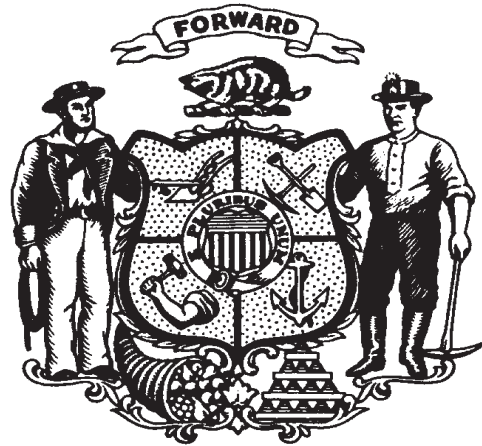


Wisconsin Administrative Register

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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.

Commerce

(Financial Assistance for Businesses & Communities, Chs. Comm 105—)

Rules were adopted creating **ch. Comm 129**, relating to technology commercialization programs.

Finding of Emergency

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

1. In accordance with sections 560.205 (3) and 560.275 (7), Stats., the department has the responsibility to promulgate rules to administer an Early Stage Business Investment Program and a Technology Commercialization Grant and Loan Program.

2. Section 560.205 (1) and (2), Stats., makes available certain tax benefits for investors in early stage businesses for tax years beginning after December 31, 2004.

3. Section 560.275 (2), Stats., makes available grant and loan program funds appropriated as of July 1, 2004.

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has historically ranked low in the development of new start-ups and in the attraction of risk capital.

5. The department recognizes that promulgating this emergency rule will alleviate the need for investors to defer investments into qualified new businesses while they wait for the promulgation of the permanent rule. Such a circumstance would effectively halt new investment into early stage high tech companies in Wisconsin, a result that would be contrary to the intent of the legislation.

6. In addition, the department recognizes that without promulgating this emergency rule, the department would likely be unable to fully utilize the funds made available to benefit early stage businesses.

7. Finally, the department recognizes that without promulgating this emergency rule, Wisconsin's early stage businesses would be unable to compete fairly to attract much-needed risk capital and federal research dollars to Wisconsin.

Publication Date:	December 2, 2004
Effective Date:	December 2, 2004
Expiration Date:	May 1, 2005
Hearing Date:	January 12, 2005
Extension Through:	June 29, 2005

Elections Board

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

Finding of Emergency

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

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

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

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

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

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

Insurance

Rules were adopted creating **ch. Ins 14**, Wis. Adm. Code, relating to vehicle protection plans.

Finding of Emergency

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

The statute requiring these changes is effective on December 1, 2004. The length of the rulemaking process has not permitted OCI to finish promulgating the rule. This emergency implementation will allow vehicle protection businesses to start getting registered and selling their products. Many of these products are promoted as safety related such as glass etching, the "club," vehicle entry warning sirens and others. Consumer would then be able obtain the promoted safety benefits of these products as soon as the legislature permitted them.

Publication Date: December 10, 2004
Effective Date: December 10, 2004
Expiration Date: May 9, 2005
Hearing Date: January 11, 2005
Extension Through: July 7, 2005

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

Rules were adopted revising **s. NR 20.33 (5) (c)**, relating to the closure of sturgeon spearing on the Lake Winnebago system.

Finding of emergency

The Department of Natural Resources find that an emergency exists and a rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

During the 2004 sturgeon spearing on Lake Winnebago, spearmen harvested a record 1,303 sturgeon on opening day, exceeding the season harvest cap for adult female sturgeon. The spearing season lasted only two days and resulted in an overall harvest of 1,854 sturgeon. The total harvest included 822 males, 348 juvenile females, and 684 adult females, 509 of which came on opening day, exceeding the harvest cap of 425. Population reduction due to overharvest of lake sturgeon could take years to reverse given the life history of lake sturgeon.

Publication Date: February 2, 2005
Effective Date: February 2, 2005
Expiration Date: July 2, 2005
Hearing Date: February 23, 2005

Natural Resources (2) (Environmental Protection – Water Regulation, Chs. NR 300—)

1. 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.

2. Rules adopted creating **ch. NR 328, subch. III**, relating to shore erosion control on rivers and streams.

Finding of emergency

SECTION 2. FINDING. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit.

To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2005 construction season, with specific standards for shore erosion control structures on rivers and streams.

Publication Date: April 8, 2005
Effective Date: May 1, 2005
Expiration Date: September 28, 2005
Hearing Date: May 16, 2005

Public Instruction

Rules adopted repealing **s. PI 24.02 (3)** and repealing and recreating **subchapter II of chapter PI 24**, relating to the payment of state aid under the student achievement guarantee in education (SAGE) program.

Finding of emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Section 118.43 (6m), Stats., requires the department to promulgate rules to implement and administer the payment of state aid under s. 118.43 (6), Stats. Because the next deadline for pupil reporting requirements occurs in January 2005, the rule must take effect as soon as possible to give eligible schools enough notice to meet such requirements.

Publication Date: December 20, 2004
Effective Date: December 20, 2004
Expiration Date: May 19, 2005
Hearing Date: January 14, 2005

Regulation and Licensing

Rules adopted creating **ch. RL 150 to 154**, relating to the licensure and regulation of athlete agents.

Exemption from finding of emergency

SECTION 4. Nonstatutory provisions of 2003 Wisconsin Act 150 states in part:

(2) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.9935 of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide findings of emergency for rules promulgated under this subsection.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: s. 227.11 (2), Stats., and ss. 440.99, 440.991, 440.915, 440.992, 440.9925, 440.993, 440.9935, 440.994, 440.9945, 440.995, 440.9955, 440.996, 440.9975, 440.998 and 440.999, Stats., as created by 2003 Wisconsin Act 150.

Statutes interpreted: Chapter 440, Subchapter XII.

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 150. This Act grants the Department of Regulation and Licensing the authority to create rules relating to the licensure and regulation of athlete agents.

In this order adopting emergency rules the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. These rules are as a result of 2003 Wisconsin Act 150 which enacted the Uniform Athlete Agents Act. Chapters RL 150 to 154 establish requirements and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for temporary and permanent registration, renewal requirements, and prohibited conduct for athlete agents.

SECTION 1 creates Chapter RL 150 which sets forth the statutory authority and the definitions for the proposed rules.

SECTION 2 creates Chapter RL 151 which sets forth the application process and requirements for an initial certificate of registration, including the application process for a temporary certificate of registration.

SECTION 3 creates Chapter RL 152 which sets forth the application process and requirements for renewal of a certificate of registration.

SECTION 4 creates Chapter RL 153 which outlines the standards of practice which apply to a credential holder.

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

Publication Date: October 5, 2004
Effective Date: October 5, 2004
Expiration Date: March 4, 2005
Hearing Date: November 12, 2004
Extension Through: July 1, 2005

Revenue

Rules adopted revising s. **Tax 18.07**, relating to the assessment of agricultural land.

Finding of emergency

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

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5-year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium-sized, 1-year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three-year lag in determining the 5-year average. Thus, the 2003 use value is based on the 5-year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5-year average interest rate for the 1998–2002 period. The 2005 use value is to be based on the 5-year average corn price, cost and yield for the 1998–2002 period, and the capitalization rate is to be based on the 2000–2004 period.

The data for the 1998–2002 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1998–2002 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2005.

Publication Date: December 29, 2004
Effective Date: December 29, 2004
Expiration Date: May 28, 2005
Hearing Date: May 26, 2005

Transportation

Rules adopted creating ss. **Trans 254.12 (6) and 255.12 (17)**, relating to the issuance of single and multiple trip oversize and overweight permits.

Finding of emergency

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public safety and welfare. Although the Department will pursue promulgation of this rule through normal procedure, the Department finds an emergency exists for the following reasons: (1) current administrative rules have size limitations that prevent the use of the Milwaukee

Expressway for vehicles or load or dimensions greater than 11 feet in width, 13½ feet in height, or 100 feet in length on the Milwaukee Freeway; (2) structural beams and girders that exceed the above transport limits are currently being manufactured for the initial stages of construction of the Marquette Interchange Reconstruction project; and (3) these steel and concrete bridge components must be delivered to the construction site beginning in February 2005 to keep the project on time and on-budget. Routing these oversized loads on the Milwaukee surface street system may not be possible due to the load lengths and the turning radiuses required. If the street geometry does allow the movement, these street systems may not be designed to carry the weight of such loads. Doing so will result in unsafe and possible permanent damage to the surface street system. Without this rule amendment, the other alternative is to reduce the size of these structural members (beams and girders) to meet these existing size limitations which will significantly increase the total projects costs and the time required to complete the project because of the necessary redesign.

Publication Date: February 1, 2005
Effective Date: February 1, 2005
Expiration Date: July 1, 2005
Hearing Date: March 1, 2005

Workforce Development (2) (Labor Standards, Chs. DWD 270–279)

1. 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 the attached 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.

2. Rules adopted revising **ch. DWD 272**, relating to increasing Wisconsin’s minimum wages.

Finding of emergency

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

The federal minimum wage has fallen to its lowest inflation-adjusted value of all time. When wages are so low that workers and their families can’t afford their most basic needs, society, particularly taxpayers, bears tremendous costs due to poverty-related educational failure, workforce failure, and citizenship failure. An adequate minimum wage supports workers, helps strengthen families and communities, and promotes the state’s overall economic and fiscal health.

Publication Date: May 25, 2005
Effective Date: June 1, 2005
Expiration Date: October 29, 2005
Hearing Date: June 14, 2005
[See Notice This Register]

Scope statements

Dentistry Examining Board

Subject

Training requirements for dental hygienists applying local anesthesia by applicator.

Objective of the rule. This proposed rule would exempt subgingival, local anesthetics administered by applicator from the educational program requirements of Ch. DE 7, which currently apply to dental hygienists who administer local anesthesia by injection. With the exception, the 10 hours of didactic and 11 hours of clinical education would not be required if the dental hygienist limits administration of local anesthetics to applicators.

Policy analysis

A new type of subgingival, local anesthesia applied by applicator, not by injection, is available and is being marketed in Wisconsin. The current rule concerning certification of dental hygienists to administer local anesthesia does not explicitly contemplate local anesthetics administered in this manner, so a revision is sought to clarify educational requirements for dental hygienists who apply local, subgingival anesthesia by applicator.

In terms of its application, some states consider local anesthetics applied by applicator as they do medicaments applied in periodontal pockets, similar to certain antibiotics. Dental hygienists may apply such medicaments under supervision. Others consider it a topical anesthetic. In these instances, no rule-making may be required.

Comparison with federal requirements

There is no existing or proposed federal regulation for summary and comparison.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 447.02 (2) (e), Stats.

Staff time required

200 hours.

Financial Institutions – Banking

Subject

Sections DFI—Bkg 80.85 (1), (2) and (5) relating to prohibited bases for discriminating in the extension of consumer credit.

Policy analysis

The objective of the rule is to amend ss. DFI—Bkg 80.85 (1) and (2), and create DFI—Bkg 80.85 (5). The purpose of this rule is to expand the prohibited bases for discriminating in the extension of consumer credit. Currently the Wisconsin Consumer Act makes discrimination on the basis of sex or marital status in the granting or extension of credit an unconscionable credit practice. The rule makes discrimination on the basis of a prohibited basis in the granting or extension of credit an unconscionable credit practice. The rule defines prohibited basis to include the already existing bases as well as additional bases.

Statutory authority

Sections 426.108 and 227.11 (2), Stats.

Staff time required

100 hours.

Entities affected by the rule

Credit providers.

Federal regulation addressing the activities

12 CFR 202.

Health and Family Services

Subject

The Department proposes to repeal sections HFS 61.91 to 61.98 and create ch. HFS 35, rules relating to outpatient mental health clinics, and to revise sections HFS 105.13 (2) and 107.22 rules relating to outpatient mental health services and certification of psychotherapy providers under Medical Assistance (MA).

Policy analysis

Sections HFS 61.91 to 61.98 address procedures for certification; required personnel; service requirements; and denial, involuntary termination or suspension of certification for outpatient mental health clinics; clinical supervision, collaboration, and consultation; written authorization of psychotherapy by a physician; initial assessments of clients and development of treatment plans; progress notes; discharge summaries; and record keeping. In addition to these requirements, these rules require clinics to ensure continuity of care for persons with mental disorders or alcohol and drug abuse problems by rendering or arranging for the provision of specified services, including but not limited to, residential facility placement; aftercare for continuing treatment in the community to help the patient maintain and improve adjustment following a period of treatment in a facility; and emergency care. Section HFS 105.22 provides the requirements for MA certification of psychotherapy providers, staffing of outpatient facilities, and MA reimbursement for outpatient psychotherapy services. Section HFS 107.13 (2) details the Medicaid requirements for covered services for outpatient psychotherapy services, prior authorization and other limits and procedures, and non-covered services under MA.

Sections HFS 61.91 to 61.98 have been revised several times over the years, but have not been comprehensively reviewed and rewritten since May 1981. Section HFS 105.22, was last revised in 1991, and s. HFS 107.13 (2), which was last revised in 2004, but not comprehensively reviewed and rewritten since March 1986. Several changes affecting the needs of persons who seek outpatient mental health services and the operation of the outpatient mental health clinics have occurred since the referenced rules were last revised. These changes include the passage of 2001 Wisconsin Act 80 dealing with licensure of social workers and other professionals; 1993 Act 138 and N8 dealing with advanced practice nurse prescribers; a shortage of psychiatrists in parts of the state; and research regarding recovery-oriented

treatment. In addition, many professionals and representatives of outpatient mental health clinics indicate that the current rules are burdensome, costly, and do not help to lead to the desired outcomes of persons receiving treatment.

The Department believes that ss. HFS 61.91 to 61.98 need a comprehensive rewrite to address these issues and to incorporate functional changes to the rules made through several statewide variances based on input from providers and professional organizations. In repealing ss. HFS 61.91 to 61.98 and creating ch. HFS 35 to replace these sections, the Department intends to address several areas including, allowing clinics to alternatively meet, the standards of one of several national accrediting bodies, such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); establishing a detailed certification process similar in both organization and content to the certification process set out in rules for other community mental health certified programs, which includes actions taken against certified programs and permits provisional certification pending correction of minor deficiencies; adding a requirement for a criminal records check on prospective new employees; modifying the requirements for professional staffing of a clinic; changing requirements of staff supervision to a quality improvement process; adding training requirements for clinic staff; adding or expanding rule language on admission, assessment, consent for treatment, treatment planning and medications administration; and adding sections on client rights and obtaining information about client satisfaction with treatment.

Proposed changes to ss. HFS 105.22 and 107.13 (2), will ensure that the language in these rules is consistent with the language in the proposed ch. HFS 35 and will reflect current practices and needs, such as, indexing the number of visits and dollar amounts before a prior authorization is required.

The Department believes that the proposed changes will result in rules that are less burdensome to mental health providers and improved services to mental health consumers.

Statutory authority

The Department's authority to repeal and create these rules is found in ss. 49.45 (10), 51.42 (7) (b) and 227.11 (2), Stats.

Staff time required

Estimated hours of staff time to draft the rules – 200 staff hours. An advisory committee will provide opportunities for input from mental health consumers, mental health advocates, professional organizations, accreditation organizations (e.g., Joint Commission on Accreditation of Healthcare Organizations, Council on Accreditation), and providers to the drafting process.

Entities affected by the rule

Entities that may be affected by the proposed rules are public and private outpatient mental health clinics certified by the Department of Health and Family Services.

Comparison with federal requirements

42 CFR pt. 440.130 permits use of Medicaid funds to provide diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level. There are no other known proposed or existing federal regulations pertinent to outpatient mental health clinics.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board – Social Worker Section

Subject

Internship requirements.

Objective of the rule. To create and clarify a specific term of hours for the internship requirement for the social work training certificate, and to more clearly define what constitutes a human services internship.

Policy analysis

Currently, the Social Worker Section rules specify no hourly requirements for the required human services internship. Under the current rules, the board may reject a social worker training certificate applicant based on what they deem as an insufficient length of internship. Therefore, the Social Worker Section is modifying its rules to specify that social worker training certificate applicants who are pursuing their required human services experience through internship must engage in at least 400 hours of supervised practice. The section also intends to better clarify what constitutes a human services internship.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 457.03 and 457.22, Wis. Stats.

Comparison with federal requirements

There is no existing or pending federal regulation relating to internship requirements for social worker training certificate applicants.

Staff time required

200 hours.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board – Marriage and Family Therapist Section

Subject

Continuing education requirements.

Objective of the rule. To create greater uniformity among the Marriage and Family Therapist, Professional Counselor and Social Worker sections with respect to continuing education, including the criteria and acceptance of various programs.

Policy analysis

The Marriage and Family Therapist, Professional Counselor and Social Worker Sections all require 30 credit hours of continuing education. The Marriage and Family Therapist Section is modifying its rules to permit continuing education credits to be granted for additional items, including, but not limited to, teaching academic courses, publishing professional books, and presenting at national conferences. In addition, these modifications will permit continuing education credit to be granted to those credential holders who take courses that are approved by the Professional Counselor Section or by the Social Worker Section. Finally, the revisions will also permit continuing education hours to be granted for courses that are either approved or sponsored by the American Psychology Association.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 457.03 and 457.22, Wis. Stats.

Comparison with federal requirements

There is no existing or proposed federal legislation.

Staff time required

200 hours.

**Marriage and Family Therapy, Professional
Counseling and Social Work Examining Board –
Social Worker Section**

Subject

Continuing education requirements.

Objective of the rule. To create greater uniformity among the marriage and family therapist, professional counselor and social worker sections with respect to continuing education, including the criteria and acceptance of various programs.

Policy analysis

The Marriage and Family Therapist, Professional Counselor and Social Worker Sections all require 30 credit hours of continuing education. The Social Worker Section is modifying its rules to permit continuing education credits to be granted for additional items, including, but not limited to, teaching academic courses, publishing professional books, and presenting at national conferences. In addition, these modifications will permit continuing education credit to be granted to those credential holders who take courses that are approved by the Marriage and Family Therapist Section or by the Professional Counselor Section. Finally, the revisions will also permit continuing education hours to be granted for courses that are either approved or sponsored by the American Psychology Association.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 457.03 and 457.22, Wis. Stats.

Comparison with federal requirements

There is no existing or proposed federal legislation.

Staff time required

200 hours.

**Marriage and Family Therapy, Professional
Counseling and Social Work Examining Board –
Professional Counselor Section**

Subject

Continuing education requirements.

Objective of the rule. To create greater uniformity among the Marriage and Family Therapist, Professional Counselor and Social Worker Sections with respect to continuing education, including the criteria and acceptance of various programs.

Policy analysis

The Marriage and Family Therapist, Professional Counselor and Social Worker Sections all require 30 credit hours of continuing education. The Professional Counselor Section is modifying its rules to permit continuing education credits to be granted for additional items, including, but not limited to, teaching academic courses, publishing professional books, and presenting at national conferences.

In addition, these modifications will permit continuing education credit to be granted to those credential holders who take courses that are approved by the Marriage and Family Therapist Section or by the Social Worker Section. Finally, the revisions will also permit continuing education hours to be granted for courses that are either approved or sponsored by the American Psychology Association.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 457.03 and 457.22, Wis. Stats.

Comparison with federal requirements

There is no existing or proposed federal regulation.

Staff time required

200 hours.

Natural Resources

Subject

Objective of the rule. The ch. NR 700 rule series governs site investigations and cleanup activities. Many of the revisions being proposed will update the sampling and laboratory requirements necessary for a complete site investigation and verification that a cleanup is working. Specific changes suggested are eliminating the requirement for analysis of gasoline range organics (GRO) and diesel range organics (DRO), eliminating the soil standard for GRO/DRO; revising reporting limits to the detection limit for all compounds; removing product names from sample storage devices and allowing for alternative storage devices; allowing for the use of preservation method SW-846 5035; updating ch. NR 720, Soil Cleanup Standards, and ch. NR 746, Risk Screening and Closure Criteria for Petroleum Product Contaminated Sites and Agency Roles and Responsibilities, to be consistent with ch. NR 726 requirements regarding inclusion of sites exceeding soil standards on the GIS Registry of Closed Remediation Systems, updating both statutory and rule citations and revising a standard format for site investigation reports to allow for more efficient review.

Additional changes to the proposal include requiring persons conducting a cleanup to notify property owners regarding residual contaminated soil, to be consistent with the notification provided for residual groundwater contamination; incorporating the authority granted by modifications to s. 292.94 regarding fees related to enforcement action; specifying fees in NR 749, Fees for Providing Assistance; Remediation and Redevelopment Program, for review of changes or deletions to the GIS Registry, revisions to NR 419, Control of Organic Compound Emissions, regarding elimination of the form for reporting treatment and disposal of petroleum contaminated soil; and revisions to NR 706, Hazardous Substance Discharge Notification and Source Confirmation Requirements, to mirror the statutory exemptions for law enforcement officers and members of a fire department.

Policy analysis

GRO/DRO was originally used as a screening tool during the initial stages of a site investigation due to a lower cost. Compound specific levels are now obtainable at a similar price as for GRO, and are still needed for site characterization, determination of remedial options and for site closure. There is no longer a need to use DRO/GRO as a screening tool. There is also no corresponding groundwater standard for GRO/DRO.

Changing the reporting limit to be equal to the detection limit for all compounds will also be a change in policy. Doing so will provide more accurate data in the reporting of releases and in defining the effectiveness of cleanup actions. Allowing preservation method SW-846 5035 will change policy, as currently methanol preservation of soil samples for VOC analysis is required. Changing this method will result in a more representative idea of site conditions, and will reduce the use of hazardous materials. An approval process for allowing the use of storage devices is proposed instead of listing acceptable devices in rule, so as to allow a greater range of devices as they come onto the market. The change is needed to remove product names, which provides a competitive disadvantage to other acceptable methods.

Currently, sites closing under NR 746 are exempted from NR 720, Soil Standards. Revising the rules to require that these sites, while closing under NR 746, must also be included on the GIS Registry for sites with residual soil contamination will ensure consistency with other sites with residual soil contamination closing under NR 726. As very few sites have closed under NR 746, we do not expect this change to be controversial. Including a requirement to notify those who will have residual soil contamination left on their property after case closure is consistent with the notification requirements for residual groundwater contamination.

Statutory authority

ss. 227.11 (2) (a), 281.19 (1), 285.11 (1), 285.17, 289.05 (1), 289.06, 291.05 (6) (f), 292.11 and 292.31, Wis. Stats.

Staff time required

The final rule should be completed within 12 months of the initiation of rule changes. The initial rule order package is expected to be prepared by Fall of 2005. Working with the affected parties in drafting the rules should expedite the rule-making process.

Comparison with federal requirements

There are no federal regulations comparable to the rule changes being proposed.

Entities affected by the rule

The entities affected by these rule changes include parties responsible for conducting cleanups under the Spill Law, environmental consulting firms conducting the investigations and cleanups and laboratories conducting the analysis of samples submitted to them.

Transportation

Subject

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

STH 175 from CTH P S. of Theresa to STH 60

STH 50 from IH 43 to USH 12

Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276

is an existing rule set up for long truck routes. The Department has received requests from Kreilkamp Trucking, Inc., in Allenton, WI, and Sutton Transport, Inc., in Weston, WI, to add these highway segments.

Comparison with federal requirements

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

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

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

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

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

Entities affected by the rule

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

Statutory authority

s. 348.07(4), Stats.

Staff time required

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

Transportation**Subject**

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

STH 57 from Sturgeon Bay to Sister Bay

Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a request from Representative Garey Bies, on behalf of businesses of the 1st Assembly District, to add this highway segment.

Comparison with federal requirements

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

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

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

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

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

Entities affected by the rule

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

Statutory authority

s. 348.07(4), Stats.

Staff time required

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

Workforce Development**Subject**

Chapter DWD 272, Minimum wages.

Policy analysis

Pursuant to ss. 103.005 (5) (a) and 104.04, Stats., DWD created a Minimum Wage Advisory Council in January 2004. The Council collected and analyzed data relating to the issue of the State of Wisconsin's minimum wage rates, determined the adequacy of the current minimum wage rates, and made recommendations to the Department on potential adjustments to the minimum wage rates.

The Minimum Wage Advisory Council recommended an increase in the general minimum wage rate to \$5.70 on October 1, 2004, and to \$6.50 on October 1, 2005, and various increases to special wage rates. The Department incorporated the Minimum Wage Advisory Council's recommendations in the proposed rule CR04-036. Legislative committees objected to that rule.

The Department proposes a new rule to increase the general minimum wage rate to \$5.70 when the rule is effective and to increase it to \$6.50 on June 1, 2006; to increase special

rates for opportunity employees, agricultural workers, camp counselors, and golf caddies; and to create a special rate for minors on these new effective dates.

Entities affected by the rule

Employers and employees

Comparison with federal requirements

The federal general minimum wage rate is \$5.15 per hour and the opportunity rate is \$4.25 per hour for employees under

20 years old for the first 90 days of employment. There are no special rates for minors, agricultural workers, camp counselors, or golf caddies.

Statutory authority

Sections 103.005 (1), 104.04, 104.045, 104.07, and 227.11, Stats.

Staff time required

150 hours.

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On May 12, 2005, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

Statutory authority: s. 227.15, Stats. The proposed rule order relates to dairy and food license fees.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 14, 15, 16 and 17.

Contact Information

Tom Leitzke
(608) 224-4711
tom.leitzke@datcp.state.wi.us

Commerce

Rule Submittal Date

On May 5, 2005, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

Statutory authority: s. 227.14 (4m) and 227.17, Stats. The proposed rule order relates to miscellaneous fee schedule changes.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 15, 2005.

Contact Information

Robert DuPont
(608) 266-8984
rdupont@commerce.state.wi.us

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

Rule Submittal Date

On May 12, 2005, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 457.03, Stats.

The proposed rule-making order relates to postgraduate education and field experience for licensure as a clinical social worker.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 29, 2005, at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal, Office of Legal Counsel,
(608) 266-0495.
Pamela.haack@drl.state.wi.us

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

Rule Submittal Date

On May 12, 2005, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 457.03, Stats.

The proposed rule-making order relates to expiration of a temporary credential issued by the Social Worker Section.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 29, 2005, at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495.
Pamela.haack@drl.state.wi.us

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

Rule Submittal Date

On May 12, 2005, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 457.03 (2), Stats.

The proposed rule-making order relates to recordkeeping by marriage and family therapists, professional counselors and social workers.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 2, 2005, at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495. Pamela.haack@drl.state.wi.us

Natural Resources**Rule Submittal Date**

On May 5, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule order relates to miscellaneous structures and dredging in navigable waterways.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 15, 2005.

Contact Information

Mary Ellen Vollbrecht
Bureau of Fisheries Management & Habitat Protection
608-264-8554

Natural Resources**Rule Submittal Date**

On May 12, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule order relates to ch. NR 465, national emission standards for hazardous air pollutants for surface coating of plastic parts and products and miscellaneous metal parts and products.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 21, 2005.

Contact Information

Eric Mosher
Bureau of Air Management
608-266-3010

Natural Resources**Rule Submittal Date**

On May 12, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule order relates to chs. NR 460 and 463, incorporation of federal amendments in National Emission Standards for Hazardous Air Pollutants.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 21, 2005.

Contact Information

Eric Mosher
Bureau of Air Management
608-266-3010

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 05-044]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) issues dairy and food licenses. DATCP announces that it will hold a public hearing on a rule related to dairy and food license fees under chs. ATCP 59, 60, 70, 71, 75, 77, 80, 81, 82, and 85, Wis. Adm. Codes.

DATCP will hold public hearings on June 14, June 15, June 16 and one by videoconference on June 17, 2005, at the places shown below. DATCP invites the public to attend the hearing at these locations and comment on the proposed rule. Following the public hearing date, the hearing record will remain open until July 1, 2005, for additional written comments. Comments may be sent by e-mail to: hearingcomments@datcp.state.wi.us

This proposed rule is posted at on the Wisconsin Legislative Council web site at http://www.legis.state.wi.us/lc/adm_rules.htm. You may also obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4700 or e-mail kathy.porter@datcp.state.wi.us. Copies will also be available at the public hearing.

Wisconsin Department Agriculture, Trade, and Consumer Protection's small business regulatory coordinator is Keeley Moll. She can be contacted at the following address: Keeley Moll, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5039, e-mail keeley.moll@datcp.state.wi.us

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Friday, June 3, 2005 by writing to Debbie Mazanec, P.O. Box 8911, Madison WI 53708-8911, telephone (608) 224-4712, e-mail: debbie.mazanec@datcp.state.wi.us or by telephoning the message relay system (TTY) at (608) 266-4399 to forward your call to the department at (608) 224-5058. Handicap access is available at all locations for the hearings.

Four hearings are scheduled at the following Dates, Times and Locations:

Tuesday June 14, 2005

11:00 a.m. to 1:00 p.m.

Eau Claire

Eau Claire Division of Food Safety Area Office

Conference Room

3610 Oakwood Hills Parkway

Eau Claire, WI 54701

Wednesday June 15, 2005

11:00 a.m. to 1:00 p.m.

Appleton

Fox Valley Technical College
Room B126
1825 N. Bluemound Drive
Appleton, WI 54912

Thursday June 16, 2005

11:00 a.m. to 1:00 p.m.

Waukesha

Waukesha State Office Building

Department of Transportation Offices

Room 247

141 NW Barstow St.

Waukesha, WI 53188

Video Conference Hearing

June 17, 2005

11:00 a.m. 1:00 p.m.

At the following sites:

Main Broadcast Center

Madison

UW Pyle Center

Room 227

702 Langdon Street

Madison, WI 53706

Green Bay

Green Bay State Office Building

Room 618

200 N. Jefferson St.

Green Bay, WI 54301

Monroe

Monroe High School

Distance Learning Lab – B01

Use Gymnasium Entrance

1600 26th St

Monroe, WI 53566

La Crosse

La Crosse State Office Building

Dept of Transportation

Room B29

3550 Mormon Coulee Rd.

La Crosse, WI 54601

Wausau

UW Marathon County –Wausau

Distance Education & Instructional Technology

Room 218

518 South 7th Avenue

Wausau, WI 54401

Background Summary

This rule increases current license and reinspection fees for milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water-testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders. This rule increases fees beginning in 2006.

This rule also provides for annual license fee adjustments (up or down) beginning in 2007, based on the prevailing cash balance in Wisconsin’s food safety program revenue account. Any upward adjustment of fees must be submitted to an industry advisory council and approved by the Board of Agriculture Trade and Consumer Protection. All annual fee adjustments, whether up or down, must be published in the Wisconsin administrative register.

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s dairy and food safety program. The program is funded, in part, by dairy and food license fees. This rule modifies current license fees. It also provides a mechanism and criteria for future license fee adjustments.

Rulemaking Authority

Statutory authority: 93.07 (1), 93.09 (10), 93.12 (7), 97.17 (4), 97.175 (2), 97.20 (2c) (b), (2g) (b), (2n) (b), (2w) and (4), 97.21 (4m) and (6), 97.22 (2) (b), (4) (am) and (8), 97.27 (3m) and (5), 97.29 (3) (am), (cm) and (5), 97.30 (3m) and (5), and 98.146 (4), Stats.

Statutes interpreted: 93.09, 93.12, 97.17, 97.175, 97.20, 97.21, 97.22, 97.27, 97.29, 97.30 and 98.146 (4), Stats.

Rule Content

General

This rule increases current license and reinspection fees for milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders. This rule increases fees beginning in 2006.

This rule also provides for annual license fee adjustments (up or down) beginning in 2007, based on the prevailing cash balance in Wisconsin’s food safety program revenue account. Any upward adjustment of fees must be submitted to an industry advisory council and approved by the Board of Agriculture Trade and Consumer Protection. All annual fee adjustments, whether up or down, must be published in the Wisconsin administrative register.

Initial Fee Increase

DATCP currently licenses certain businesses that produce, process or handle dairy or food products. These businesses must pay license fees and comply with food safety and labeling laws administered by DATCP. License fees pay for part of DATCP’s food safety and labeling program. DATCP may adjust most license fees by rule. This rule increases current license and reinspection fees as follows:

<u>Entity</u>	<u>Current Fee(s)</u>	<u>Proposed Fee(s)</u>
Dairy Farm	\$20 annual license fee (paid by dairy plant operator)	\$24
	\$20 or \$40 reinspection fee (paid by dairy plant operator if reinspection is required)	\$24 or \$48
Dairy Plant	Annual license fee:	

	\$80 for a Basic Plant fee	\$96
	\$580 or \$730 for grade A processing plant (based on size)	\$699 or \$879
	\$330 for grade A receiving station	\$397
	\$80 for grade A transfer station	\$96
	\$80 to \$350 for grade B processing plant (based on size)	\$96 or \$421
	\$80 for grade B receiving station or transfer station	\$96
	Grade A milk procurement fee: 0.6 cent per 100 lbs.	0.0096 cent per 100 lbs.
	Grade B milk procurement fee 0.2 cent per 100 lbs.	No change
	Reinspection fee:	
	\$165 or \$200 for grade A processing plant	\$203 or \$246
	\$180 for grade B processing plant	\$221
	\$100 for grade A receiving station	\$123
	\$40 for grade B receiving station, or grade A or B transfer station	\$48
	Butter and cheese grading fee: 1.09 cents per 100 lbs. of product	No change
Food Processing Plant	\$60–\$525 annual license fee (based on size and type)	\$78 – \$685
	\$200 surcharge for canning	\$261
	\$40–\$350 reinspection fee (based on size and type)	\$49 – \$431
Food Warehouse	\$50–\$200 annual license fee (based on size and type)	\$65–261
	\$75–\$200 reinspection fee (based on size and type)	\$92 – \$246
Milk Distributor	\$50 annual license fee per facility	\$60
	\$20 reinspection fee per facility	\$25
Retail Food Store	\$30–\$450 annual license fee (based on size and type)	\$39–587
	\$60–\$300 reinspection fee (based on size and type)	\$74 – \$369
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	No change
	\$276 annual lab certification fee for each water test	No change
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	No change
	\$50–\$500 initial fee and \$25–\$50	No change

	annual renewal fee for lab performing milk drug residue screening	
change	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	No
Milk Hauler	\$30 annual milk hauler license fee	\$36
	\$30 milk hauler reinspection fee	\$36
	\$40 milk weigher and sampler license fee (2-year license)	\$48
	\$40 milk weigher and sampler reinspection fee	\$48
Buttermaker or Cheesemaker	\$50 license fee (2-year license)	\$60
	\$25 Buttermaker or Cheesemaker reinspection fee	\$30
Butter or Cheese Grader	\$50 license fee (2-year license)	\$60

Annual Fee Adjustment

This rule provides for annual adjustment of the above fees (up or down), based on the prevailing cash balance in Wisconsin's food safety program revenue account on June 30 of each year. Fees are subject to the following adjustments (adjustments take effect on September 1 of each year):

- If the program revenue account balance on June 30 is less than \$400,000, DATCP *may increase* the fees by the percent necessary to increase the account balance by an amount equal to the difference between \$500,000 and the account balance. Before increasing any fee, DATCP must consult with an advisory council of food and dairy processors. The fee increase, if any, must be approved by the DATCP Board and published in the Wisconsin administrative register.
- If the program revenue account balance on June 30 is greater than \$600,000, DATCP *must reduce* the fees by the percent necessary to reduce the account balance by an amount equal to the difference between \$500,000 and the account balance.
- If the program revenue account balance on June 30 is between \$400,000 and \$600,000, the fees *do not change*.

Exemptions

This rule does *not* affect any of the following:

- Fees that DATCP charges for certain services, such as review of food processing equipment plans, or the testing, timing and sealing of pasteurizers. DATCP is authorized to charge fees for such services in order to cover its cost of providing the services. DATCP may adjust these service fees by written notice, in order to keep fees consistent with service costs.
- License fees for milk and cream testers. DATCP is not authorized to adjust these fees by rule. Milk and cream testers currently pay a license fee of \$50 (for a 2-year license) and a reinspection fee of \$25.

This rule exempts ungraded barrel cheese from *current and proposed* cheese grading fees (paid by dairy plants).

Technical Changes

This rule makes certain non-substantive editorial and drafting changes to current rules.

Fiscal Impact

State Fiscal Effect

This rule will increase food safety program revenues by \$1.2 million in 2006. This is necessary to offset a projected deficit in DATCP's food safety program revenue account beginning in FY 2005–06. Fees have not been increased since 1998. DATCP proposes to increase license fees for all food and dairy license categories. A complete fiscal estimate is attached.

Wisconsin's food safety program is funded by a combination of general tax dollars (GPR) and program revenue from license fees (PR). In 1991, license fees funded about 40% of program costs. The 1995–97 biennial budget act reduced GPR funding, so that PR accounted for about 50% of food safety funding. Because of further GPR reductions in recent state budgets, the current PR funding share is about 60%.

Other developments have combined to deplete the food safety PR account balance. Recent state budgets have lapsed a substantial amount of license fee revenue to the state general fund (to help remedy state budget deficits). DATCP has delayed fee increases (none since 1998), but has experienced a modest increase in operating costs. DATCP also incurred a significant increase in PR costs when the legislature transferred the grade A milk certification program to DATCP (without any attached funding). DATCP currently projects a PR account deficit in FY 2005–06.

DATCP is working to deliver effective food safety protection as efficiently as possible. DATCP's bureau of food safety and inspection currently has 88 staff — 12.75 fewer than in 1997 and 15.5 fewer than in 1991. Dairy farm inspection frequency is based on milk quality tests and past inspection performance (DATCP is exploring ways to expand this risk-based approach). DATCP is also working with other agencies to share resources and minimize duplication. For example:

- DATCP works with local government to license and inspect retail food establishments. Twenty-seven local entities license and inspect on behalf of DATCP, compared to 15 in 1997. Local entities now license and inspect 3,800 retail food establishments, and DATCP licenses and inspects the remaining 4,700 establishments.
- DATCP coordinates dairy plant inspection with the United States Department of Agriculture, Agricultural Marketing Service, to avoid duplicate inspection.
- Since 1997, DATCP has worked with the Wisconsin Department of Health and Family Services (DHFS) to eliminate duplicate licensing and inspection of grocery stores, restaurants, and combination grocery-restaurants. DATCP and DHFS have adopted uniform rules for grocery stores and restaurants, to avoid conflicting standards. Standards are based on the federal model food code.

Local Fiscal Effect

DATCP currently provides administrative support to local governments that license and inspect retail food establishments as agents of DATCP. Local governments establish their own license fees, and reimburse DATCP for administrative services costs. The reimbursement amount equals 10% of the license fee that DATCP would charge local license holders, if DATCP licensed them directly. An increase in DATCP license fees therefore increases local reimbursement payments.

In FY 2004, local governments made a total of \$50,005 in reimbursement payments. If DATCP adopts the fee increases proposed in this rule, the reimbursement rate will remain at 10%, but the total reimbursement amount will increase to \$61,505. This rule thus increases local costs by \$11,500.

(statewide total). Local governments can (and likely will) pass this increased cost on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs.

Business Impact

This rule increases current license fees for milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders licensed by DATCP. Many of these licensed entities are “small businesses.”

The proposed fee increase is necessary to prevent a deficit in Wisconsin’s food safety program revenue account. Fees have not been increased since 1998. The proposed fee increase will have an impact on the affected businesses, but not a dramatic impact. DATCP has worked to maintain a fair and equitable license fee schedule.

Fees are based on actual food safety costs related to each license sector. Fees are also based on business size, food product type, and type of food handling operations. Smaller businesses generally pay lower fees than large businesses, and lower-risk businesses generally pay lower fees than higher-risk businesses.

This rule increases food safety license fees, but does not

change other license requirements. This rule requires no additional recordkeeping, and no added professional services to comply. A complete small business analysis (“initial regulatory flexibility analysis”) is attached.

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. Food and dairy businesses must pay required license fees in order to obtain a license from DATCP.

Federal Regulation

There are no existing or proposed federal regulations related to license fees for food and dairy businesses operating in Wisconsin.

Surrounding State Programs

All of the surrounding states charge license fees to food and dairy businesses. License structure and fees vary between states. Differences in license fees may partly reflect differences in general tax dollar support for food and dairy programs in different states.

Minnesota

Minnesota has a license and fee structure that is similar, but not identical to, Wisconsin’s structure:

Dairy Fees – Minnesota	
Grade A pasteurizing plant	\$500
Grade A farm	\$50
Grade A farm reinspection fee	\$45
Manufacturing plant	\$140 per pasteurizer unit
Manufactured farm	\$25
Manufactured farm reinspection fee	\$45
Processor assessment	\$.07 per cwt for fluid milk products sold for retail sale in Minnesota
Farm bulk milk pick-up tanker	\$25
Milk procurement fee	\$.0071 per cwt of raw milk purchased

Food Fees – Minnesota	
Retail food handler	\$50–\$2,001 based on sales volume
Wholesale food handler	\$57–\$1,502 based on sales volume
Food broker	\$150
Wholesale food processor or manufacturer	\$169–\$2,571 based on sales volume

Michigan

Michigan has a license and fee structure that is similar, but not identical to, Wisconsin’s structure“

Dairy fees – Michigan	
Milk plant	\$175
Farms sending milk to plant	\$5–\$10
Receiving or transfer station	\$50
Milk tank truck cleaning facility	\$50
Milk transportation company	\$20
Milk tank truck	\$10
Grade A milk distributor	\$50
Single service container and closure plant	\$50
Bulk milk hauler/sampler	\$40 for 2 years

Food Fees – Michigan	
Retail food establishment	\$70
Limited wholesale food processor	\$70
Food warehouse	\$70
Extended retail food establishment	\$175
Wholesale food processor	\$175
Mobile food establishment	\$175
Temporary food establishment	\$28
Bottled water manufacturer	\$25 for each product registered and \$25 for each water dispensing machine

Iowa

Iowa has a license and fee structure that is similar, but not identical to, Wisconsin's structure:

Dairy Fees – Iowa	
Milk plant	\$2,000 for 2 years
Transfer station	\$400 for 2 years
Receiving station	\$400 for 2 years
Milk hauler	\$20 for 2 years
Milk grader	\$20 for 2 years
Bulk milk tanker permit	\$50 for 2 years
Reinspection fee	\$40
Resealing pasteurizer fee	\$100 per reseal
Purchaser of milk fee – Grade A	\$.015 per cwt of raw milk purchased
Purchaser of milk fee – Grade B	\$.005 per cwt of raw milk purchased

Food Fees – Iowa	
Mobile food unit or pushcart	\$20
Temporary food establishment	\$25
*Food establishment	\$30–\$225 based on sales volume
*Food service establishment	\$50–\$225 based on sales volume
Food processing plant	\$50–\$250 based on sales volume
Egg handler	\$15–\$250 based on cases sold

*If one establishment must hold both a food establishment and a food service establishment license, each license fee is 75% of the established fee.

Illinois

Illinois has a license and fee structure that is substantially different from the Wisconsin structure:

Dairy Fees – Illinois	
Milk plant permit	\$100
Receiving or transfer station	\$50
Cleaning and sanitizing facility	\$50
Milk hauler–sampler	\$25
Milk tank truck	\$25
Certified pasteurizer sealer	\$100

Illinois does not license or charge a fee to most food establishments. The following are fees charged to Illinois food establishments:

Food Fees	
Salvage Operator	\$100 plus inspection fee based on size
Bottled water manufacturer or distributor	\$150
Egg handlers, distributors and breakers	\$15–\$200 plus inspection fee per case of eggs sold

**Notice of Hearing
Commerce
(Fee Schedule)
[CR 05–038]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (15) (h) to (j), and 101.19, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 2, relating to miscellaneous fee schedule changes.

The public hearing will be held as follows:

Date and Time:

Wednesday, **June 15, 2005** at 2:00 p.m.

Location:

Room 3B, Thompson Commerce Center
201 West Washington Avenue
Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive

individual responses. The hearing record on this proposed rulemaking will remain open until **June 30, 2005**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Ronald Acker, Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at racker@commerce.state.wi.us.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Analysis

1. Statutes Interpreted.
Sections 101.02 (15) (h) to (j), and 101.19, Stats.
2. Statutory Authority.
Sections 101.02 (15) (h) to (j), and 101.19, Stats.
3. Related Statute or Rule.
None.

4. Explanation of Agency Authority.

Section 101.02 (15) (h) to (j), Stats., grants the Department general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. Section 101.19, Stats., grants the Department authority to promulgate rules to fix and collect fees.

5. Summary of Proposed Rules.

The Division of Safety and Buildings within the Department of Commerce is responsible for administering and enforcing safety and health rules relating to the construction and inspection of dwellings, public buildings and places of employment. The Division of Environmental and Regulatory Services within the Department is responsible for administering and enforcing safety and health rules relating to underground and aboveground flammable and combustible liquid storage tank systems. In the administration and enforcement of those rules, the Department provides numerous services such as plan examination, inspection and certification. The Department, by rule promulgated under chapter 227 of the Wisconsin Statutes, is required to fix and collect fees which must, as closely as possible, equal the cost of providing those services.

Most of the fees charged by the Division of Safety and Buildings and the Division of Environmental and Regulatory Services are contained in chapter Comm 2. The proposed rules consist of miscellaneous changes in chapter Comm 2 in order to address inconsistencies, omissions, format and administration problems that have been discovered since the complete update of chapter Comm 2 in 2000. The proposed rules do not involve a general fee increase.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

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

7. Comparison with Rules in Adjacent States.

The proposed rules consist of administrative changes specific to the Department's schedule of fees charged for the services provided by the Safety and Buildings Division and the Environmental and Regulatory Services Division. There are no similar rules in the states of Illinois, Iowa, Michigan and Minnesota.

8. Summary of factual Data and Analytical Methodologies.

There were no factual data or analytical methodologies used to develop the proposed rules.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The proposed rules should have a minimal effect on small business. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at:

www.commerce.state.wi.us/SB/SB-HomePage.html. Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, Email rward@commerce.state.wi.us, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The rules will affect any businesses that pay fees to the Safety and Buildings Division or the Environmental and Regulatory Services Division for the Divisions' costs of providing certain plan examination and inspection services. Because the proposed rules basically consist of clarifications to address inconsistencies, omissions, format and administration problems, the rules will have a minimal affect on small businesses.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

There are no reporting, bookkeeping or other procedures required for compliance with the rules.

3. Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the rules.

4. Rules have a significant economic impact on small businesses.

No. Rules not submitted to Small Business Regulatory Review Board.

Fiscal Estimate

The proposed rules consist of miscellaneous changes in ch. Comm 2 to address inconsistencies, omissions, format and administration problems, resulting in no significant changes in the Department's costs or revenues. The proposed rules will also not have any fiscal effect on local governments or the private sector.

The major format change in the proposed rules consists of modifying the fees related to reviewing storage tank plans and inspecting storage tank installations for Aboveground Storage Tanks (AST) and Underground Storage Tanks (UST). These fees are based on the costs related to staff time for reviewing owner's proposed petroleum storage tank plans and time worked inspecting tank installations.

The Department proposes to change the fee structure to make the total fee easier to calculate. The Department deposits all fees collected into the Petroleum Inspection Fund, which is the funding mechanism behind the positions associated with these activities. Below is a sampling of typical tank systems that are reviewed and the fees assessed by the Department.

<u>Tank Plan</u>	<u>Current</u>	<u>Proposed</u>	<u>Difference</u>
Commercial business with 1,100 gallon capacity UST	\$163	\$160	-\$3
Service station with 12,000 gallon capacity UST	\$366	\$375	\$9

Based on departmental analysis, the Department estimates that revenues collected under the proposed plan will closely mirror those currently collected. However, by moving to a

new fee methodology based on tank size, year-end revenues are difficult to estimate as they will depend on the changing market demand for these storage systems. Similarly, while the Department predicts decreased costs, they will likely be negligible as they will result from lowered mailing and telephone costs associated with fewer fee issues.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at cdunn@commerce.state.wi.us.

Notice of Hearing
Natural Resources
(Environmental Protection – Water
Management)
[CR 05-037]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12 (1), (1p) and (3) (br), 30.20 (1), (1k), (1t) and (2), 30.206 and 227.11 (2), Stats., interpreting ss. 30.12 (1g) (a), (g), (h) and (km), (2m), (2r), (3) and (3m), 30.20 (1), (1g), (1k), (1m), (1t) and (2), and 30.206, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 329 and 345, Wis. Adm. Code, relating to miscellaneous structures and dredging in navigable waterways. The purpose of this rule is to establish five additional general permits for waterway activities, with appropriate conditions. Revisions to ch. NR 329 establish a general permit for pea gravel blankets. Revisions to ch. NR 345 establish general permits for non-exempt manual dredging, maintenance dredging, jetting to remove aquatic plants, and dredging less than 25 cubic yards from a river or stream. All activities authorized by general permits must follow technical standards similar to those previously used for short form permits, in Department guidance, or as developed with key stakeholders.

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:
SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

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

Wednesday, June 15, 2005 at 3:00 p.m.

Video conference participation will be available at:

Room 8F, State Office Building
101 E. Wilson Street
Madison

Room 220, UW-Marathon County
518 S. 7th Avenue
Wausau

Fiscal Estimate

The purpose of these permanent rule revisions is to establish five additional general permits for waterway activities, with appropriate conditions.

NR 329

NR 329 revisions establish a general permit for the placement of pea gravel. There will be a revenue impact, consisting of a decrease in revenue of about \$5,900 annually. This revenue is from permit fees. Currently, the placement of pea gravel requires a \$500 permit fee, and the revenue from 13 permits a year is \$6,500. With adoption of this rule, the placement will be eligible for a \$50 general permit, and the revenue from 13 permits a year would be \$650. There will be a reduction in work related to review of permits, reflecting that general permits will require less staff review. The staff savings is estimated at 137 hours annually, or 0.07 FTE, which would equate to a cost reduction of \$4,400 in salary and fringe benefits.

NR 345

NR 345 revisions establish four general permits for various dredging activities. There will be a revenue impact, consisting of a decrease in permit revenue of about \$25,200 annually. Currently, an estimated 314 dredging activities require a \$500 permit fee, yielding revenue of \$157,000 annually. Another 62 dredging projects require a \$50 general permit, and 25 projects are exempt from a permit and pay no fee. With adoption of this rule, an estimated 251 dredging activities will be subject to a \$500 individual permit, 125 will be eligible for a \$50 general permit, and 25 will be exempt from any permit, for a total annual revenue from dredging of \$131,800. There will be a reduction in work related to review of permits, reflecting that general permits will require less staff review. The staff savings is estimated at 661 hours annually, or 0.32 FTE, which would equate to a cost reduction of \$21,000 in salary and fringe benefits.

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 Roberta Lund at (608) 266-2220 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Dale Simon, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until June 22, 2005. 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. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707.

Notice of Hearing
Natural Resources
(Environmental Protection – Air Pollution
Control)
[CR 05-039]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11 (1), Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 460, 463 and 466, Wis. Adm.

Code, relating to incorporation of federal amendments in National Emission Standards for Hazardous Air Pollutants (NESHAP) into chs. NR 460 and 463.

The proposed rule will incorporate federal changes promulgated by U.S. EPA on April 5, 2002, May 30, 2003 and April 22, 2004 to the general provisions in ch. NR 460. These changes make the general provisions more flexible, thus reducing the regulatory burden on industry while improving compliance and compatibility with other regulations governing sources of federal air toxics. The proposed amendments extend the period of time available for an owner or operator of a facility to request a one-year compliance extension for the installation of pollution controls, change some provisions relating to startup, shutdown and malfunction plans and add a new section which specifies requirements for sources which are members of the U.S. EPA Performance Track program.

The proposed rule will also incorporate federal changes to NESHAP for chromium electroplating promulgated by U.S. EPA on July 19, 2004 into ch. NR 463 and make the state rule consistent with the federal rule. The proposed amendments add an option that allows hard chrome platers to meet the requirements of NESHAP by controlling the surface tension of their plating baths, establishing an emission rate appropriate for closed tanks, broadening the definition of chromium plating and anodizing tanks to include all the ancillary equipment and relaxing the operating limit for mesh pad scrubbers and making it easier for sources using this type of control equipment to demonstrate compliance.

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:

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

Fiscal Impact

There is no fiscal impact on state or local governments.

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

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

Tuesday, **June 21, 2005** at 11:00 a.m.

Room 413, GEF #2

101 South Webster Street

Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Park at (608) 266-1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

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

Mosher, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until July 1, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Mosher.

Notice of Hearing

Natural Resources

[CR 05-040]

(Environmental Protection – Air Pollution Control)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11 (1), Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 460, 465 and 484, Wis. Adm. Code, relating to national emission standards for hazardous air pollutants (NESHAP) for the surface coating of plastic parts and products and of miscellaneous metal parts and products.

The proposed rules will regulate the emissions of hazardous air pollutants from major sources of federal hazardous air pollutants which perform surface coating of miscellaneous metal parts and products or surface coating of plastic parts and products. Coating operations, including the use of thinners and cleaning materials are addressed by the proposed rules. Under the proposed plastic parts rule, emission limits are specified as pounds of organic hazardous air pollutants emitted per pound of coating solids used during each 12-month compliance period. Under the proposed miscellaneous metal parts rule, emission limits are specified as pounds of organic hazardous air pollutants emitted per gallon of coating solids used during each 12-month compliance period. Three compliance options are provided in each rule. These are the compliant material option, the emission rate without add-on controls option and the emission rate with add-on controls options.

Under the surface coating of plastic parts and products rule, existing affected sources have until April 19, 2007 to achieve compliance. New or reconstructed affected sources must achieve compliance by the later of April 19, 2004 or the date of initial startup. Under the surface coating of miscellaneous metal parts and products rule, existing affected sources have until January 2, 2007 to achieve compliance. New or reconstructed affected sources must achieve compliance by the later of January 2, 2004 or the date of initial startup. Sources have until their final compliance date to reduce hazardous air pollutant emissions below the major source level and thereby avoid the rule. Sources may also become a synthetic minor hazardous air pollutant source to avoid the rule by obtaining and complying with a federally enforceable permit prior to the final compliance date that restrict hazardous air pollutant emissions.

The proposed rules are identical to the federal NESHAP, except for punctuation, capitalization, numbering and nonsubstantive wording and the organizational changes made to accommodate state rule form and style requirements and, in some cases, to improve clarity.

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:

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

Fiscal Impact

There is no significant fiscal impact on state or local government entities.

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

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

Tuesday, **June 21, 2005** at 11:00 a.m.

Room 413, GEF #2

101 South Webster Street

Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Park at (608) 266-1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Eric Mosher, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until July 1, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Mosher.

Notice of Hearing Workforce Development (Labor Standards)

NOTICE IS HEREBY GIVEN that pursuant to Sections 104.04 and 227.11, Stats., the Department of Workforce Development will hold a public hearing to consider emergency and proposed permanent rules relating to increasing Wisconsin's minimum wages.

Hearing Information

Tuesday, **June 14, 2005** @ 10:00 a.m.

Madison

G.E.F. 1 Building, Room H305

201 E. Washington Avenue

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

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is wheelchair accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at

the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 104.04 and 227.11, Stats.

Statutes interpreted: Chapter 104, Stats.

Wisconsin needs a minimum wage increase

Creating good paying jobs and a "high end" economy is a top priority for Governor Jim Doyle's administration. A key focus of the Governor's *Grow Wisconsin* economic development plan is investing in people and helping families climb the economic ladder. One of the most important initiatives in the Governor's plan is raising the state minimum wage. Such an increase ensures that Wisconsin's lowest wage workers will share in the benefits of economic growth as Wisconsin's economy moves forward.

This is a critical time for Wisconsin to support low-wage workers by increasing the minimum wage. It has been nearly 8 years since the federal minimum wage has been increased, and in 2005 it will fall to its lowest inflation-adjusted value of all time. The buying power of the federal minimum wage in 1970 equaled about \$8.00 in 2004 dollars. Given the declining value of the minimum wage and the lack of federal action to increase it, 16 other states have already enacted minimum wages above the federal level.

When wages are so low that workers and their families can't afford their most basic needs, the costs that society, particularly taxpayers, must bear related to poverty are so insidious that anything that helps divert those expenses back to the consumers of the services provided by those low-wage workers is worthwhile. Educational failure, workforce failure, citizenship failure can very often be traced back to families forced to live in poverty. An adequate minimum wage supports workers, helps strengthen families and communities, and promotes the state's overall economic and fiscal health. Family-supporting wages reduce dependence on the state and increase tax revenue from these families, decreasing the burden on Wisconsin's taxpayers.

It is estimated that 200,000 workers will be affected by Wisconsin's minimum wage increase. Many of these workers are adults and a larger than proportionate share are minorities. Putting more money in the hand of these low-wage workers will result in \$175 million in consumer expenditures in Wisconsin's economy. Low-wage workers spend nearly their entire income in the local economy on basics. This spending stimulates the local economy and benefits local businesses because spending is concentrated locally on food, clothing, shelter, and transportation. Most studies considering a potential negative effect on employment opportunities available to low-wage workers as a result of a moderate minimum wage increase show little to no effect, although both advocates and opponents are able to produce studies supporting their side of the issue.

Minimum wage increases

Chapter 104, Stats., and Chapter DWD 272 provide that Wisconsin's minimum wage should be sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her reasonable comfort, physical well-being, decency, and moral well-being. Section 104.04, Stats., directs the Department of Workforce Development to determine the state's minimum wage taking into consideration the effect of the wage on the economy of the state, including employment opportunities for low-wage workers and regional economic conditions within the state.

In January 2004, Governor Doyle and the Department of Workforce Development convened a Minimum Wage Advisory Council to assist with determining whether there should be an increase in Wisconsin's minimum wage. The Council included leaders from the business community, labor organizations, community organizations, and both houses of the legislature. The Department's Office of Economic Advisors provided the Advisory Council with data from the U.S. Census; Current Population Survey; and the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics. The council issued its recommendations in March 2004.

Taking into consideration the Council's recommendations, the Department orders and proposes the following increases:

General minimum wage rate

- \$5.70/hour effective 6/1/05 (currently \$5.15/hour)
- \$6.50/hour effective 6/1/06

Minor minimum wage rate

- \$5.30/hour effective 6/1/05 (currently same as adult rate \$5.15/hour)

- \$5.90/hour effective 6/1/06

Opportunity minimum wage rate

- \$5.30/hour effective 6/1/05 (currently \$4.25/hour)
- \$5.90/hour effective 6/1/06

Agriculture minimum wage rate for workers age 18 and over

\$5.15/hour effective 6/1/05 (currently \$4.05/hour)

Agricultural minimum wage rate for workers age 17 and under

\$4.25/hour effective 6/1/05 (currently \$3.70/hour)

Camp counselor minimum wage rate for workers age 18 and over

If no room or board provided (currently \$140/week)

\$215/week effective 6/1/05, \$270/week effective 6/1/06, and \$315/week effective 6/1/07

If board provided (currently \$110/week)

\$164/week effective 6/1/05, \$217/week effective 6/1/06, and \$240/week effective 6/1/07

If room and board provided (currently \$91/week)

\$129/week effective 6/1/05, \$171/week effective 6/1/06, and \$189/week effective 6/1/07

Camp counselor minimum wage rate for workers age 17 and under

If no room or board provided (currently \$123/week)

\$175/week effective 6/1/05, \$225/week effective 6/1/06, and \$275 effective 6/1/07

If board provided (currently \$92/week)

\$133/week effective 6/1/05, \$171/week effective 6/1/06, and \$209 effective 6/1/07

If room and board provided (currently \$74/week)

\$105/week effective 6/1/05, \$135/week effective 6/1/06, and \$165 effective 6/1/07

Golf caddy minimum wage rate

\$10.50 for 18 holes effective 6/1/05 (currently \$5.95)

\$5.90 for 9 holes effective 6/1/05 (currently \$3.35)

Effect of minimum wage increases on Wisconsin's economy

The Department of Workforce Development estimates that 200,000 workers will be affected by the minimum wage increases.

First increase – June 1, 2005. The first increase in the minimum wage from \$5.15 to \$5.70 per hour is estimated to directly affect the wages of 50,000 hourly paid workers currently earning at or below \$5.15 per hour, plus an additional 75,000 hourly paid workers currently earning between \$5.16 and \$5.69 per hour. Thus, the total number of workers directly affected by this first wage increase is estimated to be 125,000 hourly paid workers.

This first increase to \$5.70 per hour will also result in wage compression among those who had previously earned slightly higher hourly wages than the new minimum wage. It is estimated that approximately 50,000 workers who earn between \$5.70 and \$6.50 per hour could be indirectly affected and receive wage increases as a result of this first minimum wage increase.

Second increase – June 1, 2006. The second increase in the minimum wage from \$5.70 to \$6.50 will directly affect the hourly wages of an estimated 150,000 workers who would at that time be earning at or below \$6.50 per hour. The Department estimates that another 50,000 workers earning at or higher than \$6.50 to a cap of about \$7.00 per hour will also see their hourly wages indirectly rise due to resultant wage compression.

Industries and occupations. The majority of workers affected by the wage increase are in food preparation and serving related occupations and in personal care and services occupations. The vast majority of these workers are employed in the broad leisure and hospitality sector, which includes the food and accommodation industry. Retail trade employment also shows moderately higher than average number of minimum wage workers.

Workers affected by the wage increases include food service workers, retail clerks, cleaning and housekeeping laborers, personal care attendants, child care workers, telemarketers, laundry and dry cleaning workers, veterinary assistants, home health care aides, office workers, gaming change and booth cashiers, building and grounds maintenance laborers, and many other occupations in virtually all industries in the state.

Demographics of affected workers. It is estimated that nearly 80% of these low-wage workers are over 18 years of age, 65% are female, and over one-third are heads of their household. These workers are African-American, Hispanic, and Asian in numbers larger than their proportion in the population. Over two-thirds of these low-wage workers work more than half-time:

- 30% work 1–19 hours per week
- 35% work 20–34 hours per week
- 35% work 35+ hours per week

Effect on business. The effect of the wage increase on business will be \$175 million in increased payroll costs. Low-wage workers will circulate this money back into the economy immediately, representing a 0.1 percent increase in the gross state product. The increased spending by affected workers may be a revenue growth for some businesses. The effects may be slightly greater in northern, rural regions of the state where minimum wage jobs make up a greater percentage of the workforce. Higher wages also have a positive impact on both workers and their employers by reducing turnover, increasing work experience, and saving on training and recruitment costs for both workers and employers. Any increase in the cost of doing business will likely be passed on to consumers as part of the price of the product or service being purchased.

Effect on small businesses. The proposed rule will have an effect on small businesses, which s. 227.114 (1), Stats., defines as 25 or fewer employees or less than \$5 million in gross annual sales. The primary businesses affected by the

proposed rule will be those related to food preparation and serving, personal care and services, and retail trade. The Department has considered the methods listed in s. 227.114 (2), Stats., for reducing the impact of the rule on small businesses. There are no reporting, bookkeeping, or professional skills required for compliance with the proposed rule. The rule requires businesses to pay affected employees at least the specified minimum wage.

The exemption of small businesses from the requirements of the rule would be contrary to the statutory objectives which are the basis for the proposed rule. Pursuant to Chapter 104, Stats., the primary purpose of the minimum wage is to require that every wage paid by any employer to any employee is sufficient to enable the employee receiving it to maintain himself or herself under conditions of reasonable comfort, reasonable physical well-being, decency, and moral well-being. The Department estimates that a very high percentage of workers affected by this minimum wage increase work for employers with 25 or fewer employees or less than \$5 million in gross annual sales. If the rule exempted these employers from minimum wage coverage, it would render the minimum wage nearly meaningless.

Fiscal effect on state and local government

It is estimated that 35% of the additional \$175 million in consumer expenditures will be on items subject to the sales tax. This translates to increased revenue of approximately \$3 million for the state and some increased revenue for counties with a local sales tax.

There may be increased state revenue from the income tax on higher incomes for workers. The Department of Revenue estimates that the additional individual income tax revenue on the additional wages paid due to the minimum wage increase will be \$4.725 million. This amount will be offset by the decline of business tax revenue estimated at \$5.495 million. The net effect on income tax revenue is estimated to be a decline of \$770,000.

It is estimated that 100–200 local governmental employees across the state who work as seasonal summer helpers may be affected by the increase. The increased cost is estimated at approximately \$20,000 across all local governments in the state. The minimum wage increase is not expected to affect state employees.

Federal law and adjacent states

Section 227.14 (2)3. and 4., Stats., requires the Department to compare the proposed rule to any existing or proposed federal regulation and rules in adjacent states.

General rate:

Federal	\$5.15
Iowa	\$5.15
Michigan	\$5.15
Minnesota	\$5.15 for employers with annual gross sales of at least \$500,000; effective 8/1/05, increasing to \$6.15 for employers with annual gross sales of at least \$625,000

\$4.90 for employers with annual gross sales of less than \$500,000; effective 8/1/05, increasing to \$5.25 for employers with annual gross sales of less than \$625,000

Illinois \$6.50

Minor rate:

Federal	None
Iowa	None
Michigan	None
Minnesota	None

Illinois \$6.00

Opportunity rate:

Federal	\$4.25 for employees under 20 years old for first 90 days of employment
Iowa	\$4.25 for all employees for first 90 days of employment
Michigan	\$4.25 for 16– to 19–year–olds for first 90 days of employment
Minnesota	\$4.25 for employees under 20 years old for first 90 days of employment; increasing to \$4.90 effective 8/1/05

Illinois No opportunity wage of general application. Employers may apply for a license from the Illinois Department of Labor to pay adult learners 70% of minimum wage rate for initial six months of employment.

Agricultural rate:

Federal	None
Iowa	None
Michigan	None
Minnesota	None
Illinois	None

Camp counselor rate:

Federal	None
Iowa	None
Michigan	None
Minnesota	None
Illinois	\$260 per week

Golf caddy rate:

Federal	None
Iowa:	None
Michigan:	None
Minnesota	None
Illinois:	Exempt from minimum wage

Technical correction

The proposed rule also repeals and recreates the policy that travel time for the benefit of the employer is work time. It is rewritten for clarity and with no change in substance.

Small Business Regulatory Coordinator

The Department’s Small Business Regulatory Coordinator is Jennifer Jirschele. She may be reached at (608) 266–1023 or jennifer.jirschele@dwd.state.wi.us.

Contact Information and Written Comments

A copy of the emergency rule is available at the website <http://www.dwd.state.wi.us/er/>. Due to statutory restrictions on the rule promulgation process, the proposed permanent rule may not be drafted until after June 10. A paper copy of the emergency rule is available and the proposed permanent will be available by contacting:

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

Written Comments

Written comments on the proposed and emergency rules received at the above address or email no later than June 13, 2005, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Commerce**(CR 05–010)**

Ch. Comm 16, relating to electrical construction.

Dentistry Examining Board**(CR 04–109)**

Ch. DE 2, relating to the definition of “dental school.”

Hearing and Speech Examining Board**(CR 05–026)**

Ch. HAS 6, relating to definitions, temporary trainees, continuing education, temporary licenses and unprofessional conduct.

Natural Resources**(CR 04–107)**

Relating to implementing general and registration air permit program.

Natural Resources**(CR 05–004)**

Relating to payment program for damage caused by endangered and threatened species of wildlife and gray wolves to hunting dogs and pets.

Natural Resources**(CR 05–005)**

Relating to payment program for damage caused by endangered and threatened species of wildlife and gray wolves to livestock.

Natural Resources**(CR 05–016)**

Relating to deer hunting as it relates to the management of chronic wasting disease.

Veterinary Examining Board**(CR 04–125)**

Rules affecting chs. VE 1, 7, 9 and 10, relating to renewal, conduct and continuing education for veterinarians and veterinary technicians.

Rule orders filed with the revisor of statutes bureau

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

Health and Family Services

(CR 04-142)

An order affecting ch. HFS 148, relating to the cancer drug repository.
Effective 7-1-05.

Insurance

(CR 04-121)

An order affecting ch. Ins 3, relating to Medicare supplement, cost, select, Medicare Advantage and Medicare Part D.
Effective 7-1-05.

Natural Resources

(CR 04-102)

An order affecting ch. NR 410, relating to asbestos permit exemption fees and inspection fees.
Effective 7-1-05.

Natural Resources

(CR 04-112)

An order affecting ch. NR 20, relating to live well standards for participants in the bass fishing tournament pilot program.
Effective 7-1-05.

Natural Resources

(CR 04-113)

An order affecting chs. NR 500, 502, 544 and 545,

relating to recycling.
Effective 7-1-05.

Regulation and Licensing

(CR 04-110)

An order affecting chs. RL 150 to 154, relating to the licensure and regulation of athlete agents.
Effective 7-1-05.

Regulation and Licensing

(CR 04-124)

An order affecting ch. RL 17, relating to supervision by real estate brokers.
Effective 7-1-05.

Transportation

(CR 04-100)

An order affecting ch. Trans 102, relating to proof of identification.
Effective 7-1-05.

Transportation

(CR 05-009)

An order affecting chs. Trans 254 and 255, relating to the standards and procedures for the issuance of single and multiple trip oversize and overweight permits.
Effective 7-1-05.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the May 31, 2005, 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.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board (CR 03-087)

An order affecting ch. A-E 4, relating to application contents for professional engineers. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

Gaming (CR 04-073)

An order affecting chs. Game 41, 42 and 44, relating to bingo and raffle events. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

There will be no significant impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 03-066)

An order affecting chs. NR 404 and 484, relating to ambient air quality standards. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

The rule and rule revision are public exposure oriented and will not directly affect emissions or activities of small businesses in Wisconsin. Should subsequent rules be required in order to achieve these standards, small business analyses will be prepared as needed.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Transportation. No comments were received by the department.

Natural Resources (CR 04-061)

An order affecting ch. NR 809, relating to reporting of analytical data and the procedure for returning to compliance

following an MCL violation of the nitrate, nitrite, or combined nitrate and nitrite standards. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

The department intends to allow several formats for laboratories to electronically submit drinking water analytical results to the department. Formats may include SML files, tab delimited text files and web-based data entry. Under very limited circumstances, the department may allow laboratories to submit results to the department on paper forms or in some other format.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On March 2, 2005, the Assembly Committee on Natural Resources held a public hearing. No modifications were requested.

Natural Resources (CR 04-101)

An order affecting chs. NR 106, 149 and 219, relating to the whole effluent toxicity (WET) test methods. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

Smaller industrial permittees that discharge to a surface water and have whole effluent toxicity (WET) requirements in their permits, as well as smaller WET labs who may wish to be certified to conduct WET tests, will be affected by this rule. The department does not expect significant impacts to these businesses, however, because the changes that are proposed to WET test methods are not expected to require additional staff time or resources on the part of the permittee, and are not expected to significantly increase the costs associated with conducted WET tests.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On March 2, 2005, the Assembly Committee on Natural Resources held a public hearing. No modifications were requested.

Natural Resources (CR 04-111)

An order affecting ch. NR 20, relating to trout fishing in Richland and Vernon counties. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule regulated individual anglers; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On March 2, 2005, the Assembly Committee on Natural Resources held a public hearing. No modifications were requested.

**Regulation and Licensing
(CR 04-097)**

An order affecting chs. RL 4 and 31, relating to criminal background investigations and fingerprinting of applicants. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 04-141)**

An order affecting ch. Trans 102, relating to military vehicle operator CDL exemption. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

This rule-making has no effect on small business. This affects only drivers working for the U.S. Military.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 05-003)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways. Effective 6-1-05.

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 may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 05-006)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways. Effective 6-1-05.

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 may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

Summary of Comments by Legislative Review Committees

No comments were received.

**Workforce Development
(CR 05-007)**

An order affecting ch. DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

The rule does not affect small businesses as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**Veterans Affairs
(CR 05-002)**

An order affecting ch. VA 13, relating to the veterans assistance program. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

The proposed rules do not impact small business.

Summary of Comments by Legislative Review Committees

No comments were received.

**Veterans Affairs
(CR 05-008)**

An order affecting ch. VA 4 and 12, relating to the home improvement loan program and the personal loan program. Effective 6-1-05.

Summary of Final Regulatory Flexibility Analysis

The proposed sales do not impact small business.

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 **May 2005**, 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

Architects, Engineers, Designers and Surveyors

- Ch. A-E 4**
- S. A-E 4.09

Gaming

- Ch. Game 41**
- S. Game 41.03
- Ch. Game 42**
- S. Game 42.17
- S. Game 42.18
- Ch. Game 44**
- S. Game 44.01
- S. Game 44.02 (3) to (8)
- S. Game 44.03 (1), (3) and (4)
- S. Game 44.04
- S. Game 44.05 (4)
- SS. Game 44.07 to 44.09

Natural Resources

- Ch. NR 20**
- S. NR 20.20 (53) (f) and (63) (c)
- Ch. NR 106**
- S. NR 106.09 (1)
- Ch. NR 149**
- S. NR 149.22
- Ch. NR 219**
- S. NR 219.04 Table A
- Ch. NR 400**
- S. NR 400.02 (19m)
- Ch. NR 404**
- S. NR 404.02 (2) and (8)
- S. NR 404.04 (2), (5), and (6)
- S. NR 404.06 (2)
- Ch. NR 484**
- S. NR 484.04 (2), (4), and (4m)
- Ch. NR 809**
- S. NR 809.12 (9) (f)

- S. NR 809.80 (4)

Regulation and Licensing

- Ch. RL 4**
- S. RL 4.02 (1g), (3e), (3m), (3s) and (5m)
- SS. RL 4.07 to 4.09
- Ch. RL 31**
- S. RL 31.035 (1m)
- S. RL 31.036 (1m)

Transportation

- Ch. Trans 102**
- S. Trans 102.23
- Ch. Trans 276**
- S. Trans 276.07 (10) and (18)

Veterans Affairs

- Ch. VA 4**
- S. VA 4.03 (2)
- S. VA 4.09 (4)
- S. VA 4.14 (1), (2) (a), (3) (b), (d), and (g), (4) (a) and (c) to (f)
- Ch. VA 12**
- S. VA 12.02 (2), (3) (g), (4), (6), (7), (13), and (15) to (17)
- S. VA 12.03 (1), (3)
- S. VA 12.04
- S. VA 12.05 (2)
- S. VA 12.06 (2) and (3)
- Ch. VA 13**
- S. VA 13.01 (1), (4), and (5)
- S. VA 13.02 (2) (intro.), (e) and (3)
- S. VA 13.04 (3)
- S. VA 13.06

Workforce Development

- Ch. DWD 290**
- S. DWD 290.155 (1)

Editorial corrections

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

Natural Resources

Ch. NR 149

S. NR 149.21 (5)

Regulation and Licensing

Ch. RL 31

S. RL 31.03 (1) (b)

S. RL 31.035 (1) (b)

S. RL 31.036 (1) (b)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 96. Relating to a special election for the Town of Monticello.

Public notices

Health and Family Services

(Medical Assistance Reimbursement of Nursing Homes)

State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 05–06

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

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 2005.

The proposed changes would update the payment system and make various payment–related policy changes. Some of the changes are necessary to implement various budget policies being considered in the Wisconsin 2005–2007 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$36,747,130 all funds, (\$21,313,335 federal financial participation), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2005–2007 Biennial Budget Bill and to disburse the \$34,479,166 allotted in the bill to a rate increase of approximately 5% for nursing facilities and \$2,267,964 allotted in the bill to a rate increase of approximately 3% for ICF–MRs. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.700, 5.800 and 5.900, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.

2. Change references to previous years for descriptive reasons where necessary.

3. Modify the labor factors listed in Section 5.410.

4. Create a new cost center combining Support Services, Administration and Fuel and Utilities into a single cost center.

5. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2005–2006 period.

6. Re–write Section 3.775 Special Allowances for Facilities Operated by Local Units of Government.

7. Modify the calculation for the Medicare Upper Limit in Section 3.780 for ICF–MRs.

8. Modify Section 3.900, Reimbursement of State–Operated Facilities to include tribal–operated facilities.

9. Modify the targets in the property allowance in Section 3.532.

10. Modify Sections 2.710, 3.651 and 5.920, Exceptional Medicaid/Medicare Utilization Incentive to clarify issues concerning the movement of beds and homes in Milwaukee.

11. Delete Sections 1.270 (3) and 1,270 (4), disallowance from working capital interest expense.

12. Modify Section 5.150, All Non–Expendable, Reusable Materials, to differentiate between cushions and seating arrangements in wheelchairs.

13. Modify Section 3.531 (b), Maximum on Equalized Value.

14. Clarify Section 3.802, Ancillary Billable Services, to state that ancillaries mentioned in this section cannot be paid as part of the rate but can be billed by the facilities.

15. Revise Sections 1.256, Hospice and 1.315 Patient Days.

16. Modify Section 3.600, Capital Incentives, to address patient lifts.

17. Modify Section 2.720, Private Room Incentive, to include a due date for filing an affidavit.

18. Create a quality–of–care incentive in Section 2.700, Provider Incentives.

Copies of the Proposed Changes:

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

Division of Health Care Financing

Attention: Nursing Home Medicaid Payment Plan

P.O. Box 309

Madison, WI 53701-0309

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

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

Written Comments/Meetings:

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

Natural Resources

Notice of Availability of a Legislative Report Relating to Wisconsin's Air State Implementation Plan

All interested persons are advised that the Department of Natural Resources (DNR) intends to submit proposed rules as contained in Natural Resources Board Order AM-46-04 (Clearinghouse Rule No. 04-107) to the United States Environmental Protection Agency (USEPA) for incorporation into Wisconsin's air state implementation plan to meet requirements contained in the Federal Clean Air Act 42 USC 7401, et seq. DNR has submitted these proposed rules establishing programs for registration and general air permits and all supporting information as a report to the legislative standing committees for environmental matters as required under s. 285.14 (2), Stats. Information on AM-46-04 can be viewed on the following website: <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmoId=186>

If you are unable to make copies of this information from the website and would like copies of the information supplied to the Wisconsin legislative committees, please call Ralph Patterson, DNR, at 608-267-7546 or send a request via email to Ralph.Patterson@dnr.state.wi.us.

Workforce Development

2005 CHILD CARE COPAY SCHEDULE (Effective March 27, 2005)

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	748	939	1129	1319	1509	1699	1889	2080	2270	5	8	13	16	21	2	6	9	12	15
75% FPL	802	1006	1209	1413	1617	1821	2024	2228	2432	5	11	15	20	24	4	7	10	14	16
80% FPL	855	1073	1290	1507	1725	1942	2159	2377	2594	7	12	17	22	27	6	8	12	16	19
85% FPL	909	1140	1371	1602	1832	2063	2294	2525	2756	11	15	20	25	32	7	11	14	18	21
90% FPL	962	1207	1451	1696	1940	2185	2429	2674	2918	12	19	24	30	36	8	13	16	21	26
95% FPL	1016	1274	1532	1790	2048	2306	2564	2822	3080	15	22	29	36	42	11	16	21	24	30
100% FPL	1069	1341	1613	1884	2156	2428	2699	2971	3243	17	25	32	40	46	12	16	22	27	33
105% FPL	1123	1408	1693	1978	2264	2549	2834	3119	3405	20	27	35	42	49	14	19	24	29	35
110% FPL	1176	1475	1774	2073	2371	2670	2969	3268	3567	22	30	36	44	51	16	21	26	30	36
115% FPL	1230	1542	1854	2167	2479	2792	3104	3416	3729	25	32	40	47	54	17	22	28	33	39
120% FPL	1283	1609	1935	2261	2587	2913	3239	3565	3891	27	35	42	49	57	19	25	29	35	40
125% FPL	1336	1676	2016	2355	2695	3034	3374	3714	4053	30	38	45	51	61	21	26	32	36	43
130% FPL	1390	1743	2096	2449	2803	3156	3509	3862	4215	32	41	49	58	66	22	28	35	40	46
135% FPL	1443	1810	2177	2544	2910	3277	3644	4011	4377	35	44	54	64	72	25	30	38	44	50
140% FPL	1497	1877	2258	2638	3018	3399	3779	4159	4540	37	47	57	66	77	26	33	40	47	53
145% FPL	1550	1944	2338	2732	3126	3520	3914	4308	4702	40	49	58	69	79	28	35	41	49	55
150% FPL	1604	2011	2419	2826	3234	3641	4049	4456	4864	42	51	62	71	82	29	36	43	50	57
155% FPL	1657	2078	2499	2920	3342	3763	4184	4605	5026	44	54	64	73	84	30	39	44	52	58
160% FPL	1711	2145	2580	3015	3449	3884	4319	4753	5188	47	57	67	77	87	33	40	47	54	61
165% FPL	1764	2212	2661	3109	3557	4005	4454	4902	5350	48	59	69	78	89	34	41	49	55	62
170% FPL	1818	2279	2741	3203	3665	4127	4589	5050	5512	49	62	71	82	91	35	43	50	57	63
175% FPL	1871	2346	2822	3297	3773	4248	4724	5199	5674	50	63	74	84	93	35	44	51	58	65
180% FPL	1925	2414	2903	3392	3881	4370	4859	5348	5837	53	66	77	87	96	36	47	54	61	68
185% FPL	1978	2481	2983	3486	3988	4491	4993	5496	5999	54	67	79	88	98	37	49	55	62	69
<<<-----+185% of the Federal Poverty Level----->>>																			
190% FPL	2031	2548	3064	3580	4096	4612	5128	5645	6161	55	69	82	91	100	40	50	57	63	71
195% FPL	2085	2615	3144	3674	4204	4734	5263	5793	6323	57	71	84	93	104	40	52	59	66	72
200% FPL	2138	2682	3225	3768	4312	4855	5398	5942	6485	59	72	86	96	105	41	54	61	67	73
<<<-----+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.

Note: Pursuant to s. DWD 56.08 (3), the Department of Workforce Development is authorized to adjust the co-pay schedule with publication in the Wisconsin Administrative Register.

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