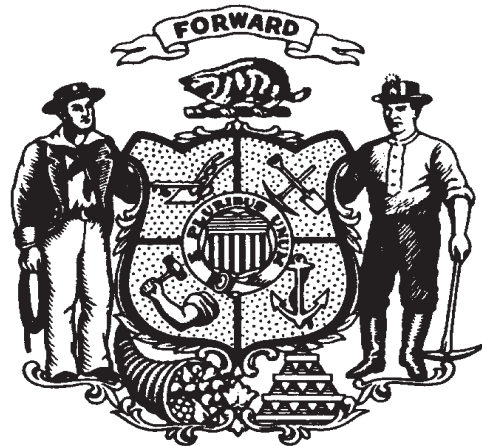


Wisconsin Administrative Register

No. 623



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Revisor of Statutes Bureau
<http://www.legis.state.wi.us/rsb/code.htm>

New Material

Architects, Professional Engineers, Designers and Land Surveyors:	Pages 21 to 22
Commerce:	<u>Petroleum Environmental Cleanup Fund, Ch. Comm 47</u> Pages 1 to 26
Health and Family Services:	<u>Health, Chs. HFS 110—</u> Pages 185 to 191
Regulation and Licensing:	Entire Code
Transportation:	Pages 143 to 144-1; 239 to 240-1

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Instructions for Inserting New Material in the Wisconsin Administrative Code

Volume	Code	Pages removed	Pages inserted	Removed chapters	Inserted chapters	
2	A-E	Architects, Prof. Engineers, Designers, Land Surveyors	21 to 22	21 to 22	A-E 7	A-E 7
3	Comm 47	Commerce—Petroleum Environmental Cleanup Fund, Ch. Comm 47	1 to 26	1 to 26	Comm 47	Comm 47
8	HFS	Health and Family Services—Health, Chs. HFS 110—	185 to 190	185 to 191	HFS 133	HFS 133
16	RL	Regulation and Licensing	Entire Code	Entire Code	RL 1 RL 1 Appx I RL 1 Appx II RL 2 RL 2 Appx RL 3 RL 3 Appx I RL 4 RL 5 RL 6 RL 7 RL 7 Appx I RL 8 RL 8 Appx I RL 9 RL 10 RL 11 RL 12 RL 15 RL 16 RL 17 RL 18 RL 22 RL 23 RL 24 RL 25 RL 26 RL 30 RL 31 RL 32 RL 33 RL 34 RL 35	RL 1 RL 1 Appx I RL 1 Appx II RL 2 RL 2 Appx RL 3 RL 3 Appx I RL 4 RL 5 RL 6 RL 7 RL 7 Appx I RL 8 RL 8 Appx I RL 9 RL 10 RL 11 RL 12 RL 15 RL 16 RL 17 RL 18 RL 22 RL 23 RL 24 RL 25 RL 26 RL 30 RL 31 RL 32 RL 33 RL 34 RL 35

Volume		Code	Pages removed	Pages inserted	Removed chapters	Inserted chapters
		Regulation and Licensing (Cont'd)			RL 50 RL 51 RL 52 RL 53 RL 54 RL 60 RL 61 RL 62 RL 65 RL 70 RL 71 RL 72 RL 73 RL 80 RL 81 RL 82 RL 83 RL 84 RL 85 RL 86 RL 87 RL 87 Appx I RL 90 RL 91 RL 92 RL 93 RL 94 RL 100 RL 101 RL 102 RL 103 RL 104 RL 105 RL 110 RL 111 RL 112 RL 113 RL 114 RL 115 RL 116 RL 120 RL 121 RL 122 RL 123 RL 124 RL 125 RL 126 RL 127 RL 128	RL 50 RL 51 RL 52 RL 53 RL 54 RL 60 RL 61 RL 62 RL 65 RL 70 RL 71 RL 72 RL 73 RL 80 RL 81 RL 82 RL 83 RL 84 RL 85 RL 86 RL 87 RL 87 Appx I RL 90 RL 91 RL 92 RL 93 RL 94 RL 100 RL 101 RL 102 RL 103 RL 104 RL 105 RL 110 RL 111 RL 112 RL 113 RL 114 RL 115 RL 116 RL 120 RL 121 RL 122 RL 123 RL 124 RL 125 RL 126 RL 127 RL 128

Volume		Code	Pages removed	Pages inserted	Removed chapters	Inserted chapters
		Regulation and Licensing (Cont'd)			RL 130 RL 131 RL 132 RL 133 RL 134 RL 135 RL 140 RL 141 RL 142 RL 150 RL 151 RL 152 RL 153 RL 154 _____ _____ _____ _____ RL 164 RL 165 _____ _____ _____ RL 174 RL 175 RL 176 RL 177 RL 180 RL 181 RL 182 RL 183 RL 183 Appx I	RL 130 RL 131 RL 132 RL 133 RL 134 RL 135 RL 140 RL 141 RL 142 RL 150 RL 151 RL 152 RL 153 RL 154 RL 160 RL 161 RL 162 RL 163 RL 164 RL 165 RL 166 RL 167 RL 168 RL 174 RL 175 RL 176 RL 177 RL 180 RL 181 RL 182 RL 183 RL 183 Appx I
17	Trans	Transportation	143 to 144 239 to 240	143 to 144-1 239 to 240-1	Trans 130 Trans 195	Trans 130 Trans 195

Table of Contents

Emergency Rules Now in Effect.**Pages 4 to 9**

Agriculture, Trade and Consumer Protection:

Rules relating to diseases of fish and farm-raised deer.

Commerce:

Licenses, Certifications, etc., Ch. Comm 5

Rules relating to licensing of elevator contractors and installers.

Amusement Rides, Ch. Comm 34

Rules relating to amusement ride safety.

Rules affecting **ch. Comm 34**, relating to amusement rides and affecting small businesses. **[First Appearance]**Financial Resources for Businesses and Communities, Chs. Comm 104-131

Rules relating to tax credits and exemptions for internet equipment used in the broadband market.

Dentistry Examining Board:

Rules amending the effective date of an emergency rule that took effect on December 29, 2006, relating to anesthesia administration; and delaying the effective date of the permanent rule.

Elections Board:

Rules relating to pricing of voter information available from the Statewide Voter Registration System.

Health and Family Services:

Medical Assistance, Chs. HFS 100—

Rules relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Natural Resources:

Fish and Game, etc., Chs. NR 1—

Rules relating to the hook and line harvest of lake sturgeon.

Rules relating to the 2007 migratory game bird seasons and waterfowl hunting zones.

Rules relating to control of fish diseases and invasive species.

Environmental Protection-Water Regulation, Chs. NR 300—

Rules relating to general permits for dredging Great Lakes navigable waterways.

Rules relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

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

Rules relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

Revenue:

Rules relating to the computation of the apportionment fraction by multistate professional sports clubs.

Rules relating to liquor wholesaler warehouse facilities.

Scope Statements.**Pages 10 to 12**

Architects, Professional Engineers, Designers and Land Surveyors:

Rules affecting ch. A–E 2, relating to the use of certificates when submitting plans, specifications and calculations for public documents.

Rules affecting ch. A–E 8, creating discipline for licensees who do not respond to information requests.

Commerce:

Rules affecting ch. Comm 4, relating to grants for construction career academies.

Rules affecting chs. Comm 2 and 5, relating to fees.

Insurance:

Rules affecting ch. Ins 17, relating to fund fees and mediation panel fees for fiscal year 2009 and affecting small business.

Natural Resources:

Rules affecting chs. NR 660 to 679, relating to hazardous waste, universal waste, and used oil rules.

Submittal of Rules to Legislative Council Clearinghouse.**Pages 13 to 14**

Administration:

Rules creating ch. Adm 49, relating to the administration of the plat review program.

Health and Family Services:

Rules affecting chs. HFS 45, 46, and 55, relating to child care centers.

Natural Resources:

Rules affecting chs. NR 405, 407, 409, and 484, relating to major source definition and affecting small business.

Rules affecting chs. NR 460 and 469, relating to national emission standards for hazardous air pollutants for halogenated solvent cleaners and other general provisions.

Podiatrists Affiliated Credentialing Board:

Rules affecting ch. Pod 3, relating to continuing medical educational programs.

Rule–Making Notices.**Pages 15 to 20**

Administration:

Hearing to consider rules affecting ch. Adm 49, relating to the administration of the plat review program.

Commerce:

Hearing to consider emergency rules affecting ch. Comm 34, relating to liability insurance for amusement rides.

Natural Resources:	Hearing to consider emergency rules affecting chs. NR 19 and 20, relating to the control of fish diseases and invasive species.
	Hearings to consider rules affecting chs. NR 405, 407, 408, and 484, relating to major source definition and affecting small business.
	Hearing to consider rules affecting chs. NR 460 and 469, relating to national emission standards for hazardous air pollutants for halogenated solvent cleaners and other general provisions.
Revenue:	Hearing to consider rules affecting ch. Tax 2, relating to the computation of the apportionment fraction by multistate professional sports clubs.
Submittal of Proposed Rules to the Legislature.	Page 21
Commerce:	CR 07-069 — Chs. Comm 5 and 83, relating to administrative forfeitures and tracer wire for nonmetallic pipe.
	CR 07-086 — Ch. Comm 34, relating to amusement rides.
Natural Resources:	CR 07-040 — Chs. NR 405, 407 and 409, relating to construction permits, stack test requirements and affecting small business.
	CR 07-045 — Chs. NR 460 and 469, relating to national emission standards for hazardous air pollutants for paper and other web surface coating processes.
	CR 07-056 — Ch. NR 8, relating to implementation of the wildlife violator compact.
Public Instruction:	CR 07-057 — Ch. PI 8, relating to gifted and talented pupil identification.
Veterans Affairs:	CR 07-083 — Ch. VA 2, relating to the tuition reimbursement program.
Rule Orders Filed with the Revisor of Statutes Bureau.	Page 22
Commerce:	CR 06-120 — Chs. Comm 14 and 60 to 66, relating to fire prevention and the commercial building code.
Health and Family Services:	CR 07-041 — Ch. HFS 107, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.
Insurance:	CR 07-070 — Ch. Ins 2, relating to use of the 2001 CSO Preferred Class Structure Mortality Table in determining reserve liabilities.
Workforce Development:	CR 07-018 — Ch. DWD 301, relating to migrant labor.

**Rules Published with this Register and Final
Regulatory Flexibility Analyses.** **Page 23**

Sections Affected by Rule Revisions and Corrections. **Pages 24 to 25**

Executive Orders. **Page 26**

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.

Agriculture, Trade and Consumer Protection

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

Finding of Emergency

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

Disease Testing of Fish

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

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

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

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

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

Disease-Free Herd Certification of Farm-Raised Deer Herds

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

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

Publication Date: October 31, 2007

Effective Date: October 31, 2007

Expiration Date: March 29, 2008

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

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

Exemption From Finding of Emergency

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

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the

elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

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

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

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

Finding of Emergency

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

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

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

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

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

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

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

Finding of Emergency

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

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

2. The department is in the processing of promulgating rule revisions under its Amusement Ride Code, chapter Comm 34 to address two issues that have come to light as a result of the accident investigation. The completion of this rule-making process and their enactment cannot occur prior to the beginning of the 2008 amusement ride season. The issuance

of the emergency rules at this time is also necessary to allow amusement ride owners and operators sufficient time to acquire the necessary issuance.

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

Publication Date: November 12, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: December 12, 2007
[See Notice this Register]

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

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

Exemption From Finding of Emergency

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

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

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

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

Dentistry Examining Board

Rule adopted amending the effective date of CR 04–095, by amending the emergency rule that took effect on December 29, 2006, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to

provide for reporting of adverse occurrences related to anesthesia administration.

Finding of Emergency

The board has made a finding of emergency. The board finds that failure to delay the effective date of CR04-095, from July 1, 2007 to November 1, 2007 will create a danger to the public health, safety and welfare. The extra four months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients. The rules created a course requirement for receiving a conscious sedation permit that did not exist. Courses have and are being developed to meet this requirement. By November 1, 2007, the course will have been available to enough dentists to ensure the continuation of the use of conscious sedation.

Publication Date: June 24, 2007
Effective Date: July 1, 2007
Expiration Date: November 28, 2007
Hearing Date: July 11, 2007

Elections Board

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

Exemption From Finding of Emergency

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under subsection (4).

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

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

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

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

Rules adopted revising **ch. HFS 107**, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting the emergency are as follows:

A recent revision to s. HFS 107.07 (2), the prior authorization subsection of the dental services section of the Medicaid Administrative Code, caused a result which was not intended by the Department. To correct this error, the Department is promulgating rules to clarify that the Department’s intent is to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient.

In the previous rulemaking (Clearinghouse Rule 05-033) the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. The Department specifically stated, in Clearinghouse Rule 05-033, that “Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization.”

The language that was adopted, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. The Department believes that the interpretation of the administrative law judge could open up the Department to being required to pay for procedures that are purely cosmetic. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department is promulgating rules to revise section s. HFS 107.07 to clarify the intent of the rule.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

Publication Date: April 30, 2007
Effective Date: April 30, 2007
Expiration Date: September 27, 2007
Hearing Date: June 12, 2007
Extension Through: November 25, 2007

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

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

Finding of Emergency

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

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

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

Finding of Emergency

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

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

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

Finding of Emergency

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

The World Health Organization for Animal Health (OIE) lists Viral Hemorrhagic Septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts

(part of the Lake Winnebago system) were infected with the VHS virus. On May 23, May 24, and June 1, respectively, the Department learned that brown trout from Lake Michigan, smallmouth bass from Sturgeon Bay, and lake whitefish from Lake Michigan had tested positive for the virus.

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

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

Publication Date: November 2, 2007
Effective Date: November 2, 2007
Expiration Date: March 31, 2008
Hearing Date: December 3, 2007
[See Notice this Register]

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

1. Rules adopted revising ch. NR 345, relating to general permits for dredging in Great Lakes navigable waterways.

Finding of Emergency

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

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits. Without emergency rules to create general permits, all dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To

carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2007 summer season, with specific standards for operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits.

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

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

Finding of Emergency

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

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

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

Publication Date: July 12, 2007
Effective Date: July 12, 2007
Expiration Date: December 9, 2007
Hearing Date: August 13, 2007

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

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

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court-ordered vacatur of the federal regulations. Normal rule-making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

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

Revenue (2)

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

Finding of Emergency

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

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

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

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

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

Finding of Emergency

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

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

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

It is necessary to promulgate this rule order to remove the threat of revenue loss to bona fide liquor wholesalers as a result of having applications for issuance or renewal of

permits denied solely because they do not meet the square footage requirement in the existing rule.

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

Publication Date: October 29, 2007

Effective Date: October 29, 2007

Expiration Date: March 27, 2008

Scope Statements

Architects, Professional Engineers, Designers, and Land Surveyors

Subject

The rules affect ch. A–E 2, relating to the use of certificates when submitting plans, specifications and calculations for public documents.

Objective of the Rule

Section A–E 2.02 (8) (b) provides that if the registered architect or professional engineer who is submitting the plans, specifications and calculations is not the registered architect or professional engineer who originally prepared those documents, then the certificate shall specify why they are not submitting the documents for approval. The board would like to provide further clarification as to the circumstances in which an individual other than the registered architect or professional engineer who prepared the plans, specifications and calculations for public documents can submit those documents for approval.

Policy Analysis

Existing rules, s. A–E 2.02 (8) (b), provide that if the registered architect or professional engineer who is submitting the plans, specifications and calculations is not the registered architect or professional engineer who originally prepared those documents then the certificate shall specify why they are not submitting the documents for approval.

Statutory Authority

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

Entities Affected by the Rule

Architect and Professional Engineer licensees.

Comparison with Federal Regulations

This is not an area which is regulated by federal law or is subject to any proposed federal legislation. The standards for state licensure are regulated by each state.

Estimate of Time Needed to Develop the Rule

150 hours.

Architects, Professional Engineers, Designers, and Land Surveyors

Subject

The rules affect ch. A–E 8, creating discipline for licensees who do not respond to information requests from the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, the Sections of the Examining Board, or the Department of Regulation and Licensing.

Objective of the Rule

The objective is to allow the Sections of the Examining Board the authority to impose discipline for failure of a licensee to respond to the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, the Sections of the Examining Board, or the

Department of Regulation and Licensing so as to encourage the submission of requested information.

Policy Analysis

Existing rules relating to the professional conduct of architect, landscape architect, professional engineer, designer and land surveyor licensees can be found in Chapter A–E 8. The ability to impose discipline for failure to cooperate does not currently exist.

Statutory Authority

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

Entities Affected by the Rule

Architect, Landscape Architect, Professional Engineer, Designer and Land Surveyor licensees.

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.

Estimate of Time Needed to Develop the Rule

100 hours

Commerce

Subject

The rules affect ch. Comm 4, relating to grants for construction career academies.

Objective of the Rule

The objective is to create rules by which the Department would administer the award of grants for the operation of construction career academies as mandated by 2007 Wisconsin Act 20.

Policy Analysis

The administration of a grant program for construction career academies is a new initiative, mandated by the law, to be administered by the Safety and Buildings Division.

The alternative of not developing the rule would be contrary to statutory direction.

Statutory Authority

Section 101.31 (6), Stats., as created by 2007 Wisconsin Act 20.

Entities Affected by the Rule

The rule will affect any entity, private or public that funds or proposes to fund a construction career academy.

Comparison with Federal Regulations

An internet search on federal grants for construction career academies in the U.S. federal regulations and U.S. federal register yielded no results.

Estimate of Time Needed to Develop the Rule

The department estimates approximately 100 hours will be needed to develop the rules. This time includes drafting the rules and processing the rules through public hearing, legislative review, and adoption. The department will assign existing staff to develop the rules, and no other resources will be needed.

Commerce

Subject

The rules affect chs. Comm 2 and 5, relating to fees.

Objective of the Rule

The objective of the rule is to update the provisions of the Department's administrative rules relating to the fees charged by the Safety and Buildings Division. The update is intended to provide a sufficient revenue stream to cover the operational costs of the division for four years.

Policy Analysis

Section 101.19, Stats., requires the Department to fix and collect fees by rule which shall, as closely as possible, equal the cost of providing services such as plan examination, inspections, and permits to operate. The fees for these services provided by the Safety and Buildings Division are contained in chapter Comm 2. The fees involved in the issuance of licenses, certifications and registrations are contained in chapter Comm 5. The current fees were last revised in 2000. The alternative of not updating the fees would result in revenues that would not be sufficient to support continuation of existing division operations.

Statutory Authority

Sections 101.19, 145.02 (3) (g), and 145.26 (3), Stats.

Entities Affected by the Rule

The rule will potentially affect a wide variety of individuals and entities that utilize the Safety and Building Division's services. The Division is involved in the oversight of commercial buildings, new one- and 2- family dwellings, blasting, amusement rides, fireworks manufacturers, boilers, electric wiring, plumbing, public swimming pools, private onsite wastewater treatment systems, passenger ropeways, elevators, escalators, mines, pits and quarries. The people affected by the rule would include building owners, designers and contractors and owners of the various mechanical devices. Under chapter Comm 5 the division issues licenses, certifications and registrations to approximately 65 different types of trade practices typically related to building construction. For example, the Division issues credentials to blasters, electricians and inspectors. The rules would not affect credential fees established by the statutes, such as license fees for plumbers and automatic fire sprinkler system installers.

Comparison with Federal Regulations

An Internet-based search in the *Code of Federal Regulations and the Federal Register* did not identify any existing or proposed federal regulations that address these topics.

Estimate of Time Needed to Develop the Rule

The department estimates approximately 300 hours will be needed to perform the review and develop any needed rule changes. This time includes drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

Insurance

Subject

The rules affect ch. Ins 17, relating to fund fees and mediation panel fees for fiscal year 2009 and affecting small business.

Objective of the Rule

To establish the annual fees which participating health care providers must pay to the Injured Patients and Families Compensation Fund as required by s. 655.247 (3) Wis. Stats., for the fiscal year beginning July 1, 2008. The proposed rule will also establish the mediation panel fees for fiscal year 2009 commencing July 1, 2008.

Policy Analysis

Existing policies are set forth in the statutes cited in the next section and in the rules themselves.

Statutory Authority

Sections 601.41 (3), 655.27 (3) (bg) and 655.61, Stats.

Entities Affected by the Rule

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

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 actuarial committee based on the analysis and recommendations of the fund's actuaries and the director of state courts.

Natural Resources

Subject

The rules affect chs. NR 660 to 679, relating to hazardous waste, universal waste, and used oil rules.

Objective of the Rule

The purpose of the revisions to the NR 600 series rules is to update and make corrections to current rules that regulate the generation, transportation, recycling, treatment, storage and disposal of hazardous waste, universal waste and used oil. The proposed rules will include provisions based on federal hazardous waste regulations that were put into effect since 2002. The Department is required to adopt rules that are at least equivalent to US Environmental Protection Agency's RCRA regulations in order to maintain authorization to administer the federal hazardous waste program in Wisconsin.

Policy Analysis

The proposed rule revisions continue our existing policy of protecting public health and welfare from mismanagement of hazardous waste and used oil constituents. The proposed revisions will update our current rules to add federal requirements already in effect and make corrections to the state's hazardous waste management rules, to allow the state to retain authorization from EPA

Statutory Authority

Sections 227.11 (2) (a), 227.14 (1m), 287.03 (1) (a), 289.05, 289.06, 289.21, 289.24, 289.30, 289.31, 289.33, 289.41, 289.43, 289.61, 289.63, 291.05, 291.07, 291.25, 299.05 and 299.53, Stats.

Comparison with Federal Regulations

The rule revisions incorporate new regulations adopted by EPA since 2002, and correct errors in the current rules. The new rules will include minor revisions to the Land Disposal Restrictions; technical revisions to the Hazardous Air Pollutant rules for combustors; an amendment to the used oil recycling rule; add a new waste to the hazardous waste

listings; add a new material to the universal waste rule; revise a laboratory analytical test method; and add a conditional exclusion for cathode ray tubes that are recycled. To the extent possible, the Department intends to adopt the content and format of the federal regulations, to be equivalent.

Estimate of Time Needed to Develop the Rule

Approximately one year will be needed to draft the rule package.

Contact Information

Patricia Chabot, Bureau of Waste and Materials Management, P.O. Box 7921, Madison, WI 53707; (608) 264-6015; patricia.chabot@Wisconsin.gov

Submittal of Rules to Legislative Council Clearinghouse

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

Administration

On November 15, 2007, the Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The Department shall review preliminary, final or assessor's plats under s. 70.27 or ch. 236, Stats., upon payment of the fees specified in this chapter. The Department intends to create a rule as required by s. 236.12 (7), Stats., to establish uniform procedures and fees for the plat review program administered by the Department of Administration. The proposed rule is similar to the existing Chapter Tax 53 which was created when the Plat Review Program was administered by the Department of Revenue. The Plat Review Program was transferred from the Department of Revenue to the Department of Administration in 1997.

Agency Procedure for Promulgation

A public hearing has been scheduled for December 13, 2007. The organizational unit responsible for the promulgation of the proposed rule is the Department of Administration Division of Intergovernmental Relations.

Contact Person

If you have any questions regarding the proposed rule, please contact:

Donna Sorenson
Department of Administration
Telephone: (608) 266-2887
E-Mail: Donna.Sorenson@Wisconsin.gov

Health and Family Services

On October 31, 2007, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect chs. HFS 45, 46, and 55, relating to child care centers.

Agency Procedure for Promulgation

A public hearing is required but has not yet been scheduled.

Contact Person

For substantive questions on rules, contact:
Anne Carmody, Child Care Program Specialist
Division of Children and Family Services
1 West Wilson Street, Rm. 534
P.O. Box 8916
Madison, WI 53708-8916
Phone: 608-267-9761 Fax: 608-267-7252
carmoaw@dhfs.state.wi.us

For small business considerations contact:

Rosie Greer
608-266-1279
greerrj@dhfs.state.wi.us

For rules processing information contact:

Rosie Greer
608-266-1279
greerrj@dhfs.state.wi.us

Natural Resources

On November 13, 2007, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect chs. NR 405, 407, 409 and 484, relating to major source definition and affecting small business.

Agency Procedure for Promulgation

Public hearings are scheduled for December 18 and 19, 2007.

Contact Person

Paul Yeung
Bureau of Air Management
(608) 266-0672

Natural Resources

On November 13, 2007, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rules affect chs. NR 460 and 469, relating to national emission standards for hazardous air pollutants (NESHAP) for halogenated solvent cleaners and the NESHAP general provisions.

Agency Procedure for Promulgation

A public hearing is scheduled for January 8, 2008.

Contact Person

Roger Fritz
Bureau of Air Management
(608) 266-1201

Podiatrists Affiliated Credentialing Board

On November 8, 2007, the Podiatrists Affiliated Credentialing Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Pod 3, relating to continuing medical educational programs.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for February 19, 2008.

Contact Person

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

Rule–Making Notices

Notice of Hearing Administration [CR 07–106]

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1) and 227.11 (2) (a), Stats., interpreting s. 16.967 (3) and (7), Stats., the Department of Administration will hold a public hearing on a proposed rule order to create Chapter Adm 49 relating to the administration of the Plat Review Program.

Date: December 13, 2007
Time: 3:30 P.M.
Location: Wis. Dept. of Administration Bldg.
 101 East Wilson Street
 Yahara Conference Rm. 122
 Madison, WI 53702

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, should be directed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707–7864. Written comments must be received by December 11, 2007, to be included in the record of rule–making proceedings.

Analysis Prepared by the Department of Administration

Statutory authority

Sections 16.004 (1) and 236.12 (7), Stats.

Statutes interpreted

Sections 70.27 and 236.12, Stats.

Explanation of agency authority

The department shall review preliminary, final or assessor's plats under s. 70.27 or ch. 236, Stats., upon payment of the fees specified in this chapter.

Related statute or rule

Ch. Tax 53, Wis. Adm. Code.

Summary of proposed rule

The Department intends to create a rule as required by s. 236.12 (7), Stats., to establish uniform procedures and fees for the plat review program administered by the Department of Administration. The proposed rule is similar to the existing Chapter Tax 53 which was created when the Plat Review Program was administered by the Department of Revenue. The Plat Review Program was transferred from the Department of Revenue to the Department of Administration in 1997.

Comparison with federal regulations

This proposed rule is specific to the State of Wisconsin laws and is completely separate from, and unaffected by, federal regulations.

Comparison with adjacent states

Michigan: The state level review of subdivision plats is performed by the Department of Labor and Economic Growth

on a fee for service basis before the subdivision is recorded with the Register of Deeds.

Minnesota: Minnesota requires subdivisions to be reviewed by the Minnesota Department of Health and by the County Surveyor's Office on a fee for service basis before the subdivision is recorded.

Illinois: It appears that each unit of government enacts subdivision regulations reviewed on a fee for service basis.

Iowa: It appears that each unit of government enacts subdivision regulations reviewed on a fee for service basis.

Summary of factual data and analytical methodologies

The Plat Review Program has been 100% program revenue supported since 1980. All reviews are conducted on a fee for service basis as provided by s. 236.12 (7), Wis. Stats.

Analysis and supporting documents used to determine effect on small business

The proposed rule prescribes uniform procedures and fees making the cost of review consistent and predictable.

Agency Contact Person

Donna Sorenson
 Department of Administration
 101 E. Wilson Street
 P.O. Box 7864
 Madison, WI 53707–7864
 608–266–2887
 Donna.Sorenson@Wisconsin.Gov

Submission of Written Comments

Comments may be submitted to the agency contact person that is listed above and via the Wis. Admin. Rules Website at <http://adminrules.wisconsin.gov>, by December 13, 2007.

Initial Regulatory Flexibility Analysis

Developers and surveyors who divide land will be affected by this rule because they pay for the services the program provides

State Fiscal Effect

This rule will increase plat review revenues by approximately \$240,000 per year, beginning in May 2008. The increase is needed to sufficiently cover program costs.

The Plat Review program is funded from fees charged to subdividers or agents seeking an advisory opinion relative to conditions affecting a proposed plat for the review of preliminary, final or assessors' plats under s. 70.27 or chapter 236 Statutes. The fees have not been adjusted since 1997.

The program's permanent staffing level remains at the 1997 level of 5.50 FTE. When workload required more staff, limited term employees have been hired. Fee increases are needed to maintain the current level of staffing required to ensure services are provided in a timely manner.

Local Fiscal Effect

There is no fiscal effect on local units of government.

Text of Rule

SECTION 1. Chapter Adm 49 is created to read:

Adm 49.01 Applicability. The department shall review preliminary, final or assessor's plats under s. 70.27 or ch. 236, Stats., upon payment of the fees specified in this chapter.

Adm 49.02 Definitions. In this chapter:

(1) "Department" means the Wisconsin department of administration.

(2) "Parcel" means a lot, outlot or public dedication. 'Public dedication' includes parks, greenways and other similar dedications but does not include streets or easements.

(3) "Plat" means the total assemblage of sheets comprising a preliminary or final subdivision or assessor's plat.

(4) "Sheet" includes each page of a preliminary or final plat.

Adm 49.03 Review fee. (1) The following fee schedule applies to the submission of plats to the department, either as copies under s. 236.12 (2), Stats., or as original drawings under s. 236.12 (6), Stats.

(a) Initial filing fee for preliminary, final or assessor's plats \$125.00.

(b) Preliminary plat (each submission) ...\$100.00 per plat

(c) Final plat or assessor's plat (each submission) \$40.00 per parcel, or \$160.00 per plat, whichever is greater.

(2) The following additional fees, to cover reproduction and postage costs, apply to the submission to the department of an original drawing of a preliminary or final plat under s. 236.12 (6), Stats.

(a) Preliminary plat (each submission) \$40.00 per sheet.

(b) Final plat or assessor's plat (each submission) \$40.00 per sheet.

(3) The following additional fees, to cover copy and postage costs, apply to the submission to the department of copies of a preliminary or final plat under s. 236.12 (2), Stats.

(a) Final (each submission) \$40.00 per sheet.

(b) Preliminary (each submission) \$40.00 per sheet.

(4) The fee for review of a certified survey map, if a waiver is requested under s. 236.20 (2) (L), Stats., is \$100.00.

(5) If a subdivider or agent seeks an advisory opinion relative to conditions affecting a proposed plat which requires staff research and written response in the form of a presubmission consultation, the fee is \$50.00, \$25.00 of which the department shall credit toward the review fee when the plat is submitted.

Adm 49.06 Procedure for fee submission. (1) The subdivider or the subdivider's agent shall provide required fees in the form of a check or money order and may use a credit card or electronic payment with each plat submittal.

(2) The department may not accept any plat submitted to it until it receives all fees required for processing of that plat from the subdivider or agent. None of the time periods specified by ch. 236, or s. 70.27(8), Stats., for plat review shall commence until the department receives the required fees.

(3) The department may, when warranted by unusual circumstances, waive part or all of the fees required under Adm 43.03. The subdivider or the subdivider's agent shall obtain any such waiver in writing from the department prior to plat submittal.

Notice of Hearing**Commerce****(Amusement Rides, Ch. Comm 34)**

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.17 and 227.24 (4), Stats., the Department of Commerce will hold a public hearing on emergency rules under chapter Comm 34 relating to liability insurance for amusement rides.

Hearing Information

The public hearing will be held as follows:

Date and Time:

December 12, 2007
9:30 a.m.

Location:

Conference Room 3C
Thompson Commerce Center
201 West Washington Avenue
Madison

Interested persons are invited to appear at the hearing and present comments on the emergency rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on the emergency rules will remain open until December 21, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

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

Copy of Rules and Analysis

The emergency rules and an analysis of the rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Small Business Regulatory Coordinator

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

Notice of Hearing**Natural Resources****(Fish, Game, etc., Chs. NR 1—)**

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (intro.), 23.091, 23.11 (1), 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.014 (1), 29.041, 29.039 (1), 29.509 (4) and (5), 227.11 (2) (a) and 227.24 (1) (a), Stats., interpreting ss. 23.09

(2) (intro.), 23.22 (2) (a), 29.014 (1), 29.039 (1), 29.041 and 227.11 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Order No. FH-40-07(E) pertaining to control of fish diseases and invasive species. This emergency order took effect on November 2, 2007. The emergency rule revises chs. NR 19 and 20, Wis. Adm. Code.

Hearing Information

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

December 3, 2007	Room 511
Monday	GEF #2 Office Building
at 2:00 p.m.	101 South Webster Street
	Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copy of Rule and Submission of Written Comments

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the emergency rule may be submitted via U.S. mail to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until December 3, 2007. 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 emergency rule and fiscal estimate may be obtained from Mr. Horns.

Analysis Prepared by Department of Natural Resources

The emergency rule limits the transport of live fish and fish eggs away from identified inland and outlying waters, and requires the immediate drainage of water from boats, boating equipment, fishing equipment and other containers upon removal from these waters. The emergency order adds a procedure for identifying additional waters where viral hemorrhagic septicemia (VHS) may be present. The Department may authorize the commercial harvest of wild minnows for use as bait from any water via a permit, except identified waters, and may set permit conditions to prevent the spread of VHS. Bait dealers are required to keep daily harvest and disposition records. The emergency order bans the use or possession of imported live minnows as bait, with exceptions. It also prohibits any person from using dead fish, fish eggs or any parts thereof as bait, with exceptions, and it limits the use of fish and fish parts as bait in crayfish traps and turtle traps, with exceptions. Finally, the emergency rule adds a new criterion for the issuance of permits for licensed bait dealers to use non-standard minnow gear, allowing the permits to be denied if use of the gear could spread invasive species or diseases.

Fiscal Estimate

The fiscal impact that this rule package will have on state and local government—namely the increased costs associated with addressing or containing the VHS problem—is difficult to estimate given the short amount of time that has elapsed

since the discovery of the virus and the uncertainty about the extent to which the virus may or may not spread to other parts of the state. Consequently, the Department is characterizing the state and local fiscal impact as “indeterminate” until more detailed cost information becomes available.

Notice of Hearings

Natural Resources

(Air Pollution Control, Chs. NR 400—)

[CR 07-104]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11 (1) and (16), Stats., interpreting ss. 227.11 (2) (a), 227.14 (1m) (b), 285.11 (1) and (16), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 405, 407, 408 and 484, Wis. Adm. Code, relating to major source definition and affecting small business. The State Implementation Plan developed under s. 285.11 (6), Stats., is revised.

Hearing Information

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

December 18, 2007	Conference Room 124A and B
Tuesday	State Office Building
at 1:00 p.m.	1681 Second Avenue South
	Wisconsin Rapids

December 19, 2007	Room 413
Wednesday	GEF #2 State Office Building
at 1:00 p.m.	101 S. Webster Street
	Madison

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

Copy of Rule and Submission of Written Comments

The proposed rule and 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. AM-34-07. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Paul Yeung, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Paul.Yeung@wisconsin.gov. Comments may be submitted until December 21, 2007. 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 Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

Analysis Prepared by Department of Natural Resources

The proposed rules will amend the definition of “major stationary source” in s. NR 405.02 (22) (a), such that ethanol production facilities that produce ethanol by natural

fermentation are not included in the Chemical Processing Plant category of the North American Industry Classification System. The other changes are to ss. NR 405.07 (4) (a) 20., 407.02 (4) (b) and 408.02 (21) (e), which will state that fugitive emissions from these ethanol production facilities will no longer be included in determining whether a facility is considered a major source. This rule package is initiated because of similar federal rule changes published May 1, 2007.

In addition, a federal rule clarifying two elements of the major source permitting program was promulgated on January 6, 2004. The first is the additional of a definition of replacement unit and the second clarifies a component of the emission calculation used when determining emissions under a plantwide applicability limitation (PAL). U.S. EPA has required permitting agencies to add these elements during the next reopening of the permit program regulations.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

The proposed changes are being done so that the Department's regulations are updated to reflect the current federal regulations. These are definition changes with no fiscal impact.

Environmental Analysis

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

Notice of Hearing Natural Resources

(Air Pollution Control, Chs. NR 400—)

[CR 07-105]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 227.14 (1m) (a), 285.11 (1) and 285.27 (2) (a), Stats., interpreting ss. 285.11 (6) and 285.27 (2) (a), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 460 and 469, Wis. Adm. Code, relating to national emission standards for hazardous air pollutants (NESHAP) for halogenated solvent cleaners and the NESHAP general provisions. The U.S. Environmental Protection Agency published amendments to the NESHAP general provisions and to the NESHAP for halogenated solvent cleaning operations. Section 285.27 (2) (a), Stats., requires the Department to promulgate NESHAP into the administrative code. The amendments to the general provisions revise the language relating to startup, shutdown and malfunction plans and add force majeure as a reason for being unable to meet a performance test deadline. The

amendments to the halogenated solvent cleaning rule add control requirements for continuous web cleaning machines, add a facility-wide standard and exempt small sources from the requirement to obtain an operating permit.

Hearing Information

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

January 8, 2008	Room 511
Tuesday	GEF #2 State Office Building
at 11:30 a.m.	101 South Webster Street
	Madison

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

Copy of Rule and Submission of Written Comments

The proposed rule and 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. AM-31-07). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Roger Fritz, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Roger.Fritz@wisconsin.gov. Comments may be submitted until January 11, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. 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 Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

Initial Regulatory Flexibility Analysis

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

Types of small businesses affected

Any small business which is a major source of hazardous air pollutant emissions, especially the ones which operate one or more continuous web cleaning machines.

Description of reporting and bookkeeping procedures required

The proposed amendments to the halogenated solvent cleaning rule add new recordkeeping requirements for continuous web cleaning machines and the proposed general provision amendments reduce the reporting requirements for startup and shutdown episodes. Neither set of amendments adds new reporting, bookkeeping or other procedural requirements in the existing rules.

Description of professional skills required

An environmental scientist or environmental engineer with knowledge of organic hazardous air pollutant emissions, halogenated solvent cleaning operations, performance testing, air pollution control technologies, compliance strategies and environmental regulations would have the professional skills necessary to ensure compliance with the proposed rule.

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

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

Fiscal Estimate

There will be no fiscal impact on state or local government.

**Notice of Hearing
Revenue
[CR 07-091]**

NOTICE IS HEREBY GIVEN that, pursuant to s. 227.11 (2), Stats., and interpreting ss. 71.04 (4) and 71.25 (6), Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the amendment of rules relating to the computation of the apportionment fraction by multistate professional sports clubs.

Hearing Information

The hearing will be held at 9:00 A.M. on Monday, **December 10, 2007**, in the Events Room (1st floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

Submission of Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than December 17, 2007, and will be given the same consideration as testimony presented at the hearing.

Contact Person**Small Businesses:**

Julie Raes
Department of Revenue
Mail Stop 6-73
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933
(608) 267-9892 or email: julie.raes@revenue.wi.gov

Others:

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933
(608) 266-8253 or email: dale.kleven@revenue.wi.gov

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

Sections 71.04 (4) and 71.25 (6), Stats.

Statutory authority

Section 227.11 (2) (a), Stats.

Explanation of agency authority

Section 227.11 (2) (a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute(s) or rule(s)

Sections 71.04 (4m), (5), (6), and (7) and 71.25 (6m), (7), (8), and (9), Stats., and s. Tax 2.39.

Plain language analysis

This proposed rule order prescribes the method to be used for apportioning the apportionable income of interstate professional sports clubs.

The phase-in of the single sales factor apportionment formula will apply to professional sports clubs.

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 adjacent states

- Illinois does not have a special apportionment formula for interstate professional sports clubs. Their apportionment formula consists solely of a sales factor. Sales of services are attributed to the state where the income-producing activity occurred.
- Iowa does not have a special apportionment formula for interstate professional sports clubs. The apportionment formula consists solely of a sales factor. Sales of services are sourced where the benefit of the service is received.
- Michigan does not have a special apportionment formula for interstate professional sports clubs. The apportionment formula consists of a three-factor formula with sales weighted 90%, and property and payroll each weighted 5%. Sales of services are sourced where the income-producing activity occurred.
- Minnesota's apportionment formula for interstate professional sports clubs consists of a three-factor formula with sales weighted 75%, and property and payroll each weighted 12.5%. Sales of services are sourced where the benefit of the service is received, where the service was ordered, or where the service was billed, depending on the circumstances. All income from the operation of an athletic team when the visiting team does not share in the gate receipts is assigned to the state in which the team's operation is based.

Summary of factual data and analytical methodologies

2003 Wisconsin Act 37 changed the apportionment formula used by multistate businesses for determining the income taxable by Wisconsin. As a result of this legislation, single sales factor apportionment will be phased in for most businesses. The phase-in of single sales factor apportionment begins for taxable years beginning on January 1, 2006. 2005 Wisconsin Act 25 changed how gross receipts from services are sourced for purposes of the apportionment formula. Receipts from services are sourced where the benefit of the service is received. The change in the sourcing rules first applies to taxable years beginning January 1, 2005.

Analysis and supporting documents used to determine effect on small business

The department has determined that this proposed rule will not have a significant economic impact on a substantial

number of small businesses. The department is not aware of any interstate professional sports clubs to which the rule will apply that meet the definition of a small business under s. 227.114 (1), Stats.

Anticipated Costs Incurred by Private Sector

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

Initial Regulatory Flexibility Analysis

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

Agency Contact Person

Please contact Dale Kleven at (608) 266-8253 or dale.kleven@revenue.wi.gov, if you have any questions regarding this proposed rule order.

Text of Rule

SECTION 1. Tax 2.505 (title) and (intro.), (1), (2), and (3) (intro.) and (d) are amended to read:

Tax 2.505 Apportionment of ~~net business~~ apportionable income of interstate professional sports clubs. The apportionable income of professional sports clubs engaged in ~~income producing activities~~ business both inside and outside Wisconsin during the year shall be apportioned to Wisconsin using ~~an~~ the apportionment fraction composed of a ~~property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined~~ described in s.

71.25 (6), Stats., and the apportionment formula computation described in s. 71.25 (6m), Stats., if applicable. The property, payroll, and sales factors described in s. 71.25 (6) and (6m), Stats., shall be determined as follows:

(1) PROPERTY FACTOR. The property factor is a fraction as defined in s. 71.25 (7), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.25 (7), Stats., and s. Tax 2.39 ~~(3)~~ (4). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

(2) PAYROLL FACTOR. The payroll factor is a fraction as defined in s. 71.25 (8), Stats. Compensation shall be reported as provided in s. 71.25 (8), Stats., and s. Tax 2.39 ~~(4)~~ (5). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71-137, Cum. Bull., 1971-1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) SALES FACTOR. The sales factor is a fraction as defined in s. 71.25 (9), Stats. Sales shall be included in the factor in accordance with s. 71.25 (9), Stats., s. Tax 2.39 ~~(5)~~ (6) and the following rules:

(d) *Player contracts, franchises, etc. and similar sources.* Income from player contract transactions, franchise fees, and other similar sources shall be excluded from the numerator and the denominator of the sales fraction.

Note: The provisions of s. Tax 2.505 first apply for taxable years beginning on January 1, 2005.

Submittal of Proposed Rules to the Legislature

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

Commerce
(CR 07-069)

Chs. Comm 5 and 83, relating to administrative forfeitures and tracer wire for nonmetallic pipe.

Commerce
(CR 07-086)

Ch. Comm 34, relating to amusement rides.

Natural Resources
(CR 07-040)

Chs. NR 405, 407, and 409, relating to construction permits, stack test requirements and affecting small business.

Natural Resources
(CR 07-045)

Chs. NR 460 and 469, relating to national emission standards for hazardous air pollutants for paper and other web surface coating processes.

Natural Resources
(CR 07-056)

Ch. NR 8, relating to implementation of the wildlife violator compact.

Public Instruction
(CR 07-057)

Ch. PI 8, relating to gifted and talented pupil identification.

Veterans Affairs
(CR 07-083)

Ch. VA 2, relating to the tuition reimbursement program.

Rule Orders Filed with the Revisor of Statutes Bureau

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

Commerce (CR 06-120)

An order affecting chs. Comm 14 and 60 to 66, relating to the fire prevention code and Wisconsin commercial building code.

Effective 3-1-08.

Health and Family Services (CR 07-041)

An order affecting ch. HFS 107, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Effective 1-1-08.

Insurance (CR 07-070)

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

Effective 1-1-08.

Workforce Development (CR 07-018)

An order affecting ch. DWD 301, relating to migrant labor.

Effective 1-1-08.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in the November 30, 2007, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

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

Health and Family Services (CR 07-060)

An order affecting ch. HFS 133, relating to home health care agencies and affecting small businesses. Effective 12-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rule will affect a substantial number of small businesses that are home health agencies, but the proposed rule will not have a significant economic impact on these businesses.

Summary of Comments by Legislative Review Committees

No comments were received

Regulation and Licensing (CR 07-031)

An order creating chs. RL 160 to 163 and 166 to 168, relating to substance abuse professionals. Effective 12-1-07.

Summary of Final Regulatory Flexibility Analysis

The rule changes may affect small business; however, where standards were increased, the department is proposing grace periods for these requirements. Additionally, these changes were seen as necessary to achieve the minimal competency required for safe practice and protection of the public.

Summary of Comments by Legislative Review Committees

No comments were received.

Transportation (CR 07-064)

An order affecting ch. Trans 195, relating to fees and procedures for searches and documentation of division of motor vehicle records. Effective 12-1-07.

Summary of Final Regulatory Flexibility Analysis

This proposed amendment will have minimal increased cost on small business. The rule requires that a business obtain a criminal background check from the Wisconsin Department of Justice for all persons who will have direct access to vehicle or driver license records. The Department of Justice currently charges a fee of \$13 (request by internet) or \$18 (request by mail or fax) for each criminal background check. For example, if a small business has 25 employees and 10 of those employees are proposed to have direct access to vehicle or driver license records, the small business would need to pay the Department of Justice up to \$180 for criminal background checks.

Summary of Comments by Legislative Review Committees

No comments were received.

Transportation (CR 07-072)

An order affecting ch. Trans 130, relating to special identification cards and special registration plates for physically disabled. Effective 12-1-07.

Summary of Final Regulatory Flexibility Analysis

The rule has no effect on small business.

Summary of Comments by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **November 2007**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Health and Family Services

Ch. HFS 133

- S. HFS 133.02 (1), (1e), (1m), (1s), (4), (10m) and (11)
- S. HFS 133.03 (3) (i), (4) (b), and (5)
- S. HFS 133.05 (2) (b)
- S. HFS 133.06 (4) (d)
- S. HFS 133.08 (2) (intro.), (a), (i) and (j)
- S. HFS 133.09
- S. HFS 133.13
- S. HFS 133.14 (2) (c) and (g)
- S. HFS 133.15 (1)
- S. HFS 133.16
- S. HFS 133.17 (1) and (3)
- S. HFS 133.18
- S. HFS 133.20 (1), (3) and (4)
- S. HFS 133.21 (5) (d), (e), (h) and (i)

Regulation and Licensing

- Ch. RL 160 (Entire chapter)**
- Ch. RL 161 (Entire chapter)**
- Ch. RL 162 (Entire chapter)**
- Ch. RL 163 (Entire chapter)**
- Ch. RL 166 (Entire chapter)**
- Ch. RL 167 (Entire chapter)**
- Ch. RL 168 (Entire chapter)**

Transportation

Ch. Trans 130

- S. Trans 130.02 (4), (4m) and (5g)
- S. Trans 130.03 (1) (i) and (k), (2) (bm), (e), (h) and (i)
- S. Trans 130.04 (1)
- S. Trans 130.05 (2) (b), (d), (f) and (g) to (i)
- S. Trans 130.06
- S. Trans 130.07 (1), (3) (e), (4)
- S. Trans 130.08
- S. Trans 130.09
- S. Trans 130.10
- S. Trans 130.11

Ch. Trans 195

- S. Trans 195.02 (7m), (12), (12g), (12r), (13e), (13m), (13s), (15g) and (15r)
- S. Trans 195.03 (1) (intro.)
- S. Trans 195.04 (1) (intro.)
- S. Trans 195.05 (2)
- S. Trans 195.06 (2) to (5)
- S. Trans 195.09 (1), (3), (9) and (10)
- S. Trans 195.10 (1), (2) (intro.) to (d), (4) and (6)
- S. Trans 195.11

Editorial corrections

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

Health and Family Services

Ch. HFS 133

- S. HFS 133.02 (5m) (a)

Regulation and Licensing

Ch. RL 9

- S. RL 9.03 (4)

Ch. RL 10

- S. RL 10.01 (3), (4) and (5)

Ch. RL 25

- S. RL 25.03 (3) (L)
- S. RL 25.035 (2) (e)

Ch. RL 35

- S. RL 35.01 (12m)

Ch. RL 70

- S. RL 70.01

Ch. RL 116

- S. RL 116.01 (3) (f)

Ch. RL 134

- S. RL 134.01

Ch. RL 150

- S. RL 150.02 (10)

Ch. RL 182

- S. RL 182.03 (4) (b)

Transportation

Ch. Trans 195

- S. Trans 195.02 (4)

Errata

Architects, Engineers, Designers and Land Surveyors

Ch. A-E 7

S. A-E 7.08 (1) (intro.) (dropped copy)

Commerce

Ch. Comm 47

S. Comm 47.325 (added explanatory note)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 220. 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 Corporal Rachael Hugo of the United States Army Who Lost Her Life During Operation Iraqi Freedom.

Executive Order 221. 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 Joshua Brennan of the United States Army Who Lost His Life During Operation Enduring Freedom.

Executive Order 222. 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 Louis Griese of the United States Army Who Lost His Life During Operation Iraqi Freedom.

Executive Order 223. 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 2nd Lieutenant Tracy Alger of the United States Army Who Lost Her Life During Operation Iraqi Freedom.

Executive Order 224. 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 Chief Petty Officer Patrick Wade of the United States Navy Who Lost His Life During Operation Iraqi Freedom.