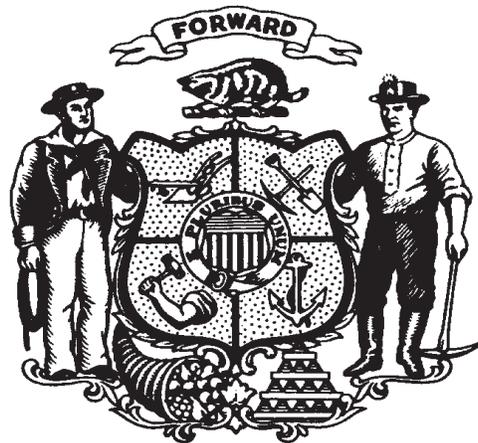


Wisconsin Administrative Register

No. 589



Publication Date: January 31, 2005

Effective Date: February 1, 2005



Revisor of Statutes Bureau
Suite 800, 131 West Wilson Street
Madison, Wisconsin 53703-3233

The 2003 – 04 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2003 – 04 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u>	Hard Cover <u>Without Postage</u>	Soft Cover <u>With Postage</u>	Soft Cover <u>Without Postage</u>
\$152.00	\$146.00	\$130.00	\$124.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

WisLaw[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

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

Table of contents

Emergency rules now in effect.**Pages 5 to 14**

Commerce:

Financial Assistance for Businesses and Communities, Chs. Comm 105—

Rules relating to technology commercialization programs.

Insurance:

Rules relating to vehicle protection plans.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

Rules relating to Natural Resources Board policies on protection and management of public waters.

Environmental Protection—Water Regulation, Chs. NR 300—

Rules relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Rules relating to shore erosion control of inland lakes and impoundments.

Rules relating to miscellaneous structures in navigable waterways.

Rules relating to regulation of construction, dredging, and enlargement of an artificial water body.

Rules relating to dredging in navigable waterways.

Rules relating to grading on the bank of a navigable waterway.

Rules relating to procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Public Instruction:

Rules relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Rules relating to the payment of state aid under the student achievement guarantee in education (SAGE) program.

Regulation and Licensing:

Rules relating to criminal background investigations of applicants.

Rules relating to the licensure and regulation of athlete agents.

Revenue:

Rules relating to the dairy investment credit.

	Rules relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.
	Rules relating to assessment of agricultural land.
Transportation:	Rules relating to creation of a school bus oxidation catalyst grant program in certain counties.
	Rules relating to medical standards for driver licensing and general standards to school bus endorsements.
Veterans Affairs:	Rules creating ss. VA 13.02 (2) (e), 13.04 (3), and 13.06 , relating to the veterans assistance program. [First Appearance]
Workforce Development:	<u>Labor Standards, Chs. DWD 270–279</u> Rules relating to overtime pay for employees performing companionship services.
	<u>Public Works Construction, Chs. DWD 290–294</u> Rules adopted revising ch. DWD 290, relating to adjustment of prevailing wage thresholds.
Scope statements.	Pages 15 to 17
Agriculture, Trade and Consumer Protection:	Rules relating to agricultural producer security.
Natural Resources:	Rules affecting ch. NR 20, relating to eliminating daily bag limits and allowing for unlimited walleye harvest in two lakes (Sherman, Vilas Co and Bass Lake, Washburn Co.).
	Rules affecting ch. NR 12, the endangered/threatened species and gray wolf depredation payment program.
Submittal of rules to legislative council clearinghouse.	Page 18
Transportation:	Rules affecting ch. Trans 276, relating to the operation of double bottoms and certain other vehicles on specified highways.
	Rules affecting ch. Trans 276, relating to the operation of double bottoms and certain other vehicles on specified highways.
Veterans Affairs:	Rules affecting ch. VA 13, relating to the veterans assistance program.
Workforce Development:	Rules affecting ch. DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates.
Rule–making notices.	Pages 19 to 25
Health and Family Services:	<u>Health, Chs. HFS 110—</u> Hearing to consider rules creating ch. HFS 148, relating to the cancer drug repository program.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Hearing to consider rules affecting ch. NR 12, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to livestock, hunting dogs and pets.

Transportation:	Hearing to consider rules affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.
	Hearing to consider rules affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:
Veterans Affairs:	Hearing to consider rules that will identify the circumstances under which the department may assist a financially needy veteran to reside at the department's facilities.
	Hearing to consider rules for home improvement and personal loans.
Workforce Development:	<u>Public works Construction, Chs. DWD 290–294</u> Hearing to consider rules affecting ch. DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates.
Submittal of proposed rules to the legislature.	Pages 26 to 27
Agriculture, Trade and Consumer Protection:	CR 04–094 – Ch. ATCP 30
Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board:	CR 03–087 – Ch. A–E 4
Natural Resources:	CR 02–099 – Ch. NR 328
	CR 03–066 – Chs. NR 404 & 484
	CR 03–105 – Ch. NR 6
	CR 04–060 – Ch. NR 198
	CR 04–062 – Ch. NR 329
	CR 04–063 – Ch. NR 325
	CR 04–064 – Ch. NR 323
	CR 04–065 – Chs. NR 300, 310 & 322
	CR 04–066 – Ch. NR 1
	CR 04–078 – Chs. NR 10 & 19
	CR 04–084 – Ch. NR 320
	CR 04–085 – Chs. NR 340 & 341
	CR 04–086 – Chs. NR 340 & 343
	CR 04–087 – Ch. NR 345
	CR 04–091 – Ch. NR 10
	CR 04–092 – Ch. NR 45
Revenue:	CR 04–049 – Ch. Tax 1

	CR 04-083 – Ch. Tax 61
	CR 04-115 – Ch. Tax 2
	CR 04-116 – Ch. Tax 3
Transportation:	CR 04-090 – Ch. Trans 135
	CR 04-099 – Ch. Trans 102
	CR 04-100 – Ch. Trans 102
	CR 04-114 – Ch. Trans 302
	CR 04-117 – Ch. Trans 112
	CR 04-122 – Ch. Trans 276
Veterans Affairs:	CR 04-126 – Ch. VA 14

Rule orders filed with the revisor of statutes bureau. Page 28

Transportation: CR 04-057 – Chs. Trans 201 and 202, relating to the Wisconsin scenic byways program.

Rules published with this register and final regulatory flexibility analyses. Pages 29 to 30

Sections affected by rule revisions and corrections. Page 31

Sections affected by revisor’s corrections not published. Page 32

Executive orders. Page 33

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.

Commerce

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

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

Finding of Emergency

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

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

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

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

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has

historically ranked low in the development of new start-ups and in the attraction of risk capital.

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

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

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

Publication Date: December 2, 2004

Effective Date: December 2, 2004

Expiration Date: May 1, 2005

Hearing Date: January 12, 2005

Insurance

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

Finding of Emergency

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

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

Publication Date: December 10, 2004

Effective Date: December 10, 2004

Expiration Date: May 9, 2005

Natural Resources (2)

(Fish, Game, etc., Chs. NR 1—)

1. Rules adopted revising **chs. NR 10 and 19**, relating to the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

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 state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. The state legislature has also delegated to the department rule – making authority in 2003 Wisconsin Act 240 to regulate feeding of wild animals for non-hunting purposes including recreational and supplemental feeding. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date: June 10, 2004
Effective Date: June 10, 2004
Expiration Date: November 7, 2004
Hearing Date: August 25 and 26, 2004
Extension Through: March 6, 2005

- Rules adopted creating ss. NR 1.05, 1.06 and 1.07, relating to Natural Resources Board policies on protection and management of public waters.

Finding of emergency

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

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

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).
- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.
- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but

permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

Natural Resources (8)
(Environmental Protection – Water Regulation,
Chs. NR 300—)

- Rules adopted revising ch. NR 320, relating to the regulation of bridges and culverts in or over navigable waterways.

Finding of emergency

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

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

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

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

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

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

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

Finding of emergency

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

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

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

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

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

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

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

- Rules adopted revising **ch. NR 328**, relating to shore erosion control of inland lakes and impoundments.

Finding of emergency

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

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

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

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

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

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

- Rules adopted revising **ch. NR 329**, relating to miscellaneous structures in navigable waterways.

Finding of emergency

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

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

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

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

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

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

- Rules adopted revising **ch. NR 340**, and creating **ch. NR 343**, relating to regulation of construction, dredging, and enlargement of an artificial water body.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust

waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

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

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

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

- Rules adopted revising **ch. NR 345**, relating to dredging in navigable waterways.

Finding of emergency

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

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special

natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

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

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

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

7. Rules adopted repealing s. NR 340.02 (2), (8) and (19) and to creating ch. NR 341, relating to regulation of grading on the bank of a navigable waterway.

Finding of emergency

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

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

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an

automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams.

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

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

Publication Date: May 19, 2004
Effective Date: May 19, 2004
Expiration Date: October 16, 2004
Hearing Date: June 16, 2004
Extension Through: February 12, 2005

8. Rules adopted creating ch. NR 310, relating to procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Finding of emergency

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

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

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but

permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

Public Instruction (2)

1. Rules were adopted revising **ch. PI 35**, relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Finding of emergency

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

Per 2003 Wisconsin Act 15, the provisions under the rule must take effect beginning in the 2004–05 school year. Because some of the reporting requirements must be made by August 1, the rule must be in place as soon as possible to give the private schools enough notice to meet such requirements.

Publication Date: June 30, 2004
Effective Date: June 30, 2004
Expiration Date: November 27, 2004
Hearing Date: September 13, 2004
Extension Through: March 26, 2005

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

Finding of emergency

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

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

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

Regulation and Licensing (2)

1. Rules were adopted repealing **ss. RL 31.035 (1m) and 31.036 (1m)**; and creating **ss. RL 4.01 (3g), (3r) and (5m), 4.07 and 4.09**, relating to criminal background investigations of applicants.

Exemption from finding of emergency

SECTION 4, Nonstatutory provisions., of 2003 Wisconsin Act 151 states: “(1) The department of regulation and licensing may, using the procedure under section 227.34 of the statutes, promulgate the rules under section 440.03 (13) (b) of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Analysis prepared by the Department of Regulation and Licensing

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 151. Act 151 was created in response to federal Public Law 92–544, which required authorization by state statute to continue the FBI's policy of honoring state requests for criminal background reports.

Act 151 modifies the authority of the Department of Regulation and Licensing to conduct criminal background checks of applicants and requires rule-making by the Department to conduct investigations whether an applicant for or holder of any credential issued by the Department has been charged with or convicted of a crime. The emergency rule preserves the ability of the Department to continue its practice of conducting criminal background investigations of applicants and credential holders.

Publication Date: July 3, 2004
Effective Date: July 3, 2004
Expiration Date: November 30, 2004
Hearing Date: October 1, 2004
Extension Through: March 29, 2005

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

Exemption from finding of emergency

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

(2) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.9935 of the statutes,

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

Analysis prepared by the Department of Regulation and Licensing

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

Statutes interpreted: Chapter 440, Subchapter XII.

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

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

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

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

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

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

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

Publication Date: October 5, 2004
Effective Date: October 5, 2004
Expiration Date: March 4, 2005
Hearing Date: November 12, 2004

Revenue (3)

1. Rules adopted creating s. **Tax 2.99**, relating to the dairy investment credit.

Finding of emergency

The Department of Revenue finds that an emergency exists and that the attached 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 clarify the following terms as they apply to the dairy investment credit:

- “amount the claimant paid in the taxable year,”
- “dairy farm modernization or expansion,”
- “milk production,” and
- “used exclusively related to dairy animals.”

It is necessary to promulgate this rule order to remove the threat of inappropriate credit claims and the revenue loss to the state as a result of clarification of the above terms being absent in the statutes.

Publication Date: September 17, 2004
Effective Date: September 17, 2004
Expiration Date: February 14, 2005
Hearing Date: December 28, 2004
Extension Through: April 14, 2005

2. Rules adopted creating s. **Tax 3.04**, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.

Finding of emergency

The Department of Revenue finds that an emergency exists and that the attached 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:

Section 71.05 (6) (b) 34, Stats., provides that a subtraction from income may be claimed for “any amount of basic, special, and incentive pay received from the federal government by a person who is a member of a reserve component of the U.S. armed forces, after being called into active federal service under the provisions of 10 USC 12302 (a) or 10 USC 12304, or into special state service authorized by the federal department of defense under 32 USC 502 (f), that is paid to the person for a period of time during which the person is on active duty.”

Included under 32 USC 502 (f) are persons who are serving on active duty or full-time duty in the active guard reserve (AGR) program. Discussion between the departments of revenue and military affairs and legislative personnel revealed that it was not intended that these persons benefit from the subtraction provided for in s. 71.05 (6) (b) 34, Stats.

It is necessary to promulgate this rule order to remove the threat of inappropriate subtractions from income and the revenue loss to the state as a result of information contained in the statutes that implies persons who are serving on active duty or full-time duty in the active guard reserve program are eligible to claim the subtraction from income for military pay received by members of a reserve component of the armed forces.

Publication Date: September 17, 2004
Effective Date: September 17, 2004
Expiration Date: February 14, 2005
Hearing Date: December 28, 2004
Extension Through: April 14, 2005

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

Finding of emergency

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

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5-year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium-sized, 1-year adjustable rate mortgage and net 0 tax rate for the property tax levy two years prior to the assessment year.

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

The data for the 1998–2002 period yields negative net income per acre due to declining 0 corn prices and increasing costs of corn production. As a result, reliance on data for the 1998–2002 period will result in negative use values.

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

Publication Date: December 29, 2004

Effective Date: December 29, 2004

Expiration Date: May 28, 2005

Transportation (2)

1. Rules adopted creating **ch. Trans 135**, relating to creation of a school bus oxidation catalyst grant program in certain counties.

Exemption from finding of emergency

The Legislature, by Section 2r of 2003 Wis. Act 220, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Transportation

Plain Language Analysis: 2003 Wis. Act 220 requires the Wisconsin Department of Transportation, in consultation with the Wisconsin Department of Natural Resources, to develop and administer a program to provide grants for the purchase and installation of oxidation catalysts on school buses customarily kept in the counties identified in s. 110.20 (5), Stats.: Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Act 220 amends s. 20.395 (5) (hq), Stats., to provide funds for the grant program under WisDOT's vehicle inspection/maintenance (I/M) program appropriation.

Publication Date: September 1, 2004

Effective Date: September 1, 2004

Expiration Date: See Section 2r 2003 Wis. Act 220

Hearing Date: September 14, 2004

2. Rules adopted revising **ch. Trans 112**, relating to medical standards for driver licensing and general standards to school bus endorsements.

Exemption from finding of emergency

The Legislature, by Section 30 of 2003 Wis. Act 280, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Transportation

Under current law, a person may not operate a school bus without a school bus endorsement issued by the Department of Transportation (DOT). DOT may issue a school bus endorsement to a person's valid motor vehicle operator's license if the person meets certain qualifications, including being free of conviction for certain crimes. A school bus endorsement is valid for the eight-year duration of the person's operator's license. Under certain circumstances, DOT must cancel the operator's license of a person to whom a school bus endorsement has been issued.

2003 Wisconsin Act 280 modified the existing criminal history requirements, and imposed additional requirements for the initial issuance or renewal of a school bus endorsement. That act prohibits DOT from issuing or renewing a school bus endorsement to an applicant if the applicant has been convicted of or adjudicated delinquent for any specified disqualifying crime or offense within a prior minimum specified time. These disqualifying crimes and offenses and minimum time periods for disqualification include those specified under current statutes, including various crimes against children. The act also authorizes DOT to specify by rule additional disqualifying crimes and offenses and the time period during which the disqualification applies.

Prior to Act 280, persons were not eligible for a school bus endorsement if he or she has been convicted of listed offenses (including a felony or an "offense against public morals") within the past five years, if the circumstances of the offense are "substantially related" to the circumstances of operating a school bus, or was convicted of specified offenses (including OWI and operating with a suspended or revoked license) within the past two years, regardless of whether the circumstances of the offense are "substantially related" to the circumstances of operating a school bus. Thus, Act 280 lengthened the periods of disqualification for some offenses, and listed some offenses that arguably are not "substantially related" to the circumstances of operating a school bus.

This rule establishes three periods of disqualification from eligibility for a school bus driver endorsement for conviction of listed felonies and misdemeanors. A lifetime disqualification is imposed on any person convicted of violent crimes resulting in death or serious physical injury to another, of sex offenses involving children and other vulnerable persons, or of other crimes involving predation or victimization of children or other vulnerable persons. A five-year disqualification is imposed on any person convicted of other crimes against life and bodily security, of other crimes against children, of crimes involving use of a motor vehicle, including operating while intoxicated (OWI), of possession of illegal weapons or of similar offenses likely to result in serious injury to others. A two-year disqualification is imposed on any person convicted of negligent operation of a motor vehicle, of obstructing emergency and rescue personnel or of other crimes.

Many of the listed offenses comprise felonies and misdemeanors. Under the rule, if a person provides evidence to the Department that his or her conviction of a listed offense is a misdemeanor conviction, the disqualification period is shortened to the next shorter disqualification period. However, there is no reduced disqualification period for misdemeanor sexual assault convictions, and the minimum

period of disqualification for any listed offense (whether felony or misdemeanor) is two years.

The rule requires the Department to conduct a criminal history record search of every applicant for initial issuance or renewal to determine whether the person is convicted of disqualifying offenses. Although a school bus endorsement is renewed every eight years, DOT must conduct a criminal history search four years after the person obtains a school bus endorsement and, if appropriate, cancel the endorsement.

The rule also requires any person applying for initial issuance or renewal of a school bus endorsement to certify whether he or she has been convicted of any disqualifying offense, and allows the department to disqualify the person for the appropriate period based on that certification.

The rule requires any person who has resided in another state within the previous two years to notify the department of those other states, and requires the department to make a good faith effort to obtain the criminal history records from those other states, including submitting the persons fingerprints to the Department of Justice for a nationwide criminal history search.

The rule allows DOT to require every applicant for initial issuance or renewal of a school bus endorsement to provide two sets of fingerprints, and to pay fees for the two criminal history records searches that will be completed at initial issuance or renewal, and four years after the person obtains the school bus endorsement.

This rule also makes minor changes to medical standards for school bus drivers not required under 2003 Wis. Act 280, including the following:

1. Allows physician to certify driver is following treatment plan for cerebrovascular function, without such certification of the patient.
2. Shortens from 12 to 6 months the period during which a school bus driver must be free of any cerebrovascular incident.
3. Eliminates the 12 month period during which school bus driver must be free of destructive behavior or suicidal tendencies, instead making eligible a driver who is free of such behaviors or tendencies at the time of application.
4. Provides that a license restriction imposed on a physician's recommendation may be lifted only by the physician that recommended the restriction or by the Department following its evaluation of the person's ability to drive.
5. Provides that a person who does not meet minimum waiting periods following certain medical disqualifications cannot request a medical review board assessment of those disqualifications, because those waiting periods cannot be waived.

Publication Date: November 4, 2004
Effective Date: November 4, 2004
Expiration Date: See 2003 Wis. Act 280
Hearing Date: November 15, 2004

Veterans Affairs

Rules adopted creating **ss. VA 13.02 (2) (e), 13.04 (3), and 13.06**, relating to the veterans assistance program.

Finding of emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the finding of emergency is:

The department operates two community-based residential care facilities and a residential care apartment complex facility in Union Grove. As a condition of admission and continued residency at the facilities a veteran must be able to pay the full cost of his or her care from income and other resources.

Care rates at the facilities were raised across-the-board in October 2004. Several current residents do not now have sufficient income or other resources to fully pay their cost of care. Furthermore, several recent applicants with limited income and resources have been denied admission because they fall just short of meeting their care costs. Both groups of veterans do not have adequate housing available for their needs, other than residency at the Union Grove facilities.

In light of these circumstances, the department determines that the health and safety of the current and prospective residents is threatened unless adequate funding is made available. Enactment of the emergency will permit the department to provide the subsidy necessary to address these concerns.

Publication Date: January 3, 2005
Effective Date: January 3, 2005
Expiration Date: June 1, 2005
Hearing Date: February 16, 2005
 [See Notice This Register]

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

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

Finding of emergency

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

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person's life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications

office or exchange, or any express or transportation establishment or any hotel.”

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

Publication Date: March 1, 2004
Effective Date: March 1, 2004*
Expiration Date: July 29, 2004

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

Workforce Development (Public Works Construction, Chs. DWD 290–294)

A rule was adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Finding of emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

Publication Date: December 20, 2004
Effective Date: January 1, 2005
Expiration Date: May 30, 2005
Hearing Date: February 14, 2005
[See Notice This Register]

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Agricultural producer security. *Objective of the rule.* Update existing rules to reflect current conditions under the agricultural producer security program. Among other things, this rule would correct potentially misleading disclosures related to the amount of security provided to certain producers.

Policy analysis

Wisconsin's Agricultural Producer Security Law (ch. 126, Wis. Stats.) helps protect agricultural producers against catastrophic defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively known as "contractors"). Contractors must be licensed by DATCP, and most contractors must pay assessments into Wisconsin's producer security trust fund ("fund"). If a contributing contractor defaults in payments to producers, DATCP can draw on the fund to reimburse producers for at least part of their loss.

The current version of the law was created in 2002 and amended in 2003. DATCP has adopted rules to implement the law. However, subsequent experience has revealed some problems that must be addressed. A key problem is the lack of backup security for the fund.

The producer security law directs DATCP to obtain backup security (commercial surety bonds or other security) to supplement the fund. The backup security was intended to cover very large contractor defaults that might exceed the capacity of the fund. But changes in insurance and financial markets have made it impossible to obtain the required backup security at a price that is remotely affordable. Hence there is no backup security in place. Statutory changes are needed to address this problem.

The current fund balance is adequate to cover the vast majority of contractor defaults. However, a small number of contractors are so large that their default would exceed the capacity of the fund (often by a very large amount). Some of these contractors have filed individual security to supplement fund coverage, but others have not. DATCP cannot *require* contractors to file individual security (statutory changes would be needed). But if a contractor filed security under prior law, DATCP can require the contractor to maintain that security. Contractors may also file voluntary security.

Under current DATCP rules, a contractor must give each producer an annual written notice explaining the producer's security coverage. Current rules specify the exact text of the disclosure. But in certain cases, for reasons explained above, the current disclosure may lead producers (those who sell to certain very large contractors) to believe they have more security coverage than is actually available. This rule will correct the current disclosures, to make them more accurate.

DATCP will also consider the following rule changes:

- Changes to clarify which vegetable contract obligations are, or are not, covered by the producer security law.
- Minor rule changes to enhance or clarify current rules.

Relevant federal legislation

There is no federal program to secure milk contractor payments to producers. However, there are federal programs relating to grain warehouses and vegetable contractors. Federal program coverage differs from Wisconsin program coverage, so there is little if any duplication.

Grain warehouses

The United States Department of Agriculture (USDA) administers a producer security program for federally licensed grain *warehouses*. Federally licensed warehouses are exempt from state grain *warehouse* licensing and security requirements. State-licensed warehouses are likewise exempt from federal licensing and security requirements.

The federal program focuses on grain *storage*. Unlike the Wisconsin program, the federal program provides little or no protection related to grain *dealing* (buying grain from producers, with or without storage). However, USDA is proposing to regulate grain *dealing* ("merchandising") by federally licensed grain warehouse keepers. If that proposal becomes law, federally licensed warehouse keepers who engage in grain dealing would likely be exempt from state grain *dealer* licensing. DATCP rules might need to recognize that exemption, if it occurs.

Vegetable contractors

The Perishable Agricultural Commodities Act (PACA) regulates contractors who buy unprocessed, fresh market vegetables from producers. The federal program creates a priority lien, for the benefit of unpaid vegetable producers, on a contractor's vegetable inventory, sales proceeds and accounts receivable.

Wisconsin's vegetable security program applies to *processing* vegetables, so there is little overlap with PACA (which applies to *fresh market* vegetables). However, this rule may help clarify the relationship between the Wisconsin producer security law and PACA.

Entities affected

- Contractors. This rule will have little or no effect on 95% of the dairy, grain and vegetable contractors licensed in Wisconsin. However, certain large contractors may need to disclose to producers that their payments to producers are not fully secured (unless the contractors file voluntary security). This rule may also exempt certain transactions from coverage under the Wisconsin producer security program.

- Producers. This rule will have little or no effect on most agricultural producers. However, some producers (those who sell to certain large contractors) will receive more accurate security disclosures from their contractor, which could affect their decision to continue selling to that contractor. This rule may also exempt certain transactions from coverage under the Wisconsin producer security program.

Policy Alternatives

There are few, if any, policy alternatives related to contractor disclosures to producers. The current disclosure of security coverage is misleading in some cases, and must be corrected. DATCP cannot continue to require a misleading disclosure.

DATCP may or may not exempt certain transactions from coverage under the Wisconsin producer security law, after reviewing federal coverage and consulting with affected producers and contractors. DATCP reviews all proposed rules with the Agricultural Producer Security Council, a statutory advisory council that includes producer and contractor representatives.

Statutory alternatives

Rulemaking will be needed, with or without legislation. However, DATCP may also propose legislation to address the current lack of backup security for the producer security fund. DATCP assumes that backup security will not be available in the foreseeable future. One approach would be to require contractors to file individual security if (1) they fail to meet minimum financial ratios and (2) their obligations to producers exceed the capacity of the fund. The amount of security would be based on the degree to which the contractor's obligations exceed the capacity of the fund. DATCP will review possible draft legislation with the Agricultural Producer Security Council and the DATCP Board.

Staff time required

DATCP estimates that it will use approximately 0.8 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Natural Resources

Subject

During 1995 a team of DNR, federal, and tribal biologists and administrators developed a list of priorities for statewide fisheries research. At that time, the top research priority was walleye exploitation and development of safe-harvest models for sustainable walleye harvest by both anglers and the tribes.

Policy analysis

Management issue: Long-term effects of angling and spearing exploitation on walleye populations can be modeled using existing data on these fisheries in northern Wisconsin lakes in concert with stock-recruit and age-structured population models. Of principal concern are the long-term effects of exploitation on walleye reproduction, when the scopes for compensation in growth rate, age at maturity, and fecundity have been pushed to their limits. A fish population that experiences exploitation in excess of its ability to compensate, known as recruitment over-fishing, will undergo long-term decline or collapse in the absence of restrictions on its fisheries. Such a pattern of over-fishing has led to the collapse of many of the world's most valuable fisheries.

Safe harvest limits for shared walleye fishery in Northern Wisconsin is based on assumption that maximum sustainable annual exploitation rate is 35% of adult population. This figure was based on the long-term data set from Escanaba but never subjected to verification from a study with replication and controls. Basing a large important program on the best possible information was viewed as good management.

Objective of the rule. Design a study evaluating walleye population levels subject to different levels of exploitation

with several lakes at each target level, originally 0, ~20, 35, 50 percent. Currently, research has focused on lakes with 0, 10, 20, and 35% exploitation. The regulation change that is proposed will expand the study to include two 50 % exploitation lakes. The two lakes identified for 50 % exploitation are Sherman Lake (Vilas Co.) and Bass-Patterson Lake (Washburn CO). Both lakes are relatively small (around 200 acres) with good naturally reproducing populations of walleye. Both lakes are part of the GLIFWC's long-term lake monitoring program. As such each lake has at least 10 years of long-term population data available.

Project administration: Cooperative project with DNR Fish Research and GLIFWC.

Current Exploitation Study (1998 to Present): USDA-Forest Service and WDNR Fish Research Section is currently conducting an exploitation project on four lakes to describe the effects of light (0-5%), moderate (10-25%), and heavy (=35%) rates of exploitation on walleye populations. One component of that study is to develop and calibrate walleye population models for the purpose of predicting the maximum sustainable exploitation rate. We propose to incorporate biological and fishery data on walleye populations from various lakes in northern Wisconsin into stock-recruitment and age-structured population models, from which to model long-term effects of various exploitation rates on population age-structure, size-structure, and sustainability. In order to develop a complete model to test the 35% exploitation questions lakes with a higher exploitation rate need to be incorporated in the study.

Specific Objectives of Exploitation Study Include:

1. Develop density-dependent models of walleye maturity and fecundity for Wisconsin Ceded Territory Lakes from the ongoing studies in Big Crooked Lake, Wolf, Plum and Escanaba Lake, Vilas County, Wisconsin.

2. Using the above data in combination with data from the current proposal, estimate maximum level of spearing and angling exploitation that can be sustained by walleye in northern Wisconsin lakes.

3. Simulate long-term effects of a range of spearing and angling exploitation rates on walleye population age structure, size structure, and age at maturity, and fecundity.

Consequence of No Action

Failure to change the harvest regime on Sherman and Bass-Patterson will limit the utility of the current research effort to assess factors that may regulate walleye survival and recruitment in lakes in northern Wisconsin. While the current data collection efforts provide interesting information, the proposed manipulation to the harvest regime will provide invaluable new information on factors that regulate walleye populations, provide information on maximum sustained harvest, and potential surplus harvest that will not be available without the proposed regulation change.

Evaluation

The current data collection efforts on Escanaba, Big Crooked, Wolf, and Plum Lakes will be continued to assess the effects of this proposed rule change. Current data collection efforts include:

- Compulsory Creel Census of harvest and angling effort.
- Annual estimates of walleye population size and recruitment
- Complete fish community assessment of all study lakes including the status of forage fish.

Project Duration: 10 years

Statutory authority

Sections 29.014 and 227.11, Stats.

Staff time required

Approximately 100 hours will be needed.

Comparison with federal requirements

There are no federal requirements applicable.

Natural Resources

Subject

The program to pay for damage done by species listed as Endangered or Threatened in Wisconsin was established in the 1983–85 budget bill (ss. 20.370 (1) (fs), Stats.). Funds for these payments come from the Endangered Resources Voluntary Payments Fund (i.e. the “Tax Check-off”). The 1999–01 budget bill added Endangered Resources (Wolf) License Plate funding and added that damage by Gray Wolves will be paid for by this fund even after wolves are delisted.

To date, the WI DNR has settled 179 damage claims totaling \$ 352,056.62. The majority of these claims, 144, – (totaling \$ 312,266.83) have been paid for damage done by gray wolves.

The Endangered Resources Program has administered this program since 1985 without permanent rules because the species on the state’s Endangered and Threatened list would change from year to year and there was no controversy about the program. There is now a need for permanent rules because wolf damage has been made a permanent part of the payment program and there is significant public controversy about the wolf damage payment program.

Policy analysis

The Wisconsin wolf population has increased from just 25 animals in 1980 to 335 in 2003. From 1985 to 1998 wolf damage payments ranged from \$200.00 to \$ 12, 000.00 per year. Wolf damage payments from 1999 to 2004 have averaged \$ 43,800 per year. We can anticipate that wolf damage claims will be reduced somewhat in the future now that the Department has the authority to destroy wolves that are causing depredations to livestock. However, 37% of all wolf damage payments are paid to reimburse dog owners for killed or damaged dogs. Most all of these dogs are hound dogs killed or injured by wolves while the dogs are pursuing legal game animals such as bear, bob cat and coyote. Now that wolves have been recovered in Wisconsin, many people and

some legislators are questioning the need to continue to pay for hound dogs. Additionally, constituents that contribute to the Endangered Resources fund have questioned the current policy of paying for missing livestock.

The Wisconsin Wolf Stakeholders Group discussed the need for permanent Administrative rules to govern the Department’s payment program at a meeting in Wausau on October 25, 2003. They concluded that the following list of topics need to be addressed by any proposed Administrative Rule:

- Livelihood versus recreation
- Compensation/consumption sports
- Seek financial partnerships to help with payments
- Sources of money used for payments
- What types of property are eligible for payments
- Rule should limit certain types of money (to exclude some specific fund)
 - Limitations to reimbursement
 - Criteria to be applied to judge
 - Incentives for prevention measures
 - Non-lethal measures
 - Caps on payment
 - Reporting requirements
 - Value determination
 - Verification
 - Land Ownership
 - Owner negligence/responsibility
 - Interdepartmental cooperation
 - Population cap – relationship between wolf numbers and payments
 - Game farm situation
 - Percent of ER funds to pay claims
 - Look at statute change

The Bureau of Endangered Resources would like permission to conduct public input sessions and work with the Wisconsin Wolf Stakeholders group and the Wisconsin Wolf Science Team to draft proposed rules to govern this payment program.

Statutory authority

Sections 20.370 (1) (fs) and 227.11, Stats.

Staff time required

Approximately 240 hours will be needed by the Department.

Submittal of rules to legislative council clearinghouse

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

Transportation

Rule Submittal Date

On January 10, 2005 the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. Trans 276 of the Wisconsin Administrative Code and relates to allowing the operation of double bottoms and certain other vehicles on specified highways.

Agency Procedure for Promulgation

A public hearing is required and scheduled for February 11, 2005. The Division of Transportation Infrastructure Development, Bureau of Highway Operations is primarily responsible for preparing the rule.

Contact Information

Julie A. Johnson
Paralegal
Telephone (608) 266-8810

Transportation

Rule Submittal Date

On January 13, 2005 the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. Trans 276 of the Wisconsin Administrative Code and relates to allowing the operation of double bottoms and certain other vehicles on specified highways.

Agency Procedure for Promulgation

A public hearing is required and scheduled for February 11, 2005. The Division of Transportation Infrastructure Development, Bureau of Highway Operations is primarily responsible for preparing the rule.

Contact Information

Julie A. Johnson
Paralegal
Telephone (608) 266-8810

Veterans Affairs

Rule Submittal Date

On January 5, 2005 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the

Wisconsin Legislative Council Rules Clearinghouse creating ss. VA 13.02 (2) (e), 13.04 (3), and 13.06 of the Wisconsin Administrative Code. The proposed rule relates to the veterans assistance program.

Subject Matter

The creation of the proposed rules will identify the circumstances under which the Department may assist a financially needy veteran to allow the veteran to reside at the Department's facilities established under ss. 45.365 or 45.385, Stats.

There is no current or pending federal regulation that addresses this initiative. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant impact upon the private sector.

Agency Procedure for Promulgation

A public hearing is required. The Office of the Secretary is primarily responsible for preparing the rule.

Contact Information

John Rosinski
Chief Legal Counsel
Telephone (608) 266-7916

Workforce Development

Rule Submittal Date

On January 14, 2005, the Department of Workforce Development submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rules affect s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 14, 2005. The Equal Rights Division is the organizational unit that is primarily responsible for promulgation of the rule.

Contact Information

Elaine Pridgen
Telephone (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearing
Health and Family Services
(Health, Chs. HFS 110–)
[CR 04– 142]

NOTICE IS HEREBY GIVEN that pursuant to Sections 227.11 (2) (a) and 255.056 (2) and (7), Stats., interpreting Sections 255.056 and 450.11, Stats., the Department of Health and Family Services will hold a public hearing to consider the proposal to create ch. HFS 148, relating to the cancer drug repository program authorized under s. 255.056, Stats., and affecting small businesses.

Hearing Information

The public hearing will be held:

Wednesday March 2, 2005 at 10:00 a.m.

1 West Wilson

Room 950 A

Madison, WI

The hearing site is fully accessible to people with disabilities. If you are hearing or visually impaired, do not speak English, or have circumstances that might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Place Where Written Comments may be Submitted

Written comments may be submitted at the public hearing, or in lieu of attending a public hearing written comments can be submitted by regular mail or email to:

Doug Englebort

Room 950

1 West Wilson

Madison, WI 53701

Engleda@dhfs.state.wi.us

608-266-5388

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at <http://adminrules.wisconsin.gov>.

Deadline for Comment Submission

The deadline for submitting comments is **4:30 p.m., on March 11, 2005.**

Analysis Prepared by the Department of Health and Family Services

Under s. 255.056, Stats., pharmacies and medical facilities, which include hospitals, and clinics or offices used by physicians licensed under ch. 448, Stats., may elect to accept unused cancer drugs and cancer supplies for dispensation to individuals who meet eligibility criteria established by the Department in these rules. The proposed rules establish eligibility requirements for participation in the program;

forms for use in the administration of the program; drugs and supplies that may and may not be accepted for use under the program; and the maximum handling fee that a pharmacy or medical facility may charge a recipient for drugs or supplies received under the program.

Initial Regulatory Flexibility Analysis

The proposed rules will affect only the pharmacies and medical facilities that elect to participate in the cancer drug repository program, including those that meet the definition of small business under s. 227.114 (1), Stats. Except for certain form requirements, the proposed rules do not impose reporting or recordkeeping requirements, or performance, operational, or design standards beyond what may be already required under s. 450.11, Stats., and ch. Phar 7 relating to pharmacies; s. HFS 124.15 relating to hospitals; and ch. Med 17 relating to physicians.

Fiscal Estimate

It is estimated that the bill will cost \$82,000 the first year and \$27,400 thereafter including 0.5 FTE to implement. The fractional position will administer the program including the administration of a department web-based database. This program established under Act 175 did not appropriate any additional funds or positions to DHFS. Therefore, the Department will need to reallocate existing resources to implement the program. Because the costs result from Act 175 this proposed rule does not, by itself, have a fiscal effect.

Ongoing costs to the state are estimated at \$27,400 in the second year, with annual increases thereafter. The provisions of the bill did not appropriate funds for this program; costs will need to be absorbed within existing appropriations.

Participation by pharmacies and/or hospitals is on a voluntary basis. Business entities (including small business entities) that lack the resource(s) to participate will simply elect not to become involved. The handling fee allowed in the rule is intended to cover some of the cost to process a prescription. These costs can be anywhere from \$7.00-\$9.00 depending on the pharmacy and location. Additional costs include storing this medication or shipping drugs to another pharmacy or hospital. Should the donated medications end up not being used or past the expiration date businesses will need to destroy the medication or hire someone to do it. They will incur costs for destruction and meeting EPA and DNR regulations.

Document Copies

A copy of the full text of the rules and the full text of the fiscal estimate, and other documents associated with this rulemaking may be obtained, at no charge, from the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov> or by contacting Doug Englebort, 1 West Wilson, Room 950, Madison, WI 53701.

Small Business Regulatory Review Coordinator

For matters or comments concerning a rule's impact on small businesses, contact:

Rosie Greer, DHFS Administrative Rules Manager

608-266-1279

greerj@dhfs.state.wi.us

Notice of Hearings
Natural Resources
(Fish, Game, etc., Chs. NR 1-)

[CR 05-004]
[CR 05-005]

NOTICE IS HEREBY GIVEN that pursuant to ss. 20.370 (1) (fs), 29.014 and 227.11, Stats., interpreting ss. 20.370 (1) (fs), 71.10 (5) (am) and 29.605, Stats., the Department of Natural Resources will hold public hearings on the creation of subch. III of ch. NR 12, Wis. Adm. Code, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to livestock. The Bureau of Endangered Resources has administered this program since 1985 without rules because the species on the state's Endangered and Threatened lists could change from year to year, there were relatively few claims per year, and there was no controversy about the program. There is now a need for rules because the Endangered Resources program has responsibility for these payments regardless of legal status, claims have increased due to wolf damage, and there is significant public controversy about the wolf damage payment program.

The proposed rules differ from the existing program in three ways: proposed caps for maximum payments per livestock animal type; proposed maximum reimbursement of \$15,000 per claimant per year (same as the wildlife damage payment program); and proposed deductible of \$250 per claim (same as wildlife damage payment program). The rules propose to be applicable until wolves become a game species in Wisconsin.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 29.014 and 227.11, Stats., interpreting ss. 20.370 (1) (fs), 71.10 (5) (am) and 29.604, Stats., the Department of Natural Resources will hold public hearings on the creation of subch. III of ch. NR 12, Wis. Adm. Code, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to hunting dogs and pets. The Bureau of Endangered Resources has administered this program since 1985 without rules because the species on the state's Endangered and Threatened lists could change from year to year, there were relatively few claims per year, and there was no controversy about the program. There is now a need for rules because the Endangered Resources program has responsibility for these payments regardless of legal status, claims have increased due to wolf damage, and there is significant public controversy about the wolf damage payment program.

The proposed rules differ from the existing program in four ways: proposed maximum reimbursement of \$15,000 per claimant per year (same as the wildlife damage payment program); proposed deductible of \$250 per claim (same as wildlife damage payment program); proposed limit on hunting dog payments whereby the Department would not pay for additional dogs killed by wolves within 5 miles of a previous dog kill site that the Department has publicly noticed; and proposal that the loss of personal property other than pets and hunting dogs will not be eligible for reimbursement. These rules propose to be applicable until wolves become a game species in Wisconsin.

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

a. Types of small businesses affected: Individuals involved in agriculture

b. Description of reporting and bookkeeping procedures required: None, except that to be eligible for reimbursement for calves, claimants needs records confirming the count of the number of calves missing

c. Description of professional skills required: None

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

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

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

- | | |
|---|---|
| February 15, 2005
Tuesday at 6:00 pm. | Cafeteria, Spooner High School
500 College Street, Spooner |
| February 15, 2005
Tuesday at 6:00 pm. | GLI Room
Black River Falls Middle School
1202 Pierce Street
Black River Falls |
| February 16, 2005
Wednesday at 6:00 pm. | Cafeteria
James Williams Jr. High School
915 Acacia Lane, Rhinelander |
| February 17, 2005
Thursday at 6:00 pm. | Room 114
Ag and Extension Service Center
1150 Bellevue St., Green Bay |
| February 17, 2005
Thursday at 6:00 pm. | Union South
227 N. Randall Avenue, Madison
(parking is available in UW lots
located between University Avenue
and Johnson Street north of Union
South) |

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 Randy Jurewicz at (608) 267-7505 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Mr. Tim Cooke, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until February 18, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Cooke.

Notice of Hearing
Transportation
[CR 05-003]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the

Department of Transportation will hold a public hearing at the following location to consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

February 11, 2005

Transportation District #5
3550 Mormon Coulee Road
Mississippi Conference Room
LaCrosse, WI
11:00 AM

(Parking is available for persons with disabilities)

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16 (1) and 348.07 (4), Stats.

Statute Interpreted: s. 348.07 (4), Stats.

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

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

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

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

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

This rule amends Trans 276.07 (18), Wisconsin Administrative Code, to add one segment of highway to the designated highway system established under s. 348.07(4), Stats. The actual highway segment that this rule adds to the designated highway system is:

<u>Hwy.</u>	<u>From</u>	<u>To</u>
STH 95	Arcadia	Blair

The long trucks to which this rule applies are those with 53–foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin’s regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin’s highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

¹ The rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

² 45–foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

The effect of this rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segment listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly–designated highway. Specifically, this means there will be no overall length limitation for a tractor–semitrailer combination, a double bottom or an automobile haulaway on the affected highway segment. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor–semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

Comparison with Rules in Adjacent States: None of the states adjacent to Wisconsin (Michigan, Minnesota, Illinois and Iowa) have administrative rules relating to long truck routes in their states.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: Due to the federal requirement that requests for access to the designated highway system in a state be decided within 90 days of the request, a proposed rule making to add requested routes is initiated without investigation. The public hearing and Department investigation undertaken in preparation for the hearing provide the engineering and economic data needed to make a final decision on whether to withdraw the proposal or proceed to final rule making.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The provisions of this rule adding a highway segment to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes. You may contact the Department's small business regulatory coordinator by phone at (608) 267-3703, or via e-mail at the following website:

<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Place Where Comments are to be Submitted and Deadline for Submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Ashwani Sharma, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986. You may also contact Mr. Sharma by phone at (608) 266-1273.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Notice of Hearing Transportation [CR 05-006]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to

allowing the operation of double bottoms and certain other vehicles on certain specified highways:

February 11, 2005

Transportation District #5
3550 Mormon Coulee Road
Mississippi Conference Room
LaCrosse, WI
11:00 AM

(Parking is available for persons with disabilities)

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16 (1) and 348.07 (4), Stats.

Statute Interpreted: s. 348.07 (4), Stats.

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

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

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

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

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of

STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in § 348.07 (4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 5 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

This rule amends Trans 276.07 (10), Wisconsin Administrative Code, to add one segment of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segment that this rule adds to the designated highway system is:

Hwy.	From	To
STH 48	STH 35 in Luck	USH 63 in Cumberland

The long trucks to which this rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segment listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highway. Specifically, this means there will be no overall length limitation for a tractor-semitrailer combination, a double bottom or an automobile haulaway on the affected highway segment. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segment provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on this highway segment provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

Comparison with Rules in Adjacent States: None of the states adjacent to Wisconsin (Michigan, Minnesota, Illinois and Iowa) have administrative rules relating to long truck routes in their states.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: Due to the federal requirement that requests for access to the designated highway system in a state be decided within 90 days of the request, a proposed rule making to add requested routes is

initiated without investigation. The public hearing and Department investigation undertaken in preparation for the hearing provide the engineering and economic data needed to make a final decision on whether to withdraw the proposal or proceed to final rule making.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The provisions of this rule adding a highway segment to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes. You may contact the Department's small business regulatory coordinator by phone at (608) 267-3703, or via e-mail at the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Place Where Comments are to be Submitted and Deadline for Submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Ashwani Sharma, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986. You may also contact Mr. Sharma by phone at (608) 266-1273.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

¹ The rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

² 45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

Notice of Hearing Veterans Affairs

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the 16th day of February, 2005, at 11:00 a.m., in the 8th floor board room at 30 West Mifflin Street in Madison, Wisconsin.

Analysis Prepared by the Department of Veterans Affairs

Statutory authority: ss. 45.35 (3) and 45.357 (2), Stats.
Statute interpreted: s. 45.357, Stats.

Analysis Prepared by the Department of Veterans Affairs established under s. 45.365 or 45.385, Stats.

The proposed rule will identify the circumstances under which the department may assist a financially needy veteran to reside at the department's facilities established under s. 45.365 or 45.385, Stats.

There is no current or pending federal regulation that has an impact on this issue. There are no similar rules in adjacent

states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal effect upon the private sector.

Initial Regulatory Flexibility Analysis

This rule is not expected to have any adverse impact upon small businesses.

Fiscal Estimate

The rule limits expenditures for the initiative to \$70,000 for each fiscal year.

Contact Person

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski
Wisconsin Department of Veterans Affairs
PO Box 7843
Madison, WI 53707-7843
(608) 266-7916
John.rosinski@dav.state.wi.us

Notice of Hearing Veterans Affairs [CR 05-008]

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the 16th day of February, 2005, at 11:15 a.m., in the 8th floor board room at 30 West Mifflin Street in Madison, Wisconsin.

Analysis Prepared by the Department of Veterans Affairs

Statutory authority: ss. 45.35 (3), 45.356 (7) and 45.73, Stats.

Statute interpreted: ss. 45.356, 45.76, and 45.79, Stats.

The proposed rule accomplishes several purposes. The application procedures for home improvement and personal loans are updated to implement the additional flexibility authorized in 2003 Wis Act 83. Specifically, applicants would be authorized to file applications directly with the department. Current rule provisions addressing adjustment of interest rates and maximum loan amounts in the personal loan program will be repealed to reflect the authority provided in 2003 Wis Act 83. Additionally, underwriting criteria for guarantors will be amended to assure more secure guarantor loans.

There is no current or pending federal regulation that has an impact on this issue. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal effect upon the private sector.

Initial Regulatory Flexibility Analysis

This rule is not expected to have any adverse impact upon small businesses.

Fiscal Estimate

The fiscal impact is expected to be negligible. However, the added flexibility allowing interest rate and loan amount adjustments will better enable the department to control expenditures from the veterans trust fund.

Contact Person

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski

Wisconsin Department of Veterans Affairs
PO Box 7843
Madison, WI 53707-7843
(608) 266-7916
John.rosinski@dav.state.wi.us

Notice of Hearing Workforce Development (Public Works Construction, Chs. DWD 290-294) [CR 05-007]

NOTICE IS HEREBY GIVEN that pursuant to ss. 66.0903 (5) and 103.49 (3g), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Hearing Information
Monday, **February 14, 2005**, at 1:30 p.m.
G.E.F. 1 Building, B103
201 E. Washington Avenue
Madison

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

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903 (5), 103.49 (3g), and 227.11, Stats.

Statutes interpreted: Sections 66.0903 (5) and 103.49 (3g), Stats.

Explanation of agency authority. The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of the prevailing wage rate requirements and direct the Department to adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the Department adjusts the thresholds based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication.

Summary of the proposed rule. Section DWD 290.155 (1) currently provides that the prevailing wage rate requirements do not apply to any single-trade public works project for which the estimated cost of completion is below \$38,000 and do not apply to any multi-trade public works project for

which the estimated cost of completion is below \$186,000. This rule adjusts the thresholds from \$38,000 to \$41,000 for a single-trade project and from \$186,000 to \$200,000 for a multi-trade project based on a 7.755% increase in the construction cost index between December 2003 and December 2004.

Summary of related federal law. The federal prevailing wage law applies to a federal public works project for which the contract is greater than \$2,000. This threshold is in statute and is rarely adjusted.

Comparison with laws in adjacent states. Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws. Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid. Iowa does not have a prevailing wage law.

Summary of factual data and analytical methodologies. The thresholds are increased based on the national inflation rate in the construction industry. The Department uses the construction cost index in the *Engineering News-Record*, a national construction trade publication, to determine the inflation rate.

Effect on small business. The proposed rule does not affect small business.

Anticipated costs incurred by the private sector. The rule does not have a significant fiscal effect on the private sector.

Fiscal Estimate

Under the proposed rule, a state agency or local governmental unit contracting for the construction of a

single-trade public works project that costs more than \$38,000 but less than \$41,000 or a multi-trade project that costs more than \$186,000 but less than \$200,000 will not be covered by the prevailing wage requirement.

Contact information

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing "prevailing wage" in the search engine. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

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

Written comments

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than February 14, 2005, will be given the same consideration as testimony presented at the hearing.

Small Business Regulatory Coordinator
Jennifer Jirschele
(608) 266-1023
jennifer.jirschele@dwd.state.wi.us

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 04–094)

Chapter ATCP 30, Appendix A, relating to pesticide product restrictions.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board

(CR 03–087)

Chapter A–E 4, relating to application contents for professional engineers.

Financial Institutions – Banking

(CR 04–098)

Chapter DFI–Bkg 74, relating to authorizations to consolidate accounts.

Natural Resources

(CR 02–099)

Relating to department standards for erosion control of inland lakes and impoundments.

Natural Resources

(CR 03–066)

Relating to ambient air quality standards.

Natural Resources

(CR 03–105)

Relating to snowmobile noise testing procedures.

Natural Resources

(CR 04–060)

Relating to grants for the control of aquatic invasive species.

Natural Resources

(CR 04–062)

Relating to miscellaneous structures in navigable waterways.

Natural Resources

(CR 04–063)

Relating to boathouses and fixed houseboats in navigable waterways.

Natural Resources

(CR 04–064)

Relating to fish and wildlife habitat structures in navigable waterways.

Natural Resources

(CR 04–065)

Relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waters.

Natural Resources

(CR 04–066)

Relating to Natural Resources Board policies on protection and management of public waters.

Natural Resources

(CR 04–078)

Relating to regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

Natural Resources

(CR 04–084)

Relating to regulation of bridges and culverts in or over navigable waterways.

Natural Resources

(CR 04–085)

Relating to regulation of grading on the bank of a navigable waterway.

Natural Resources**(CR 04-086)**

Relating to regulation of construction, dredging and enlargement of an artificial water body.

Natural Resources**(CR 04-087)**

Relating to dredging in navigable waterways.

Natural Resources**(CR 04-091)**

Relating to deer management unit population goals and boundaries.

Natural Resources**(CR 04-092)**

Relating to use of department properties.

Revenue**(CR 04-049)**

Chapter Tax 1, relating to electronic funds transfer.

Revenue**(CR 04-083)**

Chapter Tax 61, relating to the Retailer Performance Program (RPP).

Revenue**(CR 04-115)**

Chapter Tax 2, relating to the dairy investment credit.

Revenue**(CR 04-116)**

Chapter Tax 3, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.

Transportation**(CR 04-090)**

Chapter Trans 135, relating to creation of a school bus oxidation catalyst grant program in certain counties.

Transportation**(CR 04-099)**

Chapter Trans 102, relating to the issuance of driver licenses and identification cards.

Transportation**(CR 04-100)**

Chapter Trans 102, relating to proof of identification.

Transportation**(CR 04-114)**

Chapter Trans 302, relating to vehicle marking.

Transportation**(CR 04-117)**

Chapter Trans 112, relating to medical standards for driver licensing and general standards for school bus endorsements.

Transportation**(CR 04-122)**

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

Veterans Affairs**(CR 04-126)**

Chapter VA 14, relating to the determination of interment fees and assessments at the state veterans cemeteries.

Rule orders filed with the revisor of statutes bureau

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

Transportation (CR 04-057)

An order affecting chs. Trans 201 and 202, relating to the Wisconsin scenic byways program.
Effective 3-1-05.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **January 31, 2005**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Commerce (CR 04-052)

An order affecting chs. Comm 90 and 2, relating to design and construction of public swimming pools and fees. Effective 2-1-05.

Summary of Final Regulatory Flexibility Analysis

The agency received hearing comments from seven individuals; one was from another state agency (Department of Health and Family Services, DHFS); one from Sen. Ron Brown's office; and the others were from small business. The small business comments originated from three pool designers/contractors and one manufacturer of interactive play attractions. The Wisconsin Innkeepers Association also submitted comments.

Comments later received at the legislative committee review step which precipitated a germane modification included:

This modification consists of changes dealing with three aspects of the code: who can request the final inspection of a pool, floor drain specifications and the number of plumbing fixtures required at public swimming pools and water attractions. A specific description of the changes follows.

Under Treatment Section 11b., a change is hereby proposed that would allow the construction contractor to call for the final inspection of pool construction.

Under Treatment Section 33., a change is hereby proposed that would clarify that floor drains are not required in dressing areas, but where floor drains are installed they must have drain openings that are no larger than 1/2 inch in width or diameter.

Under Treatment Section 35., a change is hereby proposed to Table 90.16 that would reduce (from the original proposal) the number of public toilets, urinals and showers required at small public pools and water attractions located in hotels and motels.

Also, four editorial changes to Table 90.16 are hereby proposed to correct typographical errors found since the original rule proposal was forwarded for legislative committee review. These changes are necessary to properly communicate that for large pools the number of public toilets required for females must be twice the number of toilets and urinals required for males in order to provide equal speed of access as required by section 101.128 of the statutes.

Summary of Comments by Legislative Review Committees

On September 21, 2004 Rep. Pettis, chair of the Assembly Committee on Tourism requested a meeting with staff regarding three areas of concern. A meeting was held on

October 6, 2004 with the Committee chair and staff as well as representatives from Commerce, Department of Health and Family Services and the pool contractor and hospitality industry. On October 18, 2004 Commerce responded with a germane modification, which was deemed acceptable. The committee review period ended on November 4, 2004.

Commerce (CR 04-068)

An order affecting ch. Comm 87, relating to the private sewage system replacement or rehabilitation grant program. Effective 2-1-05.

Summary of Final Regulatory Flexibility Analysis

The rules establish updated maximum allowable financial assistance amounts in various tables, where appropriate, consistent with s. 145.245 (7) (c), Stats. The table items and the table titles are amended to align with the technologies and methods now contained in chapter Comm 83, POWTS.

The rules also clarify that the date of the system installation, not the age of the structure, is a factor used in determining eligibility for financial assistance.

Summary of Comments by Legislative Review Committees

No comments were received.

Insurance (CR 04-032)

An order affecting ch. Ins 17, relating to annual patients compensation fund and mediation fund fees. Effective 2-1-05.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 03-098)

An order affecting ch. MPSW 4, relating to supervised pre-certification and pre-licensure social work. Effective 2-1-05.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

**Marriage and Family Therapy, Professional Counseling and Social Work Examining Board
(CR 04-044)**

An order affecting ch. MPSW 1, relating to alcohol and drug counseling. Effective 2-1-05.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

**Veterinary Examining Board
(CR 04-018)**

An order affecting chs. VE 2 and 5, relating to admission time for national examinations and post graduate training permits. Effective 2-1-05.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **January 2005**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Commerce

Ch. Comm 2

S. Comm 2.68 (1) and (2) and (3) (d), Tables 2.68-1 and 2.68-2

Ch. Comm 87

S. Comm 87.01
 S. Comm 87.02 (1) to (3)
 S. Comm 87.03 (5), (7) (b), (7m), (9) (intro.), (c)
 SS. Comm 87.04 and 87.05
 S. Comm 87.10
 S. Comm 87.20 (1) (intro.), (b), (d), (3) (intro.) and (4)
 S. Comm 87.21 (2) and (3)
 SS. Comm 87.30 and 87.31
 S. Comm 87.32 (1) to (3) and (6)
 S. Comm 87.40 (1) (a), (b), (2), (3)
 S. Comm 87.50
 S. Comm 87.60
 S. Comm 87.70 (1), (2) and (4)
 S. Comm 87.71 (1) to (4), (6) and (7)
 S. Comm 87.72 (1), (2) (a), (b), and (3) to (6)
 S. Comm 87.80 (intro.), (2) and (3)
 S. Comm 87.81 (1)
 S. Comm 87.90
 S. Comm 87.91

Ch. Comm 90

S. Comm 90.02 (1)
 S. Comm 90.03
 S. Comm 90.04 (intro.), (1) (intro.), (a), (4) (a) to (e) and (6) (c)
 S. Comm 90.045
 S. Comm 90.07 (3)
 S. Comm 90.08 (8) (b)

S. Comm 90.09 (2) to (5)
 S. Comm 90.11 (1), (6) (b), (8) (a), (9) (a), (b) and (d)
 S. Comm 90.12 (1) (d)
 S. Comm 90.13 (1) and (6)
 S. Comm 90.14
 S. Comm 90.16 (1) to (3), Table 90.16
 S. Comm 90.18 (2) (a), (e) and (6)
 S. Comm 90.19 (6) (b) and (9) (g)
 SS. Comm 90.20 to 90.21
 SS. Comm 90.30 and 90.40

Insurance

Ch. Ins 17

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

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

Ch. MPSW 1

S. MPSW 1.02 (1), (1g), (2d) and (2h)
 S. MPSW 1.09

Ch. MPSW 4

S. MPSW 4.01 (3) (b) and (c)

Veterinary Examining Board

Ch. VE 2

S. VE 2.01 (2)

Ch. VE 5

S. VE 5.03 (1) (d)

Editorial corrections

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

Commerce

Ch. Comm 2

S. Comm 2.31 (1) (g) and (h)

Ch. Comm 87

S. Comm 87.21 (1) and (2)

Sections affected by revisor's corrections not published

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

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

Location of invalid cross-reference	Invalid cross-reference	Correction
Comm 81.01 (288e)	Comm 90.03 (11) (k)	Comm 90.03 (18) (h)
HFS 172.12 (1) (h)	Comm 90.09 (5)	Comm 90.09 (4)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 81. Designation of the National Incident Management System (NIMS) as the basis for incident management in the State of Wisconsin.

Executive Order 82. 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 Lance Corporal Richard Warner of the United States Marine Corps Reserve who lost his life during Operation Iraqi Freedom.

Executive Order 83. 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 Private First class Brent Vroman of the United States Marine Corps Reserve who lost his life during Operation Iraqi Freedom.

Executive Order 84. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff to honor Tsunami victims.

Executive Order 85. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Staff Sergeant Todd Olson of the Wisconsin Army National Guard who lost his life during Operation Iraqi Freedom.

Executive Order 86. Relating to a special session of the Legislature.

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

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

*Wisconsin
Administrative
Register*

Dated Material. Please Do Not Delay!