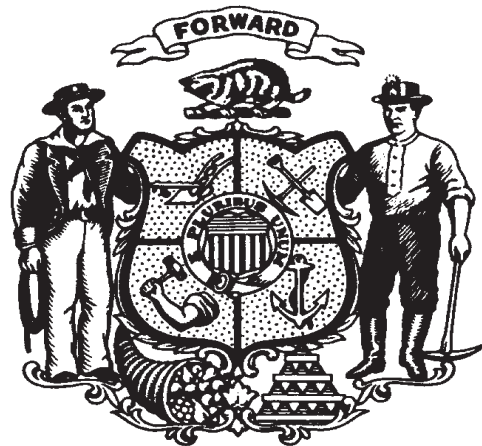


# Wisconsin Administrative Register

No. 598



Publication Date: October 31, 2005

Effective Date: November 1, 2005



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## Emergency rules now in effect

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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](http://www.legis.state.wi.us/rsb/code).*

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### Elections Board

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

#### Finding of Emergency

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

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

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be

transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

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

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

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

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### Natural Resources (3) (Fish, Game, etc., Chs. NR 1—)

1. Rules adopted revising **ch. NR 10**, relating to the 2005 migratory game bird seasons.

#### Finding of emergency

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

**Publication Date:** August 31, 2005  
**Effective Date:** August 31, 2005  
**Expiration Date:** January 28, 2006  
**Hearing Date:** October 17, 2005

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

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules that govern the managed forest law. The state legislature has delegated the appropriate agencies rule-making authority to administer the managed forest law. State statute governing the managed forest law was amended on July 25, 2005 with an initial applicability date of June 1, 2005. This order is designed to bring the administrative code into conformity with the state statutes that govern the managed forest law.

Normal rule-making procedures will not allow the establishment of changes necessary to continue processing petitions for managed forest law received from June 1, 2005 to July 1, 2005 (petition deadline). Failure to process these petitions will result in a delay in designation of these lands as managed forest land and a failure to meet statutory deadlines for designation.

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

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

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

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

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## Natural Resources (2)

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

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

**Finding of emergency**

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

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

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with

specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

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

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

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

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

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

**Finding of emergency**

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

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

To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 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

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## Public Instruction (2)

1. Rules adopted revising **ch. PI 35**, relating to the private school proration process.

### Finding of emergency

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents. Further, procedures must be in place prior to the beginning of the 2005–06 school year to avoid removing pupils from private schools that have lost seats after the prorating process is completed.

**Publication Date:** August 1, 2005  
**Effective Date:** August 1, 2005  
**Expiration Date:** December 29, 2005  
**Hearing Date:** August 31, 2005

2. Rules adopted amending emergency rules revising **ch. PI 35**, relating to prorating under the Milwaukee Parental choice 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:

The department anticipates the program reaching the 15% cap in the 2005–06 school year. Because the department is required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents.

The rules contained in this order do not apply after December 29, 2005, unless an extension is granted under s. 227.24 (2), Stats.

**Publication Date:** August 9, 2005  
**Effective Date:** August 9, 2005  
**Expiration Date:** December 29, 2005

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## Technical College System Board

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

### Finding of emergency

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

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

The Act requires the WTCS Board to promulgate rules to implement and administer the awarding of these grants. The

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

**Publication Date:** October 7, 2005  
**Effective Date:** October 7, 2005  
**Expiration Date:** March 6, 2006

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## Veterans Affairs (2)

1. Rules adopted repealing **s. VA 2.04** and repealing and recreating **s. VA 2.02**, relating to the veterans tuition reimbursement program.

### Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the veterans tuition reimbursement program under the emergency rule procedure without providing evidence of the necessity of the preservation of the public peace, health, safety, or welfare at sec. 9153 (1) of 2005 Wis Act 25.

**Publication Date:** August 2, 2005  
**Effective Date:** August 2, 2005  
**Expiration Date:** December 30, 2005  
**Hearing Date:** October 21, 2005

2. Rules adopted repealing and recreating **s. VA 2.01**, relating to the assistance to needy veterans program.

### Exemption From Finding of emergency

The legislature has authorized the department to promulgate rules for the administration of the assistance to needy veterans program under the emergency rule procedure without providing evidence of the necessity of the preservation of the public peace, health, safety, or welfare at sec. 9135 (3k) of 2005 Wis Act 25.

**Publication Date:** August 2, 2005  
**Effective Date:** August 2, 2005  
**Expiration Date:** December 30, 2005  
**Hearing Date:** October 21, 2005

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

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

### Finding of emergency

The Department of Workforce Development finds that an emergency exists and that 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.

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## Scope statements

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### Commerce

#### Subject

*Objective of the rule.* The objective of the rule is to revise the department's requirements relating to plan review processing times.

#### Policy analysis

Currently, plan review processing times specified in the respective department chapters are based on receipt of all forms, fees, documents and information required to complete the review. This method of determining the starting date of processing times is not compatible with the new procedure that allows individuals to schedule a plan review appointment date over the Internet or by telephone. With the new appointment scheduling, plans may be received by the department any time before the appointment date, and the specified processing time could have expired by the date of the appointment. The rule will propose revisions to address this incompatibility.

The alternative of not revising the plan review processing time rules will result in continued confusion as to whether the specified processing times are being met.

#### Statutory authority

Chapters 101 and 145, Stats.

#### Staff time required

The department estimates that it will take approximately 100 hours to develop this rule. This time includes drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

#### Entities affected by the rule

The rule will affect any person submitting plans to the department for required plan review. This includes plans for elevators, ski lifts, buildings, plumbing systems, and public swimming pools.

#### Comparison with federal requirements

The activities to be regulated by the rule are specific to the department's administrative procedures relating to plan review. There are no existing or proposed federal regulations that address the activities to be regulated by the rule.

### Commerce

#### Subject

The objective of the rule is to revise chapter Comm 5, in one or more rule packages, to address at least the following subjects:

- a) The terms of the licenses for plumbers and automatic fire sprinkler installers.
- b) The definition of "HVAC equipment" as it relates to the registration of HVAC contractors.
- c) The scope of application of the HVAC contractor registration requirements.

d) The evaluation and revision of license, certification and registration rules as needed to coordinate with changes in related statutes, codes or programs.

#### Policy analysis

The terms of most of the credentials for plumbers and automatic fire sprinkler installers in chapter Comm 5 are determined by statute in chapter 145, Stats., as being no longer than 2 years. 2005 Wisconsin Act 25 contained revisions to the credential terms specified in chapter 145, Stats. The rule will propose revisions to chapter Comm 5 that will set most credential terms for plumbers and automatic fire sprinkler installers at 4 years, as now allowed in chapter 145, Stats.

The current definition of "HVAC equipment" in chapter Comm 5 specifies equipment that is included and not included under the definition. This definition is used to determine whether or not a person must be registered as an HVAC contractor in order to install or service HVAC equipment. The rule will propose revisions to that definition for clarification of the contractor registration requirement.

The existing requirements for registration as an HVAC contractor do not address the activity where a person installs an HVAC system in a facility owned by the person. The rule may propose revisions to the HVAC contractor registration requirements to address that activity.

The current license, certification and registration rules in chapter Comm 5 are coordinated with the current statutes, codes and programs upon which the rules are based. As those related statutes, codes and programs change, the respective rules in chapter Comm 5 need to be changed. The rule will propose revisions as needed in order to keep current with those related statutes, codes and programs.

#### Statutory authority

Chapters 101 and 145, Stats.

#### Staff time required

The Department estimates that it will take approximately 200 hours to develop this rule package. This time includes meeting with affected industry groups, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

#### Entities affected by the rule

The rule will affect any person or business that obtains a license, certification or registration under chapter Comm 5 from the Department.

#### Comparison with federal requirements

There are no existing or proposed federal regulations that address the activities to be regulated by the rules applying to the licensure of plumbers or automatic fire sprinkler system installers, or to the registration of HVAC contractors.

The federal government issues licenses for a variety of activities, such as radio services, exporting, fisheries, storage of spent nuclear fuel, nuclear power plants, explosive materials dealer, and patents. The following 2 rules in chapter Comm 5 relate to activities addressed by the federal government.

a) Section Comm 5.21 requires a person to hold a license issued by the department as a licensed fireworks manufacturer in order to manufacture fireworks in this state. To qualify for the fireworks manufacturer license, a person must hold a federal license issued under 18 USC chapter 40 section 843.

b) Section Comm 5.72 requires a person to hold a certification issued by the department as a certified refrigerant handling technician in order to install or service a piece of refrigeration equipment that would release or may release an ozone-depleting refrigerant. To qualify for the refrigerant handling technician certification, a person must hold a technician certification issued in accordance with the federal regulations under title 40 CFR Part 82 Protection of Stratospheric Ozone, Subpart F Recycling and Emissions Reduction.

## Commerce

### Subject

The objective of the rule is to revise chapter Comm 155 relating to the submittal of interest to the department under the interest bearing real estate trust accounts (IBRETA) funding for housing programs.

### Policy analysis

Currently, banks and lending institutions submit a statement and remit the interest from an IBRETA to the department in any format and at any time of the year.

This code project will propose that the statement and the interest be submitted to the department on a standardized form and by a specific date each year.

The alternative of not revising the existing rules will result in the continued inefficient and confusing submittal of the statements and interest.

### Statutory authority

Section 452.13 (5), Stats.

### Staff time required

The department estimates that it will take approximately 60 hours to develop this rule. This time includes drafting the rule and related documents, and then processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

### Entities affected by the rule

The rule will affect any banking or lending institution that submits a statement and interest to the department under the IBRETA funding program.

### Comparison with federal requirements

There is no existing or proposed federal regulation that addresses the activities to be regulated by the rule.

## Elections Board

### Subject

Section ElBd 1.39. Scope of regulated activity: clarifying the discernability of required source identifications on communications made for political purposes.

### Policy analysis

*Objective of the rule.* To amend the Elections Board's existing rules; to clarify the statutory requirement that source

identifications must be readable, legible and accessible to emphasize that a person viewing a campaign communication has to be able to readily identify the source of that communication.

Existing Wisconsin policy requires that any communication that is paid for by or through a contribution or disbursement shall identify the source of that communication and shall make that source identification readable, legible and accessible. The new policy is the Board's clarification that "readable, legible and accessible" means that the communication must be readily discernable. Further, readily discernable is determined by some specific standards.

### Statutory authority

Section 5.05 (1) (f) and s.227.11 (2) (a), Stats.

### Staff time required

At least 30 hours of state employees' time.

### Entities affected by the rule

The rule will affect all campaign committees and any other political committee that pays for, or authorizes, a written or spoken communication. That communication will be required to be readily discernable by all those who view or hear the communication. A person viewing or hearing the communication should be readily able to identify the individual or committee who is responsible for the communication.

### Comparison with federal requirements

The Board, in promulgating this rule, will adopt the federal standard for discernability found in section 110.11 of the Code of Federal Regulations: Communications, Advertising; disclaimers (2 U.S.C. 441d).

## Natural Resources

### Subject

Revisions to NR 320 – Bridges and Culverts in Navigable Waterways.

### Policy analysis

The Department proposes to amend the general permit standards of NR 320, to include additional standards and definitions for two new general permits. The general permit for temporary placement of a clear span bridge over navigable streams applies to public utility projects as defined in s. 196.01 (5), Stats., or for forest management activities. The second general permit for temporary in-stream crossings over navigable streams is applicable to forest management activities. These new general permits and standards will provide public utilities and the forest industry a streamlined permit process, design flexibility and establish time frames for temporary crossing.

The forestry and public utility industry have expressed interest in this issue since the passage of Act 118 to streamline the permit process. Groups impacted will include the forest industry, public utilities, municipalities and their citizens, as well as the citizens who use public waters for navigation, hunting and fishing.

Currently, Section 30.123 (7) (a), Stats. provides general permits for clear span bridges and culverts and NR 320 contains the general permit standards. Section 30.123 (7) (b), Stats. allows the department to promulgate rules that specify bridges or culverts, in addition to those listed in s. 30.123 (7) (a), Stats., that may be authorized by statewide general

permits. The current proposal is to amend NR 320, Admin. Code to include specific general permit standards for temporary clear span bridge and temporary in-stream crossings on navigable streams. Prior to the passage of Act 118, the Department had a short-form permit process for clear span bridges and the standards were contained in NR 320, Admin. Code. Pre-Act 118 there was no short-form permit process for culverts or temporary in-stream crossings.

The development of these general permits and standards are necessary to provide public utilities and the forest industry with a streamlined permit process so they may carry out daily work activities expeditiously, in conjunction with protecting the natural resources and public interests of Wisconsin.

#### **Statutory authority**

Sections 30.123, Stats.

#### **Staff time required**

Department staff will need approximately 160 hours for this rule revision, not including time and travel for 2 proposed public hearings.

## **Technical College System**

#### **Subject**

Training Program Grants.

*Objective of the rule.* The rule will establish procedures to implement and administer the awarding of grants to technical college districts to provide skills training or other education related to the needs of business.

#### **Policy analysis**

2005 Wis. Act 25 (the 2005–2007 biennial budget bill) created a new grant program in which technical college districts qualify to receive a grant to provide skills training

and other education related to the needs of business. An annual appropriation of \$1,000,000 GPR was established. These funds are to be awarded by the WTCS Board as grants to technical college districts to provide skills training or other education related to the needs of business. 2005 Wis. Act 25 did not provide specific grant eligibility criteria. The Act requires the WTCS Board to promulgate rules to implement and administer the awarding of these grants.

When implementing and administering this grant program, the technical college system board will consider a number of factors. These include the following:

- Defining the allowable uses of grant funds.
- Establishing a match requirement and any limitations to the use of funds for specific purposes.
- Establishing a grant application process that allows for applications to be submitted at intervals throughout the year.
- Establishing reporting requirements that demonstrate the effect of training and education provided with grant funds on employee skill levels, workplace efficiency and productivity.

#### **Statutory alternatives**

Section 38.41 (1), Wis. Stats., authorizes the technical college system board to award grants to technical college districts to provide skills training or other education related to the needs of business.

Section 38.41 (4), Wis. Stats., mandates that the technical college system board promulgate administrative rules to implement and administer training program grants.

#### **Staff time required**

Estimated time to be spent by state employees: 120 hours. No other resources are necessary.

#### **Comparison with federal requirements**

Not applicable.

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## Rule-making notices

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### Notice of Hearing Administration [CR 05-069]

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1), 227.11 (2) (a), and 16.855 (15), Stats., and interpreting ss. 16.85 and 16.855, Stats., the Department of Administration will hold a public hearing on a proposed rule order amending chs. Adm 20 and 21 relating to architect/engineer selection and construction contracting for facilities owned by the State of Wisconsin.

#### Hearing Information

Date: **November 15, 2005**  
 Time: 3:00 P.M.  
 Location: Wis. Department of Administration Building  
 101 East Wilson Street  
 First Floor, St. Croix Conference Room  
 Madison, Wisconsin

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707-7864. Written comments must be received by November 29, 2005, to be included in the record of rule-making proceedings.

#### Rule summary

Statutes interpreted: ss. 16.85, 16.855 and 16.87, Stats.  
 Statutory authority: ss. 16.004 (1) and 16.855 (15), Stats.

#### Explanation of agency authority

Pursuant to s. 16.85, Stats., the Wisconsin Department of Administration is responsible for the supervision of all engineering, architectural services or construction work performed by, or for, the state in the construction and acquisition of new buildings or improvements and additions to existing buildings.

#### Related statute or rule

None applicable.

#### Plain language analysis

The department proposes amending Chs. Adm 20 and 21, regarding the department's requirements for architect/engineer services solicitation and construction contracting.

Proposed revisions to ch. Adm 20 raise dollar threshold minimums for the architect/engineer selection committee for large projects and allow an additional owner agency voting member on the committee.

Section Adm 20.02 and 21.02, definitions are rewritten and reordered for clarification and consistency with administrative rule writing procedures.

Proposed revisions to Adm 20.03, 20.08 and 20.09 allow new or additional delegation and signature authority as a process improvement.

Sections Adm 20.05, 20.06 and 20.08 are revised to recognize current business practices with regard to department project advertising and solicitation via the department's official website, again as a method of process improvement as well as industry standard.

Proposed Adm 20.04 has raised a threshold dollar level for selection committee interviews to \$5,000,000 reflecting the increases in construction costs over the last two decades and to more accurately reflect the typical size and complexity of projects requiring architect/engineer interviewing. Raising the threshold also provides more opportunity for Wisconsin architects/engineers to increase their experience portfolio of larger projects.

The proposed rule in s. Adm 21.02 further allows for the department to determine that a bidder is unqualified based on noncompliance with other agency requirements and also requires responsible bidders to have an established safety program.

The proposed rule amends s. Adm 21.09 to permit greater department latitude in negotiating deductive changes with the lowest construction bidder(s) for better project budget management.

Other sections provide for non-substantive changes reflecting architect, engineer or project information submittal requirements necessary for department processing of projects.

Several other sections reflect administrative rule revisions required for consistency with statutes and recent statutory changes regarding dollar thresholds for project approvals and required signatures in project approvals.

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

The State of Wisconsin utilizes Qualifications-Based Selection for architectural and engineering services for State projects. The federal government in 1972 passed The Brooks Act requiring federal government agencies to utilize Qualifications-Based Selection (QBS) for federal projects. This act requires the following for federal projects: 1) Statements of qualifications from architect/engineer firms; 2) Evaluation of statements by evaluation boards; 3) Interviews with firms after short-listing top firms; and 4) Ranking and subsequent negotiation with the top ranked firm.

Since the passage of the Brooks Act, 45 other states have passed similar Qualifications-Based Selection criteria for architectural and engineering services and have applied these types of requirements for public works and in some cases private commercial projects.

The State of Wisconsin administrative code chapter Adm 20, Selecting and Contracting Architect/Engineer Services is consistent with The Brooks Act and has been in place since last revision in 1979. This administrative rule change seeks to update rules for current business practices as well as more consistent dollar threshold values.

#### Comparison with rules in adjacent states

A review of neighboring states indicates Minnesota and Michigan utilize website project solicitation with differing thresholds. Minnesota threshold for selection is \$2,000,000, Michigan threshold is \$1,000,000, Illinois threshold is \$250,000 also with a qualifications-based architect/engineer selection process. Minor differences in the rules from state to

state exist in committee makeup and other threshold values. All utilize and recognize website project posting.

### Summary of factual data and analytical methodologies

The current rule has been in existence since 1979 with little or no updating. The inflation index and increasing costs of services has created a condition in which the 1979 threshold level is approximately 50% of where it should be. This has created a condition requiring excessive oversight of smaller dollar value projects.

Business practices since 1979 have also radically changed. This proposed rule change reflects current practices such as electronic and web based advertisement, electronic document exchange and acceptance and electronic notifications. This will enhance the construction of state projects and speed up the processing of construction documents. Most other states as well as the Federal government utilize electronic advertising of projects as well as electronic document exchange.

### Anticipated costs incurred by the private sector

\$408,000 est. annual savings.

Waiving 3 of the 4 requirements of s. 20.02 (4) will provide more flexibility and opportunities for small, Wisconsin-based architect/engineering firms to submit their qualifications and provide services and establish a performance evaluation for smaller projects. Waiver is permissive in that making a selection of those projects with greater risk can still be evaluated using all of the requirements.

Approximately \$17,000 per interview per firm multiplied by approximately 6 interviews per year is the estimated savings by increasing the threshold to \$5 million in the interview process. Typically, four firms are invited to interview. Likewise, Wisconsin architects/engineers can more easily qualify for \$5 million projects by making it easier to be selected for projects of 50% of the size (\$5 million). Currently, if a firm cannot meet the experience requirement of 50% of the size, the firms will partner with an out-of-state firm to meet the qualification.

Moving toward more electronic notifications requires firms to have computers with internet access or access those locations which provide public internet service for free or a nominal charge. Costs incurred for this are offset by eliminating manual paper processing of documents and creating more efficiency and timeliness for consultants to learn about projects and show interest in those projects they are most qualified for. Also, web advertising is visible to a greater number of potentially qualified design candidates and allows for confidential letters of interest to be read only by those staff most involved with the project allowing opportunity for dialogue.

### Effect on Small Business

The department does not foresee any negative impact on small businesses. As indicated in item number 10, given the less restrictive requirements, added access to the department via other media and changes in dollar thresholds, the department foresees a positive impact.

### Contact Person

Donna Sorenson  
Department of Administration  
(608) 266-2887  
Donna.sorenson@.doa.state.wi.us

### Text of Rule

SECTION 1. Adm 20.02 is repealed and recreated to read:  
Adm 20.02 Definitions. In this chapter:

(1) "Approval" means the written or electronic procedure for evaluation and acceptance.

(2) "Architect/engineer" means a member of the design profession, registered under ch. 443, Stats. and is meant to refer to either an architect or an engineer, whichever is appropriate. The term shall apply to an individual or firm which provides architectural or engineering services, or both, and is not intended to impose the requirement of both registrations on an individual or individuals within a design firm.

(3) "Architect/engineer data record form" means a form upon which architects/engineers shall provide specific data requested by the department which will facilitate evaluation of architect/engineer eligibility, performance capabilities, experience, personnel and staff and statistics on past and present projects.

(4) "Architect/engineer proposal" means those documents submitted by an architect/engineer, indicating interest in providing professional services to the state for a specific project. The documents may include a fully executed architect/engineer data record form, a tentative schedule to include the method and staff that would be employed to meet the requirements of the proposed projects and such other materials as requested by the selection committee in the advertisement for architect/engineer proposals.

(5) "Department" means the department of administration. This also includes any organizational entity of the department of administration, which is assigned the responsibility for providing and supervising the architectural and engineering services performed by, or for, the state, as provided for in s. 16.85, Stats.

(6) "Eligible architect/engineer" means an architect/engineer who meets or exceeds the following criteria in order to be considered by the selection committee for a project:

(a) Has more than one architect/engineer as a responsible member of the firm.

(b) Has been in business for a period of not less than 3 years.

(c) Has a permanent office within Wisconsin, where responsible direction of all services will be based. Out-of-state firms will be considered when the selection committee determines there are no Wisconsin firms qualified or available to provide the services required.

(d) Has been responsible for the design and substantial completion of a similar project with a total construction cost or size of at least 50% as large as the construction cost or size of the project under consideration.

(e) For projects less than \$1,000,000 or when it becomes apparent to the selection committee that a project is of such a size or has such unique characteristics that special architect/engineer project responsibility is warranted, the selection committee, by vote, may set appropriate standards of acceptability different from pars. (a), (b) and (d).

**Note:** The department will post additional information regarding selection committee requirements for projects at the time of project advertising. Additional information regarding selection committee policy and procedures maybe be obtained at the department website, [www.doa.state.wi.us/dsf](http://www.doa.state.wi.us/dsf).

(7) "Selection committee" means a standing group composed of 5 state employees appointed by the secretary of the department of administration including one who shall also be designated as chairperson, and a minimum of 3 who shall be registered architects/engineers. The agency for whom the project is to be constructed will be requested to appoint 2 representatives to serve as additional members on the committee for the selection of an architect/engineer for that

project. If after appropriate notice, the agency fails to have any representative at the selection committee meeting, such absence shall be considered a waiver of their vote on the architect/engineer selection for that project. Each committee member shall have one vote.

SECTION 2. Adm 20.03 (1) is amended to read:

Adm 20.03 Convening of selection committee. (1) At the call of the chairperson, or the chairperson's designee, the selection committee shall convene for the purpose of initiating and carrying out the process of selecting architects/engineers for projects approved by the state building commission.

SECTION 3. Adm 20.03 (2) (e) is created to read:

Adm 20.03 (2) (e) Other pertinent project information.

SECTION 4. Adm 20.03 (4) is created to read:

Adm 20.03 (4) The chairperson of the selection committee, or the chairperson's designee, may nominate an architect/engineer for emergency projects approved by the governor under s. 16.855 (16) (b) 2., Stats., without solicitation or selection committee action. The chairperson, or chairperson's designee, shall notify the selection committee of any emergency nomination action at the next scheduled selection committee meeting.

SECTION 5. Adm 20.04 (1) and (2) are amended to read:

Adm 20.04 Selection procedures. (1) When selecting an architect/engineer for a project when the estimated project cost is less than ~~\$2,500,000~~ \$5,000,000, the selection committee may utilize the simplified selection by nomination procedure specified in s. Adm 20.05.

(2) When selecting an architect/engineer for a project that has an estimated project cost of ~~\$2,500,000~~ \$5,000,000 or more, the selection committee shall require the more detailed procedure for selection by advertisement, review and interview as specified in ss. Adm 20.06, 20.07 and 20.08.

SECTION 6. Adm 20.05 is repealed and recreated to read:

Adm 20.05 Selection by nomination. (1) The department shall solicit for architects/engineers by posting an advertisement for the project on the department's official website. The advertisement shall include a project description, proposed budget, schedule and a contact name for questions during the solicitation period. Architects/engineers who are interested in a project may submit a letter of interest through the website for review by the selection committee.

(2) An architect/engineer responding to the project solicitation shall provide all of the following information in the letter of interest:

(a) Completed and updated architect/engineer data record form, if one has not previously been provided.

(b) List of similar projects the architect/engineer has, at minimum, substantially completed, including approximate project square footage or cost of project.

(c) Architect's/engineer's proposed staff and subconsultants for the project.

(d) Schedule indicating when the architect/engineer can begin project work.

(e) Any other pertinent information indicating the architect's/engineer's qualifications and experience.

(3) The department shall make copies of the data record forms and the submitted architect/engineer letters of interest available to the selection committee for consideration for each project.

(4) The selection committee's evaluation of all interested architects/engineers shall also give consideration to the qualification criteria stated in Adm 20.07 (3).

(5) The selection committee shall submit its first and second recommendations for selection of an architect/engineer to the secretary of the department, or the secretary's designee, accompanied with justification supporting their recommendations.

(6) The selection committee shall keep the minutes of the selection committee meeting and shall record the name of the architects/engineers considered for each project and the action taken by the selection committee and justification supporting the selection committee recommendations.

(7) The secretary of the department, or the secretary's designee, shall consider the selection committee's recommendations, and inform the selection committee of the approval or disapproval of the recommended architect/engineer.

(8) The department shall repeat the selection process if the secretary of the department, or the secretary's designee, does not accept the selection committee's recommendations.

(9) When the selection of an architect/engineer has been finalized, the department shall establish a time and date for the architect/engineer to meet with the department's designated representative to negotiate a contract. If negotiations with the selected architect/engineer firm do not reach consensus, negotiations may be initiated with the second qualified architect/engineer firm as determined by the selection committee.

(10) The department shall post the results of the selection on the department's official website.

(11) If at any time during the selection process the department determines submitted materials misrepresent qualifications, the department may reject the letter of interest of a recommended architect/engineer.

**Note:** The Wisconsin Department of Administration Division of State Facilities official website is [www.doa.state.wi.us/dsf](http://www.doa.state.wi.us/dsf). Forms, publications and information regarding architect/engineer selection and proposed projects may be obtained from this website.

SECTION 7. Adm 20.06 (1) is amended to read:

Adm 20.06 Selection by advertisement. (1) For all projects having an estimated project cost ~~which would exceed \$2,500,000~~ of \$5,000,000 or more, an invitation for architects/engineers to submit proposals for consideration by the selection committee, shall be published in a class 2 notice under ch. 985 Stats. in the official state paper. The notice shall include the following information:

SECTION 8. Adm 20.06 (1) (c) is repealed and recreated to read:

Adm 20.06 (1) (c) Architect/engineer qualification requirements.

SECTION 9. Adm 20.06 (1) (e) is repealed and recreated to read:

Adm 20.06 (1) (e) Project description, estimated project budget and schedule.

SECTION 10. Adm 20.06 (1) (g) and (h) are created to read:

Adm 20.06 (1) (g) Criteria used in ranking architects/engineers to qualify for the interview process.

(h) Other information pertinent to the solicitation regarding the qualifications of the architect/engineer firm.

SECTION 11. Adm 20.07 (3) (f) is created to read:

Adm 20.07 (3) (f) Other information pertinent to the review of architect/engineer qualifications.

## SECTION 12. Adm 20.07 (4) is amended to read:

Adm 20.07 (4) Consideration may be given to joint ventures associations consisting of 2 or more architect/engineer firms organized for the purposes of furnishing professional services as a single entity, providing the assignment of and provisions for continuity of the various responsibilities within the joint venture association are approved by the selection committee and further providing that the combination of the qualifications of the individual firms constituting the joint venture association makes the team eligible for selection as defined in s. Adm 20.02 (4) and the qualification requirements indicated in sub. (3). Those firms that are party to an association that are invited to interview in accordance with s. Adm 20.08 (1) shall submit at the interview an executed draft association agreement in principal between the parties. Firms that are party to an association, selected in accordance with s. Adm 20.08 (6), shall submit a final executed association agreement between the parties prior to execution of a contract in accordance with s. Adm 20.09. The association agreement shall indicate how responsibilities will be shared, how tasks will be divided and the firms or individuals that will be assigned the responsibilities and tasks.

## SECTION 13. Adm 20.08 (1) is amended to read:

Adm 20.08 Interview. (1) Those architects/engineers deemed to be the best qualified, shall be notified and date and time shall be arranged for them to appear before the selection committee for the purpose of presenting their understanding of the scope of services required and their proposed method of meeting the program, including appropriateness and adherence to project budget and schedule. A copy of the evaluation form and interview questionnaire used by the selection committee will be furnished to the architect/engineer at least 10 days prior to their scheduled appearance.

## SECTION 14. Adm 20.08 (5) and (6) are amended to read:

Adm 20.08 (5) The selection committee will submit their first and second recommendation for selection of an architect/engineer to the secretary of the department or the secretary's designee.

(6) The secretary of the department, or the secretary's designee, will consider the selection committee's recommendations, and inform the selection committee of the results of that consideration.

## SECTION 15. Adm 20.08 (8) and (9) are amended to read:

Adm 20.08 (8) Negotiations for contract shall be conducted in the same manner as that specified in s. Adm 20.05 ~~(4)~~ (9).

(9) ~~As soon after the selection of an architect/engineer has been confirmed, an announcement shall be sent to all architects/engineers who were interviewed, informing them of the selection committee action. After confirmation of the selection, the department shall notify all interviewed architects/engineers informing them of the selection committee action and post results of selection on the department's official website.~~ Any architect/engineer who was interviewed may upon request, inspect the selection committee interview evaluation of their firm.

**Note:** The Wisconsin Department of Administration Division of State Facilities official website is [www.doa.state.wi.us/dsf](http://www.doa.state.wi.us/dsf). Forms, publications and information regarding architect/engineer selection and proposed projects may be obtained from this website.

SECTION 16. Adm 20.09 (2), (a) and (b) are amended to read:

~~Adm 20.09 (2) Upon return of contracts from the architect/engineer, the department shall be guided by the following procedure regarding final approval: Final approval authority for contracts shall be guided by all of the following:~~

(a) The approving authority for contracts less than \$15,000 the threshold prescribed in s. 16.87(3), Stats., is vested in the department secretary or a designee thereof, or the secretary's designee.

(b) Contracts of \$15,000 the threshold prescribed in s. 16.87(3), Stats., or more must be signed by the department secretary or a designee thereof, or the secretary's designee, and forwarded to the governor for approval.

SECTION 17. Adm 20.09 (3) (b) and (c) are amended to read:

Adm 20.09 (3) (b) Change order requests shall be reviewed by the appropriate department representative coordinating the project implementation and by that employee's supervisor. If the request is approved by the department representative's supervisor, the recommendation shall be processed in the form of a change order and submitted to the department secretary or a designee thereof, or the secretary's designee, in accordance with s. 16.87(3), Stats., for approval. ~~When the change order amounts to \$15,000 or more it shall also be submitted to the governor for approval.~~

(c) A change order to the architect/engineer contract shall contain: specific information which will document the reason for the contract change, a description of the work involved, any change to the schedule, and the maximum cost limit.

## SECTION 18. Adm 20.10 (4) and (5) are amended to read:

Adm 20.10 (4) The evaluation summary ~~of the performance evaluation reports~~ shall contain the significant evaluations of strengths and weaknesses and shall be utilized as a report to the selection committee and a basis for review with the architect/engineer. The summary shall be placed in the evaluation file.

(5) The ~~professional service~~ evaluation summary will be reviewed with the architect/engineer upon request. An entry shall may be made in the evaluation file to acknowledge the review with the architect/engineer, rating information, summary, or corrective measures to be taken as pertinent to providing good performance services, and any comments the architect/engineer desires to include as part of the record. The architect/engineer may appeal to the department any portion of the evaluation summary within a period of 30 calendar days after the architect/engineer has been notified of the evaluation.

## SECTION 19. Adm 21.01 (2) is amended to read:

Adm 21.01 (2) These rules shall apply to all state construction projects when the estimated construction cost exceeds \$30,000 the threshold prescribed in s. 16.855(1), Stats.

## SECTION 20. Adm 21.02 is repealed and recreated to read:

Adm 21.02 Definitions. In this chapter:

(1) "Advertise for proposals" means a written notice announcing that sealed bids will be received for a specific construction project, inviting prospective bidders to obtain or review drawings and specifications for the purpose of submitting a bid to do work. The advertisement for proposals shall contain as a minimum, the following information:

(a) Location of the work.

(b) Identification of owner.

(c) Scope of the work, which describes such items as square footage, number of floors and primary function(s) of the project.

(d) A 10% bid guarantee is required.



(e) Date and time receipt of bids will close and public opening will occur.

(f) Location where bids will be received.

(g) Date and place where drawings and specifications will be available.

(2) "Bid" means the completed standard bid form on which the bidder has set forth the price or prices for which the bidder is willing to enter into a contract to perform and complete the work bid, in full compliance with the contract documents.

(3) "Bid guarantee" means a properly executed department of administration form of bid bond, a bank certified check, or a cashier's check, in an amount equal to 10% of the highest combination base bid(s) and alternate bids submitted. In the event the federal government participates in a state project, the bid guarantee shall be as specified by the federal government, but not less than 10%.

(4) "Bidder" means an individual, partnership, or corporation that submits a bid.

(5) "Bidders authorized representative" means an individual who has been provided in writing, the authority to act in the bidder's behalf.

(6) "Bidding period" means that time span from the date of first publication of the advertisement for proposals to the date of bid opening.

(7) "Lowest qualified responsible bidder" shall be defined to include all of the following which must be met to be considered for award of contract:

(a) *Lowest bidder.* The lowest bidder is one whose bid contains the lowest total dollar amount when compared with other bids submitted for the same work. Should the specifications require evaluation of other factors in conjunction with lowest dollar amount to determine the lowest bidder, a formula shall be specified which will permit the conversion of evaluation factors to a dollar value.

(b) *Qualified bidder.* A qualified bidder is one who meets the following conditions:

1. Has completed one or more projects of at least 50% of the size or value of the division of work being bid and the type of work completed is similar to that being bid. If a greater magnitude of experience is deemed necessary, other than size or value of the work, such requirements will be described in the specifications.

2. Has access to all necessary equipment and has organizational capacity and technical competence necessary to enable performance of the work properly and expeditiously.

3. Consideration will be given to associations consisting of 2 or more contracting firms organized for the purpose of entering into a construction contract as a single entity, providing the assignment of and provisions for continuity of the various responsibilities within the association are agreed upon prior to award of contract and further providing that either of the individual firms constituting the association is qualified as defined herein.

4. In the event that the project is of such magnitude as to limit competition as a result of the conditions established for qualification, the department may waive the condition for bidder qualification.

5. The department may require bidders to submit sworn statements as to financial ability, equipment and experience in construction and require other such information as may be necessary to determine their competency. Bidders failing to submit required sworn statements shall be deemed not qualified.

(c) *Responsible bidder.* A responsible bidder is one who meets the following conditions:

1. Maintains a permanent place of business.

2. Provides a sworn statement upon request, which evidences the bidder has adequate financial resources to complete the work being bid, as well as all other work the bidder is presently under contract to complete.

3. Is bondable for the terms of the proposed contract.

4. Has a record of satisfactorily completing past projects. Criteria which will be considered in determining satisfactory completion of projects by contractors and subcontractors will include:

a. Completed contracts in accordance with drawings and specifications.

b. Diligently pursued execution of the work and completed contracts according to the established time schedule unless extensions are granted by the owner.

c. Fulfilled guarantee requirements of the contract documents.

d. Established and diligently maintained a satisfactory affirmative action program in accordance with the contract provisions.

e. Established and diligently maintained a satisfactory safety program in accordance with the contract provisions.

5. Is not presently on an ineligible list maintained by the department of administration for noncompliance with equal employment opportunities and affirmative action requirements as provided for in s. 16.765 (9), Stats., or on any other agency list for violation of statutes or administrative rules.

(8) "Omission, error or mistake" are terms used interchangeably and synonymously, constituting a neglect to provide something that is required or a departure from accuracy.

(9) "Supporting documents" means those documents packaged with a bid including, but not limited to, bid guarantee, power of attorney if bid bond is submitted as bid guarantee, affidavit form and other information specifically requested. Materials submitted with the bid form that are unsolicited are deemed to be fugitive materials and shall not be considered in determining the lowest bidder or award of contract.

SECTION 21. Adm 21.05 (2) is amended to read:

Adm 21.05 (2) Should the bidder not possess the special envelope described in sub. (1), the bidder ~~should~~ shall place the following information on the face of the outermost envelope containing the bidder's proposal:

SECTION 22. Adm 21.05 (5) is amended to read:

Adm 21.05 (5) Sealed bids received by the department of administration, after the date and time designated in the advertisement for proposal, shall have the date and time of receipt stamped upon the face of the envelope and returned to the bidder unopened. The department shall determine envelopes that conform with this section in the best interests of the state.

SECTION 23. Adm 21.09 (4) is amended to read:

Adm 21.09 (4) Should the total of the proposals submitted by the lowest qualified responsible bidder(s) exceed the limits imposed by authorized funds, the department of administration may negotiate deductive changes, ~~not to exceed 5% of the total bid by any of the lowest qualified responsible bidders in the lowest qualified bid~~ for each contract to bring the bids within funding limits.

**Notice of Hearings  
Natural Resources  
(Fish, Game, etc.)  
[CR 05-102]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 27.01 (2), 29.014, 29.041, 29.089 (3) and 227.11 (2) (a), Stats., interpreting s. 29.014, 29.041 and 29.0839 (3), Stats., the Department of Natural Resources will hold public hearings to revise chs. NR 10 and 45, Wis. Adm. Code, relating to small game and expanded spring turkey hunting in state parks. The proposed rule removes sunset dates from ch. NR 10 which will allow the hunting of small game, upland game birds and migratory game birds to continue at Mill Bluff and Mirror Lake state parks. The proposed rule also discontinues the hunting of small game, upland and migratory game birds at Newport and Governor Dodge state parks. The proposed rule also creates three new state park turkey management zones in Willow River, Interstate and Newport state parks. These parks will be included in the Department's annual turkey management permit issuance system. An additional special permit to hunt turkey in these parks will no longer be required.

NOTICE IS HEREBY FURTHER GIVEN that the Department master plans for affected state parks may be modified based on the proposed rule revisions. The Department will accept comments on possible modifications to the master plans relating to hunting in the affected state parks

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:

Monday, **December 5, 2005** at 6:00 p.m.  
County Board Room, Door County Courthouse  
421 Nebraska St.  
Sturgeon Bay

Tuesday, **December 6, 2005** at 6:00 p.m.  
Community Room, St. Croix Co. Courthouse  
1101 Carmichael Road  
Hudson

Wednesday, **December 7, 2005** at 6:00 p.m.  
Community Center, Kilbourn Public Library  
620 Elm Street  
Wis. Dells

Thursday, **December 8, 2005** at 6:00 p.m.  
Prairie Conference Room, DNR Service Center  
1500 N. Johns St.  
Dodgeville

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kurt Thiede at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

1. Supplies and Services:

Vehicle Maintenance and Expenses for Increased Patrol		
\$1,000 per park	(\$1,000 x 5)	\$5,000

2. Salaries and Fringes – \$30 per hour.

Selling Park Permits, Admitting Hunters to Park and/or Issuing Permits & Law Enforcement during Hunting Seasons:

Small Game: 1 hour per park per day at \$30 per hour		
(1 x 2 x 45 x \$30)		\$2,700

Turkey: 1 hour per park per day at \$30 per hour		
(1 x 3 x 15 x \$30)		\$1,350

[Based on 15 days of spring turkey hunting and 45 days of small game hunting]

Total Cost		\$9,050
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The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until December 9, 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. Thiede.

**Notice of Hearing  
Natural Resources  
(Fish, Game, etc.)  
[CR 05-101]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1) and 227.11 (2) (a), Stats., interpreting 29.014 (1), Stats., the Department of Natural Resources will hold a public hearing on revisions to s. NR 20.20, Wis. Adm. Code, relating to hook and line walleye, sauger and hybrids fishing in Sherman Lake, Vilas County and Bass (Patterson) Lake, Washburn County. The proposed rule eliminates the daily bag limits and size limits for walleye, sauger and hybrids on these two lakes. In addition, there will be no closed season for walleye, sauger and hybrids on these two lakes resulting in greater harvest opportunity for anglers. This proposed rule is part of a walleye research project being conducted by the Department to investigate the long-term effects of high harvest on walleye populations in northern Wisconsin.

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 hearing will be held on:

Thursday, **November 17, 2005** at 1:00 p.m.  
Large Conference Room, DNR Service Center  
875 S. 4<sup>th</sup> Ave.  
Park Falls

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 Edward Emmons at (608) 221-6334 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Estimate**

There is no state or local government fiscal impact anticipated.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Edward Emmons, Bureau of Science Services, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 30, 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. Emmons.

### **Notice of Hearing Natural Resources (Environmental Protection – General)**

#### **[CR 05-100]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 281.68, Stats., interpreting s. 281.68, Stats., the Department of Natural Resources will hold a public hearing on the creation of ch. NR 192, Wis. Adm. Code, relating to lake monitoring contracts and the citizen lake monitoring network. The proposed rule implements s. 281.68 (2) (b), Stats., that allows the Department to award contracts from the lake protection grant appropriation, s. 20.370 (6) (ar), Stats., for the creation and support of a statewide lake monitoring network to collect information about the environmental health of the state's lakes. The Department may use up to 10% of the annual lake protection grant appropriation to fund the network through contracts to groups and individuals. The Department will register, train and equip citizens to collect

data that the Department will receive and analyze and make available to the public. The rule lists the types of monitoring activities citizens may conduct. The Department will provide monitoring protocols to assure consistent results. Qualified citizen monitors must participate in Department sponsored training and have access to a boat, computer and telephone. The Department may use contracts with other agencies and private corporations to provide the training, equipment and other goods and services needed to support the network. The process for issuing contracts will comply with all applicable state law.

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 hearing will be held on:

Tuesday, **November 22, 2005** at 11:00 a.m.  
Room 613, GEF #2  
101 South Webster Street  
Madison, WI

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 Carroll Schaal at (608) 261-6423 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Estimate**

This rule is implementing a statutory change, and the rule itself has so state fiscal impact.

For 2005 – 2006, 10% of the lake protection grant allocation is approximately \$370,000. These are funds that otherwise would go to units of local government, lake associations and non profit conservation organizations for lake planning, lake protection and aquatic invasive species control grants. While this will decrease the number of grants the department will be able to award, the reduction will be offset by expanded use of volunteer lake monitoring through the contracts.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Carroll Schaal, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 30, 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. Schaal.

**Notice of Hearings**  
**Natural Resources**  
**(Environmental Protection – Air**  
**Management)**

**[CR 03–118]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1), (16) and (17) and 285.65 (14), Stats., interpreting ss. 285.11 (6), 285.60 and 285.61, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 405, 408 and 484, Wis. Adm. Code, relating to incorporation of federal changes to the air permitting program. On December 31, 2002, the U.S. EPA promulgated federal rules which significantly changed the federal new source review (NSR) program for major emission sources located in both attainment and nonattainment areas. The major elements of the Department's proposed implementation are:

1. Baseline actual emissions – The Department is proposing that facilities determine baseline actual emission rates for use in calculating emissions increases and establishing plant-wide applicability limitations by using any 24 consecutive month period in the past 10 years. Although all emissions units affected by the change must use the same baseline period for the air contaminant being addressed, a different baseline period may be used for differing air contaminants.

2. Methodology for calculating emission increases – The Department is proposing that the federal applicability test, including a demand growth factor, be adopted. In calculating emissions that result from a change, facilities may either project actual emissions resulting from the change or choose to utilize potential emissions. Baseline actual emissions are subtracted from projected actual/potential emissions to determine whether a significant net emissions increase will occur as a result of the project. The department is proposing record keeping and reporting requirements for those instances where there is a reasonable possibility that a project could result in a significant net emissions increase.

3. Plant-wide applicability limitations (PALs) – The Department is proposing that the federal PAL proposal be accepted in Wisconsin. The PAL would be calculated the same as baseline actual emissions plus a significance threshold. Projects occurring within facilities that would be regulated under a PAL would be exempt from federal new source review requirements if they will not result in emissions exceeding the PAL level.

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1), (6) and (17), 285.60 (6) and 285.69 (1), Stats., interpreting ss. 285.11 (6) and (17), 285.60 and 285.61, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 406, 407 and 410, Wis. Adm. Code, relating to providing the interface of the state air permitting programs with federal changes to the air permitting program. The State Implementation Plan developed under s. 285.11 (6), Stats., will also be revised. On December 31, 2002, the U.S. Environmental Protection Agency published regulations that significantly changed the way new and modified sources of air pollution are permitted. Changes necessary to implement the federal program cannot be fully utilized unless additional changes are made to the state construction and operation permitting regulations. The proposed rule revisions have been designed to take full

advantage of the flexibility made available under the proposed changes that adopt the federal air permitting revisions without compromising on Department or public opportunity for review. The proposed rule revisions are intended to provide flexibility to stationary sources utilizing the permit applicability exclusions provided within the federal rule changes.

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.

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, **November 16, 2005** at 1:00 p.m.  
Conference Room 1, Portage Co. Courthouse Annex.  
1462 Strongs Ave.  
Stevens Point

Friday, **November 18, 2005** at 10:00 a.m.  
Room GO9, GEF #2  
101 South Webster St.  
Madison

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

**Fiscal Estimate**

Because these rule revisions will reduce the number of PSD/NSR permits that the department will process annually, revenues from the completion of these permits will be lost. Based upon 2002 permitting efforts, the department estimates this lost revenue to be \$480,000 annually. Increasing minor source permitting efforts may result due to less regulatory burden, the department estimates that this increasing level would equal \$140,000.

The department estimates that although these revisions will reduce the number of projects that would be subject to permitting under the PSD/NSR program, the department will be required to spend resources conducting complex applicability determinations and preparing exclusions from the PSD/NSR program under the options provided for in the rule revisions. These exclusions will be labor intensive on the front end in order to ultimately provide regulatory relief. It is estimated that any time that would have been available as a result of the reduced number of PSD/NSR permit applications will be spent responding to requests for applicability determinations or in preparing exclusionary documents for sources taking advantage of the exclusionary options. The department estimates that the costs to prepare these exclusionary documents will equal or exceed the costs of

preparing PSD/NSR permits, and but may be possible to absorb within the agency's budget.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rules may be submitted by regular mail to Mr. Jeffrey Hanson, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than November 21, 2005. Written comments, whether submitted electronically or by regular mail, will have the same weight and effect as oral

statements presented at the hearings.

A copy of proposed rules AM-06-04 and AM-32-04b and the fiscal estimates may be obtained from:

Proposed Rules  
Bureau of Air Management  
P.O. Box 7921  
Madison, WI 53707  
Phone: (608) 266-7718  
FAX: (608) 267-0560

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## Submittal of proposed rules to the legislature

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

### **Commerce**

**(CR 05–064)**

Ch. Comm 72, relating to cleaning methods for historic buildings.

### **Insurance**

**(CR 05–066)**

Ch. Ins 50, relating to actuarial opinions and summaries and affecting small business.

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

**(CR 05–051)**

Chs. MPSW 16 and 17, relating to supervised clinical practice and temporary licenses issued by the Marriage and Family Therapist Section.

### **Natural Resources**

**(CR 05–039)**

Chs. NR 460 to 463, relating to incorporation of federal amendments in national emission standards for hazardous air pollutants.

### **Natural Resources**

**(CR 05–040)**

Ch. NR 465, relating to national emission standards for hazardous air pollutants for the surface coating of plastic parts and products and of miscellaneous metal parts and products.

### **Natural Resources**

**(CR 05–073)**

Ch. NR 20, relating to Lake Winnebago sturgeon spearing.

### **Transportation**

**(CR 05–062)**

Ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

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## Rules published with this register and final regulatory flexibility analyses

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*The following administrative rule orders have been adopted and published in the **October 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.*

### **Commerce (CR 05-025)**

An order affecting chs. Comm 2, 5 and 41, relating to boilers and pressure vessels. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

Section 101.17, Stats., authorizes the Department to promulgate rules prescribing minimum installation and operation standards for boilers and pressure vessels in public buildings and at places of employment. The proposed rules of Clearinghouse Rule No. 05-025 are minimum requirements to meet the directive of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Commerce (CR 05-038)**

An order affecting ch. Comm 2, relating to fee schedule. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

Section 101.19, Stats., authorizes the Department to charge fees to cover the costs of the Department's services for protecting the safety and health of frequenters and occupants in public buildings, places of employment and one- and 2-family dwellings. The proposed rules of Clearinghouse Rule No. 05-038 are minimum requirements to meet the directives of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Health and Family Services (CR 05-047)**

An order affecting ch. HFS 119, relating to health insurance risk sharing plan (HIRSP). Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

HIRSP statutes require an assessment of insurers and an adjustment to provider payment rates in order to help finance HIRSP. The rule changes do not affect health insurers as none are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. The rules changes may affect some

health care providers that are small businesses. The net fiscal impact of HIRSP on these small health care providers is unknown.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Health and Family Services (CR 05-048)**

An order affecting ch. HFS 113, relating to First Responders. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rules will not have a significant economic impact on a substantial number of small businesses.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Insurance (CR 05-028)**

An order affecting ch. Ins 17, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2005. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

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

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Natural Resources (CR 04-137)**

An order affecting ch. NR 47, relating to the gypsy moth suppression program. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

The program is voluntary and has no regulatory impact on business.

#### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Assembly Committee on Forestry and the Senate Committee on Natural Resources and Transportation. No public hearings were held and no comments were received by the department.

### **Natural Resources (CR 05-004)**

An order affecting ch. NR 12, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to hunting dogs and pets. Effective 11-1-06.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rules are applicable to individuals involved in agriculture and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., 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 June 17, 2005, the Senate Committee on Natural Resources and Transportation requested modifications to the proposed rule. On June 20, 2005, the Assembly Committee on Natural Resources requested modifications. The Natural Resources Board modified the rule to delete the provision that stated claims for dogs killed or injured by wolves within five miles of a previous dog kill that had been publicly noticed by the department would not be paid.

### **Natural Resources (CR 05-005)**

An order affecting ch. NR 12, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to livestock. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed subchapter to ch. NR 12, pertaining to rules relating to the payment for damage caused by endangered and threatened species of wildlife and by gray wolves. These rules are applicable to individuals involved in agriculture and impose no compliance or reporting requirements for small businesses nor are any design or operational standards contained in the rule. Therefore, a final regulatory flexibility analysis was not required.

#### **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. On June 16, 2005, the Senate Committee held a public hearing and requested modifications to the proposed rule. On June 29, 2005, the Assembly Committee held a public hearing and requested modifications. On August 11, 2005, the Natural Resources Board adopted modifications to amend the criterion in s. NR 12.54 (2) (c) 5. that a cattle producer must meet in order to be eligible for payments for missing calves. The modifications were submitted to the Committees and no further action was taken.

### **Natural Resources (CR 05-015)**

An order affecting ch. NR 20, relating to fishing on the inland, outlying, and boundary waters of Wisconsin. Effective 11-1-05 and 4-1-06.

### **Summary of Final Regulatory Flexibility Analysis**

The proposed rule will not directly affect small business as the rules will not directly apply to them, with the possible exception of some holders of setline or set or bank pole licenses who choose to sell the catfish, rough fish and turtles they catch. Such sales are discretionary and no reporting is required, so it is not known whether the proposed rule relating to the clarification of timing of placement of setlines and set or bank poles will affect any licensees who are small businesses. Any effect is likely to be insignificant.

#### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On June 20, 2005, the Assembly Committee on Natural Resources held a public hearing on the proposed rule. No modifications were requested as a result of the public hearing.

### **Natural Resources (CR 05-017)**

An order affecting chs. NR 10, 12, 15 and 45, relating to hunting and trapping regulation changes. Effective 11-1-05 and 2-1-06.

#### **Summary of Final Regulatory Flexibility Analysis**

The revisions pertain to rules relating to hunting regulations and wildlife refuges. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. In addition, these proposed rules do not have a significant economic impact on a substantial number of small businesses. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

#### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On June 20, 2005, the Assembly Committee on Natural Resources held a public hearing on the proposed rule. No modifications were requested as a result of the public hearing. A concern was raised by committee members regarding the amendment requiring owners to identify tree stands used on state-owned lands and lands under the management of the department. In response to these concerns, the department will be initiating an amendment that only unoccupied stands will need to be identified.

### **Natural Resources (CR 05-030)**

An order affecting ch. NR 46, relating to the administration of the Forest Crop Law and the Managed Forest Law. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

This rule does affect small business. Small private forest landowners and forest industries enrolled under the Forest Crop Law and the Managed Forest Law are required to 10% and 5% respectively of the stumpage value adopted in the zone for the species and wood product volume cut from their land. Enrolling under either the Forest Crop Law or the Managed Forest Law is voluntary.



### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Assembly Committee on Forestry and the Senate Committee on Natural Resources and Transportation. No public hearings were held and no comments were received by the department.

#### **Natural Resources (CR 05-031)**

An order affecting chs. NR 1, 10, 12, 16 and 19, relating to permitting and applications, hunting, trapping, captive wildlife, agricultural damage and nuisance wildlife. Part Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 93m), Stats., a final regulatory flexibility analysis is not required.

### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. The Assembly Committee on Natural Resources held a public hearing on August 31, 2005. There were no comments on the proposed rules.

#### **Public Instruction (CR 04-076)**

An order affecting ch. PI 35, relating to financial reporting requirements under the Milwaukee Parental Choice Program and affecting small business. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rules establish how private schools participating in the MPCP program will meet the new financial reporting requirements established under 2003 Wisconsin Act 155.

In January 2004, there were 106 private schools participating in the MPCP, with a total enrollment of 12,231 students in the program. It is anticipated that the private

school financial audit requirements will have a slight fiscal effect since many of the participating schools currently have limited audit procedures in place. Auditing costs for small public school districts range from \$2,000 – \$4,000 annually. It is assumed that auditing costs to participating private schools will fall within the higher end of the \$2,000 – \$5,000 range and are not considered significant. The actual costs will vary depending on the number of financial transactions and expertise of the private school's accounting staff. The status of the financial records maintained by the private school staff will directly affect the time involved in auditing those records.

### **Summary of Comments by Legislative Review Committees**

No comments were received.

#### **Revenue (CR 05-063)**

An order affecting ch. Tax 18, relating to the assessment of agricultural property. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rule order does not have a significant effect on small business.

### **Summary of Comments by Legislative Review Committees**

No comments were received.

#### **Transportation (CR 01-156)**

An order affecting ch. Trans 100, relating to safety responsibility and damage judgment suspension of operating privileges and motor vehicle registration. Effective 11-1-05.

#### **Summary of Final Regulatory Flexibility Analysis**

This regulatory change has no impact on small business. This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The department does not anticipate any fiscal effect upon small businesses from this codification.

### **Summary of Comments by Legislative Review Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in **October 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

#### Commerce

##### **Ch. Comm 2**

- S. Comm 2.02 (7) and (8)
- S. Comm 2.04 (4)
- S. Comm 2.09
- S. Comm 2.10
- S. Comm 2.11 (4), (5) and (8)
- S. Comm 2.12 (1) and (2m)
- S. Comm 2.13 (1m)
- S. Comm 2.15 (2m)
- S. Comm 2.16
- S. Comm 2.31 (2), (2m) and (3)
- S. Comm 2.33
- S. Comm 2.34 (3) and (5)
- SS. Comm 2.41 to 2.51
- S. Comm 2.52 (3) (d), (5) and (7)
- S. Comm 2.61 (1) (a), (3) and (4)
- S. Comm 2.68 (3) (a) and (c)

##### **Ch. Comm 5**

- S. Comm 5.06
- S. Comm 5.60 (5) (c)

##### **Ch. Comm 41**

- S. Comm 41.04 (13m)
- S. Comm 41.10 (1), (2) (a) through (c)
- S. Comm 41.15 (3) (a) and (b)
- S. Comm 41.16 (2) (b)
- S. Comm 41.18 (1) (n)
- S. Comm 41.23 (1) and (2) (a)
- S. Comm 41.24 (1) (b) and (4)
- S. Comm 41.31 (1) (a)
- S. Comm 41.41 (2) (b) and (3)
- S. Comm 41.42 (2)
- S. Comm 41.48
- S. Comm 41.56
- S. Comm 41.60
- S. Comm 41.61
- S. Comm 41.62 (2)
- SS. Comm 41.90 to 41.92

#### Health and Family Services

##### **Ch. HFS 113**

- SS. HFS 113.01 and 113.02
- S. HFS 113.03 (1), (1m), (4), (12) to (21), (24) to (31)
- S. HFS 113.04 (1), (2) (b) and (d), (2m), (3) (a), (c) and (d), (4) (a), (b), (e) and (f), (5), (6), (7), (8) (a), (9), (10) (b), (c) and (d)

- S. HFS 113.05 (1) (intro.) and (2) to (4)

##### **Ch. HFS 119**

- S. HFS 119.07 (6) (b) to (d)
- S. HFS 119.15 (2) and (3)

#### Insurance

##### **Ch. Ins 17**

- S. Ins 17.01 (3)
- S. Ins 17.28 (6)

#### Natural Resources

##### **Ch. NR 10**

- S. NR 10.001(15) (b) to (d), (20) and (23c)
- S. NR 10.01 (3) (e)
- S. NR 10.02 (1), (3) and (7)
- S. NR 10.07 (1) (k)
- S. NR 10.09 (1) (a) and (c)
- S. NR 10.10 (1) (b)
- S. NR 10.102 (2) (a)
- S. NR 10.104 (7) (a), (9) and (14)
- S. NR 10.111 (7)
- S. NR 10.125 (2) (b)
- S. NR 10.13 (1) (b)
- S. NR 10.145 (3) (b), (4) (b), (5) (a) and (c), and (6) (b)
- S. NR 10.24 (8) (a)
- S. NR 10.25 (1) (c), (2) (b), (4) (d) and (e)
- S. NR 10.26 (1) (b)
- S. NR 10.27 (6)
- S. NR 10.28 (1)
- S. NR 10.40 (3) (b), (f) and (h) and (4) (b)

##### **Ch. NR 12**

- S. NR 12.10 (3) (intro.) and (e)
- S. NR 12.15 (11) (b) and (d)
- S. NR 12.16 (8) (b)
- S. NR 12.31 (4e)
- S. NR 12.37 (1) (d)
- Ss. NR 12.50 to 12.55

##### **Ch. NR 15**

- S. NR 15.026

##### **Ch. NR 20**

- S. NR 20.12 (2) (k)
- S. NR 20.20 (3) (c), (4) (a) and (e), (10) (bm), (17) (dm), (21) (e), (27) (e) and (g), (44) (f) and (g), (49) (c), (57) (e), (64) (g) and (h), (70) (f), (72) (h), (73) (a), (cm), (i), (L) and (m)

**Ch. NR 45**

S. NR 45.09 (2)

**Ch. NR 46**

S. NR 46.30 (2) (a) to (c)

**Ch. NR 47**

S. NR 47.910

S. NR 47.912 (3m), (7) and (8)

S. NR 47.913 (1), (2) (a), (b) and (d)

S. NR 47.914 (2) to (11)

S. NR 47.917 (1) (intro.), (f), (i) and (2) (am)

**Public Instruction****Ch. PI 35**

S. PI 35.02 (1m), (2), (5m), (6m), (7m), (8m), (9m), (9r), (10b), (10k), (10m), (12m), (15m), (17m) and (20m)

S. PI 35.03 (3)

S. PI 35.04 (4), (7) (a) and (9)

S. PI 35.045 (1) (intro.), (b) to (g), and (3) (b)

SS. PI 35.046 to 35.048

S. PI 35.05 (2), (3) (b), and (10) to (12)

**Revenue****Ch. Tax 18**

S. Tax 18.07 (1) (b), (c), (d) and (3) (a)

**Transportation****Ch. Trans 100**

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S. Trans 100.02 (intro.), (1), (2), (3), (4), (4m), (5), (6), (7), (8), (9), (10), (11), (12) and (14)

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S. Trans 100.03

S. Trans 100.04 (3) to (7)

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S. Trans 100.06 (1) (intro.), (a), (b) and (d) to (h), (2) (intro.), (a) and (b), (c) to (f) and (3)

S. Trans 100.07

S. Trans 100.08 (1) (intro.) and (3) to (8)

S. Trans 100.09 (intro.) and (1), (2), (3), (5), (6)

S. Trans 100.10

S. Trans 100.11

S. Trans 100.12 (2) (c), (3), (4) (5)

S. Trans 100.13 (1) (intro.) and (a) to (h), (2), (3)

S. Trans 100.14

S. Trans 100.15 (intro.) (1), (2), (3) (b), (c), (e) and (f), (4), (5), (6)

S. Trans 100.16 (2) and (4)

S. Trans 100.17 (1), (1m), (2), (3) (intro.), (a) and (b), (4) (intro.) and (b), (c), (5) and (6)

SS. Trans 100.18 and 100.19

**Editorial corrections**

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

**Health and Family Services****Ch. HFS 119**

S. HFS 119.12 (3) (d)

**Errata**

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

**Health and Family Services****Ch. HFS 57**

S. HFS 57.13 (1) (e)

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## Executive orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 125.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Specialist Michael Wendling of the Wisconsin Army National Guard who lost his life during Operation Iraqi Freedom.

**Executive Order 126.** Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Sergeant Andrew Wallace of the Wisconsin Army National Guard who lost his life during Operation Iraqi Freedom.

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