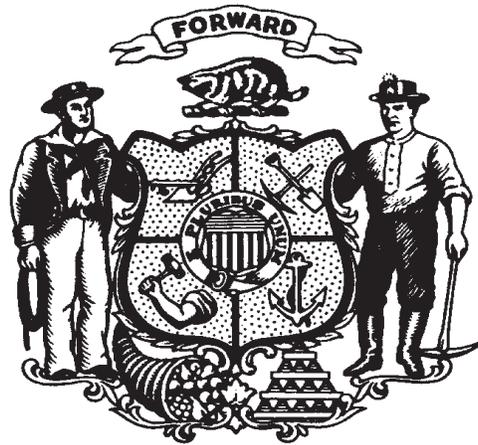


Wisconsin Administrative Register

No. 614



Publication Date: February 28, 2007

Effective Date: March 1, 2007



Revisor of Statutes Bureau
<http://www.legis.state.wi.us/rsb/code.htm>

The 2005 – 06 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2005 – 06 Wisconsin Statutes and Annotations bound volumes are detailed below.
Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u> \$159.00	Hard Cover <u>Without Postage</u> \$151.00	Soft Cover <u>With Postage</u> \$140.00	Soft Cover <u>Without Postage</u> \$133.00
--	---	--	---

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

WisLaw[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, WI 53707–7840

Table of contents

Emergency rules now in effect.	Pages 5 to 9
Agriculture, Trade and Consumer Protection:	Rules relating to minimum acreage requirements for farm-raised deer hunting preserves. Rules relating to credit report security freezes.
Commerce:	<u>Financial Resources for Businesses and Communities, Chs. Comm 104–131</u> Rules creating ch. Comm 104 , relating to Woman-Owned Business Certification Program. [First Appearance]
Dentistry Examining Board:	Rules relating to the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation–enteral, conscious sedation–parenteral, deep sedation, and general anesthesia, and the requirements for each level.
Financial Institutions – Banking:	Rules relating to pawnbrokers.
Insurance:	Rules relating to preferred provider plan applicability dates and affecting small business plan limited exemption. Rules relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.
Natural Resources:	<u>Fish and Game, etc., Chs. NR 1–</u> Rules adopted amending s. NR 1.21 and creating s. NR 1.26 , relating to contracting for timber sale establishment services on state land. [First Appearance] Rules adopted creating s. NR 45.075 , relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department. [First Appearance] <u>Environmental Protection – Hazardous Waste, Chs. NR 600–</u> Rules relating to hazardous waste management.
Optometry Examining Board:	Rules relating to continuing education.
Regulation and Licensing:	Rules relating to substance abuse professionals.
Transportation:	Rules relating to contractual service procurement. Rules relating to allowing the operation of certain 2–vehicle combinations on certain highways without a permit.
Workforce Development:	<u>Workforce Solutions, Chs. DWD 11 to 59</u> Rules revising s. DWD 56.06 , relating to child care rates. <u>Public Works Construction, Chs. DWD 290–294</u> Rules relating to the adjustment of thresholds for application of prevailing wage rates.

Scope statements.**Pages 10 to 15**

Agriculture, Trade and Consumer Protection:

Rules affecting ch. ATCP 99, relating to agricultural producer security.

Health and Family Services:

Rules affecting ch. HFS 117, rules relating to fees for copies of patient health care records.

Natural Resources:

Rules affecting ch. NR 20, relating to making non-substantive changes to sections relating to sport fishing seasons, bag limits and approved gear.

Rules affecting ch. NR 146, relating to well driller and pump installer registration; ch. NR 812, relating to well construction and pump installation; and ch. NR 845, relating to county administration of the private well code.

Revenue:

Rules affecting ch. Tax 8, relating to reciprocal interstate shipments of wine.

Transportation:

Rules affecting ch. Trans 28, relating to the definition of "commercial transportation facility".

Rules affecting ch. Trans 129, relating to motorcycle courses.

Rules affecting ch. Trans 130, relating to special identification cards and special registration plates for physically disabled.

Workforce Development:

Rules affecting ch. DWD 128, relating to unemployment insurance rules for determining a claimant's ability and availability to work.

Submittal of rules to legislative council clearinghouse.**Pages 16 to 18**

Commerce:

Rules affecting chs. Comm 5 and 20, relating to dwelling contractor certification.

Rules affecting ch. Comm 67, relating to rental unit energy efficiency standards.

Natural Resources:

Rules affecting chs. NR 10, 15, 17 and 19, relating to hunting and trapping regulations.

Rules affecting chs. NR 20 and 26, relating to fishing on the inland, outlying and boundary waters of Wisconsin.

Rules affecting s. NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Rules affecting s. NR 1.212, relating to referral of private timber sale requests to cooperating foresters.

Rules affecting s. NR 1.26, relating to contracting for timber sale establishment services on state land.

Rules affecting chs. NR 428 and 484, relating to implementation of Reasonably Available Control Technology (RACT) NO_x emission limitations applicable to major sources in the 8-hour ozone non-attainment area in southeastern Wisconsin.

Rules affecting ch. NR 433, relating to the Best Available Retrofit Technology (BART) requirements for visibility protection and the determination of BART for those sources.

Workforce Development:

Rules affecting chs. DWD 100 to 150, relating to unemployment insurance technical corrections.

Rules affecting ch. DWD 295, relating to enforcement of apprenticeship agreements and affecting small businesses.

Rules affecting chs. DWD 80 and 81, relating to worker's compensation and affecting small businesses.

Rules affecting ch. DWD 301, relating to migrant labor and affecting small businesses.

Rule-making notices.

Pages 19 to 32

Natural Resources:

Hearing to consider rules affecting s. NR 1.26, relating to contracting for timber sale establishment services on state land.

Hearing to consider rules affecting s. NR 1.212 (3) (a), relating to referral of private timber sale requests to cooperating foresters.

Hearing to consider rules affecting s. NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Hearing to consider rules affecting chs. NR 20 and 26, relating to fishing on the inland, outlying and boundary waters of Wisconsin and to consider rules affecting chs. NR 10, 15, 17 and 19, relating to hunting and trapping.

Hearing to consider rules affecting ss. NR 428.20 to 428.28, NR 428.04 (2) (h), 428.05 (3) (e) and 484.04, relating to the establishment of rules for reasonable available control technology (RACT) emission requirements for major sources of NO_x emissions in the southeast 8-hour ozone nonattainment counties of Kenosha, Racine, Milwaukee, Waukesha, Washington, Ozaukee, and Sheboygan.

Hearings to consider rules affecting ch. NR 433 and s. NR 484.04 (11m), relating to the best available retrofit technology (BART) requirements for visibility protection.

Workforce Development:

Hearing to consider rules affecting chs. DWD 80 and 81, relating to worker's compensation and affecting small businesses.

Hearing to consider rules affecting ch. DWD 301, relating to migrant labor and affecting small businesses.

Submittal of proposed rules to the legislature.

Page 33

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board:

CR 06-057 – Ch. A-E 6, relating to land surveyor education and experience requirements.

Natural Resources:

CR 05-104 – Ch. NR 17, relating to hound dog training and trialing on captive wild animals.

CR 06-104 – Ch. NR 432, relating to provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate Rule (CAIR).

CR 06-111 – Ch. NR 25, relating to commercial fishing open seasons in Lake Michigan for chubs.

Public Service Commission:

CR 06-112 – Ch. PSC 118, relating to renewal resource credit.

Rule orders filed with the revisor of statutes bureau.

Page 34

Health and Family Services:

CR 03-111 – An order affecting ch. HFS 117, relating to fees for copies of health care records.

Sections affected by rule revisions and corrections:

Page 35

Executive orders:

Page 36

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 & Consumer Protection (2)

1. Rules adopted amending **s. ATCP 10.47 (2) (c) and (3) (b) 3.**, relating to minimum acreage requirements for farm-raised deer hunting preserves.

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers state laws related to farm-raised deer. DATCP currently licenses deer farms and issues certificates for deer hunting preserves, pursuant to s. 95.55, Stats., and ch. ATCP 10, Wis. Adm. Code.

(2) Current law generally prohibits deer hunting preserves smaller than 80 acres. However, 2005 Wis. Act 359 (enacted effective May 3, 2006) provides a limited “grandfather” exemption for certain white-tailed deer hunting preserves previously licensed by the Department of Natural Resources (“DNR”). Under Act 359, a white-tailed deer hunting preserve is exempt from the 80-acre minimum size requirement if, *among other things*, the acreage of the hunting preserve is “not less than the acreage subject to the deer farm license on December 31, 2002.” This rule clarifies that the “acreage subject to the deer farm license on December 31, 2002” means the *hunting* acreage subject to the deer farm license on December 31, 2002. Without this interpretation, Act 359 would have no practical effect and would be rendered a nullity.

(3) The “grandfather” exemption in Act 359 is limited to hunting preserve operators who apply by November 1, 2006. DATCP must act on applications within 90 business days. Action may affect an operator’s ability to operate during the

2006 hunting season. DATCP is adopting this rule as an emergency rule, in order to facilitate timely action on applications. DATCP could not adopt this rule by normal rulemaking procedures in time to implement Act 359.

Publication Date: October 9, 2006
Effective Date: October 9, 2006
Expiration Date: March 7, 2007
Hearing Date: November 13, 2006

2. Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

Commerce (Financial Resources for Businesses and Community, Chs. Comm 104–131)

Rules adopted creating **ch. Comm 104**, relating to Woman-Owned Business Certification Program.

Exemption From Finding of Emergency

The Legislature, by section 5 (1) (a) in 2005 Wisconsin Act 358, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 5 (1) (b) of 2005 Wisconsin Act 358, this rule will remain in effect until March 1, 2007, or the date on which permanent rules take effect, whichever is sooner.

Plain Language Analysis

These emergency rules primarily specify (1) which businesses are eligible for becoming certified in this program; (2) how to apply for certification and recertification; (3) how

the certifications will be issued, renewed, and rescinded; and (4) how to appeal a decision by the Department. Parameters are also included for recognizing equivalent certifications that are issued by other public agencies.

Publication Date: February 9, 2007
Effective Date: February 9, 2007
Expiration Date: See Section 5 (1) (b) 2005 Wis. Act 358

Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation—enteral, conscious sedation—parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Finding of Emergency

The board finds that failure to delay the effective date of CR04-095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

Publication Date: December 21, 2006
Effective Date: December 29, 2006
Expiration Date: May 28, 2007
Hearing Date: January 31, 2007

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
Hearing Date: December 13, 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 a 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
Hearing Date: December 12, 2006
Extension Through: March 29, 2007

2. 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 a 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 29, 2006
Effective Date: September 29, 2006
Expiration Date: February 26, 2007
Hearing Date: December 11, 2006

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

1. Rules adopted amending s. NR 1.21 and creating s. NR 1.26, relating to contracting for timber sale establishment services on state land.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007

Effective Date: February 6, 2007

Expiration Date: July 6, 2007

Hearing Date: March 21, 2007

[See Notice this Register]

2. Rules adopted creating s. NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption from finding of emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR-11-07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which

the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007

Effective Date: February 6, 2007

Expiration Date: July 6, 2007

Hearing Date: March 21, 2007

[See Notice this Register]

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

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

Exemption from Finding of emergency

The Department of Natural Resources finds that an emergency exists and that 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

Extension Through: March 2, 2007

Optometry Examining Board

A rule was adopted creating **ch. Opt 8**, relating to continuing education.

Exemption from finding of emergency

2005 Wisconsin Act 297 section 58 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph 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 paragraph.”

Plain language analysis

Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Publication Date: November 8, 2006
Effective Date: November 8, 2006
Expiration Date: April 7, 2007
Hearing Date: December 7, 2006

Regulation and Licensing

Rules adopted creating **chs. RL 160 to 168**, relating to substance abuse professionals.

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.”

Plain language analysis

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval and professional liability insurance for substance abuse professionals.

Publication Date: November 27, 2006
Effective Date: December 1, 2006
Expiration Date: April 30, 2007
Hearing Date: February 13, 2007

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

2. 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 (Workforce Solutions, Chs. DWD 11 to 59)

Rules adopted revising s. DWD 56.06, relating to child care rates and affecting small businesses.

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:

The child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06-07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007

Workforce Development (Public Works Compensation, Chs. DWD 290-294)

Rules adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

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. 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 permanent rule-making process.

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007

Scope statements

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) gives notice, pursuant to s. 227.135, Stats., that it proposes to promulgate an administrative rule as follows:

Subject

Agricultural Producer Security.

NOTE: This scope statement expands a scope statement published on December 1, 2006, related to agricultural producer security.

Administrative Code Reference: Chapters ATCP 99, 100 and 101, Wis. Adm. Code.

Statutory Authority

Sections 93.07 (1), 126.11 (4), 126.15 (1), 126.26 (3), 126.30 (1), 126.41 (3), 126.42 (6), 126.46 (1), 126.56 (4), 126.56 (4) (f), 126.60 (1), 126.81, and 126.88, Stats.

Policy Analysis

Preliminary Objectives

Modify producer security fund assessments and license fees for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

Modify required contractor disclosures to producers.

Make technical modifications to current rules governing the agricultural producer security program, as necessary.

Security Shortfall

DATCP administers the Agricultural Producer Security program under Chapter 126, Stats. The program helps protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as “contractors”). Contractors must be licensed by DATCP. Most contractors pay assessments to the agricultural producer security fund (“fund”) administered by DATCP. If a contractor defaults, DATCP may reimburse producers from the fund.

The fund currently has a balance of approximately \$7 million. DATCP may pay up to 60% of that amount to reimburse producers for losses in any individual contractor default. That amount is adequate to handle most potential defaults. But several large contractors have unsecured “default exposure” far in excess of fund capacity. If one of those contractors were to default, reimbursement might cover only a small fraction of producer losses.

DATCP has proposed legislation to remedy the security shortfall, but that legislation has not advanced. DATCP therefore proposes to modify current rules to do the following:

Increase fund assessments to provide greater default coverage for contractors who are not adequately secured. Without a change in fund assessments, most assessments are actually scheduled to decline over the next several years.

Adjustments may affect some contractors more than others, depending on default risks.

Strengthen contractor disclosures to producers, so that producers will be more fully aware of the security shortfall that exists for certain contractors.

DATCP *must* adjust fund assessments whenever the overall fund balance, or the fund balance for any contractor group (grain dealers, grain warehouse keepers, milk contractors or vegetable contractors) falls outside a specified statutory range. At this time, the fund balance for grain warehouse keepers falls below the specified range, so DATCP *must* increase fund assessments for grain warehouse keepers.

Administrative Costs and License Fees

Effective program administration is critical for managing potentially large financial risks under the producer security program. DATCP performs the following functions, among others:

Reviews and processes annual contractor license applications, and monitors compliance with license requirements.

Reviews confidential annual financial statements, to determine contractor compliance with financial standards.

Audits accounts, records and inventories, to verify contractor claims and ensure compliance with financial standards. Grain facility audits account for a substantial share of overall administrative costs.

Administers the fund.

In the event of a financial default, conducts default proceedings to determine the amounts owed to producers and to reimburse producer claims as appropriate.

Attempts to recover, from defaulting contractors, reimbursement of fund payments to affected producers.

Adopts and amends rules to regulate contractor practices, and establish trust fund contribution amounts.

Investigates law violations, and takes compliance action as necessary.

Prior to 2003, administrative costs were paid by a combination of general tax revenue (“GPR”) funding and contractor license fees. However, the 2003–2004 Biennial Budget Act eliminated virtually all general tax revenue (“GPR”) funding for program administration. That made it necessary to transfer 2.9 FTE staff (grain auditors and general support staff) from GPR funding to license fee funding. As a result, current license fee funding is no longer adequate to cover administrative costs.

Funding shortfalls are especially severe in the grain and vegetable programs, so administration of those programs is currently being subsidized by dairy contractor license fees. DATCP proposes to increase license fees by rule, to provide minimally adequate funding for all program sectors and to correct current inequities between sectors.

Grain dealer and grain warehouse keeper license fees have not changed since 1997. Milk contractor license fees have not changed since 1994. Vegetable contractor license fees have not changed since 1998 (except that 2005 Wisconsin Act 80 modified license fees for certain potato buyers who opt out of the security program). Without a change in license fees, most fees are actually scheduled to decline over the next several years.

Other Rule Changes

DATCP may make a number of technical changes to current rules, including changes to current definitions and changes to reflect 2005 Wisconsin Act 80 (related to potato contractors).

Comparison with Federal Regulations

Related Federal Programs

There is no federal program to secure milk contractor payments to producers. However, there are federal programs relating to grain warehouses and vegetable contractors. Federal program coverage differs from Wisconsin program coverage, so there is little if any duplication.

Grain Warehouses

The United States Department of Agriculture (“USDA”) administers a producer security program for federally licensed grain warehouses. Federally licensed warehouses are exempt from state grain warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal licensing and security requirements.

The federal program focuses on grain *storage*. Unlike the Wisconsin program, the federal program provides little or no protection related to grain *dealing* (the buying of grain from producers, also known as grain “merchandising”). However, USDA is proposing to regulate grain merchandising by federally licensed grain warehouse keepers. If that proposal becomes law, federally licensed warehouse keepers who engage in merchandising would likely be exempt from state grain dealer licensing.

Vegetable Contractors

The Perishable Agricultural Commodities Act (“PACA”) regulates contractors who buy unprocessed, fresh market vegetables from producers. Wisconsin’s vegetable security program applies mainly to processing vegetables, so there is little overlap with PACA (which applies to fresh market vegetables). 2005 Wisconsin Act 80, which allowed potato buyers covered by PACA to opt out of participation in the trust fund, further limited potential overlap between state and federal programs.

Entities Affected by the Rule

This rule may affect grain, milk and vegetable contractors who are licensed under Wisconsin’s agricultural producer security program. This rule may increase producer security fund assessments and license fees paid by contractors, and may require contractors to provide additional disclosures to producers. Fund assessments, license fees and disclosure requirements may vary by contractor type, size, financial condition, and risk practices.

Policy Alternatives

Security Shortfall

DATCP has proposed legislation to remedy the current security shortfall under the agricultural producer security program. The legislation would authorize DATCP to demand individual security from a contractor whose “default exposure” exceeds the capacity of the producer security fund, if that contractor fails to meet minimum financial standards. That legislation, if enacted, would reduce the need for increased fund assessments from other contractors. The legislation would currently affect no more than 5–6 (very large) contractors, and would cost those contractors an approximate combined total of only \$150,000 per year. However, the affected contractors would need to tie up a significant amount of working capital as pledged security, at a time when their financial condition is weak.

DATCP will also be proposing legislation to eliminate the current statutory mandate for DATCP to obtain “contingent financial backing” for the producer security fund. DATCP has tried repeatedly, and without success, to obtain bonds or other “contingent financial backing” from bonding companies and other private sources. Those sources are simply unwilling to provide “contingent financial backing” at a price that is remotely manageable. DATCP has also evaluated potential alternatives for public financial backing, and has found no workable alternatives. The current statutory mandate provides an illusion of security protection that does not, in fact, exist.

Administrative Costs and License Fees

DATCP cannot continue to operate the agricultural producer security program, in its current form, without a restoration of funding for program administration. DATCP projects a rapidly growing operating deficit, beginning in the current fiscal year. Policy alternatives include the following:

Increase contractor license fees (as proposed in this scope statement).

Enact legislation to restore GPR funding eliminated in the 2003–05 biennial budget.

Reduce critical administrative functions, such as financial statement reviews and grain warehouse audits. That would put agricultural producers at great financial risk and threaten the solvency of the agricultural producer security fund. It could also have an adverse impact on competing grain, milk and vegetable contractors.

Statutory Alternatives

See discussion above. The Legislature could also repeal the agricultural producer security program, or drastically reduce security coverage for agricultural producers.

Staff Time Required

DATCP estimates that it will use approximately 1.0 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP Board Authorization

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

Health and Family Services

Subject

The Department proposes to revise ch. HFS 117, rules relating to fees for copies of patient health care records.

Policy Analysis

2001 Wisconsin Act 109 modified the statutory requirements upon which ch. HFS 117 was based. Principally, 2001 Act 109:

1. Amended s. 146.83 (1) (b) and (c), Stats., pertaining to a patient's access to his or her health care records. These amendments extend the applicability of the fee limits the Department specifies in ch. HFS 117 to all requests for health care record copies in all settings (not just requests from attorneys, nor just with respect to cases in litigation.)

2. Created s. 146.83 (3m), Stats., which directs the Department to prescribe copying fees that are based on an approximation of actual costs incurred by entities producing the copies, and to revise the rules every three years to account for increases or decreases in actual costs.

In 2003, the Department proposed rules consistent with 2001 Act 109, and adopted the rules on February 2, 2007, for an April 1, 2007 effective date. The rules adopted by the Department are based on data collected in 2003. Hence, it would be consistent with legislative intent to revise the rule at present to account for any potential increases or decreases in actual costs.

Statutory Authority

The Department's authority to promulgate these rules is under ss. 146.83 (3m) and 908.03 (6m) (d), Stats.

Staff Time Required

The Department estimates it will take 100 hours of staff time to develop the proposed rules, including the time required to staff an advisory committee. The Department will establish an advisory committee composed of representatives of health care records providers and requestors.

Comparison with Federal Regulations

45 CFR 160 and 164 commonly known as the "Health Insurance Portability and Accountability Act" or "HIPAA" relating to billing statements as a type of health care records; personal representatives; and two group fee system structure are regulations that may be comparable to the proposed rules.

Entities Affected by the Rule

The entities that may be affected by the proposed rules are health care records providers and requestors of health care records.

Natural Resources

Subject

Non-substantive (housekeeping) changes to sections of the Wis. Adm. Code relating to regulation of sport fishing seasons, bag limits, length limits and approved gear.

Policy Analysis

The Department is beginning the process of identifying errors and inconsistencies in sections of the Wis. Adm. Code relating to regulation of sport fishing. The Department anticipates requesting approval to hold hearings on these changes in March, 2007, and holding such hearings, if approved, in May 2007.

Comparison with Federal Regulations

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

Statutory Authority

Sections 29.014 and 29.041, Stats.

Staff Time Required

The Department anticipates spending approximately 75 hours in the rule development process.

Natural Resources

Subject

Chapter NR 146, relating to well driller and pump installer registration; Chapter NR 812, relating to well construction and pump installation; and Chapter NR 845, relating to county administration of the private well code.

Policy Analysis

Objectives of the rule. Earlier this year, Act 360 was passed with the support of the Wisconsin Water Well Association, resulting in the following major changes to ch. 280, Wis. Stats, that will improve protection to public health and groundwater:

1. Well abandonment must in most cases be performed by a licensed well driller or pump installer or someone working under the supervision of a licensed person.

2. Well and pressure system inspections conducted as part of real estate transactions must be performed by an individually-licensed well driller or pump installer.

3. Drilling rig operators must be registered with the department and complete additional training to qualify for an individual well driller license. A registered rig operator or licensed well driller must be onsite during all potable well drilling activities.

4. Some violations of ch. 280, Wis. Stats. and chs. NR 146 and NR 812, Wis. Adm. Code, will be subject to forfeitures through the citation process.

Policy analysis. Rule revisions will be needed to make the rules reflect the statutory changes and also to:

1. Specify what is included in a well and pressure system inspection, including water tests and searching for wells that must be abandoned (filled and sealed).

2. Specify minimum training standards for drilling rig operators to qualify for a well driller license.

3. Specify the violations that will be subject to forfeitures.

Comparison with Federal Regulations

There are no comparable federal regulations pertaining to rig operator registration, water system inspections at time of property transfer, or searching for wells that need to be abandoned.

Statutory Authority

Chapter 280, Stats., provides DNR with the authority to set and enforce uniform minimum standards for private well location and construction, well abandonment, pump installation, and water testing; and to require licensing of well drillers and pump installers. The last major revision in 1984 added county implementation of the private water program.

Entities Affected by the Rule

The proposed rule will be of the greatest interest to licensed well drillers and pump installers and their employees as well as those persons and firms who currently perform well and pressure system inspections and well abandonment. The rule may also be of interest to those in the real estate business and water testing laboratories. A few counties that perform real estate transfer inspections will be affected slightly.

Staff Time Required

Approximately 370 hours of staff time will be required to complete the rule revisions.

Revenue

Subject

Section Tax 8.24, relating to reciprocal interstate shipments of wine.

Entities Affected by the Rule

Wineries located in California, Missouri, and Oregon that ship wine into Wisconsin and individuals in Wisconsin that receive such shipments. Also, wineries located in Wisconsin that ship wine into California, Missouri, and Oregon and individuals in California, Missouri, and Oregon that receive such shipments.

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.

Policy Analysis

Objective of the rule. The objective of the proposed rule is to reflect a law change relating to shipments of wine between Wisconsin and states with which Wisconsin has a reciprocal agreement described in s. 139.035, Stats. (currently California, Missouri, and Oregon). The law change increased the amount of wine an individual may receive per year from a winery in a reciprocal state from 9 liters to 27 liters.

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect the law change indicated above. 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 60 hours to develop this rule order.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 28, relating to the Wisconsin Harbor Assistance Program (HAP), by amending the definition of "commercial transportation facility," which will expand eligibility for HAP grants to owners of harbor facilities that had been used for maritime commerce.

Policy Analysis

2003 Wisconsin Act 208 amended s. 85.095, Stats., to open the HAP to private owners of harbor facilities. When such facilities are taken out of commercial use, there remains a need that the wharf along such a property be maintained to ensure the integrity of the commercial navigation channel in that harbor. Allowing HAP grants to be used to rehabilitate such facilities would help protect the navigation channels and allow public access to such privately-owned facilities for at least ten years.

Comparison with Federal Regulations

None

Statutory Authority

Sections 85.16 (1), 85.095 and 227.11 (2), Stats.

Entities Affected by the Rule

Private owners of harbor facilities, ports of Wisconsin, WI Harbor Towns Assoc., WI Commercial Ports Assoc., US

Coast Guard, US Army Corp of Engineers, the WI Coastal Management Council.

Staff Time Required

Approximately 160 hours.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 129, relating to motorcycle courses, by changing the maximum number of motorcycles allowed on the range as prescribed in the Basic Rider Course and Experienced Rider Course curriculums developed by the Motorcycle Safety Foundation (MSF). It will also require a 10-day reporting time frame for site inspection reports. Finally, it will make changes necessary as a result of removing private motorcycle training schools from ch. Trans 105.

Policy Analysis

Currently the rule requires that there be a maximum of 15 motorcycles on the range. The MSF curriculum only allows a maximum of 12 motorcycle on the range at a time. Site inspection reports are currently being sent in weeks after the inspection. This rule making would require that they be submitted within 10 days of the inspection. Ch. Trans 105 was recently revised and removed the private motorcycle rider education sites from its requirements. This rule making will remove those sections that are no longer valid and retain those that are still deemed appropriate.

Comparison with Federal Regulations

None

Statutory Authority

Section 85.30, Stats.

Entities Affected by the Rule

All rider education providers, both technical college sponsored and private, chief instructors and instructors may be affected.

Staff Time Required

Approximately 40 hours.

Transportation

Subject

Objective of the rule. 2005 Wis. Act 455 establishes new provisions regarding disabled parking card issuance, intended to reduce fraudulently obtaining disabled parking cards, as well as improper use. The law requires DOT to provide by rule for the issuance of replacement disabled parking identification cards, for cards that have been lost or destroyed. This rule making will amend ch. Trans 130, relating to special identification cards and special registration plates for physically disabled, by addressing issuance of replacement cards, and updating the rule to include other appropriate references from the new law. In addition, DMV proposes to distinguish, by card design, disabled parking cards for organizations as distinct from parking cards for individuals.

Policy Analysis

Under current policy, a request for replacement disabled parking cards must include a reason for the request: lost/destroyed, stolen, or mutilated/illegible. There is no limit to the number of replacement cards that a person may obtain over time. However, very frequent replacement typically triggers customer contact to verify that a replacement card is warranted.

In this rule making, DOT will consider possible alternative policies and procedures, with the objective of aiding DMV in determining whether a request is fraudulent and possibly implementing procedures that will deter or reduce fraud. DOT may wish to consider policies that differ among replacement cards for lost cards, replacement cards for stolen cards, and replacement cards for mutilated cards. However, DOT's analysis will balance the need to minimize fraud against the difficulty, inconvenience, and cost to legitimate customers who have a legitimate need to obtain a replacement card.

For example, a possible alternative might be a period of time after a replacement card is issued, that a person is ineligible for another replacement card; however, such a policy might be subject to challenge of discrimination under the Americans with Disabilities Act. Another example is having a replacement card be a different color than an original card; however, this alternative would be costly, since Wisconsin would require special purchasing of card stock. A third example is informing local law enforcement whenever a person is issued a replacement card; however, this alternative would be extremely costly to DMV and law enforcement and would be burdensome to customers without any documented value in reducing fraud.

The reason that DMV proposes to distinguish, by card design, disabled parking cards for organizations as distinct from parking cards for individuals is to possibly reduce the misuse of organization parking cards.

Comparison with Federal Regulations

Federal Americans with Disability Act is the over-arching federal law that governs treatment of disabled persons. The National Highway Traffic Safety Administration (NHTSA) implements disabled parking requirements, in 23 CFR 1235, Uniform System for Handicapped Parking.

Entities Affected by the Rule

Individuals who apply for disabled parking cards, and replacement cards; and, organizations that apply for and receive disabled parking cards.

Statutory Authority

Section 343.51 (2m) (b), as created by 2005 Wis. Act 455.

Staff Time Required

240 hours.

Workforce Development

Subject

Unemployment insurance rules for determining a claimant's ability and availability to work.

Policy Analysis

To be eligible to receive unemployment insurance benefits, an individual must, in addition to other requirements, be "able" to perform suitable work and be "available" for suitable work. Section 108.04 (2), Stats., provides that a claimant shall be eligible for benefits for any week of total unemployment only if the claimant is able to work and available for suitable work. Sections 108.04 (1) (b) 1., 108.04 (7) (c), and 108.04 (8) (e), Stats., provide that a claimant shall be eligible for unemployment benefits only if the claimant is able to work and available for work.

Under the current ch. DWD 128, a claimant is not considered "able" to work if the claimant's physical or

psychological ability to work limits the claimant to less than 15% of the opportunities for suitable work in the claimant's labor market area. A claimant is not considered "available" for work if the claimant restricts his or her availability for work to less than 50% of the full-time opportunities for suitable work. The Department has found that rigid adherence to percentage standards sometimes produces results that are arbitrary and inconsistent. The Department is unaware of any other states that use percentage tests to determine whether a claimant is "able and available" to work.

The Department proposes amendments to Chapter DWD 128 to clarify the determination when claimants are able to work and available for work. The proposed rule eliminates the requirement that a claimant be "able" to work 15% of the opportunities for suitable work in the claimant's labor market area, and replaces this with five relevant factors the Department may consider in making the determination whether the claimant is considered to have withdrawn from the labor market due to physical or psychological inability to work and is therefore ineligible for benefits. Appropriate factors include, but are not limited to: the claimant's usual or customary occupation, the nature of the restrictions, the qualification to do other work based on the claimant's education, training and experience, the ability to be trained in another occupation, and certain occupational data and reports available to the Department.

The proposed rule also eliminates the requirement that a claimant be "available" for work 50% of the full-time opportunities for suitable work in the claimant's labor market area and the requirement that first shift full-time work governs the availability standard for most jobs, and replaces this with eight relevant factors the Department may consider in making the determination whether a claimant is considered to have withdrawn from the labor market by restricting his or her availability to work and is therefore ineligible for benefits. These factors include: restrictions on the claimant's salary or wages, shift and time restrictions, travel and transportation restrictions, if the claimant is incarcerated or otherwise absent from the labor market for 48 hours in one week, the types of work sought, other unreasonable restrictions on the claimant's working conditions, and occupational data and reports available to the Department.

The proposed rule carries over from federal law the general presumption that a claimant is able and available to work if the claimant is registered to work and does the required work search. The proposed rule will help the Department determine whether a claimant is "able and available" for work based on the claimant's attachment to, or withdrawal from, the labor market by methods that are more transparent than the percentage standards and are more understandable to claimants and employers. The proposed rule also deletes the provision that overpayments will not be collected for benefits erroneously paid before issuance of an eligibility determination for a given week, clarifies the difference between refusal of work and availability for work, incorporates federal law standard for proof of alien status, and deletes the grace period for claimants with uncontrollable restrictions as unnecessary in light of the new definition of able to work.

Statutory Authority

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

Staff Time Required

200 hours.

Comparison with Federal Regulations

All states must have provisions that require a claimant to be “able and available” for work in order to receive unemployment benefits. The United States Department of Labor (DOL) and its predecessors have interpreted and enforced federal “able and available” requirements since the inception of the federal–state unemployment compensation program. Although no “able and available” requirements are explicitly stated in the federal statutes, the DOL interprets five provisions of federal law, contained in the Social Security Act and Federal Unemployment Tax Act, as requiring that states condition the payment of unemployment benefits upon a claimant being able to and available for work. Two of these provisions, at Section 3304(a)(4), FUTA, (26 U.S.C. 3304(a)(4)) and Section 303(a)(5), SSA, (42 U.S.C. 503(a)(5)) with specific exceptions, limit withdrawals from a state’s unemployment fund to the payment of “compensation.” Section 3306(h), FUTA, (26 U.S.C. 3306(h)) defines “compensation” as “cash benefits payable to

individuals with respect to their unemployment.” The “able and available” requirements provide a federal test of an individual’s continuing unemployment. Two other provisions, found in Section 3304(a)(1), FUTA, (26 U.S.C. 3304(a)(1)) and Section 303(a)(2), SSA, (42 U.S.C. 503(a)(2)) require that compensation “be paid through public employment offices.” The requirement that compensation be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to both an individual’s ability to work and availability for work. These requirements serve to limit benefit eligibility. The federal government has proposed rules, 20 CFR Part 604, regarding Unemployment Compensation Eligibility relating to determinations of individuals who are able and available for work.

Entities Affected by the Rule

Employees and employers covered by the unemployment insurance program.

Submittal of rules to legislative council clearinghouse

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

Commerce

On January 26, 2007, the Department of Commerce submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Section 227.14 (4m) and 227.17, Stats.

The proposed rules affect chs. Comm 5 and 20, relating to dwelling contractor certification.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on February 27, 2007. The department's Safety and Buildings Division is primarily responsible for this rule.

Contact Person

Jim Quast
Program Manager
608-266-9292
jim.quast@wisconsin.gov

Commerce

On January 29, 2007, the Department of Commerce submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Section 227.14 (4m) and 227.17, Stats.

The proposed rules affect ch. Comm 67, relating to rental unit energy efficiency standards.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on March 15, 2007. The department's Safety and Buildings Division is primarily responsible for this rule.

Contact Person

Joe Hertel
Program Manager
608-266-5649
jhertel@commerce.state.wi.us

Natural Resources

On February 7, 2007, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

The proposed rule affects chs. NR 10, 15, 17 and 19, relating to hunting and trapping regulations.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on April 16, 2007. The department's Bureau of Wildlife Management is primarily responsible for this rule.

Contact Person

Scott Loomans
Bureau of Wildlife Management
608-267-2452

Natural Resources

On February 7, 2007, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

The proposed rule affects chs. NR 20 and 26, relating to fishing on the inland, outlying and boundary waters of Wisconsin.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on April 16, 2007. The department's Bureau of Fisheries Management and Habitat Protection is primarily responsible for this rule.

Contact Person

Joe Hennessy
Bureau of Fisheries Management and Habitat Protection
608-267-9427

Natural Resources

On February 7, 2007, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

The proposed rule affects s. NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on March 21, 2007. The department's Division of Forestry is primarily responsible for this rule.

Contact Person

Dr. Andrea Diss-Torrance
Division of Forestry
608-264-9247

Natural Resources

On February 7, 2007, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

The proposed rule affects s. NR 1.212, relating to referral of private timber sale requests to cooperating foresters.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on March 21, 2007. The department's Bureau of Forest Management is primarily responsible for this rule.

Contact Person

Paul Pingrey
Bureau of Forest Management
608-267-7595

Natural Resources

On February 7, 2007, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

The proposed rule affects s. NR 1.26, relating to contracting for timber sale establishment services on state land.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on March 21, 2007. The department's Bureau of Forest Management is primarily responsible for this rule.

Contact Person

Paul Pingrey
Bureau of Forest Management
608-267-7595

Natural Resources

On February 7, 2007, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

The proposed rule affects chs. NR 428 and 484, relating to implementation of Reasonably Available Control Technology (RACT) NO_x emission limitations applicable to major sources in the 8-hour ozone non-attainment area in southeastern Wisconsin.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on March 15, 2007. The department's Bureau of Air Management is primarily responsible for this rule.

Contact Person

Tom Karman
Bureau of Air Management
608-266-7718

Natural Resources

On February 7, 2007, the Department of Natural Resources submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

The proposed rule affects ch. NR 433, relating to the Best Available Retrofit Technology (BART) requirements

for visibility protection and the determination of BART for those sources.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on March 13 and 15, 2007. The department's Bureau of Air Management is primarily responsible for this rule.

Contact Person

Farrokh Ghoreishi
Bureau of Air Management
608-266-7718

Workforce Development

On January 31, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Sections 108.02 (12) (f), 108.14 (2) and 227.11 (2), Stats.

The proposed rules affect chs. DWD 100 to 150, relating to unemployment insurance technical corrections.

Agency Procedure for Promulgation

Pursuant to s. 227.16 (2) (b), Stats., a public hearing is not required because the proposed rule brings an existing rule into conformity with a statute that has been changed. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Person

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Workforce Development

On January 31, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Sections 106.01 (9) and 227.11 (2), Stats.

The proposed rules affect ch. DWD 295, relating to enforcement of apprenticeship agreements and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 28, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

Contact Person

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Workforce Development

On February 15, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Sections 102.15 (1), 102.16 (2m) (g) and 227.11 (2) (a), Stats.

The proposed rules affect chs. DWD 80 and 81, relating to worker's compensation and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 22, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Worker's Compensation Division.

Contact Person

Jim O'Malley

Telephone: (608) 267-6704

Email: jim.o'malley@dwd.state.wi.us

Workforce Development

On February 15, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Sections 103.905 (1) and 227.11 (2) (a), Stats.

The proposed rules affect ch. DWD 301, relating to migrant labor and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 19, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

Contact Person

Elaine Pridgen

Telephone: (608) 267-9403

Email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

**Notice of Hearing
Natural Resources
(Fish, Game, etc.)
[CR 07-011]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 28.025 and 227.11 (2) (a), Stats., interpreting s. 28.025, Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 1.21 (2) (e), Wis. Adm. Code, and the creation of s. NR 1.26, Wis. Adm. Code, relating to contracting for timber sale establishment services on state land. Section 28.025, Stats., created by 2005 Wisconsin Act 166, directs the Department to establish an annual allowable timber harvest for state forest lands. The Act instructs the Department to develop a timber sale contracting program with private "cooperating foresters" for assistance in meeting the allowable harvest goals. Proposed s. NR 1.26 would identify timber sale related tasks that could be contracted and a method for calculating the portion of timber sale revenue that would pay for the services. The proposed rule distinguishes between timber sale related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. 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), Stats.

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: Private consulting forestry firms will have the opportunity to add positions and expand into providing more services on state-owned land.
- b. Description of reporting and bookkeeping procedures required: No new requirements.
- c. Description of professional skills required: The revised educational requirement would clarify that the Chief State Forester can identify college training that is equivalent to accreditation by the Society of American Foresters.

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. 28.025 and 227.24, Stats., interpreting s. 28.025, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FR-01-07(E) relating to contracting for timber sale establishment services on state land. This emergency order took effect on February 6, 2007. 2005 Wisconsin Act 166 provides that the rules shall be initially adopted through the emergency rule process followed by promulgation of the permanent rule. The Act also provides the emergency rule shall not lapse prior to promulgation of the permanent rule and required no finding of emergency.

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

Wednesday, **March 21, 2007** at 1:00 p.m.

Video conference participation will be available at:

Room 138, State Office Building, 718 W. Clairemont, Eau Claire

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

Conference Room 3, DNR Regional Office, 107 Sutliff Ave., 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 Paul Pingrey at (608) 267-7595 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

It is anticipated that there will be both an increase in revenues and costs.

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 Mr. Paul Pingrey, Division of Forestry, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until March 30, 2007. 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. Pingrey.

**Notice of Hearing
Natural Resources
(Fish, Game, etc.)
[CR 07-012]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 28.025 and 227.11 (2) (a), Stats., interpreting s. 28.025, Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 1.212 (3) (a), Wis. Adm. Code, relating to referral of private timber sale requests to cooperating foresters. The proposed rule revision would 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. The revision also drops redundant language about refusals from cooperators to provide service.

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: Private consulting forestry firms and landowners who operate their woodlands as a small business.

b. Description of reporting and bookkeeping procedures required: No new requirements.

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, **March 21, 2007** at 1:00 p.m.

Video conference participation will be available at:

Room 138, State Office Building, 718 W. Clairemont, Eau Claire

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

Conference Room 3, DNR Regional Office, 107 Sutliff Ave., Rhineland

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 Paul Pingrey at (608) 267-7595 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

No fiscal effect is anticipated.

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 Mr. Paul Pingrey, Division of Forestry, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until March 30, 2007. 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. Pingrey.

Notice of Hearing Natural Resources (Fish, Game, etc.) [CR 07-013]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.114 and 227.11 (2) (a), Stats., interpreting s. 23.114, Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 45.075, Wis. Adm. Code, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department. Section 23.114, Stats., directs the Department implement a rule pertaining to the chief state forester's authority to specify emergencies on forested lands under the jurisdiction of the Department. The proposed rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency on forested lands under department jurisdiction and take management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease and damage to timber from fire, snow, hail, ice or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that was the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.

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. 23.114 and 227.24, Stats., interpreting s. 23.114, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FR-11-07(E) relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department. This emergency order took effect on February 6, 2007. 2005 Wisconsin Act 166 provides that the rules shall be initially adopted through the emergency rule process followed by promulgation of the permanent rule. The Act also provides the emergency rule shall not lapse prior to promulgation of the permanent rule and required no finding of emergency.

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

Wednesday, March 21, 2007 at 1:00 p.m.

Video conference participation will be available at:

Room 138, State Office Building, 718 W. Clairemont, Eau Claire

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

Conference Room 3, DNR Regional Office, 107 Sutliff Ave., 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 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 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 Dr. Andrea Diss-Torrance, Division of Forestry, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until March 30, 2007. 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 Hearings
Natural Resources
(Fish, Game, etc.)**

[CR 07-014]

[CR 07-015]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.039, 29.041 and 227.11 (2) (a), Stats., interpreting ss. 29.531, 29.533, 29.014 (1), 29.039 and 29.041, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 20 and 26, Wis. Adm. Code, relating to fishing on the inland, outlying and boundary waters of Wisconsin. The proposed changes:

1. Eliminate restriction on maximum allowable size of landing nets. Current administrative code stipulates that landing nets may not exceed 36" diameter.
2. Implement 50" minimum size limit for muskellunge on the St. Louis River. This proposal is being made concurrently with the Minnesota Department of Natural Resources.
3. Stipulate that spears and arrows used for fishing have barbed tips.
4. Increase the daily bag limit for walleye, sauger and their hybrids in Mineral Lake, Ashland County from 3 fish to 5 fish and replace the current 18" minimum size limit with no minimum, but only one fish larger than 14" may be kept.
5. Authorize seining and dipnetting for rainbow smelt in Beaver Dam Lake, Barron County with a continuous open season and no restrictions on harvest hours. A maximum allowable size for seines is specified.
6. Create a 26" minimum size limit for trout in Beaver Dam Lake, Barron County with a one fish daily bag limit, and create a 15" minimum size limit for trout in the Hay River, Barron County, with a one fish daily bag limit.
7. Create an 18" minimum size limit for walleye in the Red Cedar chain of lakes (lakes Balsam, Red Cedar and Hemlock), Barron and Washburn Counties.

8. Reduce the daily bag limit for panfish in Middle Eau Claire and Bony Lakes, Bayfield County, from 25 fish to 10 fish.

9. Extend the 45" minimum length limit for muskellunge in Lakes Monona, Waubesa and Wingra, Dane County to tributaries and connecting waters of those lakes.

10. Implement minimum size and bag limits for brown trout and lake trout, and an 18" minimum size limit and 3 fish daily bag limit for walleye in Keyes Lake, Florence County.

11. Remove the 26" minimum size limit and 2 fish daily bag limit for northern pike in Kettle Moraine and Long Lakes, Fond du Lac County and replace those restrictions with no minimum size limit and a 5 fish daily bag limit.

12. Increase the daily bag limit for largemouth and smallmouth bass in the Gile Flowage, Iron County, from 2 fish to 3 fish, aggregate, and change the 15" minimum size limit to no minimum, but no fish between 14" and 18" may be kept and only one fish larger than 18" may be kept.

13. Remove the 26" minimum size limit and 2 fish daily bag limit for northern pike in the Buffalo (upstream of highway 93) and Trempealeau Rivers (upstream of the dam in Blair), Jackson and Trempealeau Counties, and replace those restrictions with no minimum size limit and a 5 fish daily bag limit.

14. Eliminate the continuous open season for game fish on the Yellowstone River, Lafayette County.

15. Eliminate special regulations for trout on a section of the Prairie River, Lincoln County.

16. Implement a 3 fish aggregate daily bag limit for largemouth and smallmouth bass in Big Bass and Mission Lake, Marathon County, with no minimum size limit but no fish between 14" and 18" may be kept and only one fish larger than 18" may be kept.

17. Eliminate special regulations for trout in Plum Creek, Pepin County, eliminate special regulations for trout in the Kinnickinnic River and Plum Creek in St. Croix County, and change trout regulations on reaches of the Kinnickinnic River in Pierce County.

18. Implement a 3 fish aggregate daily bag limit for largemouth and smallmouth bass in Pipe Lake, Polk County with no minimum size limit but no fish between 14" and 18" may be kept and only fish larger than 18" may be kept.

19. Reduce the daily bag limit for panfish from 25 fish to 10 fish in all inland waters of St. Croix County and Cedar Lake, which is in Polk and St. Croix Counties.

20. Implement a 3 fish daily bag limit for walleye in Cedar Lake, Polk and St. Croix Counties, with no minimum size limit but no fish between 14" and 18" may be kept and only one fish larger than 18" may be kept.

21. Implement a 5 fish daily bag limit for walleye in Butternut Lake, Price County, with no minimum size limit but only one fish larger than 14" may be kept.

22. Implement restrictive bag and size limits for panfish, largemouth and smallmouth bass and northern pike in Eagle Lake, Racine County.

23. Remove the 26" minimum size limit and 2 fish daily bag limit for northern pike in Crystal Lake, Sheboygan County and replace those restrictions with no minimum size limit and a 5 fish daily bag limit.

24. Remove the 26" minimum size limit and 2 fish daily bag limit for northern pike in Little Cedar Lake, Washington County and replace those restrictions with no minimum size limit and a 5 fish daily bag limit.

25. Create 3 fish refuges below dams in the Sugar River, Green County and create a fish refuge on the Yahara River below the Dunkirk Dam, Dane County.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 23.09 (2) (b), 29.014, 29.089, 29.091, 29.164 (4) (b), 29.184 (6), 29.197 (2) and 29.597, Stats., interpreting ss. 23.09 (2) (b), 29.014, 29.089, 29.041, 29.091, 29.164 (4) (b), 29.184 (6), 29.197 (2) and 29.597, 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 hunting and trapping regulations. The proposed changes:

1. Reduce the number of turkey management zones from the current 46 to 7.
2. Rename Bear Hunting Zone A1 as Zone D.
3. Eliminate the open season for jackrabbits.
4. Establish a nonresident trapping season for raccoons that begins 2 weeks after the start of the season for residents.
5. Legalize the use of shotgun slugs for hunting species other than game birds and allow the use of buckshot for hunting bobcat at all times during that season.
6. Require the display of blaze orange on ground blinds used on department lands during seasons when hunters are required to wear blaze orange.
7. Prohibit deer feeding near dwellings and businesses when feed is being used by bear or elk.
8. Prohibit open water hunting on Mississippi River Pool 11 to match U.S. Fish & Wildlife Service regulations for the Upper Mississippi River National Fish & Wildlife Refuge.
9. Change closed area boundaries and create new closed areas on the Upper Mississippi River Wildlife and Fish Refuge to make them consistent with those adopted by the U.S. Fish & Wildlife Service.
10. Establish a closed area at the Wisconsin River Delta of the Upper Mississippi River National Fish and Wildlife Refuge beginning on November 1 each year for consistency with the U.S. Fish & Wildlife Service.
11. Expand the time when cable restraints may be used for coyote and fox, allow their use for a portion of the bobcat season, and modify cable size standards.
12. Establish a fee of \$12.00 for the course of instruction under the trapper education program and \$28 for correspondence courses that require out-of-state mailing.
13. Apply existing trap size, type and placement regulations to licensed wild fur farms.
14. Create an archery season for deer and special tags in Unit 79, Apostle Islands National Lakeshore.
15. Create a 9-day, shotgun-only deer hunting season at Lake Wissota State Park and create Deer Management Unit 59E.
16. Eliminate the 19-day muzzleloader-only deer hunting season at Brunet Island State Park and create a 9-day shotgun-only season in its place.
17. Establish a 2:00 p.m. closing time for pheasant hunting at Mud Lake Wildlife Area in Columbia County and Pine Island Wildlife Area in Sauk and Columbia Counties.
18. Create a pilot program to allow fall turkey hunting with the aid of dogs in certain counties.

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 16, 2007, the Wisconsin Conservation Congress will hold its election of county delegates in each county. Upon completion of the delegate elections, 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 16, 2007 at 7:00 p.m. at the following locations:

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>.

Ashland: Ashland Senior High School, Auditorium, 1900 Beaser Ave., Ashland

Barron: Old Courthouse Building Lower Level, Auditorium, 330 E LaSalle Ave., Barron

Bayfield: Drummond High School, 40 Eastern Ave., Drummond

Brown: Green Bay Southwest High School, Auditorium, 1331 Packerland Drive, Green Bay

Buffalo: Alma High School, Auditorium, S1618 State Rd. 35, Alma

Burnett: Siren Government Center, Room 165, 7410 County Road K, Siren

Calumet: Calumet County Courthouse, B025, 206 Court Street, Chilton

Chippewa: Chippewa Falls Middle School, Auditorium "A", 750 Tropicana Blvd., Chippewa Falls

Clark: Greenwood High School, Cafetorium, 306 W. Central Ave., Greenwood

Columbia: Turner Junior High School, 2505 New Pinery Road, Portage

Crawford: Crawford County Courthouse, Court Room, 220 N. Beaumont Road, Prairie du Chien

Dane: Dane County Alliant Energy Center, 1919 Alliant Energy Way, Madison

Dodge: Horicon City Hall, 404 Lake Street, Horicon

Door: Sturgeon Bay High School, Auditorium, 1230 Michigan, Sturgeon Bay

Douglas: Superior Senior High School, 2600 Catlin Avenue, Superior

Dunn: Dunn County Fish And Game Club, 1900 Pioneer Ave., Menomonie

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

Florence: Florence Natural Resources Center, Large Conference Room, Highway 70/101, Florence

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

Forest: Crandon High School, Auditorium, 9750 USH 8 W, Crandon

Grant: Lancaster High School, Auditorium, 806 East Elm Street, Lancaster

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

Green Lake: Green Lake High School, Small Gym, 612 Mill St., Green Lake

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

Iron: Iron County Court House, Main Courtroom, 300 Taconite, Hurley

Jackson: Black River Falls Middle School, LGI, 1202 Pierce Street, Black River Falls

Jefferson: Jefferson County Fairgrounds, Activity Center, 503 N. Jackson Ave., Jefferson

Juneau: Juneau County Courthouse, Second Floor – County Board Room, 220 E. State Street, Mauston

Kenosha: Bristol Grade School, Auditorium, 20121 83rd Street, Bristol

Kewaunee: Kewaunee High School, Auditorium, 911 2nd Street, Kewaunee

La Crosse: Onalaska High School, Field House, 700 Hilltop Place, Onalaska

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

Langlade: Antigo High School, Media\Tech Room, 1900 10th Avenue, Antigo

Lincoln: Tomahawk Middle School, 1048 East Kings Road, Tomahawk

Manitowoc: UW Manitowoc, Theater, 705 Viebahn Street, Manitowoc

Marathon: D.C. Everest Middle School, Auditorium, 9302 Schofield Avenue, Schofield

Marinette: Crivitz High School, Auditorium, 400 South Ave, Crivitz

Marquette: Montello High School, Community Room, 222 Forest Lane, Montello

Menominee: Menominee County Courthouse, Basement, Courthouse Lane, Keshena

Milwaukee: Greenfield High School, Auditorium, 4800 South 60th Street, Greenfield

Monroe: Tomah High School, 901 Lincoln Ave., Tomah

Oconto: Suring High School, Cafeteria, 411 E. Algoma St., Suring

Oneida: James Williams Jr. High, Auditorium, 915 Arcadia, Rhineland

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

Ozaukee: Webster Middle School, Commons, W75 N624 Wauwatosa Road, Cedarburg

Pepin: Pepin County Government Center, County 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 Middle School, Auditorium, 2000 Polk Street, Stevens Point

Price: Price County Courthouse, County Board Room, 126 Cherry Street, Phillips

Racine: Union Grove High School, Auditorium, 3433 S. Colony Ave., Union Grove

Richland: Richland County Courthouse, Court Room, 181 West Seminary, Richland Center

Rock: Janesville Moose Lodge, 2701 Rockport Ave., Janesville

Rusk: Ladysmith High School, Auditorium, 1700 Edgewood Ave., East Ladysmith

Sauk: UW Baraboo, R.G. Brown Theater, 1006 Connie Road, Baraboo

Sawyer: Hayward High School, Auditorium, 10320 Greenwood Lane, Hayward

Shawano: Shawano Middle School, LG Room, 1050 S. Union Street, Shawano

Sheboygan: Sheboygan Falls High School, Auditorium, 220 Amherst Avenue, Sheboygan Falls

St. Croix: WI Indianhead Technical College, Cashman Auditorium, 1019 S. Knowles Ave., New Richmond

Taylor: Taylor Co. Fairgrounds, Multipurpose Building, State Hwy 13 and Hwy 64 Intersection, Medford

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

Vernon: Viroqua High School, Lecture Room, 100 Blackhawk Drive, Viroqua

Vilas: Sayner Community Center, Golf Course Road, Sayner

Walworth: Delavan/Darien High School, Auditorium, 150 Cummings, Delavan

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

Washington: Washington County Fair Park, Exhibit Hall, 3000 Hwy PV, West Bent

Waukesha: Waukesha Co. Tech. College (WCTC), C052, 800 Main Street, Pewaukee

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

Waushara: Waushara County Court House, County Board Room, 209 S. St. Marie, Wautoma

Winnebago: Webster Stanley Auditorium, Auditorium, 915 Hazel Street, Oshkosh

Wood: Pittsville High School, Auditorium, 5459 Elementary Ave., 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 9, 2007.

Fiscal Estimate

Establishing a deer hunting season at Lake Wissota State Park would increase department costs. One time costs of \$600 would result from creating maps that indicate where hunting is allowed and new signs. Additionally, there would be annual costs of approximately \$350 for reproducing maps and efforts to inform the public through the media that hunting is taking place. There should be no additional law enforcement costs

because the park already has full time staff who work during the deer season.

Creating a non-resident trapping season for raccoons will result in a minor increase in the sales of two licenses, the Non-resident Trapping license and the Conservation Patron license. It is impossible to estimate how many additional licenses will be sold so an estimate of the amount of increased revenue is not available.

Establishing a 2 p.m. close of pheasant hunting hours at Pine Island and Mud Lake Wildlife Areas would require a one time expense of approximately \$6,300 for new signage on the properties. These costs include, labor and fringe for a limited term employee, mileage, and materials.

Increasing the cost of a trapper education course from \$8.00 to \$12.00 and establishing a fee of \$28 for correspondence courses that require out-of-state mailing will result in a revenue increase for the department of approximately \$1,738. This estimate assumes that a similar number of students will participate as in 2005, when 869 students took the classroom course of instruction under the Trapper Education Program and another 177 took the correspondence course. This estimate also assumes that instructors keep half of the fee as they are authorized to do in order to cover their expenses for the course. Actual revenue to the department could be higher if an increase in the number of non-resident students results from 2005 ACT 284 which authorizes non-resident trapping and requires Wisconsin trapper education certification.

Creating special tags for hunting in the Apostle Islands National Lakeshore, DMU 79, will result in increased costs of approximately \$500 annually for designing or updating the tags and printing.

The proposed rules and fiscal estimates may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed fishing regulations may be submitted via U.S. mail to Mr. Joe Hennessy, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Written comments on the proposed hunting and trapping regulations may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Written comments shall be postmarked not later than April 17, 2007. Written comments whether submitted electronically or by U.S. mail will NOT, however, be counted as spring hearing votes.

Notice of Hearing Natural Resources [CR 07-016]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 227.14 (1m) and 285.11(1) and (6), Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on the creation of ss. NR 428.20 to 428.28, Wis. Adm. Code, and amendments to ss. NR 428.04 (2) (h) and 428.05 (3) (e) and 484.04, Wis. Adm. Code, relating to the establishment of rules for reasonable available control technology (RACT) emission requirements for major sources of NO_x emissions in the southeast 8-hour ozone nonattainment counties of Kenosha, Racine, Milwaukee, Waukesha, Washington, Ozaukee, and Sheboygan.

In June 2004, the US EPA designated the Wisconsin counties addressed by the rule as “moderate” nonattainment areas for the 8-hour ozone ambient air quality standard. The

designation triggered federal Clean Air Act requirements for implementation of “reasonably available control technology” (RACT) for major stationary sources of NO_x and volatile organic compounds (VOC) by May 1, 2009. The Department is proposing this rule package to meet the RACT requirement for major sources of NO_x emissions. The Department previously adopted RACT rules for VOC sources to address the previous 1-hour ozone standard.

The proposed rule affects facilities with the potential to emit 100 tons or more of NO_x per year in the moderate ozone nonattainment areas. However, the emission requirements apply to individual emission units, such as a boiler or furnace, at the affected facilities. It is possible that an emission unit contributing to a major source’s potential to emit may not be subject to a RACT requirement. Likewise, an emission unit identified by a RACT source category, but at a facility with a potential to emit less than 100 tons per year, will not be subject to a RACT requirement.

The emission requirements proposed in the rule consist of NO_x emission limitations and combustion tuning requirements applicable on a year-round basis. The emission limitations are established by source categories with an emission unit size threshold based on available control technologies and cost-effectiveness. Combustion tuning requirements apply to the emission units subject to emission limitations, as well as to smaller emission units. The emission limit and combustion tuning requirements are established based on a cost-effectiveness of \$2,500 or less per ton of controlled NO_x emissions. The rule contains exemptions from both RACT requirements for certain types of emission units demonstrating low operating levels during the ozone season. An additional exemption recognizes that the NO_x emissions of certain smaller emission units are already well controlled under existing ch. NR 428 provisions and no further action is cost-effective in meeting a NO_x RACT emission limit.

The proposed rule contains several provisions to address technical issues and provide compliance flexibility. The rule proposes a specific phased schedule applicable to large coal boilers owned or operated by electric utilities in order to maintain electric reliability, with final compliance by May 1, 2013. For compliance flexibility, the rule allows facility-wide and multi-facility emission averaging between emission units at the affected facilities. An affected entity may also request an alternate RACT requirement for an emission unit based on a technical and economic demonstration.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a direct economic impact on small businesses. The proposed RACT rules impose no reporting, compliance or performance standards on small businesses. The requirements to emission units owned and operated by electric utilities may increase the cost of electricity and therefore may have an indirect impact on small businesses through higher electricity costs.

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:

Thursday, **March 15, 2007** at 2:00 p.m.

Room 140–141, DNR Southeast Region Headquarters,
2300 North Dr. Martin Luther King Jr. Dr., Milwaukee, WI at
2:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266–2856 or by e–mail to Robert.Eckdale@wisconsin.gov. with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The Department is proposing this rule package to meet Clean Air Act requirements for implementing a reasonably available control program for NO_x emissions from major sources capable of emitting 100 tons per year or more of nitrogen oxides in the moderate ozone non–attainment counties. The affected emission units include electric utility generating units and industrial combustion emission units. The majority of emission units are subject to emission limitations and good combustion requirements with a set of smaller emission units only subject to good combustion requirements.

1. Impact on the Department: The annual emissions fees paid to the department are affected by the reduction in NO_x emissions. The estimated reduction related to RACT controls achieved by 2013 is approximately 19,000 tons of NO_x annually below 2004 emission levels. The related reduction in emission fees or reduced revenue to the department is approximately \$400,000 to \$450,000 per year based on the current emission fee schedule.

2. Impact to government affected facilities: The UW–Milwaukee facility has three boilers used for heating and cooling purposes. The units already have combustion modifications in place sufficient to meet rule emission limitation requirements. The facility may have to implement recordkeeping and additional monitoring to meet good combustion requirements at a minimum net cost increase.

3. Impact on non–government affected facilities: These cost estimates are based on general cost assumptions and factors applicable to each of the source categories.

The proposed rule requires the most significant reductions from thirteen coal–fired electric utility boilers. The primary cost of reduction for electric generating units is due to the anticipated installation and operation of major

The proposed rule and supporting documents, including the fiscal estimate may be reviewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM–17–05.) Written comments on the proposed rule may be submitted via U.S. mail to Mr. Tom Karman, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e–mail to Mr. Karman at Thomas.Karman@wisconsin.gov. Comments may be submitted until March 19, 2007. 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. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266–2856.

Notice of Hearings Natural Resources (Environmental Protection – Air Pollution Control) [CR 07–017]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 227.14 (1m) and 285.11 (1) and (6), Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on the creation of ch. NR 433 and s. NR 484.04 (11m), Wis. Adm. Code, relating to the best available retrofit technology (BART) requirements for visibility protection.

The Department is proposing a rule to address BART related State Implementation Plan (SIP) revisions which are required by the federal regional haze rule. The Federal regulations require all states, including Wisconsin, to develop State Implementation Plans to address visibility impairment in mandatory Class I Federal Areas (Class I Areas) by December 2007. One of the provisions of the federal regulations is the application of BART requirements to major stationary sources that meet certain criteria relating to amount and type of emissions, installation date and source category. The proposed rule requires that the affected facilities perform an engineering analysis for the BART determination which shall be based on an analysis of the best systems of continuous emission control technology available and associated emission reductions achievable for each source subject to BART. This analysis is to be performed on a source–by–source basis taking into account the criteria provided by the federal regulation. The net effect of the proposed rule would be to examine potential emission control technologies for SO₂, NO_x and particulate matter from approximately 10 power plants and 4 pulp and paper mills that meet the criteria in the federal regulations and to determine BART for those emission sources.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a direct economic impact on small businesses. The requirements to emission units owned and operated by electric utilities and paper manufacturers may increase the cost of their products and therefore may have an indirect impact on small businesses through higher electricity costs or the costs of paper products.

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, **March 13, 2007** at 1:00 p.m.

Marathon County Public Library, Wausau Room, 300 N. First Street, Wausau, WI

Thursday, **March 15, 2007** at 1:00 p.m.

Room 140–141, DNR Southeast Region Headquarters,
2300 North Dr. Martin Luther King Jr. Dr., Milwaukee, WI

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

accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266-2856 or by e-mail to Robert.Eckdale@wisconsin.gov with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

Impact on the Department: Due to the emission reductions required by the rule, the annual emission fees paid to the Department are affected. An accurate emission reduction estimate is not available at this time, since the rule requires a source specific engineering analysis for determination of emission reductions. In addition, some of the sources affected by this rule would be subject to other rules, such as RACT and CAIR, as well. Those rules, still in development, require emission reductions of one or more of the same air pollutants. These uncertainties make it difficult to estimate the emission reductions resulting from the proposed rule. However, assuming emission reductions typically achievable for the affected sources, the emission reductions and the annual emission fees can be estimated. Assuming that there would be no changes to the fee structure for the air program in the intervening years, the decrease in revenues (based on the reduced tonnage of emissions assumed) would be approximately \$900,000 per year in 2014 and after.

Impact on the City of Manitowoc: This rule would impact one local government facility operated by Manitowoc Public Utility (MPU). MPU operates three coal fired boilers at its power plant. One of them, Unit 7, is affected by the BART rule. Depending on the results of the site-specific BART determination, the source may need to be retrofitted with NO_x and SO₂ control systems. Since the rule requires an extensive evaluation of control technologies, costs and other considerations, the fiscal effect of the rule cannot be accurately estimated at this time. Assuming installation of equipment to attain the maximum level of NO_x and SO₂ control, the maximum capital and operational costs should not exceed \$1.5 million per year starting no later than 2014.

Impact on affected facilities: The proposed BART rule would require emission controls on certain power plants and industrial sources. The vast majority of emissions are from the affected power plants. Depending on the results of the site specific BART determinations, the sources may need to be retrofitted with NO_x and SO₂ control systems. Since the rule requires an extensive evaluation of control technologies, costs and other considerations, the specific fiscal effect of the rule cannot be accurately estimated at this time. However, assuming installation of equipment to attain the maximum level of NO_x and SO₂ control, the maximum capital and operational costs should not exceed \$270 million per year starting no later than 2014. Additionally, the Department expects the electric utilities to use emission reductions from application of BART controls to comply with CAIR, significantly reducing the cost of CAIR compliance.

It should be noted that the cost impacts on the industrial sources can vary in wide ranges. However, the Department expects the annual costs of air pollution controls for industrial sources to be relatively low compared to the costs for power plants.

The proposed rule and supporting documents, including the fiscal estimate may be reviewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM-04-06.) Written comments on the proposed rule may be submitted via U.S. mail to Mr. Farrokh Ghoreishi, Bureau of Air

Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Mr. Ghoreishi at: Farrokh.Ghoreishi@wisconsin.gov

Comments may be submitted until March 19, 2007. 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. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

Notice of Hearings Workforce Development (Worker's Compensation) [CR 07-019]

NOTICE IS HEREBY GIVEN that pursuant to ss. 102.15 (1), 102.16 (2m) (g), and 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider changes affecting chs. DWD 80 and 81, relating to worker's compensation and affecting small businesses.

Hearing Information

Thursday, **March 22, 2007**

9:00 a.m. to 12:00 noon

The hearing will be conducted at the following 6 locations simultaneously using video conference technology:

Madison

UW-Extension

Pyle Center, Room 235

702 Langdon Street

Eau Claire

State Office Building, Room 139

718 W. Clairemont Avenue

Green Bay

State Office Building, Room 618

200 N. Jefferson Street

La Crosse

State Office building, Room B29

3550 Mormon coulee Road

Milwaukee

State Office Building, Room 98

819 N. 6th Street

Superior

Department of Transportation Building

Conference Room

1701 N. 4th Street

Interested persons are invited to appear at the hearing 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. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-6704 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: Sections 102.15 (1), 102.16 (2m) (g), and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 102.11 (1) (f), 102.13 (2) (c), 102.16 (1), 102.16 (2m) (g), 102.18 (1) (e), 102.32 (6m), 102.37, 102.38, 102.54, and 102.59, Stats.

Related statutes: NA

Explanation of agency authority. Section 102.15 (1), Stats., provides that subject to Chapter 102, Stats., the department may adopt its own rules of procedure and may change the same from time to time.

Section 102.16 (2m) (g), Stats., as amended by 2005 Wisconsin Act 172, directs the department to promulgate rules establishing standards for determining the necessity of treatment provided to injured employees and provides that the rules establishing the standards shall, to the greatest extent possible, be consistent with Minnesota worker's compensation treatment parameters.

Summary of proposed rule. The proposed rules make the following changes, as agreed to by the Worker's Compensation Advisory Council.

Supplementary reports by employers and insurance companies. Under the current rule self-insured employers and insurance companies are required to submit supplementary reports within 30 days after the final compensation payment is made in cases where there is payment for more than 3 weeks of temporary disability or any permanent disability. The proposed amendment will also require the filing of the reports in cases where the injured employee has undergone surgery to treat an injury, other than surgery to correct a hernia. Section 102.13 (2) (c), Stats., as created by 2005 Wisconsin Act 172, provides that the department may by rule require this report.

Compromise settlements. The proposed amendment to s. DWD 80.03 (1) (d) will increase the amount of unaccrued compensation or death benefits that may be paid in a lump sum to the injured employee or his or her dependents from \$5,000 to \$10,000.

The proposed amendment to s. DWD 80.03 (1) (g) is a technical amendment that updates the name of the Department of Industry, Labor and Human Relations to the current Department of Workforce Development.

Payment of orders awarding compensation. The proposed rules will repeal s. DWD 80.15. This section is no longer necessary because s. 102.18 (1) (e), Stats., as created by 2001 Wisconsin Act 37, established a uniform 21 day payment standard for all orders awarding compensation, including awards resulting from hearings, defaults of parties, and compromises and stipulations confirmed by the Worker's Compensation Division.

Minimum rating for permanent partial disability. The proposed amendment to s. DWD 80.32 (11) provides a minimum permanent partial disability rating of 7.5% at each level of the spine for the implantation of an artificial spinal disc.

Advancements and lump sum payments. The amendment to s. DWD 80.39 (1) is a technical amendment to correct the statutory reference authorizing the Worker's Compensation Division to approve advancements and lump sum payments of compensation for permanent disability and death benefits. In a recent amendment, s. 102.32 (6), Stats., was renumbered s. 102.32 (6m), Stats.

Vocational rehabilitation benefits. The amendments to s. DWD 80.49 (2), (7) (b), and (8) are technical amendments that update the reference to the Department of Health and Family Service to the Division of Vocational Rehabilitation. These amendments are necessary to reflect that the Division of Vocational Rehabilitation is now a division of the Department Workforce Development.

Computation of compensation for permanent disabilities. Section 102.54, Stats., provides for an increase in compensation for injuries to the dominant hand that result in any amputation beyond two-thirds (2/3) of a distal phalanx of any finger or 100% loss of use of any joint on a hand or arm. The amendments to s. DWD 80.50 (1) (a), (2), and (3) update the rule to include reference to the increased permanent partial disability for injuries to the dominant hand. The amendments clarify that compensation based on the increase for dominant hand injuries is to be computed in the same manner as other multiple injury factors under s. 102.53, Stats.

Computation of weekly wage. The proposed amendment to s. DWD 80.51 (4) establishes a 24-hour minimum workweek for employees who are members of a regularly scheduled class of part-time employees under s. 102.11 (1) (am), Stats. The former law provided for a 30-hour workweek for part-time employees who were part of a class. The amendment is to correctly reflect the current law setting a 24-hour workweek for part-time employees working as part of a class.

Compensation from the Second Injury Fund. The proposed amendments to s. DWD 80.68 (1) and (3) are technical amendments to correct the statutory reference that authorizes the Worker's Compensation Division to approve advancements and lump sum payments of compensation for permanent disability and death benefits. In a recent amendment, s. 102.32 (6), Stats., was renumbered s. 102.32 (6m), Stats.

Reasonableness of fee disputes. In a recent amendment to s. 102.16 (2) (d), Stats., the definition of "formula amount" for establishing reasonable fees was changed from 1.5 to 1.4 standard deviations from the mean for that procedure as shown by data from a certified database. Section DWD 80.72 (2) (i) is amended to reflect this statutory change.

Section DWD 80.72 (L) is amended to include advanced practice nurse prescriber in the definition of "provider" or "health service provider." In a recent amendment to s. 102.42 (2), Stats., advanced practice nurse prescribers were added as a choice of practitioner that injured employees were permitted to select for treatment for work-related injuries.

Necessity of treatment disputes. The proposed amendment to s. DWD 80.73 (2) (d) is a technical amendment to include physician assistant and advanced practice nurse prescriber to the definition of " provider." In a recent amendment to s. 102.42 (2), Stats., physician assistant and advanced practice nurse prescriber were added as choices of practitioner that injured employees were permitted to select for treatment for work-related injuries.

Treatment guidelines for necessity of treatment disputes. The creation of Chapter DWD 81 is the result of a Study Committee formed by the Worker's Compensation Advisory Council to study the cost of health care services provided for the treatment of injured employees. The Study Committee recommended to the Worker's Compensation Advisory

Council that Wisconsin adopt worker's compensation treatment guidelines to be used by impartial health services review organizations and experts from a panel of experts selected by the department to render opinions to resolve necessity of treatment disputes arising under s. 102.16 (2m), Stats., and s. DWD 80.73. Currently there are no provisions in Ch. 102, Stats., or Chapter DWD 80 that establish guidelines for review organizations and experts to use in rendering opinions to resolve necessity of treatment disputes.

The Study Committee recommended that the Wisconsin treatment guidelines follow the model of the Minnesota Worker's Compensation Treatment Parameters to the extent the Minnesota parameters are consistent with existing Wisconsin worker's compensation law. The Worker's Compensation Advisory Council agreed. This recommendation was adopted into law in 2005 Wisconsin Act 172. Section 102.16 (2m) (g), Stats., as amended by 2005 Wisconsin Act 172, directs the department to promulgate rules establishing standards for determining the necessity of treatment provided to injured employees and provides that the rules establishing the standards shall, to the greatest extent possible, be consistent with Minnesota rules 5221.6010 to 5221.8900, as amended to January 1, 2006.

The proposed Chapter DWD 81 contains the Minnesota treatment parameters that are consistent, to the greatest extent possible, with current Wisconsin law. The Minnesota rules contain certain provisions that conflict with Wisconsin law and these provisions are not included in Chapter DWD 81. The provisions in the Minnesota rules that are not included in Chapter DWD 81 cover the following:

Requirements for prior notice by health care providers to insurers before administering treatment that is a departure from the guidelines. Under Wisconsin law there is no requirement for prior notification to an employer or insurer before providing any form of treatment to an injured employee.

Requirements for health care providers to follow in referring injured employee to another health care provider. Under Wisconsin law there is no statutory requirement for a health care provider to follow in referring an injured employee to another health care provider for treatment.

Requirements for treating health care providers to obtain second opinions before certain modalities of treatment can be provided to injured employees. There is no statutory requirement under Wisconsin law that requires a second opinion to approve any treatment.

Recognition of certified managed care plans. Under Wisconsin law injured employees cannot be required to obtain treatment from a certified managed care plan and have the right to select their own treating practitioner licensed in and practicing in Wisconsin.

Requirement for the Worker's Compensation Division to maintain outcome studies on treatment modalities provided to treat injured employees for work-related injuries. In Wisconsin, there is no statutory requirement that the Worker's Compensation Division conduct or maintain outcome studies for treatment provided to injured employees.

Disciplinary action and penalties against health care providers for providing excessive treatment to injured employees. There is no statutory authority in Wisconsin for authorizing the Worker's Compensation Division to impose disciplinary action or penalties against health care providers.

Section 102.16 (2m) (g), Stats., as amended by 2005 Wisconsin Act 172, also created a Health Care Providers Advisory Committee for the purpose of advising the Worker's Compensation Division and the Worker's Compensation

Advisory Council before amending the rules establishing the treatment guidelines. The Health Care Provider Advisory Committee reviewed the proposed rules and their suggested modifications have been incorporated. The Minnesota rules were promulgated on the basis of standard current medical practice as it existed in the early 1990s. The modifications suggested by the Health Care Provider Advisory Committee replaced outdated terminology and updated certain substantive provisions to reflect current standard practice.

The proposed Chapter DWD 81 is organized in the same general format as the Minnesota rules. Sections DWD 81.01 to 81.13 cover the same subjects and topics included in the Minnesota rules that are consistent with Wisconsin law but do not include matters that are contrary or inconsistent with Wisconsin law. Section DWD 81.14 applies to the Health Care Provider Advisory Committee.

The following is a summary of the provisions in Chapter DWD 81:

DWD 81.01 states the purpose of the rules is to establish guidelines for necessary treatment of patients with compensable worker's compensation injuries to prevent unnecessary treatment under s. 102.16 (2m), Stats.

DWD 81.02 provides that the ICD-9-CM diagnostic codes referenced in the rules are contained in the fourth edition of the International Classification of Diseases, Clinical Modification, 9th Revision, 1994, and corresponding annual updates.

DWD 81.03 contains definitions of medical terms that appear throughout the rules.

DWD 81.04 covers general treatment guidelines and the responsibility of health care providers to evaluate whether treatment modalities result in progressive improvement of the employee. This section also enumerates the 5 exceptions that justify departure from the guidelines. The exceptions that justify departure from the guidelines include the following:

There is a documented medical complication.

Previous treatment did not meet the accepted standard of practice and meet the guidelines in this chapter for the health care provider who ordered the treatment.

The treatment is necessary to assist the employee in the initial return to work where the employee's work activities place stress on the body part affected by the work injury.

The treatment continues to meet two of the following three criteria documented in the medical record (1) The employee's subjective complaints of pain are progressively improving; (2) The employee's objective clinical symptoms are progressively improving; (3) The employee's functional status, especially vocational activity, is objectively improving.

There is an incapacitating exacerbation of the employee's condition.

DWD 81.05 establishes the treatment guidelines for general medical imaging procedures and specific imaging procedures for low back pain. The Health Care Provider Advisory Committee recommended modifying the Minnesota rules to reduce the time to initiate CT and MRI scanning from eight weeks to four weeks because these procedures may be more useful if done at an earlier point in time after the injury. The Health Care Provider Advisory Committee also recommended deleting the term gadolinium, as used in the Minnesota rules covering MRI enhanced scanning, because other contrast agents are being developed and coming into use.

DWD 81.06 creates treatment guidelines for low back pain. This section includes diagnostic procedures, general treatment guidelines, passive and active treatment modalities,

therapeutic injections, surgery, chronic management, durable medical equipment, treatment evaluation by health care providers, and medication management. Specific treatment guidelines are also included in this section for regional low back pain and specific low back conditions such as radicular pain and cauda equina syndrome. The Health Care Provider Advisory Committee recommended modifying the Minnesota rules to increase the maximum active treatment frequency from three to five times during the first week because patients should have the same frequency for treatment by active treatment modalities as passive treatment modalities. The Health Care Provider Advisory Committee also modified the Minnesota rules by changing the subsection title of "Scheduled and Nonscheduled Medication" to "Medication Management" because this provides a better descriptive umbrella to cover the subsection. The Health Care Provider Advisory Committee also recommended modifying the Minnesota rules by changing the terms "dorsal column stimulator" to "spinal cord stimulator" and "morphine pump" to "intrathecal drug delivery system" to use current terminology.

DWD 81.07 creates treatment guidelines for neck pain. This section includes diagnostic procedures, general treatment guidelines, passive and active treatment modalities, therapeutic injections, surgery, chronic management, durable medical equipment, treatment evaluation by health care providers, and medication management. Specific treatment guidelines are also included in this section for regional neck pain and specific neck conditions involving radicular pain with static and progressive neurological deficits, and myelopathy. The Health Care Provider Advisory Committee recommended modifying the Minnesota rules by using the terms "Medication Management," "spinal cord stimulator" and "intrathecal drug delivery system" as in s. DWD 81.06.

Section DWD 81.08 creates treatment guidelines for thoracic back pain. This section includes diagnostic procedures, general treatment guidelines, passive and active treatment modalities, therapeutic injections, surgery, chronic management, durable medical equipment, treatment evaluation by health care providers, and medication management. Specific treatment guidelines are also included in this section for regional thoracic back pain and specific thoracic back conditions including radicular pain, and myelopathy. The Health Care Provider Advisory Committee recommended modifying the Minnesota rules to use the terms "Medication Management," "spinal cord stimulator," and "intrathecal drug delivery system" as in s. DWD 81.06.

Section DWD 81.09 creates treatment guidelines for upper extremity disorders. This section includes diagnostic procedures, general treatment guidelines, passive and active treatment modalities, therapeutic injections, surgery, chronic management, durable medical equipment, treatment evaluation by health care providers, and medication management. Specific treatment guidelines are also included for epicondylitis; tendonitis of forearm, wrist, and hand; nerve entrapment syndromes, muscle pain syndromes; shoulder impingement syndromes; and traumatic sprains and strains of the upper extremity. The Health Care Provider Advisory Committee recommended modifying the Minnesota rules to use the terms "Medication Management," "spinal cord stimulator," and "intrathecal drug delivery system" as in s. DWD 81.06.

Section DWD 81.10 creates treatment guidelines for complex regional pain syndrome of the upper and lower extremities. This section includes a scope defining this clinical category, initial non surgical involvement, surgery and chronic management. The Minnesota rules referred to this

clinical category as reflex sympathetic dystrophy. The Health Care Provider Advisory Committee recommended that the name for this clinical category be changed from reflex sympathetic dystrophy to complex regional pain syndrome because the former title is outdated and the clinical category is currently more commonly referred to as complex regional pain syndrome. The Health Care Provider Advisory Committee also recommended modifying the diagnostic criteria in the Minnesota rules to conform with the diagnostic guidelines issued by the International Association of the Study of Pain because the use of these criteria are more accurate in diagnosing complex regional pain syndrome and the criteria specified in the Minnesota rules are now outdated.

Section DWD 81.11 establishes treatment guidelines for inpatient hospitalization. This section includes general principles for inpatient hospitalization and specific requirements for hospital admission of patients with low back pain. The Health Care Provider Advisory Committee recommended modifying the Minnesota rules in this section to include that some patients who are in hospitals recovering from surgical, diagnostic, or other medical procedures, or are in observation status, are not in the clinical criteria for inpatient status and are therefore not considered patients or billed as patients.

Section DWD 81.12 creates treatment guidelines for surgical procedures. This section includes spinal surgery, upper extremity surgery, and lower extremity surgery.

Section DWD 81.13 creates treatment guidelines for chronic management. This section applies to all types of physical injuries with the purpose of making patients independent of health care providers for ongoing care and the patient to be returned to highest functional status reasonably possible. This section covers various chronic management modalities including home-based exercise programs, health clubs, computerized exercise programs, work conditioning and work hardening programs, chronic pain management programs, and individual or group psychological or psychiatric counseling.

Section DWD 81.14 applies to the membership, appointment criteria, and role of the Health Care Provider Advisory Committee in advising the Worker's Compensation Division and the Worker's Compensation Advisory Council on modifying the treatment guidelines.

Summary of factual data and analytical methodologies. All of the proposed changes were approved by the Worker's Compensation Advisory Council. The Health Care Provider Advisory Committee suggested certain modifications to the treatment guidelines to conform with standard current medical practice.

Comparison with federal law. There are four federal worker's compensation programs. These are Federal Employees' Compensation Program, Longshore and Harbor Workers' Compensation Program, Federal Black Lung Benefits Program and Energy Employees Occupational Illness Program. There are no treatment guidelines that apply to treatment provided to injured employees under any of these programs.

Comparison with rules in adjacent states. Of the four adjacent states, Minnesota is the only state that has adopted worker's compensation treatment guidelines that apply to treatment provided to injured employees. Chapter DWD 81 is modeled on the Minnesota parameters. Illinois, Iowa, and Michigan have not adopted worker's compensation treatment guidelines. About 20 states have adopted worker's compensation treatment guidelines. In some states the guidelines may be referred to as treatment parameters or protocols.

Effect on small business. The proposed rules may affect small businesses as defined in s. 227.114 (1), Stats., but will not have a significant economic impact on a substantial number of small businesses. The Department's small business regulatory coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Analysis used to determine effect on small businesses. The amendments to Chapter DWD 80 will have no effect on small businesses. The amendments are primarily technical corrections to conform to the current Chapter 102, Stats.

Any effect that Chapter DWD 81 may have on small business will not be detectable or measurable. Chapter DWD 81 could have the effect of reducing the rate of growth of health care costs for the treatment of injured employees for all employers, not just small employers. Department data shows that the following number of necessity of treatment disputes were sent out for review in the last three years: 102 in 2004; 71 in 2005; and 61 in 2006. We do not know if these cases involved large or small employers. For 2004 data shows there were 144,589 total work-related injuries (this number includes lost time and medical only) and the Department sent 102 necessity of treatment disputes out for review. The total number of lost time and medical only injuries for 2005 and 2006 is not yet available.

Fiscal Effect

The proposed rules will have no fiscal effect on state or local governments.

Agency Contact

Jim O'Malley, Section Chief
 Worker's Compensation Legal Services
 (608) 267-6704
 jim.o'malley@dwd.state.wi.us.

Copies of the proposed rules. The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing "worker's compensation" in the search engine. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule 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

Written comments. Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than March 26, 2007, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing Workforce Development (Migrant Labor) [CR 07-018]

NOTICE IS HEREBY GIVEN that pursuant to ss. 103.905 (1) and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider changes affecting ch. DWD 301, relating to migrant labor and affecting small businesses.

Hearing Information

Monday, **March 19, 2007**
 1:30 p.m.
 Madison
 G.E.F. 1 Building, Room A415
 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: Sections 103.905 (1) and 227.11 (2), Stats.

Statutes interpreted: Sections 103.90 to 103.97, Stats.

Related statutes: NA

Explanation of agency authority. Pursuant to ss. 103.90 to 103.97, Stats., the Department of Workforce Development inspects and certifies all migrant camps in the state, ensures that migrant workers are provided with a work agreement that explains the required terms and conditions of employment, monitors and registers crew leaders who recruit migrant workers, ensures required field sanitation facilities are provided, and investigates complaints of apparent violations of migrant law. Section 103.905 (1), Stats., provides that the Department shall promulgate rules for the enforcement and implementation of 103.90 to 103.97, Stats.

Summary of the proposed rule. The proposed rule incorporates various explanatory guidelines that have been issued as labor alerts, updates obsolete references, and repeals provisions with obsolete compliance dates and provisions that conflict with the state building code. The substantive provisions include the following:

Under s. 103.915 (1) (a), Stats., a person subject to the section must provide a migrant worker with a written recruiting statement at the time of the worker's recruitment.

The proposed rule clarifies that “recruitment” means a migrant worker is offered employment whether by personal contact, telephone, correspondence, or a recall notice due to a union contract. If recruitment is by telephone, the written worker agreement shall be furnished as soon as reasonably possible.

Under s. 103.915 (4) (a), Stats., migrant work agreements are required to include the approximate ending date of employment. The intent of the approximate ending date is to give migrant workers a reasonable idea of how long they will be employed so they can plan accordingly. In Wisconsin, many employers provide a bonus as an incentive to encourage migrant workers to work until the end of the season. The proposed rule provides that a work agreement may not state “until the end of the harvest” as a condition to receive a bonus because that defeats the intent of the approximate ending date of the required work agreement. A bonus may be conditioned on a worker continuing to work up to 7 days beyond the approximate ending date in the work agreement.

The proposed rule provides that only a single family may live in a one-family housing unit, except as approved by the department. A single family may include parents and their unmarried children, grandparents, unaccompanied married children, and dependent minor relatives. The department may allow other individuals to share a one-family housing unit with a family, taking into consideration respect for the integrity of the migrant family; privacy of the occupants; preference of family members; relationship of the occupants; size of the unit; health and safety concerns; the employer’s justification; and compliance with other migrant camp rule provisions, fair housing law, and any other applicable law.

The current rule provides that all living quarters and service buildings shall be provided with permanently installed, operable heating equipment capable of maintaining a temperature of at least 70° F. The proposed rule lowers the required temperature to 68° F.

This proposed rule provides requirements on the placement of portable smoke detectors for migrant housing units that do not have permanently wired smoke detectors installed by a professional electrician at the time of construction. The portable smoke detectors shall be installed in each sleeping area of each housing unit or elsewhere in the unit within 6 feet of the doorway of each sleeping area and not in a kitchen; in the basement of each housing unit; and at the head of any stairway on each floor level of each housing unit. Each portable smoke detector shall be installed no closer than 3 to 12 inches from the ceiling, except a camp operator may follow a manufacturer’s recommendation on the installation of a particular smoke detector in a different location if the camp operator provides the department’s migrant labor inspector with proof of the manufacturer’s installation recommendation at the time of the camp inspection.

Section 103.93 (2), Stats., provides that every employer shall furnish to each migrant worker at the time of payment of wages a written statement showing the amount of gross and net wages paid and each amount deducted or withheld for whatever purpose. The proposed rule clarifies that the wage statement may not combine information on wages earned by multiple members of a family.

The proposed rule requires that a summary of the migrant code shall be posted in a conspicuous place in all migrant labor camps or where the occupants report for work in a place easily seen by the camp occupants. The posting shall be on a form prescribed by the department and shall be in English and in the language of the camp occupants if other than English.

The current migrant rule contains provision that conflict with the state building code on the minimum ratio of persons per water closet, the number of urinals that may be substituted for toilet seats, the ratio persons per showerhead, and the ratio of persons per lavatory for new construction. Builders must comply with the stricter requirement of the state building code. The conflicting migrant provisions are repealed and references to the state building code are added.

Summary of related federal regulations. Federal regulations on migrant recruitment, migrant work agreements, payroll records, and provision of other information to migrant workers are found at 29 CFR Part 500. These regulations require each agricultural employer that employs migrant workers to post in a conspicuous place at the place of employment a poster provided by the Department of Labor that sets out the rights and protections for workers under the Migrant and Seasonal Agricultural Worker Protection Act, 29 USC 1801 et seq. A separate provision requires each employer that provides housing to migrant workers to post terms and conditions of the housing in a conspicuous place at the site of the housing. These regulations also require an itemized wage statement for each worker.

Owners of migrant worker housing constructed before April 3, 1980, may elect to comply with OSHA regulations at 29 CFR 1910.142 or Employment Training Administration (ETA) regulations at 20 CFR 654.404 et. seq. Migrant worker housing constructed on or after April 3, 1980, must comply with OSHA regulations. OSHA regulations require that a camp have adequate heating equipment during cold weather and require equipment capable of maintaining a temperature of at least 70.

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>.

Comparison with rules in adjacent states. Michigan’s rules on migrant worker housing require a smoke detector within each shelter at a point centrally located in each corridor or area that provides access to rooms used for sleeping and at the top of a stairway where the second floor of a structure is intended to be occupied. Michigan also requires that a shelter and a common-use room that is used before May 31 or after September 1 be provided with heating equipment that is capable of maintaining a temperature of not less than 65° F.

Illinois requires a smoke detector within 15 feet of every room used for sleeping purposes. The detector must be installed on the ceiling and at least 6 inches from any wall or on a wall between 4 and 6 inches from the ceiling. Every single-family residence shall have at least one smoke detector on every story, including basements but including unoccupied attics.

Iowa and Minnesota do not appear to have rules on the specific issues in the Department’s proposed rules.

Summary of factual data and analytical methodologies. The proposed rules were recommended by the Council on Migrant Labor pursuant to s. 103.967, Stats.

Effect on small business. The proposed rule may affect small businesses as defined in s. 227.114 (1), Stats., but will not have a significant economic impact on a substantial number of small businesses. The Department’s small business regulatory coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Fiscal Effect

The proposed rules have no fiscal effect on state or local governments.

Contact Information

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing “migrant labor” in the search engine. This site allows you to view documents associated with this rule’s promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule 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

Written Comments

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than March 20, 2007, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board:

(CR 06–057)

Ch. A–E 6, relating to land surveyor education and experience requirements.

Natural Resources

(CR 05–104)

Ch. NR 17, relating to hound dog training and trialing on captive wild animals.

Natural Resources

(CR 06–104)

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.

Natural Resources

(CR 06–111)

Ch. NR 25, relating to the commercial fishing open seasons in Lake Michigan for chubs.

Public Service Commission

(CR 06–112)

Ch. PSC 118, relating to renewal resource credit.

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.

Health and Family Services

(CR 03-111)

An order affecting ch. HFS 117, relating to fees for copies
of health care records.

Effective 4-1-07.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **February 2007**, 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

Commerce

Chs. Comm 20-25
Appendix

Chs. Comm 60-65

Appendices

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 25
S. NR 25.02 (16)

Errata

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

Commerce

Ch. Comm 21
S. Comm 21.40 (history note)

Transportation

Ch. Trans 152
S. Trans 152.14 (8) (note)

Regulation and Licensing

Ch. RL 94 (title)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 182. Relating to the Recreation of Non-Statutory Committees.

Executive Order 183. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Army Corporal Matthew Grimm of the United States Army Who Lost His Life During Operation Iraqi Freedom.

Executive Order 184. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Lance Corporal Andrew Matus of the United States Marine Corps Who Lost His Life During Operation Iraqi Freedom.

Executive Order 185. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Specialist Jon St. John II of the United States Army Who Lost His Life During Operation Iraqi Freedom.

Executive Order 186. Proclamation of an energy emergency.

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840



First Class Mail

Dated Material. Please Do Not Delay!