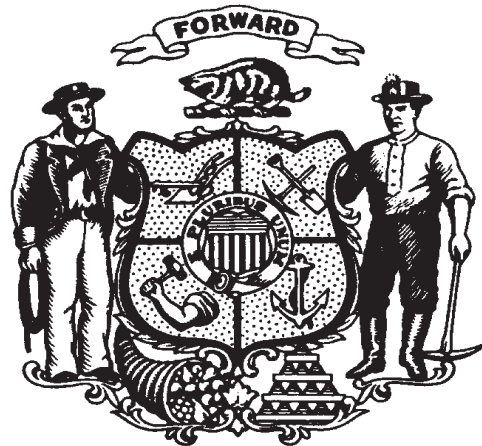


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Emergency Rules Now in Effect

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

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection (2)

1. **EmR0913** — Rule adopted revising **s. ATCP 21.17**, relating to the quarantines of Brown County and Kenosha County for emerald ash borer.

Finding of Emergency

On July 24, 2009, APHIS identified emerald ash borer in Brown County. On August 12, 2009, APHIS identified emerald ash borer in Kenosha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Brown County and Kenosha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Publication Date: August 22, 2009
Effective: August 22, 2009 through January 18, 2010
Hearing Dates: September 29 and 30, 2009

2. **EmR0922** — Rule adopted revising **s. ATCP 21.17**, relating to the quarantines of Milwaukee County, Racine County and Waukesha County for emerald ash borer.

Finding of Emergency

On August 28, 2009, APHIS identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Milwaukee County, Racine County and Waukesha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Publication Date: September 14, 2009
Effective: September 14, 2009 through February 10, 2010
Hearing Date: October 15, 2009

Children and Families

Family and Economic Security, Chs. DCF 101–153

- EmR0906** — Rule adopted revising **ss. DCF 120.05, 120.07 and 120.08**, relating to emergency assistance for needy families.

Finding of Emergency

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

The recent large increase in foreclosures has caused tenants living in rental properties that are in foreclosure to lose their housing. Under the current rule, these tenants are not eligible for Emergency Assistance due to impending homelessness and would only be able to receive assistance if they became homeless. This emergency rule will allow these tenants to receive assistance for impending homelessness and avoid the additional expense and trauma of homelessness.

The current maximum payment amounts for Emergency Assistance due to homelessness and impending homelessness are insufficient to allow a smaller family to obtain or retain a permanent living accommodation. Increasing the payments for smaller households immediately will help them obtain or retain a permanent living accommodation with fewer resources from other sources and may prevent homelessness for these families.

The current rule has no maximum payment amount for Emergency Assistance due to an energy crisis. All other categories of assistance have a maximum payment based on group size. This emergency rule requires that families first exhaust resources available through the Wisconsin Home Energy Program and sets a maximum payment amount for assistance available for Emergency Assistance due to energy crisis to make better use of the program's limited funds.

Publication Date: April 9, 2009
Effective: April 22, 2009 through September 18, 2009
Extension Through: November 17, 2009
Hearing Date: June 11, 2009

Commerce

Uniform Dwelling, Chs. Comm 20–25

EmR0917 — Rule adopted revising **Ch. Comm 22**, relating to energy conservation.

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. Recently, chapter Comm 22, relating to energy conservation, was repealed and recreated to bring the Wisconsin requirements in line with the national model energy code. Effective April 1, 2009, chapter Comm 22 incorporates new prescriptive requirements that apply to individual components such as walls, windows, skylights, doors and ceilings. Within that subsection is section Comm 22.31 (2) (a), that allows the use of a “total dwelling thermal envelope” method, and (2) (b), that allows the use of REScheck software, version 4.1.0, or later, to calculate compliance with the Uniform Dwelling Code thermal envelope requirements.

2. The U.S. Department of Energy's Building Energy Codes Program develops and distributes REScheck software. The software program simplifies and clarifies residential code compliance with the Model Energy Code (MEC) and the International Energy Conservation Code (IECC). REScheck software makes it easier for designers, builders, product manufacturers and code officials to comply with energy codes based on the IECC or ASHRAE/IESNA Standard 90.1 requirements. Also, REScheck can be tailored to meet state-specific codes.

3. The department included the REScheck software edition requirement in anticipation that Version 4.1.0 would be compatible with the current code. Working with Pacific Northwest Laboratories, who contracts with the U.S. Department of Energy to develop the REScheck software, the department developed state-specific energy calculations that were not incorporated into REScheck software until Version 4.2.2. The calculations that reflect the current code are identified in the software as “Wisconsin 2009.” Versions prior to 4.2.2 do not have the code choice “Wisconsin 2009.”

4. Previous versions of REScheck, including Version 4.1.0, do not meet nor support the requirements of Wisconsin's current energy code. In fact, Version 4.1.0 includes other values, such as gross wall trade-offs and appliance credits that are not included in chapter Comm 22 that became effective April 1, 2009.

5. The department recognizes that without promulgating this emergency rule, there would be confusion and miscalculations surrounding the use of Version 4.1.0 and other previous and out-of-date versions of REScheck software to calculate compliance with Uniform Dwelling Code thermal envelope requirements.

Publication Date: September 5, 2009
Effective: September 5, 2009 through February 1, 2010
Hearing Date: October 21, 2009

Commerce (2)

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

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

Exemption From Finding of Emergency

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

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

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

Finding of Emergency

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

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the purpose of encouraging economic development and recovery in the 30 counties.

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

Publication Date: November 9, 2009
Effective: November 9, 2009 through April 7, 2010

Corrections

EmR0920 — Rule adopted revising s. DOC 309.466, relating to inmate release accounts.

Finding of Emergency

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

Under 2009 WI Act 28, an increased number of inmates are being considered for release. In addition, the department has developed a number of release initiatives to address an inmate's successful transition from incarceration to community life. As part of those initiatives, there are costs associated with that transition, including acquiring housing, employment, and transportation. For example, an inmate must have a social security card, a driver's license or state identification card, the first months rent and security deposit for an apartment, and civilian clothing.

Under the current rule, an inmate may only use release account funds for "adequate clothing for release" and for "out-of-state release transportation." In addition, the rule limits the maximum amount of money which can be saved in the release account to \$500.00. The emergency rule immediately permits the use of release account money for a wide variety of purchases, including fees associated with obtaining a driver's license or state identification card, housing, and a mode of transportation (bus tickets, vehicle, bicycle, etc.). In the past the Department has borne some of these costs, despite an inmate having the money in his or her release account. Given the initiatives of reentry and release, an inmate should be responsible for these expenditures.

In addition, the emergency rule raises the limit on release accounts from \$500.00 to \$5,000.00. Since the current limit was established, the cost of living in the community has risen. The department seeks this change to reflect the significant costs of housing, transportation, and food and other necessities.

If the rule is not created promptly and immediately, the department will not be able to use inmate release account funds to pay for items which inmates need in preparation for their release to the community. The purpose of the emergency rule is to permit inmates to use release account funds for a greater range of expenditures related to their release from incarceration and transition back into the community. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the need to use inmate funds, not state funds, while permanent rules are being developed.

Publication Date: September 10, 2009
Effective: September 10, 2009 through February 6, 2010
Hearing Date: October 14, 2009

Financial Institutions — Banking

EmR0907 — Rule adopted to create **Chapter DFI-Bkg 47** and to revise **Chapter DFI-Bkg 41**, relating to the transition from a registration system to a license system.

Exemption From Finding of Emergency

The legislature by section 9117 of 2009 Wisconsin Act 2 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: May 4, 2009
Effective: *Section 1:*
5-4-09 through 7-1-11
Section 2:
9-1-09 through 7-1-11
Section 3:
1-10-10 through 7-1-11
Hearing Date: June 10, 2009

Health Services

Health, Chs. DHS 110—

EmR0928 — Rule adopted to revise **Chapter DHS 163**, relating to requirements for conducting lead-safe renovation activities in pre-1978 housing and child-occupied facilities, and affecting small businesses.

Finding of Emergency

The Department of Health Services (department) finds that an emergency exists and that the adoption of an emergency rule is necessary for the continuity of regulations relating to lead hazard exposure in Wisconsin. The facts constituting the emergency are as follows:

Under ch. DHS 163, the department, as Wisconsin's public health agency, regulates lead hazard reduction and lead management activities in pre-1978 housing (target housing) and child-occupied facilities. The rules include standards for certification of individuals and companies conducting these activities, accreditation of lead training courses and approval of instructors, and work practices. In addition to the department's authority under chs. 250 and 254, Stats., to regulate lead hazards, the department has authorization from the Environmental Protection Agency (EPA) to regulate lead hazard reduction and management activities in lieu of the EPA administering federal regulations in Wisconsin.

On April 22, 2008, the EPA issued rules under 40 CFR 745 to establish requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; and for renovation work practices (and associated recordkeeping requirements) that disturb paint in target housing and child-occupied facilities. Under the EPA regulations, beginning on April 22, 2010, persons who perform renovation activities for compensation, including repair and painting activities, that disturb paint in target housing and child-occupied facilities must be certified, properly trained, and follow specific work practices to prevent lead contamination. The EPA will begin accepting applications for certification from individuals and companies on October 22, 2009.

States that promulgate rules that conform to the EPA standards on or before October 22, 2009, may accept applications for certification in lieu of the EPA. Otherwise, on October 22, 2009, the EPA will begin accepting these applications and the associated fees from Wisconsin companies and individuals. Such an occurrence may cause confusion among the regulated community and property owners, and would impede the department's ability to continue to administer a viable lead hazard reduction program if covered persons begin complying with the EPA certification requirements before state requirements are implemented. Promulgating rules before October 22, 2009, will help to avoid any unnecessary complexity for covered persons that may be caused by overlapping state and federal regulations that address lead-based paint hazards in target housing and child-occupied facilities.

Publication Date: October 16, 2009
Effective: October 19, 2009
 through March 17, 2010
Hearing Date: November 18, 2009

Insurance (5)

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

Finding of Emergency

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

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

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

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

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

2. **EmR0923** — Rule adopted to create **section Ins 3.36**, Wis. Adm. Code, relating to treatment of autism spectrum disorders and affecting small business.

Exemption From Finding of Emergency

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

Specifically, s. 632.895 (12m) (f), Wis. Stats., requires the commissioner to define "intensive-level services," "nonintensive-level services," "paraprofessional," and "qualified" for purposes of providing services under this subsection. The statute further authorizes that the commissioner may promulgate rules governing the interpretation or administration of this subsection.

Publication Date: September 26, 2009
Effective: September 26, 2009
 through February 22, 2010
Hearing Date: December 2, 2009

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

Exemption From Finding of Emergency

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

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

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

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

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

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

Finding of Emergency

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

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

Publication Date: October 9, 2009
Effective: October 10, 2009 through March 10, 2010
Hearing Date: December 3, 2009

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

Finding of Emergency

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

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

Publication Date: October 30, 2009
Effective: October 31, 2009 through March 29, 2010
Hearing Date: December 9, 2009

Natural Resources

Fish, Game, etc., Chs. NR 1—

- EmR0914** — Rule adopted to revise **Chapter NR 10**, relating to hunting and the 2009 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 22, 2009
Effective: September 1, 2009 through January 28, 2010
Hearing Date: November 4, 2009

Natural Resources

Environmental Protection — Water Regulation, Chs. NR 300—

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

Finding of Emergency

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

Publication Date: August 28, 2009
Effective: August 28, 2009 through January 24, 2010

Public Defender Board

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

Finding of Emergency

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

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

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

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

Publication Date: October 3, 2009
Effective: October 3, 2009 through March 1, 2010
Hearing Date: November 16, 2009

Public Instruction (2)

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

Exemption From Finding of Emergency

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

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

(Except Section 1)

Effective: October 1, 2009 through February 27, 2010
Hearing Date: October 26, 2009

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

Exemption From Finding of Emergency

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

Publication Date: September 4, 2009
Effective: September 4, 2009 through January 31, 2010
Hearing Date: November 9, 2009

Public Service Commission

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

Finding of Emergency

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

Publication Date: September 11, 2009
Effective: September 11, 2009 through February 7, 2010
Hearing Date: December 2, 2009

Regulation and Licensing (2)

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

Exemption From Finding of Emergency

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

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

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

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of

regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

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

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

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

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

Publication Date: October 19, 2009
Effective: October 19, 2009 through March 17, 2010
Hearing Dates: December 10 and 21, 2009
 (See the Notice in this Register)

Revenue (3)

1. **EmR0912** — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

Finding of Emergency

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

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

Publication Date: August 8, 2009
Effective: August 8, 2009 through January 4, 2010
Hearing Dates: September 25, 2009 and October 16, 2009

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

Finding of Emergency

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

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

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

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

Finding of Emergency

The Department of Revenue finds that an emergency exists and that an emergency rule is necessary for the immediate

Transportation

- EmR0909** — Rule adopted amending section **Trans 315.03 (1) (a) and (c)**, relating to safety belt medical use exemption.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of public health and safety. Current federal law at 23 USC 406 provides safety belt performance grants to a state that has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles. A grant of federal funds estimated at roughly \$15,000,000 are available if this state is eligible on or before September 30, 2009; a secondary grant based on "share of unallocated funds," estimated at not more than \$1,000,000, may be available if this state is eligible on or before June 30, 2009. The Wisconsin Legislature is currently deliberating a primary safety belt use law as part of the executive biennial budget bill, 2009 Assembly Bill 75, with the aim of qualifying for safety belt performance grants. Were the law timely enacted, this state could remain ineligible for safety belt performance grants because Department rules allow persons other than physicians to grant medical exemptions from safety belt use requirements. Immediate action is necessary to avoid forfeiting approximately \$16,000,000 in federal funds for highway safety activities. Increased use of safety belts has been shown to reduce the severity of injuries sustained in motor vehicle collisions, and limiting the medical use exemption to physicians would increase use of safety belts.

Publication Date: June 25, 2009
Effective: June 25, 2009 through November 21, 2009
Hearing Date: September 8, 2009

Veterans Affairs

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

Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is: The economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans

have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define “vision care and to limit the eligibility, by available funding, for “dental care”, “hearing care”, and “vision care”. These eligibility limitations, which address the cost, type and frequency of care available under

the program, will allow more veterans in need to access the limited resources of this program.

Publication Date: July 1, 2009
Effective: July 1, 2009 through
November 27, 2009
Hearing Date: August 14, 2009

Scope Statements

Employment Relations Commission

Subject

Amends Chapters ERC 8, 21, 32, and 33 and creates Chapters ERC 34, 60, 61, 62 and 63 to implement 2009 statutory changes in and additions to the collective bargaining laws administered by the Wisconsin Employment Relations Commission.

Objective of the Rule

Allow the Commission and the parties we serve to efficiently implement 2009 Wisconsin Act 29.

Policy Analysis

New Administrative rules are needed to implement the University of Wisconsin System Faculty and Academic Staff Labor Relations statute. Existing administrative rules need to be amended to implement statutory changes in the interest arbitration law applicable to school district employees and the extension of collective bargaining rights to day care providers and research assistants.

Statutory Authority

Sections 111.09, 111.71, 111.94, 111.9993 and 227.11, Stats.

Comparison with Federal Regulations

There are no existing or proposed applicable federal regulations.

Entities Affected by the Rule

University of Wisconsin System, school districts, and the State of Wisconsin.

Estimate of Time Needed to Develop the Rule

500 hours.

Insurance

Subject

Revises section Ins 17.28 (3s), Wis. Adm. Code, relating to retroactive coverage requests.

Objective of the Rule

To establish an application fee for retroactive coverage requests and to establish a time limit for signed affidavits for these requests.

Policy Analysis

Current regulations allow for a health care provider to request retroactive coverage from the Injured Patients and Families Compensation Fund and the Wisconsin Health Care Liability Insurance Plan for any time period in which the provider had a gap in coverage. These requests are reviewed by the Board of Governor's Legal Committee which makes a recommendation to the Board which may grant the request. Currently no fee is charged for this

process. This rule will establish a fee which must be paid at the time the request is filed.

The health care provider must sign and have notarized an affidavit stating that they are not aware of any incidents that occurred which may give rise to claim during the time period for which the retroactive coverage is being requested. Currently these affidavits have no time limit. This rule will impose a 100 days time limit. If the request cannot be addressed within this time limit, the health care provider will need to submit a new signed and notarized affidavit.

Statutory Authority

Sections 601.41 (3) and 655.004 Wis. Stats.

Comparison with Federal Regulations

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

Entities Affected by the Rule

All health care provider participants in the fund as set forth in s. 655.002 (1), Wis. Stats.

Estimate of Time Needed to Develop the Rule

100 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendation of the board's legal committee as well as the full board of governors.

Insurance

Subject

Revises section Ins 17.35 (4), Wis. Adm. Code, relating to primary coverage deductibles and affecting small business.

Objective of the Rule

To establish limitations as to the deductible amounts and related coverages for the required primary coverage for fund participants.

Policy Analysis

Current regulations do not place a limit on the amount of the deductible and is silent as to the types of coverage that a deductible may apply to, such as; indemnity, interest and defense costs. This rule will establish limitations to the deductible and will clarify what type of coverage the deductible may be applied.

Statutory Authority

Sections 601.41 (3) and 655.004, Wis. Stats.

Comparison with Federal Regulations

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

Entities Affected by the Rule

All health care provider participants in the fund as set forth in s. 655.002 (1), Wis. Stats.

Estimate of Time Needed to Develop the Rule

100 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendation of the board's legal committee as well as the full board of governors.

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapters NR 8, 10 and 12, relating to license and permit procedures, game and hunting and wildlife damage and nuisance control.

Objective of the Rule

These rule changes relate to hunting, trapping and captive wild animals and 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 allow the sales of conservation stamps by county clerks, consolidate state & federal animal depredation permits, allow the retention of multiple deer by animal damage control permit holders, update address information, establish violations for two existing prohibitions, repeal duplicative language related to turkey hunting, clarify regulations which apply to disabled hunters and assistants, and to clarify that nuisance animal removal related firearms discharge can occur on the day before deer hunting seasons other than the traditional 9-day season.

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 29.011, 29.014, 29.024, 29.03, 29.053 (3), 29.192, 29.193, 29.885 and 227.11, Stats.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Groups and individuals who are likely to be interested in the outcome of these rule changes include hunters, trappers and animal damage program participants. However, because of the corrective and non-controversial nature of these changes no groups will be significantly impacted.

Estimate of Time Needed to Develop the Rule

150 hours.

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Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapters NR 10, 11, 12, 15 and 19, relating to game and hunting, closed areas and game refuges, wildlife damage and nuisance control, and outdoor recreation.

Policy Analysis

These rule changes are proposed for inclusion on the 2010 Spring Hearing rules package and questionnaire. This rule package will create and amend hunting and trapping regulations, game refuges, and the Wildlife Damage Abatement and Claims program.

Specifically, these rules would; allow youth hunt participation by 16 and 17 year olds, allow atlatls for small game hunting, consolidate furbearer trapping zones and opening days, allow scopes during the muzzleloader only season, revise deer tagging options, minor modifications to the animal damage program, create a definition of a normal agricultural practice, relax deer carcass transportation restrictions, allow quartering deer in the field, allow the use of colony traps for muskrat trapping, make the raccoon season opening day consistent for residents and non-residents, expand pheasant hunting hours at Scuppernong public hunting grounds, eliminate two Canada goose refuges, and establish or modify hunting seasons at certain state parks.

These changes do not deviate from existing board policy. The proposed changes to hunting seasons, methods, permit issuance, and registration are consistent with previous board actions and policies.

Statutory Authority

Sections 23.11, 29.011, 29.014, 29.063, 29.089, 29.197, 29.889 and 227.11, Stats.

Comparison with Federal Regulations

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

Entities Affected by the Rule

Hunters and participants in the Wisconsin Animal Damage Control Program are the principal group that will be affected by this rulemaking.

Estimate of Time Needed to Develop the Rule

Rule development will take approximately 264 hours of staff time.

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Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapters NR 20, 21 and 23, relating to proposed fishing regulation changes for 2010 Spring Fish and Wildlife Rules Hearings.

Objective of the Rule

Modify recreational fishing regulations on inland waters and Wisconsin–Minnesota and Wisconsin–Michigan boundary waters.

Policy Analysis

The department is beginning the process of recommending changes to Wisconsin administrative code related to recreational fishing regulations. These changes are proposed to better protect and enhance the State's fish resources, and do not reflect major changes in department policy. The department anticipates requesting hearings to these changes in January 2010, and holding hearings, if approved, in April 2010 as part of the department's annual spring fish & wildlife rules hearings.

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 regulation recreational fishing activity.

Entities Affected by the Rule

The proposed rule changes will affect recreational anglers.

Estimate of Time Needed to Develop the Rule

The department anticipates spending approximately 320 hours in the rule development process.

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Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapter NR 45, relating to the use of Department properties.

Objective of the Rule

Department staff review Chapter NR 45 approximately every two years and suggest revisions designed to ensure the health and safety of people using Department properties, establish use regulations necessary for the protection of natural resources, propose rules to increase consistency between properties, clarify existing rules, and to adjust use fees.

Policy Analysis

Approximately 50 changes to NR 45 are being considered. Many proposals are "housekeeping" items to clarify or

improve upon existing rules or codify existing allowable activities. There are some fee increases being considered and a fee proposal for Lakeshore State Park boat moorage and marina operation.

A code change being considered would clarify that the issuance of permits for collection of wild edibles is for personal, rather than commercial purposes. This is a revision designed to avoid over-collection and resource depletion while still allowing individuals to pick plants such as berries, fruits, and asparagus and mushrooms for personal consumption. Additionally, under the current code, picking edible plants on state natural areas is generally prohibited. The proposed code change would eliminate the prohibition on collecting edible fruits, nuts, mushrooms, and other specified edible plants from State Natural Areas for consistency among department properties.

A proposal to allow removal of invasive plant species from department property without a permit is also being considered. Technically the removal of invasive plants by the public is currently prohibited under NR 45. This existing provision is contrary to the department's interests and efforts in controlling invasive species and enhancing biodiversity.

A number of property specific rules are being considered to protect natural resources, and protect property users. A proposal to limit the number of campers at the new group campsites at the Turtle–Flambeau Scenic Waters Area is designed to protect the natural features of the sites and is consistent with the existing limits on other northern flowage properties. Proposed rules are being considered which are necessary to implement the recently completed master plan at Straight Lake State Park. A proposal to establish closed hours for the recently acquired Gibraltar Rock State Natural Area is being considered due to a history of off-hours public use and injuries/deaths by falling from the sheer cliffs prior to state ownership. Individual property rules are also being considered for the Coulee Experimental Forest, the shooting range at Yellowstone Lake Wildlife Area, the Thornapple River Sturgeon Spawning Property, Parfreys Glen State Natural area, and Lakeshore State Park. A slow–no–wake proposal on the "narrows" of the Dells of the Wisconsin River State Natural area is being proposed to protect public safety and provide consistency with the property's master plan. A rule is also being considered to permit dispersed camping on sandbars within a specified area on department lands on the Lower Chippewa River.

Fee increases are being considered for some state forest and state park campgrounds, and fee establishment is being considered for the new outdoor group campground at Council Grounds State Park, and for special events and boat mooring fees at Lakeshore State Park. An increase in fees is being considered for commercial use permits. Rules are being considered which would reorganize the list of fee areas on the state forests and remove two fee areas from the list.

The rule which provides fee waivers to State Parks for holders of National Park Service passes is being evaluated to determine if waiver authority would be more appropriately be given using general statutory authority (s. 27.01(9), Stats.) and internal policy guidance rather than utilizing the current rule language.

A proposal is also being considered which would prohibit launching or removing a motorboat from a department landing if use of motorboats is restricted by the property's master plan. Prohibiting the launching and removal of motorized watercraft at certain designated launch sites within department properties is intended as a tool for implementing the property's master plan when the plan has determined that

motorized watercraft are not consistent with the use of the area, and the ecological characteristics of the waterbody. Typically, these waterbodies are classified as wilderness or wild lakes during the planning process. Depending on the characteristics of the waterbody and surrounding area, the master plan may limit the prohibition to gasoline motors and still allow the launching/removal of boats with electric motors. Nothing in this rule would prohibit the launching or removal of motor boats from non-department owned landings.

A rule prohibiting the collection of driftwood and other dead and down wood located below the ordinary high water mark for campfire usage on the Northern flowages would be a new policy designed to retain wood on the beds of these properties for habitat and aesthetic purposes.

A rule is being proposed to allow the department to designate roads within northern forests as ATV routes when the use is authorized in the property master plan. This would act to codify an existing established use on the Flambeau River State Forest, and establish future authority on other northern state forests if the route is established as part of the property master plan.

A proposal to allow camping on sandbars on the Lower Chippewa River is not a change in policy, but will serve to legalize an existing use.

Park rangers currently can evict problem visitors or campers from their "individual property." As a result, evicted violators often leave one park only to enter or register to camp at another state park or forest and create law enforcement problems at that property. The amended code provision would state that a person or person(s) that get evicted may not return to the property or any other state park, forest or recreation area for 48 hours or for the period of their camping permit. This would stop the problem of just moving one problem group of day users or campers from one park to another.

It is currently illegal to possess a firearm, air gun or bow at state parks unless the gun is unloaded and enclosed in a carrying case or a person is engaged in a legal hunting activity at that park. The state trail system is considered to be part of the state park system under s. 23.175(2) (a), Stats. A rule is being considered which would allow a person to cross a state trail where hunting is not allowed without requiring them to unload or enclose their firearm, air gun or bow in a carrying case. Allowing this practice will be a convenience to people who are engaged in legal hunting activities on either side of a trail and who want to cross the trail. This convenience will be afforded to anyone who is hunting adjacent to a state trail, whether on adjacent public or private lands where hunting is allowed.

Statutory Authority

Sections 23.091, 23.09 (2) (intro), 23.11 (1), 23.28 (3), 23.293, 23.33 (4) (b), 27.01 (2) (j), (9), (10) (b) and (f) and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

N/A

Entities Affected by the Rule

Users of department properties are the entities affected by the rule. While most proposals are not known to be of interest to organized groups, the slow-no-wake proposal for the Dells of Wisconsin River Natural Area proposal will be of interest to tour boat operators on the Upper Dells. The rule related to establishing ATV routes on state forest roads may be of

particular interest to WATVA (Wisconsin All Terrain Vehicle Association).

Estimate of Time Needed to Develop the Rule

200 hours.

Contact Information

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Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapter NR 46, relating to the administration of the Managed Forest Law (MFL) and Forest Crop Law (FCL).

Objective of the Rule

The following amendments to Chapter NR 46 have been suggested, are required by statute, or are being proposed by the Department to streamline administration of the Managed Forest Law (MFL) and Forest Crop Law (FCL):

- Annual adjustments of timber stumpage values.
- Change the format that Certified Plan Writers submit plan writing cost data to the Department.
- Review stocking requirements for plantations.
- Remove deadline guarantee language for Certified Plan Writers management plan submissions.
- Update language related to MFL additions across multiple municipalities.
- Examine possible weight conversion change.
- Extend terminating FCL rollover to MFL deadlines as a result of an ownership change.

Policy Analysis

Amendments to Chapter NR 46 occur on an annual basis to update timber stumpage values. Stumpage values are used to collect the accurate yield and severance tax from landowners enrolled in the MFL and FCL programs as payment of deferred property taxes when timber is harvested.

Additional administrative changes are requested to make the MFL program easier to explain, enter and enforce. Changes include:

1. A change in the way a Certified Plan Writer reports the amount they charge for developing management plans for new MFL entries. This data is used to determine the amount the Department charges a landowner when a Certified Plan Writer is not available to write a management plan. Currently Certified Plan Writers are asked to submit a base rate and a per acreage rate. Many Certified Plan Writers do not charge a base rate making it difficult for them to convert what they charge in to this format. A result of the Department changing to a pure per acreage rate would make this conversion much simpler for Certified Plan Writers.
2. The Department will review the stocking requirements found in NR 46.18 (2) d Wis. Admin. Code. Historically the requirement of 600 trees per acre for the seedling size in plantations was considered the minimum medium density. The Department will further explore if this

amount can be lowered to 550 and still be considered sound forestry.

3. The Department will remove language in NR 46 regarding Certified Plan Writers guarantee that an approvable plan will be submitted by a deadline. It is not the Department's role to determine or establish business practices for Certified Plan Writers.
4. The Department will update the wording of NR 46.16 (7) Wis. Admin. Code to only allow additions across multiple municipalities if the land does not qualify as an independent new entry.
5. The Department will explore possible weight conversion changes found in NR 46.30 (1) (g) 1 Wis. Admin. Code.
6. A change in NR 46 Subchapter I to allow expiring FCL land the ability to roll over to MFL past deadlines. This would be allowed if an ownership change had occurred between the original owner being notified of the FCL termination and the land being sold.

Statutory Authority

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

Comparison with Federal Regulations

There are no existing or proposed federal regulations to compare with Wisconsin's Managed Forest Law or Forest Crop Law programs.

Entities Affected by the Rule

All private landowners under the Managed Forest Law and Forest Crop Law programs are affected by changes in the stumpage values when they harvest their timber. Landowner may pay more or less yield and severance tax depending on individual stumpage values. Local municipalities will also be affected by changes in stumpage values since they receive the money collected from landowners for yield and stumpage taxes. Small business may be impacted by making the reporting of plan writing charges easier.

Estimate of Time Needed to Develop the Rule

5 months.

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Natural Resources

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

Subject

Revises Chapter NR 410, Wis. Adm. Code, relating to asbestos fees.

Objective of the Rule

The Bureau of Air Management proposes to revise s. NR 410.05, Wis. Adm. Code, for asbestos fees relating to inspections and include new fees for processing certain

asbestos notifications. These fee types are included in the 2009-2011 biennial budget.

Policy Analysis

Asbestos is a known carcinogenic substance that was widely used in building construction materials. The DNR has been delegated by the US Environmental Protection Agency (EPA) to enforce the national emission standards for hazardous air pollutants (NESHAP) for asbestos as it applies to building demolition and renovation projects, including demolition by fire training burns. The Air Management asbestos program fee increases will provide the funding necessary to support the asbestos program compliance efforts and maintain an electronic notification system that serves both the Department's work and the Wisconsin Department of Health Services' asbestos certification program.

The Asbestos Program is at risk of an operating deficit with the current fees. The Air Management Program receives federal funding from the US EPA for a wide variety of areas, including asbestos. This US EPA funding continues to be questionable and has been steadily decreasing since the mid 1990's. This revision will raise asbestos fees so that the program can be self supporting.

The proposed revision will raise all inspection fees and include some new fees. Proposed new fees are included for those areas that require either inspection or additional administrative work in order to conduct inspections. Proposed new fees include a fee for revisions to previously department received asbestos notification, a fee for inspecting structures proposed for community fire department training burns and an additional fee for not filing the required asbestos notification for the demolition or renovation project with the Department.

Statutory Authority

Sections 227.11 (2) (a), 285.11 (1) and 285.69 (3), Stats.

Comparison with Federal Regulations

The Wisconsin asbestos program requirements are the same as the federal asbestos requirements found in 40 CFR, part 61, subpart M. The federal requirements are known as National Emission Standards for Hazardous Air Pollutants (NESHAPs). US EPA Region 5 has delegated the authority to the DNR to enforce the asbestos NESHAP through ch. NR 447, Wis. Adm. Code. The proposed revision does not address any existing or proposed federal regulations.

Entities Affected by the Rule

Building owners, including single family residence owners whose homes will be demolished by fire training burns; state and local governments, fire departments, asbestos abatement contractors, demolition contractors, and environmental consultants may be affected by the rule.

Estimate of Time Needed to Develop the Rule

Approximately 404 staff hours are needed to develop the rule revision.

Contact Information

Bill Baumann
WI DNR — AM/7
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Madison, WI 53707
Phone: (608) 267-7542
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Natural Resources

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

Subject

Revises Chapter NR 660, relating to hazardous waste generator fees.

Objective of the Rule

The 2009–11 biennial budget (2009 Act 28) amended s. 289.67 (2) (b) 1., Wis. Stats., to increase the annual base fees for large quantity generators of hazardous waste to \$470 and to \$350 for small quantity generators, in addition to the current fee of \$20 per ton of hazardous waste generated. The amended statute instructs the DNR to create a rule that specifically defines large and small quantity generators so it is clear to whom the fees apply. Under current NR 600–series hazardous waste rules, large and small quantity generator status is described in text but there are no concise definitions.

Until the rule definitions can be adopted, large quantity and small quantity generators are required to continue paying an annual base fee of \$210 and \$20 per ton for total amounts of hazardous waste generated, unless the hazardous waste is recycled or reused. The statutory revision will require all large and small quantity generators to pay the base fee at a minimum.

A non–statutory provision in 2009 Act 28 allows the DNR to promulgate the rule definitions using the emergency rule procedures of ch. 227, Wis. Stats., but without having to make a finding of emergency. This special emergency rule may remain in effect until July 1, 2011, or until a permanent rule takes effect, whichever occurs first.

The rule definitions have to be in effect before the Department can charge the increased fees. We would like to have the rule definitions in effect in 2009, so the new base fees can be charged with the 2009 annual report billing that will be sent out in May of 2010. To accomplish this, the Department intends to request adoption of an emergency rule and hearing authorization for an identical permanent rule.

Policy Analysis

The Department administers Wisconsin’s hazardous waste regulatory program under ch. 291, Wis. Stats. The Department is also authorized by statute to set fees by rule for specific activities to recover its costs to implement the program. The current fee–generating activities are primarily borne by the licensed hazardous waste treatment and storage facilities.

However, the DNR is no longer able to cover the costs necessary to operate an effective hazardous waste program due to reduced federal grant funding and reductions in hazardous waste program revenue from plan review and license fees for the hazardous waste treatment and storage facilities. There are only 15 licensed hazardous waste facilities, but there are about 380 large quantity generators and more than 1200 small quantity generators. Inspections and compliance assistance activities at generator sites are an increasing component of the program’s workload. These increased fees will provide a more stable funding source for the program.

Statutory Authority

Section 289.67 (2) (b) 1., Wis. Stats.

Comparison with Federal Regulations

There is no existing or proposed federal regulation that requires hazardous waste generators to pay fees.

Entities Affected by the Rule

Businesses, government agencies and public and private institutions that are considered to be large quantity or small quantity generators of hazardous waste will be affected.

Estimate of Time Needed to Develop the Rule

The Department estimates that approximately 90 hours of existing staff and legal time will be needed to develop the new rule. This time estimate includes drafting the rules, taking them to a statewide public hearing, preparing for meetings with the Natural Resources Board, legislative review and rule adoption.

Revenue

Subject

Revises section Tax 1.17, relating to the ambulatory surgical center assessment.

Objective of the Rule

The objectives of the proposed rule are to provide for the administration and computation of the ambulatory surgical center assessment under s. 146.98, Stats.

Policy Analysis

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes and court decisions. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

Statutory Authority

Section 146.98 (3)(a) and (5), Stats.

Comparison with Federal Regulations

42 CFR 433.68 provides requirements under which a state may receive health care related taxes without a reduction in federal financial participation under the federal Medicaid program. Generally, the requirements are that the taxes must be broad based, uniformly imposed, and not violate “hold harmless” provisions. The proposed rules described in this scope statement must satisfy the requirements of 42 CFR 433.68.

Entities Affected by the Rule

Ambulatory surgical centers, as defined in 42 CFR 416.2, in Wisconsin.

Estimate of Time Needed to Develop the Rule

The department estimates it will take approximately 100 hours to develop this rule order.

Contact Information

Dale Kleven

Phone: (608) 266–8253

Email: dale.kleven@revenue.wi.gov

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce

*Fire Prevention, Ch. Comm 14
Uniform Dwelling, Chs. Comm 20–25
Wis. Commercial Bldg. Code, Chs. Comm 60–66
CR 09–104*

On November 12, 2009, the Department of Commerce submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters Comm 14, 21 to 23, 61 to 63 and 66, relating to fire prevention; recordkeeping for fires; fire suppression for mobile kitchens; structural, ventilating, and vapor-barrier requirements for one- and two-family dwellings; air barriers and local enforcement for commercial buildings; and previously constructed buildings that are converted to community-based residential facilities.

Agency Procedure for Promulgation

A public hearing is required and will be held on December 18, 2009. The Safety and Buildings Division is responsible for promulgation of the rules.

Contact Information

Sam Rockweiler
Code Development Consultant
Phone: (608) 266-0797
Email: sam.rockweiler@wisconsin.gov

Natural Resources

*Fish, Game, etc., Chs. NR 1—
CR 09–103*

On November 11, 2009, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section NR 45.04 (1) (g), relating to the regulation of firewood allowed onto department lands.

Agency Procedure for Promulgation

A public hearing is required and will be held on December 15, 2009. The Division of Forestry is primarily responsible for promulgation of the rules.

Contact Information

Andrea Diss-Torrance
Division of Forestry
Email: Andrea.DissTorrance@wisconsin.gov

Natural Resources

*Environmental Protection — General, Chs. NR 100—
CR 09–102*

On November 9, 2009, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 140, relating to groundwater quality.

Agency Procedure for Promulgation

Public hearings are scheduled for December 11, 14, 15, and 16, 2009. The Bureau of Drinking Water and Groundwater is responsible for promulgation of the rules.

Contact Information

Mike Lemcke
Bureau of Drinking Water and Groundwater
Phone: (608) 266-2104

Rule-Making Notices

Notice of Hearing

Commerce

Fire Prevention, Ch. Comm 14
Uniform Dwelling, Chs. Comm 20–25
Wis. Commercial Bldg. Code, Chs. Comm 60–66
CR 09–104

NOTICE IS HEREBY GIVEN that pursuant to sections 101.02 (15) (j), 101.127, 101.14 (1) (a) and (2) (c) 1., 101.63 (1), 227.11 (2) (a), and 227.16, Stats., the Department of Commerce will hold a public hearing on proposed rules in Chapters Comm 14, 21 to 23, 61 to 63 and 66 relating to fire prevention; recordkeeping for fires; fire suppression for mobile kitchens; structural, ventilating, and vapor-barrier requirements for one- and two-family dwellings; air barriers and local enforcement for commercial buildings; and previously constructed buildings that are converted to community-based residential facilities; and affecting small businesses.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u> December 18, 2009 Friday At 10:00 a.m.	<u>Location:</u> Thompson Commerce Center Third Floor, Room 3B 201 West Washington Avenue Madison, Wisconsin
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This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266-0797 or at Contact Through Relay at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Appearances at Hearing and Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until December 23, 2009, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E-mail comments should be sent to sam.rockweiler@wisconsin.gov. If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

Copies of Proposed Rule

The proposed rules and an analysis of them are available on the Internet by entering "Comm 14" in the search engine at the

following Web site: <https://apps4.dhfs.state.wi.us/admrules/public/Search>. Paper copies may be obtained without cost from Roberta Ward at the Department of Commerce, Bureau of Program Development, P.O. Box 2689, Madison, WI, 53701-2689; or at telephone (608) 266-8741 or at Contact Through Relay; or at roberta.ward@wisconsin.gov. Copies will also be available at the public hearing.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 19.21 (4) (b), 101.02 (15) (j), 101.12 (3), 101.127, 101.14 (1) (a), (am) and (b) and (2) (c) 1., 101.141, and 101.63 (1).

Statutory authority

Sections 101.02 (15) (j), 101.127, 101.14 (1) and (2) (c) 1., 101.63 (1), and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 101.02 (15) (j) of the Statutes requires the Department to promulgate rules for the construction, repair and maintenance of safe public buildings and places of employment.

Section 101.127 of the Statutes requires the Department to adopt rules for previously constructed buildings that are converted to homelike community-based residential facilities.

Section 101.14 (1) of the Statutes authorizes the Department to make reasonable orders for the repair or removal of any buildings or other structures or combustible or explosive materials or inflammable conditions which are dangerous to any other building or premises or to occupants or which hinder firefighters in case of fire.

Section 101.14 (2) (c) 1. of the Statutes requires the Department to promulgate by rule any exceptions where fire prevention inspections can be performed less frequently than once in each non-overlapping 6-month period per calendar year.

Section 101.63 (1) of the Statutes requires the Department to adopt rules which establish standards for the construction and inspection of one- and two-family dwellings.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Those Statutes include section 101.02 (15) (j), which addresses construction of safe public buildings and places of employment; section 101.14 (1) (am), which establishes a fire-suppression-system exemption for low-use mobile kitchens; and 101.141, which addresses record keeping for all building-related fires. Section 19.21 (4) (b) establishes a minimum time period for cities, villages and towns to retain public records.

Related statute or rule

The Department has various statutory obligations and rules relating to fire prevention and building safety – which include the design and construction requirements in chapters Comm 60 to 66 for public buildings and places of employment, as promulgated under sections 101.02 (15) (j) and 101.14 (4) of the Statutes; and the fire-prevention and inspection requirements in chapters Comm 10 and 14 for public

buildings and places of employment, as promulgated under sections 101.14 (1) (a) and (2) of the Statutes.

Summary of rule

The proposed rules for chapter Comm 14 in this order primarily update the incorporated National Fire Protection Association's NFPA[®] 1 fire prevention code from the 2006 edition to the 2009 edition. The rules also specify (1) the information that all fire departments must report to the United States Fire Administration (USFA) for all fires that involve buildings; (2) an occupancy period of no more than six months, for seasonal occupancies to be eligible for being inspected only once per calendar year; (3) a time period of at least seven years, for cities, villages and towns to retain records for fire prevention inspections and fire dues entitlement; (4) the maximum size and usage, and minimum record keeping, for a mobile kitchen that is allowed to not have an exhaust hood and corresponding automatic fire suppression system; (5) some minor cross-reference and other editorial corrections in the requirements for one- and two-family dwellings; (6) submittal of local ordinances where municipalities choose to perform plan review or inspection of commercial buildings; (7) requirements for air barriers in the exterior walls of commercial buildings; and (8) design requirements for previously constructed buildings that are converted to a community-based residential facility for five to 20 residents.

Comparison with federal regulations

The Federal Fire Prevention and Control Act of 1974 (P.L. 93-498) authorizes the National Fire Data Center in the USFA to gather and analyze information on the magnitude of the nation's fire problem, as well as the detailed characteristics and trends of the problem. The Act further authorizes the USFA to develop uniform data reporting methods, and to encourage and assist state agencies in developing and reporting data. In order to carry out the intentions of the Act, the National Fire Data Center has established the National Fire Incident Reporting System.

An Internet-based search of the 2007 and 2008 editions of the *Federal Register* did not reveal any currently proposed regulations regarding fire investigation reports, fire inspections for buildings that are occupied seasonally, or commercial cooking equipment for mobile kitchens.

Comparison with rules in adjacent states

Illinois:

The State of Illinois is applying the 2006 edition of the *International Fire Code*[®] (IFC), excluding Chapter 4, to public schools. No references were found relating to adoption of NFPA 1.

An Internet-based search of the terms "fire reports," "seasonal occupancies," "fire inspections," "fire records," "mobile kitchens," "fire incident reporting," "fire incidents," "fire reports," "incident reporting," and "NFIRS reports" yielded the following results: The officer making investigations must notify the Office of the State Fire Marshal by the 15th of the month following the occurrence of fire. The notification must include a statement of all facts relating to the cause and origin of the fire, and such information as may be called for in a format approved or on forms provided by the Office. Reporting of such information must be based upon the nationally recognized standards of the United States Fire Administration's National Fire Incident Reporting System. OSFM no longer accepts data via e-mail or data on disks. Fire

departments are trained to upload their own data directly to the USFA. Reporting "No Activity" is also required. No department can receive any state or federal funding without first being a faithful reporter to the NFIRS program.

An Internet-based search of the Illinois Administrative Code revealed that Illinois has adopted the NFPA 101[®] *Life Safety Code*[®], which does address commercial cooking devices, but does not specify fire-protection exemptions for mobile kitchens of less than a particular square footage or of limited use, nor does it specifically address fire inspection of seasonal occupancies.

Iowa:

The State of Iowa has adopted the 2000 edition of the IFC. The only reference found for NFPA 1 related to use by local municipalities.

An Internet-based search of the terms "fire reports," "seasonal occupancies," "fire inspections," "fire records," "mobile kitchens," "fire incident reporting," "fire incidents," "fire reports," "incident reporting," and "NFIRS reports" yielded the following results: For reports of fires and emergency responses, the State Fire Marshal's Division is to be notified immediately when death, serious bodily injury, or property damage in excess of two hundred thousand dollars has occurred as a result of a fire or if arson is suspected. For all other fires causing fifty dollars or more in damage or emergency response by the fire service, a report must be filed within ten days following the end of the month. The penalty for non-reporting is a simple misdemeanor. Based on course offerings for Iowa Fire School, Iowa follows NFIRS and encourages use Firehouse Software[®]. Fires are investigated by city or township officials, and reports are filed with the State Fire Marshal within a week unless an extension is granted. These fire records are on file in the Fire marshal's office, and some data is not considered accessible for public record.

The IFC, as adopted by Iowa, does not specifically address fire inspection of seasonal occupancies. The IFC does address commercial cooking devices, but does not specify fire-protection exemptions for mobile kitchens of less than a particular square footage or of limited use.

Michigan:

The State of Michigan has adopted the 2006 edition of NFPA 1.

An Internet-based search of the terms "fire reports," "seasonal occupancies," "fire inspections," "fire records," "mobile kitchens," "fire incident reporting," "fire incidents," "fire reports," "incident reporting," and "NFIRS reports" yielded the following results: Immediately after the occurrence of fire resulting in loss of life or property, the chief must make and file with the State Fire Marshal a complete fire incident report of the fire. The report must be made on and according to modules supplied by the State Fire Marshal. Violation of these requirements is a misdemeanor. Michigan requires local police and fire departments to report incidents such as fires to the Michigan Bureau of Fire Services, which maintains these records.

An Internet-based search of the terms "fire inspections," "seasonal occupancies" and "mobile kitchens" yielded no results of Michigan regulations specifically regarding these issues. An Internet-based search of the Michigan Administrative Rules revealed that they do not specify fire-protection exemptions for mobile kitchens of less than a particular square footage or of limited use, nor do they specifically address fire inspection of seasonal occupancies.

Minnesota:

The State of Minnesota has adopted the 2006 edition of the IFC. No references were found relating to adoption of NFPA 1.

An Internet-based search of the terms “fire reports,” “seasonal occupancies,” “fire inspections,” “fire records,” “mobile kitchens,” “fire incident reporting,” “fire incidents,” “fire reports,” “incident reporting,” and “NFIRS reports” yielded the following results: Minnesota requires local officers to investigate fires and to file a report with the State Fire Marshal within a week. The Fire Marshal maintains these records and compiles statistics based on the data, which is available to the public. However, as of January 1, 2009, Minnesota began providing a statewide software program for fire reporting created by ImageTrend Inc. It is recommended that incidents be reported to the State Fire Marshal Division monthly.

An Internet-based search of the terms “fire inspections,” “seasonal occupancies” and “mobile kitchens” yielded no results of Minnesota regulations specifically regarding these issues. The 2006 edition of the IFC, as adopted by Minnesota, does not specifically address fire inspection of seasonal occupancies. The IFC does address commercial cooking devices, but does not specify fire-protection exemptions for mobile kitchens of less than a particular square footage or of limited use.

Summary of factual data and analytical methodologies

The data and methodology for developing these proposed rules were derived from and consisted of comparing the 2006 and 2009 editions of NFPA 1, and incorporating the applicable criteria from 2007 Wisconsin Acts 75 and 173.

Analysis and supporting documents used to determine effect on small business

The primary documents that were used to determine the effect of the proposed rules on small businesses were the 2006 and 2009 editions of NFPA 1; 2007 Wisconsin Act 75, which addresses record keeping for all building-related fires; and 2007 Wisconsin Act 173, which establishes a fire-suppression-system exemption for small, low-use mobile kitchens.

Small Business Impact

The proposed rules are not expected to impose significant costs or other impacts on small businesses because the 2009 edition of NFPA 1, as modified in chapter Comm 14, is not expected to impose costs that substantially exceed the costs imposed by the currently adopted 2006 edition; the record-keeping requirements for fires and fire-prevention inspections apply only to fire departments and municipalities; and the record-keeping requirement for low-use mobile kitchens applies only where an exemption is desired from installing an exhaust hood and corresponding automatic fire suppression system.

Initial regulatory flexibility analysis

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

Owners and operators of public buildings and places of employment, or other premises if dangerous fire hazards exist; and owners and operators of small, low-use mobile kitchens who choose to not equip the kitchen with an exhaust hood and corresponding automatic fire suppression system.

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

A record must be maintained that shows the mobile kitchen is used on fewer than 12 days in a calendar year, for the purpose of cooking.

Types of professional skills necessary for compliance with the rules.

No new professional skills would be needed for compliance with these rules.

Rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

Any inquiries for the small business regulatory coordinator for the Department of Commerce can be directed to Sam Rockweiler via email: sam.rockweiler@wisconsin.gov. If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

Environmental Analysis

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

Fiscal Estimate***Assumptions used in arriving at fiscal estimate***

The proposed rules will not impose any significant costs on local governments, because the requirements are not expected to significantly change their current workloads or needed resources for reporting fires, performing fire prevention inspections and maintaining records.

The proposed rules are not expected to impose significant costs or other impacts on small businesses because (1) the 2009 edition of NFPA 1, as modified in chapter Comm 14, is not expected to impose costs that substantially exceed the costs imposed by the currently adopted 2006 edition; (2) the record-keeping requirements for fires and fire-prevention inspections apply only to fire departments and municipalities; and (3) the record-keeping requirement for low-use mobile kitchens applies only where an exemption is desired from installing an exhaust hood and corresponding automatic fire suppression system.

State fiscal effect

None.

Local government costs

None.

Long-range fiscal implications

None known.

Agency Contact Person

Joe Hertel, Wisconsin Department of Commerce, Bureau of Program Development, P.O. Box 2689, Madison, WI, 53701-2689; telephone (608) 266-5649; e-mail joe.hertel@wisconsin.gov.

Notice of Hearing

Health Services

*Health, Chs. DHS 110—
CR 09–089*

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.36 (1), 50.377 (2), and 227.11 (2) (a), Stats., the Department of Health Services will hold a public hearing to consider changes to Chapter DHS 124, relating to forfeitures, anatomical gifts, and automated external defibrillator (AED) training for hospitals.

Hearing Information

Date and Time	Location
December 14, 2009 9:30 AM to 11:30 AM	Wilson St. State Office Bldg. 1 West Wilson Street Room B 272 Madison, WI

Accessibility

English

DHFS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting Pat Benesh at (608) 264–9896. You must make your request at least 7 days before the activity.

Spanish

DHFS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con Pat Benesh al número (608) 264–9896. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

DHFS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau Pat Benesh ntawm (608) 264–9896. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnuv ua ntej qhov hauj lwm ntawd.

Copies of the Proposed Rule

A copy of the rules may be obtained from the department by downloading the rules from www.adminrules.wisconsin.gov or by contacting:

Pat Benesh, Quality Assurance Program Spec–Senior
Division of Quality Assurance
1 West Wilson St., Room 1150
Madison, WI 53701
Phone: 608–264–9896
Fax: 608–267–7119
patricia.benesh@wisconsin.gov

Submission of Written Comments

Comments may be submitted to Pat Benesh, as shown above or to the Wisconsin Administrative Rules Website at

<http://adminrules.wisconsin.gov> until **December 15, 2009, 4:30 p.m.**

Analysis Prepared by the Department of Health Services

Statutes interpreted

Sections 50.36 (5), 50.375, 50.377 (1), (3), and (4), and 157.06, Stats.

Statutory authority

Sections 50.36 (1), 50.377 (2), and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 50.36 (1), Stats., requires the department to promulgate rules for the construction, maintenance and operation of hospitals deemed necessary to provide safe and adequate care and treatment of patients and to protect the health and safety of patients in a hospital. Section 50.377 (2), Stats., permits the department to directly assess forfeitures for violations of s. 50.375 (2) and (3), Stats., relating to emergency contraception for sexual assault victims. Section 227.11 (2) (a), Stats., provides state agencies with general rulemaking authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

See the “Statutes interpreted” and “Statutory authority” sections.

Plain language analysis

Section 157.06, Stats., specifies provisions relating to anatomical gifts. Under this proposed order, the department replaces the existing requirements under s. DHS 124.05 (3) (i), with a requirement for hospitals to comply with relevant provisions relating to anatomical gifts under s. 157.06, Stats. The proposed rule removes the more prescriptive requirements on the subject.

Section 50.36 (5), Stats., requires that before providing emergency services in a hospital, medical and nursing personnel have proficiency in the use of an automated external defibrillator (AED) achieved through instruction provided by an individual, organization or institution that is approved by the department. Under this proposed order, the department creates s. DHS 124.05 (3) (j), to require hospitals to ensure compliance with s. 50.036 (5), Stats., for use of automated external defibrillators by medical and nursing personnel.

Section 50.375, Stats., requires a hospital that provides emergency services to provide emergency contraception services to a female victim of sexual assault.

Section 50.377, Stats., provides that “[w]hoever violates a requirement under s. 50.375 (2) or (3), Stats., may be required to forfeit not less than \$2,500 nor more than \$5,000 for each violation.” There are 3 separate requirements under s. 50.375 (2), Stats., and one requirement under s. 50.375 (3), Stats. The department, under s. 50.377, (2), Stats., may directly assess the forfeitures for violations of these requirements. Under this proposed order, the department establishes forfeiture dollar amounts for violations of s. 50.375 (2) and (3), Stats., and the statutory requirements for notice of assessment and appeal rights relating to a forfeiture assessment.

A hospital that violates all 4 requirements would be subject to a total forfeiture of \$10,000 for the first violation of those requirements, and a total forfeiture of \$20,000 for a subsequent violation of the same requirements.

Comparison with federal regulations

Emergency contraception: There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Anatomical gifts: 42 CFR 482.45, Condition of Participation and 42 CFR 121, Organ Procurement and Transplantation Network, include requirements for hospitals relating to organ, tissue and eye procurement.

Automated external defibrillators: There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

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

Emergency contraception: Illinois administrative code requires hospitals to provide medical and factually accurate written and oral information about emergency contraception and how and when victims may be provided emergency contraception. Hospitals that are found out of compliance with the code have 14 working days to submit a plan of correction to the state agency. If the hospital fails to submit an acceptable plan of correction or fails to implement the plan of correction within the time frames, the hospital is subject to the imposition of a fine of up to \$100 per day until the hospital complies with the requirement of the code. Administrative Code Section: 77 Ill. Adm. Code 545.95 and 545.67. The proposed rule establishes forfeiture amounts as permitted under s. 50.389, Stats., for violations of s. 50.375 (2) or (3), Stats., relating to emergency contraception for sexual assault victims.

Anatomical gifts: Illinois administrative code requires hospitals to have an agreement with its federally designated organ procurement agency providing for notification when potential organ donors become available and to provide access to the medical records of deceased patients. Administrative Code Section: 77 Ill. Adm. Code 250.280. The proposed rule requires hospitals to comply with relevant provisions under s.157.06, Stats., relating to anatomical gifts. The proposed rule removes the more prescriptive requirements on the subject.

Automated external defibrillators: Illinois administrative code requires users of AEDs to be trained. Administrative Code Section: 77 Ill. Adm. Code 525.400. The proposed rule requires hospitals to ensure compliance with s. 50.036 (5), Stats., for use of automated external defibrillators by medical and nursing personnel.

Iowa:

Emergency contraception: Iowa has no administrative code regarding emergency contraception in hospitals. The proposed rule establishes forfeiture amounts as permitted under s. 50.389, Stats., for violations of s. 50.375 (2) or (3), Stats., relating to emergency contraception for sexual assault victims.

Anatomical gifts: Iowa has no administrative code regarding anatomical gifts in hospitals. The proposed rule requires hospitals to comply with relevant provisions under s.157.06, Stats., relating to anatomical gifts. The proposed rule removes the more prescriptive requirements on the subject.

Automated external defibrillators: Iowa has no administrative code regarding the use of automated external defibrillators in hospitals. The proposed rule requires hospitals to ensure compliance with s. 50.036 (5), Stats., for

use of automated external defibrillators by medical and nursing personnel.

Michigan:

Emergency contraception: Michigan has no administrative code regarding emergency contraception in hospitals. The proposed rule establishes forfeiture amounts as permitted under s. 50.389, Stats., for violations of s. 50.375 (2) or (3), Stats., relating to emergency contraception for sexual assault victims.

Anatomical gifts: Michigan has no administrative code regarding anatomical gifts in hospitals. The proposed rule requires hospitals to comply with relevant provisions under s.157.06, Stats., relating to anatomical gifts. The proposed rule removes the more prescriptive requirements on the subject.

Automated external defibrillators: Michigan has no administrative code regarding the use automated external defibrillators in hospitals. The proposed rule requires hospitals to ensure compliance with s. 50.036 (5), Stats., for use of automated external defibrillators by medical and nursing personnel.

Minnesota:

Emergency contraception: Minnesota has no administrative code regarding emergency contraception. The proposed rule establishes forfeiture amounts as permitted under s. 50.389, Stats., for violations of s. 50.375 (2) or (3), Stats., relating to emergency contraception for sexual assault victims.

Anatomical gifts: Minnesota has no administrative code regarding anatomical gifts in hospitals. The proposed rule requires hospitals to comply with relevant provisions under s.157.06, Stats., relating to anatomical gifts. The proposed rule removes the more prescriptive requirements on the subject.

Automated external defibrillators: Minnesota has no administrative code regarding the use automated external defibrillators in hospitals. The proposed rule requires hospitals to ensure compliance with s. 50.036 (5), Stats., for use of automated external defibrillators by medical and nursing personnel.

Summary of factual data and analytical methodologies

The Department relied on all of the following sources to draft the proposed rule to determine the impact on small businesses.

- The Department solicited comments from representatives of the Wisconsin Hospital and Health Association, Wisconsin Public Psychiatric Hospital, Rural Wisconsin Health Cooperative and Planned Parenthood of Wisconsin. Representatives from these organizations reviewed the initial draft of the rule.
- The 2002 Economic Census – Wisconsin Geographic Series, compiled by the U.S. census bureau every 5 years for each year ending in “2” and “7” and contains the latest available economic data (2007 data is not yet published–August 2009) compiled on businesses located in Wisconsin.
- Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department’s proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department’s criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of

the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or reduces revenues by more than the prior year's consumer price index. For the purposes of this rulemaking, 2008 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics; the preliminary rate for the Midwest in 2008 is currently estimated at 3.9 percent.

- Section 227.114 (1) (a), Wisconsin Stats., defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- DHS databases including the Aspen information System which contains demographic, licensing, program, and compliance history of hospitals in Wisconsin.

Analysis and supporting documents used to determine effect on small business

The North American Industry Classification System (NAICS) includes hospitals in the Health Care and Social Assistance sector, (sector 62) and further defined in sub-sector 622 hospitals. Industries in the hospitals subsector provide medical, diagnostic, and treatment services that include physician, nursing, and other health services to inpatients and the specialized accommodation services required by inpatients. Hospitals may also provide outpatient services as a secondary activity. Establishments in the Hospitals subsector provide inpatient health services, many of which can only be provided using the specialized facilities and equipment that form a significant and integral part of the production process.

Employment statistics and revenue data from the 2002 NAICS dataset for Wisconsin report \$9.4 billion in revenue with over 103,000 employees receiving over \$3.5 billion in wages.

None of Wisconsin's hospitals meet the definition of a small business under s. 227.114 (1), Stats.

Small Business Impact

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

Small business regulatory coordinator

Rosie Greer
rosie.greer@dhs.wisconsin.gov
608-266-1279

Fiscal Estimate

Under the proposed order, the department establishes forfeiture dollar amounts for violations of s. 50.375 (2) and (3), Stats., relating to emergency contraception services to a female victim of sexual assault. The proposed forfeiture assessment ranges from \$2,500 for a first violation to \$5,000 for a subsequent violation. The Wisconsin constitution requires that all forfeitures are to be deposited in the Common School Fund with this department receiving no benefit from the forfeiture assessment. The State of Wisconsin operates 4 hospitals, 11 other hospitals are operated by counties or other local governmental entities and would be subject to forfeiture assessment if they were found to be out of compliance. There

may be an increase in costs for government run hospitals that violate s. 50.375, Stats. There are no other provisions in the proposed rules beyond statutory requirements that would affect state or local government costs.

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

A copy of the fiscal estimate may be obtained from the department upon request.

State fiscal effect

Indeterminate. Increase in costs that may be possible to absorb within the agency's budget.

Fund sources affected

GPR.

Affected Ch. 20 appropriations

Section 20.435 (6) (a), Stats.

Local government costs

Increase costs.

Local government units affected

Cities and Counties.

Private sector fiscal effect

None.

Agency Contact Person

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Madison, WI 53701
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Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09-103

NOTICE IS HEREBY GIVEN THAT pursuant to s. 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on revisions to section NR 45.04 (1) (g), Wis. Adm. Code, relating to regulation of firewood entering department lands. The proposed amendment would prohibit anyone from bringing onto department managed lands firewood from greater than 25 miles from the campground or property, from outside of Wisconsin, or from areas quarantined by the state, a federal agency or tribal government or designated zones of infestation if the property is outside of the quarantine or infested zone unless the firewood source is approved by the Wisconsin DATCP. The amendment also defines firewood for the use of this rule.

Hearing Information

The hearing will be held on:

December 15, 2009, 7:00 p.m. at the following sites:

- Pyle Center, 702 Langdon St., Room 315, Madison
- UW-Green Bay, 2420 Nicolet Drive, Room IS1034, Green Bay
- UW-Marathon County, 518 S. 7th Ave., Room 220, Wausau
- UW-Eau Claire, 105 Garfield Ave., Room 1118, Old Library, Eau Claire

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 Dr. Andrea Diss-Torrance at 608-264-9247 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rule and Submission of Written Comments

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. FR-25-09. Written comments on the proposed rule may be submitted via U.S. mail to Dr. Andrea Diss-Torrance, Division of Forestry, P.O. Box 7921, Madison, WI 53707 or by e-mail to Andrea.DissTorrance@wisconsin.gov. Comments may be submitted until December 31, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from: Dr. Andrea Diss-Torrance, Division of Forestry P.O. Box 7921, Madison, WI 53707 or by calling (608) 264-9247.

Analysis Prepared by the Department of Natural Resources

Statutes interpreted

Sections 23.09 (2) (intro), 23.091, 23.11 (1), 23.22 (2) (b) 1., 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats.

Statutory authority

Section 227.11 (2) (a), Stats.

Related statute or rule

Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) ch. ATCP 21 regulates import and movement of firewood and other host material of the emerald ash borer, Asian longhorn beetle, hemlock woolly adelgid and sudden oak death. The Wisconsin Department of Natural Resources ch. NR 40 prohibits the movement of materials carrying specific invasive species, such as firewood with emerald ash borer (EAB) or asian longhorned beetle. This rule supports ch. ATCP 21 and NR 40.

Plain language analysis

This rule will prohibit anyone from bringing onto department managed lands firewood from greater than 25 miles from the campground or property, from outside of Wisconsin, or from areas quarantined by the state, a federal agency or tribal government or designated zones of infestation if the property is outside of the quarantine or infested zone unless the firewood source is approved by the Wisconsin DATCP. The purpose of this rule is to reduce the risk of introduction and spread of EAB and other invasive insects and diseases of trees by reducing the distance firewood used on the properties is moved. Currently, EAB is moving primarily on firewood and parks and campgrounds in other states have been sites of new introductions as a result (Muirhead et al. 2006). This rule will provide additional protection for state parks and forests, set a good example for county, municipal and private campgrounds and reduce a

reason people move firewood: for use while camping. While this rule may cause some inconvenience for campers, it is dwarfed by the cost of infestation or establishment of this pest to the public and the state. To minimize any inconvenience, the department is working with firewood dealers and the Wisconsin DATCP to assure a sufficient supply of safe and affordable firewood at department campgrounds.

Invasive, foreign pests and diseases are often very destructive as native trees typically have little resistance, there are rarely effective natural enemies to regulate infestations and effective pesticides may be unavailable. EAB is a dramatic example of this situation. Where it is established, it has eliminated all ash species in the region. Cities and towns in southeastern Michigan have been stripped of street trees and lowland forests decimated as this beetle has killed the ash trees that dominate these landscapes. The cost of removal of hazardous dead trees alone has cost communities millions and they continue to suffer associated costs from reduced property values and increased energy and water costs. Wisconsin is at least as vulnerable to EAB as Michigan. Thirty percent of our community trees are ash and ash species are common to dominant in our northern hardwood, central hardwood and lowland forests. Dealing with EAB and other invasives once established is very expensive but EAB and many other invasives move slowly if not transported on firewood or other host material. If this artificial movement can be reduced, many communities and woodlands in Wisconsin need not suffer damage from EAB for many years. While federal and state quarantines on nursery stock and logs have been effective, those on firewood have largely failed to prevent movement of this pest. Most infestations distant from the core infestation in southeastern Michigan have been traced back to firewood as the source of the introduction. Recognizing this risk, the Wisconsin DATCP and DNR have proposed additional limits on movement of firewood into and within the state. This rule supports DATCP's external quarantine and DNR's NR 40. In addition, the further tightening of restrictions on firewood allowed into state properties sends a strong message that we need to be even more active in preventing spread of EAB now that it is in the state. In the event that an infestation of emerald ash borer is discovered on a department property, movement from that property of all infested host material including firewood would be halted by the DATCP and NR 40, minimizing the risk of spread.

The regulation of firewood into department properties is supported by an intensive information and education program to reach campers who could be affected by the new regulation and to raise awareness of the risk posed by the movement of firewood. The department also reaches out to municipal and private campground managers to educate them on why we are taking this step and encourage and support them if they decide to do likewise. The department will also work with the DATCP and firewood dealers to ensure campers have a sufficient supply of safe and reasonably priced firewood.

Comparison with federal regulations

The Apostle Islands National Park has prohibited bringing any firewood into the park since 2006. The Chequamegon-Nicolet National Forest prohibits firewood from greater than 25 miles onto the forest. The Army Corp of Engineers regulates the firewood they allow onto their lands along the upper Mississippi.

Comparison with rules in adjacent states

Michigan:

Michigan prohibits movement of ash products including firewood from the quarantined counties. Campers from quarantined areas entering Michigan parks are questioned if they brought firewood from the quarantined area and if so confiscation of firewood and fines could result.

Minnesota:

Minnesota state parks allow wood from approved vendors that are within Minnesota and within 100 miles of the park. To be approved, vendors must either exclude ash from their wood, heat treat or debark the wood. Firewood from EAB quarantined counties is not allowed into parks outside the quarantined area.

Iowa:

Iowa state parks prohibit wood from EAB or gypsy moth quarantined areas unless carrying a USDA certificate stamp indicating the wood has been treated to prevent transmission of the pest.

Illinois:

Illinois prohibits the movement of host materials including wood from the area quarantined for Asian longhorned beetle and is considering regulation of firewood entering state lands.

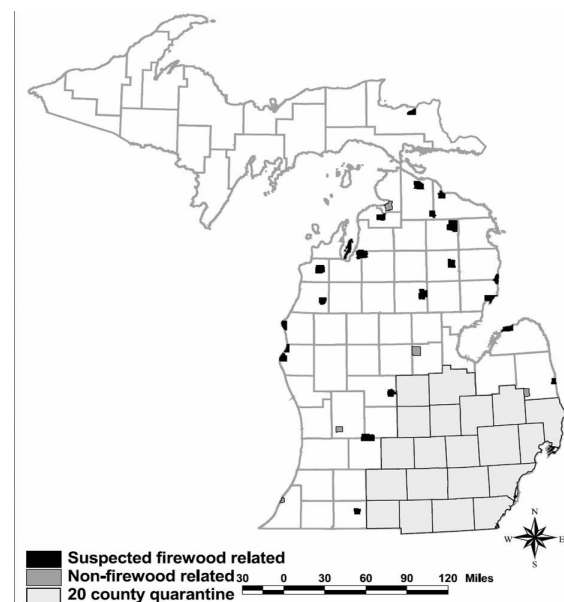
Summary of factual data and analytical methodologies

Firewood is generally recognized as a major source of new infestations of EAB (Muirhead et al 2006) and other invasives that infest wood. Figure 1. shows the outlying infestations of EAB in Michigan in 2005 and their probable source. Note that most of the colonies outside epicenter in the Detroit area were traced back to infested firewood brought in from the quarantined area. Quarantines on nursery stock and logs have been successful in discouraging exportation of infested host material from these sources. When such quarantines are broken, it is often detected quickly and material can be retrieved or at least the potentially infested area can be accurately delineated and treated. This happened in Maryland and Virginia where a dealer received an illegal shipment of nursery stock from Michigan. The Virginia introduction appears to have been successfully eradicated though the one in Maryland is still being treated. In contrast, much firewood is moved by individuals and there is little that can be done to regulate its movement out of a quarantined area except to try and educate the public to the risk. An external quarantine can add a second opportunity to intercept the infested host material and enforcement is often more vigorous since the people enforcing the quarantine are trying to protect their own resources.

One advantage we have in dealing with wood infesting pests and diseases is that many move slowly on their own, like EAB. If we can reduce the distance infested firewood moves, we can slow the spread of these invasives. Slowing the expansion of infestations and establishment of new populations has benefits. It buys time for the development of new control options. It delays the time when a community or forest will suffer impacts allowing time to prepare, minimizing losses. Once an invasive has become established in the state it is even more important to prevent spread, even locally. It is our communities and forests that directly benefit. Further restricting the distance from which firewood may be

brought into state lands sends a strong message that we must increase our efforts to prevent spread of invasives like EAB and not give up just because it is now found in the state. Recently, Forestry staff working with a Forest Service scientist developed a model of the risk of introducing a wood borne invasive into Wisconsin state campgrounds given increasing numbers of populations of the invasive in the state and differing distances from which firewood was allowed into the property. Figure 2. shows the results of this model. As the number of populations of an invasive increases in Wisconsin, the number of state campgrounds that are at risk because a population of the pest is within the circumference for allowable firewood also increases. However, the rate at which the number of campgrounds at risk increases is very different for the four distances modeled. For example, at 8 populations of invasive X in Wisconsin, 54% of the state campgrounds were at risk in the 50 mile radius model, 21% were at risk in the 25 mile radius, and only 4% were at risk when only wood from 10 miles away was allowed into the campground. This model shows the importance of reducing the distance firewood moves in reducing the risk of introductions into our parks, communities and forests.

Figure 1. 2005 Map of infestations of emerald ash borer and probable source of infestation.



While risk of introduction of EAB or other wood borne pests and diseases would be minimized if we did not allow wood from outside the property to enter, that is not practical. Many state campgrounds could not supply wood from within their boundaries. We presented the results of our model to Parks program leaders and State Forest staff and asked for input on whether to reduce the distance from which wood could be brought into their properties. They responded that the distance should be reduced to reduce the risk of introduction and send the right message to the public but that they felt that they could not reliably supply enough firewood at all campgrounds if we reduced the distance below 25 miles. For these reasons, the DNR recommends that firewood be allowed onto state lands from no more than 25 miles from its point of origin.

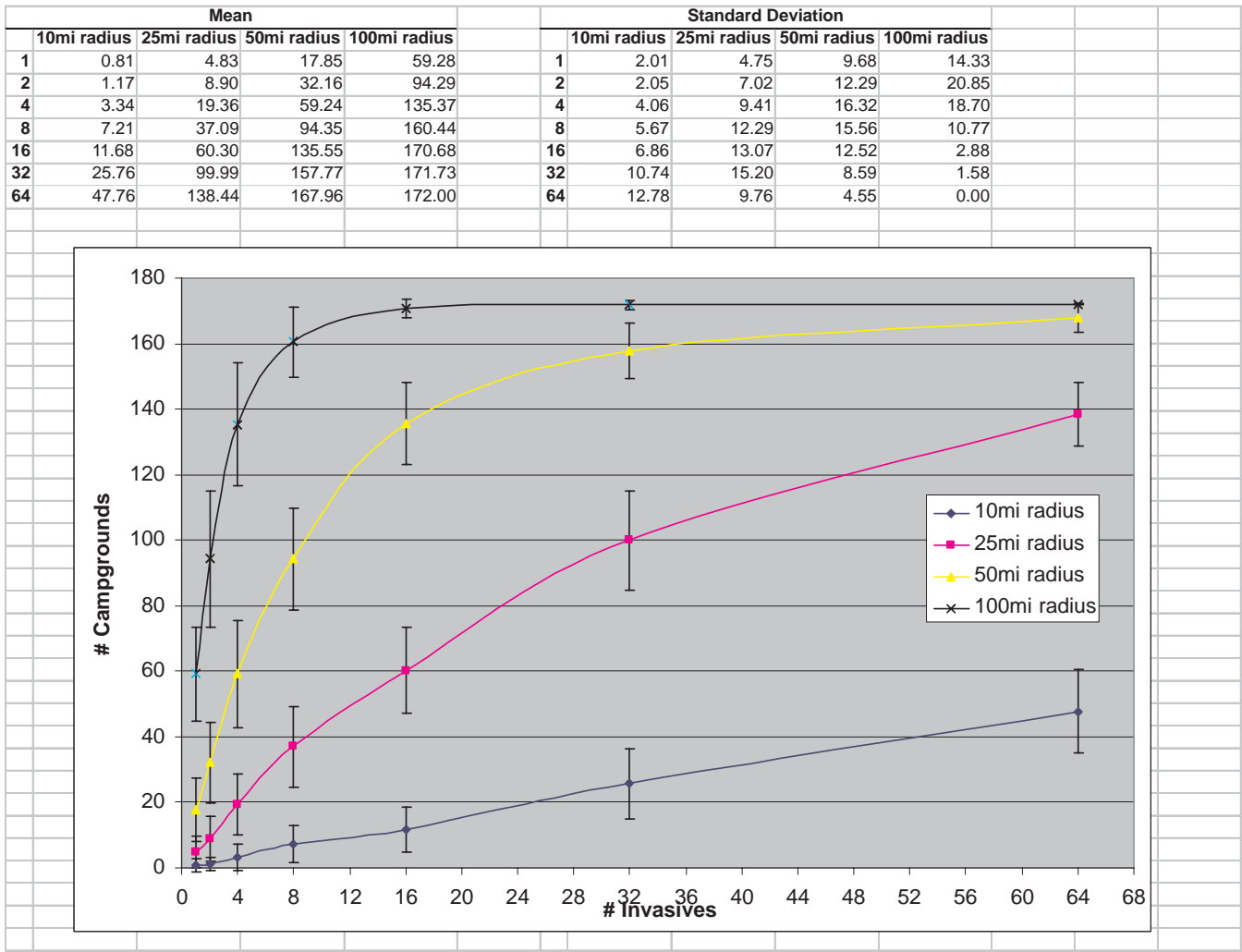


Figure 2. Mean number (+SD) of Wisconsin state campgrounds where a population of wood borne invasive X occurs within the distance firewood is allowed into the campground given a number of populations of invasive X (# Invasives) randomly distributed in Wisconsin. Four allowable distances were plotted; 100, 50, 25 and 10 miles from the campground. There are 172 state campgrounds used in this model.

Analysis and supporting documents used to determine effect on small business

This rule is designed to reduce the spread of invasive forest pests and diseases such as the EAB which pose a grave threat to Wisconsin forest and urban landscapes. This rule will help protect Wisconsin industries associated with tourism and forest products by protecting the resources on which they depend. Some firewood dealers may be initially impacted by this rule if they get firewood from greater than 25 miles from the state campgrounds or from out of state. Early analysis of a statewide survey of firewood dealers indicates that most dealers are obtaining their wood within 50 miles of the area where they sell it so fewer dealers may be impacted than might at first be thought. Dealers supplying firewood to state campgrounds have been able to segregate their wood into that from within the allowable distance and that from outside. DATCP has developed an approval process so that larger dealers that distribute over a wider area can have their wood approved for use on department properties using several treatments.

While this rule will require campers to obtain firewood near their campsite, this small expense will be dwarfed by savings to individuals and private business in its contribution to preventing or delaying the establishment of EAB and other

invasive pests and diseases. Where EAB has been introduced, homeowners must pay hundreds of dollars to remove yard trees killed by the beetle as well as suffer property value decline due to loss of the trees. Communities must bear the cost of removal and replacement of killed ash trees along streets and in parks. Michigan communities have requested 6 million from Federal Emergency Management Agency to remove and replace street trees. Businesses that deal in nursery stock, logs and firewood are also impacted by establishment of EAB as markets outside the infested area no longer want their products or require costly inspections to show the shipment is pest free.

Small Business Impact

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

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

Environmental Analysis

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch.

NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Fiscal Estimate

Summary

We do not expect any fiscal effects on county, city, village, town, school district, technical college district or sewerage districts from these rules.

We expect that the major expense may be in communicating the new regulations to the public. Publications will be developed and printed in quantities sufficient to supply all campers arriving at our public campgrounds for the next 2 years. Therefore, printing costs are estimated at \$50,000 in the first year. We expect that the public information and education effort will last 2 years with the greatest costs in the first year. We do not expect to add any staff to implement these rules, and we do not anticipate costs to the private sector as a result of these rules.

State fiscal effect

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

Local government costs

None.

Fund sources affected

SEG.

Affected Ch. 20 appropriations

Section 20.370 (1) (mv), Stats.

Long-range fiscal implications

We do not expect long-term fiscal impacts. Expenses associated with public education and information will be in the next 2 years.

Agency Contact Person

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Notice of Hearing

Natural Resources

Environmental Protection — General, Chs. NR 100— CR 09-102

NOTICE IS HEREBY GIVEN that pursuant to sections 281.12 (1), 281.15, 281.19 (1) and 299.11, Stats., and ch. 160, Stats., the Department of Natural Resources will hold public hearings on amendments to Chapter NR 140, Wis. Adm. Code, relating to groundwater quality.

Hearing Information

The hearings will be held on the following dates and locations [Note: it is useful to check the website, or at the Visitor Center, for the UW campus locations listed below, for assistance locating campus buildings and to obtain information on campus visitor parking policies]:

December 11, Friday, 10:00 a.m.

Natural Resources State Office Building/GEF 2, Room G09,
101 South Webster Street, Madison, WI, 53703

December 14, Monday, 10:00 a.m.

Sauk County—UW Extension, West Square Administration
Building, Room B30, 505 Broadway, Baraboo, WI, 53913

December 15, Tuesday, 10:00 a.m.

Eau Claire State Office Building, Room 139,
718 West Clairemont Avenue, Eau Claire, WI, 54701

December 15, Tuesday, 4:00 p.m.

UW—Stevens Point, Communications Arts Center (CAC),
Room 211, 1101 Reserve Street, Stevens Point, WI, 54481

December 16, Wednesday, 10:00 a.m.

UW—Oshkosh, Halsey Science Center, Room 259,
921 Elmwood Avenue, Oshkosh, WI, 54901

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 McLimans at (608) 266-2726 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rules 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>. Written comments on the proposed rule may be submitted via U.S. mail to: Mr. Mike Lemcke, Wisconsin Dept. of Natural Resources, Bureau of Drinking Water & Groundwater, P.O. Box 7921, Madison, WI, 53707. Comments may be submitted until December 30, 2009. 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. Lemcke.

Analysis Prepared by the Department of Natural Resources

Statutory authority

Sections 281.12 (1), 281.15, 281.19 (1) and 299.11, Stats., and Chapter 160, Stats.

Plain language analysis

Chapter 160, Stats., requires the Department to develop numerical groundwater quality standards, consisting of enforcement standards and preventive action limits. Chapter NR 140, Wis. Adm. Code, establishes groundwater standards and creates a framework for implementation of the standards by the Department. These proposed amendments to ch. NR 140 would add new state groundwater quality standards for 15 substances and revise existing standards for another 15 substances. In accordance with ch. 160, Stats., amendments to ch. NR 140 groundwater quality standards are based on recommendations from the Department of Health Services.

New public health related groundwater quality standards are proposed for: 1,4-Dioxane, Acetochlor, Acetochlor – ESA + OXA, Aluminum, Ammonia, Chlorodifluoromethane, Chlorpyrifos, Dimethenamid/Dimethenamid-P, Dinitrotoluenes, Ethyl Ether, Manganese, Metolachlor – ESA + OXA, Perchlorate, Propazine and Tertiary Butyl Alcohol.

Revised public health related groundwater quality standards are proposed for: 1,3-Dichlorobenzene,

1,3-Dichloropropene, Acetone, Boron, Carbaryl, Chloromethane, Dibutyl Phthalate, Ethylene Glycol, Methyl Ethyl Ketone, Metolachlor, Metribuzin, Phenol, Prometon, Toluene and Xylene.

Minor revisions, to clarify rule language and update rule reference information, are also proposed to ch. NR 140. These revisions include:

- Replacing current “Chromium” in ch. NR 140 Table 1 with “Chromium (total)” to clarify that ch. NR 140 standards apply to total chromium (combination of chromium III and chromium VI).
- Replacing current “Cyanide” term in ch. NR 140 Table 1 with “Cyanide, free” to clarify that ch. NR 140 standards apply to “free cyanide” (HCN, CN⁻ and metal-cyanide complexes that are easily dissociated into free cyanide ions).
- Changing “Metolachlor” in ch. NR 140 Table 1 to “Metolachlor/s–Metolachlor” to clarify that ch. NR 140 standards apply to both Metolachlor (CAS RN 51218–45–2) and its stereo isomer, s–Metolachlor (CAS RN 87392–12–9).
- Revising units for field specific conductance in s. NR 140.20 Table 3 from micromhos/cm (micromhos per centimeter) to $\mu\text{S}/\text{cm}$ (microsiemens per centimeter).
- Revising s. NR 140.28(5)(c)6 note to add “for discharges, as defined by s. 283.01(4), Stats” language related to the need for a wastewater discharge permit.
- Adding CAS RN of 142363–53–9 for Alachlor–ESA to Appendix I to Table 1.
- Changing existing Appendix I to Table 1 CAS RN for Asbestos from 12001–29–5 (chrysotile asbestos) to 1332–21–4 (asbestos, all forms).
- Adding “Chromium (total)”, with CAS RN of 7440–47–3, to Appendix I to Table 1.
- Adding CAS RN of 542–75–6 for cis/trans 1,3 Dichloropropene (mixed isomers) to Appendix I to Table 1.
- Changing existing Appendix I to Table 1 CAS RN for Fluoride from 16984–48–8 to 7681–49–4.
- Adding 1,1,1,2–PCA synonym for 1,1,1,2 tetrachloroethane to Appendix I to Table 1.
- Adding 1,1,2,2–PCA synonym for 1,1,2,2 tetrachloroethane to Appendix I to Table 1.
- Adding 1,1,1–TCA synonym for 1,1,1 trichloroethane to Appendix I to Table 1.

Comparison with federal regulations

The United States Environmental Protection Agency (US EPA) establishes health based drinking water maximum contaminant levels (MCLs), cancer risk levels and health advisories (HAs). Federal drinking water MCLs are established based on scientific risk assessments and, in some cases, economic and technological considerations. Cancer risk levels are established as the concentration of a chemical in drinking water that corresponds to a specific excess estimated lifetime cancer risk. Federal lifetime health advisories (LHAs) are developed based on an established health risk acceptable daily intake (ADI) level or reference dose (RfD). An ADI or RfD is the daily oral exposure to a chemical that is likely to be without an appreciable risk over a lifetime.

No federal drinking water MCLs have yet been established for any of the substances for which new Wisconsin state groundwater quality standards are proposed. Federal 1 in 1,000,000 drinking water cancer risk levels have been established at 3 ppb for 1,4–Dioxane and at 0.05 ppb for DNT (mixture of 2,4–/2,6–DNT). US EPA LHAs have been established at 2 ppb for Chlorpyrifos, at 300 ppb for Manganese and at 10 ppb for Propazine. The US EPA has also developed an “Interim Drinking Water Health Advisory” of 15 ppb for Perchlorate. RfDs have been established by EPA for: Dimethenamid at 0.05 mg/kg–day, Ethyl Ether at 0.2 mg/kg–day and Perchlorate at 0.0007 mg/kg–day. A Reference Concentration (RfC) for Chronic Inhalation Exposure of 50 mg/cu.m has been established by EPA for Chlorodifluoromethane.

US EPA Contaminant Candidate List (CCL): The Contaminant Candidate List (CCL) is the US EPA’s list of unregulated contaminants which may require national drinking water regulation in the future. The current list is designated Contaminant Candidate List 2 (CCL 2). Substances currently on EPA’s CCL 2 include: Aluminum, Acetochlor, Acetochlor–ESA, Acetochlor–OXA, Metolachlor–ESA, Metolachlor–OXA and Perchlorate. Substances currently proposed for inclusion on EPA’s draft CCL 3 include: 1,4–Dioxane, Acetochlor, Acetochlor–ESA, Acetochlor–OXA, Chlorodifluoromethane, Metolachlor–ESA, Metolachlor–OXA, and Perchlorate.

Comparison of rules in adjacent states

The proposed amendments to ch. NR 140, Wis. Adm. Code, would add new state numeric groundwater quality standards for 15 substances: 1,4–Dioxane, Acetochlor, Acetochlor ESA + OXA, Aluminum, Ammonia (as N), Chlorodifluoromethane, Chlorpyrifos, Dimethenamid/Dimethenamid–P, Dinitrotoluenes (Total Residues), Ethyl Ether, Manganese, Metolachlor ESA + OXA, Perchlorate, Propazine and Tertiary Butyl Alcohol. The groundwater quality standards contained in ch. NR 140 are used in Wisconsin by state regulatory agencies as state groundwater protection standards. These standards are used as contamination site cleanup levels, design and management criteria for regulated activities and as minimum public health and welfare protection standards for contaminants in groundwater.

The states surrounding Wisconsin: Minnesota, Michigan, Illinois and Iowa, also use groundwater protection values/levels/standards in their regulation of practices and activities that might impact the quality of groundwater resources. Three of the states surrounding Wisconsin have promulgated individual state groundwater protection standards and one utilizes established federal standards (federal drinking water maximum contaminant levels, lifetime health advisory levels and established cancer risk levels) as their state groundwater protection standards.

Groundwater protection quality standards are usually developed based on health risk assessments. States are often required to follow state specific health risk assessment methodology when establishing groundwater protection quality standards. States may use state specific health risk assessments; factors and methodology in calculating and developing their groundwater protection standards. This use of different health risk assessment factors and methodologies has led to the establishment of different state groundwater protection standard levels for the same substance. For example, the health based groundwater protection quality

standard for manganese used by the states surrounding Wisconsin varies by state – the standard used in Minnesota is 300 ppb, the standard used in Michigan is 860 ppb, Illinois uses 150 ppb and the standard used in Iowa is 300 ppb, the federal Lifetime Health Advisory level.

Minnesota:

The state of Minnesota has established state groundwater protection “Health Risk Limits” (HRLs) under Minnesota Statutes Section 103H.201. The State of Minnesota has established HRLs for Acetochlor at 9 ppb and for Ethyl Ether at 1,000 ppb. The Minnesota Department of Health has also calculated “Health Based Values” (HBVs) for some groundwater contaminants. Minnesota HBVs are not standards that have been promulgated by rule but are calculated concentrations that may be used as advisory levels by Minnesota state groundwater and environmental protection programs. The State of Minnesota has established HBVs for: Metolachlor–ESA at 800 ppb, Metolachlor–OXA at 800 ppb, Acetochlor–ESA at 300 ppb and Acetochlor–OXA at 100 ppb. The Minnesota Department of Health also issues Risk Assessment Advice (RAA) levels for some groundwater contaminants. Minnesota Department of Health RAAs are advisory concentrations developed to assist Minnesota agencies in evaluating potential health risks to humans from exposures to a chemical. Generally, RAAs contain greater uncertainty than HRLs and HBVs because the information available to develop them is more limited. The State of Minnesota has established a RAA for Manganese at 300 ppb.

Michigan:

The state of Michigan has established state groundwater protection quality standards. Michigan “Drinking Water Criteria and Risk Based Screening Levels (RBSLs)” are Michigan state groundwater protection standards authorized in accordance with Michigan’s Natural Resources and Environmental Protection Act, 1994 PA 451 (NREPA). The State of Michigan has established a Drinking Water Criteria/RBSL for: 1,4–Dioxane at 85 ppb, Manganese at 860 ppb, Aluminum at 300 ppb, Propazine at 200 ppb, Chlorpyrifos at 22 ppb, Ethyl Ether at 3,700 ppb and Tertiary Butyl Alcohol at 3,900 ppb. The State of Michigan also has established a Drinking Water Criteria/RBSL for “all potential sources of nitrate–nitrogen”, including ammonia nitrogen, in groundwater drinking water supplies at 10,000 ppb.

Illinois:

The state of Illinois has established state groundwater quality standards for “potable resource groundwater”. Illinois Groundwater Quality Standards are state groundwater protection standards promulgated in 35 Ill. Adm. Code 620, environmental protection regulations. Illinois state “Groundwater Quality Standards for Class I: Potable Resource Groundwater” have been established for Manganese at 150 ppb. The state of Illinois also has established “Groundwater Cleanup Objectives” in 8 Ill. Adm. Code 259. Illinois Groundwater Cleanup Objectives include both Illinois state Groundwater Quality Standards and Human Threshold Toxicant Advisory Concentrations (HTTACs). Illinois has established state Groundwater Cleanup Objectives for Class I, Potable Resource Groundwater: at 21 ppb for Chlorpyrifos, at 2 ppb for Acetochlor and at 10,000 ppb for Ammonia. The Illinois Acetochlor groundwater cleanup objective value was established in accordance with the Acetochlor Registration Agreement monitoring program.

The state groundwater cleanup objective for Ammonia was developed based on the US EPA’s 30,000 ppb Lifetime Health Advisory level for ammonia in drinking water.

Iowa:

The state of Iowa has not established specific state groundwater protection standards. In accordance with Iowa Environmental Protection Regulations 567 IAC Chapter 133, Iowa uses established federal EPA lifetime health advisory levels, “negligible risk levels” (NRLs) for carcinogens (estimate of one additional cancer case per million people over a lifetime of exposure) and federal drinking water maximum contaminant levels (MCLs) as “Action Levels” in their regulation of practices and activities that may adversely impact groundwater quality. As noted in section 6 above, federal lifetime health advisory levels have been established at 2 ppb for Chlorpyrifos, at 300 ppb for Manganese and at 10 ppb for Propazine. Federal 1 in 1,000,000 drinking water cancer risk levels have been established at 3 ppb for 1,4–Dioxane and at 0.05 ppb for DNT (mixture of 2,4–/2,6–DNT).

Summary of the factual data and analytical methodologies

In accordance with s. 160.07, Stats., the Department is required, for substances of public health concern, to propose rules establishing recommendations from the Department of Health Services (DHS) as state groundwater quality enforcement standards. In accordance with s. 160.15, Stats., the Department is required to establish by rule a preventive action limit for each substance for which an enforcement standard is established.

The DHS has provided the Department, in a document titled *Scientific Support Documentation for Cycle 9 Revisions of NR 140.10 Groundwater Enforcement Standard & Preventive Action Limit Recommendations* (dated May 2009), its recommendations for new state public health related groundwater quality standards for 15 substances: 1,4–Dioxane, Acetochlor, Acetochlor ESA + OXA, Aluminum, Ammonia (as N), Chlorodifluoromethane, Chlorpyrifos, Dimethenamid/Dimethenamid–P, Dinitrotoluenes, Ethyl Ether, Manganese, Metolachlor ESA + OXA, Perchlorate, Propazine and Tertiary Butyl Alcohol. DHS has also provided recommendations for revisions to existing public health related state groundwater quality standards for 15 additional substances: 1,3–Dichlorobenzene, 1,3–Dichloropropene, Acetone, Boron, Carbaryl, Chloromethane, Dibutyl Phthalate, Ethylene Glycol, Methyl Ethyl Ketone, Metolachlor, Metribuzin, Phenol, Prometon, Toluene and Xylene.

The Department is proposing rules establishing the DHS enforcement standard recommendations as ch. NR 140, Wis. Adm. Code, state groundwater quality enforcement standards. The Department is also proposing rules establishing ch. NR 140, Wis. Adm. Code, state groundwater quality preventive action limits in accordance with s. 160.15 (1), Stats.

Analysis and supporting documentation used to determine effect on small businesses

In its determination of the effect of this proposed rule on small businesses, the Department used analysis and supporting documentation that included information from the U.S. Department of Agriculture—National Agricultural Statistics Service (NASS), the University of Wisconsin (UW)—Department of Agronomy and the Wisconsin Department of Agriculture Trade and Consumer Protection (DATCP). Information used from the United States

Department of Agriculture NASS included agricultural chemical usage reports from 2001–2007, and the NASS Agricultural Chemical Use Database. Information used from the UW Department of Agronomy included the UW Extension 2008 Herbicide price list and the UW Extension Corn and Soybean Herbicide Chart. Information from DATCP included data from DATCP's *Agricultural Chemicals in Wisconsin Groundwater – Final Report March 2008* document and results from the agency's groundwater monitoring and pesticide registration databases.

Small Business Impact

The Department has determined that this rule order will not have a significant economic impact on small businesses. Chapter NR 140, Wis. Adm. Code, currently contains groundwater standards for 123 substances of public health concern, 8 substances of public welfare concern and 15 indicator parameters. The proposed groundwater standard revisions would apply to all regulated facilities, practices and activities which may impact groundwater quality.

The enforcement of Wisconsin state groundwater quality standards is done by state regulatory agencies through their groundwater protection programs. State regulatory agencies, in exercising their statutory powers and duties, establish groundwater protection regulations that assure that regulated facilities and activities will not cause state groundwater quality standards to be exceeded. A state regulatory agency may establish specific design and management criteria to ensure that regulated facilities and activities will not cause the concentration of a substance in groundwater, affected by the facilities or activities, to exceed state groundwater quality enforcement standards or preventive action limits at an applicable "point of standards application" location.

Regulated facilities, practices and activities, which are sources of the substances for which new and revised groundwater standards are proposed are, for the most part, likely sources of substances for which groundwater standards already exist. Consequently, there will likely be few cases where the proposed standards will be exceeded where existing standards are not currently being exceeded. Additional monitoring costs may be imposed upon regulated facilities, practices and activities, but the extent of such monitoring and any costs associated with it, while too speculative to quantify at this time, are not expected to be significant.

The proposed revisions to state groundwater quality standards include new and revised standards for some pesticides and pesticide degradation products found in Wisconsin groundwater. New proposed groundwater quality standards include standards for the insecticide chlorpyrifos, the herbicides acetochlor, dimethenamid and propazine, and the herbicide degradation products acetochlor ethane sulfonic acid and oxanilic acid, and metolachlor ethane sulfonic acid and oxanilic acid.

The insecticide active ingredient chlorpyrifos is used in corn to control rootworm, and in soybeans to control aphids and spider mites. There are currently 32 insecticide products registered in Wisconsin that contain the active ingredient chlorpyrifos. Chlorpyrifos has been reported as detected in groundwater at 2% of DATCP Agricultural Chemical Cleanup Program sites. In a DATCP 2007 statewide survey of agricultural chemicals in Wisconsin groundwater, no chlorpyrifos was reported detected in 398 private water supply wells sampled.

Acetochlor and dimethenamid/dimethenamid-P are herbicides that have been used in Wisconsin to control weeds in corn and soybeans. There are currently 46 herbicide products registered in Wisconsin that contain the active ingredient acetochlor or dimethenamid/dimethenamid-P. Acetochlor has been reported as detected in groundwater at 25% of DATCP Agricultural Chemical Cleanup Program sites and dimethenamid/dimethenamid-P has been reported as detected at 27% of those sites. In DATCP's 2007 statewide survey of agricultural chemicals in Wisconsin groundwater, no "parent" acetochlor or dimethenamid/dimethenamid-P were reported as detected in 398 private water supply wells sampled. Metabolite degradation products of these herbicides were, however, detected in some of the sampled wells.

Propazine is a herbicide used for weed control on sorghum, umbelliferous crops (carrots, parsley etc.) and greenhouse ornamentals. It is also a contaminant of the herbicide atrazine, which is used in Wisconsin on corn. There are currently no herbicide products registered in Wisconsin that contain the active ingredient propazine. Propazine has been reported as detected in groundwater at 22% of DATCP Agricultural Chemical Cleanup Program sites.

The acetochlor ethane sulfonic acid and oxanilic acid (acetochlor ESA & OXA) degradation products of acetochlor have been found in Wisconsin groundwater. In DATCP's 2007 statewide survey of agricultural chemicals in Wisconsin groundwater, acetochlor ESA & OXA were reported as detected in 16 private water supply wells and 3 private water supply wells respectively, of 398 wells sampled. The highest levels of acetochlor ESA & OXA reported in the DATCP study were 2.32 ppb and 4.36 ppb respectively. The highest levels reported in the DATCP groundwater monitoring database for private water supply wells are 9.52 ppb for acetochlor-ESA and 4.36 ppb for acetochlor-OXA.

In the DATCP's 2007 statewide survey of agricultural chemicals in Wisconsin groundwater, metolachlor ESA & OXA were reported as detected in 106 private water supply wells and 18 private water supply wells respectively, of 398 wells sampled. The highest levels of metolachlor ESA & OXA reported in the DATCP study were 6.54 ppb and 1.37 ppb respectively. The highest levels reported in the DATCP groundwater monitoring database for private water supply wells are 31.2 ppb for metolachlor-ESA and 22.8 ppb for metolachlor-OXA.

As it appears that the occurrence of the pesticides chlorpyrifos, acetochlor, dimethenamid/dimethenamid-P and propazine in Wisconsin groundwater is limited to DATCP Agricultural Chemical Cleanup Program sites, and as the pesticide metabolite degradation products acetochlor ESA & OXA and metolachlor ESA & OXA have been detected statewide at levels relatively low compared to proposed state groundwater quality standards for those substances, and as comparably priced alternative herbicide products appear to be available to state farmers, the Department has determined that any management practice restrictions placed on the pesticides chlorpyrifos, acetochlor, dimethenamid/dimethenamid-P and propazine to limit their impact on Wisconsin groundwater, or on acetochlor or metolachlor to limit the impact of their ESA or OXA metabolite degradation products on groundwater, are unlikely to have a significant economic impact on corn or soybean growers in Wisconsin.

Small business regulatory coordinator

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

Environmental Analysis

The Department has made a preliminary determination that 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**Summary**

Although additional monitoring costs may be imposed upon the state or local government entities that are within the regulated community, the extent of such monitoring and any costs associated with it — while too speculative to quantify at this time — are not expected to be significant. Further, any increased monitoring costs associated with the setting of an ES and PAL for new substances and the lowering of the existing ES and PAL for other substances may be offset by cost savings associated with the relaxing of ESs and PALs for other compounds. Thus, on balance, the Department believes it is unlikely that there will be additional costs to state and local governments resulting from adopting these groundwater standards

State fiscal effect

None.

Local government costs

None.

Agency Contact Person

Mike Lemcke, Chief, Groundwater Management Section, Wisconsin Department of Natural Resources, Bureau of Drinking Water & Groundwater, 101 S. Webster Street, Madison, WI 53707-7921; (608) 266-2104; Michael.Lemcke@wisconsin.gov.

Notice of Hearings**Revenue****EmR0929 and CR 09-087**

NOTICE IS HEREBY GIVEN That pursuant to ss. 71.80 (9m) (c), 77.61 (19) (c), and 227.24, Stats., the Department of Revenue will hold public hearings to consider emergency rules and the creation of permanent rules revising Chapters Tax 2 and 11, relating to penalties for failure to produce records.

Hearing Information

The hearings will be held:

December 10, 2009 at 1:30 p.m.

Events Room
State Revenue Building
2135 Rimrock Road
Madison, Wisconsin

December 21, 2009 at 9:00 a.m.

Events Room
State Revenue Building
2135 Rimrock Road
Madison, Wisconsin

Handicap access is available at the hearing location.

Submission of Written Comments

Interested persons are invited to appear at the hearings and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearings. Written comments may also be submitted to the contact person shown below no later than December 21, 2009. Written comments will be given the same consideration as testimony presented at the hearings.

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

Analysis Prepared by the Department of Revenue**Statutes interpreted**

Sections 71.80 (9m) and 77.61 (19), Stats.

Statutory authority

Sections 71.80 (9m) (c) and 77.61 (19) (c), Stats.

Explanation of agency authority

Sections 71.80 (9m) (c) and 77.61 (19) (c), Stats., provide that the Department shall promulgate rules to administer the penalties for failure to produce records.

Related statute or rule

There are no other applicable statutes or rules.

Plain language analysis

This proposed rule does the following:

- Reflects changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.
- Provides guidance to Department employees and taxpayers so that the penalties can be administered in a fair and consistent manner. This includes providing a standard response time, a standard for noncompliance, and penalty waiver provisions.

Comparison with federal regulations

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

Comparison with rules in adjacent states

The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies

2009 Wisconsin Act 28 adopted statutory changes creating penalties for failure to produce records. Within these provisions are requirements that the Department promulgate rules to administer these penalties. The department has created this rule to reflect these changes in Wisconsin's tax laws and comply with statutory requirements.

Analysis and supporting documents used to determine effect on small business

As explained above, this emergency rule is created to reflect changes in Wisconsin's tax laws and comply with statutory requirements. As the rule itself does not impose any

significant financial or other compliance burden, the department has determined that it does not have a significant effect on small business.

Anticipated costs incurred by private sector

This proposed rule does not have a significant fiscal effect on the private sector.

Small Business Impact

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

Fiscal Estimate

Summary

The fiscal effect of these changes (a minimal increase in state revenues) was included in the fiscal estimates of 2009 Wisconsin Act 28. Consequently, this proposed rule has no fiscal effect.

State fiscal effect

None.

Local government costs

None.

Text of Proposed Rule

SECTION 1. Tax 2.85 is created to read:

Tax 2.85 Penalty for failure to produce records under s. 71.80(9m), Stats. (1) GENERAL. A person who fails to produce records or documents, as provided under ss. 71.74 (2) and 73.03 (9), Stats., that were requested by the department may be subject to the following penalties:

(a) The disallowance of deductions, credits, exemptions or income inclusion to which the requested records relate.

(b) In addition to any other penalties that the department may impose, a penalty for each violation under s. 71.80 (9m), Stats., that is equal to the greater of \$500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

(2) DEFINITIONS. In this section:

(a) "Disallowance," "inclusion," or "adjustment" include action taken by the department when a proposed assessment or refund or notice of assessment or refund is issued to a taxpayer.

(b) "Records" or "documents" include both paper and electronic formats. Examples include, but are not limited to, bills, receipts, invoices, contracts, letters, memos, accounting statements or schedules, general ledgers, journal entries, and board of director's minutes.

(c) "Records requested were not provided" means that all records requested were not provided to the department within the time specified by the department.

(d) "Written request for records" includes requests made by letter, e-mail, fax or any other written form.

(3) PROCEDURES. The penalties in this section may be imposed if the records requested were not provided and the department provided the following notifications regarding the records requested:

(a) A first written request for records where the department allowed the person a minimum of 15 days for the records to be provided.

(b) A second written request for records where the department allowed the person a minimum of 30 days for the

records to be provided. This second written request for records shall include a statement explaining that if the requested records are not provided by the date specified, the penalties provided by s. 71.80(9m), Stats., may be imposed.

Examples: 1) The department issues a first written request for records to John Jones on May 5, 2010, allowing him until May 20, 2010 to provide the records requested. Mr. Jones does not provide the requested records to the department by May 20, 2010. The department issues a second written request for records to him on June 1, 2010, allowing him until July 1, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Mr. Jones does not provide the requested records by July 1, 2010. Therefore, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Mr. Jones not providing the records requested.

2) The department issues a first written request for records to Corporation A on September 1, 2009, allowing Corporation A until October 6, 2009, to provide the records requested. Corporation A does not provide the requested records to the department by October 6, 2009. The department issues a second written request for records to Corporation A on October 21, 2009, allowing Corporation A until November 30, 2009, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Corporation A does not provide the requested records by November 30, 2009. Therefore, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation A not providing the records requested.

3) The department issues a first written request for records to Corporation B on January 5, 2010, allowing Corporation B until January 20, 2010, to provide the records requested. Corporation B does not provide the requested records to the department by January 20, 2010. The department issues a second written request for records to Corporation B on February 8, 2010, allowing Corporation B until March 10, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80(9m), Stats. Corporation B provides records to the department by March 10, 2010, but the department determines that the taxpayer did not provide some of the records requested by March 10, 2010. Therefore, since the taxpayer did not provide all of the records requested by March 10, 2010, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation B not providing the records requested.

(4) WAIVER OF PENALTIES. (a) The penalties in this section may be waived if the person whose records were requested can show that, under all the facts and circumstances, its response to the written request for records or its failure to respond to the written request for records was reasonable or justified by factors beyond the person's control. In determining whether the penalties will be waived, the department may consider the following factors:

1. Death of the taxpayer, tax preparer, accountant or other responsible party.

2. Onset of debilitating illness or injury of the taxpayer, tax preparer, accountant or other responsible party.

3. Natural disaster such as tornado, flood or fire.

4. Records that were destroyed due to events beyond control of the taxpayer or other responsible party and not due to neglect.

5. Any other unusual circumstance that the department believes pertinent.

(b) Providing requested records after the time period required for providing the records has expired, as provided in sub. (3), may result in a reduction of the penalty provided in sub. (1) (a) if the department determines that these records support a reduction in the disallowance or inclusion previously made by the department, but would not result in a reduction of the penalty provided in sub. (1) (b) unless the person can show that under all the facts and circumstances providing the requested records at that time was reasonable or justified by factors beyond the person's control.

Examples: 1) Since Corporation C does not provide the records requested by the date specified in a second written request for records to support interest expense deducted, the department issues a proposed audit report to Corporation C disallowing all the interest expense previously deducted. Additional tax of \$100,000 and penalty of \$25,000 results in the proposed audit report from disallowing this interest expense. Corporation C provides the records requested 26 days after the department issues the proposed audit report but before the notice of assessment is issued and explains that they were too busy with other aspects of their business to respond to the two written requests for records by the dates specified. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided support half of the interest expense deduction previously claimed. Therefore, the interest expense adjustment is modified to reduce the proposed additional tax from \$100,000 to \$50,000, but the original proposed penalty of \$25,000 for failure to provide records remains.

2) Since Mr. Smith does not provide the records requested regarding his cash business to support the reported gross receipts by the date specified in a second written request for records, the department issues a notice of assessment to Mr. Smith including an estimated amount into income for unreported receipts. Additional tax of \$60,000, a negligence penalty of \$15,000 and a penalty for failure to produce records of \$15,000 results in the assessment from including these estimated receipts. Mr. Smith appeals the assessment, provides the records that were requested during the audit, and explains that he forgot to provide the records that were previously requested. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided show that unreported receipts were only 20% of the amount previously included by the department as estimated unreported receipts. Therefore, the unreported receipts adjustment and negligence penalty are modified to reduce the additional tax from \$60,000 to \$12,000 and the negligence penalty from \$15,000 to \$3,000, but the original penalty for failure to produce records of \$15,000 remains.

3) Assume the same facts as example 2, except that Mr. Smith explains that he did not previously provide the requested records because his accountant had possession of them and was in the hospital when the records were requested during the audit. In this situation the failure to provide the records requested is reasonable or justified by factors beyond the person's control. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from \$60,000 to \$12,000, the negligence penalty is reduced from \$15,000 to \$3,000 and the original penalty for failure to produce records of \$15,000 is waived.

SECTION 2. Tax 11.90 is created to read:

Tax 11.90 Penalty for failure to produce records under s. 77.61 (19), Stats. (1) **GENERAL.** A person who fails to produce records or documents, as provided under ss. 73.03(9) and 77.59(2), Stats., that were requested by the department may be subject to the following penalties:

(a) The disallowance of deductions, credits, exemptions or inclusions of additional taxable sales or additional taxable purchases to which the requested records relate.

(b) In addition to any other penalties that the department may impose, a penalty for each violation under s. 77.61(19), Stats., that is equal to the greater of \$500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

(2) **DEFINITIONS.** In this section:

(a) "Disallowance," "inclusion," or "adjustment" include action taken by the department when a proposed assessment or refund or notice of assessment or refund is issued to a taxpayer.

(b) "Records" or "documents" include both paper and electronic formats. Examples include, but are not limited to, bills, receipts, invoices, contracts, letters, memos, accounting statements or schedules, general ledgers, journal entries, and board of director's minutes.

(c) "Records requested were not provided" means that all records requested were not provided to the department within the time specified by the department.

(d) "Written request for records" includes requests made by letter, e-mail, fax or any other written form.

(3) **PROCEDURES.** The penalties in this section may be imposed if the records requested were not provided and the department provided the following notifications regarding the records requested:

(a) A first written request for records where the department allowed the person a minimum of 15 days for the records to be provided.

(b) A second written request for records where the department allowed the person a minimum of 30 days for the records to be provided. This second written request for records shall include a statement explaining that if the requested records are not provided by the date specified, the penalties provided by s. 77.61 (19), Stats., may be imposed.

Examples: 1) The department issues a first written request for records to John Jones on May 5, 2010, allowing him until May 20, 2010, to provide the records requested. Mr. Jones does not provide the requested records to the department by May 20, 2010. The department issues a second written request for records to him on June 1, 2010, allowing him until July 1, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61(19), Stats. Mr. Jones does not provide the requested records by July 1, 2010. Therefore, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Mr. Jones not providing the records requested.

2) The department issues a first written request for records to Corporation A on September 1, 2009, allowing Corporation A until October 6, 2009, to provide the records requested. Corporation A does not provide the requested records to the department by October 6, 2009. The department issues a second written request for records to Corporation A on October 21, 2009, allowing Corporation A until November 30, 2009, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61 (19), Stats. Corporation A does not provide the requested records by November 30, 2009. Therefore, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation A not providing the records requested.

3) The department issues a first written request for records to Corporation B on January 5, 2010, allowing Corporation B until January 20, 2010, to provide the records requested. Corporation B does not provide the requested records to the department by January 20,

2010. The department issues a second written request for records to Corporation B on February 8, 2010, allowing Corporation B until March 10, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 77.61 (19), Stats. Corporation B provides records to the department by March 10, 2010, but the department determines that the taxpayer did not provide some of the records requested by March 10, 2010. Therefore, since the taxpayer did not provide all of the records requested by March 10, 2010, the department may disallow the deductions, credits, or exemptions or include the additional taxable sales or additional taxable purchases to which the requested records relate and impose a penalty equal to the greater of \$500 or 25% of the additional tax on the adjustments made resulting from Corporation B not providing the records requested.

(4) **WAIVER OF PENALTIES.** (a) The penalties in this section may be waived if the person whose records were requested can show that, under all the facts and circumstances, its response to the written request for records or its failure to respond to the written request for records was reasonable or justified by factors beyond the person's control. In determining whether the penalties will be waived, the department may consider the following factors:

1. Death of the taxpayer, tax preparer, accountant or other responsible party.
2. Onset of debilitating illness or injury of the taxpayer, tax preparer, accountant or other responsible party.
3. Natural disaster such as tornado, flood or fire.
4. Records that were destroyed due to events beyond control of the taxpayer or other responsible party and not due to neglect.
5. Any other unusual circumstance that the department believes pertinent.

(b) Providing requested records after the time period required for providing the records has expired, as provided in sub. (3), may result in a reduction of the penalty provided in sub. (1) (a) if the department determines that these records support a reduction in the disallowance or inclusion previously made by the department, but would not result in a reduction of the penalty provided in sub. (1) (b) unless the person can show that under all the facts and circumstances providing the requested records at that time was reasonable or justified by factors beyond the person's control.

Examples: 1) Since Corporation C does not provide the records requested by the date specified in a second written request for records to support deductions for exempt sales, the department issues a proposed audit report to Corporation C disallowing all the deductions for exempt sales previously claimed. Additional tax of \$100,000 and

penalty of \$25,000 results in the proposed audit report from disallowing the deductions for exempt sales. Corporation C provides the records requested 26 days after the department issues the proposed audit report but before the notice of assessment is issued and explains that they were too busy with other aspects of their business to respond to the two written requests for records by the dates specified. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided support half of the deductions for exempt sales previously claimed. Therefore, the deductions for exempt sales adjustment is modified to reduce the proposed additional tax from \$100,000 to \$50,000, but the original proposed penalty of \$25,000 for failure to provide records remains.

2) Since Mr. Smith does not provide the records requested regarding his cash business to support the reported gross receipts by the date specified in a second written request for records, the department issues a notice of assessment to Mr. Smith including an estimated amount into taxable sales for unreported receipts. Additional tax of \$60,000, a negligence penalty of \$15,000 and a penalty for failure to produce records of \$15,000 results in the assessment from including these estimated receipts. Mr. Smith appeals the assessment, provides the records that were requested during the audit, and explains that he forgot to provide the records that were previously requested. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. However, the records provided show that unreported receipts were only 20% of the amount previously included by the department as estimated unreported receipts. Therefore, the unreported receipts adjustment and negligence penalty are modified to reduce the additional tax from \$60,000 to \$12,000 and the negligence penalty from \$15,000 to \$3,000, but the original penalty for failure to produce records of \$15,000 remains.

3) Assume the same facts as example 2, except that Mr. Smith explains that he did not previously provide the requested records because his accountant had possession of them and was in the hospital when the records were requested during the audit. In this situation the failure to provide the records requested is reasonable or justified by factors beyond the person's control. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from \$60,000 to \$12,000, the negligence penalty is reduced from \$15,000 to \$3,000 and the original penalty for failure to produce records of \$15,000 is waived.

Agency Contact Person

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Submittal of Proposed Rules to the Legislature

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

Commerce

Fee Schedule, Ch. Comm 2

Licenses, Certifications and Registrations, Ch. Comm 5

CR 09-046

A rule-making order to revise Chapters Comm 2 and 5, relating to fees.

Transportation

CR 09-070

A rule-making order to repeal Chapters Trans 267 and 268, relating to emergency agricultural transportation permits, and emergency energy conservation permits.

Rule Orders Filed with the Legislative Reference Bureau

The following administrative rule orders have been filed with the Legislative Reference Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266-7590 for updated information on the effective dates for the listed rule orders.

Agriculture, Trade and Consumer Protection

CR 09-037

Rule revising Chapter ATCP 91, relating to method of sale of commodities, including method of sale by weight, measure or count.
Effective 1-1-10.

Children and Families

Family and Economic Security, Chs. DCF 101-153

CR 09-059

Rule revising Chapter DCF 120, relating to emergency assistance for needy families.
Effective 1-1-10.

Commerce

Fee Schedule, Ch. Comm 2 Plumbing, Chs. Comm 81-87

CR 09-050

Rule revising Chapters Comm 2 and 82, relating to permits to operate, registration and filing fees.
Effective 1-1-10.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in the November 30, 2009, 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.

Children and Families

Family and Economic Security, Chs. DCF 101-153

CR 09-036

Revises Chapter DCF 150, relating to medical support and child support guidelines review. Effective 1-1-10.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

CR 09-021

Revises sections Comm 5.12 and 5.33, relating to the administrative forfeitures for POWTS governmental unit employees. Effective 12-1-09.

Summary of Final Regulatory Flexibility Analysis

The rules implement the mandates imposed by 2007 Wisconsin Act 197. The Act affects governmental unit employees who administer and enforce regulations pertaining to design, installation and maintenance of POWTS by limiting the activities that such employees may undertake outside of their governmental employment. The department does not believe that the rules will increase the effect on small businesses over that imposed by the Act.

Summary of Comments by Legislative Review Committees

No comments were received.

Health Services

Management and Technology and Strategic Finance, Chs. DHS 1-

CR 09-003

Revises Chapter DHS 10, relating to fair hearings and continuation of benefits pending the outcome of a grievance, department review, or fair hearing under the family care program. Effective 12-1-09.

Summary of Final Regulatory Flexibility Analysis

The rule change will not affect "small business" as defined under s. 227.114 (1) (a), Stats.

Summary of Comments by Legislative Review Committees

The Assembly Committee on Children and Families and the Senate Committee on Health, Health Insurance, Privacy,

Property Tax Relief, and Revenue on July 27, 2009, requested to meet with the Department to discuss the rule. In the interim, the Department submitted germane modifications to both the Assembly and Senate Committees. No further comments were received from either Committee.

Natural Resources

Fish, Game, etc., Chs. NR 1-

CR 09-031

Revises Chapter NR 46 to update stumpage values used to collect yield taxes for lands entered under the Forest Crop Law (FCL) and Managed Forest Law (MFL) programs. Additional changes will streamline the MFL program and clarify how the department will administer the entry of lands that span municipal lines, create a draft deadline date for plans submitted for the current July 1 deadline and change the deadline for when completed and approved management plans are returned back to the department. Effective 12-1-09.

Summary of Final Regulatory Flexibility Analysis

The rule will affect landowners who are required to pay severance and yield taxes when timber is harvested from lands enrolled in Forest Crop Law and Managed Forest Law. It also requires that lands are entered under MFL by municipality except when lands in any one municipality is less than 10 acres in size or less than 80% productive. In these cases the lands will be entered under a single MFL order. Certified plan writers are given a deadline of June 1 to submit management plans for review by the DNR and a deadline of August 15 to submit a final management plan with landowner signatures. DNR Foresters are given under August 15 to submit final management plans with landowner signatures.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Transportation, Tourism, Forestry, and Natural Resources and the Assembly Committee on Forestry. On July 16, 2009, the Senate Committee on Transportation, Tourism, Forestry, and Natural Resources held a public hearing. The Department did not receive a comment or request for modification to Clearinghouse Rule No. 09-031 as a result of this hearing.

Natural Resources

Environmental Protection — Solid Waste Management, Chs. NR 500-

CR 08-111

Creates Chapter NR 528, relating to the management of accumulated sediment from storm water management structures. Effective 12-1-09.

Summary of Final Regulatory Flexibility Analysis

The rule will not have a significant economic impact on a substantial number of small businesses. Under existing rules,

a sediment manager, when cleaning out a storm water management structure, must either pay the price of taking the sediment to a licensed landfill or pay for the Department to review an exemption request. Under the rule, the sediment manager still has the option to take the sediment to a landfill or choose a different end use, often at a reduced cost. If the basin from which the sediment is derived meets certain criteria, the sediment does not need to be sampled prior to determining the appropriate end use, allowing for significant savings. If the basin does not pass the criteria, the sediment must be sampled and analyzed prior to selecting an end use. The cost in this case, would be similar or less than that under the existing rule. The list of sampling parameters is usually less under the new rule and a fee to have an exemption reviewed is not charged.

Under the existing rule, if the sediment is not disposed of in a landfill, the sediment manager must provide a written exemption request which evaluates the sampling results and discusses the proposed end use for the sediment. No set format is established so each exemption request is written up differently and evaluated by the Department on a case-by-case basis. The new rule has the advantage of providing exactly what information must be collected, so it saves time and money when the sediment manager is preparing requests for proposals to send to prospective bidders. The record retention cost under the two rules would be similar. Under the rule, the sediment manager must fill out a certification form and keep the sampling results on hand. However, the rule allows the Department to develop an on-line system in the future to receive and store records. If an on-line system is not available or the sediment manager chooses not to use it, the sediment manager must retain the

completed certification forms and the sediment sampling results and site management records for 20 years (the expected amount of time between maintenance events.) If the sediment manager chooses or is required to use the on-line system, the retention requirements are waived.

Summary of Comments by Legislative Review Committees

The rule was reviewed by the Senate Committee on Environment and the Assembly Committee on Natural Resources. On September 2, 2009 the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments or requests for modification as a result of the hearing.

Transportation CR 09-049

Revises sections Trans 510.08 and 512.06, relating to the transportation facilities economic assistance and development program, and the transportation infrastructure loan program. Effective 12-1-09.

Summary of Final Regulatory Flexibility Analysis

Since TEA grants provide transportation infrastructure necessary for newly-created or expanded businesses in the state, the analysis revealed that the kind of businesses in the program will have little or no difficulty in complying with the jobs reporting requirement.

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **November 2009**, 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

Children and Families

Ch. DCF 150

DCF 150.01 (1)
 DCF 150.02 (25), (25m), (26)
 DCF 150.04 (1), (2) (b), (3) (a), (b), (6)
 DCF 150.05 (1) (a) to (f), (2) (b)
 DCF 150 Appendix C, D

DHS 10.56 (2), (2m)

Natural Resources

Ch. NR 46

NR 46.16 (5)
 NR 46.18 (5) (a)
 NR 46.30 (2)

Ch. NR 528 (Entire Chapter)

Commerce

Ch. Comm 5

Comm 5.12 (1), (2m)
 Comm 5.33 (6)
 Comm 5 Appendix

Transportation

Ch. Trans 510

Trans 510.08 (1), (2) (b), (3)

Ch. Trans 512

Trans 512.06

Health Services

DHS 10

DHS 10.55 (1), (1m)

Editorial Corrections

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

Children and Families

Ch. DCF 150

DCF 150.04 (6) (b)

DHS 10.23 (6) (b)

DHS 10.36 (1) (b)

DHS 10.42 (2) (a), (3) (a) to (d), (4), (6) (b), (8)

DHS 10.62 (1) (b)

Health Services

Ch. DHS 10

DHS 10.13 (33), (40m)
 DHS 10.21 (3) (b), (5)

Transportation

Ch. Trans 512

Trans 512.02 (2)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 293. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Specialist Kevin Graham of the United States Army Who Lost His Life While Serving His Country in Operation Enduring Freedom.

Executive Order 294. 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 Nickolas Mueller of the United States Army Who Lost His Life While Serving His Country in Operation Enduring Freedom.

Executive Order 295. 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 the Victims of the Shootings at Fort Hood Army Base, Texas.

Executive Order 296. An Amendment to Executive Order No. 295, 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 the Victims of the Shootings at Fort Hood Army Base, Texas.

Executive Order 297. 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 Lieutenant Bret Miller of the United States Navy Who Lost His Life While Flying a Training Mission.

Executive Order 298. 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 Staff Sergeant Amy Krueger of the United States Army Who Lost Her Life at Fort Hood Army Base, Texas.

Executive Order 299. 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 Captain Russell Seager of the United States Army Reserve Who Lost His Life at Fort Hood, Texas.

Public Notices

Department of Health Services

Medical Assistance Reimbursement of Registered Nurses

The State of Wisconsin reimburses registered nurses for medically necessary services provided to low-income persons through the State's Medical Assistance and BadgerCare Plus programs. The State's Medical Assistance and BadgerCare Plus programs are administered by the Wisconsin Department of Health Services (the Department) and operate under the authority of Title XIX and Title XXI of the Federal Social Security Act and chapters 49.43 to 49.47 of Wisconsin Statutes. Together the Medical Assistance and BadgerCare Plus programs are referred to as ForwardHealth.

The Department is making a change in reimbursement for registered nurses in independent practice. Effective for dates of service on and after December 1, 2009, Forward Health will discontinue separate reimbursement to registered nurses in independent practice for care coordination of private duty nursing services to members dependent on a ventilator for life support. This change makes the reimbursement to registered nurses in independent practice consistent with the reimbursement to home health agencies for the same services.

ForwardHealth will not reimburse Current Procedural Technology procedure code 99504 [Home visit for mechanical ventilator care (per hour)] with the "U1" modifier (RN case coordinator) for dates of service on or after December 1, 2009, regardless of prior authorization (PA).

The requirement for care coordination when more than one nurse is necessary to staff the member's case remains unchanged.

Private duty nursing services are covered under the Wisconsin Medical Assistance and BadgerCare Plus Standard Plan. Private duty nursing services are not covered under the BadgerCare Plus Benchmark Plan or the BadgerCare Plus Core Plan for Adults with no Dependent Children.

This notice applies to services members receive on a fee-for-service basis only. Managed care policy is established by individual managed care organizations. Managed care organizations are required to provide at least the same benefits as those provided under fee-for-services arrangements.

The reimbursement change described in this public notice is projected to result in a savings of \$300,000 all funds, composed of \$120,000 general purpose revenue (GPR) and \$180,000 federal match (FED) in the current (2010) state fiscal year (July 1, 2009 though June 30, 2010) as well as state fiscal year 2011 (July 1, 2010 though June 30, 2011).

Written Comments

For more information or to submit written comments on the proposed change, interested persons may fax or write to:

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309
Fax: (608) 266-1096

Copies of the proposed change and comments received on the change will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Access and Accountability
Room 350, State Office Building
One West Wilson Street
Madison, WI

Copies of the conforming state plan change will also be made available for review at the main office of any county department of social services or human services.

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840



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