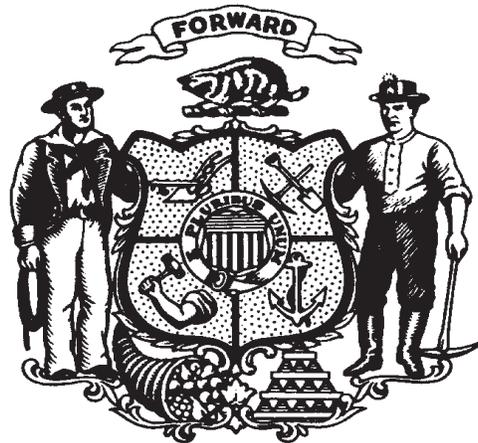


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Emergency Rules Now in Effect

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

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

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

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

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

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

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade and Consumer Protection

EmR1003 — Rule adopted revising **ss. ATCP 60.15 and 60.20**, relating to somatic cell standards for dairy goat milk.

Finding of Emergency

Recently, the National Conference of Interstate Milk Shippers voted to relax the standard for somatic cells in grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Food and Drug Administration accepted this change and will include it in the next edition of the Interstate Pasteurized Milk Ordinance. The United States Department of Agriculture is adopting the same standard for grade B goat milk, as part of its standards for “Milk for Manufacturing Purposes and its Production and Processing.”

Wisconsin rules currently establish a limit of 1,000,000 somatic cells per ml in goat milk, which is more stringent than the new national standard of 1,500,000 per ml. The more stringent Wisconsin standard, if not modified to conform to the new national standard, will put Wisconsin dairy goat milk producers at a significant financial, operational, and competitive disadvantage compared to producers in other states.

This emergency rule modifies Wisconsin’s current standard, and makes it consistent with the new national

standard. The department of agriculture, trade and consumer protection (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings to modify the standard on a more “permanent” basis. “Permanent” rulemaking proceedings normally require over a year to complete. This emergency rule is needed to mitigate a potential hardship to Wisconsin producers of dairy goat milk, pending the adoption of “permanent” rules.

Publication Date: February 4, 2010
Effective Dates: February 4, 2010 through July 3, 2010

Children and Families

Safety and Permanence, Chs. DCF 37–59

EmR0937 — Rule adopted revising **Chapters DCF 56 and 58**, relating to foster care and kinship care.

Finding of Emergency

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

2009 Wisconsin Act 28 assumes that court-ordered kinship care relatives will be applying for a license to operate a foster home beginning after January 1, 2010, and continuing throughout 2010. This rule creates the first two levels of the new levels of care system for foster care. The newly-licensed kinship care relatives will be incorporated into the foster care program. Licensing these relatives will allow the state to claim an additional \$6.5 million in Title IV-E funds for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011.

Publication Date: December 30, 2009
Effective Dates: January 1, 2010 through May 30, 2010
Hearing Dates: March 17, March 31, April 8, 2010

Commerce

Fee Schedule, Ch. Comm 2

EmR0934 — Rule adopted revising **Chapter Comm 2**, relating to public swimming pool and water attraction plan review and inspection fees.

Finding of Emergency

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

1. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.
2. The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008.
3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply

with the federal act. As of December 1, 2009, approximately 1,800 pool modifications have been submitted to the department for review and approval.

4. There are claims that the availability of parts to make the necessary modifications is limited.

5. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.

6. The department believes that a fee reduction to facilitate plan review and inspection relative to the Virginia Graeme Baker Pool and Spa Safety Act is in alignment with the direction provided under s. 101.19, Stats., of keeping fees consistent with the costs of providing service.

Publication Date: January 1, 2010
Effective Dates: January 1, 2010 through May 30, 2010
Hearing Date: January 21, 2010

Commerce (3)

Financial Resources for Businesses and Communities, Chs. Comm 104—

1. **EmR0910** — Rule adopted to create **Chapter Comm 100**, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

Exemption From Finding of Emergency

The Legislature, by section 9110 (4) in 2009 Wisconsin Act 2, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of the public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: June 30, 2009
Effective Dates: June 30, 2009 through July 1, 2010 or the date permanent rules take effect, whichever is sooner
Hearing Date: September 15, 2009

2. **EmR0931** — Rule adopted creating Chapter Comm 136, relating to midwestern disaster area bonds.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public welfare. The facts constituting the emergency are as follows.

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the

purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin's Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

Publication Date: November 9, 2009
Effective Dates: November 9, 2009 through April 7, 2010
Extension Through: June 6, 2010
Hearing Date: January 25, 2010

3. **EmR1006**— Rule adopted to create **Chapter Comm 137**, relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by Section 5 (1) (b) in 2009 Wisconsin Act 112, 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.

Publication Date: March 5, 2010
Effective Dates: March 5, 2010 through August 1, 2010
(subject to 2009 Wis. Act 112, s. 5)

Corrections

EmR0939 — Rule adopted revising **Chapter DOC 302**, relating to sentence calculations and prison release and to administrative review of inmate classification decisions.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that emergency rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Department is responsible for implementing several of those procedures. Specifically, the department is responsible for implementing the early release programs under: (1) s PAT (2) ERP/CIP (3) CER (4) Risk reduction (5) 75%/85%. In addition, the department is revising section 302.18 to facilitate the review of inmates for purposes of early release.

If the rule is not created promptly and immediately, the Department will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates

under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary for a prompt implementation of the legislative mandates concerning the release of inmates meeting established criteria while the permanent rules are being developed.

Publication Date: December 31, 2009
Effective Dates: December 31, 2009 through May 29, 2010
Hearing Date: February 25, 2010

Earned Release Review Commission

(Formerly Parole Commission)

EmR0940 — Rule adopted revising **Chapter PAC 1**, relating to the release of inmates through parole or other procedures.

Finding of Emergency

The Wisconsin Earned Release Review Commission finds that an emergency exists and that emergency rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Earned Release Review Commission (formerly the Parole Commission) is responsible for implementing several of those procedures. Specifically, the commission is responsible for considering the early release of inmates under: (1) section 304.06 (1) (bg)1. and 2., Stats., after the inmate has served the term of confinement of their bifurcated sentence less positive adjustment time, (2) section 304.06 (1) (bg) 3. and 4., Stats., after the inmate has served either 75 % or 85 % of their term of confinement, depending on the offense for which the inmate was sentenced, and (3) section 302.1135 (2) (a), (b), and (c), Stats., based on age or extraordinary health.

If the rule is not created promptly and immediately, the commission will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the department of corrections to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond the legislatively recognized need to review inmates who meet the requirements under the statutes for potential release while the permanent rules are being developed.

Publication Date: December 31, 2009
Effective Dates: December 31, 2009 through May 29, 2010
Hearing Date: February 23, 2010

Employee Trust Funds

EmR0938 — Rule adopted revising **Chapters ETF 10, 20 and 40**, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

Finding of Emergency

The Department of Employee Trust Funds finds that an emergency exists and that emergency rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

ETF cannot promulgate a permanent rule in compliance with the mandated changes by January 1, 2010, which is the effective date of the domestic partnership and the health insurance provisions of 2009 Wisconsin Act 28. Without an emergency rule in place, the ability of ETF to enroll and cover participants' domestic partners and to provide health insurance to adult dependents would be seriously impaired. ETF would be unable to provide health insurance and other benefits to domestic partners and adult dependents.

Publication Date: December 28, 2009
Effective Dates: January 1, 2010 through May 30, 2010
Hearing Date: February 12, 2010

Health Services

*Medical Assistance, Chs. DHS 101—
Health, Chs. DHS 110—*

EmR0932 — Rule adopted revising **Chapters DHS 105, 106 and 133**, relating to personal care agencies and providers, and affecting small businesses.

Exemption From Finding of Emergency

The legislature by 2009 Wis. Act 28, Section 9122 (2), provides an exemption from a finding of emergency to adopt these emergency rules.

Publication Date: December 16, 2009
Effective Dates: December 16, 2009 through May 14, 2010
 (Subject to 2009 Wis. Act 28, Section 9122 (2))
Hearing Date: February 3, 2010

Health Services

Health, Chs. DHS 110—

EmR1004 — Rule adopted to create **sections DHS 195.145 and 197.145**, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

Finding of Emergency

DHS finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. The facts constituting the emergency are as follows:

Section 101.149 (2) and (3), Stats., requires the owners of lodging establishments, including hotels, tourist rooming houses, and bed and breakfast establishments that were

constructed on or before October 1, 2008, or had plans reviewed by the department of commerce before October 1, 2008, to, not later than April 1, 2010, install carbon monoxide detectors in every residential building that has a fuel-burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel-burning appliances in the building have sealed combustion units that are either covered by the manufacturer’s warranty against defects or are inspected under rules promulgated by DHS.

Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units for carbon monoxide emissions, and rules that specify the conditions under which DHS may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

Publication Date: March 1, 2010
Effective Dates: April 1, 2010 through August 28, 2010
Hearing Dates: April 21, 23, 27, 28, 30, 2010

Insurance (6)

1. **EmR0918** — Rule adopted to revise **Chapter Ins 6**, relating to exempting commercial umbrella and commercial liability policies covering only hired and non-owned autos from having to offer or include uninsured and underinsured motorist coverage.

Finding of Emergency

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

Act 28 (2009) modified the requirements for auto insurance in Wisconsin. Most of these new provisions go into effect on November 1, 2009. These modifications did not specifically address the issue of insurers who write commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles (“HNO”) under the policy but do not insure any automobiles owned by the insured.

If these new Act 28 requirements apply to commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles (“HNO”) under the policy, this creates a significant problem. Some of these insurers do not have authority to write auto insurance which is needed to write uninsured (“UM”) and underinsured coverage (“UIM”). Other insurers offering the commercial umbrella and commercial liability HNO have not ever written UM/UIM coverages because the current rules exempt them. Insurers have also stated that obtaining reinsurance for this is a problem.

This issue was addressed in 1997 when an emergency rule was promulgated and modifications to Ins 6.77 were enacted in response to various court cases. In that process, commercial insurers who wrote liability policies that covered only HNO were exempted from the requirement to offer or include UM/UIM coverage. This emergency rule would continue this exemption so that the market for commercial liability insurance and commercial umbrella policies is not disrupted.

Publication Date: September 9, 2009
Effective Dates: November 1, 2009 through March 30, 2010
Hearing Date: December 8, 2009

2. **EmR0925** — Rule adopted to create **section Ins 3.75**, relating to continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES. (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

Publication Date: October 1, 2009
Effective Dates: October 2, 2009 through October 1, 2010
Hearing Date: December 8, 2009

3. **EmR0927** — Rule adopted to create **Chapter Ins 57**, relating to care management organizations and affecting small business.

Finding of Emergency

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

Beginning January 1, 2010, care management organizations are required to obtain a permit from the commissioner to provide services under the Family Care program. In order to ensure no gap in services to enrollees, organizations and the office need to complete and accept applications for permits prior to January 1, 2010. Promulgation of this rule will permit the timely filing and review of permittees.

Publication Date: October 9, 2009
Effective Dates: October 10, 2009 through March 10, 2010
Extension Through: May 9, 2010
Hearing Date: December 3, 2009

4. **EmR0930** — Rule adopted to create **section Ins 3.34**, relating to insurance coverage of dependents to age 27 and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the Commissioner is aware that insurers, employers and consumers are interpreting the state mandate inconsistently so without this rule consumers will not be treated similarly when the law becomes effective on January 1, 2010; the Commissioner has received numerous inquiries from insurers, consumers and employers seeking clarity of terms and guidance on interpretation and implementation of the law as many employers are entering open enrollment for the 2010 plan year.

These changes will be effective the day following publication in the official state newspaper and a permanent rule will start the permanent rule process to achieve uniformity in interpretation therefore protecting the public, informing employers, and guiding insurers in the state.

Publication Date: October 30, 2009
Effective Dates: October 31, 2009 through March 29, 2010
Extension Through: May 28, 2010
Hearing Date: January 14, 2010

5. **EmR0945** — Rule adopted revising **section Ins 3.75**, relating to the continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

Publication Date: January 7, 2010
Effective Dates: January 8, 2010 through June 6, 2010

6. **EmR1005** — A rule adopted creating **section Ins 3.36**, relating to treatment of autism spectrum disorders and affecting small business.

Exemption From Finding of Emergency

The Commissioner of Insurance pursuant to s. 632.895 (12m) (f) 2., Stats., need not find that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety or welfare.

Publication Date: March 8, 2010
Effective Dates: March 8, 2010 through August 4, 2010
(subject to s. 632.895 (12m) (f), Stats.)

Natural Resources

Environmental Protection — Water Regulation, Chs. NR 300—

- EmR0915** — A rule adopted revising **Chapters NR 335 and 336**, relating to grants for dam maintenance, repair, modification, or abandonment and removal.

Finding of Emergency

The substantial increase in bonding for the dam grant programs is a strong message from the legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

Publication Date: August 28, 2009
Effective Dates: August 28, 2009 through January 24, 2010
Extension Through: May 24, 2010
Hearing Date: April 15, 2010

(See the Notice in this Register)

Natural Resources

Environmental Protection — Hazardous Waste Management, Chs. NR 600—

- EmR1007** — A rule adopted revising **section NR 660.10**, relating to hazardous waste management.

Exemption From Finding of Emergency

Section 289.67 (2) (de), Stats., as created by 2009 Wisconsin Act 28 (the 2009–2011 biennial budget bill), requires the department to promulgate by rule definitions of “large quantity generator” and “small quantity generator” for purposes of the hazardous waste generator fees

established by s. 289.67 (2) (b) 1., Stats., as amended by 2009 Wisconsin Act 28.

Section 9137 (2), a non-statutory provision in 2009 Wisconsin Act 28, authorizes the department to promulgate the required definitions using emergency rule making procedures, but is not required to provide evidence that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to

Publication Date: March 17, 2010
Effective Dates: March 17, 2010 through July 1, 2011

Public Defender Board

EmR0926 — Rule adopted to create **Chapter PD 8**, Discovery Payments, relating to the maximum fees that the state public defender may pay for copies of discovery materials in criminal proceedings, proceedings under Chapter 980, Wis. Stats., and other proceedings in which the state public defender provides legal representation.

Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats., because the magnitude of the shortfall in the state public defender's appropriation for transcripts, discovery, and interpreters in both years of the current biennium constitutes an emergency that requires implementation of a rule earlier than a permanent rule could take effect if the agency were to comply with the applicable notice, hearing, legislative-review, and publication requirements.

The state public defender was initially provided a base budget of \$60,000 in 1995 for discovery payments, which at that time consisted mostly of photocopies and some photographs. In the 1999–2001 budget act, this appropriation was increased to \$150,000, based on a presumptive rate for photocopies of \$0.20 per page. In the 2001–2003 biennial budget act, this appropriation was subjected to a five percent funding reduction, leaving a base budget for discovery payments of \$142,500.

The public defender received discovery bills totaling \$717,000 for the fiscal year that ended June 30, 2009. Although discovery costs are caseload driven, this represents a nearly five-fold increase since 2001 and is due primarily to two factors. First, in the past many counties and municipalities did not bill the state public defender for copies of discovery materials. Because local budgets have come under increasing pressure, most now do so. Second, 2005 Wisconsin Act 60 resulted in more widespread use of audio and video recordings of interrogations by law enforcement, copies of which must be provided to the defense.

The public defender board's requests for cost-to-continue budget increases for discovery payments in 2007–2009 and in 2009–2011 were not funded. Instead, the FY 2009–2011 budget act reduced this appropriation by 1%, leaving a base budget of \$141,100, and directed the board to promulgate rules to address the funding shortfall.

Publication Date: October 3, 2009
Effective Dates: October 3, 2009 through March 1, 2010
Extension Through: April 30, 2010
Hearing Date: November 16, 2009

Public Instruction (4)

- EmR0916** — A rule adopted revising **ss. PI 35.03 and 35.05**, relating to establishing a fee under the Milwaukee Parental Choice Program.

Exemption From Finding of Emergency

Pursuant to Section 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 1, 2009
Effective Dates: September 1, 2009 through January 28, 2010

Extension Through: March 29, 2010

(Except Section 1)

Effective Dates: October 1, 2009 through February 27, 2010

Hearing Date: October 26, 2009

- EmR0921** — Rule adopted to create **Chapter PI 15**, relating to revenue limit exemptions for energy efficiencies.

Exemption From Finding of Emergency

Pursuant to Section 9139 (2x) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 4, 2009
Effective Dates: September 4, 2009 through January 31, 2010

Extension Through: April 1, 2010

Hearing Date: November 9, 2009

- EmR0933** — Rule adopted to create **Chapter PI 39**, relating to grants for tribal language revitalization.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The tribal language revitalization grant program under s. 115.745, Stats., was created under 2009 Wisconsin Act 28. The Act became effective June 30, 2009, and appropriated \$247,500 annually beginning in the 2009–10 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date: December 15, 2009
Effective Dates: December 15, 2009 through May 13, 2010

Hearing Date: January 15, 2010

- EmR0936** — Rule adopted to create **section PI 8.01 (4)**, relating to waiver of school hours.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and an emergency rule is necessary for the

immediate preservation of the public welfare. The facts constituting the emergency are as follows:

2009 Wisconsin Act 42 requires the department to promulgate rules establishing criteria for waiving the requirement to schedule at least the number of hours of direct pupil instruction specified under s. 121.02 (1) (f) 2. if school is closed for a reason specified in s. 115.01 (10) (a) 2. or 3. The Act became effective October 21, 2009. Therefore, rules must be in place as soon as possible to establish the waiver procedure and criteria for the current school year.

Publication Date: December 21, 2009
Effective Dates: December 21, 2009 through May 19, 2010
Hearing Date: February 1, 2010

Public Service Commission

EmR0919 — Rule adopted to create **Chapter PSC 172**, relating to the police and fire protection fee created under 2009 Wisconsin Act 28.

Finding of Emergency

The Commission finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The police and fire protection fee, which must go into effect September 1, 2009, (2009 Wisconsin Act 28 section 9441) will be used to replace shared revenue payments for such services. To ensure the public peace, health, safety, and welfare of the citizens of Wisconsin, it is vital for funding of police and fire protection services to continue smoothly, quickly, and unimpeded. Thus, it is necessary for the rule administering the fee to be implemented as soon as possible.

Publication Date: September 11, 2009
Effective Dates: September 11, 2009 through February 7, 2010
Extension Through: April 18, 2010
Hearing Date: December 2, 2009

Regulation and Licensing (2)

- EmR0827** — Rule adopted creating s. **RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule 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 to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Dates: November 26, 2008
 April 13, 2009

- EmR0828** — Rules adopted to amend s. **RL 181.01 (2) (c); and to create ss. RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule 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 to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Date: November 26, 2008

Revenue (6)

- EmR0924** — Rule adopted revising **Chapter Tax 11**, relating to sale and use tax.

Finding of Emergency

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

The changes made by the emergency rule must be effective October 1, 2009, to be in conformity with the Streamlined Sales and Use Tax Agreement. In order to meet this deadline, it is necessary to promulgate this rule as an emergency rule.

Publication Date: September 30, 2009
Effective Dates: October 1, 2009 through February 27, 2010
Extension Through: April 28, 2010
Hearing Dates: December 1 and 15, 2009

- EmR0929** — Rule adopted to create sections **Tax 2.85 and 11.90**, relating to failure to produce records.

Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

It is necessary to promulgate this rule order to provide guidance so that the penalties can be administered in a fair and consistent manner.

Publication Date: October 19, 2009
Effective Dates: October 19, 2009 through March 17, 2010
Extension Through: May 16, 2010
Hearing Dates: December 10 and 21, 2009

3. **EmR0935** — Rule adopted to create **section Tax 1.16**, relating to the financial record matching program.

Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of the financial record matching program.

It is necessary to promulgate this rule order to provide procedures so that the program can be administered in a fair and consistent manner.

Publication Date: December 22, 2009
Effective Dates: December 22, 2009 through May 20, 2010
Hearing Date: February 11, 2010

4. **EmR0943** — Rule adopted to revise **Chapter Tax 2**, relating to apportionment and nexus.

Finding of Emergency

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

In 2009, the Wisconsin Legislature enacted Acts 2 and 28, both of which contained substantial changes to Wisconsin's corporation franchise and income tax laws. Most of these changes are effective retroactively to taxable years beginning on or after January 1, 2009. Emergency rules are needed to add certainty about the scope and application of the newly enacted statutes as soon as possible so that taxpayers can file their returns accordingly.

Publication Date: December 31, 2009
Effective Dates: December 31, 2009 through May 29, 2010
Hearing Date: February 25, 2010

5. **EmR1001** — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

Finding of Emergency

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

The function of the Wisconsin Department of Revenue is to administer the Wisconsin tax laws. These laws, and tax policy for raising revenue, are determined by the State Legislature. The State Legislature recently enacted numerous items of tax legislation, affecting individuals and businesses alike. Some of these apply retroactively to January 1, 2009. Emergency rules are needed, not only to address the risk of revenue loss, but to add more clarity and certainty about the scope and application of the newly enacted statutes.

Publication Date: January 15, 2010
Effective Dates: January 15, 2010 through June 13, 2010
Hearing Date: February 25, 2010

6. **EmR1002** — Rule adopted to create **section Tax 1.17**, relating to the ambulatory surgical center assessment.

Exemption From Finding of Emergency

The legislature by Section 9143 (4u) of 2009 Wisconsin Act 28 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: January 19, 2010
Effective Dates: January 19, 2010 through June 16, 2010
 (Subject to 2009 Wis. Act 28, Section 9143 (4u))
Hearing Date: February 11, 2010

Veterans Affairs (2)

1. **EmR0911** — Rule adopted to revise section VA 2.01, relating to the assistance to needy veterans grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is: The economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define "vision care and to limit the eligibility, by available funding, for "dental care", "hearing care", and "vision care". These eligibility limitations, which address the cost, type and frequency of care available under the program, will allow more veterans in need to access the limited resources of this program.

Publication Date: July 1, 2009
Effective Dates: July 1, 2009 through November 27, 2009
Extension Through: March 27, 2010
Hearing Date: August 14, 2009

2. **EmR0944** — Rule adopted to amend **section VA 2.02 (2)**, relating to the veterans tuition reimbursement program.

Finding of Emergency

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

The removal of the existing deadline for completing and receiving an application for the tuition fee reimbursement program has left the department unable to budget the available resources for this program to ensure maximum coverage for eligible veterans throughout the fiscal year. The department is requesting emergency rules to ensure applications can be processed in a responsive manner and to allow the department to properly manage the program's biennial budget and ensure the welfare of all eligible veterans. The emergency rule will

address the need for an application deadline while the department completes the promulgation for a permanent rule for the program.

Publication Date: January 4, 2010
Effective Dates: January 4, 2010 through June 2, 2010
Hearing Date: March 10, 2010

Workforce Development (2)

*Public Works Construction Contracts,
Chs. DWD 290–294*

1. **EmR0941** — Rule adopted to create **section DWD 290.20**, relating to the thresholds for the requirement of prevailing wage rates.

Finding of Emergency

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

The most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require the payment of prevailing wage rates for work done on projects of public works and, in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a

prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rule provides that guidance by establishing that the new threshold requirements will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

Publication Date: December 29, 2009
Effective Dates: January 1, 2010 through May 30, 2010

2. **EmR0942** — Rule adopted to amend **section DWD 293.02**, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

Finding of Emergency

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

The adjustment of the thresholds for the application of the project payment and performance assurance bond requirements 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 the need for obtaining bonding 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 rule-making process.

Publication Date: December 29, 2009
Effective Dates: January 1, 2010 through May 30, 2010
Hearing Date: March 31, 2010

Scope Statements

Employee Trust Funds

Subject

Revises Chapter ETF 10, regarding the election of persons to the Teachers Retirement Board and Employee Trust Funds Board.

Objectives of the Rule

ETF seeks to clarify the Secretary's authority under s. 40.03 (2) (p), Stats., to choose alternate means of holding elections of members to the Teachers Retirement Board and Employee Trust Funds Board. We plan additional changes to the rule for the simplification of the elections provisions.

Policy Analysis

1. *Clarify statutory authority of the ETF Secretary to hold board elections in any reasonable manner, including by electronic means.*

When warranted, holding board elections electronically can promote efficiency and minimize costs. It is clear that the Secretary has authority under s. 40.03 (2) (p), Stats., to choose the means of holding board elections. However, the provisions in the existing administrative rule contemplate only a paper-based board election process. The anticipated changes to the rule would provide that the Secretary may choose to hold a board election using a paper-based process, electronically by use of the Internet, by a combination of methods or by any other reasonable means.

2. *Simplify Wis. Adm. Code s. ETF 10.10.*

ETF desires to review the election process in the current rule with the general goal of making the provisions in Wis. Adm. Code s. ETF 10.10 more understandable and eliminating provisions that create inefficiencies.

Statutory Authority

Sections 40.03 (2) (i), (p) and 227.11 (2), Stats.

Comparison with Federal Regulations

Elections to the Teachers Retirement Board and Employee Trust Funds Board are exclusively a matter of state law and are not governed, or affected, by federal regulations.

Entities Affected by the Rule

The new rules will affect participants and annuitants who run for membership in board elections, as well as the manner in which participants and annuitants cast ballots during board elections.

Estimate of Time Needed to Develop the Rule

State employees will spend an estimated 50 hours to develop these rules.

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapter NR 10, Wis. Adm. Code, relating to game and hunting and the use of archery deer hunting licenses.

Objectives of the Rule

Currently, each license which authorizes archery deer hunting includes one carcass tag that is valid for taking an antlered buck in any management unit and one tag which is valid for one antlerless deer in any management unit. This proposal would limit the areas where the antlerless carcass tag is valid to only management units for which an antlerless deer harvest quota has been established.

Policy Analysis

The harvest of antlerless deer is managed by the department in order to achieve overwinter goals established in s. NR 10.104, Wis. Adm. Code. In management units where the deer population is below goal, the department may restrict antlerless deer harvest or establish an antlerless quota of zero. When the quota is zero only archers, first year hunter safety graduates, and disabled permit holders are allowed to harvest antlerless deer.

Eliminating archery hunter's ability to harvest antlerless deer in zero quota units would make regulations more consistent between the firearm and archery seasons and the reduced antlerless harvest will help to achieve overwinter goals by allowing additional population growth.

Statutory Authority

Sections 29.014 and 29.171, Stats.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Deer hunters are primary people who will be impacted by and interested in this proposal.

Estimate of Time Needed to Develop the Rule

48 hours.

Contact Information

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Natural Resources

*Environmental Protection — Wisconsin Pollutant
Discharge Elimination System, Chs. NR 200—*

Subject

Revises Chapter NR 216, relating to storm water discharge permits.

Objectives of the Rule

The Department of Natural Resources is proposing to revise Chapter NR 216 pertaining to the state's storm water

discharge permits program to address the transfer of regulating construction sites from the Department of Commerce to the Department of Natural Resources as directed by 2009 Act 28, adjust the permit fees, clarify language, and update certain provisions.

Policy Analysis

Transfer of Regulatory Authority for Commercial Building Sites – COMM 60

Prior to the adoption of 2009 Wisconsin Act 28, erosion control at public buildings and buildings that are places of employment (“commercial buildings”) were regulated by the Department of Commerce under s. 101.1205, stats., and Chapter COMM 60, Wis. Adm. Code. Act 28 transferred that authority from Commerce to the Department. The Department is required by Act 28 to develop administrative rules to implement the transfer of this authority from Commerce.

Permit Fees

Under s. 283.33 (9) (b), Stats., the Department is required to establish storm water permit fees based on the costs associated with each type of permit. Increases in fees for industrial, municipal, and construction site storm water permits are needed to fulfill the statutory requirement to support the permit program. Funding projections indicate that there will be a significant deficit in FY 2011 with effects on availability of technical assistance, permit reviews and compliance efforts.

Water Quality

Additional revisions may be needed to address antidegradation, impaired waters, total maximum daily loads, discharges to outstanding and exceptional resource waters, and other water quality issues.

Finally, “housekeeping” revisions and other revisions may be needed to ensure consistency with other water quality or WPDES rules.

Statutory Authority

2009 Wisconsin Act 28; Sections 281.33, 283.33, and 227.11 (2) (a), Wis. Stats.

Comparison with Federal Regulations

The counterpart existing Federal regulation is Title 40 of the Code of Federal Regulations Part 122. These regulations require storm water permit coverage for construction sites where an acre or more of land disturbance will occur. For construction sites for public buildings and buildings that are places of employment, storm water permit application processing and erosion control was administered by the Wisconsin Department of Commerce through COMM 60, Wis. Adm. Code, prior to the transfer of these sites to the DNR by 2009 Act 28. With this change, all erosion control and storm water management regulation is the responsibility of the DNR except at one and two family dwellings.

Entities Affected by the Rule

Entities likely to be impacted or interested in the issues of this rule revision include regulated municipalities and industries, owners of regulated construction sites, environmental organizations, and state and Federal agencies.

Estimate of Time Needed to Develop the Rule

Approximately 728 hours of staff time.

Contact Information

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Workforce Development

Apprenticeship, Chs. DWD 295–296

Subject:

Revises Chapter DWD 295, relating to procedures for the creation, assignment and enforcement of apprentice contracts.

Objectives of the Rule

On October 26, 2008, the US Department of Labor published 29 CFR 29 (Volume 29 of the Code of Federal Regulations, Part 29) in the Federal Register. 29 CFR 29 is a final rule designed to modernize the National Apprenticeship System. This rule, which took effect on December 29, 2008, provides State Apprenticeship Agencies with up to two additional years to implement the required changes in order to continue federal recognition of Wisconsin’s apprenticeship program. Bills (AB 797 and SB 586) have been introduced in the Legislature to make conforming changes to the statutory provisions on apprenticeship, such as changing the term “indenture” to “apprentice contract.” DWD is now considering a proposed rule in order to make similar conforming and updating changes to the rules of the state apprenticeship program.

Policy Analysis

The fundamental procedures of the federal and state apprenticeship programs, which primarily involve training standards for apprentices and the creation, assignment and enforcement of apprentice contracts, are not changing. The proposed rule will contain amendments to update the content and terminology of the state apprenticeship rule and bring it into conformance with the new federal regulation and the related changes proposed in AB 797 and SB 586. The only significant policy alternative would be to do nothing, which could lead to conformity questions due to some of the changes in terminology contained in the federal regulation and the proposed state legislation. It is clear that the best course is to update the rule in a manner that is consistent with the federal regulation and the proposed state legislation.

Statutory Authority

Sections 103.005 (1), 106.01 (9) and 227.11 (2), Wis. Stats.

Comparison with Federal Regulations

The relationship of the federal regulation on apprenticeship, 29 CFR 29, to this rulemaking proposal is described in paragraph 1.

Entities Affected by the Rule

State and local apprenticeship committees, employers, unions and other individuals and organizations which participate in the state apprenticeship program.

Estimate of Time Needed to Develop the Rule

120 hours.

Contact Information

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Submittal of Rules to Legislative Council Clearinghouse

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

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 10–031

On March 3, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 46, relating to annual adjustments of timber stumpage values and other administrative changes relating to the Managed Forest Law (MFL).

Agency Procedure for Promulgation

A public hearing is required and will be held on April 14, 2010.

Contact Information

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Natural Resources
Environmental Protection — General, Chs. NR 100—
Environmental Protection — WPDES, Chs. NR 200—
CR 10–035

On March 17, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 102 and 217, relating to phosphorus water quality standards criteria and related WPDES permit limitations and procedures.

Agency Procedure for Promulgation

Public hearings will be held on April 15, 20, 21 and 27, 2010.

Contact Information

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Natural Resources
Environmental Protection — Water Regulation,
Chs. NR 300—
CR 10–032

On March 9, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters NR 335 and 336, relating to implementation of the Municipal Dam Grant program and the Dam Removal Grant program.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 15, 2010.

Contact Information

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Natural Resources
Environmental Protection — Air Pollution Control,
Chs. NR 400—
CR 10–033

On March 16, 2010, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 433, relating to implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 26, 2010.

Contact Information

Robert B. Eckdale
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Transportation
CR 10–030

On March 8, 2010, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter Trans 198, and revises Chapters Trans 196 and 250, relating to motor vehicle convenience fees.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 21, 2010. The Division of Motor Vehicles is responsible for promulgation of the proposed rule.

Contact Information

Julie A. Johnson, Paralegal
Phone: (608) 267-3703
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Rule-Making Notices

Notice of Hearings

Justice Assistance

CR 10-010

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.964 (16) (b) and 227.11 (2) (a), Stats., the Office of Justice Assistance (OJA) will hold public hearings at the times and places indicated below to consider the creation of Chapter OJA 1, relating to the collection and analysis of motor vehicle traffic stop information.

Hearing Information

Date and Time Location

April 26, 2010 Room 142 C (Student Lounge)
4:00 PM Madison Area Technical College
3550 Anderson Street
Madison, Wisconsin

April 28, 2010 Room 250, Zelazo Center
4:00 PM University of Wisconsin — Milwaukee
2419 East Kenwood Boulevard
Milwaukee, Wisconsin

The public hearing sites are accessible to people with disabilities. If you have special needs or circumstances that may make communication or accessibility difficult at a hearing, please call (608) 261-7005 at least 10 days prior to the hearing date. Accommodations will be made available to the fullest extent possible.

Copies of Proposed Rule

Copies of this proposed rule are available on the Office of Justice Assistance website at <http://oja.state.wi.us/> under “Current News” or at the state administrative rules website at <http://adminrules.wisconsin.gov> (search under “traffic stop”). Copies may also be obtained at no charge by making a request to Dennis Schuh, Program Director, Office of Justice Assistance, 1 S. Pinckney Street, Suite 615 Madison, WI 53703, Phone: (608) 266-7682. Email: Dennis.Schuh@wisconsin.gov.

Appearances at the Hearing and Submission of Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Comments may also be submitted using the Wisconsin Admin. Rules Website at <http://adminrules.wisconsin.gov> or submitted by mail addressed to the agency contact person listed above. The deadline for submitting comments to the Office of Justice Assistance is 4:30 p.m. on April 30, 2010.

Analysis Prepared by the Office of Justice Assistance

Statutes interpreted

Sections 16.964 (16) (a) and 349.027, Stats.

Statutory authority

Section 16.964 (16) (b), Stats.

Explanation of agency authority

Section 9101 (11y), of 2009 Wisconsin Act 28, a nonstatutory provision, directs that:

(11y) RULE-MAKING RELATED TO TRAFFIC STOP INFORMATION COLLECTION AND ANALYSIS. The office of justice assistance in the department of administration shall submit in proposed form the rules required under section 16.964 (16) (b) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than February 1, 2010.

Under the provisions of s. 16.964 (16) (b), Stats. as created by 2009 Wisconsin Act 28, “(t)he office shall promulgate rules relating to . . .” (traffic stop data collection, submittal, analyses and reports). “Office” is defined to mean “the office of justice assistance.” s. 16.964 (1) (g), Stats.

Related statute or rule

Under s. 349.027, Stats., the person in charge of a law enforcement agency shall “cause to be obtained” information required by the OJA rules relating to each traffic stop made on or after January 1, 2011. The person in charge of a law enforcement agency is also required to submit the information to the OJA using the process and format prescribed by OJA rules.

Plain language analysis

These rules fulfill a statutory mandate that OJA adopt rules relating to the collection of information on traffic stops by law enforcement agencies (agencies) and analysis of the collected information by OJA. By statute, the rules are to relate to:

- The types of information that agencies must collect and the circumstances under which it must be collected;
- The process and format that agencies must use to submit the collected information to the OJA;
- The types of analyses that OJA will perform; and,
- Requirements for making reports to the legislature.

Proposed ch. OJA 1, in s. OJA 1.03, includes definitions of terms used in the statute and rule, including “law enforcement agency,” “law enforcement officer,” “person in charge of a law enforcement agency employing the law enforcement officer” “race or ethnicity” and “traffic stop.”

No later than June 30, 2010, the Department of Transportation and the OJA are to enter into a memorandum of understanding covering traffic stop data collection procedures, forms, procedures, costs, staffing and training. Among other things, the terms of the agreement are to minimize impact on the time and expense of law enforcement agencies. Section OJA 1.04.

In section OJA 1.05, the rules describe the type of information that police officers must collect relating to traffic stops, categorized as operator, occupant, event and search data. The process that law enforcement agencies must use to submit traffic stop data to the Office of Justice Assistance is set out in s. OJA 1.06.

The types of data analysis that OJA will perform is described in s. OJA 1.07. The analysis will be completed by the Statistical Analysis Center in OJA. The Center will

analyze the traffic stop data under the tests identified in s. 16.964 (16) (a), Stats., specifically, to determine:

- (a) Whether the number of traffic stops involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of traffic stops involving motor vehicles operated or occupied solely by persons who are not members of a racial minority.
- (b) Whether the number of searches involving motor vehicles operated or occupied by members of a racial minority is disproportionate to the number of searches involving motor vehicles operated or occupied solely by persons who are not members of a racial minority.

Under the rule, the analysis may also evaluate correlations between the race and ethnicity of vehicle occupants and traffic stop events such as search requests and stop duration. OJA may also note whether other factors, such as specific law enforcement strategies, may contribute to identified disproportionalities. OJA is required to identify benchmarks and other analytical tools used in preparing its reports.

All of the OJA traffic stop reports shall be filed as required by statute and published on the agency's website. Section OJA 1.08.

Under section OJA 1.10, a law enforcement agency that does not submit traffic stop data will be identified in OJA reports.

Comparison with federal regulations

There is no known federal law requiring the collection and analysis of data about the racial or ethnic characteristics of individuals involved in traffic stops. However, the Federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) 23 USC s. 1906 provides guidance on local legislation. Section 1906 provides incentive funding for states to enact a law that prohibits the use of racial profiling in highway law enforcement and to allow public inspection of statistical information for each motor vehicle stop regarding the race and ethnicity of the driver and passengers.

Comparison with rules in adjacent states

Minnesota:

In 2001, Minn. Stats. § 626.951, provided for a statewide racial profiling study with voluntary participation by law enforcement agencies. Sixty-five jurisdictions participated, reporting 194,189 total stops. The 2003 report from this study analyzed one year of data collected from the sixty-five jurisdictions. The complete report is available at <http://archive.leg.state.mn.us/docs/2004/mandated/040200.pdf>. According to the Minnesota study,

Law enforcement officers stopped Black, Latino, and American Indian drivers at greater rates than White drivers, searched Blacks, Latinos, and American Indians at greater rates than White drivers, and found contraband as a result of searches of Blacks, Latinos, and American Indians at lower rates than in searches of White drivers. . . . (2001 Report, p. 1)

The report includes the conclusion that the patterns of disparate treatment “. . . suggest a strong likelihood that racial/ethnic bias plays a role in traffic stop policies and practices in Minnesota.”

Minnesota does not currently have a statewide law requiring law enforcement officers to collect data and prepare reports on the race of persons who are stopped or searched in

a traffic stop. However, Minnesota does have a law that defines “racial profiling” and requires the chief law enforcement officer of every state and local law enforcement agency to enforce a written anti-racial profiling policy governing the conduct of officers engaged in stops of citizens. Minn. Stat. § 626.8471.

Iowa:

Iowa does not currently have a law requiring the police to collect traffic stop data that includes the race or ethnicity of vehicle operators or passengers. Between October 1, 2000 and March 3, 2002, the Iowa State Patrol collected traffic stop data from over 260,000 traffic stops. A report was prepared in April 2003, by the Iowa state Patrol and the Iowa Division of Criminal and Juvenile Justice Planning.

The 2003 Report, available at http://publications.iowa.gov/7228/1/Stop_Data.pdf, concluded, among other things, that,

Can we say whether or not ISP troopers are stopping, ticketing, searching or arresting people differently because of their race? The data in this report do not conclusively answer this question. They do give us an indication that Iowans are not more or less likely to be stopped by ISP troopers because of their race. . . .

The data in this report also do not definitively answer the question of whether or not the ISP troopers are influenced by a person's race or ethnicity when deciding whether to conduct a search or issue a warning vs. a formal sanction. The data do seem to indicate that race or ethnicity may have sometimes influenced decisions in these areas. However, such observations are only indications because a substantial number of cases had missing data and because the impact of numerous other variables that should affect such decisions is unknown (e.g. existence of outstanding warrants, severity of alleged traffic violations, visible contraband, incriminating driver or passenger behavior). (2003 Report p. 8)

Illinois:

Illinois began collecting traffic stop data and issuing annual reports on January 1, 2004. The Illinois law was substantially amended in 2008. A Racial Profiling Prevention and Data Oversight Board (Board) was created to oversee plans and strategies to eliminate racial profiling in Illinois.

The recent 2008 Illinois report based on data reported from 2,518,825 traffic stops, sought to answer two questions.

- To what extent, if any, does race influence an officer's decision to stop a vehicle?
- To what extent, if any, does race influence the disposition of the stop? Was a citation issued? Was the vehicle subject to a consent search?

The 2008 Illinois Report, available at <http://www.dot.state.il.us/trafficstop/meeting.html>, concluded:

The ratio of minority drivers stopped to the minority driving population has improved each year. That is, the percentage of minority drivers stopped by the police is getting closer to the estimated driving population.

Law enforcement agencies continue to pay careful attention to this issue and many have introduced policies and procedures to correct deficiencies.

Our newest measures of post-stop performance — duration of stop — suggests that traffic stops of minority

drivers consume about the same time as those for Caucasian drivers.

The number of consent searches in Illinois continues to decline, but minority drivers are still more likely to be consent searched than Caucasian drivers. Differential refusal rates do not appear to contribute to this difference.

Police officers conducting consent searches are far more likely to find contraband in a vehicle driven by a Caucasian driver than by a minority driver. While there has been a significant amount of attention devoted to this issue, there is little evidence at this point of substantial improvement. (2008 Report, p. 13)

The Illinois Act sunsets on July 1, 2010. The Illinois Board must recommend whether to continue the Illinois racial profiling study beyond July 1, 2010.

Michigan:

Michigan does not have a statewide law currently in effect requiring traffic stop data collection and analysis, although some local studies have been conducted in Michigan.

Summary of factual data and analytical methodologies

OJA utilized an advisory committee and public listening sessions in developing proposed ch. OJA 1.

OJA appointed a 17-member Traffic Stop Data collection Advisory Committee to advise the agency with respect to this rulemaking. The committee included representatives of law enforcement (police chiefs, county sheriff, the state patrol) a police association, legislators, community representatives, the Department of Transportation, the Department of Natural Resources, the Office of the Public Defender and a civil liberties organization. The advisory committee met on September 28, 2009, October 14, 2009, November 18, 2009, December 17, 2009 and January 14, 2010. Presentations made to the committee include:

- The Illinois Traffic Stop Study: Alexander Weiss, Ph.D. University of Illinois at Chicago Center for Research in Law and Justice.
- Data Elements — Jerry Jansen, Criminal Justice Consultant, OJA.
- Technology — Erin Egan, Citations & Withdrawals Section, Badger TraCS Program Manager, DOT, Division of Motor Vehicles.
- Funding – Kathy Cushman, Citations and Withdrawals Section, DOT Division of Motor Vehicles.
- Milwaukee Police Department Traffic Enforcement Policy and Data Analysis — Milwaukee Chief of Police Ed. Flynn.
- Fundamental Questions and Benchmarks and a Draft Data Analysis Report Outline — Kristi Waits, Program Director, OJA Strategic Analysis Center.
- Monitoring Stops for Biased Policing in Washington State — John R. Batiste, Chief of the Washington State Patrol.
- Data Collection and Community Partnerships — Noble Wray, Chief of Police, Madison Police Department.
- Local Law Enforcement Data Assessment (LLEDA), UW Report to BOTS — Joni Graves, Program Director, UW–Madison Transportation Information Center.
- Analysis Software for Local Analysis — Greg Ridgeway, Ph.D. Director, RAND Corporation.

- Benchmarks — Lorie Fridell, Ph.D., University of South Florida, Department of Criminology.

Listening Sessions were held by the Advisory Committee and OJA from 4 and 7 PM on November 11, 2009 (La Crosse), November 12, 2009 (Green Bay), November 18 (Milwaukee), December 1, 2009 (Rice Lake, Superior, Crandon and Keshena), and December 12, 2009 (Kenosha/Racine). At the sessions the committee and OJA heard from citizens who commented about the issue of racial profiling and traffic stops and about the traffic stop data collection project mandated by 2009 Wisconsin Act 28.

Small Business Impact

This rule does not have a significant effect on small business.

Fiscal Estimate

State fiscal effect

Increase costs, program revenue.

Local government fiscal effect

No fiscal effect.

Private sector fiscal effect

No fiscal effect.

A copy of the full fiscal estimate may be obtained from the agency contact person listed below, upon request.

Agency Contact Person

Dennis Schuh, Program Director
Office of Justice Assistance
1 S. Pinckney Street, Suite 615
Madison, WI 53703
Phone: (608) 266-7682
Email: Dennis.Schuh@wisconsin.gov.

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1— CR 10-031

NOTICE IS HEREBY GIVEN that pursuant to ss. 77.06 (2), 77.82 (2m) and (4), 77.88 (2) (d) 2., 77.91 (1) and 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on revisions to Chapter NR 46, Wis. Adm. Code, relating to the administration of the Forest Crop Law and the Managed Forest Law.

Hearing Information

The hearing will be held on:

Video conference participation will be available at:

April 14, 2010 The Pyle Center
Wednesday 702 Langdon St.
at 10:00 a.m. Madison

Room 211
Communication Art Center (CAC)
UW–Stevens Point, 1101 Reserve St.
Stevens Point

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 Kathy Nelson (608) 266-3545 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rule and Submission of Written Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Nelson.

Written comments on the proposed rule may be submitted via U.S. mail to Ms. Kathy Nelson FR/4 Bureau of Forest Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until **April 30, 2010**.

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.

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Section 77.06 (2) and subch. VI Ch. 77, Stats.

Statutory authority

Sections 77.06 (2), 77.82 (3) (c), 77.91 (1), Wis. Stats., and 227.11 (2) (a), Wis. Stats.

Sections 77.06 (2) and 77.91 (1), Wis. Stats. directs the department to establish stumpage rates on an annual basis for use in determining the severance and yield taxes assessed when timber is harvested from lands designated as forest crop land and managed forest land. New rates shall take effect on November 1 each year. Section 77.82 gives implicit authority to the department to create rules for processing petitions.

Summary of proposed rule

The proposed rule:

1. Revises the annual stumpage rates for the period between November 1, 2010 and October 31, 2011 as required in ss. 77.06(2) and 77.91(1), Stats. The average change from the current rate is a 3% decrease in sawtimber, a 4% decrease for pulpwood, a 3% decrease for mixed products, and a 1% increase in piece products.
2. Creates an exemption for payment to forest crop law termination taxes if land ownership changes have occurred after the original landowner received notification of forest crop law expiration and new landowner certifies intent to enter into the managed forest law program.
3. Clarifies the requirements for additions to existing managed forest law lands.
4. Amends the certified plan writer reporting requirements for plan preparation costs and requirements for making an offer to landowners for management plan writing services. Amend the department billing requirements when invoicing landowner for plan preparation fees.
5. Amends the stocking requirements for management of plantations.

Annual Stumpage Rate Adjustment:

For purposes of the Forest Crop Law (FCL) and the Managed Forest Law (MFL), this rule repeals NR 46.30(2)(a) to (g) and recreates NR 46.30(2)(a) to (h) to revise annual stumpage values used to calculate severance and yield taxes due on timber cut during the period from November 1, 2010 through October 31, 2011. One new stumpage table is created

to represent stumpage values used to calculate severance and yield taxes on timber if the timber sold by weight (tons) includes both pulpwood and fine woody material. Thirteen separate zones reflect varying stumpage values for different species and products across the state.

Timber prices have steadily fallen throughout the past year, although overall prices did not fall as significantly as what was observed one year earlier. The average statewide prices for sawlogs decreased 3%, with a range of a 13% increase to a 34% decrease. The average statewide prices for pulpwood decreased 4%, with a range of a 16% increase to a 20% decrease. Prices for mixed products (mixture of sawlogs and pulpwood for red pine, white pine and spruce) have dropped 3%, with a range of a 32% increase and a 21% decrease. Piece products (posts, poles and Christmas trees) had a 1% increase in prices, with some market zones having an increase in prices of 4% to a 1% decrease.

While the statewide stumpage rates largely decreased, there are fluctuations between market zones and individual prices. Of all total 630 prices calculated, 149 (24%) increased, 198 (31%) decreased and 283 (45%) stayed the same.

The severance and yield tax collected in CY 2009 was \$1,284,934. This value is 26% lower than it was in CY 2008. Timber harvest volumes are down since CY 2008 by the following amounts:

Timber Product	% Change
Cordwood	Down 17%
Fuelwood	Up 97%
Sawlogs	Down 20%
Mixed Product	Up 106%
Piece Products	Down 2%

If the same amount of timber is harvested in 2011 as was harvested in 2009, local municipalities will receive a decrease in the yield and severance tax payments by an estimated \$1,500. Estimates are based on the average change in rates for private land timber sales across species and zone for each product type (cordwood, sawtimber and mixed), the volumes reported and paid for in CY 2009, and the assumption that the volume and the ratio of the cordwood and sawtimber will remain the same. Actual impact for a county and municipality will vary by the number of harvests completed and the actual species and products cut.

Amendments to minimum medium density of plantations in NR 46.02(24m) and NR 46.18(2)(d):

Stocking requirements are established to determine when lands are adequately stocked and capable of fully utilizing the site to grow forest products in a reasonable time frame. Fully stocked stands can be thinned or harvested at regular intervals, providing Wisconsin's forest products industry with valuable raw material and local municipalities with a periodic income through payment of severance and yield taxes.

The minimum medium density for plantations has been established at 600 trees per acre. Current research has shown that plantations have the ability to fully utilize the size at lower densities than was previously determined, as long as the trees are evenly distributed throughout an area. NR 46.02(24m) and NR 46.18(2) will be amended to establish the minimum medium density for a plantation at 400 trees per acre to reflect this new information.

Amendments to the managed forest law petition deadlines and management plans if petitions from owners of land entered as forest crop land are subject to an ownership change within 18 months prior to the end of the forest crop law contract period in NR 46.16(1)(cm) and NR 46.18(5)(c).

Landowners who purchase expiring forest crop law lands within 18 months prior to the expiration of forest crop law contract may be interested in enrolling in the managed forest law program. New landowners, depending upon the date of purchase, may find it difficult to meet the petition deadlines established by statute and administrative code. Forest crop law lands that are not immediately enrolled in the managed forest law are placed on the regular property tax rolls and landowners are assessed a termination tax.

NR 46.16 (1) (cm) is created to allow landowners who purchase expiring forest crop law lands within 18 months prior to the end of the forest crop law expiration the opportunity to apply for the July 1 petition deadline or later for good cause to be considered for designation effective the following January 1.

Management plans would need to be developed by certified plan writers; however management plans would not need to have been previously reviewed by the department by the deadline date of March 1. Department review of the managed forest law petition will be done according to the provisions of NR 46.18 (5).

Amendments to the requirements for additions to existing managed forest land in NR 46.16(7):

Recent changes to NR 46.16(5) required that landowners enroll lands by municipality except when lands on either side of the municipal line do not meet eligibility requirements. Changes to NR 46.16(7) will require that the same eligibility requirements apply to additions as well as new enrollments so that additions across municipal lines are done only in situations where lands cannot qualify for a new entry under NR 46.17 and s. 77.82 (1) (a), Stats.

Amendment to the format that Certified Plan Writers submit plan writing data to the department in NR 46.165(4)(f):

The method in which certified plan writers submit their plan preparation costs for work done in the previous 12 months is being amended to make it easier for certified plan writers to submit the data.

Currently, NR 46.165 (4) (f) requires that certified plan writers submit their plan preparation cost by base rate per plan plus the cost per acre. Many certified plan writers charge clients an hourly rate or a per acre rate. These certified plan writers are not able to easily determine their base rate and cost per acre.

The change to administrative code will eliminate the requirement to submit a base rate per plan.

The department collects this information in order to determine the average cost of plan writing services statewide. This average value is used to charge landowners for plan writing services on plans that the department writes.

Eliminate the requirement that offers for plan writing services must be in writing and guarantee that plans are submitted for the following July 1 deadline in NR 46.18(7)(c):

Management plans that are submitted for the July 1 petition deadline without a management plan or indicating a certified plan writer are placed on a management plan referral list.

Certified plan writers are given the opportunity to offer plan writing services to landowners.

NR 46.18 (7) (c) provided that certified plan writers must submit their offers in writing and include the cost for the management plan preparation service and guarantee that an approvable plan will be completed by the following July 1. The department does not require that it receive a copy of the offer, only that a certified plan writer report that an offer has been made within 5 days of the offer under NR 46.18(7)(d).

The managed forest law statutes and administrative codes establish the eligibility and management provisions of the program, but do not establish the business practices of certified plan writers in working with private landowners. Additionally, the cooperating forester agreement (note: certified plan writers must also be a cooperating forester) states that cooperating foresters have sole control over the methods, hours worked, and time and manner of any performance under the agreement other than as expressly required by the Cooperative Agreement.

Because the department has no mechanism to insure that written offers are provided to landowners, and because the department does not direct the business practices of certified plan writers, NR 46.18(7)(c) this provision will be removed from administrative code.

Amendment of the format in which the department charges landowners for plan writing services in NR 46.18(8)(b).

The department must charge landowners a plan preparation fee that includes a base rate and a rate per acre. Changes to NR 46.165 (4) (f) to eliminate the requirement to submit a base rate per plan will require the department's billing procedure to also change. Changes to NR 46.18 (8) (b) will eliminate the base rate per plan.

Comparison of federal regulations

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

Comparison of rules in adjacent states

Checks with the surrounding states of Minnesota, Michigan, Iowa and Illinois indicate that while they offer some type of incentive program to forest landowners, none of the states have similar forestry practice requirements nor do they calculate annual stumpage rates for severance and yield taxes in conjunction with their programs.

Anticipated cost by private sector

For owners of land designated as managed forest law or forest crop law, there is an anticipated decrease in cost associated with the decrease in yield tax on managed forest law lands and severance tax on forest crop law lands based on the average decrease in stumpage rates proposed for both pulpwood (4% decrease) and sawlogs (3% decrease). Actual cost could be an increase or decrease depending on the specific species, product and zone.

For owners who qualify for the exemption of payment of the forest crop law termination tax, an estimated \$3,000 will be saved by the owner. The estimated savings of \$3,000 is based upon an average termination tax paid by owners in FY 2009. There will likely be one landowner per year who will qualify for this exemption.

Changes associated with submitting and approving management plans prepared by certified plan writers and DNR foresters will have no fiscal effect and allow additional time for plans to be written and approved.

Summary of factual data and analytical methodologies

Stumpage rate data is collected from Department Foresters and Cooperating Foresters annually. This data is used to calculate a three year weighted average for each species and product by zone. Only data obtained from private timber sales was used in the stumpage rate calculation.

$$\frac{\begin{matrix} \text{wtd avg} & \text{wtd avg} & \text{wtd avg} & \text{wtd avg} \\ \text{current year minus 3} & \text{current year minus 2} & \text{current year minus 1} & \text{current year minus 1} \\ \text{stumpage value} & \text{stumpage value} & \text{stumpage value} & \text{stumpage value} \end{matrix}}{\begin{matrix} \text{\# of years wtd avg stumpage values} \\ 2 \end{matrix}} = \text{Stumpage Rate}$$

(if there is a wtd avg current year minus 1 stumpage value, otherwise it's 1)

The current rates in NR 46.30 were compared to the proposed rates to determine the average change in rates by product.

Analysis and documentation used to determine effect on small business

A review of the law shows the impact on small business. The actual impact is dependant on the amount of timber (if any) is scheduled to be harvested on their specific land during this stumpage rate year and on the expected number of additions.

Small Business Impact

This rule will impact small businesses (i.e., farmers, landowners) that have land designated as managed forest land or forest crop land. Those involved in this voluntary program pay a reduced tax in place of the regular property tax in exchange for sound forest management on the land. When timber is harvested they pay a 5% yield tax or 10% severance tax, which is calculated using the stumpage rates established in NR 46.30. At the time of entry into these programs the owner pays for the preparation of a management plan, which includes sound forest management practices that must be completed during the order period to ensure and maintain a healthy stand of timber.

Initial regulatory flexibility analysis

Pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

Any business with land enrolled in either the Managed Forest Law or the Forest Crop Law or wishing to enroll land under the Managed Forest Law.

b. Description of reporting or bookkeeping procedures required:

No procedures not already required.

c. Description of professional skills required:

No new skills are required.

Small business regulatory coordinator

The Department's Small Business Regulatory Coordinator for this rule may be contacted at quinn.williams@wisconsin.gov or by calling (608) 266-1318.

Environmental Analysis

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.

Fiscal Estimate

Assumptions used in arriving at fiscal estimate

This proposed rule change addresses the annual stumpage rate changes used in the calculation of severance and yield tax collections under Forest Cop Law (FCL) and Managed Forest Law (MFL) when timber is harvested from the private lands enrolled in the programs.

Revenues to local municipalities will decrease due to a decrease in the average stumpage value for sawlogs, pulpwood, mixed products and piece products. Timber prices have steadily fallen throughout the past year, although overall prices did not fall as significantly as what was observed a year earlier. The average statewide prices for sawlogs have decreased 3%, with a range of a 13% increase to a 34% decrease. The average statewide prices for pulpwood have decreased 4%, with a range of a 16% increase to a 20% decrease. The average statewide prices for mixed products (mixture of sawlogs and pulpwood for red pine, white pine and spruce) have decreased 3%, with a range of a 32% increase to a 21% decrease. Lastly, the average statewide prices for piece products (posts, poles, and Christmas trees) have increased 1%, with a range of a 4% increase to a 1% decrease.

While the statewide stumpage rates decreased slightly, there are fluctuations between market zones and individual prices. Of the total 630 prices calculated, 149 (24%) increased, 198 (31%) decreased, and 283 (45%) stayed the same.

The severance and yield taxes collected in CY 2009 were \$1,284,934. This is 26% less than the severance and yield taxes collected in CY 2008. Timber harvest volumes have also changed since CY 2008 in the following manner: pulpwood volumes decreased 17%, fuelwood volumes increased 97%, sawlog volumes decreased 20%, mixed products volumes increased 106%, and piece products volumes decreased 2%.

To estimate the fiscal impact of stumpage rate changes, the Department assumes that overall timber harvest volumes remain the same in CY 2011 as they were in CY 2009. Because of offsetting increases and decreases in timber sale revenues based on differences in market zone, wood classification, harvest volume and timber prices, the

Department estimates that a net total of \$1,500 less in yield and severance taxes will be collected as a result of the rate changes, which equates to a net decrease of less than 1% of revenues for local municipalities.

Amendments to the minimum medium density of plantations will have no state or local fiscal effect. The change will relieve some landowners of replanting plantations if the survival rate is 400 well-spaced tree seedlings per acre.

Procedure and process clarifications for additions of land to existing managed forest law, the provisions for certified plan writers to submit management plan preparation fee data, the removal the conditions of a written offer, and the Department's billing process will have no state or local fiscal impact.

State fiscal effect

Decrease existing revenues.

Local government fiscal effect

Mandatory decrease in revenues.

Types of local governmental units affected

Towns, Villages, Cities, Counties.

Fund sources affected

SEG.

Agency Contact Person

Kathryn J. Nelson, Forest Tax Policy Chief
Phone: (608) 266-3545
Email: Kathryn.Nelson@Wisconsin.gov

Notice of Hearings

Natural Resources

Environmental Protection — General, Chs. NR 100—

Environmental Protection — WPDES, Chs. NR 200—

CR 10-035

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.11 (2) (a), 281.15, 283.001 (2), 283.13 (5), 283.15, 283.31, 283.35 and 283.37, Stats., the Department of Natural Resources will hold public hearings on proposed revisions to Chapters NR 102 and 217, Wis. Adm. Code, relating to phosphorus water quality standards criteria and limitations and effluent standards.

Hearing Information

The hearings will be held on:

April 15, 2010 at 1:00 p.m.	Quality Inn 668 W. Kemp Street Rhinelanders
April 20, 2010 at 1:00 p.m.	Green Bay City Hall Council Chambers, Room 203 100 N. Jefferson Street Green Bay
April 21, 2010 at 1:00 p.m.	Olympia Resort and Conf. Center Crown Room 1350 Royale Mile Road Oconomowoc
April 27, 2010 at 1:00 p.m.	Ramada Inn, Lower Ballroom 205 S. Barstow Street Eau Claire

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided to qualified individuals with disabilities upon request. Please call Jim Baumann at (608) 266-9277 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rule and Submission of Written Comments

The proposed rule revisions and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following internet site: <https://health.wisconsin.gov/admrules/public/Home>.

Written comments on the proposed rules may be submitted via U. S. mail to Jim Baumann, DNR-WT/3, P.O. Box 7921, Madison, WI 53707-7921 or by e-mail to james.baumann@wisconsin.gov. Comments may be submitted until **April 30, 2010**. 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 rules and supporting documents, including the fiscal estimate may be obtained from Jim Baumann, DNR-WT/3, P.O. Box 7921, Madison, WI 53707-7921, or by calling (608) 266-9277.

Analysis Prepared by Department of Natural Resources

Statutes interpreted

Sections 281.15, 283.13 (5), 283.31, 283.55 and 283.84, Stats.

Statutory authority

Sections 227.11 (2) (a), 281.15, 283.001 (2), 283.13 (5), 283.15, 283.31, 283.35 and 283.37, Stats.

Related statute or rule

Section 283.11 (3) (am), Stats.

Chapters NR 106 and 200, Wis. Adm. Code

Plain language analysis of the rule

The proposed rule has two parts. The first is a set of phosphorus water quality standards criteria for rivers, streams, various types of lakes, reservoirs and Great Lakes. The second is procedures for determining and incorporating phosphorus water quality based effluent limitations into Wisconsin Discharge Pollutant Elimination System (WPDES) permits under chapter 283, Stats. Pursuant to 40 CFR 131.11, states are required to adopt water quality standards criteria that are protective of the designated uses of surface waters. Pursuant to section 303(c)(4) of the Clean Water Act, EPA may step in and promulgate the criteria for the state, if the state does not. Development of point source permit procedures is required as part of the state's point source permit delegation agreement. EPA approval of state water quality criteria is required under 40 CFR ss. 131.5, 131.6 and 131.21.

Phosphorus Water Quality Standards Criteria

The proposed rule establishes phosphorus water quality criteria of 100 ug/l (parts per billion) for rivers specifically identified in the rule and of 75 ug/l for smaller streams and rivers. No criteria are proposed at this time for ephemeral streams or streams identified in ch. NR 104, Wis. Adm. Code as limited aquatic life waters. Both of the criteria are intended

to prevent in-stream algae and other plant growth to the extent that is detrimental to fish and aquatic life. For example, extensive algae or macrophyte (large plants growing on the beds of streams) consume oxygen during the night to the extent that may leave too little oxygen for certain fish species and for certain aquatic insects. About half of Wisconsin’s rivers and streams meet the proposed criteria.

For lakes and reservoirs, the proposed rule has a suite of criteria for five different types of lake ranging from 15 ug/l for lakes supporting a coldwater fishery, such as lake trout or cisco in its bottom waters, to 40 ug/l for shallow drainage lakes and reservoirs. The criteria are intended to prevent or minimize nuisance algal blooms; prevent shifts in plant species in shallow lakes; maintain adequate dissolved oxygen in the bottom of “two-story” lakes with a warmwater fishery in top waters and coldwater fisheries in bottom waters; and to maintain fisheries. “Toxic” algae concerns may also be addressed. For millponds and similar impoundments, the upstream river or stream criteria would apply. More than half of Wisconsin’s lakes meet the proposed criteria with the percent varying by lake type. No criteria are proposed at this time for marsh lakes and other wetlands since they will be part of future wetlands nutrient criteria adoption.

For the Great Lakes, phosphorus criteria are proposed for the open waters of Lake Superior (5 ug/l), the open waters of Lake Michigan (7 ug/l) and the nearshore waters of Lake Michigan (7 ug/l). Presently, for the open waters both Lake Michigan and Lake Superior are meeting the criteria. For the nearshore waters of Lake Michigan, the zone from the beaches to a depth of 10 meters, where there are concerns with the Cladophora algal mats forming on beaches, the criteria may be exceeded in some locations.

Below is a table showing the proposed phosphorus water quality standards criteria by type of water body. The specific water body types are defined in the proposed rules, and there are some exclusions based on size or flow conditions.

Proposed Phosphorus Criteria by Type of Water Body	Total Phosphorus in ug/l
Listed rivers	100
All other streams	75
Stratified reservoirs	30
Non-stratified reservoirs	40
Stratified “two-story” fishery lakes	15
Stratified drainage lakes	30
Non-stratified (shallow) drainage lakes	40
Stratified seepage lakes	20
Non-stratified (shallow) lakes	40
Impoundments	Same as inflowing river or stream
Lake Michigan open and nearshore waters	7
Lake Superior open and nearshore waters	5

WPDES Effluent Standards and Limitations

The current regulations for phosphorus establish specific procedures for including technology based limitations and

standards in WPDES permits (existing chapter NR 217). There is also an existing rule (s. NR 102.06) that generally states the department may establish water quality based limits for phosphorus in permits on a case-by-case basis using an evaluation of phosphorus sources in a watershed, but this rule is being repealed and replaced with a proposed new subchapter in chapter NR 217 that includes detailed procedures for establishing water quality effluent limitations for phosphorus.

Specifically, there are provisions for determining when a water quality based effluent limitation is needed in a WPDES permit; equations and procedures for calculating effluent limits based on different types of waters and stream flow assumptions; and provisions for expressing permit compliance averaging periods, such as a monthly average. The rule requires concentration limits, as commonly used in permits. However, it also specifies where and how mass limits are required, such as for discharges to impaired waters, where there is a downstream lake and where there is a downstream outstanding or exceptional resource water. The rule also addresses the relationship and procedures for including a various types of phosphorus limits in permits such as a phosphorus limit based on a total maximum daily load, a technology based phosphorus limit and a water quality based phosphorus limit calculated under the new procedures in chapter NR 217.

The proposed rule allows the department to include compliance schedules in permits. The compliance schedule provisions specify factors the department may consider when establishing the length of a compliance schedule. One of the options for a compliance schedule provision for discharges to nonpoint source dominated waters includes an adaptive management option where interim limits may be phased in, if phosphorus concentrations improve in the receiving water.

There are also provisions for a streamlined approach for processing variances for stabilization pond and lagoon systems that mimic the procedures for ammonia variances in ch. NR 106. These special provisions are based on the knowledge that presently there are few means to control phosphorus being discharged from these systems and that the construction of a mechanical plant is not affordable for smaller municipalities. The inclusion of streamlined procedures for stabilization pond and lagoon systems should not be interpreted to mean that these are the only systems that may obtain a variance, where appropriate. There are standard procedures for variances in statutory language and other administrative codes.

Comparison with federal regulations

The proposed phosphorus criteria for streams of 75 ug/l and rivers of 100 ug/l are similar to EPA’s guidance values for the southern half of Wisconsin. EPA recommended 70 ug/l of phosphorus for both rivers and streams in the southwestern driftless area of the state and 80 ug/l of phosphorus for both rivers and streams in the remainder of the southern half of the state. EPA, did however, recommend a criterion of 29 ug/l for a band or area stretching west to east through the middle of the state and 10 ug/l for the forested northern part of the state. All of the EPA guidance numbers are based on the 25th percentile of available data from a number of states and do not represent a cause-effect situation. We could not find concentrations as low as 10 ug/l even for pristine conditions in most of the forested northern portion of Wisconsin.

For lakes, the proposed criteria that range from 15 to 40 ug/l based on the type of lake are different than EPA’s guidance

values that range from 9.7 ug/l for northern lakes to 36 ug/l for driftless area lakes. EPA's guidance values are based on data from multiple states and represent the 25th percentile of available data. They do not differentiate based on the type of lake.

The proposed criteria for Lake Michigan and Lake Superior are the same as the values derived for the federal Great Lakes Water Quality Agreement.

The proposed WPDES permit procedures, including water quality based effluent limitations, are based on general EPA regulations and guidelines.

Comparison with rules in adjacent states

All states, including adjacent states, are required by EPA to promulgate nutrient water quality standards criteria under EPA's Clean Water Act authority. In addition, all states delegated National Pollutant Discharge Elimination System permit authority by EPA, including all adjacent states, are required to issue point source permits that will meet water quality standards.

To date, Minnesota has promulgated phosphorus criteria for lakes which are very similar to what is proposed in this rule. Minnesota is now in the process of developing proposed criteria for rivers and streams. Illinois has had phosphorus criteria for lakes and Lake Michigan in its water quality standards for some years, but is in the process of developing phosphorus criteria for streams and rivers. Michigan and Iowa are developing criteria, but to date have not publicly proposed criteria. None of the adjacent states or Wisconsin has proposed criteria for nitrogen, except for ammonia.

All adjacent states have provisions for developing water quality based effluent limits, but none to date have proposed rules that specifically deal with the issues uniquely related to phosphorus.

Summary of factual data and analytical methodologies

The proposed water quality standards phosphorus criteria for streams and rivers are based on results of a number of Wisconsin studies aimed at determining when biotic effects occur and how these effects relate to protection of designated uses. The primary studies were jointly conducted by department and USGS staff and their results are reported in "Nutrient Concentrations and Their Relations to the Biotic Integrity of Wadeable Streams in Wisconsin", USGS Professional Paper 1722, by Robertson, Graczyk, Garrison, Wang, LaLiberte and Bannerman, 2006; and "Nutrient Concentrations and Their Relations to the Biotic Integrity of Nonwadeable Rivers in Wisconsin", USGS Professional Paper 1754, by Robertson, Weigel and Graczyk, 2008. These studies identified a suite of breakpoints or thresholds for effects of phosphorus on algae, aquatic insects and fish. Based on discussions involving a number of experts in the scientific field, the department used an averaging method of the suite of breakpoints to derive the proposed criteria. These proposed criteria were compared to Department studies of trout streams in southwestern Wisconsin, the early 1980's Department study of phosphorus in streams and studies cited in EPA's "Nutrient Criteria Technical Guidance Manual: Rivers and Streams", EPA-822-B-00-002, 2000.

The proposed water quality standards phosphorus criteria for lakes and reservoirs are based on methods commonly used for decades in lake management in Wisconsin and adjacent states. Specifically, for most types of lakes, the proposed criteria are based on limiting the risk of nuisance algae

conditions (20 ug/l chlorophyll a) to no more than 5 percent of the time (e.g. less than one week per year from June through September) using work by Walmsley (Journal of Environmental Quality, 13:97-104, 1988) and Heiskary and Wilson ("Minnesota Lake Water Quality Assessment Report: Developing Nutrient Criteria", Minnesota Pollution Control Agency, September 2005). These concentrations were also determined to be sufficient to protect sport fisheries in lakes again using information from Heiskary and Wilson ("Minnesota Lake Water Quality Assessment Report: Developing Nutrient Criteria", Minnesota Pollution Control Agency, September 2005). For the relatively few lakes that support a cold water fishery in the lower waters, the department's objective was to maintain 6 mg/l for dissolved oxygen in the lower waters. To determine the appropriate phosphorus concentrations, the Department examined sediment cores and current water concentrations to determine undisturbed conditions. The proposed criteria were compared to literature information summarized in EPA's "Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs", EPA-822-B-00-001, 2000.

For development of the water quality based effluent limitation procedures for permits, the department reviewed existing state and federal regulations and guidance for the point source discharge permit programs, consulted with EPA representatives, and received input from a technical advisory committee that met several times in 2008 through 2009. The technical advisory committee was comprised of representatives of municipal and industrial wastewater dischargers, municipal storm water dischargers, agricultural interests, water user groups and environmental groups. Staff from EPA and USGS also attended committee meetings as advisories to the committee and the Department.

Analysis and supporting documents used to determine effect on small business

The Department initially identified cheese and other dairy operations that discharge wastewater containing phosphorus to lakes and streams as small businesses potentially impacted by the proposed rules. With the assistance of the Wisconsin Cheese Makers, 11 businesses were identified for analysis. All 11 are likely to have more than \$5 million in annual revenue, but may have less than 25 employees. Of the 11, six apply wastes to the land through a variety of methods. Some may discharge non-contact cooling water without adding additives, which would not come under this rule. The other six discharge their wastes to municipal wastewater treatment plants.

Based on this analysis, the Department concluded that there are few, if any, small businesses that directly discharge of wastewater containing phosphorus to lakes or streams. If there is an effect, it would likely be an indirect effect on those small businesses that discharge their wastes to a municipal wastewater treatment facility. If the municipal wastewater treatment plant is required to further remove phosphorus, it is possible that the service fee may increase or the municipality may require some level of pretreatment.

Small Business Impact

The department has determined the rule will not have a significant impact on small businesses. Most of the fiscal impacts from the proposed rules will affect municipalities and industries (with phosphorus discharges to surface waters) that aren't considered small businesses. The rule may have an effect on a few small businesses, but it is very difficult to estimate. As mentioned above, small cheese factories may be

the best example. For those meeting the definition of a small business, many of the facilities land apply all or the majority of their wastewater, and therefore will not be impacted by these rules. If there are any businesses that discharge wastes directly to surface waters that meet the definition of a small business, they may apply for a variance if compliance with water quality based effluent limits for phosphorus would cause significant economic hardship. The proposed rules do not provide for less stringent reporting, longer compliance schedules or completed exemptions for small businesses with phosphorus discharges to surface waters because it would not be allowed under federal regulations or state statutes. There is, however, a variance procedure which is allowed under both state and federal law for all point sources that qualify. Reporting and record keeping requirements are established through permit terms and conditions.

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.

Fiscal Estimate

State fiscal effect

Increase costs — may be possible to absorb within agency's budget.

This rule package has no impact on state revenues; however, the Department would incur costs associated with WPDES permits to implement the provisions of the rule package. An ongoing workload equivalent to about 2.0 FTE statewide is projected for at least five to ten years. Wastewater engineer positions will develop effluent limitations, including consideration of TMDL wasteload allocations, review of variance requests, development of compliance schedules, etc. The workload estimate is based on 100 permits per year at about 40 hours per permit with five years to complete an initial cycle of permit reissuances. Salary and fringe costs are estimated at \$220,000 per year (4,000 hours x \$35hour salary + 48.59% fringe+ travel and supplies).

Fund sources affected

GPR.

Affected Ch. 20 appropriations

Section 20.370 (4) (ma), Stats.

Local government fiscal impact

Increase costs.

The proposed rule package will result in compliance costs for a number of municipal and other publicly owned wastewater treatment facilities. These costs may be in the form of capital expenditures, increased operation and maintenance costs, or both, and will vary considerably by municipality or sanitary district. For some facilities, no additional costs will be needed since they discharge to streams and rivers and already meet the phosphorus criteria. For up to an estimated 163 facilities, the addition of filtrations processes may be needed and a substantial cost could be incurred. The Department estimates that municipalities and sanitary districts will incur costs of between \$300 million and \$1.13 billion to comply with the provisions in the rule package. Costs per unit of phosphorus removed are much lower for larger facilities than for smaller facilities. Furthermore, it should be noted that the estimated cost range does not take into account the possibility that some municipalities and sanitary districts may need to acquire land

for locating additional wastewater treatment facilities, and thus incur the corresponding land acquisition costs.

There are a number of factors that could push the costs toward the low end of the range, or even lower. These mitigating factors include nonpoint source control that lessen the need for point source control of phosphorus either in general or through implementation of TMDLs. Other factors include economic variances that limit the degree of control to affordable levels, emerging technology that may lower costs, and pollutant trading. The low end of the range may also be overstated to the extent that facilities have already upgraded their treatment plants and/or treatment processes and have thus already incurred some of the costs.

Types of local governmental units affected

Towns, Villages, Cities, Sanitary districts.

Private sector fiscal impact

The proposed rule package will result in compliance costs for a number of industrial wastewater facilities. These costs may be in the form of capital expenditures, increased operation and maintenance costs, or both. The paper industry and the food processing industry would be most affected. The Department estimates that up to 35 facilities could have stringent effluent limitations. Those discharging wastes to municipal wastewater treatment plants may also face increased service fees. Similar to local governmental entities, there is a great degree of variability in the costs that would be incurred. The Department estimates the cost range to be between \$80 million and \$440 million. The same mitigating factors described above for local governmental entities will push costs toward the lower end of the range for private sector facilities.

Long-range fiscal implications

The fiscal impact on local governments and industries will likely be spread over a 10 to 20 year period with less costly interim limitations being imposed in the initial five to ten years and the more stringent limits being phased in primarily in the 10 to 20 year period.

Agency Contact Person

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Notice of Hearing

Natural Resources

Environmental Protection — Water Regulation, Chs. NR 300—

EmR0915, CR 10-032

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on emergency rules and proposed permanent rules revising Chapters NR 335 and 336, relating to implementation of the Municipal Dam Grant Program and the Dam Removal Grant Program.

The proposed revisions relate to providing grants for dam safety projects for municipally owned dams, grants for any dam owner to removal a dam they no longer want to maintain and any person to removal an abandoned dam as provided under s. 31.385, Stats.

Hearing Information

Date and Time	Location
April 15, 2010	WI DNR Building (GEF 2)
Thursday	Room 413
at 1:30 PM	101 S. Webster Street
	Madison, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Eileen Trainor in writing at the Department of Natural Resources, Bureau of Community Financial Assistance (CF/2), 101 S Webster, Madison, WI 53707; by E-mail to eileen.trainor@wisconsin.gov; or by calling (608) 267-0848. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Copies of the Emergency Rule, Proposed Permanent Rule and Fiscal Estimate

The emergency rule, proposed permanent rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link provided on the Municipal Dam Grant Website at <http://dnr.wi.gov/org/caer/cfa/Grants/dammaint.html>. If you do not have Internet access, a printed copy of the emergency rule, proposed permanent rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Eileen Trainor, Department of Natural Resources, Bureau of Community Financial Assistance (CF/2), 101 S. Webster St, Madison, WI, 53703, or by calling 608.267.0848.

Submission of Written Comments

Comments on the proposed rule must be received on or before Friday, April 16, 2010. Written comments may be submitted by U.S. mail, fax, or E-mail and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Meg Galloway
 Department of Natural Resources
 Bureau of Air Management (AM/7)
 101 S Webster St, Madison, WI 53703
 Phone: (608) 266-7014
 Fax: 608.267.2800
 Email: meg.galloway@wisconsin.gov

Analysis Prepared by Department of Natural Resources

Statute interpreted

Section 31.385, Stats.

Statutory authority

Sections 31.385 (1m), 31.385 (4) and 227.11 (2), Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., gives state agencies general rule-making authority. Section 31.385 (1m), Stats., directs the department to promulgate rules to administer a financial assistance program for dam safety projects and s. 31.385 (4), Stats., directs the department to promulgate rules to establish a dam grant inventory and notice and hearing procedure to place dams on the inventory. The rules must provide grants

to municipalities and Lake Districts for maintenance, repair, reconstruction, and removal of dams, to private dam owners for the removal of their dams and any person for the removal of abandoned dams.

Related statute or rule

These rules assist the department in achieving the statutory goals of Chapter 31, Stats., which vests the Department with the responsibility to regulate dams and promote safety and protect life and property from unsafe dams. The grant programs provide funding to dam owners to address safety deficiencies at dams. There are no other similar rules that address these issues.

Plain language analysis

The objectives of the revisions to ch. NR 335 and ch. NR 336 are to implement changes to enabling legislation. The rule changes can be divided into two broad categories:

- Incorporate statutory changes into the existing grant codes:
 - increases the maximum level of state contribution allowed under the grant programs from \$200,000 to \$400,000
 - varies the state contribution percentage for dam repair and reconstruction projects, depending on the size of the projects
 - increases the percentage of state contribution to 100% up to the maximum grant award for dam removal projects
 - eliminates statutory definition of “small dam” for dam removal grants
 - provides for an inventory of dam safety projects with a notification for dam owners
 - changes the definition of large dam to match change in s. 31.19, Stats.
 - allows for cost effective, non construction activities that increase the safety of a dam
- Facilitate investing the \$4 million allocation of bonding for the program
 - grants greater flexibility for implementation of a grant application cycle
 - adjusts code timelines and better defines application requirements to address past implementation difficulties and assure more applications can be deemed complete
 - sets additional criteria for ranking applications and allows for adjustment to the ranking procedures outside of Administrative Code process
 - allows for the addition of a variance clause which would facilitate the implementation and administration of NR 335
 - makes it easier applicants to the Municipal Dam Grant program to pair the grant with other, outside funding sources
 - corrects incorrect definitions and statute citations
 - clarifies that state agencies may use the grants to remove abandoned dams
 - clarifies that an owner can only submit one application at a time per dam for funding under NR 335 and cannot get a grant for the same dam under NR 335 and NR 336 in the same year

Comparison with federal regulations

The U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS) has a cost sharing program for

the rehabilitation of dams built under Public Law 566. Funding for this federal program is limited but if a dam owner is successful in obtaining funding from both programs the state grant would help the county pay their 35% local cost share requirement under the federal program. There are also a number of federal programs which fund dam removal and stream restoration, including programs from U.S. Fish and Wildlife Service, NRCS and the National Oceanic and Atmospheric Administration. These programs have been used in conjunction with grants awarded under NR 336 in the past. The programs are complimentary and pairing of the finding sources allows grant funds to go toward more projects.

Comparison with rules in adjacent states

No similar programs in Illinois, Iowa, Michigan and Minnesota.

Summary of factual data and analytical methodologies

None.

Analysis and supporting documents used to determine the effect on small business

No formal analysis was completed as the existing rule does not significantly impact small business, therefore the propose revisions to the rules will have not impact to small business.

Preparation of an economic impact report was not requested.

Small Business Impact

The proposed rule revisions are not expected to have a significant economic impact on small business because no new regulations are imposed on them. If a small business did own a dam the rules provide an opportunity for financial assistance for removing the dam if the business chose to do so.

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

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate

Summary

The proposed changes incorporate recent changes with no fiscal impact to state and local governments, and no anticipated significant fiscal impact to the private sector.

State fiscal effect

No state fiscal effect.

The 2009-2011 Budget Bill, 2009 Wisconsin Act 28, did not provide additional staff or funding for administering the dam grant programs, therefore, the costs associated with handling the additional demand for dam grants will be absorbed with existing staff and within the existing budget. It is assumed that the \$4 million in bonding will be allocated as soon as possible. Assuming an 8% annual amortization rate, the allocation of the bonding will result in an annualized costs

of \$320,000 in bonding repayments. However, these costs will occur regardless of the action on this rule package, so these costs are included in this fiscal note for information purposes only.

Local fiscal effect

Decrease costs; permissive.

The rule package makes it easier for municipalities, lake districts, and persons who own the dam to leverage grant funds and thus provides a greater financial incentive to apply for grants.

Types of local governmental units affected

Towns, Villages, Cities, Counties, Lake Districts, Tribes.

Agency Contact Person

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Notice of Hearing

Natural Resources

Environmental Protection — Air Pollution Control, Chs. NR 400—

CR 10-033

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on proposed amendments to sections NR 433.05 and 433.06, relating to implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas. The proposed amendments relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11 (6), Stats., will be revised.

Hearing Information

Date and Time Location

April 26, 2010	WI DNR Building (GEF 2)
Monday	Room G09
at 1:30 PM	101 S. Webster Street
	Madison, WI

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert Eckdale in writing at the Department of Natural Resources, Bureau of Air Management (AM/7), 101 S Webster, Madison, WI 53703; by E-mail to Robert.Eckdale@wisconsin.gov; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Copies of the Proposed Rule and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi>.

[us/air/rules/calendar.htm](http://us.air/rules/calendar.htm). A printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Robert Eckdale, Department of Natural Resources, Bureau of Air Management (AM/7), 101 S. Webster St, Madison, WI, 53703, or by calling (608) 266-2856.

Submission of Written Comments

Comments on the proposed rule must be received on or before Friday, **May 7, 2010**. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Tom Karman
 Department of Natural Resources
 Bureau of Air Management (AM/7)
 101 S Webster St, Madison, WI 53703
 Phone: 608 264-8856
 Fax: 608.267.0560
 E-mail: thomas.karman@wisconsin.gov
 Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm>

Analysis Prepared by the Department of Natural Resources

Statute interpreted

Section 285.11 (6), Stats. The State Implementation Plan developed under s. 285.11 (6), Stats., is revised.

Statutory authority

Sections 227.11 (2) (a) and 285.11 (1) and (6), Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., gives state agencies general rulemaking authority. Section 285.11 (1), Stats., authorizes the Department to develop rules consistent with ch. 285, Stats. Section 285.11 (6), Stats., authorizes the Department to develop and revise the State Implementation Plan for prevention, abatement and control of air pollution.

Related statute or rule

None.

Plain language analysis

The proposed rule modifications pertain to ch. NR 433 which regulates Best Available Retrofit Technology (BART) for the protection of visibility in mandatory class I federal areas. These BART requirements pertain to controlling emissions of particulate (PM), nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from certain stationary sources which cause or contribute to impairment of visibility.

The rules for Best Available Retrofit Technology currently require the owner or operator of a source, which has been determined to be subject to BART controls, to have those controls in place and operating "as expeditiously as practicable" but no later than December 31, 2013. The Department is proposing to extend the final allowed compliance date to December 31, 2015. The extended compliance date provides additional time for sources which are undergoing significant installations of control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. Extending the final

compliance date to December 31, 2015 does not relax the requirement for controls to be in place as expeditiously as practicable.

The Department also proposes to clarify and to provide additional flexibility to the averaging provisions in the rule. The additional flexibility allows an owner or operator of a BART affected source to submit a proposed emissions averaging plan at any time, not just during the initial BART determination process.

Comparison with federal regulations

The Board initially established ch. NR 433 in January 2008 to satisfy BART requirements set forth by the US Environmental Protection Agency (EPA) under the regional haze regulation published July 6, 2005 Federal Register (70 FR 39104). In that regulation the US EPA required all states to develop programs to assure reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I Federal Areas resulting from manmade air pollution. The application of Best Available Retrofit Technology (BART) on certain stationary sources is one of the core requirements for the implementation plan for regional haze.

Comparison with similar rules in adjacent states

Illinois, Iowa, Michigan, and Minnesota have adopted the same approach in meeting BART requirements for industrial sources as Wisconsin. These states have identified BART eligible sources and are moving forward with the determination of applicable control requirements according to US EPA criteria.

Summary of factual data and analytical methodologies

The proposed rule modifications are the result of issues identified during the initial implementation of the BART rule requirements in Wisconsin. The Department found that facilities needed extra time to comply with BART requirements, particularly facilities that need multiple control equipment installations and those facilities facing multiple state and federal requirements for the same sources. Additionally, the Department found, during application of the trading requirements, certain provisions to be confusing or needing clarification.

Analysis and supporting documents used to determine the effect on small business

No small business is subject to BART controls under the existing BART rules. Therefore the proposed rule modifications have no direct effect on small business.

Small Business Impact

There is no direct effect on small business.

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

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate

The proposed rules have no fiscal effect on state and local government, and no significant fiscal effect on the private sector. The proposed revisions to ch. NR 433 do not alter which sources are subject to BART, the required level of emission control, or final compliance requirements under the Wisconsin BART rules. Based on this premise, there is no change anticipated for the fiscal cost of implementing the BART rule.

Agency Contact Person

Tom Karman
 Department of Natural Resources
 Bureau of Air Management (AM/7)
 101 S Webster St, Madison, WI 53703
 Phone: 608 264-8856
 Fax: 608.267.0560
 E-mail: thomas.karman@wisconsin.gov

Notice of Hearing Transportation CR 10-030

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.14 (1) (a), 85.16 and 227.11, Stats., the Department of Transportation will hold a public hearing to consider the repeal of sections Trans 196.04 (1) (d) and 250.04, and the creation of Chapter Trans 198, Wis. Adm. Code, relating to motor vehicle convenience fees.

Hearing Information

The hearing will be held:

April 21, 2010 Hill Farms State Transportation Bldg.
 at 11:00 a.m. Room 144-B
 4802 Sheboygan Avenue,
 Madison, WI

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Carson Frazier at (608) 266-7857 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

Submission of Written Comments

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Copies of Proposed Rule

A copy of the rule may be obtained upon request from Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us. Copies will also be available at the hearing.

Analysis Prepared by the Department of Transportation *Statutes interpreted*

Section 85.14, Stats.

Statutory authority

Sections 85.14 (1) (a), 85.16 and 227.11, Stats.

Explanation of agency authority

The Wisconsin Department of Transportation is authorized to accept payment by credit card, debit card, or any other electronic payment mechanism for a fee for certain motor vehicle products or services and to establish a convenience fee charged for any transaction so paid, pursuant to s. 85.14 (1) (a), Stats.

Related statute or rule

Sections 85.14(1) (b) and (c), and 85.14 (2), Stats.

Plain language analysis

Section 85.14, Stats., as amended in 2009 Wis. Act 28, allows the Department to accept payments by credit card, debit card, or any other electronic payment mechanism for fees required to be paid to the Department under chs. 194, 218, 341, 342, 343, or 348, which are motor vehicle statutes.

Section 85.14, Stats., permits the Department to charge a convenience fee in an amount to be established by rule. The convenience fee shall approximate the cost to the Department for providing this service to persons who request it.

The proposed rule establishes the convenience fee. The proposed rule provides that the Department will determine the fee annually or as the Department determines necessary due to changes in fees that the Department may be required to pay the Enterprise Bank. The Department will determine the convenience fee in consultation with the State Controller's Office (which is responsible for managing the State's contract for Enterprise Banking Services). The Department will publish the fee on its internet web site and in relevant communication material with customers eligible to use these payment methods.

The convenience fee is established either as a percentage of the total transaction amount or as a flat fee specified for ranges of transaction amount. The convenience fee will cover the fee that the Department pays the Enterprise Bank or other vendor for processing, merchant fee, and any associated cost to provide the service. The proposed rule provides that the Department may refuse to accept credit cards, debit cards, or other electronic payment mechanisms issued by or offered by certain companies. The proposed rule allows the Department to establish a minimum transaction amount that may be paid by credit or debit card or other electronic payment mechanism.

The proposed rule consolidates treatment of all Division of Motor Vehicles transactions for which credit card, debit card, and other electronic payment methods apply, and the associated convenience fee. Therefore, the proposed rule repeals the provisions that are currently established as ss. Trans 196.04 (1) (d) and 250.04, and consolidates those convenience fees into the convenience fee structure applicable to all Division of Motor Vehicle products and services.

Comparison with federal regulations

No federal rules apply.

Comparison with rules in adjacent states***Michigan:***

Michigan accepts Discover and MasterCard at some DMV offices for in-person transactions, and for some on-line transactions. The customer pays a 2% convenience fee.

Minnesota:

Minnesota does not accept credit or debit cards.

Illinois:

Illinois accepts Discover, MasterCard, and American Express for in-person transactions. For on-line transactions, Illinois accepts VISA also. The customer pays a convenience or "process" fee.

Iowa:

Iowa is currently implementing credit cards at the stations. The customer will pay a convenience fee that may be a flat fee based on average transaction amount, assumed distribution of card types, and assumed number of transactions.

Summary of factual data and analytical methodologies

The Department proposes to establish convenience fees that are as uniform as possible among different types of transactions. The convenience fee amount must approximate the cost to the Department of providing electronic payment option.

The Department's on-line payment process is provided through the Enterprise Banking Services Contract. Agencies are parties to the contract. The Department pays the Enterprise Bank a fee for processing each payment. The fee consists of both payment to the Enterprise Bank and payment to the card-issuing bank. The Department's costs for in-person transactions may vary from on-line transactions, because the Department will require additional equipment, installation and maintenance, to accept in-person card

payment. Therefore, the proposed rule allows the Department to establish a different convenience fee amount for in-person transactions and on-line transactions.

Analysis and supporting documentation used to determine effect on small businesses

The Department offers electronic transactions to most businesses using standard Automated Clearinghouse payment procedures. These procedures are currently in place and most businesses already participate. Moreover, businesses as well as individuals may continue to pay Department fees by check or cash; payment by methods that require a convenience fee is voluntary.

Small Business Impact

The Department concludes that there is no effect on small business as a result of this rule.

The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector

The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency Contact Person

Ms. Carson Frazier
DOT — Bureau of Vehicle Services
Room 253, P. O. Box 7911
Madison, WI 53707-7911
Phone: (608) 266-7857

Submittal of Proposed Rules to the Legislature

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

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

CR 09-028

A rule-making order to revise Chapter Comm 5, relating to the licensing of electrical contractors and electricians, and affecting small business.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09-052

A rule-making order to revise Chapters NR 12 and 16,

relating to harmful wild animal designation of wild or feral swine, mute swans and wolf-dog hybrids.

Revenue

CR 09-118

A rule-making order to create section Tax 1.16, relating to the financial record matching program.

Rule Orders Filed with the Legislative Reference Bureau

The following administrative rule orders have been filed with the Legislative Reference 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 Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266-7590 for updated information on the effective dates for the listed rule orders.

Health Services

Health, Chs. DHS 110—

CR 09-062

Rule revises Chapter DHS 157, relating to radiation protection and affecting small business.
Effective 5-1-10.

Revenue

CR 09-064

Rule creates sections Tax 2.60 to 2.67, relating to combined reporting for corporation franchise and income tax purposes.
Effective 5-1-10.

Rules Published with this Register and Final Regulatory Flexibility Analyses

*The following administrative rule orders have been adopted and published in the **March 31, 2010**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Barbering and Cosmetology Examining Board

CR 09-065

Rule revises Chapter BC 9 and creates Chapter BC 11, relating to renewal, reinstatement of license, and continuing education. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

These rules were reviewed by the department's Small Business Review Advisory Committee which determined that the rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were reported.

Commerce

Fee Schedule, Ch. Comm 2

Licenses, Certifications and Registrations, Ch. Comm 5

CR 09-046

Rule revises Chapters Comm 2 and 5, relating to fees charged by the Safety and Buildings Division. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

The rules revise several provisions of the Department's administrative rules relating to the fees charged by the Safety and Buildings Division. The revision corrects some discrepancies and inequities, and provides a sufficient revenue stream to cover operational costs of the certain work processes of the division.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce

Uniform Dwelling, Chs. Comm 20-25

CR 09-072

Rule revises section Comm 22.31 (2) (b), relating to approved software to show compliance with Uniform Dwelling Code thermal envelope requirements. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), Stats., the Department of Commerce has determined that the rule to amend s. Comm 22.31 (2) (b) alleviates confusion and enforcement issues and will not have a significant impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Corrections

CR 09-075

Rule creates section DOC 309.466, relating to inmate release accounts. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

There is no expected effect on small businesses under s. 227.114, Stats.

Summary of Comments by Legislative Review Committees

No comments were reported.

Health Services

Health, Chs. DHS 110—

CR 09-085

Rule revises Chapter DHS 163, relating to requirements for conducting lead-safe renovation activities in pre-1978 housing and child-occupied facilities, and affecting small businesses. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

At least 10% of the businesses affected by this order are small businesses; however, the rules will not have a significant economic impact on those businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Health Services

Health, Chs. DHS 110—

CR 09-089

Rule revises Chapter DHS 124, relating to forfeitures, anatomical gifts, and automated external defibrillator (AED) training for hospitals. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

There is no fiscal impact on small business as defined in s. 227.114 (1), Stats., as none of Wisconsin's hospitals meet the definition of a small business.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance
CR 09-055

Rule creates section Ins 17.28 (3h), relating to supervision and direction. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The legislative standing committees had no comments on this rule.

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 09-083

Rule revises section NR 25.06 (2) (e) 2., relating to commercial fishing for lake whitefish in outlying waters and affecting small business. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

The rule will not have a significant adverse economic impact on a substantial number of small businesses.

a. Describe the type of small business that will be affected by the rule.

Some commercial fishing businesses will be affected. The rule will increase the allowable harvest for all commercial

fishing licensees who hold Lake Michigan lake whitefish quotas.

b. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule.

None.

c. Describe the type of professional skills necessary for compliance with the rule.

None.

Summary of Comments by Legislative Review Committees

No comments were received.

Pharmacy Examining Board
CR 09-099

Rule creates section Phar 7.095, relating to remote dispensing sites. Effective 4-1-10.

Summary of Final Regulatory Flexibility Analysis

These proposed rules were reviewed and discussed by the department's Small Business Review Advisory Committee which determined that these rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **March 2010**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Barbering and Cosmetology Examining Board

Ch. BC 9

BC 9.01

BC 9.02

BC 9.03

Ch. BC 11 (Entire Chapter)

DHS 163.11 (intro.), (1) (c), (d), (2) (a), (c), (3), (3m)
 DHS 163.12 (title), (1) (am), (b), (1m), (2) (intro.), (c),
 (cm), (d), (3), (4) (b), (c), (5), (6)

DHS 163.13

DHS 163.14 (1) (c), (5), (10), (11)

DHS 163.16

DHS 163.20 (1), (2), (4) (d), (5), (8) (a), (b), (c), (h), (9)

DHS 163.21 (1), (3) (c), (5)

DHS 163.22 (4) (b)

DHS 163.23 (3) (a), (d)

DHS 163.24 (2) (a), (3) (a), (b)

DHS 163.25 (3), (5), (7) (intro.), (e), (f), (10) (b), (11)
 (b)

DHS 163.30 (1), (2)

DHS 163.31 (1), (2) (d), (h), (L), (3) (c), (4) (intro.),
 (L), (n), (5) (b), (6) (a)

DHS 163.32 (intro.), (3) (intro.)

DHS 163.40 (1), (2) (a), (c), (4)

DHS 163.41 (2) (a)

DHS 163.42 (2) (a), (3) (e), (f)

DHS 163.43

DHS 163.44

DHS 163 Appendix A

DHS 163 Appendix B (title)

DHS 163 Appendix C (title)

DHS 163 Appendix H (title)

DHS 163 Appendix I (title)

Commerce

Ch. Comm 2

Comm 2.31 (1) (b) Note, (d), Table 2.31-1

Comm 2.35 (3) (a)

Ch. Comm 5

Comm 5.02 Table

Comm 5.08 (1) (f)

Comm 5.09 (8) (b) to (d)

Ch. Comm 22

Comm 22.31 (2) (b)

Corrections

Ch. DOC 309

DOC 309.466 (1), (2), (5)

DOC 309.48 (title)

DOC 309.49 (title), (4m)

Health Services

Ch. DHS 124

DHS 124.05 (3) (i), (j)

DHS 124.24 (3)

Ch. DHS 163

DHS 163.01 (2), (3)

DHS 163.02 (1) (a), (c), (2)

DHS 163.03 (1) (a), (b), (5), (10), (13), (13g), (13r),
 (14), (15), (22m), (26), (27), (31m), (36), (40m),
 (46), (48), (52), (53), (56), (58m), (62), (64), (65),
 (71), (76), (80), (82), (83), (85m), (88), (88m),
 (96m), (100), (100m), (114) (a), (am), (114g), (114r)

DHS 163.10 (1) (intro.), (b), (bm), (c), (d), (2), (3) (a),
 (c), (5) (f), (g), (7) (b), (8) (b), (c), (e)

Insurance

Ch. Ins 17

Ins 17.28 (3h)

Natural Resources

Ch. NR 25

NR 25.06 (2) (e)

Pharmacy

Ch. Phar 7

Phar 7.095

Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Health Services

Ch. DHS 163

DHS 163.12 (3) (b)

DHS 163.20 (9) (c)

DHS 163.41 (2) (f)

DHS 163.42 (2) (f)

Public Notices

Department of Administration

Notice of Change in Fiscal Estimate

NOTICE IS HEREBY GIVEN That pursuant to section 227.14 (4) (d), Stats., the Department of Administration has revised the fiscal estimate for the proposed rule amending Chapter Adm 21, CR 08–025, relating to construction contracting for facilities owned by the State of Wisconsin.

The Department has determined that it will seek a vendor solution for the electronic bid submission process proposed in Chapter Adm 21. A vendor provided and hosted bidding website will ensure the security and reliability required by the Department and prospective bidders on state projects. The Department estimates the vendor costs for developing the electronic website will be \$100,000 to \$250,000. The Department has budgeted for these costs and intends to absorb some costs through a 4% management fee charged against projects. On-going annual maintenance costs for vendor products will also be absorbed and funded through the 4% management fee.

While the exact amount of costs to prospective bidders has not been fully determined, it is expected that some portion of the fees will be offset by the convenience of submitting a bid via a secure electronic submission instead of incurring the associated travel and delivery expenses required for submission of paper bids. The Department will attempt to seek out vendors with the lowest cost of operation to the Department and prospective bidders.

A copy of the complete fiscal estimate and proposed rule can be obtained from Department.

Agency Contact Person

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Department of Administration
101 E. Wilson Street
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Madison, WI 53707–7864
Phone: (608) 266–2887
Email: Donna.Sorenson@Wisconsin.gov

Department of Health Services

Maximum Allowable Cost for Drugs with More than One Manufacturer

The State of Wisconsin reimburses pharmacies for services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health Services (DHS) administers this program, which is called Medical Assistance or Medicaid. In addition, the state of Wisconsin reimburses pharmacies for services provided under the authority of chapters 49.471, 49.665, and 49.688, Wisconsin Statutes.

Under the Wisconsin State Medicaid Plan as approved by the U.S. Department of Health and Human Services, DHS establishes maximum allowable fees for all covered pharmaceutical items provided to Wisconsin Medicaid recipients. The Plan further specifies that DHS will provide public notice in advance of the effective date of any significant change in maximum allowable fees. Federal regulations at 42 CFR §§ 447.512 – 447.518 establish certain aggregate upper limits in State Medicaid expenditures for drugs. This notice is to announce new maximum allowable costs for drugs with more than one manufacturer.

Maximum Allowable Cost (MAC)

When multiple generic equivalent drugs become available, the Department establishes the MAC, (an upper limit for payment of brand or generic version of the same drug for federal and over-the-counter products), regardless of the manufacturer. The Department uses marketplace research or best estimate of prices currently and generally paid for those drugs.

Drug costs will be calculated based on the package size from which the prescription was dispensed, as indicated by the NDC. The only exceptions are for those drugs for which quantity minimums are specified by federal regulations and for drugs listed on the Wisconsin MAC list.

Effective for dates of service on and after April 1, 2010, DHS is proposing to establish new MACs in accordance with the approved Wisconsin State Plan, including MACs for drugs that have not previously had a MAC established. The MACs are published by DHS and are available in the data table section of the Pharmacy page, located in the Provider area of the ForwardHealth Portal at www.forwardhealth.wi.gov.

This proposal is estimated to reduce WI Medicaid expenditures by \$25 million, all funds, in SFY10.

Copies of Proposed Changes

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

A copy of the proposed changes may also be obtained free of charge by calling or writing as follows:

Regular Mail:

James Vavra
Division of Health Care Access and Accountability
P.O. Box 309
Madison, 53701-0309

Phone:

James Vavra
(608) 261-7838

FAX:

(608) 266-1096
Attention: James Vavra

E-Mail:

james.vavra@dhs.wisconsin.gov

Written Comments

Written comments are welcome. Written comments on the changes may be sent by FAX, e-mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The e-mail address is james.vavra@dhs.wisconsin.gov. Regular mail can be sent to the above address.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin.

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