

# Wisconsin Administrative Register

No. 624



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Revisor of Statutes Bureau  
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# Notice to Subscribers

On December 31, 2007 the responsibility of editing and publishing the Wisconsin Administrative Code and the Wisconsin Administrative Register will be transferred from the Revisor of Statutes Bureau to the Legislative Reference Bureau.

The contact person at the Legislative Reference Bureau will be Bruce Hoesly. He can be contacted at 608-266-7590 or at [bruce.hoesly@legis.wisconsin.gov](mailto:bruce.hoesly@legis.wisconsin.gov).

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Gary Poulson  
Revisor of Statutes Bureau

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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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### Agriculture, Trade and Consumer Protection

Rules adopted revising **ch. ATCP 10**, relating to diseases of fish and farm-raised deer.

#### Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including programs to control diseases of fish and farm-raised deer.

#### Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources (“DNR”). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Morts (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (including bait) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS

testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non-salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a “permanent” rule.

#### Disease-Free Herd Certification of Farm-Raised Deer Herds

(6) DATCP registers farm-raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm-raised deer. Under current DATCP rules, DATCP may certify a deer herd as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the deer keeper. Certification is voluntary, but facilitates sale and movement of deer.

(7) Under current rules, a tuberculosis-free herd certification is good for 3 years, but a brucellosis-free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis-free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that deer farmers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for deer farmers this year, pending the adoption of permanent rules.

<b>Publication Date:</b>	<b>October 31, 2007</b>
<b>Effective Date:</b>	<b>October 31, 2007</b>
<b>Expiration Date:</b>	<b>March 29, 2008</b>
<b>Hearing Dates:</b>	<b>January 14, 2008</b>
	<b>[See Notice this Register]</b>

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### Commerce

#### (Licenses, Certifications, etc., Ch. Comm 5)

Rules adopted revising **ch. Comm 5**, relating to licensing of elevator contractors and installers.

#### Exemption From Finding of Emergency

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.”

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on

a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

**Publication Date:** June 1, 2007  
**Effective Date:** June 1, 2007  
**Expiration Date:** See section 7 (2), 2005 Wis. Act 456  
**Hearing Date:** June 27, 2007

## Commerce (2) (Amusement Rides, Ch. Comm 34)

1. Rule adopted creating s. Comm 34.22 (5m), relating to amusement ride safety.

### Finding of Emergency

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

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007. The ride involved the field attachment of passengers who don harnesses and then are elevated off the ground.

2. Although no mechanical or equipment failure contributed to the incident, attachment and connection practices of the operators did not incorporate safety practices used on some similar rides in the industry.

3. The department recognizes that without promulgating this emergency rule, there could be confusion in what constitutes a recognized safe practice for the field attachment or connection of harnessed passengers on similar amusement rides. The department believes clarifying the code will promote safety.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes.

**Publication Date:** August 13, 2007  
**Effective Date:** August 13, 2007  
**Expiration Date:** January 10, 2008  
**Hearing Date:** October 15, 2007

2. Rules adopted revising ch. Comm 34, relating to amusement rides and affecting small businesses.

### Finding of Emergency

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

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007.

2. The department is in the processing of promulgating rule revisions under its Amusement Ride Code, chapter Comm 34 to address two issues that have come to light as a result of the accident investigation. The completion of this rule-making

process and their enactment cannot occur prior to the beginning of the 2008 amusement ride season. The issuance of the emergency rules at this time is also necessary to allow amusement ride owners and operators sufficient time to acquire the necessary issuance.

3. The department believes that establishing liability insurance obligations for amusement ride owners and operators will promote safety.

**Publication Date:** November 12, 2007  
**Effective Date:** January 1, 2008  
**Expiration Date:** May 30, 2008  
**Hearing Date:** December 12, 2007

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

Rules adopted creating ch. Comm 135, relating to tax credits and exemptions for internet equipment used in the broadband market.

### Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time-specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow-up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

**Publication Date:** February 20, 2007  
**Effective Date:** February 20, 2007  
**Expiration Date:** See section 17 (1) (d) 2005 Wis. Act 479  
**Hearing Date:** March 26, 2007

## Elections Board

Rules adopted creating s. EIBd 3.50, relating to pricing of voter information available from the Statewide Voter Registration System.

### Exemption From Finding of Emergency

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in



subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under subsection (4).

This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: “the actual, necessary, and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components required by the new statute.

**Publication Date:** May 12, 2007  
**Effective Date:** May 12, 2007  
**Expiration Date:** See section 180 (4), 2005 Wis. Act 451  
**Hearing Date:** June 11, 2007

### **Health and Family Services (Medical Assistance, Chs. HFS 100—)**

Rules adopted revising s. HFS 115.04, to include the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the list of disorders and disorder types found under s. HFS 115.04.

#### **Finding of Emergency**

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, s. 253.13, Wis. Stats., requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department; however, parents may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists 13 congenital and metabolic disorders and types of disorders, for a total of 47 different disorders, for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons with expertise and experience concerning congenital and metabolic disorders. For this purpose, the Department has established the

Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists 6 criteria on which the Department must base its decision to add or delete disorders from s. HFS 115.04. These criteria are as follows:

1. Characteristics of the specific disorder, including disease incidence, morbidity, and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with the testing for the specific condition.

In consideration of these criteria, the Wisconsin Newborn Screening Advisory Umbrella Advisory Group has recently recommended the Department add the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the 13 disorders and types of disorders currently screened for and listed in s. HFS 115.04. Persons with SCID are extremely vulnerable to infections, to the degree that the condition is universally fatal without treatment within the first year of life. With an estimated prevalence of 1 in 66,000, and a Wisconsin annual birth rate around 71,000, the failure to screen for SCID could result in the death of 1–2 infants in the state every year.

The Advisory Group also recommended the Department begin screening newborns for SCID and related conditions of immunodeficiency as soon as possible. Before the screening can begin, the Department needs to add these conditions to the list in s. HFS 115.04. Therefore, it is proposed to put an emergency rule in effect first, to be followed by an identical proposed permanent rule to replace the emergency rule.

The Department will immediately promulgate identical permanent rules to replace these emergency rules.

**Publication Date:** December 27, 2007  
**Effective Date:** January 1, 2008  
**Expiration Date:** May 30, 2008

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

1. Rules adopted amending s. NR 20.20, relating to the hook and line harvest of lake sturgeon.

#### **Finding of Emergency**

The Department of Natural Resources finds that an emergency exists and rules are necessary to prevent excessive harvest of lake sturgeon from the inland waters of Wisconsin during the 2007 hook and line season.

**Publication Date:** July 23, 2007  
**Effective Date:** July 23, 2007  
**Expiration Date:** December 20, 2007  
**Hearing Date:** August 13, 2007

2. Rules adopted amending **ss. NR 10.01 (1) (v), 10.12 (5) (d) and 10.15 (6); and to repeal and recreate s. NR 10.01 (1) (b), (g) and (u)**, relating to the 2007 migratory game bird seasons and waterfowl hunting zones.

#### 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 30, 2007  
**Effective Date:** August 30, 2007  
**Expiration Date:** January 27, 2008  
**Hearing Date:** October 19, 2007

3. Rules adopted affecting **chs. NR 19 and 20**, relating to control of fish diseases and invasive species.

#### Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts (part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

Earlier, VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage basin. Information obtained pursuant to an emergency rule that took effect May 17 revealed that 88 bait dealers harvest live wild minnows from a large number of state waters, including waters that are near or connected to the Mississippi river, the Lake Winnebago system, Green Bay and Lakes Michigan and Superior.

Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. It is expected the USDA APHIS will soon expand its emergency order limiting the interstate transportation of these species to apply to all fish species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been

present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

**Publication Date:** November 2, 2007  
**Effective Date:** November 2, 2007  
**Expiration Date:** March 31, 2008  
**Hearing Date:** December 3, 2007

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

1. Rules adopted revising **ch. NR 345**, relating to general permits for dredging in Great Lakes 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 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 under a general permit. There are no statutory general permits for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits. Without emergency rules to create general permits, all dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits 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 2007 summer season, with specific standards for operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits.

**Publication Date:** June 10, 2007  
**Effective Date:** June 10, 2007  
**Expiration Date:** November 7, 2007  
**Hearing Date:** July 10, 2007  
**Extension Through:** January 5, 2008

2. Rules adopted revising **chs. NR 320, 323, 328, 329, 341, 343 and 345**, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

#### 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 under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only 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 standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

**Publication Date:** July 12, 2007  
**Effective Date:** July 12, 2007  
**Expiration Date:** December 9, 2007  
**Hearing Date:** August 13, 2007  
**Extension Through:** February 6, 2008

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### Natural Resources (Environmental Protection – Air Pollution Control, Chs. NR 400–)

Rules adopted creating **s. NR 462.015**, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

#### 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. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into

conformity with the court-ordered vacatur of the federal regulations. Normal rule-making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

**Publication Date:** September 13, 2007  
**Effective Date:** September 13, 2007  
**Expiration Date:** February 10, 2008  
**Hearing Date:** October 26, 2007

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### Public Instruction

A rule is adopted creating **ch. PI 33**, relating to grants for nursing homes.

#### Finding of Emergency

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

The school nursing grant program under s. 115.28 (47), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$250,000 annually beginning in the 2007–08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

**Publication Date:** November 24, 2007  
**Effective Date:** November 24, 2007  
**Expiration Date:** April 23, 2008

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### Revenue (2)

1. Rules adopted amending **s. Tax 2.505**, relating to the computation of the apportionment fraction by multistate professional sports clubs.

#### Finding of Emergency

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

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of interstate professional sports clubs.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate professional sports clubs.

**Publication Date:** October 12, 2007  
**Effective Date:** October 12, 2007  
**Expiration Date:** March 10, 2008

2. A rule was adopted revising **s. Tax 8.63**, interpreting s. 125.54 (7), Stats., relating to liquor wholesale warehouse facilities.

#### Finding of Emergency

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

The emergency rule is to change the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet of floor space. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

It is necessary to promulgate this rule order to remove the threat of revenue loss to bona fide liquor wholesalers as a result of having applications for issuance or renewal of permits denied solely because they do not meet the square footage requirement in the existing rule.

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

**Publication Date:** October 29, 2007  
**Effective Date:** October 29, 2007  
**Expiration Date:** March 27, 2008  
**Hearing Date:** January 2, 2008

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## Transportation

Rule adopted creating **ch. Trans 178**, relating to the Unified Carrier Registration System.

### Analysis

This chapter establishes in the Wisconsin Administrative Code the fees to be charged under the Unified Carrier Registration (UCR) system, and establishes a method for counting the number of vehicles so that an entity knows whether it is required to register under UCR and, if so, which fee bracket applies to the entity.

### Exemption From Finding of Emergency

The Legislature, by Section 2927, as created by 2007 Wis. Act 20, provides an exemption from a finding of emergency for the adoption of the rule.

**Publication Date:** December 19, 2007  
**Effective Date:** December 19, 2007  
**Expiration Date:** May 18, 2008  
**Hearing Date:** March 5, 2008

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## Scope Statements

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### Health and Family Services

#### Subject

The proposed rules amend ch. HFS 115, relating to screening of newborns for congenital and metabolic disorders.

#### Policy Analysis

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, Wisconsin Statute 253.13 requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department; however, parents may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists 13 congenital and metabolic disorders and types of disorders, for a total of 47 different disorders, for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons with expertise and experience concerning congenital and metabolic disorders. For this purpose, the Department has established the Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists 6 criteria on which the Department must base its decision to add or delete disorders from s. HFS 115.04. These criteria are as follows:

1. Characteristics of the specific disorder, including disease incidence, morbidity, and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with the testing for the specific condition.

In consideration of these criteria, the Wisconsin Newborn Screening Advisory Umbrella Advisory Group has recently recommended the Department add the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the 13 disorders and types of disorders currently screened for and listed in s. HFS 115.04. Persons with SCID are extremely vulnerable to infections, to the degree that the condition is universally fatal without treatment within the first year of life. With an estimated prevalence of 1 in 66,000, and a Wisconsin annual birth rate

around 71,000, the failure to screen for SCID could result in the death of 1–2 infants in the state every year.

When SCID and related conditions of immunodeficiency are permanently added to those disorders and types of disorders listed in s. HFS 115.04, follow-up and management will be conducted by both specialists and primary care physicians. Families of infants will receive intensive counseling and be fully apprised of treatment options and availability. The Wisconsin Congenital Disorders Program will be responsible for coordinating the activities of the managing specialists, but will not provide direct patient care.

This rule change would add SCID and related conditions of immunodeficiency to the 13 disorders and disorder types currently screened for under s. HFS 115.04. All newborn screening tests are currently paid for by user-generated fees. The State Laboratory of Hygiene charges hospitals \$69.50 for each newborn screening sample collection card. Hospitals in turn charge parents for newborn screening, which is typically included in the labor and delivery bill and covered by the mother's insurance. The cost of adding SCID to the newborn screening panel will be supported by grant funds through 2008 at least. In years 2009, 2010, 2011 and 2012, the Wisconsin State Laboratory of Hygiene and Division of Public Health will actively seek additional grant funding in order to continue screening for SCID and related conditions of immunodeficiency at no cost to the state. However, such outside funding is not guaranteed. Thus, perhaps as early as January 1, 2009, the cost of the newborn screening sample card will need to be increased. The increase is currently estimated to be \$5.52, which would result in a new total cost of approximately \$75.00 per child screened. The annual cost of screening for SCID in Wisconsin, based on the additional \$5.50 per child, would be approximately \$387,000 when grant funding is completed and user-generated fees begin covering costs (anticipated sometime between 1/1/09 and 1/31/13). In the absence of this screening, babies who are undiagnosed or diagnosed late with SCID typically cost \$1–2 million each to treat (This figure is based on audited costs from Children's Hospital of Wisconsin, the facility which treats children with SCID, but without benefit of early diagnosis.) Babies with SCID, diagnosed in the first week of life can be cured by bone marrow transplantation (estimate 75–95% cure rate) at a charge of \$170,000/discharge (2005 J Peds, McGhee et.al.). In treating infants with SCID and related conditions of immunodeficiency, the state would not assume responsibility for the bone marrow transplantation, since the Congenital Disorders Program historically pays only for initial follow-up visits and confirmatory testing. It is expected that the savings to Medicaid may be substantial for each eligible affected child receiving early diagnosis.

The Advisory Group also recommended the Department begin screening newborns for SCID and related conditions of immunodeficiency as soon as possible. Before the screening can begin, the Department needs to add these conditions to the list in s. HFS 115.04. Therefore, it is proposed to put an emergency rule in effect first, to be followed by an identical proposed permanent rule to replace the emergency rule.

#### Statutory Authority

Sections 253.13 (1) and 227.11 (2), Stats.

**Entities Affected by the Rule**

Wisconsin State Lab of Hygiene, hospitals, primary care physicians/pediatricians, families of infants born in the state of Wisconsin.

**Comparison with Federal Regulations**

There are no current federal regulations concerning newborn screening, nor are there any which specifically address screening newborn infants for the condition known as SCID.

**Estimate of Time Needed to Develop the Rule**

40–45 hours

**Insurance****Subject**

The rules affect ch. Ins 3, relating to long-term care plans including the long-term care partnership program and affecting small business.

**Objective of the Rule**

To update the current administrative rule which was last revised in 2001 to comply with the National Association of Insurance Commissioners (NAIC) Model Act. Additionally, amendments are needed to comply with the requirements of the Center for Medicare and Medicaid Services (CMS) related to the Long-term Care Partnership program.

**Policy Analysis**

The current administrative rule was last revised in 2001 and is not fully compliant with the NAIC Model Act. Potential modifications to the long-term care rule include expanded reporting requirements, standards for marketing, suitability of products, and format changes to outlines of coverage. Additionally, modifications will be necessary in order to comply with 2007 Wis. Act 20 that created s. 601.415 (8), Stats. Modifications may include requirements related to the approval of training programs in compliance with the statute.

**Statutory Authority**

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

**Entities Affected by the Rule**

Insurers offering long-term care insurance products including the long-term care partnership program policies and insurance intermediaries that sell these products to consumers.

**Comparison with Federal Regulations**

The Office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

**Estimate of Time Needed to Develop the Rule**

200 hours and no other resources are necessary.

**Natural Resources****Subject**

The Bureau of Wildlife Management recommends promulgating administrative rules that modify sections of chapters NR 1, 8, 10, 12, 15, 16, 17, and 19. These rule changes related to hunting, trapping, captive wild animals, dog training, nuisance animal removal and license issuance are minor and unlikely to be controversial. The intent of these rule changes is to correct drafting errors, provide clarification

to existing rules, simplify regulations, and update administrative code language and references. Specifically, these rules will expand the types of licenses which may be issued through the automated license system, update deer shooting permit language to be consistent with statutes, and correct and update deer hunting rule language. This rule also updates bear hunting zones, fur tagging regulations, the description of the Horicon Marsh Fur Farm, and corrects drafting errors and oversights related to dog training. Finally, this rule will clarify that tanning furs does not require a taxidermy license.

**Policy Analysis**

Every year the department promulgates a rule order that contains changes that are considered to be minor and non-controversial. This package, known as the annual housekeeping order, helps to correct inaccuracies and clarify existing regulations. Policy issues affected by this rule are ones which have already been addressed decided by previous rulemaking.

**Statutory Authority**

Sections 29.014, 29.071, 29.506, 29.749, 29.885, 169.20 and 169.21, Stats.

**Entities Affected by the Rule**

Groups and individuals who are likely to be interested in the outcome of these rule changes include hunters, trappers, dog trainers, license agents, and people who tan raw furs. However, because of the corrective and non-controversial nature of these changes no groups will be significantly impacted.

**Comparison with Federal Regulations**

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

**Estimate of Time Needed to Develop the Rule**

150 hours.

**Agency Contact Person**

Scott Loomans, 101 S. Webster St., Madison, WI 53707, (608) 267-2452, [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov)

**Natural Resources****Subject**

The Bureau of Wildlife Management recommends promulgating administrative rules modifying Chapter NR 10 relating to establishing general rule authority for the department to open state trail properties to hunting by posted notice.

**Policy Analysis**

Legal interpretations have described Ice Age Trail properties and other trails as falling under the definition of state parks. Under s. 29.089, Stats., hunting is prohibited in state parks unless authorized by rule. This rule proposal would authorize hunting on state-owned portions of state trails and related property as posted by department signs.

Prior to the determination that trail properties are state parks, hunting has occurred at certain properties. This authority is necessary in order for hunting to continue on these areas. Additionally, some newly acquired properties are suitable for hunting and people have expressed a desire to allow that activity. This rule change will permit the DNR and NRB to be more responsive in managing hunting on state trail properties.

Hunting is currently allowed at some state parks and trails by rule but, where it is not allowed, all firearms must be unloaded and enclosed in case. This proposal would allow a person who is hunting on adjoining public or private property to cross a trail as long as the firearm is unloaded.

**Statutory Authority**

Section 29.089 (3), Stats.

**Entities Affected by the Rule**

Groups likely interested in the outcome of these rule changes will be conservation and sporting interest groups as well as friends groups, hikers and users of the state trails in Wisconsin.

**Comparison with Federal Regulations**

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

**Estimate of Time Needed to Develop the Rule**

80 hours.

**Agency Contact Person**

Scott Loomans, 101 S. Webster St., Madison, WI 53707, (608) 267-2452, [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov)

**Natural Resources**

**Subject**

The Bureau of Wildlife Management recommends promulgating administrative rules modifying chapters NR 10 and 45 relating to hunting, trapping, and the use of public lands.

**Policy Analysis**

These rule changes are proposed for inclusion on the 2008 Spring Hearing questionnaire. Specifically, these rules would revise bobcat population goals, extend the pilot season for hunting turkeys with the aid of dogs, update trapping regulations in the fisher/marten closed areas, clarify trap-type regulations, and prohibit paintball activities on department managed lands.

These changes do not deviate from existing board policy. The proposed changes to hunting seasons, population goals, trapping equipment and methods, and the use of public lands are consistent with previous board actions and policies.

**Statutory Authority**

Sections 23.095, 23.11 and 29.014, Stats.

**Entities Affected by the Rule**

Trappers, bobcat hunters and trappers, turkey hunters, and users of public lands will be affected by these rules.

**Comparison with Federal Regulations**

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

**Estimate of Time Needed to Develop the Rule**

244 hours.

**Agency Contact Person**

Scott Loomans, 101 S. Webster St., Madison, WI 53707, (608) 267-2452, [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov)

**Natural Resources**

**Subject**

Modifications to portions of chapter NR 20, pertaining to fishing regulations on inland waters.

**Policy Analysis**

The Department is beginning the process of recommending changes to the Wis. Adm. Code relating to recreational fishing regulations. The Department anticipates requesting hearings on these changes in January, 2008, and holding approved hearings in April 2008.

**Statutory Authority**

Sections 29.014 and 29.041, Stats.

**Comparison with Federal Regulations**

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

**Estimate of Time Needed to Develop the Rule**

The Department anticipates spending approximately 300 hours in the rule development process.

**Agency Contact Person**

Joe Hennessy  
Bureau of Fisheries Management and Habitat Protection  
P.O. Box 7921  
Madison, WI 53707  
(608) 267-9427  
[Joseph.Hennessy@Wisconsin.gov](mailto:Joseph.Hennessy@Wisconsin.gov)

**Natural Resources**

**Subject**

Section NR 46.30, Forest Tax Program, annual timber stumpage rate changes; modifications to the definition of "ownership" under s. NR 46.15 (23) to include trusts; revision of s. NR 46.16 Managed Forest Law petition and entry packet information.

**Policy Analysis**

The issues needing to be addressed are routine and technical within the Forest Crop Law (FCL) and Managed Forest Law (MFL) program.

The Department is required to assess the value of cut wood products from FCL and MFL lands based on the current stumpage value schedule. Stumpage values are determined each year by surveying industry, private forestry consultants and DNR field staff on the prices obtained the previous year for wood products by species, product type, and zone. These values are recalculated annually using a weighted three-year average and published in NR 46.30. The stumpage value charts are used to determine severance and yield tax for participants in the Forest Tax Law programs. It is important to adjust these values annually so that landowners are not paying too much or too little in yield/severance tax. The monies collected are distributed to the municipalities within which the land is located to help offset reduced property taxes collected from these lands.

Under Wis. Admin. Code NR 46.15(23), the current definition of "owner" or 'ownership' means one with an interest in the land in fee or in equity, including that of a grantee of a land contract prior to satisfaction of all conditions of the contract, or as established by statute. Under this definition, changes in ownership by owners converting their direct property interest to Trusts and other similar

“will–substitutes” are not considered “transfers” under current interpretation of Wisconsin law. This prevents the effective administration of the Managed Forest Law program, by preventing direct notification of potential changes in controlling ownership of the Managed Forest Law property in question. A change in the definition that includes trusts and other similar entities would solve this problem by clearly establishing the need for an owner to document and record the transfer of interest with the Department’s Forest Tax Law section.

Current petitions and entry packets have information and requirements which have become either duplicative, based on the subsequent management plan requirements, or unnecessary based on advances both in the technical capabilities of the Forest Tax Section’s administrative capabilities and response times. The Department’s changes will allow for faster turn around and entry into the Managed Forest Law program, and will result in a less burdensome and more customer friendly approach to the program.

### **Statutory Authority**

Chapter 77, Stats.

### **Entities Affected by the Rule**

All landowners, including farmers and forest industries, that have land entered under the Managed Forest Law or who wish to enter land under the Managed Forest Law.

### **Comparison with Federal Regulations**

There are no known federal rules which apply to stumpage rates or the Managed Forest Law Program, nor to the Department’s definition of “ownership” regarding trusts for similar forestry programs, or for Managed Forest Law entry packets and petition requirements.

### **Estimate of Time Needed to Develop the Rule**

Approximately 117 hours will be needed by the Department.

### **Agency Contact Person**

Kathryn Nelson  
Section Chief, Forest Tax  
Division of Forestry, Forest Management  
P.O. Box 7921  
Madison, WI 53707  
(608) 266–3545  
[Kathryn.nelson@wisconsin.gov](mailto:Kathryn.nelson@wisconsin.gov)

## **Natural Resources**

### **Subject**

Creation of chapter NR 52, relating to access on properties purchased in whole or in part

### **Objective of the Rule**

The 2007–09 Biennial Budget (2007 *Wis. Act 20*) reauthorized the Knowles–Nelson Stewardship Program (hereafter “Stewardship Program”) with funding of \$86 million per year beginning with fiscal year 2010–11 and ending with fiscal year 2019–20. In addition, this law now formally includes hunting, fishing, trapping, hiking, and cross–country skiing in the definition of “nature–based outdoor activity” – in addition to any other nature–based outdoor activity designated that the DNR might make by rule. Beginning on October 27, 2007, access for one or more nature–based outdoor activities may not be restricted on land acquired in whole or in part with Stewardship Program funds

unless the Natural Resources Board determines that the prohibition meets one of three conditions:

- Protect public safety
- Protect a unique animal or plant community
- Accommodate usership patterns, as defined by rule by the department

The statutes require the creation of this new rule to address the prohibition process.

The new nature–based definition impacts both the Department’s purchase of land as well as purchases made by nonprofit conservation organizations and local units of government using Stewardship Program grant funding.

This new rule is separate and distinct from the existing ch. NR 51, titled “Administration of Stewardship Grants”. Revisions to ch. NR 51 will be addressed after the new Stewardship access rule is created.

### **Policy Analysis**

Wisconsin’s first Stewardship Program was created through 1989 *Wis. Act 31* for the purpose of acquiring land to expand recreational opportunities and protect environmentally sensitive areas. In that act, the Legislature authorized \$250 million of general obligation bonding (reduced to \$231 million in 1995 *Wis Act 27* to recognize \$19 million in anticipated federal funding) for this purpose over a 10–year period, ending in fiscal years 1999–2000. The law allocated funding among 12 land acquisition and development sub–programs. Some sub–programs were extensions of land acquisition activities that existed prior to the Stewardship initiative and other sub–programs were newly–created. 1991 *Wis. Act 343* renamed the Stewardship program the Warren Knowles–Gaylord Nelson Stewardship Program.

The Stewardship Program was reauthorized in 1999 *Wis. Act 9* as the Warren Knowles–Gaylord Nelson Stewardship 2000 program. Under that Act, the state would be able to contract public debt in an amount not to exceed \$460 million. The annual funding allotment under the program was set at \$46 million, from fiscal years 2000–01 to 2009–10. Under 2001 *Wis. Act 16*, the bonding authorization was increased from \$46 million to \$60 million annually, beginning in fiscal year 2002–03 and continuing through the remainder of the program.

Pursuant to the requirements of the Stewardship 2000 program [See s. 23.0917 (4) (f), Stats.], the DNR defined “nature–based outdoor recreation” by rule. This definition appears in s. NR 51.002 (19), Wis. Adm. Code, was effective on July 1, 2001, and has been in use for all Stewardship program grants issued since then.

### **Statutory Authority**

Section 23.0916 (5), Stats.

### **Entities Affected by the Rule**

- Any party wishing to sell land to the DNR that will be purchased with Stewardship Program funds.
- Any party wishing to sell land to a local unit of government or nonprofit conservation organization that will be purchased with grant funds from the Stewardship Program.
- Any local unit of government or nonprofit conservation organization wishing to acquire land with grant funds from the Stewardship Program.
- Any citizen, scientist, researcher, planner, educators, outdoor recreation enthusiast interested in the preservation of and public access to natural resources or



the current or future disbursement of Stewardship Program funds.

### **Comparison with Federal Regulations**

There is no existing or proposed federal regulation that is intended to address the issue of Stewardship Program access prohibitions.

### **Estimate of Time Needed to Develop the Rule**

The department estimates that approximately 1000 hours of existing staff time will be needed to develop this new rule. This time includes meeting with the Stewardship Advisory Committee, collecting public input at listening sessions, drafting the rule, taking the rule to statewide public hearings, preparation for meetings with the Natural Resources Board, legislative review, and rule adoption.

### **Agency Contact Person**

Mary Rose Teves  
Bureau of Community Financial Assistance  
Wisconsin Dept. of Natural Resources  
101 S. Webster Street  
P. O. Box 7921  
Madison, WI 53707-7921  
Phone: 608-267-7683  
[Mary.Teves@wisconsin.gov](mailto:Mary.Teves@wisconsin.gov)

Steve Miller  
Bureau of Facilities and Lands  
Wisconsin Dept. of Natural Resources  
101 S. Webster Street  
P. O. Box 7921  
Madison, WI 53707-7921  
Phone: 608-266-5782  
[Steven.Miller@wisconsin.gov](mailto:Steven.Miller@wisconsin.gov)

## **Natural Resources**

### **Subject**

The department will be presenting a rule package related to the control of chronic wasting disease in white-tailed deer and other wildlife diseases. In part this rule may be based on recommendations that result from an extensive process to involve the public, key stakeholders, partners and the legislature in establishing CWD management strategies. The subject of this rule may include changes to the deer hunting season structure and other hunting regulations where CWD has been found or other areas. Proposed rulemaking may also take advantage of new authority derived from 2005 ACT 286 including new conditions on the movement of deer carcasses and parts of deer, elk, and other cervids from areas in this state or other states where CWD is known to occur. Additionally, this rule may describe situations where a person would be required to provide the DNR with sample tissue or data derived from any wild animal if that sample is needed to determine the extent of a disease in wild animals.

### **Policy Analysis**

In an attempt to reduce or eliminate the occurrence of CWD in Wisconsin's white-tailed deer herd, the department has implemented a variety of hunting season structures and regulations since 2002. In spite of considerable effort on DNR's part, and in spite of increased hunting opportunity (unlimited bag limits, free tags, allowing landowners in the DEZ to hunt on their own property for \$2, economic incentives, and encouraging and facilitating food pantry donations for additional deer taken in the DEZ) there has not

been as much progress towards eliminating the disease as people have hoped.

In February of 2007 the Natural Resources Board authorized an extensive public involvement process in order to evaluate past efforts and make new recommendations for the future course of action. In order to sufficiently communicate with the public before determining what, if any, new rules may be necessary, the CWD Stakeholder Advisory Group has been meeting regularly and intends to make its recommendations in December of 2007. Department staff will begin promulgating recommendations that are suitable for rule making immediately upon completion of that process.

### **Statutory Authority**

Sections 23.09 (2) (p), 29.063 (3), 29.063 (4), 29.063 (5), Stats.

### **Entities Affected by the Rule**

All people who are interested in deer management may potentially be affected by the proposed rules. Deer hunters in areas where CWD has been found as well as areas where the disease has not been identified will be particularly interested in this rulemaking. Additionally, people who hunt deer and elk in other states where the disease has been found, or who hunt in Wisconsin's CWD zones but who would normally transport a whole deer carcass out of that zone would be affected. As new wildlife diseases occur, all hunters might be required to provide samples of animal tissue, if asked, under these rules.

### **Comparison with Federal Regulations**

Proposed rulemaking will not relieve individuals from the restrictions, requirements and conditions of Federal statutes and regulations. Regulation of hunting and trapping of native species has been delegated to state fish and wildlife agencies. No federal regulations regarding CWD carcass movement have been implemented. Additionally, none of the proposed rules exceed authorities granted the states in 50 CFR.

### **Estimate of Time Needed to Develop the Rule**

400 hours

### **Agency Contact Person**

Allan Crossley, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921, [Alan.Crossley@wisconsin.gov](mailto:Alan.Crossley@wisconsin.gov)

## **Workforce Development**

### **Subject**

Chapter DWD 56, Child Care Copayments.

### **Policy Analysis**

Since 1997, the child care parental copayment schedule in DWD 56.08 has provided different copayment amounts for parents who receive child care services from a certified child care operator and parents who receive child care services from a licensed provider. A certified child care operator may provide child care services for 1 to 3 unrelated children, care in the child's home, or care for school-age children and receive reimbursement for the child care services from state or federal funds. Certified child care operators are regulated by the Department. A child care provider who provides care and supervision for more than 3 unrelated children for compensation is required to be licensed by the Department of Health and Family Services.

When the Department submitted the federal fiscal year 2008-2009 Child Care and Development Fund (CCDF) State Plan for approval to the federal Department of Health & Human Services, DHHS responded with a notice that the plan

was not approvable as submitted. The DHHS review found that Wisconsin's sliding fee scale (parental copayment schedule) is not allowable under CCDF regulations because it includes different copayment amounts based on category of care, such as certified versus licensed providers, and this difference interferes with parental choice of providers. Failure to submit an approvable plan could potentially result in a disruption of federal funding provided to Wisconsin for child care services for eligible families.

The Department submitted a corrective plan eliminating the different copayment amounts for certified and licensed care. DHHS has approved the corrective Wisconsin State Plan contingent upon implementation of changes to the copayment schedule with a deadline of April 1, 2008.

The current s. DWD 56.08 provides a copayment schedule and language that copayment amounts will be based on family size, family gross income, the number of children in a given family in child care, and the type of child care selected. The proposed rule will repeal "type of child care selected" from these provisions and update the copayment schedule to eliminate the different copayment amounts for certified and licensed care.

### **Statutory Authority**

Sections 49.155 (5) and 227.11 (2), Stats.

### **Entities Affected by the Rule**

Parents who receive assistance under the child care subsidy program and child care providers who care for children of these families

### **Comparison with Federal Regulations**

Under 45 CFR 98.42(b) sliding fee scales are to be based on income, family size, and other factors as appropriate. The section of the preamble to the rule regarding sliding fee scales refers readers to 45 CFR 98.43 regarding equal access (63 Federal Register 39936, 39957, July 24, 1998).

The rule on equal access at § 98.43 provides that the state agency shall certify that the payment rates for the provision of child care services are sufficient to ensure equal access for eligible families as families who are not eligible to receive CCDF child care assistance. The state agency must show how a choice of the full range of providers is made available (center, group, family, and in-home care), how payments rates are adequate based on a local market survey, and how copayments based on a sliding fee scale are affordable. Payment rates must be consistent with 45 CFR 98.30 regarding parental choice requirements. Among other things, the parental choice requirements provide that state regulatory requirements may not have "the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in 45 CFR 98.2."

The section of the preamble to the rule regarding equal access (63 Federal Register 39936, 39960, July 24, 1998) provides that:

[S]liding fee scales should not be designed in a way that limits parental choice...Sliding fees scales must continue to be based on family size and income as § 98.42(b) has not changed. We note that this regulation provides Lead Agencies with the flexibility to take additional elements into consideration when designing their fee scales, such as the number of children in care. However, as was stated in the preamble to the regulations published on August 4, 1992, basing fees on the cost or category of care is not allowed (57 FR 34380).

The preamble to the August 4, 1992, rule (57 Federal Register 34352, 34411) actually provides that "While Grantees may take into account the cost of care in establishing a fee scale (e.g., the family pays a percentage of the cost of care), the Grantee may not vary the fee scale based on the category of care or the type of provider."

The definitions section of the current rule at 45 CFR 98.2 provides that "categories of care" means "center-based child care, group home child care, family child care and in-home care." The rule defines "types of providers" as "different classes of providers under each category of care. For the purposes of CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care."

In its review of the 2008-2009 Wisconsin State Plan, the federal Department of Health & Human Services included licensed versus certified child care in the definition of "categories of care." The Department of Workforce Development does not take issue with the DHHS findings.

### **Estimate of Time Needed to Develop the Rule**

200 hours

### **Workforce Development**

#### **Subject**

Ch. DWD 56, Child Care Rates.

#### **Policy Analysis**

Each county or tribal agency annually establishes maximum reimbursement rates for child care services provided to eligible individuals by licensed and certified child care providers, unless the Department sets multi-county rates. The Department or each county sets the rates based on a survey of all licensed providers that determines the child care prices the providers charge the general community. The maximum reimbursement rate for licensed providers is set so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. Separate maximum rates are set for licensed group child care centers, licensed family child care centers, Level I certified family child care providers, and Level II certified family child care providers. Separate maximum rates are also set for children in various age groupings. The current rates are multi-county rates set by the Department in 2006.

The adjusted rates based on the annual survey have generally become effective January 1 of the new year. In 2007, due to increases in caseload and fiscal challenges for the child care subsidy program, child care rates were not increased above 2006 levels. The Department promulgated an emergency rule and corresponding permanent rule providing that the Department shall set child care rates for the year beginning January 1, 2007, to be the same as the rates in effect on December 31, 2006.

The 2007-09 budget numbers in 2007 Wisconsin Act 20 reflect that the child care rates will not be increased for the next 2 years. The Governor's proposed child care budget included numerous cost containment strategies, including the rate freeze. The Legislature added \$65 million to the child care budget above the Governor's proposal and deleted or modified many of the Governor's other cost containment proposals. The freeze on child care rates was not changed and is included in 2007 Wisconsin Act 20.

This rule will specify that the child care reimbursement rates will remain at current levels for 2008 and 2009.

**Statutory Authority**

Sections 49.155 (6) and 227.11 (2), Stats.

**Entities Affected by the Rule**

Families who receive assistance under the child care subsidy program and child care providers who care for children of these families

**Comparison with Federal Regulations**

Under 45 CFR 98.43, a state must certify that state payment rates for the provision of child care services funded under the Child Care and Development Fund are sufficient to ensure equal access to child care services for eligible families as families not eligible for child care assistance. At a minimum, the state must show that it considered 3 key elements in determining that its child care program provides equal access for eligible families: 1) Adequate payment rates based on a local market rate survey conducted no earlier than two years prior to the effective date of the current plan; 2) Choice of the full range of categories and types of providers; and 3) Affordable copayments.

In the commentary issued with the regulation, the Administration for Children and Families notes that rates established at least at the 75<sup>th</sup> percentile of the market rate would be regarded as providing equal access. Under the former title IV–A child care program, states were required to set rates at this level. (63 FR 39936, 39959, July 24, 1998)

**Estimate of Time Needed to Develop the Rule**

140 hours

**Workforce Development****Subject**

Ch. DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates and ch. DWD 293, relating to payment and performance assurance requirements.

**Policy Analysis**

When a state agency or local governmental unit constructs a public works project, it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in

accordance with those wage rates. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of prevailing wage rates and require that DWD adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the threshold adjustments are based on changes in the construction cost index published in the *Engineering News–Record*, a construction trade publication. The thresholds for application of the prevailing wage rate laws will be adjusted based on a 2.25% increase in the construction cost index since the thresholds were last adjusted.

Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing materials for a public improvement or public work. Section 779.14 (1s), Stats., requires that the Department adjust the thresholds for application of various requirements in proportion to any change in construction costs since the last adjustment. No adjustment is made for a biennium if the adjustment to be made would be less than 5%. Pursuant to s. DWD 293.01, these threshold adjustments are based on changes in the construction cost index published in the *Engineering News–Record*. The thresholds for the payment and performance assurance requirements will be adjusted based on a 5.78% increase in the construction cost index since the thresholds were last adjusted.

**Statutory Authority**

Sections 66.0903 (5), 103.49 (3g), 779.14 (1s), and 227.11, Stats.

**Entities Affected by the Rule**

State agencies, local governmental units, employers in the construction industry who contract for public works projects, and employees of these employers.

**Comparison with Federal Regulations**

The threshold for application of the federal prevailing wage law is a contract greater than \$2,000. The threshold for application of the federal contractor payment and performance bond requirements is \$100,000. These thresholds are in statute and are rarely adjusted.

**Estimate of Time Needed to Develop the Rule**

60 hours

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# Submittal of Rules to Legislative Council Clearinghouse

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

## **Natural Resources**

On December 6, 2007, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The rules affect chs. NR 102, 106 and 209, relating to thermal standards for Wisconsin surface waters.

### **Agency Procedure for Promulgation**

Public hearings are scheduled for January 15, 17, 25, and 28, 2008.

### **Contact Person**

Michael Wenzholz  
Bureau of Watershed Management  
(608) 266-1494

## **Natural Resources**

On December 6, 2007, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The rules affect ch. NR 105, relating to surface water quality criteria.

### **Agency Procedure for Promulgation**

Public hearings are scheduled for January 3, 7, and 14, 2008.

### **Contact Person**

James Schmidt  
Bureau of Watershed Management  
(608) 267-7658

## **Natural Resources**

On December 6, 2007, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The rules affect ch. NR 345, relating to general permits for dredging in Great Lakes navigable waterways.

### **Agency Procedure for Promulgation**

Public hearings are scheduled for January 15, 16, and 17, 2008.

### **Contact Person**

Martye Griffin  
Bureau of Watershed Management  
(608) 266-2997

## **Tax Appeals Commission**

On December 6, 2007, the Tax Appeals Commission submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The rule affects ch. TA 1, relating to the rules of practice and procedure before the commission.

### **Agency Procedure for Promulgation**

A public hearing will be scheduled at a later time.

### **Contact Person**

Diane E. Norman  
Acting Chairperson  
Tax Appeals Commission  
(608) 266-9788

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## Rule–Making Notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

[CR 07–107]

(Reprinted from 12/15/07 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapters ATCP 10, 12, and 17, Wis. Adm. Code, relating to animal health and disease control.

#### Hearing Information

##### Monday, January 7, 2008

6:00 p.m. to 7:00 p.m.

Fox Valley Technical College

1825 N. Bluemound Drive, Room C140

Appleton, WI 54912

##### Tuesday, January 8, 2008

6:00 p.m. to 7:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive

1st Floor – Rm. 106 (Boardroom)

Madison, Wisconsin 53718

##### Thursday January 10, 2008

6:00 p.m. to 7:00 p.m.

Dept. of Natural Resources West Central Region  
Headquarters

1300 W. Clairemont Avenue – Room 158

Eau Claire, WI 54701

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by December 19, 2007, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4883. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

#### Written Comments

DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, January 25 for additional written comments. Comments may be sent to the Division of Animal Health at the address below, by email to [Melissa.mace@wisconsin.gov](mailto:Melissa.mace@wisconsin.gov) or online at:

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

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to [Keeley.Moll@wisconsin.gov](mailto:Keeley.Moll@wisconsin.gov) or by telephone at (608) 224–5039.

#### Copy of Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also

obtain a copy by calling (608) 224–4883 or emailing [Melissa.mace@wisconsin.gov](mailto:Melissa.mace@wisconsin.gov). Copies will also be available at the hearings. To view the proposed rule online, go to:

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

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

This rule modifies Wisconsin animal health and disease control rules. Among other things, this rule:

- Establishes new rules related to viral hemorrhagic septicemia (VHS) in fish, and simplifies registration of fish farms. DATCP has adopted temporary emergency VHS rules, which this rule would make “permanent.”
- Modifies current rules related to farm–raised deer, including rules related to herd registration, disease control, imports, movement and condemnation. Changes are consistent with proposed federal rules.
- Modifies current rules related to cattle, including rules related to voluntary Johne's disease testing and classification, tuberculosis import testing, and imports of cattle originating from Mexico.
- Modifies current rules related to poultry imports and enrollment in the national poultry improvement program.
- Modifies current rules related to animal markets, dealers and truckers.
- Modifies current rules related to Wisconsin's livestock premises registration program. This rule makes it easier to register, and extends the current annual registration period to 3 years.
- Clarifies current disease indemnity appraisal procedures.
- Makes minor drafting changes to update, clarify and correct current rules.

#### Statutory Authority

Sections 93.07 (1) and (10), 95.18, 95.19 (3), 95.197 (2), 95.20, 95.22(2), 95.32 (5), 95.38 (3), 95.45 (4) (c) and (5), 95.51 (7), 95.55 (6), 95.57 (1), 95.60 (3), (4) (c) and (4s), 95.65 (2), 95.68 (8), 95.69 (8) and 95.71 (8), Stats.

#### Statutes interpreted

Sections 93.07 (10), 95.18, 95.19, 95.197, 95.20, 95.22, 95.23, 95.32, 95.36, 95.38, 95.45, 95.51, 95.55, 95.57, 95.60, 95.65, 95.68, 95.69 and 95.71, Stats.

#### Explanation of agency authority

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

#### Rule contents

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's animal health and disease control program. This rule modifies current DATCP rules under chs. ATCP 10 (animal diseases and movement), ATCP 12 (animal markets, dealers and truckers) and ATCP 17 (livestock premises registration).

#### *Fish*

##### Fish Farm Registration

This rule allows a fish farm operator to register 2 or more fish farms under a single annual registration certificate (under

current rules, a separate registration certificate is required for each fish farm). A single registration certificate may cover both type 1 and type 2 fish farms. The registration certificate must identify each fish farm location, and must indicate whether that location is registered as a type 1 or type 2 fish farm. As under current rules, the operator must pay annual fees based on the number and types of fish farms registered (this rule does not change current fees).

This rule clarifies that fish may be moved between type 2 fish farms registered to the same operator, or from a type 2 to a type 1 fish farm registered by the same operator, without a fish health certificate. Under this rule, as under current rules, the fish farm operator must keep complete records of the fish movement.

#### VHS Test Reports

Under this rule, a veterinarian who tests fish in this state for viral hemorrhagic septicemia (VHS) must report the test result to DATCP, regardless of whether the test result is positive or negative.

#### VHS Testing Requirements

Current DATCP rules require health certificates for all of the following:

- Fish and fish eggs (*including* bait) imported into the state.
- Fish and fish eggs stocked into Wisconsin public waters.
- Fish and fish eggs moved between Wisconsin fish farms.

Under current rules, *import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for any of the following:

- Fish or fish eggs stocked into Wisconsin public waters from *Wisconsin* sources.
- Bait fish or fish eggs originating from *Wisconsin* sources.
- Fish or fish eggs moved between *Wisconsin* fish farms.
- Non-salmonids imported from states (such as Minnesota) where VHS has not yet been found.

This rule expands current VHS testing requirements. Under this rule, a fish health certificate and VHS testing are required for all of the following fish and fish eggs if they are of a *known VHS-susceptible species* identified by the United States department of agriculture (USDA) and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source in any state within the preceding 12 months:

- Fish or fish eggs stocked into Wisconsin public waters.
- Fish or fish eggs moved between Wisconsin fish farms.
- Fish or fish eggs distributed by a bait dealer for use as bait. The bait fish testing requirement will initially apply to emerald shiners (a known VHS-susceptible species), but will *not* initially apply to other major bait species such as fathead minnows, white suckers and golden shiners (which are not yet known to be VHS-susceptible). However, it could eventually apply to other species if USDA finds that those species are also VHS-susceptible. A retail bait dealer is not required to conduct duplicate tests on fish previously tested by a wholesale bait dealer.

This rule also prohibits any person from selling bait fish of *any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.

#### Operators Moving Fish Between Their Own Fish Farms

This rule clarifies that VHS and other routine disease testing requirements do not apply when operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantine and other disease control orders to individual fish farm operators, as necessary.

#### Registrant Responsibility

This rule clarifies that a person who registers a fish farm is responsible for ensuring that fish farm operations comply with DATCP rules. However, this rule does not relieve other persons of liability for rule violations that they commit.

#### *Farm-Raised Deer*

#### Chronic Wasting Disease Test Reports

Under this rule, a veterinarian who tests a farm-raised deer in this state for chronic wasting disease must report the test result to DATCP, regardless of whether the test result is positive or negative.

#### Herd Registration: General

Under current rules, no person may keep farm-raised deer at any location in this state unless DATCP has issued a current annual registration certificate authorizing that person to keep farm-raised deer at that location. An annual registration certificate currently expires on December 31 of each year. This rule changes the annual expiration date to March 15, beginning with the first registration year beginning after the effective date of this rule.

#### One Registered Herd Kept at 2 or More Locations

This rule clarifies that a person may keep farm-raised deer at 2 or more locations identified in a single herd registration certificate, subject to the following conditions:

- All of the herd locations must be actively enrolled in Wisconsin's chronic wasting disease status program.
- The registrant may move farm-raised deer between locations identified in the herd registration certificate *without* a certificate of veterinary inspection if all of the following apply:
  - Those farm-raised deer are identified with official individual identification.
  - The registrant keeps a detailed record of the movement.
- All farm-raised deer covered by the registration certificate will be treated as members of a single herd, for purposes of disease control and movement.

#### Two or More Registered Herds Kept at One Location

Under this rule, separately-registered farm-raised deer herds may be kept at the *same location* (even if they are owned by different persons) subject to the following conditions:

- If the herds are "medically separated," each herd is considered a separate herd for purposes of disease control, movement, and enrollment in Wisconsin's chronic wasting disease status program. Farm-raised deer moved between any of the medically separated herds must be accompanied by a certificate of veterinary inspection, and registrants must keep a detailed record of each movement.
- If the herds are *not* medically separated:
  - All of the farm-raised deer covered by the herd registrations are collectively treated as a single herd

for purposes of disease control and movement, regardless of location or ownership, and regardless of whether they are part of the same registered herd.

- Farm–raised deer may be moved between any of the herd locations identified on any of the herd registration certificates, without a certificate of veterinary inspection, provided that they are identified with official individual identification. Registrants must keep detailed records of the movements.
- All of the herds, including all locations covered by the herd registration certificates, must be actively enrolled in Wisconsin’s chronic wasting disease status program.
- Herds are “medically separated,” for purposes of this rule, if all of the following apply:
  - They are separated by a double fence meeting Department of Natural Resources (DNR) standards or, in the case of farm–raised deer other than white–tailed deer, by a functionally equivalent barrier approved by DATCP.
  - Bio–security procedures effectively prevent disease transmission between the herds.
  - The department inspects each shared herd location, and finds that the herds are “medically separated.” There is an inspection fee of \$150 (no change from current rules).

#### Chronic Wasting Disease Tests

Under current rules, a farm–raised deer keeper must have a chronic wasting disease test performed on every farm–raised deer at least *16 months old* that dies in captivity, or is killed or sent to slaughter (the test sample must be sent to an approved laboratory within 10 days after it is collected). Under this rule, testing is required for deer at least *8 months old* that meet the same criteria. Under this rule, a test sample must be collected within 10 days after the animal dies, or is killed or slaughtered (or within 10 days after the death is first discovered). Under this rule as under the current rules, the test sample must be sent to an approved laboratory within 10 days after it is collected.

#### Condemnation of Farm–Raised Deer

This rule clarifies current rules related to DATCP condemnation of diseased or suspect farm–raised deer. Under this rule, a condemnation order may do all of the following:

- Specify a reasonable deadline for destruction of the condemned animals.
- Direct appropriate disease testing and disposition of the carcasses.
- Require the herd owner or custodian to enter into a “premises plan” as a condition to the payment of state indemnities. The “premises plan” may require the herd owner or custodian to clean and disinfect the herd premises, limit future cervid movement to and from the premises, or comply with other requirements that are reasonably designed to prevent the spread of disease. A “premises plan” may include a restrictive covenant, such as a fence maintenance requirement, that is binding on subsequent property owners for the duration of the agreement.

Under current rules, the owner of condemned farm–raised deer may apply for state indemnity payments. Under this rule, an application for indemnity payments must include proof of compliance with DATCP’s condemnation order.

#### Chronic Wasting Disease Herd Status Program: Annual Census

Under current rules, no person may move farm–raised deer from a herd in this state unless the herd is enrolled in Wisconsin’s chronic wasting disease herd status program. Enrollees must, among other things, submit an annual herd census to DATCP. Among other things, an annual herd census must report the number, species and sex of animals that have left the herd since the last annual census, and how those animals left the herd. Under this rule, an annual herd census must also include:

- A report of apparent escapes, including approximate escape dates and circumstances, and steps taken to prevent recurring escapes.
- An explanation and accounting for overall changes in herd population since the last annual census.
- Census verification by a Wisconsin certified veterinarian if required by the department.

#### White–tailed Deer Herd: Fence Certificate

Under current law, fences for farm–raised white–tailed deer herds must be approved by DNR, and must comply with DNR rules. Under this rule, a person applying for a DATCP registration certificate to keep white–tailed deer must include, with the application, a copy of a valid DNR fence certificate for each registered location.

#### Hunting Preserves

Under current law, a person operating a farm–raised deer hunting preserve must hold a hunting preserve registration certificate from DATCP (a certificate is valid for 10 years). Current rules spell out hunting preserve registration standards and application requirements. Under this rule, an application must also include all of the following:

- An estimate of the farm–raised deer population on the hunting preserve premises, by species, age and sex.
- The identification numbers of any farm–raised deer on the hunting preserve that bear identification numbers.

Under this rule, all non–natural additions to a hunting preserve must have 2 forms of official individual identification, one visible and one implanted.

#### Disease–Free Certification of Farm–Raised Deer

Under current rules, DATCP may certify a herd of farm–raised deer as brucellosis–free or tuberculosis–free, or both, based on herd test results provided by the herd owner. Participation is voluntary, but disease–free herd certification facilitates the sale and movement of farm–raised deer. Herd certification is generally governed by federal rules (uniform methods and rules) that DATCP has incorporated by reference in its rules.

Under current federal rules, tuberculosis–free herd certification is good for 3 years, while brucellosis–free herd certification is good for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms by state rule.

This rule extends brucellosis–free herd certification from 2 years to 3 years (a herd owner may request a shorter term), consistent with tuberculosis–free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer.

This rule also clarifies that DATCP may transfer a herd certification to new herd owner, or grant equivalent certification status to a new herd created from an existing

certified herd, if the herd meets certification standards and the owner applies for certification within 90 days.

#### Tuberculosis in Farm–Raised Deer

Under current rules, a farm–raised deer must be slaughtered within 15 days if it is found to be a tuberculosis reactor, except that DATCP may extend the slaughter deadline by up to 15 days. Under this rule, DATCP may extend the slaughter deadline by up to 30 days.

#### Importing Farm–Raised Deer

Farm–raised deer imported to this state must meet standards specified in current rules. Among other things, the imported animal must meet one of several alternative requirements related to tuberculosis status. This rule modifies current import standards, based on current federal standards for interstate movement. This rule eliminates current requirements for post–import testing.

#### Moving Farm–Raised Deer Within Wisconsin

Farm–raised deer moved between separately registered herds in this state must meet standards specified in current rules. Among other things, the farm–raised deer must meet one of several alternative requirements related to tuberculosis status. Under one alternative, a farm–raised deer may qualify for movement if it tests negative on 2 tuberculosis tests, where the second test is performed within 360 days prior to movement. Under this rule, the second test must be conducted within 90 days prior to movement.

Under this rule, a farm–raised deer may not be moved between separately registered herds in this state unless it has been enrolled in Wisconsin’s chronic wasting disease status program for at least 5 years. If the source herd is located in a DNR wild deer chronic wasting disease eradication zone, it must have been enclosed by a DATCP–approved double fence for at least 5 years.

### *Cattle*

#### Johne’s Disease Testing and Herd Classification

DATCP currently administers a voluntary herd testing and classification program related to Johne’s disease in cattle. Herd testing and classification is conducted according to federal standards adopted by the United States department of agriculture (USDA). This rule incorporates the latest version (2006) of the USDA standards.

Under current rules, Johne’s disease test samples must be collected by an accredited veterinarian, by an individual working under direct supervision of an accredited veterinarian who submits the sample for testing, or by an authorized DATCP or USDA employee or agent. Under this rule, a milk sample for Johne’s disease testing may also be collected by a Dairy Herd Improvement Association (DHIA) authorized technician.

#### Imported Cattle and Bison: TB Test Exemption

Current rules exempt imported bovine animals (cattle and bison) from the requirement of a pre–import tuberculosis test if the animals originate from a state that USDA has classified as “TB–free” if that state accepts Wisconsin animals without a TB test. Under this rule, the exemption does not apply if the state of origin has a confirmed TB–positive herd, until that herd is depopulated and all epidemiologically linked herds have tested negative for TB.

#### Cattle and Bison from Mexico

Under this rule, no person may import an “M–branded” bovine animal (cattle or bison) to this state, except directly to slaughter. “M–branded” animals are animals branded with

the letter “M” to signify that they have been imported from Mexico.

### *Poultry*

#### National Poultry Improvement Plan Enrollment

Under current rules, a poultry flock owner may enroll the flock in the national poultry improvement program (DATCP administers the program in this state). Enrollment facilitates the sale and movement of poultry. Under this rule, a flock may not be enrolled in the program unless the flock premises have been registered under Wisconsin’s livestock premises registration program (the premises ID number must be included on the enrollment application).

#### Poultry Imports

Under current rules, poultry may not be imported to Wisconsin unless they are accompanied by a valid certificate of veterinary inspection that certifies *all* of the following:

- They originate from flocks enrolled in the national poultry improvement plan.
- They originate from flocks classified as “U.S. pullorum–typhoid clean” and, in the case of turkeys and turkey eggs, “Mycoplasma gallisepticum clean” under the national poultry improvement plan.

This rule changes current poultry import requirements. Under this rule, poultry may not be imported to Wisconsin unless they are accompanied by a valid certificate of veterinary inspection that certifies *at least one* of the following:

- They originate from flocks enrolled in the national poultry improvement plan.
- They originate from flocks classified as “U.S. pullorum–typhoid clean” and, in the case of turkeys and turkey eggs, “Mycoplasma gallisepticum clean” under the national poultry improvement plan or under an equivalent plan approved by DATCP.
- All test eligible birds have tested negative for pullorum, fowl typhoid and, in the case of turkeys, Mycoplasma gallisepticum within 90 days prior to import. Tested birds must bear official individual identification, and there may be no change of ownership between the test sampling date and the import date.

### *Llamas and Alpacas*

Under this rule, a llama or alpaca imported to Wisconsin must be accompanied by a certificate of veterinary inspection that includes the official individual identification of the llama or alpaca.

### *Animal Markets*

#### General

This rule does all of the following:

- Eliminates the current requirement for animal market operators to pass a test before being initially licensed by DATCP.
- Requires animal market operators to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.
- Requires animal market operators to record the official individual identification of goats that bear official individual identification.
- Requires animal market operators to record the livestock premises code, if any, of each premises from which the operator receives or to which the operator ships livestock.

#### Federally Approved Livestock Import Markets

Under current rules, certain livestock imported to a federally–approved livestock import market in this state are



exempt from Wisconsin import requirements, provided that they meet those requirements before *leaving* the market. Under this rule, before the animals leave the market, the market operator must also disclose the animals' state of origin to the animal purchaser.

#### ***Animal Dealers***

This rule does all of the following:

- Eliminates the current requirement for animal dealers to pass a test before being initially licensed by DATCP.
- Requires animal dealers to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.
- Requires animal dealers to record the official individual identification of goats.
- Requires animal dealers to record the livestock premises code, if any, of each premises from which the dealer receives or to which the dealer ships livestock.

#### ***Animal Truckers***

This rule does all of the following:

- Eliminates the current requirement for animal truckers to pass a test before being initially licensed by DATCP.
- Eliminates the current license exemption for animal truckers that haul animals for other persons fewer than 6 times per license year.
- Requires animal truckers to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.
- Requires animal truckers to record the livestock premises code, if any, of each premises from which the trucker receives or to which the trucker ships livestock.

#### ***Slaughter Establishments***

Under current rules, no person may remove livestock from a slaughter establishment after the animal has been weighed and purchased by the slaughter establishment. Under this rule, no person may remove livestock after they have been off-loaded at the slaughter establishment.

#### ***Disease Indemnities***

Under current law, DATCP may condemn and order the destruction of animals to prevent the spread of serious diseases. In some cases, the owner of the diseased animals may be eligible for state indemnity payments. Under this rule, if the owner of a diseased animal is eligible for state indemnities, and if the animal is of a type not frequently sold at public auction, DATCP must appoint a knowledgeable independent appraiser to determine the value of the animal. The appraiser must determine appraised value based on the animal's size, species, sex, and grade or quality, and by relevant information related to prevailing market prices for animals of that size, species, sex, and grade or quality.

#### ***Prohibited Practices***

This rule prohibits any person from selling, moving or disposing of an animal before the result of a disease test of that animal is known, if that disease test is required by law prior to the sale, movement or disposition.

#### ***Livestock Premises Registration***

##### **Registration Renewal Period**

Under current law, a person keeping livestock in this state must register each location where those livestock are kept. "Livestock" includes bovine animals, equine animals, goats,

poultry, sheep, swine other than wild hogs, farm-raised deer, captive game birds, camelids, ratites and fish. Under current DATCP rules, a person must renew a livestock premises registration every year. This rule extends the current renewal period. Under this rule, a person will only be required to renew once every 3 years.

##### **Who May Register**

Under current rules, if *person A* feeds and cares for livestock owned by *person B*, on premises owned by *person C*, any of those persons may register the premises (the others need not). However, if the premises are part of an operation (such a dairy farm) that DATCP licenses under other applicable law, current rules provide that *only the license holder* may register the premises. This rule eliminates that restriction, so that any eligible person (including, but not limited to, the license holder) may register the premises. This rule retains a current rule provision which allows an applicant for an initial license (such as an initial dairy farm license) to register the livestock premises as part of that initial license application.

##### **DATCP May Register Premises if Operator Does Not**

This rule authorizes DATCP to register livestock premises, or renew a premises registration, on behalf of an operator that fails to do so. For example, DATCP could register livestock premises on behalf of operators who may have religious objections to registering themselves. Before DATCP registers any premises on behalf of any person, DATCP must notify that person of the person's duty to register and of DATCP's intent to register on that person's behalf. Registration by DATCP does not relieve the person of any penalties or liability that may apply as a result of the person's failure to register the livestock premises.

##### ***Other Changes***

This rule makes a number of other minor drafting changes designed to update, clarify and correct current rules.

##### ***Comparison with federal regulations***

DATCP administers animal disease control programs in cooperation with USDA. USDA has well-established control programs for historically important diseases such as tuberculosis and brucellosis. Federal rules for these programs spell out standards for disease testing, disease control, international and interstate movement of animals, certifying the disease status of states, and certifying the disease status of individual herds.

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

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

USDA may provide grant funding, regulatory incentives, or other assistance in support of state programs and regulation. For example, USDA provides funding for voluntary Johne's disease testing and herd management, based on federal program standards.

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

#### ***Comparison with rules in adjacent states***

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

#### ***Aquaculture***

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

- Minnesota requires fish import permits, and licenses fish farms and fish dealers. Health certification is required for fish imports, but not for fish farms. Bait imports are prohibited.
- Iowa requires fish import permits, and licenses fish farms. Health certification is required for fish imports, but not for fish farms.
- Illinois licenses fish farms and fish dealers. An import permit and health certification is required for certain fish imports (salmonids). There is limited regulation of fish transport vehicles.
- Michigan licenses fish farms. Health certification is required for fish imports.

#### ***Johne's Disease***

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

#### **Fiscal Impact**

This rule will not have a significant state or local fiscal impact, except that the fish health provisions of this rule will have the following impact on DNR and DATCP.

#### ***Impact on DNR***

This rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS-susceptible fish and fish eggs (including VHS-susceptible bait species) must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source within the preceding 12 months.

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state-owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year

(including fish at state hatcheries and "cooperator" fish farms registered by DNR).

Assuming an average test cost of \$500 per lot, the total cost to DNR would be approximately \$60,000 per year. However, DNR has already implemented a number of internal controls and VHS testing protocols, so the added cost of this rule will be less than \$60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

#### ***Impact on DATCP***

DATCP will incur added costs to administer and enforce the fish health testing requirements under this rule. DATCP will need *at least* 2.0 FTE staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

The 2.0 FTE staff will have a combined total cost of at least \$120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

#### **Business Impact**

#### ***Aquaculture Industry***

This rule creates new regulations to control viral hemorrhagic septicemia (VHS) in fish, and simplifies registration of fish farms. This rule will affect fish farm operators and bait dealers. This rule will also affect the Wisconsin Department of Natural Resources (DNR). The effect on DNR is described in the fiscal estimate for this rule.

This rule will benefit the aquaculture industry by helping to control the spread of VHS, a very serious disease of fish. This rule will also benefit fish farm operators, by simplifying current fish farm registration requirements (operators will be able to register multiple fish farms on a single registration form). However, this rule may add costs or limit operations for some fish farmers and bait dealers, as described below.

#### ***Fish Farm Operators***

DATCP estimates that this rule will affect 30–40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR. Many of the affected fish farms are "small businesses," and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS-susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of *any* species) collected from any wild source within the preceding 12 months. Operators must test those VHS-susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS-free, based on tests using approved methods. VHS tests must be conducted on a

statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1–30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30–40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of \$500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately \$20,000 per year.

However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than \$20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

### **Bait Dealers**

Wisconsin bait dealers are currently licensed by DNR. This rule will affect licensed bait dealers in 2 ways:

- If bait dealers buy VHS-susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.
- If bait dealers collect VHS-susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild-harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of \$500 per test lot, the average annual cost for an individual bait dealer would be about \$3,000 per year, and the combined total cost to all 25 of those bait dealers would be about \$75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild

emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

### **Farm-Raised Deer Keepers**

This rule changes current rules related to farm-raised deer. This rule makes all of the following changes:

- Requires veterinarians who perform chronic wasting disease (CWD) tests to report test results to DATCP.
- Changes the annual expiration date for farm-raised deer herd registrations, from December 31 to March 31.
- Clarifies that a person may keep farm-raised deer at 2 or more locations identified in a single herd registration certificate, subject to specified conditions.
- Clarifies that separately-registered farm-raised deer herds may be kept at the *same location* (even if they are owned by different persons), subject to specified conditions.
- Modifies current CWD testing requirements. Under current rules, a test must be performed on every farm-raised deer at least *16 months old* that dies in captivity, or is killed or sent to slaughter (the test sample must be sent to an approved laboratory within 10 days after it is collected). Under this rule, testing is required for deer at least *8 months old* that meet the same criteria. Under this rule, a test sample must be collected within 10 days after the animal dies, or is killed or slaughtered (or within 10 days after the death is first discovered). Under this rule as under the current rules, the test sample must be sent to an approved laboratory within 10 days after it is collected.
- Clarifies current rules related to DATCP condemnation of diseased or suspect farm-raised deer. Under this rule, a condemnation order may specify a reasonable compliance deadline, may direct appropriate testing and disposition of carcasses, and may require the herd owner or custodian to enter into a "premises plan" as a condition to the payment of state indemnities.
- Clarifies annual herd census requirements under Wisconsin's chronic wasting disease herd status program. Under this rule, an annual herd census must report apparent escapes, and must explain and account for changes in herd population since the last census.
- Clarifies that a person applying to register a herd of white-tailed deer with DATCP must include, with the registration application, a copy of a valid DNR fence certificate (currently required by law) for each registered location.
- Clarifies that a person applying for a 10-year hunting preserve certificate from DATCP must include, in the application, an estimate of the farm-raised deer population on the hunting preserve premises (by species, age and sex). The application must also include the identification numbers of any farm-raised deer on the hunting preserve that bear identification numbers. Under this rule, all non-natural additions to a hunting preserve must have 2 forms of official individual identification, one visible and one implanted.
- Extends the term of a brucellosis-free herd certification, from 2 years to 3 years, so that it is consistent with the term

of a tuberculosis-free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases.

- Allows DATCP to extend the 15-day slaughter deadline for tuberculosis reactors by up to 30 days (current rules allow only a 15-day extension).
- Modifies current tuberculosis regulations for imports of farm-raised deer, to make them consistent with federal standards for interstate movement. This rule also eliminates current requirements for post-import testing.
- Clarifies current rules related to movement of farm-raised deer between separately registered herds in this state.

Most of the changes in this rule are designed to clarify current rules, or to make current rules consistent with federal rules. The rule changes will have minimal impact on most farm-raised deer keepers, and will reduce costs and facilitate deer farm operations in many cases. Clear and effective rules will help prevent and control chronic wasting disease and other diseases, for the benefit of the entire farm-raised deer industry.

This rule will require farm-raised deer keepers to perform chronic wasting disease tests on farm-raised deer that die between the ages of 8 months and 16 months (current rules only require testing of animals that die at age 16 months or older). The reduction in test age may require some farm-raised deer keepers to test a slightly larger number of farm-raised deer. The United States Department of Agriculture (USDA) currently pays laboratory testing costs, but farm-raised deer keepers must pay at least part of the cost to have test samples collected by a veterinarian. The sample collection cost ranges from \$15/head to \$140/head depending on the availability of a veterinarian. In recent years, USDA has paid the first \$50 of this cost (future funding is uncertain).

This rule requires additional (implanted) ID tags for farm-raised deer entering hunting preserves, to facilitate disease traceback. The cost of the additional tag is estimated at less than \$5 per farm-raised deer. In recent years, USDA has paid for implanted ID tags (future funding is uncertain).

#### ***Cattle and Goat Producers***

Under current rules, Johne's disease test samples must normally be collected by accredited veterinarians. This rule allows Dairy Herd Improvement Technicians to collect milk samples that are used as Johne's disease test samples. That will make it easier, and less costly, for dairy farmers to participate in the Johne's disease herd testing and management program.

Current rules exempt imported bovine animals (cattle and bison) from the requirement of a pre-import tuberculosis test if the animals originate from a state that USDA has classified as "TB-free" if that state accepts Wisconsin animals without a TB test. Under this rule, the exemption does not apply if the state of origin has a confirmed TB-positive herd, until that herd is depopulated and all epidemiologically linked herds have tested negative for TB. This rule also prohibits imports of cattle originating from Mexico, except directly to slaughter. This rule will help prevent imports of diseased cattle, and provide important protection for Wisconsin's livestock industry. It will not have significant adverse effects on the livestock industry.

#### ***Poultry Producers***

Under current rules, a poultry flock owner may voluntarily enroll in the National Poultry Improvement Plan (enrollment facilitates the sale and movement of poultry). Under this rule, a flock owner may not enroll unless the owner has registered flock premises under Wisconsin's livestock premises

identification program. This will not have a significant impact on flock owners, because registration is already required by law.

Current rules regulate poultry imports to Wisconsin. This rule modifies poultry import standards, to provide more flexible options for poultry importers. This rule will have no adverse impact on poultry importers.

#### ***Animal Markets, Dealers and Truckers***

This rule does all of the following:

- Eliminates the current requirement for animal market operators, animal dealers and animal truckers to pass a test before being initially licensed by DATCP.
- Requires animal market operators, animal dealers and animal truckers to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.
- Requires animal market operators, animal dealers and animal truckers to record the official individual identification of goats that bear official individual identification.
- Requires animal market operators, animal dealers and animal truckers to record the livestock premises code, if any, of each premises from which the operator receives or to which the operator ships livestock.
- Requires operators of federally-approved livestock import markets to disclose, to livestock recipients, the state of origin of livestock leaving the import market.

This rule will simplify licensing of animal market operators, dealers and truckers, by eliminating current testing requirements. This rule will require some animal market operators, dealers and truckers to make minor changes in recordkeeping and operating procedures. Recordkeeping changes will improve disease control and traceback capability, for the benefit of the entire livestock industry. This rule will not have any significant adverse effect on animal market operators, dealers or truckers.

#### ***Persons Keeping Livestock; Premises Registration***

Under current law, a person who keeps livestock at a location in this state is required to register that location with DATCP. Under current rules, the person must renew the registration annually. If the person holds another license from the department, the person must register as part of the license application process.

This rule extends the renewal period from one year to 3 years. Under this rule, a license holder may register as part of the license application process but is not required to do so (the person may register separately). Under this rule, DATCP may register known livestock premises if the livestock operator fails to do so (because the operator has religious objections, for example). These changes will make it easier and more convenient for livestock operators to comply with premises registration requirements. This rule will have no adverse impact on the livestock industry.

#### ***Slaughter Establishments***

This rule clarifies the current prohibition against removing live animals from slaughter establishments. This rule will not have any adverse effect on slaughter establishments.

#### ***Disease Indemnities***

This rule clarifies the procedures that DATCP will use to determine the appraised value of animals condemned for disease control purposes, in order to determine the amount of state indemnity payments. This rule will not have any significant adverse effect on livestock operators, and will clarify indemnity procedures.

### Small Business Analysis

Overall, this rule improves disease control and prevention for the benefit of the entire livestock and aquaculture industry. In many cases, this rule will actually improve flexibility and reduce costs for individual businesses, including small businesses. Overall, this rule has few adverse impacts on small business.

This rule may have some adverse effects on some small businesses (especially bait dealers that harvest emerald shiners from wild sources for sale as bait). If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities will be small businesses.

This rule is needed to protect the health of Wisconsin livestock industries, including the aquaculture and farm-raised deer industries. It is also needed to protect the health of wild animals, including fish. Effective disease control is important for all the people of the state, and for the affected livestock industries.

Although this rule may have some adverse effects on some small livestock businesses, those effects are generally minimal and are outweighed by the need to prevent and control the spread of serious diseases that could destroy entire industries. DATCP has not exempted small businesses, because the risk of disease spread is unrelated to business size.

Overall, this rule will benefit Wisconsin livestock industries by improving control of serious diseases. This rule will also increase flexibility and reduce costs for many individual businesses. This rule may have some adverse effects on some individual businesses, those effects are generally limited and are outweighed by the need to prevent and control the spread of serious diseases that could destroy entire industries.

## Notice of Hearing

### Agriculture, Trade and Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on an emergency rule amending chapter ATCP 10, Wis. Adm. Code, relating to diseases of fish and farm raised deer.

#### Submission of Written Comments

DATCP will hold one public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Thursday, January 25 for additional written comments. Comments may be sent to the Division of Animal Health at the address below, by email to [Melissa.mace@wisconsin.gov](mailto:Melissa.mace@wisconsin.gov) or online at:

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

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to [Keeley.Moll@wisconsin.gov](mailto:Keeley.Moll@wisconsin.gov) or by telephone at (608) 224-5039.

#### Copy of Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4883 or emailing

[Melissa.mace@wisconsin.gov](mailto:Melissa.mace@wisconsin.gov). Copies will also be available at the hearings. To view the proposed rule online, go to:

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

### Hearing Information

**Monday, January 14, 2008**

9:00 a.m. to 10:00 a.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive

First Floor – Room 106 (Boardroom)

Madison, Wisconsin 53718

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by December 19, 2007, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

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

This emergency rule modifies current health certification and disease testing requirements for fish and farm-raised deer. This emergency rule does all of the following:

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish and fish eggs if they are of a known VHS-susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or eggs of *any* species collected from a wild source within the preceding 12 months:
  - Fish stocked into Wisconsin public waters.
  - Fish moved between Wisconsin fish farms.
  - Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.
- Clarifies that VHS and other routine fish disease testing requirements do not apply when operators, including the Wisconsin Department of Natural Resources (DNR), are moving fish or fish eggs between Wisconsin fish farms registered by the same operator. Current rules will continue to prohibit an operator from moving fish between the operator's registered fish farms if the operator has reason to know that the fish are affected with VHS or another reportable disease.
- Extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. That will allow participating herd owners to conduct simultaneous tests for both diseases.

#### Statutory authority

Sections 93.07 (1) and (10), 95.55 (6), 95.60 (2) (c), (3), (4) (c) and (4s), Stats.

#### Statutes interpreted

Sections 93.07 (10), 95.55 and 95.60, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has broad general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP also has broad authority under s. 93.07(10), Stats., to adopt rules and issue orders to protect the health of animals, and to prevent, control and eradicate communicable diseases among animals. DATCP has specific authority, under ss. 95.55 and 95.60, Stats., to regulate farm-raised deer and fish.

### ***Animal Health Programs: Background***

DATCP administers Wisconsin's animal health and disease control programs, including programs to control diseases among fish and farm-raised deer. DATCP regulates fish farms, including DNR-operated fish farms, and regulates the import, movement and disease testing of fish. DATCP also regulates farm-raised deer herds and the import, movement and disease testing of farm-raised deer.

### ***Disease Testing of Fish***

#### **Viral Hemorrhagic Septicemia**

VHS is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Morts (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms.

Current DATCP rules require health certificates for (1) fish and fish eggs (*including* bait) imported into the state, (2) fish and fish eggs stocked into Wisconsin public waters, and (3) fish and fish eggs moved between Wisconsin fish farms. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for any of the following:

- Fish or fish eggs stocked into Wisconsin public waters from *Wisconsin* sources.
- Bait fish or fish eggs originating from *Wisconsin* sources.
- Fish or fish eggs moved between *Wisconsin* fish farms.
- Non-salmonids imported from states (such as Minnesota) where VHS has not yet been found.

Because VHS has now been found in Wisconsin public waters, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to add VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

This emergency rule expands current VHS testing requirements. Under this emergency rule, a fish health certificate and VHS testing are required for all of the following fish and fish eggs if they are of a *known VHS-susceptible species* identified by the United States department of agriculture (USDA) and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source in any state within the preceding 12 months:

- Fish or fish eggs stocked into Wisconsin public waters.
- Fish or fish eggs moved between Wisconsin fish farms.
- Fish or fish eggs distributed by a bait dealer for use as bait. The bait fish testing requirement will initially apply emerald shiners (a known VHS-susceptible species), but will *not* initially apply to other major bait species such as fathead minnows, white suckers and golden shiners (which are not yet known to be VHS-susceptible). However, it could eventually apply to other species if USDA finds that those species are also VHS-susceptible. A retail bait dealer is not required to conduct duplicate tests on fish previously tested by a wholesale bait dealer.

This rule also prohibits any person from selling bait fish of *any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.

#### **Operators Moving Fish Between Their Own Fish Farms**

This emergency rule clarifies that VHS and other routine disease testing requirements do not apply when operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantine and other disease control orders to individual fish farm operators, as necessary.

#### ***Disease-Free Certification of Farm-Raised Deer***

Under current rules, DATCP may certify a herd of farm-raised deer as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the herd owner. Participation is voluntary, but disease-free herd certification facilitates the sale and movement of farm-raised deer. Herd certification is generally governed by federal rules (uniform methods and rules) that DATCP has incorporated by reference in its rules.

Under current federal rules, tuberculosis-free herd certification is good for 3 years, while brucellosis-free herd certification is good for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms by state rule.

This emergency rule extends brucellosis-free herd certification from 2 years to 3 years (a herd owner may request a shorter term), consistent with tuberculosis-free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. It is necessary to adopt this change by emergency rule, so that certain herd owners can avoid unnecessary testing this year.

#### ***Comparison with federal regulations***

DATCP administers animal disease control programs in cooperation with USDA. USDA has issued federal orders in response to the discovery of VHS in the United States and Canada. The orders limit interstate and international shipments of VHS-susceptible fish from states and provinces that border the Great Lakes, and require negative VHS testing to permit movement. This rule supplements current federal rules by establishing testing requirements for *intrastate* movement and stocking of wild source fish and fish eggs (including bait species) in Wisconsin.

#### ***Comparison with rules of adjacent states***

Michigan and Minnesota require VHS testing on salmonids stocked into state waters. On June 7, 2007, Michigan also announced a one-year moratorium on state hatchery production of walleye, northern pike and muskellunge using eggs collected from wild sources in Michigan during 2007. Illinois and Iowa have no VHS testing requirements for intrastate movement or stocking of fish.

#### ***Fiscal Impact***

##### ***Disease Testing of Fish***

#### **Effect on DNR**

This emergency rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS-susceptible fish and fish eggs (including VHS-susceptible bait species) must be tested for VHS before

being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source within the preceding 12 months.

Under current rules, a veterinarian or other qualified fish health inspector must issue a fish health certificate for all fish or fish eggs stocked into Wisconsin public waters. The inspector must issue the health certificate on a form prescribed by DATCP. Under this rule, if the fish are of a VHS-susceptible species, and were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months, the fish health certificate must certify that the fish are VHS-free. The certification must be based on VHS tests conducted according to approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP identifies on the health certificate form.

VHS tests must be conducted on a statistically representative test sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of different species in the lot, etc.). A single fish farm might need to test from 1–30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and the purposes for which the fish are kept and distributed.

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state-owned fish hatcheries. The remainder are registered by DNR but owned by private DNR “cooperators” (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and “cooperator” fish farms registered by DNR).

Assuming an average test cost of \$500 per lot, the total cost to DNR would be approximately \$60,000 per year. However, DNR has already implemented a number of internal controls and VHS testing protocols, so the added cost of this rule will be less than \$60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

#### Effect on DATCP

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule. DATCP will need *at least* 2.0 FTE staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

The 2.0 FTE staff will have a combined total cost of at least \$120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

#### Effect on UW and Local Governments

This rule may have a slight fiscal impact on University of Wisconsin research facilities and some local governments, to the extent that they may operate fish farms or procure fish from farms affected by this rule. However, the effect will likely be minimal unless those entities are engaged in distributing VHS-susceptible fish or fish eggs from wild sources.

#### *Disease-Free Certification of Farm-Raised Deer*

This emergency rule extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. The change will allow participating herd owners to conduct simultaneous tests for both diseases. The change will have no fiscal impact on DATCP, on other agencies of state government, or on local government.

#### **Business Impact**

##### *Disease Testing of Fish*

#### Effect on Private Fish Farm Operators

DATCP estimates that this rule will affect 30–40 private fish farms, not counting DNR “cooperator” fish farms registered by DNR (see above). Many of the affected fish farms are “small businesses,” and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS-susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of *any* species) collected from any wild source within the preceding 12 months. Operators must test those VHS-susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS-free, based on tests using approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP has identified on the health certificate form.

VHS tests must be conducted on a statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1–30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30–40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of \$500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately \$20,000 per year. However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than \$20,000. Fish farm costs may increase if USDA finds that additional fish species are

susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

#### Effect on Bait Dealers

Wisconsin bait dealers are licensed by DNR. This rule will affect licensed bait dealers in 2 ways:

- If bait dealers buy VHS-susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.
- If bait dealers collect VHS-susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild-harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of \$500 per test lot, the average annual cost for an individual bait dealer would be about \$3,000 per year, and the combined total cost to all 25 of those bait dealers would be about \$75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

#### Accommodation for Small Business

This rule will have a limited effect on most private fish farms and bait dealers. But in some cases (especially in the case of bait dealers that harvest emerald shiners from wild sources for sale as bait), this rule may impose substantial added costs. If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities are small businesses.

This emergency rule is needed to protect the health of wild and farm-raised fish populations in this state. Effective disease control is important for the entire aquaculture industry in this state. Although this rule may increase costs for some fish farm operators and bait dealers, the costs are currently outweighed by the need to prevent and control the spread of disease. DATCP has not exempted small businesses, or adopted more lenient VHS testing requirements for small business, because the risk of disease spread is unrelated to business size.

#### *Disease-Free Certification of Farm-Raised Deer*

This rule will have no negative effects on farm-raised deer keepers, and will reduce testing costs for some farm-raised deer keepers. Actual cost savings will depend on herd size and current test schedules. By facilitating simultaneous testing for brucellosis and tuberculosis, this rule will also avoid some stress on tested deer.

### **Notice of Hearings Natural Resources (Environmental Protection-General, Chs. NR 100—)**

#### **[CR 07-111]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11(2), 281.15, 283.13 and 283.17, Stats., interpreting ss. 281.15, 283.13 and 283.17, Stats., the Department of Natural Resources will hold a public hearing on the repeal of ch. NR 209, revisions to ch. NR 102 and the creation of subchs. V and VI to ch. NR 106, Wis. Adm. Code, relating to thermal standards for Wisconsin surface waters. The proposed rule will establish water quality standards for temperature (in ch. NR 102) and procedures to calculate water quality-based effluent limitations (in ch. NR 106) to regulate the discharge of heated wastewater to prevent adverse impacts to fish and other aquatic life.

Two new subchapters will be created in ch. NR 106: subch. V entitled Effluent Limitations for Temperature and subch. VI entitled Alternative Effluent Limitations for Temperature. Subchapter V specifies data requirements, variance procedures, methods for determining the necessity for and calculation of water quality-based effluent limitations, application of and compliance with the limitations in WPDES permits, and other related limitation and permitting issues. As a primary means of assuring the limitations are water quality-based, the proposed rule takes into account the ambient temperature and flow of a receiving water in the calculation of effluent limitations. The effluent limitation calculation incorporates a mass balance equation, making it equivalent to other codified limit calculation procedures. The mass balance approach enables the determination of the amount of heat that a receiving water can assimilate without adversely affecting fish and aquatic life. Supplemental limits, including those of 120°F to prevent incidental injury (scalding) to humans and of 95°F to protect wetlands, ephemeral streams, and other limited aquatic life waterbodies, are also proposed. Additionally a "cap limit" is to be applied simultaneously with the calculated limit to prevent excessive acute mixing zones.

Subchapter VI specifies procedures to determining alternative effluent limitations that may be established for point source discharges with limitations calculated under subch. V that are demonstrated to be more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife



in and on the body of water into which the discharge is made. The subchapter includes application, compliance schedule and public notice procedures, among others. Subchapter VI replaces ch. NR 209 which is proposed to be repealed.

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

- January 15, 2008** Room 158  
Tuesday at 1:00 p.m. DNR Region Hdqrs.  
1300 W. Clairemont Ave.  
Eau Claire
- January 17, 2008** Room 151  
Thursday at 1:00 p.m. Dreyfus State Office Building  
141 NW Barstow St.  
Waukesha
- January 25, 2008** Room G09  
Friday at 1:00 p.m. GEF #2 State Office Bldg.  
101 S. Webster St.  
Madison
- January 28, 2008** Lake Michigan Room  
Monday at 1:00 p.m. DNR Northeast Region Hdqrs.  
2984 Shawano Avenue  
Green Bay

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 Michael Wenzholz at (608) 266-1494 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Copy of Rule and Submission of Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Michael Wenzholz, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until February 28, 2008. 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. Wenzholz.

#### Initial Regulatory Flexibility Analysis

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

#### Environmental Analysis

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.

#### Fiscal Estimate

The Department estimates that there will be a minor, one-time increase in work load associated with this rule package. Staff will be involved with participating in training sessions and drafting WPDES permits, especially through the first round of reissued permits (i.e. the first 5 years of the rule being in effect). The increase in permit drafting work load will include learning a new process, potentially learning new automated systems, and calculating more limitations than in the past. Since the degree to which this work load will increase is difficult to estimate, the Department is characterizing this cost increase as "indeterminate".

#### Notice of Hearings

#### Natural Resources

#### (Environmental Protection—General, Chs. NR 100—)

#### [CR 07-110]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 281.15, Stats., interpreting s. 281.15, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 105, Wis. Adm. Code, relating to surface water quality criteria. The Department is proposing to update surface water quality criteria for 15 substances and to develop new surface water quality criteria for 2 other substances. These updates and additions are the result of two federal initiatives. First, in 2000 U.S. EPA formally objected to aquatic life criteria for several substances in ch. NR 105 because the state criteria were not as protective as the federal criteria. Second, U.S. EPA has developed and updated human health criteria for some additional substances subsequent to the 2000 objections. The Department's proposed updates and additions will ensure federal approval of the criteria for those substances. No changes are proposed in the procedures used for developing criteria in ch. NR 105, only the numerical criteria for some of the substances regulated are being addressed at this time.

Of the 18 substances proposed for criteria revisions, it is estimated that no discharge permits will be affected for 14 of those substances. This is because the criteria are high enough and/or the discharge levels are low enough that no effluent limitations will be needed in any permit. The only substances for which changes in permit limitations are foreseen are arsenic, copper, nickel and selenium.

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

- January 3, 2008** Room G09  
Thursday at 1:00 p.m. GEF #2 State Office Building  
101 South Webster Street  
Madison
- January 7, 2008** Room 185  
Monday at 6:00 p.m. DNR West Central Region Hdqrs.  
1300 W. Clairemont St.  
Eau Claire
- January 14, 2008** Conference Room  
Monday at 6:00 p.m. Jim Coughlin Building  
625 County Road Y  
Oshkosh

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 Jim Schmidt at (608) 267-7658 with specific information on your request at least 10 days before the date of the scheduled hearing.

### Copy of Rule and Submission of Written Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov> or to: [JamesW.Schmidt@Wisconsin.gov](mailto:JamesW.Schmidt@Wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Jim Schmidt, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until February 16, 2008. 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. Schmidt.

### Initial Regulatory Flexibility Analysis

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

### Environmental Analysis

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.

### Fiscal Estimate

**Revenues.** In the past 4 years, WPDES fees associated with copper limits have ranged between \$45,000 to \$60,000 per year. Assuming that copper-related fees would increase by 15% under this proposal, and applying that percentage to the upper range of copper-related fees collected, the Department estimates that the proposed rule package would increase annual WPDES fee collections under NR 101 by \$9,000 (\$60,000 x 15%). Furthermore, the Department estimates that the proposed rule changes for the remaining 17 toxic substances will have a minimal impact on WPDES fee collections.

**Costs.** A minimal amount of DNR staff time will be required to implement the proposed rule changes.

## Notice of Hearings

### Natural Resources

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

#### [CR 07-112]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.20(1), (1k), (1t) and (2), 30.206 and 227.11(2), Stats., interpreting ss. 30.20(1), (1g), (1k), (1m), (1t) and (2) and 30.206, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 345, Wis. Adm. Code,

relating to general permit standards to allow operation of a motor vehicle on the beds of outlying waters to remove algae, mussels, dead fish and similar large public nuisance deposits and for the removal and control of invasive plants on exposed lakebeds.

The operation of motor vehicles and the removal or disturbance of materials on the beds of navigable waterways (also known as dredging) is regulated by ch. 30, Stats., and ch. NR 345. The statutes and current rule allow lakefront property owners to apply for an individual permit to use mechanized methods to remove nuisance deposits or other invasive or unwanted vegetation. However, individual permits require a \$500 application fee and a 30-day public comment period before the permit can be issued.

Considering the changing lakeshore due to decreased water levels and the abundance of invasive species, the department proposes to revise ch. NR 345 to create two new general permits. The general permits would allow lakefront property owners to operate motor vehicles on the beds of "outlying" navigable waters to remove public nuisance deposits (Cladophora, Zebra mussels, dead fish, etc.) and to control and manage invasive vegetation on exposed lakebed more efficiently while complying with general permit conditions created to protect the public interest in the lakebed. The general permit has a \$50 application fee and is processed in 30 days.

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

#### January 15, 2008

Tuesday at 10:00 a.m.

Room 151

Dreyfus State Office Building  
141 NW Barstow St.  
Waukesha

#### January 16, 2008

Wednesday at 10:00 a.m.

Lake Michigan Room

DNR Northeast Region Hdqrs.  
2984 Shawano Avenue  
Green Bay

#### January 17, 2008

Thursday at 10:00 a.m.

#### Video conference participation

will be available at:

Room 306

Conference Center  
Wis. Indianhead Tech. College  
2100 Beaser Avenue  
Ashland

Room L130

UW Center – Marinette  
750 W. Bay Shore St.  
Marinette

Large Conference Room

DOT Superior–District 8  
1701 N. 4<sup>th</sup> St.

Superior

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

### Copy of Rule and Submission of Written Comments

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov> or to [MartinP.Griffin@Wisconsin.gov](mailto:MartinP.Griffin@Wisconsin.gov). Written comments on the proposed rule may

be submitted via U.S. mail to Martin Griffin, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until January 21, 2008. 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. Griffin.

#### **Initial Regulatory Flexibility Analysis**

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

##### ***Types of small business that will be affected by the rule***

Small businesses affected by this rule will include contractors, developers and consultants who provide plans or design for projects along public navigable waterways which may include the removal of unwanted aquatic plants and dead animals from shoreline as well as participating in invasive species control and management.

##### ***Reporting, bookkeeping and other procedures required for compliance with the rule***

The person responsible for a project in or along a lake or stream must develop plans and occasionally conduct some analyses, submit an application, and observe the site during construction. For some activities, photographs of the completed project are required. For the aquatic plant management activities outlined in the rule, an invasive species control plan that includes a description of the existing condition (including the types of plants present and their abundance); a strategy for the control of the invasive species; a plan for the re-establishment of the native plant community; and a monitoring plan to assess the success or failure of the control plan may be required.

##### ***Type of professional skills necessary for compliance with the rule***

Map reading, basic computer use, mathematics, drawing to

scale, and clear writing are the skills needed to comply with these rules. While it may be helpful or efficient, hiring a consulting firm is not necessary to comply with these requirements. Many projects are planned and conducted by individuals with no professional background. If the site has particularly challenging features, then professional ecological or engineering expertise may be helpful.

##### ***Small business regulatory coordinator***

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

##### **Environmental Analysis**

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.

##### **Fiscal Estimate**

The Department estimates that under the proposed rule, approximately 2 dredging requests per year will continue to require a \$500 individual permit, for a total of \$1,000 in individual permit revenue. It is estimated that the remaining 38 requests will require general permits, for a total of \$1,900 in general permit revenue (38 general permits x \$50/each). Therefore, total revenue for individual and general permits is estimated to be \$2,900, which represents a \$1,900 increase over revenue generated under current rules.

The rule changes will have no impact on local government costs.

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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.*

**Agriculture, Trade and Consumer Protection**  
**(CR 07-085)**

Ch. ATCP 21, relating to voluntary certification of firewood dealers.

**Natural Resources**  
**(CR 06-005)**

Ch. NR 149, relating to laboratory certification and registration.

**Natural Resources**  
**(CR 07-074)**

Chs. NR 19 and 20, relating to the control of fish diseases and invasive species.

**Revenue**  
**(CR 07-087)**

Chs. Tax 61 and 63, relating to billing terms options for Wisconsin Lottery retailers, additional shipping options for retailers, requirements for the Retailer Performance Program, voluntary disclosure requirements, and correcting minor technical problems.

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## Rule Orders Filed with the Revisor of Statutes Bureau

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

### **Elections Board (CR 07-043)**

An order affecting ch. ElBd 3, relating to the pricing of voter registration data obtained from the statewide voter registration system.

Effective 2-1-08.

### **Natural Resources (CR 07-026)**

An order affecting chs. NR 1, 45, and 51, relating to use of department properties.

Effective 1-1-08.

### **Public Service Commission (CR 07-021)**

An order affecting ch. PSC 114, relating to electric safety.

Effective 2-1-08.

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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 **December 31, 2007**, 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 07-063)**

An order affecting ch. Comm 133, relating to implementing a film production accreditation program. Effective 1-1-08.

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

The enabling legislation for these rules, 2005 Wisconsin Act 483, does not establish any lesser application to small businesses. However, during rule development, the Department took steps to reduce possible barriers for small businesses by soliciting and utilizing input from individuals and organizations that are expected to be familiar with small businesses.

A comment was made at the public hearing recommending (1) not tying the goals of the State's branding campaign to the film production accreditation program and (2) making the tax credits transferable. The proposed rules now refer to not hurting the reputation of the State, instead of referring to consistency with a positive brand image of the State. The rules have not been changed to allow transfer of the tax credits because that transfer is currently not allowed by 2005 Wisconsin Act 483.

The proposed rules are not expected to impose any significant reporting costs on small businesses, because the rules address only submittal of documentation relating to voluntary pursuit of tax credits for producing film productions or for establishing film production companies.

The Department has developed an application form and related instructions that addresses the documentation which must be submitted. The cost for assembling and submitting this documentation is expected to be inconsequential.

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

No comments were received

### **Health and Family Services (CR 07-041)**

An order affecting ch. HFS 107, relating to benefits covered by the Wisconsin Medical Assistance program (to clarify that prior authorization is required for EPSDT), and affecting small businesses. Effective 1-1-08.

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

The rules will affect all businesses that are dental offices who serve Medicaid recipients. The rules are not expected to affect costs.

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

No comments were received

### **Insurance (CR 07-070)**

An order affecting ch. Ins 2, relating to use of the 2001 CSO Preferred Class Structure Mortality Table in determining reserve liabilities. Effective 1-1-08.

#### **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 06-039)**

An order affecting ch. NR 5, relating to sound testing methods for airboats. Effective 1-1-08.

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

The Department determined that the proposed rule will not have a significant economic impact on small businesses. Therefore, a final regulatory flexibility analysis was not required.

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

The rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On March 5, 2007, the Assembly Committee on Natural Resources held a public hearing and, as a result of the hearing, requested the Department to modify the rule. In response to the Committee's request, the Department created s. NR 5.125 (6) (c) which reads: A boat being used by a trapper for the sole purpose of trapping from November 1 thru March 31. This paragraph does not apply after March 31, 2009.

### **Natural Resources (CR 07-026)**

An order affecting chs. NR 1, 45, and 51, relating to use of department properties. Effective 1-1-08.

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

The rule does not regulate small business. Therefore, a final regulatory flexibility analysis is not required.

**Summary of Comments by Legislative Review Committees**

No comments were received

**Transportation  
(CR 07-065)**

An order affecting ch. Trans 128, relating to the traffic violation and registration program. Effective 1-1-08.

**Summary of Final Regulatory Flexibility Analysis**

This rule affects governmental units, authorized by law to enforce non-moving traffic violations. The rule has no effect on small business, with the exception of any small business that might engage by contract with a governmental unit to process non-moving traffic violation notices to the Department. In that case, the business would be bound by its contract with the governmental unit.

**Summary of Comments by Legislative Review Committees**

No comments were received

**Workforce Development  
(CR 07-018)**

An order affecting ch. DWD 301, relating to migrant labor. Effective 1-1-08.

**Summary of Final Regulatory Flexibility Analysis**

The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

**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 **December 2007**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

### Revisions

#### Commerce

##### Ch. Comm 133 (Entire Chapter)

S. NR 45.04 (2) (a) and (3) (h)  
 S. NR 45.05 (1) (f) to (i) and (5)  
 S. NR 45.06 (1)  
 S. NR 45.07 (1)

#### Health and Family Services

##### Ch. HFS 107

S. HFS 107.07 (1) (i), (k), (2) (a), (3) (intro.), (a), (4) (intro.), (j), and (4m)  
 S. HFS 107.22 (4)

S. NR 45.10 (1) (m) and (3) (a)  
 S. NR 45.12 (1) (b), (2) (b), (3) (c), and (4) (g)  
 S. NR 45.13 (8g), (17) (d), and (26)

##### Ch. NR 51

S. NR 51.73 (1)

#### Insurance

##### Ch. Ins 2

S. Ins 2.81 (2), (3) (a), (cm), (i), (4) (c), and (5) (e)

#### Transportation

##### Ch. Trans 128 (Entire Chapter)

#### Natural Resources

##### Ch. NR 1

S. NR 1.29 (1)  
 S. NR 1.30 (1) (e)  
 S. NR 1.71 (4) (b)

##### Ch. NR 5

S. NR 5.125 (1) (d), (e) and (6)

##### Ch. NR 45

S. NR 45.03 (9g), (16), (23m), (27)

#### Workforce Development

##### Ch. DWD 301

S. DWD 301.03  
 S. DWD 301.05 (1) and (8) (a)  
 S. DWD 301.06 (2), (2m), (3) and (13)  
 S. DWD 301.07 (9) (b), (11) (cm), (13) (a), (15) (b), (c), (16) (c), (k), and (21) (em)  
 S. DWD 301.08 (5)  
 S. DWD 301.09 (2) (c)  
 S. DWD 301.11  
 S. DWD 301.14

### Editorial corrections

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

#### Optometry Examining Board

##### Ch. Opt 8

S. Opt 8.02 (9)

#### Workforce Development

##### Ch. DWD 301

S. DWD 301.07 (4), (6) (e), (11) (a), (13) (c), (14) (h), (15) (a) and (21) (f)



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## Sections Affected by Revisor's Corrections Not Published

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### Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

**Subscriber's note:** Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, <http://www.legis.state.wi.us/rsb/>, and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
ATCP 35.28	20.115 (7) (e) and (wm)	20.115 (7) (wm)
Comm 106.47 (2) (intro.)	560.605 (2), (2m), (4), (5), (5m), (6) and 560.66	560.605 (1) (j) to (o) and (2m)
Comm 106.66 (2)	560.605 (2), (2m), (4), (5), (5m), (6) and 560.66	560.605 (1) (j) to (o) and (2m)
Comm 106.85 (2)	560.605 (2), (2m), (4), (5), (5m), (6) and 560.66	560.605 (1) (j) to (o) and (2m)
Comm 111.01	560.30 to 560.38	560.29
Comm 111.02 (4)	560.30 (2)	560.29 (1) (a)
Comm 111.02 (6)	560.30 (4)	560.29 (1) (b)
Comm 111.02 (7)	560.30 (5)	560.29 (1) (c)
Comm 111.02 (17)	560.30 (6)	560.29 (1) (d)
Comm 111.02 (18)	560.30 (7)	560.29 (1) (e)
Comm 111.02 (26)	560.30 (8)	560.29 (1) (f)
Comm 111.02 (28)	560.30 (11)	560.29 (1) (g)
Comm 111.03 (2) (c)	560.30 to 560.38	560.29
Comm 111.07 (4)	560.34	Deleted reference
Comm 111.09 (2)	560.31 (2) (d)	Deleted reference
Comm 111.09 (8) (e)	560.36	Deleted reference
Comm 111.10 (1)	560.30 to 560.38	560.29
Comm 111.10 (3) (a)	560.34 (1m), (2), (3), (4) (four places) 560.35 (1), (2), (3), (4) (four places)	Deleted references  560.29 (2) (a), (c), (d), (e) (four places)
HFS 10.11 (intro.)	50.36 (2) (c)	Deleted reference
HFS 10.62 (1) (b) (intro.)	46.286 (1) (b) 1. b.	46.286 (1) (b) 1m.
HFS 10.73 (1)	50.033 (2r) to (2t)	Deleted reference
NR 543.02	560.12 560.65	Deleted reference Deleted reference
DWD 43.08 (4) (a)	49.852 (1)	49.852 (1m)
DWD 56.02 (11)	49.13	49.79 (9) (b)

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## Executive Orders

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

**Executive Order 225.** 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 Gunnery Sergeant Richard W. Fischer of the United States Marine Corps Who Lost His Life in the Vietnam War.

**Executive Order 226.** 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 James McDonald of the United States Army Who Lost His Life While Serving His Country.

**Executive Order 227.** Relating to a Special Session of the Legislature.

**Executive Order 228.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on National Pearl Harbor Remembrance Day.

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## Public Notices

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### Agriculture, Trade and Consumer Protection

#### Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under Wis. Stat. Section 779.41 (1), mechanics or repair businesses who transport, repair or perform any work on personal property at the request of the owner have a statutory lien on the property for the just and reasonable charges associated with the work, and may retain possession of the property until the charges are paid.

Generally, a mechanic's lien under Wis. Stat. Section 779.41, has priority over any previously recorded security interest in the personal property but only for the appropriate charges at the specified dollar amounts below.

Under Wis. Stat. Section 779.41 (1m), the Department is required to annually publish adjusted dollar amounts for charges on repairs to personal property subject to mechanic's liens. The adjustments are based on the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

The Department has determined that current dollar amounts specified under Wis. Stats. Sections 779.41 (1), (1) (a), (1) (b), and (1) (c) shall be increased by 3.2%, according to the prior year annual change in the consumer price index. Thus, the dollar amounts for charges under the mechanic's lien law are adjusted as follows:

Under Wis. Stat. Section 779.41 (1), mechanic's liens generally, \$1,965.

Under Wis. Stat. Section 779.41 (1) (a), mechanic's liens on a trailer or semi-trailer designed for use with a road tractor, \$5,890.

Under Wis. Stat. Section 779.41 (1) (b), mechanic's liens on road machinery, including mobile cranes, trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment, \$9,800.

Under Wis. Stat. Section 779.41 (1) (c) 1. to 4., mechanic's liens on vehicles:

1. More than 10,000 and less than 20,000 pounds, \$3,920.
2. 20,000 pounds or more, but less than 40,000 pounds, \$7,745.
3. 40,000 pounds or more, but less than 60,000 pounds, \$11,770.
4. 60,000 pounds or more, \$15,230.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2008 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

#### Contact Information

Paul Dingee, Section Chief  
Trade Practices Bureau  
Department of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone: (608) 224-4925

## **Health and Family Services**

### **BadgerCare Plus Effective Date**

The State of Wisconsin has created a Medical Assistance program named BadgerCare Plus under the authority of s. 49.471, Wisconsin Statutes. The program was created by the enactment of the biennial budget bill, 2007 Wisconsin Act 20, and is to be administered by the Department of Health and Family Services.

Act 20 directed the Department to publish a notice in the Wisconsin Administrative Register that states the date on which BadgerCare Plus is implemented. BadgerCare Plus is to be implemented on January 14, 2008, for presumptive eligibility for children under age 19. BadgerCare Plus is to be implemented on February 1, 2008 for all other aspects of the program.

Information about the BadgerCare Plus program can be found on the Department web site at <http://dhfs.wisconsin.gov/badgercareplus/>.

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