assure that adequate resources are available for the state to be a good land steward.

The department owns more land than it can effectively manage with existing staff. Since it is not practical to add enough state employees to address all the timber harvest needs, the Legislature directed creation of a program to utilize private enterprise foresters and to pay for the foresters' services from a "portion of the proceeds received from each timber sale". The rules timetable established in 2005 Act 166 requires adoption of an emergency rule in the short term, followed by the permanent rule making process.

The statute instructs the department to develop a timber sale contracting program with private "cooperating foresters". Chapter NR 1.213, Wis. Adm. Code, defines the cooperating forester program as consulting and industrial foresters who agree to provide services consistent with DNR forestry standards. Cooperating foresters must also meet professional education requirements established in the rule. Revision of s. NR 1.21 (2) (e) would make the educational requirements for department and cooperating foresters uniform.

Parties likely to be interested in the policy include the department bureaus managing forest land, users of the land, forest industry, and private cooperating foresters. The rule should reassure stakeholders that timber harvests will be consistent with master plans and all other department policies for sustainability. Better implementation of allowable cuts will improve the supply of timber from state land, to the satisfaction of forest industry. Although cooperators will benefit from new business opportunities created by contracting state forest timber sale assistance, it will take time for cooperators to add personnel to meet public land demands in addition to an expanded role writing Managed Forest Law plans on private land. The program will impact the workload of department finance specialists who will need to develop appropriate accounting procedures to pay for forestry services from timber sale revenue across many land management bureaus. The rule will likely increase revenue to the conservation fund since it will enable implementation of more timber harvests within constraints of property master plans, although the potential revenue will be partially offset by the costs to pay for services from cooperating foresters.

Statutory authority

28.05 (3), Wis. Stats., as created by 2005 Wisconsin Act 166.

Staff time required

Department staff will need approximately 70 hours for this rule development, not including time and travel for public hearings.

Comparison with federal regulations

There are no specific federal rules affecting state contracting for timber sale services. The US Forest Service does, however, have a similar program. The department will consider Forest Service policies for ideas that might be useful for our program.

Entities affected by the rule

Parties likely to be interested in the policy include all the department bureaus managing forest land, users of the land, forest industry, and private cooperating foresters. Groups that will want to participate in this process include Wisconsin Council on Forestry, Wisconsin Consulting Foresters, Wisconsin Cooperating Foresters, Wisconsin Paper Council and environmental NGOs.

Natural Resources

Subject

Amendments to ch. NR46 to address the annual adjustments of timber stumpage values used in the administration of the Managed Forest Law (MFL) and Forest Crop Law (FCL), include provisions of 2005 Wisconsin Act 299 and other administrative changes relating to the MFL.

Policy Analysis

The issues will be addressed.

Annual Stumpage Value Adjustments – no change in current policy.

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

Modification of Catastrophic Loss provisions in NR 46 – change in current policy.

When timber is harvested from MFL and FCL lands as a result of a catastrophic event (e.g., fire, tornado, hale storm, etc) the value assessed for the wood and used to calculate the yield/severance tax assessed may be reduced by 30%. To be eligible for the reduction the catastrophic loss must involve 30% of the merchantable timber on 10 or more contiguous acres and must resulting a reduction of 30% or more in stumpage value. The actual loss in value can be more than 30% but the reduction of values assessed for calculating the yield/severance tax is limited to 30%. Landowners who have suffered a greater loss have raised the issue and asked the department to review this policy.

Implementation of 2005 Wisconsin Act 299 – change in current policy.

2005 Wis. Act 299 changed one of the eligibility requirements for land enrolled in the MFL program. Past eligibility was based on a minimum of 10 contiguous acres per municipality (city, town or village). 2005 Wisconsin Act 299 eliminated the municipality requirement so that the contiguous land may be in more than one municipality. Current policy requires a separate petition for each municipality. This must be addressed in light of the changes made through 2005 Wis. Act 299.

Comparison with federal regulations

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

Statutory authority

Chapter 77, Wis. Stats.

Staff time required

Approximately 100 hours will be needed by the department.

Natural Resources

Subject

Objective of the rule. Amending chs. NR 151, 152, 153, 154 and 155 to establish additional performance standard(s), clarify language, modify grant criteria to reflect program priorities, and update certain provisions based on improved data. The NRB directed the Department to revise the runoff management administrative rule to incorporate an agricultural buffer performance standard based on Wisconsin research.

The Department proposes the following: to develop an agricultural buffer or equivalent performance standard and a performance standard to address manure runoff from smaller, non-permitted farms; modify post-construction non-agricultural performance standards, regarding infiltration and protective areas, to be consistent with information and research findings made since NR 151 became effective; revise existing agricultural performance standards and prohibitions to clarify provisions related to manure storage facility closures and direct runoff of manure; and to modify grant rules pertaining to eligibility, awards, allocation for TMDLs and project size. Other revisions are needed to clarify language in existing codes and to update certain provisions to align with other rule revisions.

In addition, the Department proposes to create a performance standard to provide adequate control of sediment, manure and other runoff from small or medium-sized, non-permitted farms that may cause water pollution and fish kills. Modifications are needed to some post-construction non-agricultural performance standards, particularly regarding infiltration and protective areas, to be consistent with information and research findings made since NR 151 became effective. Provisions to existing agricultural performance standards and prohibitions related to manure storage facility closures and direct runoff of manure also need clarification.

In addition, revisions are proposed for related administrative rules (NR 153, NR 155) pertaining to grant eligibility, awards, allocations for TMDLs and project size. Other revisions are necessary to clarify language in existing codes and to update certain provisions to align with other rule revisions.

Policy Analysis

As directed by the Natural Resources Board resolution of May 22, 2002, the Department of Natural Resources is proposing to revise administrative rules pertaining to the state's nonpoint source pollution control program by promulgation of a performance standard for agricultural buffers. The resolution was the outcome of a request by the Senate Committee on Environmental Resources to the Department to consider an agricultural buffer performance standard in the nonpoint source redesign administrative rules. Research conducted by the University of Wisconsin on agricultural riparian buffers was presented to the Natural Resources Board in Feb. 2006 and will serve as an

informational guide to the development of a performance standard.

NR 151 and companion administrative rules became effective in 2002. Since then there has been scientific research findings on the functioning of riparian buffers under Wisconsin conditions in controlling nutrient inputs to surface water and improved methods of calculating phosphorus and sediment delivery to receiving waters. There has also been increased concern in recent years by the Department and the public about contaminated drinking water wells and surface water from runoff events. Information from the Wisconsin Buffer Initiative Report of 2005 and other scientific and technological sources can provide the basis for additional performance standards or enhancements to existing ones to provide a higher degree of resource protection. Several non-agricultural performance standards need to be modified to reflect updated resource information, ensure continued water quality protection, and provide equitable alternatives to achieve compliance in certain circumstances. Increased competition for grant funding and Department emphasis on addressing impaired waters necessitate modifications to the nonpoint source grant rules. Additionally, NR 151 definitions may need to be changed to be consistent with revisions to related rules.

Groups likely to be impacted or interested in this issue include agricultural producers, municipalities, parties responsible for construction erosion control and post-construction stormwater management from construction sites of 1 acre or more, environmental organizations, conservation groups and county land conservation departments and committees.

Statutory authority

ss. 281.16, 281.65 and 227.11 (2), Wis. Stats.

Staff time required

1140 hours.

Comparison with federal regulations

The proposed code revisions are consistent with federal regulations that apply to control of nonpoint sources of pollution, animal feeding operations, nutrient management and stormwater management. Certain modifications would also better align state grant funding priorities with those of the federal government in regards to Total Maximum Daily Loads.

Workforce Development

Subject

DWD 55, Child Care Certification.

Policy Analysis

Section 48.651, Stats., provides that counties shall certify each child care provider who meets standards established by the Department and is reimbursed for child care services to families determined eligible for a child care subsidy under s. 49.155, Stats., unless the provider is licensed by the Department of Health and Family Services or under contract with the Department of Public Instruction. The standards established by the Department are set forth in Chapter DWD 55. The proposed rules will amend DWD 55 to conform to new statutory requirements that affect certified child care providers and will also clarify and update the current rules.

2005 Wisconsin Act 165 directs the department to include in the certification rules a requirement that all providers and all employees, and volunteers of a provider who provide care

to children under 5 years old receive training on shaken baby syndrome before the individual is issued a certification or before employment or volunteer work begins. 2005 Wisconsin Act 184 criminalizes leaving a child unattended who is being transported in a vehicle that is owned or leased by a child care provider or used to transport a children to and from a child care provider. This prohibition is already in DWD 55 but the rules will be amended to track the language of 2005 Wisconsin Act 184. 2005 Wisconsin Act 106 prescribes new requirements on using booster seats and other restraints for children under 8 years old in motor vehicles used to transport children.

Among other things, the clarifications and updates to Chapter DWD 55 will reduce the hours of care allowed by an individual provider, implement a statewide continuing education requirement, limit certification to one provider for each family residence, allow certifying agencies to require a physical or mental health examination of any person associated with care of the children, set requirements for regular substitutes, and require the temperature of the home to be at least 67 degrees.

Statutory authority

Sections 49.155 (1d), as affected by 2005 Wisconsin Act 165, and 227.11 (2), Stats.

Entities affected by the rule

Certified child care providers and their employees and volunteers, applicants for certification, parents and children who receive care from certified providers, and county child care certifiers.

Comparison with federal regulations

There are no comparable federal requirements.

Staff time required

80 hours.

Workforce Development

Subject

DWD 123, Employer Reports Regarding Unemployment Insurance Benefit Claims.

Policy Analysis

Chapter DWD 123 specifies employer reports that the Department uses to gather information to determine benefit claims and prescribes filing procedures for the reports. The current ch. DWD 123 is confusing and contains obsolete and inaccurate information. The proposed rules will describe the employer reports that comply with current statutory requirements and will update and clarify department filing procedures.

Statutory authority

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

Entities affected by the rule

Employers covered by the unemployment insurance program.

Comparison with federal regulations

There are no comparable federal requirements.

Staff time required

60 hours.

Workforce Development

Subject

DWD 130, Wages for Benefit Purposes.

Policy Analysis

Section 108.08 (26), Stats., lists sources of income that are considered wages for the unemployment insurance program, unless the department otherwise specifies by rule. Chapter DWD 130 describes the department's treatment of tips, the value of room or meals, and payments under supplemental unemployment benefit plans, in determining wages for benefit purposes. The current rule contains obsolete cross-references and other inaccurate or redundant references. The proposed rule will clarify language, omit unnecessary provisions, and make technical corrections.

Statutory authority

Sections 108.02 (26), 108.14 (2), and 227.11 (2), Stats.

Entities affected by the rule

Employers and employees covered by the unemployment insurance program.

Comparison with federal regulations

There are no comparable federal requirements.

Staff time required

40 hours.

Workforce Development

Subject

DWD 276, Notice to Home Care Consumers and Workers.

Policy Analysis

2005 Wisconsin Act 197 requires that whenever a home care placement agency places a home care worker in the residence of a home care consumer, the home care placement agency must provide notice to the home care consumer specifying the duties, responsibilities, and liabilities of the agency, the consumer, and the worker. The notice shall specify whether the worker is an employee of the agency, an employee of the consumer, or an independent contractor. Notwithstanding this notice, there must also be a statement that the consumer may be found to be responsible under state and federal labor and tax laws. The notice will also contain other information, including phone numbers to report elder abuse.

The home care placement agency must also provide a similar notice to the home care worker stating the employment status of the worker and the duties, responsibilities, and liabilities of the agency, consumer, and worker as a result of that status. In addition, there must be a statement that the worker may be found to be an independent contractor under state and federal labor laws and tax laws notwithstanding the notice.

A home care consumer or worker who is not provided with the required notice may file a complaint with the department or may commence an action in circuit court to recover from the home care placement agency any fine or penalty required for noncompliance with any state or federal labor law or liability for payment of social security taxes, unemployment contributions, and provision of worker's compensation or liability insurance.

The department will promulgate rules to implement these new requirements.

Statutory authority

Sections 105.115 (5), Stats, as created by 2005 Wisconsin Act 197; and ss. 103.005 (1) and 227.11 (2), Stats.

Entities affected by the rule

Home care consumers, home care workers, and home care placement agencies.

Comparison with federal regulations

There are no comparable federal requirements.

Staff time required

120 hours.

Submittal of rules to legislative council clearinghouse

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

Natural Resources

On September 7, 2006, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. NR 22, relating to commercial harvest of shovelnose sturgeon in the Wisconsin Iowa boundary waters.

Agency Procedure for Promulgation

A public hearing on the proposed rule is yet to be determined.

The Bureau of Fisheries Management and Habitat Protection is primarily responsible for the promulgation of the proposed rule.

Contact Person

If you have questions, please contact:
Joe Hennessy
Telephone (608) 267–9427

Natural Resources

On September 7, 2006, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. NR 432, relating to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate Rule (CAIR) promulgated by the U. S. Environmental Protection Agency.

Agency Procedure for Promulgation

Public hearings on the proposed rule will be held October 10 and 12, 2006.

The Bureau of Air Management is primarily responsible for the promulgation of the proposed rule.

Contact Person

If you have questions, please contact:
Marney Hoefler

Telephone (608) 266–7718

Natural Resources

On September 29, 2006, the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends s. NR 20.40, relating to regulation of fishing tournaments in inland, outlying and boundary waters.

Agency Procedure for Promulgation

Public hearings on the proposed rule are scheduled for October 30, November 1, 2, 8, 9, 14 and 15.

The Bureau of Fisheries Management and Habitat Protection is primarily responsible for the promulgation of the proposed rule.

Contact Person

Patrick Schmalz
(608) 266–8170

Revenue

On September 22, 2006, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule creates s. Tax 9.70, relating to cigarette and tobacco products bad debt deductions.

Agency Procedure for Promulgation

A public hearing on the proposed rule will be scheduled.

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

Contact Person

If you have questions, please contact:
Dale Kleven
Income, Sales and Excise Tax Division
Telephone (608) 266–8253
E–mail dkleven@dor.state.wi.us

Rule–making notices

Notice of Hearings

Natural Resources

[CR 06–108]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.403, 29.4035 and 227.11 (2), Stats., interpreting ss. 29.014, 29.041, 29.403 and 29.516, Stats., the Department of Natural Resources will hold public hearings on the creation of s. NR 20.40, Wis. Adm. Code, relating to regulation of fishing tournaments in inland, outlying and boundary waters of Wisconsin.

2003 Wisconsin Act 249 created s. 29.403, Stats., requiring the Department to promulgate rules to establish a program to authorize and regulate fishing tournaments. Under the proposed rules, new fishing tournament permit requirements are established so that if a fishing tournament consists of 20 boats or 100 participants or targets trout on classified trout streams or is a live release tournament with an off–site weigh–in or has prizes of \$10,000 or more, a permit from the department is required. If none of those criteria are met, no permit is required.

Fishing tournament permit fees are established to cover the cost of the program, estimated to be \$76,000 annually, which includes permit application review and approval, catch report review, database entry, law enforcement, and data collection. In addition fees will include an additional \$18,000 for five years to recover the cost of the bass fishing tournament pilot program. Two alternatives for fee structures will be presented at public hearings. The first alternative seeks to collect \$94,000 annually by charging tournament organizers permit application fees ranging from \$200 to \$850 based on the size of the tournament. The second alternative seeks to collect fishing tournament permit application fees from organizers and annual fishing tournament participant permits from open–water tournament participants. Permit application fees for organizers would range from \$50 to \$475 based on tournament size and \$10 for each participant permit. These estimates assume 400 fishing tournament permits annually and 5,500 open water fishing tournament participants.

This rule establishes a permit application process by which the department will accept applications for permits from August 1 – September 30 each year. Applications received during that period that result in limits on the number of tournaments on a water being exceeded will be subjected to a lottery for the date and location. Prior to the lottery drawing, organizers will be informed and offered an opportunity to modify their application to a date or location where limits have not been reached. Limits on the size and number of fishing tournaments are proposed in this rule. Limits on lakes vary depending on lake size and are based on public access standards set forth in s. NR 1.91 (5) (b), Wis. Adm. Code. Limits on the Mississippi River are similar to those in place in Minnesota. The rule prohibits live release fishing tournaments during July and August. The rule also establishes other requirements of tournament organizers, including requiring a plan for disposal of dead fish and for preventing the spread of aquatic invasive species. Penalties are included for tournament organizers that do not comply with their plans. The rule establishes other general provisions related to fishing tournament format, fish holding and handling.

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:

Monday, **October 30, 2006** at 7:00 p.m.
 Holiday Inn
 624 W. Rolling Meadows Drive (US 151 & 41)
 Fond du Lac

Wednesday, **November 1, 2006** at 7:00 p.m.
 Strzelczyk Great Hall, Cleary Center
 UW–La Crosse
 615 East Avenue South
 La Crosse

Thursday, **November 2, 2006** at 7:00 p.m.
 Fitchburg Community Center, 5510 Lacy Road
 Fitchburg

Wednesday, **November 8, 2006** at 7:00 p.m.
 Auditorium, Bay Beach Wildlife Sanctuary Nature Center
 1660 East Shore Drive
 Green Bay

Thursday, **November 9, 2006** at 7:00 p.m.
 Suite IV, DNR Service Center
 9531 Rayne Road
 Sturtevant

Tuesday, **November 14, 2006** at 7:00 p.m.
 Spooner Agricultural Research Station, W6646 Hwy. 70
 Spooner

Wednesday, **November 15, 2006** at 7:00 p.m.
 Theater, Nicolet Technical College
 County Highway G
 Rhinelander

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

accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Patrick Schmalz at (608) 266–8170 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The program would be funded with revenue generated from permit sales to fishing tournament sponsors. In addition, 2 of the 3 alternative being considered would include funding from permit sales to anglers that participate in fishing tournaments. The estimated revenue that would be generated from the 3 alternatives ranges from \$58,100 to \$94,600 annually.

The cost to implement the program is estimated to be \$76,000 annually.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Patrick J. Schmalz, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 17, 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. Schmalz.

Notice of Hearing Natural Resources

[CR 06–105]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.041 and 227.11 (2) (a), Stats., interpreting ss. 29.014 (1), 29.041 and 29.516, Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 22.02 and 22.11, Wis. Adm. Code, relating to commercial fishing for sturgeon in the Wisconsin–Iowa boundary waters. The proposed rule changes the legal size of commercially harvestable shovelnose sturgeon in Wisconsin–Iowa boundary waters from 25 inches or more in length, to 27 inches or more, but less than 32 inches in “fork length”. “Fork length” is defined as the distance measured in a straight line from the tip of the snout to the innermost portion of the fork in the tail of a fish. The proposed rule also prohibits the removal of roe from commercial fish while on the water, bank or shore and prohibits cleaning or processing of fish until the fish reach the final processing facility or place of business of the commercial fisher.

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

a. Types of small businesses affected: Commercial fishing interests that currently operate in Wisconsin–Iowa boundary waters and harvest shovelnose sturgeon will be affected by this rule. These operations typically comprise fewer than 5 employees. In 2005, fewer than 5 commercial fishers harvested and sold shovelnose sturgeon flesh or roe in Wisconsin.

b. Description of reporting and bookkeeping procedures required: Not applicable.

c. Description of professional skills required: Not applicable

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, **November 15, 2006** at 11:30 a.m.

County Board Room, Crawford Co.

Courthouse, 220 N. Beaumont Street,

Prairie du Chien

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 Ron Benjamin at (608) 785–9012 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The proposed rule will not result in any additional fisheries staff nor law enforcement costs. Therefore, the changes have no fiscal effect.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Ron Benjamin, Wisconsin Department of Natural Resources, 3550 Mormon Coulee Road, La Crosse, WI 54601. Comments may be submitted until November 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 hearing. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Benjamin.

Notice of Hearing Workforce Development

NOTICE IS HEREBY GIVEN that pursuant to Sections 49.137 (4m) and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider emergency rules relating to grants supporting community child care initiatives.

Hearing Information

Monday, **October 26, 2006** at 1:30 p.m.

Madison

G.E.F. 1 Building, Room B103

201 E. Washington Avenue

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register

with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Note: Complaint forms are available from the Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department’s website at: <http://drl.wi.gov>.

Statutes interpreted: Section 49.137 (4m), Stats.

Related statutes and rules: 42 USC 9858 to 9858q and 45 CFR Part 98

Explanation of agency authority. Section 49.137 (4m), Stats., provides that the department shall award grants to local governments and tribal governing bodies for programs to improve the quality of child care. The department shall promulgate rules to administer the grant program, including rules that specify the eligibility criteria and procedures for awarding grants. Section 49.137 (4m), Stats., refers to the program as the local pass–through grant program.

The local pass–through grant program is funded by the federal Child Care and Development Fund (CCDF), a federal block grant that makes federal child care funding available to states that contribute the required match at the state’s federal medical assistance percentage rate. The local pass–through program began in 1999 to bring CCDF funds into the state that had been left unmatched in the state budget. Through the local pass–through program, the department awards grants supporting community child care initiatives to all local governments and tribes that supply the match required to bring the CCDF funds into the state.

Summary of the rule. In recent years, funding for grants supporting community child care initiatives has been cut by 86%. This reduced funding necessitates a change in the procedure for awarding the grants. Under the current rule, former initial grantees may receive continuing grants in the 2

following funding cycles of up to 75% of the amount of their initial grants and then may also compete, along with any eligible jurisdiction in the state, for the remaining 25% of funding as initial grantees.

This emergency rule will allow a continuing grant in an amount up to 200% of the initial grant. The increase to 200% is proposed to avoid a mandatory RFP for initial grants if there is only a small amount of funding left to award.

Summary of, and comparison with, existing or proposed federal regulations. The issue in the rule is not addressed in federal law.

Comparison with rules in adjacent states. None of the adjacent states have a comparable program.

Summary of factual data and analytical methodologies. The rule is intended to simplify the procedures for applying for grants and awarding of grants due to the significantly reduced funding for the program.

Effect on small businesses. The rules do not affect small businesses. The Department’s Small Business Regulatory Coordinator is Jennifer Jirschele, (608) 266–1023, jennifer.jirschele@dwd.state.wi.us.

Analysis and supporting documents used to determine effect on small business. The rule covers a program under which the state awards grants to local and tribal governments.

Agency contact person. Barbara Stiefvater, Grants Specialist, Child Care Section. Barbara.stiefvater@dwd.state.wi.us or (608) 266–8200.

Copies of the rule. A written copy of the rule and the fiscal estimate may be obtained by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707–7946
(608) 267–9403
elaine.pridgen@dwd.state.wi.us

Place where comments are to be submitted. Written comments on the rule received at the above address or email no later than October 26, 2006, will be given the same consideration as testimony presented at the hearing.

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 05-108)

An order affecting chs. ATCP 32 and 32, relating to fertilizer and pesticide bulk storage.
Effective 11-1-06.

Chiropractic Examining Board (CR 06-051)

An order affecting chs. Chir 4, 5, 6, and 12, relating to nutritional counseling certification.
Effective 12-1-06.

Commerce (CR 06-071)

An order affecting chs. Comm 5, 20, 21, 22 and 27, relating to installation of manufactured homes.
Effective 12-1-06 and 4-1-07.

Pharmacy Examining Board (CR 06-050)

An order affecting chs. Phar 2 and 17, relating to a foreign graduate internship.
Effective 11-1-06.

Pharmacy Examining Board (CR 06-052)

An order affecting ch. Phar 8, relating to controlled substances theft and loss reporting requirements.
Effective 11-1-06.

Regulation and Licensing (CR 06-033)

An order affecting chs. RL 80, 81, 83, 84, 85, 86 and 87, relating to definitions, experience, educational courses, continuing education, conduct and renewal for real estate appraisers.
Effective 12-1-06.

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