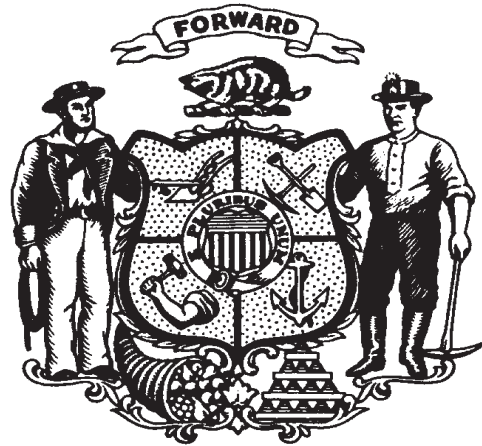


Wisconsin Administrative Register

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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.

Elections Board

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

Finding of Emergency

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

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

state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

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

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

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

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

Insurance

Rules adopted amending **s. Ins 8.49 Appendix 1**, Wis. Adm. Code, relating to small employer uniform employee application for group health insurance.

Finding of emergency

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

The federal government will be implementing Medicare Part D insurance for prescription drugs effective January 1, 2006, therefore s. Ins 8.49 Appendix 1 needs to reflect accurately the status of applicants as it relates to Medicare Part D enrollment. Further, also effective January 1, 2006, the federal government requires employers or insurers to provide an employee specific information on how to elect insurance coverage after a qualifying event subsequent to have waived coverage in accordance with 45 CFR 146.117 (c) (1). In order to have these changes in place prior to January 1, 2006, the rule must be promulgated to add these modifications.

These changes include the ability for the employee applicant to indicate that they carry Medicare Part D effective January 1, 2006 and amends one sentence in the notice portion of the wavier section of the application to add information on how an employee following a qualifying event may opt to obtain health insurance coverage after initially waiving insurance coverage through the small employer group health insurance plan.

Publication Date: November 4, 2005
Effective Date: November 4, 2005
Expiration Date: April 3, 2006

Natural Resources (5)
(Fish, Game, etc., Chs. NR 1—)

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

Finding of Emergency

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

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

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

Finding of Emergency

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

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

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

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule-making to the Department of Natural Resources. Normal rule-making procedures will not allow the establishment of the rules in

time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost revenues and added expense to the Master Logger Certification program.

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

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

Finding of Emergency

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

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

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

Plain Language Analysis

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

Exemption from finding of emergency

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

Publication Date: February 13, 2006
Effective Date: March 1, 2006
Expiration Date: July 29, 2006
Hearing Date: April 10, 2006
[See Notice this Register]

Natural Resources

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

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

Finding of emergency

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

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

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

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

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

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

Revenue (2)

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

Finding of emergency

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

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

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

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

Publication Date: December 5, 2005
Effective Date: December 5, 2005
Expiration Date: May 4, 2006
Hearing Date: February 27, 2006

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

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

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

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

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

Publication Date: December 28, 2005
Effective Date: December 28, 2005
Expiration Date: May 27, 2006
Hearing Date: March 15, 2006
 [See Notice this Register]

Technical College System Board

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

Finding of emergency

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

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

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

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

Transportation

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

Finding of emergency

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

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

Workforce Development (Labor Standards, Chs. DWD 270–279)

Rules adopted revising **ss. DWD 274.015 and 274.03** and creating **s. DWD 274.035**, relating to overtime pay for employees performing companionship services.

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

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

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

Scope statements

Barbering and Cosmetology Examining Board

Subject

Creating a rule provision clarifying that any act of fraud committed in the licensing process is misconduct which subjects the perpetrator to discipline or denial of licensure. Individuals have previously utilized forged or altered documents to represent that they have a license, when they do not. In addition, schooling documents have been altered to represent that the credential holder had obtained a certain amount of schooling when the licensee had not. This rule will address these situations, creating a penalty for using forged or altered documents during the licensing process.

Policy analysis

Objective of the rule. Currently, s. 454.15 (2) (a), Stats., allows the board to “revoke, limit, suspend or refuse to issue or renew” a license if a material misstatement is made in an application for licensure or renewal. In addition, s. BC 3.04 provides that falsification of any information on an establishment application may be grounds for denial, suspension or revocation of the establishment license and subject the person to a \$100–\$5,000 fine, imprisonment of 10–90 days, or both, under s. 454.16, Stats.

In these statutes and rules, penalties may only be enforced for actions that have taken place during the application process. In order to more thoroughly address this problem, this rule would address the use of forged or altered documents during the licensing process for all of the barbering and cosmetology professions. This rule would provide the board with a mechanism to address situations that do not occur during the application process.

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

Section BC 3.04 addresses falsification of information in establishment applications. Section 454.15 (2) (a), Stats., allows the board to “revoke, limit, suspend or refuse to issue or renew” a license if a material misstatement is made in an application for licensure or renewal.

This rule would expand on this to create a violation for using forged or altered documents during the licensing process, not just the application process, and would clarify that penalties exist for situations where forged or fraudulent documents are used.

Statutory authority

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

Comparison with federal regulations

There is none.

Entities affected by the rule

Barbering and cosmetology licensees and applicants who produce or provide forged or fraudulent documents in the licensing process.

Staff time required

300 hours.

Barbering and Cosmetology Examining Board

Subject

Creating a rule change, amending s. BC 4.03, to require a minimum standard for the amount of pressure to be used when sanitizing instruments during steam sterilization.

Policy analysis

Objective of the rule. As recommended by the Centers for Disease Control and Prevention (CDC), the objective is to create a time–pressure–temperature relationship for instruments used in the barbering and cosmetology field that eliminate all disinfections. Currently, Wisconsin rules and statutes do not contain the pressure component that is necessary to carry this out.

Sterilization is the process which destroys all forms of microbial life, including large numbers of highly resistant bacterial endospores. The recommended methods of sterilization of instruments and items used in the practice of electrology are FDA approved dry heat sterilizers or autoclaves. These methods are standardized and can be routinely monitored for effectiveness.

In general, reusable medical devices or patient–care equipment that enters normally sterile tissue or the vascular system or through which blood flows should be sterilized before each use. Sterilization means the use of a physical or chemical procedure to destroy all microbial life, including highly resistant bacterial endospores. The major sterilizing agents used in facilities are a) steam autoclaving, b) ethylene oxide gas, and c) dry heat.

Disinfection means the use of a chemical procedure that eliminates virtually all recognized pathogenic microorganisms but not necessarily all microbial forms (e.g., bacterial endospores) on inanimate objects. There are three levels of disinfection: high, intermediate, and low. High–level disinfection kills all organisms, except high levels of bacterial spores, and is effected with a chemical germicide cleared for marketing as a sterilant by the Food and Drug Administration. Intermediate–level disinfection kills mycobacteria, most viruses, and bacteria with a chemical germicide registered as a “tuberculocide” by the Environmental Protection Agency (EPA). Low–level disinfection kills some viruses and bacteria with a chemical germicide registered as a hospital disinfectant by the EPA.

In order to kill the necessary levels of disinfections with an autoclave with steam, three components are required, which are heat exposure at a minimum of 121 deg Celsius (250 F), except for 30 minutes of time at 15 pounds per square inch (PSI) of pressure. Currently within Wisconsin rules and statutes the essential pressure component is missing.

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

Section BC 4.03 sets requirements for heat and time when steam sterilizing using moist heat. Section 4.03 (1) currently reads: BC 4.03 (1)

Sterilization in ss. BC 4.07, 4.09 and 4.10 shall be accomplished by use of a dry heat or steam sterilizer cleared for marketing by the food and drug administration, used according to manufacturer’s instructions. If steam

sterilization, moist heat, is utilized, heat exposure shall be at a minimum of 121° C., F., for at least 30 minutes. If dry heat sterilization is utilized, heat exposure shall be at a minimum of 171° C., 340° F., for at least 60 minutes.

A requirement related to the amount of pressure used during this process does not exist.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 454.08 (4), Stats.

Comparison with federal regulations

There is none.

Entities affected by the rule

Barbering and cosmetology licensees.

Staff time required

300 hours.

Insurance

Subject

Regarding filing of insurance forms and insurance policy language simplification and affecting small businesses.

Objective of the rule. A statement of the objective of the proposed rule:

Consider changes in administrative rules required to adopt the National Association of Insurance Commissioners (NAIC) uniform insurance rate and form transmittal documents and uniform product coding and changes to the certification used to report insurance policy language simplification.

Policy analysis

Currently Chapter Ins 6 requires the use of rate and form transmittal documents which are unique to the State of Wisconsin and for use in Wisconsin only.

It is the intent to adopt language and conform to the nationally accepted uniform insurance form listing and to modify rules relating to rate and form transmittal documents. By adopting the uniform language and form file listings Wisconsin will require insurers to utilize the nationally accepted uniform insurance rate and form transmittal documents. All other states will be utilizing these uniform rate and form transmittal documents. Failure to require the use of these uniform rate and form transmittal documents will result in confusion and duplication efforts for insurers and may constitute grounds for the imposition of federal regulation.

Statutory authority

The statutory authorities for this rule are sections 601.42, 631.20, 631.22 and 631.61, Wis. Stat.

Staff time required

100 hours and no other resources are necessary.

Comparison with federal regulations

There is currently no federal regulation of insurance form and rate listing. Use of uniform listing forms will eliminate the need for federal regulation in the future.

Entities affected by the rule

Insurance companies, rate service organizations and third party filers contracted to file forms, rates and insurance policy certification forms for insurance companies.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 327, relating to intrastate motor carrier safety regulations, to bring them into conformity with the most recent changes to the Federal Motor Carrier Safety Regulations which went into effect on January 1, 2006. Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most recent Federal Motor Carrier Safety regulations for intrastate carriers. This proposed rule will keep the Department in compliance to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

Policy analysis

The Department annually updates Trans 327 to keep current with the most recent changes to the Federal Motor Carrier Safety Regulations, 49 CFR parts 40, 382, 390, 391, 392, 393, 395, 396, and 397.

The rule will continue to reference the use of the most recent North American Standard Out-of-Service criteria for placing vehicles and drivers out-of-service.

Entities affected by the rule

Intrastate Motor Carriers and law enforcement will be affected by this rule.

Statutory authority

Sections 110.07, 110.075, 194.38 and 194.43, Stats.

Staff time required

It is estimated that state employees will spend 100 hours on the rule making process, including research, committee meetings, drafting and conducting public hearings.

Workforce Development

Subject

Wages exempt from levy for delinquent unemployment insurance contributions or benefit overpayments.

Policy Analysis

Section 108.225, Stats., allows the Department to administratively collect debts owed under the unemployment insurance program by levy upon any property belonging to the debtor. In this section, debt means a delinquent contribution, a benefit overpayment, an assessment due to a person making a false statement or representation to obtain benefits in the name of another person, or any liability of a 3rd party for failure to surrender to the Department property or rights to property subject to levy.

Generally, in the case of benefit overpayments, an individual debtor is entitled to an exemption from levy of 80% of the debtor's disposable earnings. An exception provides that the debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the poverty line established under 42 USC 9902 (2) for a household of the debtor's size or the levy would cause that result. The proposed rule will prescribe a methodology for application of this exception.

Any employing unit that aids and abets a claimant in committing an act of concealment of a material fact relating to the claimant's eligibility for benefits may be required to forfeit an amount equal to the amount of the benefits the claimant improperly received as a result of the concealment. In the case of forfeitures imposed on an employing unit, an

individual debtor is entitled to an exemption from levy of the greater of (1) a subsistence allowance of 75% of the debtor's disposable earnings; (2) an amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period; or (3) in the case of earnings for a period other than a week, a subsistence allowance computed so that is equivalent to the weekly exemption using a multiple of the federal minimum hourly wage. The proposed rule will prescribe the multiples of the federal minimum wage for use in the case of earnings for a period other than a week.

Statutory authority

Sections 108.225, 108.14 (2), and 227.11 (2), Stats.

Entities affected by the rule

Unemployment insurance program debtors

Comparison with federal requirements

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

Staff time required

90 hours.

Submittal of rules to legislative council clearinghouse

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

Nursing Home Administrator Examining Board

On February 15, 2006, the Nursing Home Administrator Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule-making order relates to continuing

education.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 16, 2006 at 9:45 a.m. in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack, Paralegal, Office of Legal Counsel,
(608) 266-0495.

Pamela.haack@drl.state.wi.us

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 06-009]

(reprinted from 2/15/06, Wis. Adm. Register)

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

DATCP will hold five public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Wednesday, March 22, for additional written comments. Comments may be sent to the Division of Animal Health at the address below or by e-mail to hearingcommentsAH@datcp.state.wi.us.

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

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

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

Hearing-impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by February 28, 2006, by writing Melissa Mace, Division of Animal Health, 2811 Agriculture Drive, Madison, WI 53708-8911, telephone 608-224-4883. Alternatively, you may contact the DATCP TDD at 608-224-5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Tuesday February 28, 2006

7 p.m. to 9 p.m.

Dept. of Natural Resources

West Central Region Headquarters

Room 158/185

1300 W. Clairemont Ave

Eau Claire, WI 54701

Wednesday, March 1, 2006

11 a.m. to 1 p.m.

University of Wisconsin Marathon County

Lecture Hall 180

518 South 7th Ave

Wausau, WI 54401

Wednesday, March 1, 2006

6 p.m. to 8 p.m.

Fox Valley Technical College

Room A161A

1825 North Bluemound Drive

Appleton, WI 54914

Monday, March 6, 2006

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

Prairie Oak State Office Building

Board Room

2811 Agriculture Drive

Madison, WI 53708

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

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

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

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

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

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

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

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

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

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

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

Statutory Authority

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

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

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

Background

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

- Monitors for disease outbreaks.

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

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

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

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

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

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

- Responds to disease emergencies and bio-security threats.

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

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

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

Key Rule Changes

Rule Reorganization

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

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

New Options for Poultry Producers

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

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

State-Federal Consistency

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

Johne’s Disease; Voluntary Testing and Herd Management

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

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

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

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

Johne's Disease Reactors

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

Johne's Disease; Certified Veterinarians

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

Sheep and Goats; Identification

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

Fairs and Exhibitions; Disease Control

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

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

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

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

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

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

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

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

The exhibitor's name and address.

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

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

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

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

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

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

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

Conduct a daily inspection of the exhibited animals.

Review exhibitor information (see above).

Livestock Premises Codes

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

Certificates of Veterinary Inspection

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

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

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

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

Fish Farms; Annual Health Certificate

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

Fish Imports

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

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

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

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

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

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

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

Fish Introduced into Waters of the State

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

fish farm health certificate, if any, must be issued no earlier than January 1 of the year prior to the year in which the fish are introduced into waters of the state.

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

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

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

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

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

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

Fish Health Certificate Forms

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

Qualified Fish Health Inspectors

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

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

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

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

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

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

Qualified Fish Health Laboratories

Fish health tests required under this rule must be performed by qualified laboratories. This rule clarifies that the following laboratories are considered qualified laboratories unless disqualified by DATCP:

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

A laboratory approved by DATCP.

A federal or state veterinary diagnostic laboratory.

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

Farm-Raised Deer

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

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

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

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

Circus, Rodeo and Menagerie Animals

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

Reportable Diseases

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

Leptospirosis

Atrophic rhinitis of swine

Porcine reproductive and respiratory syndrome

Transmissible gastroenteritis (swine)

Technical Changes

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

Fiscal Impact

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

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

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

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

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

DATCP will incur added staff and administrative costs to administer the new voluntary poultry flock certification program created by this rule. DATCP expects to absorb this additional workload with existing staff and appropriations. There is no fee for flock owners to enroll in the program.

Business Impact

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

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

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

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

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

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

Farm-raised deer keepers. This rule makes minor technical changes to current rules related to farm-raised deer.

The rule changes will have little if any impact on most farm-raised deer keepers.

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

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

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

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

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

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule. A complete Business Impact Analysis is attached.

Federal and Surrounding State Programs

Federal Programs

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

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

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

The federal bureau may provide grant funding, regulatory incentives, or other assistance in support of state programs and regulation. For example, the federal bureau provides funding for voluntary Johne’s disease testing and herd

management, based on federal program standards. Under the federal scrapie program, the federal bureau permits easier interstate movement of sheep and goats from states that require official individual identification for intrastate movement.

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

Surrounding State Programs

General

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

Aquaculture

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

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

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

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

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

Johne's Disease

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

Sheep and Goat Identification

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

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and revisor of statutes to incorporate the following standards by reference in this rule, without reproducing the standards in full in this rule:

- "Uniform Program Standards for the Voluntary Bovine Johne's Disease Control Program," federal bureau publication 91-45-016 (November 2005).
- "Brucellosis Eradication: Uniform Methods and Rules," federal bureau publication 91-45-013 (October 1, 2003).
- "Brucellosis in Cervidae: Uniform Methods and Rules," federal bureau publication 91-45-16 (September 30, 2003).
- "Bovine Tuberculosis Eradication: Uniform Methods and Rules," federal bureau publication 91-45-011 (January 1, 2005).
- "Swine Brucellosis Control and Eradication: State-Federal-Industry Uniform Methods and Rules," federal bureau publication 91-55-042 (April, 1998).
- "Pseudorabies Eradication: State-Federal-Industry Program Standards," federal bureau publication 91-55-071 (November 1, 2003).

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

Fiscal Effect

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

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

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

Business Impact Analysis¹

Rule Subject: Animal Diseases and Movement

Adm. Code Reference: ATCP 10-12

Rules Clearinghouse #: Not yet assigned

DATCP Docket #: 04-R-10

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

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

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

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

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

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

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

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

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

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

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

Business Impact

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Steps to Assist Small Business

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

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

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

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

Makes fish import permits more workable and flexible.

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

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

Conclusion

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

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

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Notice of Hearings Agriculture, Trade and Consumer Protection [CR 06-008]

(reprinted from 2/15/06, Wis. Adm. Register)

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

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Monday, April 3, 2006 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email to: krista.lambrecht@datcp.state.wi.us

or online at:

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

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

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

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

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

Hearing Dates and Locations:

Tuesday, **February 28, 2006**

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

Marathon County Public Library

300 North First Street, 3rd Floor–Wausau Room

Wausau, WI 54403

Wednesday, **March 1, 2006**

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

Lee Sherman Dreyfus Building

141 NW Barstow Street, Room 314

Waukesha WI 53187–0798

Thursday, **March 2, 2006**

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

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR–106)

Madison, Wisconsin, 53718–6777

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

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

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

Statutory Authority

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

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

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

Background

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

This rule is designed to prevent the introduction and spread of Emerald Ash Borer, Asian Longhorned Beetle, *Phytophthora ramorum* and Hemlock Woolly Adelgid. These pests pose a grave threat to Wisconsin forest and urban

landscapes. This rule will help protect Wisconsin industries, by helping to protect the resources on which they depend.

Rule Contents**Emerald Ash Borer**

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

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

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

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

Asian Longhorned Beetle

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

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

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

Cut firewood of all non–coniferous species.

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

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

Phytophthora ramorum

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

This rule restricts the import or intrastate movement of host materials from infested areas designated by USDA–APHIS,

unless a pest control official inspects the materials and certifies that they are free of *Phytophthora ramorum*. Host materials include:

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

Soil and potted media.

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

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

Hemlock Woolly Adelgid

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

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

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

Fiscal Impact

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

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

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

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

at least 140 additional staff to control infestations of Emerald Ash Borer in that state.

Greatly increased demand for state inspection and certification of commodities (host materials) shipped from infested areas, to satisfy buyers that the commodities are free of relevant pests. DATCP can charge fees to cover its cost to perform requested inspections, but would need legislative authorization to hire additional inspectors. The number of inspection requests cannot be accurately predicted at this time. However, the number could be large, given the importance of the nursery, landscaping and forest-based industries in this state.

Increased costs for information and education.

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

Business Impact

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

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

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

Environmental Impact

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

Federal Regulations

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

States may regulate *intrastate* movement within their own territory, and may also restrict imports of host materials from infested areas in other states. States may act on their own

authority (independent of USDA–APHIS), and may restrict imports and movement from infested areas other than those designated by USDA–APHIS. However, a coordinated federal–state program promotes consistent regulation of interstate commerce throughout the United States.

The federal–state regulatory scheme may vary, depending on the type of pest or disease. In the case of Emerald Ash Borer, Asian Longhorned Beetle and *Phytophthora ramorum*, it takes the following general form:

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

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

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

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

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

Regulation in Surrounding States

Emerald Ash Borer

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

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

Asian Longhorned Beetle

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

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

Phytophthora ramorum

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

Hemlock Woolly Adelgid

Wisconsin is one of five states that currently regulate the import and movement of Hemlock Woolly Adelgid host materials. The other states are Michigan, Maine, New Hampshire and Vermont. Michigan, like Wisconsin, has large populations of native hemlock. Michigan successfully eradicated its only finding of Hemlock Woolly Adelgid to date (an isolated nursery finding).

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

Business Impact Analysis²

Rule Subject: Plant Pest Import Controls and Quarantines

Adm. Code Reference: ATCP 21

Rules Clearinghouse #: Not yet assigned

DATCP Docket #: 04–R–09

Rule Description

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

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

Businesses Affected

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

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

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

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

If any of the regulated pests is ever found in this state, the *infestation* may have a major impact on affected businesses. Businesses in infested areas will incur added costs, and some

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

may lose markets for their products. But those consequences will result from the infestation itself, *with or without* this rule.

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

Key Rule Provisions

This rule includes the following key provisions:

Emerald Ash Borer

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

Ash trees.

Ash limbs, branches and roots.

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

Cut firewood of all non-coniferous species.

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

Asian Longhorned Beetle

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

Cut firewood of all non-coniferous species.

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

Phytophthora ramorum

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

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

Soil and potted media.

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

Hemlock Woolly Adelgid

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

Effects on Businesses

Asset Protection and Loss Prevention

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

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

Costs to Comply

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

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

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

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

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

Small Business Impact

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

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

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

Steps to Assist Small Business

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

Conclusion

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

Assumptions Used in Arriving at Fiscal Estimate

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

Long – Range Fiscal Implications

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

Environmental Assessment of Proposed Rule

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

Administrative Code Reference: ATCP 21

Rules Clearinghouse #: Not yet assigned

DATCP Docket #: 04–R–09

Purpose and Content of Proposed Rule

This rule regulates the import and movement of host materials that may spread infestations of Emerald Ash Borer, Asian Longhorn Beetle, *Phytophthora ramorum* or Hemlock Woolly Adelgid. Each of these pests has been found in the United States, and each poses a major threat to Wisconsin's forest and urban landscapes. None of these pests has yet been found in Wisconsin. This rule is designed to prevent and limit the spread of these pests, by regulating imports of host materials, to Wisconsin, from known infested areas. If any of these pests is ever found in Wisconsin, this rule will also affect the movement of host materials from infested areas in this state.

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

Emerald Ash Borer

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

Ash trees.

Ash limbs, branches and roots.

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

Cut firewood of all non–coniferous species.

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

Asian Longhorned Beetle

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

Cut firewood of all non–coniferous species.

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

Phytophthora ramorum

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

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

Soil and potted media.

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

Hemlock Woolly Adelgid

DATCP rules currently limit the import and movement of Hemlock Woolly Adelgid host materials from infested areas

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

Who is Affected, and How?

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

Costs to Comply

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

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

The current inspection certificate charge is \$50.

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

Small Business Impact

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

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

Farmers

Farmers will not be directly affected by this rule.

General Public

This rule will positively impact the general public, by helping to prevent the introduction and spread of serious plant pests that threaten key urban and residential tree species in Wisconsin. If enacted, this rule would help to minimize the impact of the plant pests on the public, to lessen damage and losses that could result in reductions in private property value when tree removal is mandated.

Environmental Impact

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

Economic Effects

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

Social and Cultural Effects

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

Alternatives to this Rule

No Action

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

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

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

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

Modify Rule Provisions

Under this alternative, DATCP would enact import control and quarantine to restrict the movement of firewood, green

lumber, and other living, dead, cut or fallen material, including nursery stock, logs, stumps, roots, and branches from any host trees. These materials may be moved within the quarantine area but would be restricted from moving outside the area.

Controversial Public Issues

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

This rule will improve protection for the public at large.

Conclusion

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

Notice of Hearing

Labor and Industry Review Commission

[CR 05-092]

(reprinted from 2/15/06, Wis. Adm. Register)

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

Analysis Prepared by Labor and Industry Review Commission

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

Text of Rule (corrected)

Section 1. LIRC 1.01 is amended to read:

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

Section 2. LIRC 1.015 is created to read:

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

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

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

LIRC 1.02 Petitions for ~~commission review; appeal period.~~ All petitions for commission review shall be received, ~~or, in unemployment compensation, received or postmarked, filed~~ within 21 days from the date of mailing of the administrative law judge's findings and decision or order, except as provided under this section. "Received" means physical receipt. A mailed petition postmarked on or prior to the last day of an appeal period, but received on a subsequent day is not a timely appeal, except in unemployment compensation. All petitions shall be in writing. The last day of an appeal period shall be that the petition may be filed on the next business day if the last day for filing 21st day falls on any of the following:

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

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

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

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

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

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

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

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

LIRC 1.04 Record used for review. Review by the commission shall be based on the record of the case including the evidence previously submitted at hearing before the

department. The record of the hearing may be in the form of a written synopsis or a transcript, and may include an audio recording of the hearing. The form of the record of the hearing which the commission uses in its review shall be determined as follows:

(1) Except as provided in subs. (2) through (5) of this section, the commission shall base its review on a written synopsis of the testimony taken at the hearing. The synopsis shall be prepared by the department, by the commission, or by an outside contractor, from an audio recording of the hearing or from notes taken at the hearing by the administrative law judge. In those cases any party may obtain a copy of the synopsis as provided for in s. LIRC 1.045.

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

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

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

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

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

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

Section 6. LIRC 1.045 is amended to read:

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

Section 7. LIRC 2.01 is repealed and recreated to read:

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

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

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

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

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

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

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

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

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

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

Section 8. LIRC 2.015 is amended to read:

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

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

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

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

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

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

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

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

Section 9. LIRC 2.03 is repealed.

Section 10. LIRC 2.04 is repealed.

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

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

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

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

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

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

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

Section 12. LIRC 3.02 is repealed.

Section 13. LIRC 3.04 is amended to read:

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

Section 14. LIRC 4.01 is amended to read:

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

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

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

Section 15. LIRC 4.02 is repealed.

Initial Regulatory Flexibility Analysis:

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

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

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

Estimate: 20 transcripts per year

70 pages (\$70)

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

Contact Person and Submission of Comments

Agency contacts – James L. Pflasterer, General Counsel, telephone: (608) 266-7728, E-mail: james.pflasterer@dwd.state.wi.us; David B. Nance, Staff Attorney, telephone: (608) 266-5823, E-mail: dave.nance@dwd.state.wi.us.

Comments may be submitted in writing by **March 15, 2006** to: Wisconsin Labor and Industry Review Commission, P. O. Box 8126, Madison WI 53708-8126; by facsimile to (608) 267-4409; or via E-mail to dwdlirc@dwd.state.wi.us.

More information is provided at the commission's website at: <http://www.dwd.state.wi.us/lirc/proposedrules.htm>.

Notice of Hearing

Natural Resources

[CR 06-013]

(Fish, Game, etc., Chs. NR 1—)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.063, 29.177 and 227.11, Stats., interpreting ss. 29.063, 29.177 and 29.361, Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 10.01 (3), 10.104 (11) and 10.105 (2), Wis. Adm. Code, relating to deer hunting as the pertains to the control and eradication of chronic wasting disease (CWD). Beginning in 2006, the Department proposes the following CWD hunting rules:

Creates an either-sex hunting regulation for all seasons for both the Herd Reduction Zone (HRZ) and the Disease Eradication Zones (DEZ).

HRZ and DEZ early gun deer season for 9 days beginning the Saturday nearest October 24.

HRZ and DEZ late gun deer season beginning with the traditional opener and ending 3 Sundays after Thanksgiving.

Preservation of the Earn-a-Buck option for the future, if needed. Criteria will be created that will establish when the Department may use the earn-a-buck harvest regulations and add 7 days to the early deer gun season if earn-a-buck regulations are recommended for a unit, units or a herd reduction or disease eradication zone.

In the state parks in the herd reduction zone (Belmont Mound, Cadiz Springs, Devil's Lake, Natural Bridge, New Glarus Woods, Mirror Lake, Rocky Arbor and Yellowstone) the late October season would be extended from 4 to 9 days to mirror the season outside of the park. Also, for consistency, rather than beginning on the Thursday, the season would start on the Saturday nearest October 24. The hunting hours will end at noon for all 9 days to reduce conflicts with traditional park uses.

In state parks in the disease eradication zone (Blue Mound, Governor Dodge and Tower Hill), the number of early gun hunting days will be reduced to be consistent with hunting outside the parks. In 2006, the early firearm season in these parks would begin the Saturday nearest October 24 and extend for 9 days. The archery seasons in these parks will open on the same weekend as the early gun hunt, rather than on the Thursday nearest October 27. The hunting hours will end at noon for all 9 days to reduce conflicts with traditional park uses.

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

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

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold an open house/informational meeting immediately preceding each public hearing. The open house/informational meeting on the deer herd status and the proposed CWD rule will be held from 5:00 p.m. to 7:00 p.m. Department staff will be available to answer questions regarding the proposed rules and deer herd status in the surrounding deer management units.

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

March 13, 2006 Monday at 7:00 p.m.	Waukesha State Office Bldg. 141 NW Barstow Waukesha
March 14, 2006 Tuesday at 7:00 p.m.	Grand Avenue Elementary School Theater 225 Grand Avenue Prairie du Sac
March 15, 2006 Wednesday at 7:00 p.m.	Jefferson Co. Fairgrounds Activity Center 503 N. Jackson Avenue Jefferson
March 15, 2006 Wednesday at 7:00 p.m.	Kenosha Center Kenosha Co. Administration Center 1010 56th Street Kenosha
March 17, 2006 Friday at 7:00 p.m.	DNR Service Center 1500 N. Johns Street Dodgeville

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kari Lee-Zimmerman at (608) 267-7861 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

Since 2002, the department has promulgated rules to manage and control CWD. In previous years the department has added significant areas of southern Wisconsin to one of the designated CWD management zones, which has resulted in added costs and reduced revenues to the department. However, this year the department is not modifying either the DEZ or HRZ, resulting in no significant fiscal impact.

The remaining proposed modifications do not result in an increase or decrease in appropriations or revenues for the department. Additionally, these proposals do not result in increased or decreased department costs.

Copy of Rule and Submission of Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: *adminrules.wisconsin.gov*. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Kari Lee-Zimmerman, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until March 20, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Lee-Zimmerman.

Notice of Hearing Natural Resources

[CR 06-011]

[CR 06-012]

(Fish, Game, etc., Chs. NR 1—)

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

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

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

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

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

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

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

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

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

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

10. Allow Class A bear licenses to be purchased up to the day prior to the bear season, and allow the purchase of a Class

A bear license during the bear season, provided the license is not effective until three days after the date of purchase.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Replace the 14" minimum size limits for largemouth and smallmouth bass in Pigeon Lake, Bayfield County, with

a 14–18" no-harvest slot regulation and reduce the daily bag limit from 5 fish to 3 fish.

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 29.014, 29.164 (4) (b) and 227.24, Stats., interpreting ss. 29.014 and 29.164 (4) (b), Stats., the Department of Natural Resources will hold public hearings on Natural Resources Board Emergency Order No. WM-10-06(E) relating to the issuance of turkey hunting permits. This emergency order has an effective date of March 1, 2006. The emergency rule allows the department to issue turkey tags remaining after the initial permit drawing in accordance with state statute, which is first-come, first-served. Additionally, code language is updated to accurately describe how permits are currently issued and establishes that no person may obtain more than one turkey carcass tag per day.

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

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental

effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

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

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

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

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

Adams Adams–Friendship Middle School, Gymnasium, 420 North Main Street, Friendship
 Ashland Ashland Senior High School, Auditorium, 1900 Beaser Avenue, Ashland
 Barron Barron County Courthouse, Auditorium, 330 E. Lasalle Ave., Barron
 Bayfield Bayfield County Courthouse, 117 E. 5th, Washburn
 Brown West High School, Auditorium, 966 Shawano Avenue, Green Bay
 Buffalo Alma High School, Auditorium, S1618 STH 35, Alma
 Burnett Siren High School, Auditorium, 24022 Fourth Avenue N, Siren
 Calumet Chilton Public High School, Auditorium, 530 West Main Street, Chilton
 Chippewa Chippewa Falls Middle School, Auditorium A, 750 Tropicana Blvd., Chippewa Falls
 Clark Greenwood High School, West Gym, 306 W. Central Ave., Greenwood
 Columbia Portage Junior High School, 2505 New Pinery Road, Portage
 Crawford Prairie du Chien High School, Auditorium, 800 East Crawford Street, Prairie du Chien
 Dane Alliant Energy Center, 1919 Alliant Energy Way, Madison
 Dodge Horicon High School, Auditorium, 841 Gray Street, Horicon
 Door Sturgeon Bay High School, Auditorium, 1230 Michigan Street, Sturgeon Bay
 Douglas Northwestern Elementary School, U.S. Hwy. 2, Poplar
 Dunn Dunn County Fish & Game Club, 1900 Pine Ave., Menomonie
 Eau Claire South Middle School, Auditorium, 2115 Mitscher Ave., Eau Claire

Florence Florence High School, Auditorium, 400 Olive Avenue, Florence
 Fond du Lac Theisen Jr. High School, Auditorium, 525 E. Pioneer Rd., Fond du Lac
 Forest Crandon High School, Auditorium, 970 USH 8 W, Crandon
 Grant Lancaster High School, Hilary Auditorium, 806 E. Elm St., Lancaster
 Green Monroe Middle School, Auditorium, 1510 13th Street, Monroe
 Green Lake Green Lake High School, Multi–purpose room, 612 Mill Street, Green Lake
 Iowa Dodgeville High School, Gymnasium, 912 West Chapel Street, Dodgeville
 Iron Mercer Community Center, 2448 West Margaret, Mercer
 Jackson Black River Falls Middle School, LGI Room, 1202 Pierce Street, Black River Falls
 Jefferson Jefferson County Fair Park, Activity Center, 503 N. Jackson, Jefferson
 Juneau Mauston High School, Gymnasium, 800 Grayside Ave., Mauston
 Kenosha Bristol Grade School, Gym, 20121 83rd Street, Bristol
 Kewaunee Kewaunee High School, Theatre, 911 3rd Street, Kewaunee
 La Crosse Onalaska High School, Auditorium, 700 Wilson Street, Onalaska
 Lafayette Darlington High School, Auditorium, 11838 Center Hill Road, Darlington
 Langlade Antigo High School, Volm Theater, 900 10th Avenue, Antigo
 Lincoln Tomahawk Elementary School, Auditorium, 1048 E. Kings Road, Tomahawk
 Manitowoc UW–Manitowoc, Theater, 705 Viebahn Street, Manitowoc
 Marathon Wausau West High School, 1200 West Wausau Ave., Wausau
 Marinette Crivitz High School, Auditorium, 718 Hall Hay Street, Crivitz
 Marquette Montello High School, Varsity Gym, 222 Forest Lane, Montello
 Menominee Menominee County Courthouse, Basement, Courthouse Lane, Keshena
 Milwaukee Bayfield High School, Auditorium, 2751 South Lenox Street, Milwaukee
 Monroe Tomah High School, Gym, 901 Lincoln Avenue, Tomah
 Oconto Suring High School, Cafeteria, 411 E. Algoma Street, Suring
 Oneida James Williams Junior High, Auditorium, 915 Aracia, Rhinelander
 Outagamie Riverview Middle School, Auditorium, 101 Oak Street, Kaukauna
 Ozaukee Webster Middle School, Commons, W75 N624 Wauwatosa Rd., Cedarburg
 Pepin Pepin County Government Center–Co., Board Room, 740 7th Avenue, W. Durand
 Pierce Ellsworth Senior High School, Auditorium, 323 Hillcrest, Ellsworth

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vernon Viroqua High School, Auditorium, Viroqua

Vilas Sayner Community Center, Golf Course Road, Sayner

Walworth Delavan/Darien High School, 150 Cummings, Delavan

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

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

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

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

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

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

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

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

Fiscal Estimate

The 2005 – 07 state budget (2005 Wisconsin Act 25) created a provision to allow the department to issue turkey permits, remaining after the initial permit drawing, over the counter on a first-come, first-served basis at the cost of \$10

for residents and \$15 for non-residents. The department's intent is to prevent any one individual from hoarding permits, and at the same time make sure that there are a limited number of left over permits that go unused. The intent of the budget proposal was to make sure permits are issued to those who have the ability and desire to use the permits. Therefore, the department recommends that turkey permits remaining after the initial drawing, be made available to customers at a rate of 1 permit per day, with no limit on the number of permits that an individual hunter may obtain in a given license year. By limiting the permits to one per day per hunter it will avoid hoarding and allow hunters equal opportunities at available permits.

The fiscal impacts associated with this provision were generated by the budget bill, and not the rule itself, but are described here for informational purposes.

Cost of implementing this change will be an estimated \$10,000 to change the functionality and logic in the Department's Automated License Issuance System (ALIS) and to update and print new applications.

Additionally, by issuing turkey permits over the counter, the department will see an increase in revenue. Based on 2005 applicant information this could potentially generate on the order of over \$347,000 in revenue:

2005 Fall Turkey:

98.6% of the applicants are residents

1.4% of the applicants are nonresidents

At \$9 and \$14 per tag this equals \$31,617 for resident tags and \$700 for nonresident tags for a total of \$32,317.

2005 Spring Turkey:

96.2% of the applicants are residents

3.8% of the applicants are nonresidents

We had 34,250 second permits issued in 2005.

Using those percentages, 32,948 applicants would be residents and 1,302 would be nonresidents.

At \$9 and \$14 per tag this equals \$296,532 for resident tags and \$18,228 for nonresident tags for a total of \$314,760.

The reason that \$9 and \$14 was used as the revenue multiplier is because there is a \$.15 issuance fee for each tag. ALIS charges us about \$.89 per transaction. Some will be issued at DNR locations so the issuance fee would not apply. Some will be sold along with other approvals in the same transaction so the entire transaction fee wouldn't be for just the turkey tag. So it was estimated that the cost would be about \$1 per turkey tag.

The costs and revenue described here are not included in the worksheet because they are attributable to the enabling legislation, and not the rule. However, there are two rule change proposals that could have a fiscal impact independent of enabling legislation. The first is a proposed change to require a pheasant stamp of any hunter in the state who hunts pheasants.

The pheasant stamp was created in 1991 to fund pheasant restoration and management. Specifically the department was directed by state statute to use the revenues generated by the sale of the stamp for "developing, managing, preserving, restoring and maintaining the wild pheasant population in the state." To define areas where these funds were primarily utilized, the department created the Pheasant Management Zone (PMZ). The PMZ included counties or portions of counties with a healthy wild pheasant population. Therefore, a pheasant stamp was only required by those hunters who hunted pheasants within the PMZ.

However, as a result of 2005 Wisconsin Act 25 (The 2005 State Budget), a portion of pheasant stamp revenue is now allocated toward pheasant rearing and stocking. This now benefits pheasant hunters even outside the PMZ. As a result,

the department recommends that all pheasant hunters in the state be required to purchase the pheasant stamp in addition to their small game license to hunt pheasants in Wisconsin.

In 2005, 29,978 pheasant stamps were sold (does not include the 70,401 Conservation Patron License holders, where a pheasant stamp was included with their Patron License). At a cost of \$10 each, this resulted in approximately \$300,000 in revenue resulting from the sale of pheasant stamps (excluding the allotment from the Patron License sales) in 2005. From small game hunter surveys, the department estimates that there are approximately 75,000 hunters who annually hunt pheasants in Wisconsin. Based on this information, and that most hunters who hunt pheasants do so within the pheasant management zone where a stamp is required, we assume that 95% of pheasant hunters (71,250) either purchase a pheasant stamp or hunt pheasants under the authority of a Conservation Patron license (which includes the pheasant stamp). Based on these assumptions, if this rule proposal goes forward and the pheasant stamp is required statewide, then the department could anticipate the sale of an additional 3,750 pheasant stamps, which would result in an additional \$37,500 in revenue for pheasant habitat restoration and pheasant stocking.

Secondly, establishing a deer hunting season at High Cliff State Park would increase department costs. Costs include signage at the property (one time cost ~\$500). Patrolling of the property by Park staff during the season will result in additional costs to the local Park staff in terms of staff time.

One additional conservation warden will be needed to be on staff during this hunt (LTE). Additional hours would be at a minimum 188 hours if the LTE worked 23.5 days of the season with permanent staff working the other 23.5 days. Hours will also be needed to work on dual boundary posting adjacent to private property. The park facility repair worker and other staff can accomplish this in a minimum of 50 hours.

LTE officer	= \$1,786.00 (wage)
FTE officer	= \$3,478.00 (wage)
FTE staff	= \$846.00 (wage) – time spent on boundary work – One time cost.
Materials	= \$500.00 (signs/posts for boundaries) – One time cost.
Estimated annual expenditures (staff time)	– \$5,264
One time staff cost	– \$846
Mileage and equipment (including sign maintenance)	– \$500

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

Notice of Hearing

Natural Resources

(Environmental Protection, Chs. NR 100 —)

[CR 06–005]

NOTICE IS HEREBY GIVEN that pursuant to ss. 299.11(3) to (5) and (7) to (9), Stats., interpreting s. 299.11, Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of ch. NR 149, Wis. Adm. Code, relating to laboratory certification and registration. Chapter NR 149 sets requirements for the certification and registration of laboratories that submit data to the department for covered programs. Since the last revision of ch. NR 149 in 1998, the Department realized the need for updating the rule to reflect current analytical practices, give specificity to vague language, provide needed flexibility, and promote efficient means of administering the certification and registration program. Highlights of the proposed changes include:

- Provisions for issuing laboratory certificates that clearly reflect the analytical capabilities of participating laboratories
- Clarifications and improvements of the application process for participating laboratories
- Equitable fee schedules for laboratories based on the complexity of the analyses they perform
- Allowances for incorporating national acceptance criteria for proficiency testing samples
- Procedures the Department will follow to evaluate laboratories on site
- Comprehensive requirements that incorporate a systematic approach to ensure the quality of the data submitted to the Department by laboratories

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

- Types of small businesses affected: Small commercial laboratories
- Description of reporting and bookkeeping procedures required: The proposed rule requires laboratories to submit applications for obtaining, renewing and transferring certifications and registrations; analyze PT samples to obtain, maintain and renew certifications and registrations; allow the Department to perform an on-site evaluation to obtain certification or registration and every 3 years to maintain certification or registration; respond to and resolve deficiencies identified during on-site evaluations; submit fees to obtain and renew certifications and registrations; operate under a quality system to ensure data reported to the department is of known and documented quality; use approved methods of analyses; and report analytical data to the Department and clients in specified formats. The proposed rule does not impose specific bookkeeping requirements on participating laboratories
- Description of professional skills required: The rule requires levels of professional skills commensurate with the complexity of the tests performed by a laboratory, the breadth of operations and the degree of sophistication of the analytical

instrumentation used. Analyses covered by the rule are performed by personnel with a wide spectrum of credentials, from technicians with a basic high school science education to degreed chemists, biologists and other scientists. The rule allows analysts with lesser experience to work under the direct supervision of qualified analysts. The rule does not specifically require academic degrees or a minimum number of years of experience for those involved in its implementation.

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

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

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

March 23, 2006 Thursday at 1:00 p.m.	DNR Service Center 1300 W. Clairemont Avenue Eau Claire
March 28, 2006 Tuesday at 1:00 p.m.	Downstairs Room State Patrol Office 2805 Martin Avenue Wausau
March 29, 2006 Wednesday at 1:00 p.m.	Room 213 Lindholm School Administration Bldg. 222 Maple Avenue Waukesha
March 30, 2006 Thursday at 1:00 p.m.	Ag Extension Service Center 1150 Bellevue Street Green Bay
April 6, 2006 Thursday at 1:00 p.m.	Prairie Room DNR Service Center 1500 N. Johns Street Dodgeville

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Diane Drinkman at (608) 264-8950 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is a potential fiscal impact on local governments.

The overall costs for maintaining a laboratory's quality system will be driven by the selection of the options offered in this proposed rule. Local government laboratories are most likely to experience a reduction in these costs if they choose to modify current practices.

Copy of Rule and Submission of Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: *adminrules.wisconsin.gov*. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Diane

Drinkman, Bureau of Integrated Science Services, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 14, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Drinkman.

Notice of Hearing Nursing Home Administrator Examining Board [CR 06-010]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Nursing Home Administrator Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 456.07 (2), Stats., the Nursing Home Administrator Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber and amend NHA 1.02 (5); to amend the Note following NHA 3.01 (1), NHA 3.02 (1), (1m) and the Note following NHA 3.02 (1m), NHA 3.03 (1) (intro.), the Note following NHA 3.03 (1) (c), and (2); and to create NHA 3.02 (6) and (7), and 3.03 (5), relating to continuing education.

Hearing Date, Time and Location

Date:	March 16, 2006
Time:	9:45 A.M.
Location:	1400 East Washington Avenue Room 121A (Enter at 55 Dickinson Street) Madison, Wisconsin

Appearances at the Hearing

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. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, WI 53708, or by e-mail to *pamela.haack@drl.state.wi.us*. Written comments must be received by March 27, 2006 to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statute interpreted: Section 456.07 (2), Stats.

Statutory authority: Sections 15.08 (5) (b) and 227.11 (2), Stats.

Explanation of agency authority

The Nursing Home Administrator Examining Board is authorized under ss. 15.08 (5) (b) and 227.11 (2), Stats., to promulgate rules establishing the continuing education requirements for the renewal of a nursing home administrator's license.

Related statute or rule

There are no other statutes or rules other than those listed above.

Plain language analysis

Under the current rules, in order for a licensee to obtain credit for continuing education course work completed at an accredited college or university, the course work must be approved by the National Association of Boards of Examiners of Long Term Care Administrators (NAB). The board proposes to revise the rules to state that certain programs

offered by accredited colleges and universities will be acceptable for continuing education hours without having to be approved by NAB.

The board also proposes to limit the number of continuing education hours that may be claimed for course work completed at accredited colleges and universities to 18 contact hours within the 2-year renewal period immediately preceding the date of renewal. In addition, the subject matter of the programs will be limited to specific areas that are relevant to the practice of nursing home administration.

SECTION 1. The board proposes to revise the definition of “one credit hour” to clarify that the current definition relates only to qualifying education. For purposes of continuing education, a semester credit hour means 4 contact hours and a quarter credit hour means 2 contact hours.

SECTION 2. Section NHA 3.01 (1) is amended to state that the list of approved regular courses of study, programs of study and specialized courses are also available on the department’s website.

SECTION 3. Currently, s. NHA 3.02 (1) states that every nursing home administrator shall complete at least 24 contact hours in approved continuing education programs in each biennial renewal period. Section 456.07 (2), Stats., contains a provision that exempts new licensees from having to comply with the continuing education requirements during the time between initial licensure and commencement of a full 2-year licensure period. The proposed rules are being revised to include this exemption.

In addition, s. NHA 3.02 (1m) currently states that except as provided in s. NHA 3.03 (4), continuing education programs must be approved by NAB. The rule is being amended to add sub. (5) which states that a course offered by an accredited college or university shall be accepted by the board, without NAB approval and without receipt of an application for approval from the accredited college or university.

SECTION 4. Section NHA 3.02 (6) is being created to state that, if certain requirements are satisfied, a licensee may claim continuing education for courses successfully completed at an accredited college or university. Currently, s. NHA 3.02 (1), states that every nursing home administrator shall complete at least 24 contact hours in approved continuing education programs in each biennial renewal period. Section 456.07 (2), Stats., contains a provision that exempts new licensees from having to comply with the continuing education requirements during the time between initial licensure and commencement of a full 2-year licensure period. Section NHA 3.02 (7) is being created to state that new licensees are exempt from having to comply with the continuing education requirements during the time between initial licensure and commencement of a full 2-year licensure period.

SECTION 5. Section NHA 3.03 (1) (intro.) is being amended to state that, if certain requirements are satisfied, a program approved by NAB shall be accepted.

SECTION 6. Section NHA 3.03 (5) is being created to state that, if certain requirements are satisfied, a course offered by an accredited college or university shall be accepted by the board, without NAB approval and without receipt of an application for approval from the accredited college or university.

Summary of, and comparison with, existing or proposed federal regulation

There are no federal requirements that relate to the approval of continuing education programs for nursing home administrators.

Comparison with rules in adjacent states

Illinois: Accepts course work completed at a college or university, provided the college or university submits a sponsor application.

Iowa: Accepts relevant academic courses that meet the criteria set forth in the agency’s administrative rules. One academic semester hour is equivalent to 15 continuing education hours.

Michigan: Accepts course work completed at a college or university for continuing education credit if the subject matter relates to specific topics identified in the agency’s administrative rules.

Minnesota: Approves academic courses taken at an accredited post-secondary institution.

Summary of factual data and analytical methodologies

No study resulting in the collection of factual data was used relating to this rule. The primary methodology for revising the rule is the board’s analysis and determination that a rule change is necessary.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report

The proposed rule would change the specific subject matter area requirements for continuing education for nursing home administrators licensed in Wisconsin. There are 3,124 nursing home administrators licensed in Wisconsin. Of the 3,124 nursing home administrators licensed in Wisconsin, a significant percentage of them probably work in small businesses.

In order for nursing home administrators to renew their license, continuing education courses would have to be completed. Currently, to obtain credit for course work taken at a college or university, the course work must be approved by the National Association of Boards of Examiners of Long Term Care Administrators (NAB). The rule would allow certain course work offered at a college or university to be accepted for continuing education without obtaining approval from NAB. The rule would also limit the course work taken at colleges or universities to 18 of the 24 hours required. There will be no additional reporting requirements, bookkeeping requirements, or compliance costs. This rule would merely allow certain courses to be taken without obtaining approval from NAB. The same 24 hour requirement would be in place. This rule change will not have an effect on small business.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Fiscal Estimate

The department finds that this rule has no significant fiscal effect on the private sector. The proposed rule will have no impact on the department’s funds.

Effect on Small Business

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin

53708–8935. Telephone: (608) 266–0495. Email: pamela.haack@drl.state.wi.us.

Submission of Comments

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before **March 27, 2006** to be included in the record of rule-making proceedings.

Text Of Rule

SECTION 1. NHA 1.02 (5) is renumbered NHA 1.02 (1m) and is amended to read:

NHA 1.02 (1m) “One credit hour” “Credit hour” means, for purposes of qualifying education, a period of at least 50 minutes of instruction for a term of not less than 16 sessions. For purposes of continuing education, one earned semester credit hour shall be granted 4 contact hours of continuing education credit, and one earned quarter credit hour shall be granted 2 contact hours of continuing education credit.

SECTION 2. The Note following NHA 3.01 (1) is amended to read:

Note: A list of approved regular courses of study, programs of study and specialized courses is available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or from the Department of Regulation and Licensing’s website at: <http://drl.wi.gov>

SECTION 3. NHA 3.02 (1), (1m) and the Note following NHA 3.02 (1m) are amended to read:

NHA 3.02 Continuing education. (1) Every Except as provided in sub. (7), every nursing home administrator shall complete at least 24 contact hours in approved continuing education programs in each biennial renewal period..

(1m) Except as provided in s. NHA 3.03 (4) and (5), continuing education programs must be approved by NAB.

Note: A list of approved programs is available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or from the Department of Regulation and Licensing’s website at: <http://drl.wi.gov>.

SECTION 4. NHA 3.02 (6) and (7) are created to read:

NHA 3.02 (6) A licensee may claim continuing education hours for courses successfully completed at an accredited college or university if all of the following requirements are satisfied:

(a) The courses are relevant to the practice of nursing home administration and cover one or more of the subject matter topics listed under s. NHA 3.03 (5).

(b) The courses are completed, with a passing grade, within the 2–year renewal period immediately preceding the date of application for renewal.

(c) The licensee claims no more than 18 contact hours during the 2–year renewal period.

(d) One semester credit hour earned from an accredited college or university shall equal 4 contact hours and one quarter credit hour earned shall equal 2 contact hours.

(7) During the time between initial licensure and commencement of a full 2–year licensure period, new licensees shall not be required to meet continuing education requirements.

SECTION 5. NHA 3.03 (1) (intro.), the Note following NHA 3.03 (1) (c), and (2) are amended to read:

NHA 3.03 Approval of continuing education programs.

(1) (intro.) An application for a continuing education program shall be approved by ~~submitted to~~ NAB ~~according to the following criteria established for approval.~~ Any continuing education program approved by NAB shall be accepted by the board if all of the following are satisfied:

Note: To obtain an application for approval of a continuing education program, contact NAB at 1444 I Street, N.W. #700, Washington, D.C., 20006–2210 20005–6542; <http://www.nabweb.org>.

(2) ~~A Except as provided in sub. (5), a~~ separate application must be submitted for each continuing education program.

SECTION 6. NHA 3.03 (5) is created to read:

NHA 3.03 (5) A course offered by an accredited college or university shall be accepted by the board, without NAB approval and without receipt of an application for approval from the accredited college or university, if the course is relevant to the practice of nursing home administration and covers at least one of the following subject areas:

(a) Behavioral science including, but not limited to, psychology, sociology and social work.

(b) Business including, but not limited to, economics, marketing, accounting, finance, labor relations, human resources and management of information systems.

(c) Management.

(d) Communications.

(e) Mathematics.

(f) Pharmacology.

(g) Toxicology.

(h) Biology.

(i) Environmental and public health.

(j) Medical ethics.

Notice of Hearing

Revenue

[CR 06–001]

Notice is hereby given that, pursuant to ss. 73.029 and 227.11 (2) (a), Stats., and interpreting ss. 71.63 (3m), 71.738 (2), and 73.029, Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the amending and creation of rules relating to electronic funds transfer, information returns, and wage statements.

Hearing Information

The hearing will be held at 9:00 A.M. on Wednesday, **March 15, 2006**, in the Events Room (1st floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than March 22, 2006, and will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Revenue

Statute interpreted: ss. 71.63 (3m), 71.738 (2), and 73.029, Stats.

Statutory authority: ss. 73.029 and 227.11 (2) (a), Stats.

Explanation of agency authority: Section 73.029, Stats., provides that the department may require electronic funds transfer only by promulgating rules. Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: ss. 71.63 (3m), 71.738 (2), and 73.029, Stats.

Plain language analysis: This proposed rule order does the following:

- Creates a provision specifying that income and franchise tax withholding payments of pass-through entities are required to be made by electronic funds transfer (EFT).

- Changes a provision to specify that EFT payments made by automated clearing house (ACH) debit transfer may be initiated up until 4:00 p.m. on the due date of the payment.

- Creates a provision specifying that the department may require pass-through entities to file returns for nonresident withholding taxes by electronic means. An exception is provided for situations where the Secretary of Revenue determines that the requirement to file by electronic means causes an undue hardship.

- Creates a provision specifying that the department may require Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, to be filed by electronic means. An exception is provided for situations where the Secretary of Revenue determines that the requirement to file by electronic means causes an undue hardship.

- Updates notes to list current street and mailing addresses.

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

Comparison with rules in adjacent states:

Illinois – No similar rule exists.

Iowa – No similar rule exists.

Michigan – No similar rule exists with regard to filing an annual withholding tax reconciliation (the equivalent of Wisconsin Form WT-7) or a return for nonresident withholding taxes by electronic means. EFT payment of pass-through entity withholding is required if total pass-through entity withholding plus employee withholding averages at least \$40,000 per month.

Minnesota – No similar rule exists with regard to filing an annual withholding tax reconciliation (the equivalent of Wisconsin Form WT-7) or a return for nonresident withholding taxes by electronic means. If a pass-through entity is required to pay any Minnesota tax by EFT, it is required to pay all Minnesota taxes by EFT. The threshold for withholding tax is \$20,000 per year.

Summary of factual data and analytical methodologies: 2005 Wisconsin Act 25 created s. 71.775, Stats., which requires pass-through entities to file and pay withholding tax on the income allocable to their nonresident members. The department has determined that in order to administer this tax in a cost effective manner, it is necessary to require pass-through entities to file and pay the tax by electronic means. The department has also determined that, in the interest of cost effectiveness, a requirement to file Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, should also be put in place. In light of this, a rule is being promulgated which allows the department to prescribe the method by which Form WT-7 is to be filed and by which pass-through entities are to file and

pay withholding tax on the income allocable to their nonresident members.

Analysis and supporting documents used to determine effect on small business: The department provides methods to pay taxes using EFT and file returns electronically that occur at no or minimal cost to the payer or filer. In addition, an exception to the requirement to pay or file electronically for situations where an undue hardship is caused is provided in the rule. Based on this, the department has concluded that this proposed rule order does not have a significant effect on small business.

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

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

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

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

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

SECTION 1. Tax 1.12 (3) (fm) is created to read:

Tax 1.12 (3) (fm) "Pass-through entity" has the meaning given in s. 71.775 (1) (b), Stats.

SECTION 2. Tax 1.12 (4) (a) (intro.) is amended to read:

Tax 1.12 (4) (a) (intro.). Except as provided in sub. (11), the department requires a person who owes taxes and fees as described in subs. 1. to ~~42. 13.~~ to pay or deposit the taxes and fees using the EFT payment method. The following taxes and fees are included in the EFT payment requirement:

SECTION 3. Tax 1.12 (4) (a) 13. is created to read:

Tax 1.12(4)(a)13. Income and franchise tax withholding payments of pass-through entities under s. 71.775, Stats.

SECTION 4. Tax 1.12 (7) (a) 2. is amended to read:

Tax 1.12 (7) (a) 2. The payer shall initiate ACH debit transfers before 4:00 p.m. central standard time or central daylight savings time, as applicable, ~~at least one business day before~~ on the prescribed due date of the payment in order for the payment to have a settlement date on or before the prescribed due date.

Note to Revisor: Replace the example at the end of Tax 1.12 (10) (c) with the following:

Example: If the prescribed due date falls on a Monday which is also memorial day, an ACH debit transfer must be initiated on or before the following Tuesday, when the payment is due. A payer using an ACH credit transfer must work with the financial institution to initiate the transfer in time to settle on or before the revised payment due date.

SECTION 5. Tax 2.04 (1) is amended to read:

Tax 2.04 (1). **DEFINITION DEFINITIONS.** In this section, "person" ~~means an individual, trust, estate, partnership, limited liability company, association or corporation ;~~

SECTION 6. Tax 2.04 (1) (a) and (b) are created to read:

Tax 2.04 (1) (a). “Pass-through entity” has the meaning given in s. 71.775 (1) (b), Stats.

Tax 2.04 (1) (b). “Person” means an individual, trust, estate, partnership, limited liability company, association or corporation.

SECTION 7. Tax 2.04 (2) (d) is amended to read:

Tax 2.04 (2) (d). All statements required shall be filed by January 31, by delivering or mailing them to the department. Form WT-7, “Employer’s Annual Reconciliation of Wisconsin Income Tax Withheld From Wages,” shall accompany the statements submitted, either on paper or on magnetic media or in other machine-readable form, or by electronic means prescribed by the department, if the employer is required to be registered to withhold Wisconsin income taxes from employees’ wages.

Note to Revisor: Replace the note at the end of Tax 2.04 (2) (d) with the following:

Note: Forms may be delivered in person to the department of revenue at 2135 Rimrock Road, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, Magnetic Media Coordinator, Room 232B, 2135 Rimrock Road, Madison, WI 53708-8906. Forms W-2 or 1099-R filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8920, Madison, WI 53708-8920. Forms 9b or substitute forms filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8932, Madison, WI 53708-8932.

SECTION 8. Tax 2.04 (2) (de), (dm), and (ds) are created to read:

Tax 2.04 (2) (de). The department may require an employer registered or required to be registered to withhold Wisconsin income taxes from employees’ wages to file its Form WT-7 by electronic means. The department shall notify the employer at least 90 days prior to the due date of the first Form WT-7 required to be filed by electronic means of the requirement to file by electronic means.

Tax 2.04 (2) (dm). The secretary of revenue may waive the requirement for an employer to file by electronic means when the secretary determines that the requirement causes an undue hardship, if the employer does all of the following:

1. Requests the waiver in writing.

Note: Written requests should be addressed to Wisconsin Department of Revenue, Secretary’s Office, Mail Stop 3-258, PO Box 8903, Madison WI 53708-8903

2. Clearly indicates why the requirement causes an undue hardship.

Tax 2.04 (2) (ds). In determining whether the electronic means requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the employer from filing by electronic means.

Example: The employer does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

Note to Revisor: 1) Replace the note at the end of Tax 2.04 (2) (e) with the following:

Note: Written requests for extensions may be mailed to Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8902, Madison, WI 53708-8902.

2) Replace the note at the end of Tax 2.04 (3) (b) with the following:

Note: Forms may be delivered in person to the department of revenue at 2135 Rimrock Road, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, Magnetic Media Coordinator, Room 232B, 2135 Rimrock Road, Madison, WI 53708-8906. Forms filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8932, Madison, WI 53708-8932.

3) Replace the note at the end of Tax 2.04(4)(d) with the following:

Note: Forms W-2G or substitute forms may be delivered in person to the department of revenue at 2135 Rimrock Road, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, Magnetic Media Coordinator, Room 232B, 2135 Rimrock Road, Madison, WI 53708-8906. Forms filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8920, Madison, WI 53708-8920.

SECTION 9. Tax 2.04 (8) is created to read:

Tax 2.04 (8). ELECTRONIC FILING REQUIREMENT FOR TAXES WITHHELD BY PASS-THROUGH ENTITIES. (a) Except as provided in par. (b), the department may require a pass-through entity to file its return for nonresident withholding taxes under s. 71.775, Stats., by electronic means.

(b) The secretary of revenue may waive the requirement to file by electronic means when the secretary determines that the requirement causes an undue hardship, if the pass-through entity does all of the following:

1. Requests the waiver in writing.

Note: Written waiver requests should be addressed to Wisconsin Department of Revenue, Secretary’s Office, Mail Stop 3-258, PO Box 8903, Madison WI 53708-8903.

2. Clearly indicates why the requirement causes an undue hardship.

(c) In determining whether the electronic means requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the pass-through entity from filing by electronic means.

Example: The pass-through entity does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

Note to Revisor: 1) Move the last three notes at the end of Tax 2.04 (7) to the end of Tax 2.04 (8).

2) Replace the last note at the end of Tax 2.04(8) with the following:

Note: Section Tax 2.04 interprets ss. 71.26 (3) (e), 71.63 (3m), 71.65 (2), 71.67 (4) and (5), 71.70, 71.71 (2), 71.72, 71.738 (2), 71.74 (4) and 71.80 (20), Stats.

Initial Regulatory Flexibility Analysis

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

Fiscal Impact

These proposed changes will not have a significant fiscal effect.

Contact Person

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Submittal of proposed rules to the legislature

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

Administration

(CR 05-069)

Chs. Adm 20 and 21, relating to architecture, engineering and construction solicitation, bidding and contracting.

Nursing

(CR 05-121)

Chs. N 2 and 3, relating to qualifications for examination and application procedures, temporary permits and refresher course.

Rule orders filed with the revisor of statutes bureau

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

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

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

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the February 28, 2006, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

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

Commerce (CR 04-058)

An order affecting chs. Comm 5 and 47, relating to Petroleum Environmental Cleanup Fund awards and associated credentials. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rules will update chapter Comm 47 to make it consistent with several statutory requirements. Those requirements generally include limiting reimbursements under the PECFA program to usual and customary costs, or to least costly levels that are determined through competitive public bidding. Those statutory requirements do not exempt small businesses from these reimbursement limits.

Numerous substantive changes were made to the proposed rules in response to concerns that may have arisen from small businesses during the Public Hearing process. These changes included deleting some proposed credential requirements; deleting some proposed penalties; newly allowing reimbursement for certain capital improvements; newly allowing consultants to provide commodity services wherever reimbursement amounts are determined by either public bidding or the usual and customary cost schedule; extending some time periods for adjustments to public bidding; newly allowing subcontractor markups on work that is included in a public bidding contract; clarifying the impacts of the proposed rules for cleanup sites with reimbursements caps determined through public bidding that precedes the effective date of the new rules; increasing the reimbursement maximums for mobilization and demobilization for field activities, particularly where multiple sites are visited on a single travel circuit, or where multiple activities are conducted at the same site on the same day; and clarifying many of the descriptions and quantifications for the reimbursement categories in the proposed schedule of usual and customary costs. Some rule changes that were requested during the Hearing process were rejected because they would have been inconsistent with statutory requirements, such as the Department's duty to set reimbursement maximums at the least-costly level of remediation. Overall, the included changes appear to have resolved the concerns that arose during the Public Hearing process.

Summary of Comments by Legislative Review Committees

No comments were received, although a hearing was held on November 16, 2005, by the Assembly Committee on Natural Resources.

Commerce (CR 04-135)

An order affecting chs. Comm 2, 26, and 95, and ch. PSC 186, relating to manufactured home communities. Effective 3-1-06.

Summary of Final Regulatory Flexibility Analysis

Sections 101.935 and 101.937, Stats., direct the Department to license and regulate manufactured home communities and to regulate the provision of water and sewer service to manufactured home community occupants through the promulgation of administrative rules. The proposed rules of Clearinghouse Rule No. 04-135 are minimum requirements to meet the directive of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce (CR 05-064)

An order affecting ch. Comm 72, relating to cleaning methods for historic buildings. Effective 3-1-06.

Summary of Final Regulatory Flexibility Analysis

In accordance with section 101.1215, Stats., the Department of Commerce is required to develop requirements for prohibiting the use of abrasive cleaners on the exterior of qualified historic buildings, including both commercial buildings and one- and two-family dwellings. The proposed rules of Clearinghouse Rule No. 05-064 are minimum requirements to meet the directives of the Statutes, and any exceptions from compliance for small businesses would be contrary to the statutory objectives, which are the basis of the rules.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance (CR 05-059)

An order affecting chs. Ins 3, 9 and 18, relating to revising requirements for insurers offering defined network plans, preferred provider plans and limited service health organization plans. Effective 3-1-06.

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

No comments were received.

**Natural Resources
(CR 05-039)**

An order affecting chs. NR 460 and 463, relating to the incorporation of federal amendments in national emission standards for hazardous air pollutants. Effective 3-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rule revisions will not have a significant economic impact on a substantial number of small businesses. This is because this proposal will revise existing state rules which have been in effect for several years. Most, if not all, affected sources are already in compliance with these rules. The proposed revisions will make the rules more flexible and will reduce compliance requirements.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Senate Committee on Energy, Utilities and Information Technology and the Assembly Committee on Natural Resources. On November 16, 2005, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments as a result of this hearing.

**Natural Resources
(CR 05-040)**

An order affecting chs. NR 400, 460, 465 and 484, relating to national emission standards for hazardous air pollutants for the surface coating of plastic parts and products and of miscellaneous metal parts and products. Effective 3-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rules will not have a significant economic impact on a substantial number of small businesses. This is primarily because the proposed rules are identical to the existing federal regulations, with which all affected sources are already required to comply. Costs to the affected sources are being incurred in response to the federal regulations, which have been in effect for over a year. No additional costs will be incurred in response to the proposed state rules.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Senate Committee on Energy, Utilities and Information Technology and the Assembly Committee on Natural Resources. On November 16, 2005, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments as a result of this hearing.

**Natural Resources
(CR 05-053)**

An order affecting ch. NR 64, relating to an all-terrain vehicle registration exemption. Effective 3-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rules are applicable to individual ATV operators and impose no compliance or reporting requirements for small business. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

**Natural Resources
(CR 05-054)**

An order affecting ch. NR 64, relating to all-terrain vehicle noise testing procedures. Effective 3-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rules are applicable to individual ATV operators, owners and manufacturers and impose no compliance or reporting requirements for small business. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

**Natural Resources
(CR 05-071)**

An order affecting ch. NR 58, relating to the implementation and administration of grants for endangered resources. Effective 3-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rule pertains to providing grants to private landowners and are applicable to owners of non-government property. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

No comments were received.

**Natural Resources
(CR 05-074)**

An order affecting ch. NR 24, relating to open seasons for commercial clamming on the Wisconsin-Iowa boundary waters and the Mississippi River portion of the Wisconsin-Minnesota boundary waters. Effective 3-1-06.

Summary of Final Regulatory Flexibility Analysis

The proposed rule does not have a significant economic impact on a substantial number of small businesses. No commercial clam shelling licenses have been sold in Wisconsin since 2001.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 05-082)**

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

Summary of Final Regulatory Flexibility Analysis

The proposed rule provides additional participation opportunities for small businesses. Since businesses request that they be identified on state-installed signs, the sign application process will enforce the rule.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

**Transportation
(CR 05-095)**

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

Summary of Final Regulatory Flexibility Analysis

The provisions of this rule adding a highway segment to the designated system have no direct adverse effect on small businesses, and will have a favorable effect on those small businesses which are shippers or carriers using the STH 29 bypass around Chippewa Falls.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

Sections affected by rule revisions and corrections

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

Revisions

Commerce

Ch. Comm 2

S. Comm 2.33 (3), (4) and (5)

Ch. Comm 5

S. Comm 5.003 (32m)

S. Comm 5.10 (1) (a)

S. Comm 5.80 (1) (b), (2) (c), (d), (4), and (5)

S. Comm 5.81 (2) (c) and (4)

Ch. Comm 26 (entire chapter)

Ch. Comm 47

S. Comm 47.015 (24) and (32)

S. Comm 47.02 (4)

S. Comm 47.025 (1) (b), (2) to (6)

S. Comm 47.10 (1) (a) and (b)

S. Comm 47.115 (3)

S. Comm 47.12 (1) (intro.), (j), (2) (c) and (4)

S. Comm 47.20

S. Comm 47.30 (1) (intro.), (a) and (b), (2) (a), (b), (h) to (x), (3) to (5)

S. Comm 47.305 (1) (b) and (c)

S. Comm 47.31 (2)

S. Comm 47.32

S. Comm 47.325

S. Comm 47.33

S. Comm 47.335 (3) (c)

S. Comm 47.336

S. Comm 47.337 (2) (a) to (c), (4) and (5)

S. Comm 47.339 (1) (intro.), (2) and (4)

S. Comm 47.34

S. Comm 47.35

S. Comm 47.355 (2) (c), (d), (3) (b)

S. Comm 47.36 (1)

SS. Comm 47.37 to 47.415

S. Comm 47.42 (2) (g) and (3)

Ss. Comm 47.50 to 47.54

Ss. Comm 47.60 to 47.71

Ch. Comm 72 (entire chapter)

Ch. Comm 95 (entire chapter)

Insurance

Ch. Ins 3

S. Ins 3.67 (1) (a), (am), (b) and (e), (4)

Ch. Ins 9

S. Ins 9.01 (3), (3m), (5), (9m), (10m), (12), (13), (14m), and (17) (a) and (c)

S. Ins 9.07 (1)

S. Ins 9.20

S. Ins 9.21 (1), (2) (a) and (d)

SS. Ins 9.25 to 9.37

S. Ins 9.38 (4) (intro.) and (c)

S. Ins 9.39 (4)

S. Ins 9.40 (1) (c), (2), (3), (4), (6), (7) and (8)

S. Ins 9.41

S. Ins 9.42 (1) to (3), (4) (a) and (e), (5) (a), (6) (a) and (9)

Ch. Ins 18

S. Ins 18.03 (2) (c)

Natural Resources

Ch. NR 24

S. NR 24.09 (1) (a) and (b)

Ch. NR 58 (title)

S. NR 58.01

S. NR 58.02

S. NR 58.03 (8)

S. NR 58.04

S. NR 58.05 (1) (g)

S. NR 58.06 (1), (4) to (7)

S. NR 58.07

S. NR 58.08 (3) to (6)

S. NR 58.09 (1) to (5)

S. NR 58.10 (1) to (5)

S. NR 58.11 (1), (2) (c) to (e)

S. NR 58.14 (2)

S. NR 58.15 (1)

SS. NR 58.20 to 58.38

Ch. NR 64

S. NR 64.03 (10)

S. NR 64.07 (3) and (4)

Ch. NR 400

S. NR 400.03 (4) (js)

Ch. NR 460

S. NR 460.02 (1), (6), (8), (10), (15) (b), (18), (24c), (24w), (24y), (25), (31g), (32) (intro.), (34) (a), (b), (36), (37g), (37r), (38g), and (40)

S. NR 460.03 (2) (n) to (p), (3) (e) and (f)

S. NR 460.04 (1) (a)

S. NR 460.05 (2) (a), (c), (d), (f), (3) (b), (c), (3m), (4), (5), (6) (a), (7) (c), (e), (j), and (L)

S. NR 460.06 (1) (b), (c), (4) (b), (5) (a), (b), and (c)

S. NR 460.07 (2) (a), (b), (3) (a), (b), (f), (6) (c), (d), and (7) (a)

S. NR 460.08 (2) (b) to (e), and (8) (b)
 S. NR 460.09 (2) (b), (c), (4) (a), (e), and (5) (c)
 S. NR 460.11

Ch. NR 463

S. NR 463.02 (intro.), (8), (8m), (12m), (22m), (27),
 and (30)
 S. NR 463.04 (3), (4) (b), (5) (a) and (c)
 S. NR 463.05 (1) (d), (2) (a) and (c)
 S. NR 463.06 (1) (c), (e) and (3) (b)
 S. NR 463.07 (1), (5) (a), (b) and (7) (b)
 S. NR 463.09 (5) (e) and (6)
 S. NR 463.103
 S. NR 463.106
 S. NR 463.11
 S. NR 463.12

Ch. NR 465

S. NR 465.26 (2) (a)
 Subchapters IV and V (ss. NR 465.31 to 465.48)

Ch. NR 466

S. NR 466.09 (1) (b)

Ch. NR 484

S. NR 484.03 (intro.)
 S. NR 484.04 (intro.), (9), (24), (24g) and (24r)
 S. NR 484.10 (intro.), (22), (39e), (55c), (55i), (55L,
 (55m) and (56m)
 S. NR 484.11 (intro.) and (1)

Public Service Commission**Ch. PSC 186 (entire chapter)****Transportation****Ch. Trans 200**

S. Trans 200.06 (7) (b) and (c)

Ch. Trans 276

S. Trans 276.07 (6)

Editorial corrections

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

Commerce**Ch. Comm 5**

S. Comm 5.32 (1) (a)

Ch. Comm 47

S. Comm 47.02 (1) (e) and (3) (h)

Natural Resources**Ch. NR 503**

S. NR 503.09 (2) (i)

Ch. NR 512

S. NR 512.09 (6) (c)

Ch. NR 543

S. NR 543.02

S. NR 543.04 (3) (b)

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
HFS 119.01	149.143 (2) (a) 2., 3., 4., (3) (a) and (4)	149.143 (effective 7-1-06)
HFS 119.15 (1)	149.143 (2) (a) 3. and 4.	149.143 (effective 7-1-06)
HFS 119.15 (3)	149.142 (1) (a)	149.142 (1) (effective 7-1-06)
NR 8.04 (2) (a)	29.191 (4) 29.191 (5)	29.2285 (1) 29.2285 (2)
NR 20.03 (28m)	29.191 (4)	29.2285 (1)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 137. Relating to the use of evaluation committees in state procurement processes.

Executive Order 138. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff in remembrance of Coretta Scott King.

Executive Order 139. Relating to a special session of the Legislature.

Executive Order 140. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for former United States Senator William Proxmire.

Public notices

Workforce Development 2006 Child Care Copay Schedule – Effective February 26, 2006

Child Care Co-Payment Schedule for Licensed and Certified Care																			
Look down the column of the appropriate family size until you find the gross family monthly income level at or just less than the family income. Look to the right to find the appropriate co-payment by family and type of care.																			
	[Gross Monthly Family Income] FAMILY SIZE									Weekly Licensed Care Co-Pay Amount Children In Subsidized Care					Weekly Certified Care Co-Pay Amount Children In Subsidized Care				
	2	3	4	5	6	7	8	9	10 or more	1	2	3	4	5 or more	1	2	3	4	5 or more
70% FPL	\$770	\$968	\$1167	\$1365	\$1563	\$1762	\$1960	\$2158	\$2357	5	8	13	17	22	2	6	10	12	16
75% FPL	825	1038	1250	1463	1675	1888	2100	2313	2525	5	11	16	20	25	4	7	11	15	17
80% FPL	880	1107	1333	1560	1787	2013	2240	2467	2693	7	12	17	23	28	6	8	12	17	20
85% FPL	935	1176	1417	1658	1898	2139	2380	2621	2862	11	16	20	25	33	7	11	14	18	22
90% FPL	990	1245	1500	1755	2010	2265	2520	2775	3030	12	19	25	31	37	9	13	17	22	27
95% FPL	1045	1314	1583	1853	2122	2391	2660	2929	3198	16	23	30	37	43	11	16	20	25	32
100% FPL	1100	1383	1667	1950	2233	2517	2800	3083	3367	17	25	33	41	48	12	17	22	28	34
105% FPL	1155	1453	1750	2048	2345	2643	2940	3238	3535	20	28	36	43	51	15	19	24	30	37
110% FPL	1210	1522	1833	2145	2457	2768	3080	3392	3703	23	31	38	46	53	16	22	26	31	38
115% FPL	1265	1591	1917	2243	2568	2894	3220	3546	3872	25	33	41	49	56	18	23	29	34	40
120% FPL	1320	1660	2000	2340	2680	3020	3360	3700	4040	28	36	43	51	59	19	25	30	36	41
125% FPL	1375	1729	2083	2438	2792	3146	3500	3854	4208	31	39	46	54	63	22	27	33	37	44
130% FPL	1430	1798	2167	2535	2903	3272	3640	4008	4377	33	42	51	60	69	23	29	36	41	48
135% FPL	1485	1868	2250	2633	3015	3398	3780	4163	4545	36	46	55	66	75	25	31	39	46	52
140% FPL	1540	1937	2333	2730	3127	3523	3920	4317	4713	38	48	59	69	80	27	34	41	48	55
145% FPL	1595	2006	2417	2828	3238	3649	4060	4471	4882	41	51	60	71	81	29	36	42	51	56
150% FPL	1650	2075	2500	2925	3350	3775	4200	4625	5050	43	53	64	73	85	30	37	45	52	59
155% FPL	1705	2144	2583	3023	3462	3901	4340	4779	5218	46	55	66	76	87	31	40	46	53	60
160% FPL	1760	2213	2667	3120	3573	4027	4480	4933	5387	48	59	69	80	90	34	41	48	56	63
165% FPL	1815	2283	2750	3218	3685	4153	4620	5088	5555	49	61	71	81	92	35	42	51	57	64
170% FPL	1870	2352	2833	3315	3797	4278	4760	5242	5723	50	64	74	85	94	36	45	52	59	65
175% FPL	1925	2421	2917	3413	3908	4404	4900	5396	5892	52	65	76	87	96	37	46	53	60	67
180% FPL	1980	2490	3000	3510	4020	4530	5040	5550	6060	54	68	80	90	99	38	48	56	63	70
185% FPL	2035	2559	3083	3608	4132	4656	5180	5704	6228	55	70	82	91	102	39	51	57	64	71
<<<-----185% of the Federal Poverty Level----->>>																			
190% FPL	2090	2628	3167	3705	4243	4782	5320	5858	6397	56	71	85	94	104	40	52	59	65	74
195% FPL	2145	2698	3250	3803	4355	4908	5460	6013	6565	59	73	87	96	107	41	53	60	68	75
200% FPL	2200	2767	3333	3900	4467	5033	5600	6167	6733	60	75	89	99	109	42	55	63	70	76
<<<-----+200% of the Federal Poverty Level----->>>																			

Note: The copayment rate for teen parents who are not Learnfare participants is minimum copay and is found by selecting the lowest income line (70%) FPL and then finding the copayment listed, under either licensed care or certified care, for the appropriate number of children. Parents who have left a W-2 employment position for unsubsidized work also qualify for the minimum copay for one month. Families with children who are authorized for 20 hours or less are subject to one half of their share of the family copay listed above for those children. No copay is required for parents who participate in Learnfare or Food Stamp Employment and Training. Foster parents do not have a copayment responsibility for the foster children in their care. Kinship care relatives caring for a child under a court order do not have a copayment responsibility. Kinship care relatives caring for a child without a court order pay the minimum copay, unless they are receiving a child care subsidy for another child who is subject to a copayment greater than the minimum copay.

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