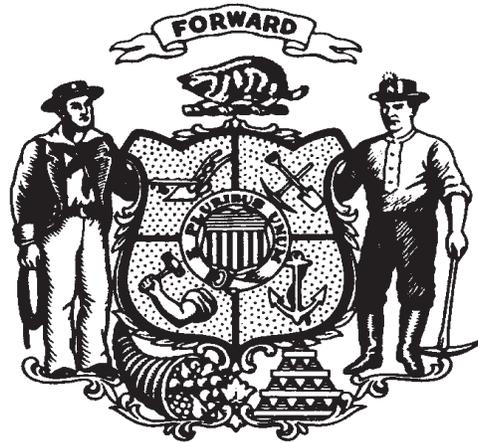


Wisconsin Administrative Register

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

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

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

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

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

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

Agriculture, Trade and Consumer Protection

Rules adopted revising **chs. ATCP 10 and 11**, relating to a poultry flock certification program.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) administers Wisconsin’s animal health and disease control programs, including the national poultry improvement program (NPIP). The NPIP is designed to prevent the spread of *Salmonella pullorum*, fowl typhoid and, in the case of turkeys, *Mycoplasma gallisepticum*. NPIP is governed by 9 CFR 145 and 147. NPIP enrollment is voluntary, but non-enrolled flocks are subject to certain movement restrictions.

(2) Current DATCP rules prohibit the import, use, sale or movement of poultry, farm-raised game birds or their eggs for breeding or hatching unless they originate from flocks that are enrolled in NPIP and meet NPIP standards. Current DATCP rules also prohibit the exhibition of poultry or farm-raised game birds at a fair, exhibition or swap meet unless they originate from an NPIP “*pullorum*-typhoid clean” or equivalent flock, or are individually tested for *pullorum*-typhoid.

(3) NPIP is primarily designed for large commercial flocks that move birds or eggs in interstate commerce. NPIP requires yearly testing of all sexually mature birds, and routine inspections. Fees for enrollment in the program differ based on flock size and purpose, and range from \$20 to \$200. NPIP enrollment and testing may be cost-prohibitive for small flocks. Current rules restrict market access and exhibition by

small producers of poultry and farm-raised game birds, and impose an unnecessary burden on those producers. Some small producers may be tempted to ignore or subvert current rules, in order to market or exhibit their poultry or farm-raised game birds. That may, in turn, create unnecessary risks of disease.

(4) It is urgently necessary to provide alternative disease monitoring options for small producers of poultry and farm-raised game birds, so that those producers can legally and economically move, market and exhibit their birds. The current lack of alternatives creates an unnecessary economic hardship, and an unnecessary risk of disease spread.

(5) DATCP has proposed rules which would create practical disease monitoring alternatives for small producers of poultry and farm-raised game birds. DATCP is proceeding to adopt those rules by normal rulemaking procedures. However, normal rulemaking procedures require at least a year to complete. A temporary emergency rule is needed to eliminate unnecessary hardship and risk in the short term, and to provide practical and effective disease monitoring for this year’s fair and exhibition season.

Publication Date:	March 3, 2006
Effective Date:	March 3, 2006
Expiration Date:	July 31, 2006
Hearing Date:	March 31, 2006

Commerce

(Commercial Buildings, Chs. Comm 61–65)

Rules adopted revising **ch. Comm 62**, relating to automatic fire suppression for student housing facilities serving colleges and universities.

Finding of Emergency

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 101.14 (4) (b) 3., Stats., and the provisions under 2005 Wisconsin Act 78, the department has the responsibility to promulgate rules requiring the installation of automatic fire sprinkler systems in various student housing facilities serving colleges and universities.

2. 2005 Wisconsin Act 78 was published on January 6, 2006, making January 7, 2006 the effective date of the Act.

3. Various provisions of the Act specified the effective date as the trigger to install the automatic fire sprinkler systems.

4. The department recognizes that promulgating this emergency rule will incorporate under the commercial building code, chapters, Comm 61 to 65, specific design and construction standards for new student housing facilities that are consistent with the intent of the Act.

5. The department recognizes that without promulgating this emergency rule, there could be confusion in design of any new student housing to be constructed in the very near future. The omission of the automatic fire sprinkler system during the initial design and construction would potentially place lives at greater risk.

6. In addition, the department recognizes that without promulgating this emergency rule, the confusion in omitting the automatic fire sprinkler system would result in additional costs to retrofit the installation of the system in order to fulfill the statutory obligation based upon the effective date of the Act.

Publication Date: March 4, 2006
Effective Date: March 4, 2006
Expiration Date: August 1, 2006
Hearing Date: May 15, 2006
 [See Notice this Register]

Elections Board

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

Finding of Emergency

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

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

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, **s. ElBd 1.39**, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

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

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

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

Natural Resources (7) (Fish, Game, etc., Chs. NR 1—)

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

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules that govern the managed forest law. The state legislature has delegated the appropriate agencies rule-making authority to administer the managed forest law. State statute governing the managed forest law was amended on July 25, 2005 with an initial applicability date of June 1, 2005. This order is designed to bring the administrative code into conformity with the state statutes that govern the managed forest law. Normal rule-making procedures will not allow the establishment of changes necessary to continue processing petitions for managed forest law received from June 1, 2005 to July 1, 2005 (petition deadline). Failure to process these petitions will result in a delay in designation of these lands as managed forest land and a failure to meet statutory deadlines for designation.

Publication Date: October 4, 2005
Effective Date: October 4, 2005
Expiration Date: March 3, 2006
Hearing Date: October 19, 2005
Extension Through: May 1, 2006

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

Finding of Emergency

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

Publication Date: October 3, 2005
Effective Date: October 3, 2005
Expiration Date: March 2, 2006
Hearing Date: October 12, 2005
Extension Through: April 30, 2006

3. Rules were adopted amending **ch. NR 47** relating to relating to master logging certification scholarships.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule-making to the Department of Natural Resources. Normal rule-making procedures will not allow the establishment of the rules in time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost revenues and added expense to the Master Logger Certification program.

Publication Date: November 15, 2005
Effective Date: November 15, 2005
Expiration Date: April 14, 2006
Hearing Date: December 12, 2005
Extension Through: June 12, 2006

4. Rules were adopted amending **ch. NR 25** relating to commercial fishing for lake trout in Lake Superior.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. Failure by the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: December 15, 2005
Effective Date: December 15, 2005
Expiration Date: May 14, 2006
Hearing Date: January 13, 2006

5. Rules were adopted revising **s. NR 10.25**, relating to the issuance of turkey hunting permits.

Plain Language Analysis

This rule change will allow the department to issue turkey tags remaining after the initial permit drawing in accordance with state statute, which is first-come, first-served. Additionally, this rule updates code language to accurately describe how permits are currently issued (by zone and by time period) and establishes that no person may obtain more than one turkey carcass tag per day.

Exemption from finding of emergency

2005 Wisconsin Act 25, allowed the department to utilize the procedure under s. 227.24, Stats., to promulgate rules implementing s. 29.164, Stats., for the period before the date on which permanent rules take effect, but may not exceed the period authorized under s. 227.24 (1) (c) and (2), Stats. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), Stats., 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.

Publication Date: February 13, 2006
Effective Date: March 1, 2006
Expiration Date: July 29, 2006
Hearing Date: April 10, 2006

6. Rules were adopted revising **ch. NR 47**, relating to the forestry research and development grant program.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to regulate and administer grant programs. The State legislature has delegated responsibility for rule-making to the Department of Natural Resources. Normal rule-making procedures will not allow the establishment of the rules in time to allocate funds during this fiscal year. Failure to establish rules during FY06 will result in lost opportunity for Wisconsin interests to compete for federal grants that improve the public health, public good and the environment through the development of alternative renewable energy and biochemical sources from forestry biomass.

Publication Date: March 16, 2006
Effective Date: March 16, 2006
Expiration Date: August 13, 2006
Hearing Date: April 24 & 26, 2006

7. Rules were adopted creating **s. NR 45.04 (1) (g)**, relating to regulation of firewood entering and exiting department lands and affecting small businesses.

Finding of Emergency

It is important to have restrictions on out-of-state firewood entering department lands in place this camping season due to recent developments in efforts to eradicate and quarantine emerald ash borer in the areas where it is currently established. In Michigan, Ohio, Indiana and Ontario, eradication programs are being dramatically scaled back or abandoned entirely for this summer. A recent audit of quarantine efforts in Michigan where emerald ash borer is most abundant and widespread is critical and faults their program for lax enforcement and poor education of the public to the dangers of moving firewood. Given this situation, a need for an external quarantine to protect Wisconsin forest resources, industry, and community trees becomes obvious. The Wisconsin Department of Agriculture, Trade and Consumer Protection has proposed an external quarantine on host material of emerald ash borer and three other invasive pests and diseases and our firewood regulation would help support this effort, provide an opportunity for education of the public and reduce one of the reasons people move firewood: for use while camping.

Publication Date: March 27, 2006
Effective Date: April 1, 2006
Expiration Date: August 29, 2006

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

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

Finding of emergency

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

new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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

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

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

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

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

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

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

Regulation and Licensing

Rules were adopted creating **chs. RL 164 and 165**, relating to a code of conduct and renewal requirements for substance abuse professionals.

Plain language analysis

The purpose of this emergency rule is to create a code of conduct to facilitate assumption of disciplinary proceedings as part of the transfer of the regulation of substance abuse professionals from the Department of Health and Family Services to the Department of Regulation and Licensing. The emergency rule also sets forth the requirements for renewal.

The Department of Regulation and Licensing must promulgate this emergency rule for the period before the effective date of the permanent rules as promulgated under

Wis. Stats. s. 440.88 (3). Under the previous regulatory scheme, the Department of Health and Family Services and the Wisconsin Certification Board had established a code of conduct and restrictions on late renewals. This emergency rule continues the applicability of the rules until the department, with the advice of the Advisory Committee, can establish permanent rules.

Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: “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.”

Publication Date: April 15, 2006
Effective Date: April 15, 2006
Expiration Date: September 12, 2006

Revenue (2)

1. Rule adopted revising **s. Tax 2.50** and creating **s. Tax 2.502**, relating to the computation of the apportionment fraction by multistated public utilities and telecommunications companies.

Finding of emergency

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

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of the following business entities:

- interstate public utilities, other than telecommunications companies, and
- interstate telecommunications companies.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate public utilities.

Publication Date: December 5, 2005
Effective Date: December 5, 2005
Expiration Date: May 4, 2006
Hearing Date: February 27, 2006

2. Rules adopted revising **chs. Tax 1 and 2**, relating to electronic funds transfer, information returns and wage statements.

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

Section 71.775, Stats., requires pass-through entities to file and pay withholding tax on the income allocable to their nonresident members. The department has determined that in order to administer this tax in a cost effective manner, it is necessary to require pass-through entities to file and pay the tax by electronic means. The department has also determined that, in the interest of cost effectiveness, a requirement to file Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, should also be put in place.

It is necessary to promulgate this rule order to remove the threat of revenue loss to the state as a result of pass-through entities filing or paying withholding tax or employers filing Form WT-7 by other than electronic means.

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

Publication Date: December 28, 2005
Effective Date: December 28, 2005
Expiration Date: May 27, 2006
Hearing Date: March 15, 2006

Transportation

A rule adopted amending s. **Trans 325.02**, relating to motor carrier safety regulations.

Finding of emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is on October 1, 2005 the new hours-of-service regulations became effective. The new regulations apply to drivers and carriers transporting property and passengers by commercial vehicles in interstate commerce. It is imperative the industry operates under a single set of regulations. Additionally, the Commercial Vehicle Safety Alliance out-of-service criteria is directly formulated to the new hours-of-service. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding and that funding could be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

Publication Date: December 1, 2005
Effective Date: December 1, 2005
Expiration Date: April 30, 2006
Hearing Date: February 13, 2006

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 a 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 Projects, Chs.
DWD 290–294)**

Rules adopted amending ss. **DWD 290.155 (1) and DWD 293.02 (1) and (2)**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Finding of emergency

The Department of Workforce Development 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 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. The adjustment of the thresholds for the application of the payment and performance assurance requirements avoids imposing an additional administrative burden on contractors for the same reason. 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 rule-making process.

Publication Date: December 27, 2005
Effective Date: January 1, 2006
Expiration Date: May 31, 2006
Hearing Date: February 15, 2006

Scope statements

Natural Resources

Objective of the rule. In April of 2002 the Natural Resources Board adopted NRB Order FH-34-01 changing the seasonal boundaries for commercial chub fishing on Lake Michigan. The provisions of that rule will expire on July 1, 2007. In the next few months the Department will review the issue and would like to consider extending the provisions of the rule beyond the present expiration date.

Policy analysis

Areas open to commercial chub fishing are limited in order to protect lake trout from being caught incidentally in the gill nets used by the commercial fishers. In general, the incidental catch of lake trout during winter and spring decreases as the nets are moved farther from shore. When commercial fishers are required to fish farther from shore, however, their operating costs increase and their yields decrease. NRB Order FH-34-01 was developed in order to address the concerns of commercial fishers while also not increasing the incidental catch of lake trout. By reducing the minimum fishing depth during winter but increasing it during spring, the rule sought to enhance fishing opportunities while actually reducing the total incidental catch of lake trout. With the rule scheduled to expire in 2007, the Department proposes to review the issue and consider recommending an indefinite extension of the provisions of NRB Order FH-34-01.

Statutory authority

Sections 29.041, 29.014 (1), 29.519 (1) (b), and 227.11 (2) (a), Stats.

Staff time required

One month FTE (combined effort by the Great Lakes Fisheries Specialist, a staff attorney, several field biologists, and wardens).

Entities affected by the rule

The interests of both commercial and sport fishers will be affected. In the past this issue has been controversial at times.

Comparison with federal regulations

None.

Natural Resources

Objective of the rule. To address nuisance algae and aquatic weed problems in lakes and low oxygen stress to fish and other aquatic life streams, the U. S. Environmental Protection Agency (EPA) is requiring all states, including Wisconsin, to adopt nutrient (phosphorus and nitrogen) criteria as part of its water quality standards. EPA's guidance identifies values for principally four "ecoregions" in the state, the northern forested areas, a west to east central zone, the driftless area and the southeastern quarter of the state. It also calls for adoption of "causal" pollutants, phosphorus and nitrogen, and "response" problems, algal biomass and high turbidity. EPA's guidance is based on the lowest 25th percentile of available data for each region, including data from other states. If EPA's approach were used, inevitably 75 percent of the lakes or streams – regardless of the actual

conditions in the water — would be considered as not meeting water quality standards and would need to be placed on the state's 303(d) impaired waters list.

Upon adoption, the criteria will be used to:

- develop nutrient water quality based municipal and industrial WPDES permit effluent limits;

- identify impaired waters under s. 303(d) of the Clean Water Act;

- further identify watersheds where nonpoint source controls, including performance standards and prohibitions, are most needed; and

- develop Total Maximum Daily Load (TMDL) allocations.

Policy analysis

EPA provides a number of options to the states. States may adopt nutrient criteria based on:

- EPA's guidance values (based on the 25th percentile of available data for multi-state eco-regions);

- the 25th percentile of available data for the state;

- conditions found in good quality lakes and streams; deemed as "least-impacted" reference conditions in EPA guidance; or

- analyses of effects found on the fish and aquatic life in the state's lakes and streams.

Also, states may adopt criteria:

- uniformly applicable across the state;

- varying by geographic regions determined by the state; or
- varying by EPA's ecoregions.

Finally, Department staff anticipates that EPA may accept promulgation on only phosphorus criteria instead of the suite of parameters (phosphorus, nitrogen, algal biomass and turbidity) identified in federal guidance.

If the state chooses to vary from EPA's guidance, the state must justify its approach to EPA. If the state chooses to not adopt nutrient criteria or if EPA finds the state's approach unacceptable, EPA may "over-promulgate" its own criteria (described above) for the state. EPA may "over-promulgate" as soon as 2008.

To date, EPA has not issued nutrient criteria guidance for the Great Lakes and their nearshore waters, including bays and harbors. In addition to adopting criteria for inland lakes and streams, criteria could be developed for these interstate waters. EPA also recommends that the criteria take into account the quality of downstream waters, including the Gulf of Mexico since nutrients, especially nitrogen, flow with the water and may cause water quality problems long distances from their source. Beyond use of the 25th percentile of available nitrogen data, EPA has not provided guidance on how to take into account the hypoxic (very low oxygen) conditions of the Gulf.

To better address the options listed above the Department requested researchers from the Department's Integrated Science Services Division and the U. S. Geological Survey (Department of Interior) to study Wisconsin streams and rivers. Two study reports will be published in 2006. The first report evaluates 250 small and medium sized streams. The second report dealing with over 30 large streams and rivers

will be completed late this year. The Department intends to use the results of these two reports, related study reports from Minnesota and Michigan and past Department studies to develop and recommend criteria that are specific to Wisconsin's lakes and streams.

Statutory authority

Statutory authority: ss. 227.11 (2), 281.15, and 282.001, Stats.

Statutes interpreted: s. 281.15, Stats.

Staff time required

Staff estimates that 20 to 30 months are needed to complete promulgation of the nutrient criteria for lakes and streams. An initial target for completion of the promulgation process is early 2008. Due to the complexity of the issue, a Department work group will need to review both recent and past studies, evaluate other pertinent data, and analyze implementation issues. After the work group process has sufficiently advanced, an external advisory group will be convened. Public hearings should be held in late-summer of 2007. Overall, it is estimated that approximately 2000 hours in staff time will be needed for the various steps in this process.

Entities affected by the rule

Either directly or indirectly, the nutrient criteria will likely affect the majority of point sources and urban and rural nonpoint sources. The number and extent that will be affected will depend on the values promulgated.

For municipal and industrial point sources, the nutrient criteria may require phosphorus removal for dischargers below the ch. NR 217, Wis. Adm. Code, phosphorus effluent limits threshold levels. It may also require lower limits for those with either 1 mg/l or alternate limits under ch. NR 217. At the same time, there will be a group of point source dischargers unaffected by the rule. Again, the number and the extent of any additional point source limits cannot be determined at this time.

Nutrient criteria will likely result in some additional lakes or streams being added to the section 303(d) Clean Water Act impaired waters list. TMDLs for these waters will identify the need for nutrient control from agriculture and urban nonpoint sources in watersheds draining to the impaired waters. In many situations, installation of best management practices to meet the required nonpoint source performance standards and prohibitions will be sufficient to attain and maintain the nutrient criteria. In those situations, no additional nonpoint source control is needed. In other situations, where the nonpoint source performance standards and prohibitions are insufficient, the result of this rule will be additional nonpoint source controls.

Comparison with federal regulations

In 2000, EPA promulgated nutrient criteria guidance for both lakes and streams and set a promulgation deadline of the end of 2004. For states choosing to conduct applicable studies, EPA has extended that deadline for states an additional three years. The estimated time needed to develop the rule may extend somewhat beyond EPA's extended schedule.

As briefly described above in the Subject/Objective section of the scope statement, states have the option to directly promulgate EPA's guidance values as criteria or to develop and justify reference or effects-based values as criteria for lakes and streams.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 200, relating to displaying attractions on highway specific information signs, to include the category of "Attractions" within the Specific Information Sign program and establish guidelines for criteria of qualification for "Attractions."

Policy analysis

2005 Wis. Act 136 amended s. 86.195, Stats., which adds the "Attractions" category to the Specific Information Sign program and authorizes the amendment of ch. Trans 200 to include specific criteria addressing the qualifications of an attraction. This also would give the Department a chance to add different types of tourist type businesses to the program that may not have had the chance to be included in any directional signing programs.

Comparison with federal regulations

This rule making would establish more detailed criteria on qualifications to the attractions category, therefore, Wisconsin would be consistent with the Federal Highway Administration Manual on Uniform Traffic Control Devices by adding the attractions category to the Specific Information sign program.

Entities affected by the rule

Department of Tourism, Department of Transportation, Outdoor Advertisers Association, Tourism business community, historic and cultural sites, and various amusements throughout the state.

Statutory authority

Section 86.195, Stats.

Staff time required

160 hours.

Transportation

Subject

Objective of the rule. This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding two highway segments to the network. The actual segments being proposed are:

CTH T from USH 12 to STH 29

CTH F from STH 124 to 85th Avenue

Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a request from Nestle USA, Eau Claire, Nutrition Division to add these highway segments.

Current law limits straight trucks on the highways in question to 40 feet in length and combination vehicles to 65 feet in length. Double bottom trucks are currently not permitted on these stretches of highway.

Designating these particular highways as "long truck routes" would lift all limits on overall truck length and permit double-bottom trucks to be operated on the routes, provided

that the trailer on a combination vehicle does not exceed 53 feet in length and no trailer on a double bottom exceeds 28 feet in length. This proposed rule change would not permit overweight loads.

Increasing overall vehicle length raises two primary safety concerns on any highway. First, whether the physical geometrics of the highway will permit longer vehicles to operate upon it. That is, “will the vehicles physically fit on the highway?” Sharp corners, for example, can make it impossible for a long vehicle to navigate a route while remaining within its lane of travel. Second, longer vehicles are more difficult for traffic to pass. This is especially true on 2-lane roads.

Comparison with federal regulations

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 s. 348.07 (2), Stats., and s. 348.08 (1), Stats. This act created ss. 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created s. 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 s. 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 s. 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.

Entities affected by the rule

The rule will affect Nestle USA, Eau Claire, Nutrition Division, the requester of the route to be designated, customers of Nestle USA on the route, other operators of commercial motor vehicles on the routes, Chippewa and Eau Claire Counties which maintain the highways at issue, and all motor vehicle operators who drive on the designated roads.

Eau Claire County opposes designation of CTH F segment as it crosses primarily residential areas of the county and is being suggested for designation primarily to service a single farm for Nestle. Chippewa County opposes designation of both routes and states it will control weights on these county highways under s. 349.15 if we adopt this rule making.

Statutory authority

Section 348.07 (4), Stats.

Staff time required

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

Transportation

Subject

Objective of the rule. This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding one highway segment to the network. The actual segment being proposed is:

STH 35 from Frederic to Siren

Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a request from H & P Express in Askov, Minnesota, to add this highway segment.

Current law limits straight trucks on the highways in question to 40 feet in length and combination vehicles to 65 feet in length. Double bottom trucks are currently not permitted on these stretches of highway.

Designating these particular highways as “long truck routes,” would lift all limits on overall truck length and permit double-bottom trucks to be operated on the routes, provided that the trailer on a combination vehicle does not exceed 53 feet in length and no trailer on a double bottom exceeds 28 feet in length. This proposed rule change would not permit overweight loads.

Increasing overall vehicle length raises two primary safety concerns on any highway. First, whether the physical geometrics of the highway will permit longer vehicles to operate upon it. That is, “will the vehicles physically fit on the highway?” Sharp corners, for example, can make it

impossible for a long vehicle to navigate a route while remaining within its lane of travel. Second, longer vehicles are more difficult for traffic to pass. This is especially true on 2-lane roads.

Comparison with federal regulations

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 s. 348.07 (2), Stats., and s. 348.08 (1), Stats. This act created ss. 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created s. 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 s. 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 s. 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.

Entities affected by the rule

The rule will affect the requester of the route to be designated and other operators of commercial motor vehicles. Permitting long trucks on the route will necessarily affect all persons operating on the stretch of highway in question.

Statutory authority

Section 348.07 (4), Stats.

Staff time required

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

Transportation

Subject

Objective of the rule. This rule making will create ch. Trans 515, relating to contractual service procurement, pursuant to 2005 Wis. Act 89, which requires the Department to perform a cost benefit analysis prior to contracting out engineering and other specialized services under s. 84.01 (13), Stats., that are estimated to cost \$25,000 or more.

Policy analysis

The Department has traditionally made decisions to contract out for engineering and other specialized services under s. 84.01 (13), Stats., using information from a variety of sources, including resource modeling, performance measures and contract by contract cost comparison. 2005 Wisconsin Act 89 requires the Department to conduct a cost benefit analysis for each proposed engagement of engineering or other technical services expected to cost \$25,000 or more. The proposed rule will implement the requirements of the statute and provide guidance for Department employees in conducting the analysis.

Entities affected by the rule

No outside entities are directly impacted by the proposed rule as its requirements will be fulfilled by Department employees. Collective bargaining organizations representing state employees, as well as consulting firms, have an interest in the provisions of the rule as the outcomes of decisions made under the rule may affect the amount of work available to them to perform.

Statutory authority

Section 84.01 (13), Stats.

Staff time required

It is estimated that it will take a total of 200 staff hours to develop.

Workforce Development

Subject

Notifying W–2 participants of payment reductions and case closures and determining good cause for failing to comply with W–2 participation requirements.

Policy analysis

Section 49.153 (1), Stats., as created by 2005 Wisconsin Act 25, provides that before taking any action against a Wisconsin Works (W–2) participant that would result in a 20 percent or more reduction in the participant's benefits or in termination of the participant's W–2 eligibility, a W–2 agency must provide the W–2 participant with written notice of the proposed action and the reasons for the proposed action; make

reasonable attempts to explain to the W-2 participant orally in person or by phone the reasons for the proposed action; and allow the participant a reasonable time to rectify the deficiency, failure, or other behavior to avoid the proposed action. Section 49.153 (2), Stats., provides that the Department shall promulgate rules that establish the procedures for the notice and explanation and that define “reasonable attempts” and “reasonable time” as used in s. 49.153 (1), Stats.

The Department proposes that the W-2 agency will provide the required written notice to the participant. Within 5 days after the mailing date of the written notice, the W-2 agency must either orally notify or make reasonable attempts to orally notify the participant of the proposed action and the reason for the proposed action.

The W-2 agency may notify the participant by phone calls at the participant’s home, child care provider, message phone, or work site or in person at the participant’s home, child care provider, work site, or the W-2 agency. The oral notification shall include telling the participant which activities were missed, discussing the reason for the nonparticipation, providing the participant the opportunity to present good cause for failing to participate, and informing the participant of the right to appeal the agency decision. Two or more attempts using any of the methods described above will be considered “reasonable attempts” at notification.

The W-2 participant will have 7 working days after the oral notification or after the W-2 agency’s last attempt to make oral notification as “reasonable time” to rectify the deficiency, failure, or other behavior. If the deficiency, failure, or other behavior that caused the payment reduction is rectified too late in the W-2 payment cycle to avoid a payment reduction, the W-2 agency shall promptly initiate a supplemental payment.

In addition, the Department proposes to amend s. DWD 12.20 relating to good cause for failing to comply with W-2 participation requirements. Section 49.148, Stats., provides that for every hour that a W-2 participant in a community service job or transitional placement fails to participate in an assigned activity without good cause, the participant’s grant amount shall be reduced by \$5.15. Good cause is to be determined by the W-2 financial and employment planner (FEP) in accordance with rules promulgated by the department. Also, s. 49.151, Stats., and s. DWD 12.21 provide that a participant who refuses to participate 3 times in any W-2 employment position component is ineligible to participate in that component. The definition of the more serious “refuses to participate” includes fails to appear for an interview with a prospective employer or fails to appear for an assigned activity without good cause under s. DWD 12.20 as

determined by the W-2 agency and voluntarily leaves appropriate employment or training without good cause under s. DWD 12.20 as determined by the W-2 agency.

The current s. DWD 12.20 provides that good cause for failing to comply with the W-2 participation requirements includes a required court appearance, unavailability of child care that is necessary to participate in required activities, and other circumstances beyond the control of the participant as determined by the FEP. The W-2 participant must provide timely notification of the good cause reason to the FEP.

The Department proposes to amend s. DWD 12.20 to add 10 specified circumstances that constitute good cause, including lack of transportation, inclement weather, school emergency, death in immediate family, and observance of a religious holiday. The Department also proposes that a W-2 participant must notify the FEP of good cause within 7 working days after an absence from a W-2 assigned activity to prevent a payment reduction.

The proposed good cause amendments are based on the recommendations in the *W-2 Sanctions Study* released by the Department in December 2004. The purpose of the study was to provide information to support the Department’s commitment to ensure that W-2 sanctions are not applied due to factors such as an individual’s race, ethnicity, geographic location, employment barriers, or other issues that have not been adequately identified or addressed by the participant’s FEP. The *W-2 Sanctions Study* incorporated the findings of a steering committee that consisted of W-2 agency administrators, state administrators, representatives of client advocacy groups, and academics.

Entities affected by the rule

W-2 agencies and participants

Comparison with federal regulations

If an individual refuses to engage in work, the state must reduce or terminate the amount of payable to the family, subject to any good cause exceptions the state may establish. The state must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work. The state may not reduce assistance based on an individual’s refusal to engage in work if the individual is a single custodial parent caring for a child under age 6 who has a demonstrated inability to obtain needed child care.

Statutory authority

Sections 49.148 (1) (b) and (c), 49.152 (2), 103.005 (17), and 227.11 (2), Stats.

Staff time required

175 hours.

Submittal of rules to legislative council clearinghouse

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

Commerce

On April 7, 2006, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Rules affecting to ch. Comm 131, relating to diesel truck idling reduction grants.

Agency Procedure for Promulgation

The Department of Commerce will hold a public hearing on proposed rules on May 15, 2006.

Contact Persons

Sam Rockweiler, Code Development Consultant
608 266-0797
srockweiler@commerce.state.wi.us

Commerce

On April 12, 2006, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Rules affecting to ch. Comm 62, relating to automatic fire suppression systems for student housing facilities serving colleges and universities.

Agency Procedure for Promulgation

The Department of Commerce will hold a public hearing on proposed rules on May 15, 2006.

Contact Persons

James Quast, Program Manager
608 266-9292
jim.quast@wisconsin.gov

Health and Family Services

On April 7, 2006, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. HFS 62, relating to assessment of drivers with alcohol controlled substance problems.

Agency Procedure for Promulgation

A public hearing is required; however, a public hearing has not yet been scheduled for this proposed rule.

Names and phone numbers of agency contacts

For substantive questions on rules contact:

Greg Levenick, Section Supervisor
Department of Health and Family Services –DDES
1 W. Wilson St., Room 434
Madison, WI 53707
Phone: 608-266-1987
TDD: 608-266-7376
Fax: 608-266-1533
e-mail: Levenga@dhfs.state.wi.us

For small business considerations contact:

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

For rules processing information contact:

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

Rule-making notices

Notice of Hearing Commerce

(Commercial Building Code, Chs. Comm 61–65) [CR 06–040]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.14 (4) (b) and 101.02 (15) (j), Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 62, relating to automatic fire suppression systems for student housing facilities serving colleges and universities.

The public hearing will be held as follows:

Date and Time: Monday, **May 15, 2006** at 10:00 a.m.

Location: 201 W. Washington Ave, Conference Room 3C, Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until May 25, 2006, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Jim Quast at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at jim.quast@wisconsin.gov.

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

Analysis Prepared by the Department of Commerce

1. Statutes Interpreted: s. 101.14 (4) (b) 3., Stats., as affected by 2005 Wisconsin Act 78, and s. 101.02 (15) (j), Stats.

2. Statutory Authority: s. 101.14 (4) (b) 3., Stats., as affected by 2005 Wisconsin Act 78, and s. 101.02 (15) (j), Stats.

3. Related Statute or Rule: Statutes: ss. 101.02 (1) and 101.12 (1), Stats., Administrative Rules: Chapter Comm 14, Fire Prevention.

4. Explanation of Agency Authority: Under the authority of ss. 101.02 (1) and (15), Stats., the Department of Commerce has the responsibility to establish standards for the design and construction of public buildings and places of employment in order to protect public health, safety and welfare. The Department fulfills this responsibility by promulgating the Commercial Building Code, chapters Comm 61–65.

5. Summary of Proposed Rules:

In accordance with sections 101.14 (4) (b) 3., Stats., and the provisions under 2005 Wisconsin Act 78, the department has the responsibility to promulgate rules requiring the

installation of automatic fire sprinkler systems in various student housing facilities serving colleges and universities.

The proposed rules consist of revising rules under the commercial building code, chapters Comm 61–65, and would be supplemental to the International Building Code which is the basis for the commercial building code. The following listing highlights the major items contained in the revisions.

- Reiterates the statutory provisions relating to providing automatic fire sprinkler systems in existing student housing facilities greater than 60 feet in height and owned or operated by University of Wisconsin System. [Comm 62.0903 (6) (b) 1. a. and b.]
- Requires the installation of automatic fire sprinkler systems in existing student housing facilities greater than 60 feet in height and owned or operated by colleges and universities that are not part of the University of Wisconsin System. [Comm 62.0903 (6) (b) 1. c.]
- Requires the installation of automatic fire sprinkler systems in existing private student residential facilities greater than 60 feet in height by January 1, 2014. [Comm 62.0903 (6) (b) 1. d.]
- Requires the installation of automatic fire sprinkler systems in existing student sororities, fraternities and similar housing facilities by January 1, 2014. [Comm 62.0903 (6) (b) 1. e.]
- Requires the installation of automatic fire sprinkler systems for the construction of all new student housing facilities. [Comm 62.0903 (6) (b) 2.]

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

There are no existing or proposed federal regulations that address or impact the activities to be regulated by this rule.

7. Comparison with Rules in Adjacent States.

An Internet-based search of adjacent states' rules found the following regulations that include similar requirements relating to commercial buildings and facilities:

The Michigan Department of Labor and Economic Growth administers the Michigan Construction Code, which adopts by reference the 2003 edition of the *International Building Code*[®], IBC, with amendments. The 2003 edition of the IBC requires all new residential occupancies, including dormitories, sororities and fraternities to be protected throughout by automatic fire sprinkler systems.

The Minnesota Department of Labor and Industry, administers the Minnesota State Building Code, which adopts the 2000 editions of the IBC with amendments. The Minnesota Department of Labor and Industry is in the process of adopting the 2003 edition of the IBC which requires all new residential occupancies, including dormitories, sororities and fraternities to be protected throughout by automatic fire sprinkler systems.

Illinois does not administer a statewide building code.

The Iowa Department of Public Safety administers the Iowa Building Code, which adopts the 1994 edition of Uniform Building Code and applies generally to buildings owned by the state of Iowa and to construction projects in local jurisdictions where the Iowa State Building Code is adopted.

8. Summary of Factual Data and Analytical Methodologies.

The rules were developed by the Department in reviewing the statutory provisions under s. 101.14 (4) (b) and 2005 Wisconsin Act 78.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The rules reflect statutory mandates. There were no supporting documents used to determine the effect on small business, and an economic impact report has not been required pursuant to s. 227.137, Stats.

10. Effect on Small Business.

It is unknown whether the student housing under the scope of 2005 Wisconsin Act 78 and the administrative rules would constitute a small business. However, the cost for installing an automatic sprinkler system in new student housing construction varies, depending upon various factors, from \$1.50 to \$2.50 per square foot of the building floor area. The cost for retrofitting of sprinkler system in existing student housing buildings is typically higher, ranging from \$3.00 to \$4.00 per square foot.

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

Environmental Assessment

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

Initial Regulatory Flexibility Analysis

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

The proposed rules address student housing facilities, dormitories, sororities, fraternities, serving colleges and universities. The Department does not believe that these facilities constitute small businesses. The proposed rules may have an indirect impact on small businesses that either design or construct such facilities and businesses maintaining and testing automatic fire sprinklers.

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

The proposed rules do not institute any new administrative procedures in order to comply with the rules. Current rules under the Commercial Building Code, chapters Comm 61 to 65, require the submission and approval of plans for automatic fire sprinkler systems to be installed in commercial residential occupancies.

3. Types of professional skills necessary for compliance with the rules.

The design of automatic fire sprinkler systems necessitates the services of licensed individuals, architects, engineers or designers. The installation of automatic fire sprinkler systems must be accomplished by licensed individuals in accordance with the statutory requirements of ch 145.

4. Rules have a significant economic impact on small businesses.

Yes. Rules submitted to Small Business Regulatory Review Board.

Fiscal Estimate

The rules as dictated by 2005 Wisconsin Act 78 requires the installation automatic fire sprinkler systems in various types of student housing facilities serving institutions of higher education that are not owned or operated by the University of Wisconsin System. Previous legislation, effective in 2000, mandated the installation of automatic fire sprinkler systems throughout housing for the University of Wisconsin System. The rules, reflecting the Act, will require the installation of sprinkler systems in existing facilities within specific timeframes. In addition, the rules require the installation of the sprinkler systems for any new housing facilities the construction of which has begun on or after January 7, 2006.

It is estimated less than 75 existing housing facilities would require the retrofit installation of automatic fire sprinkler systems by the statutorily mandated date of January 1, 2014. Under the Commercial Building Code, chs. Comm 61-65, sprinkler system plans must be submitted to and approved by the Department or its agent municipalities before the installation of sprinkler systems may commence for residential properties. Since facilities have 8 years to complete the sprinkler system retrofit and may submit to agent municipalities such as Milwaukee and Madison, it cannot be estimated how much the annual revenues of the Department may increase with respect to plan review. It is anticipated that the administrative costs to administer and enforce the rules can be absorbed into the current staffing levels of the Department.

The fiscal effect to the private sector for installing an automatic sprinkler system in new student housing construction will vary, depending upon various factors, from \$1.50 to \$2.50 per square foot of the building floor area. The cost for retrofitting of sprinkler system in existing student housing buildings is typically higher, ranging from \$3.00 to \$4.00 per square foot of floor area.

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

Notice of Hearing

Commerce

(Financial Resources for Businesses and Communities, Chs. Comm 105—)

[CR 06-035]

NOTICE IS HEREBY GIVEN that pursuant to section 560.125 (5m) of the Statutes, the Department of Commerce will hold a public hearing on proposed rules in ch. Comm 131 relating to diesel truck idling reduction grants.

The public hearing will be held as follows:

Date and Time: Monday, **May 15, 2006** at 1:00 p.m.

Location: Thompson Commerce Center, Third Floor, Room 3B, 201 West Washington Avenue, Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until May 19, 2006, to

permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. E-mail comments should be sent to srockweiler@commerce.state.wi.us. If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266-0797 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis Prepared by the Department of Commerce

1. Statutes Interpreted. Section 560.125.
2. Statutory Authority. Section 560.125 (5m).
3. Related Statute or Rule. Chapter Comm 48 regulates petroleum products, including diesel fuels, in Wisconsin.
4. Explanation of Agency Authority.

Section 560.125 (5m) of the Statutes, as created by 2005 Wisconsin Act 25, requires the Department to promulgate rules for administering a diesel truck idling reduction grant program under section 560.125 of the Statutes.

5. Summary of Rule.

The proposed rules specify who is eligible for receiving a grant under this chapter for purchasing and installing diesel truck idling reduction equipment. Eligible costs are also specified, along with how to apply for the grants. Parameters for awarding the grants are likewise specified. These parameters include (1) disallowing grants to any applicant who is failing to comply with any conditions imposed on any previous grant received under this chapter; and (2) alerting applicants that the Department may (a) refuse to award grants for idling reduction equipment on truck tractors that do not have a sleeper berth, (b) annually allocate up to 25 percent of the grant funding to applicants who own and operate 50 or fewer truck tractors, and (c) set deadlines for submitting applications, and then prorate the awards to the applicants if the total funding requested in the applications exceeds the available revenue.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

Various federal regulations address efforts to decrease emissions of air contaminants or to decrease the use of energy, by motor vehicles.

Particularly pertinent to the proposed rules is a final rule published by the U.S. Environmental Protection Agency (EPA) in the January 18, 2001, *Federal Register*, under Title 40, Parts 69, 80, and 86, in the *Code of Federal Regulations*. Through this rule, the EPA has established a comprehensive national control program for reducing particulate matter and nitrogen-oxide emissions from heavy-duty diesel engines by 90 percent and 95 percent below current standard levels, respectively. This program includes stringent, new emission standards that will begin to take effect in model year 2007, and a corresponding significant reduction of the level of sulfur in diesel fuels, which is needed to enable engine components to consistently meet the emission standards.

Extensive federal efforts related to this program are also underway for reducing these emissions by *reducing diesel engine idling* – such as (1) the EPA's National Clean Diesel Campaign, which is aggressively promoting diesel idling

reduction nationwide; (2) the National Transportation Idle-Free Corridors project, as sponsored by the EPA's SmartWay™ Transport Partnership, which aims to eliminate all unnecessary long-duration diesel truck and locomotive idling at strategic points along major transportation corridors; (3) the Clean Cities Program in the U.S. Department of Energy (DOE), which includes addressing research and development for diesel idling reduction technologies, and corresponding funding of national and state-level demonstration projects; (4) the *National Idling Reduction Network News*, as published monthly by the DOE's Argonne National Laboratory, which summarizes current events and developments nationwide relating to diesel idling reduction; and (5) the Congestion Mitigation and Air Quality Improvement Program in the U.S. Department of Transportation's Federal Highway Administration, which funds retrofitting of heavy-duty diesel engines that results in reducing nitrogen-oxide emissions in air-quality related, nonattainment or maintenance areas. In addition, Sections 792 and 793 of the federal Energy Policy Act of 2005 authorize the EPA to provide \$200 million per year, for fiscal years 2007–2011, for grants and loans to states and other eligible entities to achieve significant reductions in diesel emissions, and those funds can be used in programs that use verified technology to reduce long-duration idling of medium- and heavy-duty diesel trucks.

7. Comparison With Rules in Adjacent States.

In reviewing available sources, such as the *National Idling Reduction Network News*, and the *Compendium of Idling Regulations* by the American Transportation Research Institute, and in discussing corresponding efforts with staff in Minnesota and the EPA, Department staff did not find any rules in adjacent states that address grants for purchasing and installing diesel truck idling reduction equipment. However, under corresponding statutory criteria, Minnesota began providing loans in 2005 that can be used for this purpose, through its Small Business Environmental Improvement Loan Program. Related efforts in Iowa, Illinois and Michigan include (1) sponsoring of workshops in March 2006 in Michigan, and in May 2006 in Illinois, in conjunction with the EPA's Midwest Clean Diesel Initiative; and (2) proposed legislation that was passed overwhelmingly by the Illinois legislature in March 2006, which would prohibit diesel vehicles in excess of 8000 pounds from idling more than 5 minutes within any 60-minute period, except for various exemptions.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules consisted of (1) incorporating the detailed, prescriptive criteria in section 560.125 of the Statutes; (2) soliciting and utilizing input from representatives of the stakeholders who are expected to participate in this program; (3) discussing similar efforts to reduce diesel truck idling, with corresponding staff in Minnesota, Pennsylvania, and the EPA; and (4) reviewing Internet-based sources of related federal, state, and private-sector information.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The proposed rules are not expected to impose any significant costs on small businesses, because the rules only address how the Department will award grant funds for diesel truck idling reduction equipment. However, the Department considered the potential for owners of large truck fleets to quickly exhaust the available grant funds, as based on the number of trucks in each of the 10 largest fleets in Wisconsin; and the Department is therefore proposing to annually allocate up to 25 percent of the grant funding to applicants

who own and operate 50 or fewer truck tractors, in order to field-test the effectiveness of the program and the idling reduction equipment across the complete spectrum of the trucking industry in Wisconsin.

The proposed rules and an analysis of the rules are available on the Internet at the Department of Commerce Web site, through the links there for the Diesel Truck Idling Reduction Program. Paper copies may be obtained without cost from Tom Coogan at the Department of Commerce, Bureau of Entrepreneurship, P.O. Box 7970, Madison, WI 53707-7970, or at Thomas.Coogan@Wisconsin.gov, or at telephone (608) 267-9214 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Environmental Assessment

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

Initial Regulatory Flexibility Analysis

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

Owners and operators of small fleets of diesel trucks who choose to apply for the grant funds, and vendors who sell or install the idling reduction equipment addressed by the grant funds.

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

Each grant recipient must submit a report describing the operation and performance of the idling reduction equipment funded by the grant.

3. Types of professional skills necessary for compliance with the rules.

No new professional skills would be necessary for compliance with the proposed rules.

4. Rules have a significant economic impact on small businesses.

No. Rules not submitted to Small Business Regulatory Review Board

Fiscal Estimate

The above appropriation, as created by 2005 Wisconsin Act 25, will result in a temporary shortfall to the Department, which likely will be absorbed within the agency's budget.

The proposed rules are not expected to impose any significant costs on the private sector, because the rules only address how the Department will award grant funds for diesel truck idling reduction equipment.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or at cdunn@commerce.state.wi.us.

Notice of Hearings Natural Resources (Fish, Game, etc.) [CR 06-039]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.62 (2) (d) 2. and 227.11 (2) (a), Stats., interpreting s. 30.62 (2) (b) and (2) (d) 2. and 3., Stats., the Department of Natural Resources will hold public hearings on the creation of s. NR 5.125 (1) (d), Wis. Adm. Code, relating to sound testing methods for airboats. Section 30.62 (2) (a), Stats., requires all boat sounds to meet the level of 86 db or less in order to be legal. The current tests that the department uses are designed for motor exhaust noise or they are not safe to perform on airboats or hovercraft type boats when measuring noise other than muffler or exhaust noise. In 2005, the department was notified of concerns that it was not enforcing the noise requirements on airboats that we apply to all other boats. Currently, airboats and hovercraft have to meet the 86 db sound level as it relates to their engine exhaust noise, but there is no test that would allow for the safe testing of the propeller and fan noise. The proposed rule change in the testing process would utilize Society of Automotive Engineers Test J1970 but would take in consideration the safety concerns when testing propeller and fan types of watercraft. The test contains step-by-step instructions for measuring noise from boats.

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: Commercial trappers and fishers
- b. Description of reporting and bookkeeping procedures required: None
- c. Description of professional skills required: None

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@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:

Wednesday, **May 24, 2006** at 11:00 a.m. until the conclusion of public comments

Sheriff's Dept. Basement, Crawford County Courthouse
220 N. Beaumont St.
Prairie du Chien

Wednesday, **May 24, 2006** from 3:00 p.m. to 6:00 p.m.
Room 130, Todd Wehr Memorial Library
900 Viterbo Drive

La Crosse

Thursday, **June 1, 2006** at

Teleconference participation will be available at:

Room 311, Wisconsin Indianhead Technical College

2100 Beaser Avenue

Ashland

2:00 p.m. until the conclusion of public comments.

Room 116B, Forest R. Polk Library

UW-Oshkosh

800 Algoma Blvd.

Oshkosh

3:00 p.m. until the conclusion of public comments

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Engfer at (608) 266-0859 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

If the new testing procedure is passed the public will expect law enforcement agencies who do boating enforcement to enforce this law on prop driven type boats within their jurisdiction. While this will increase the workload of these agencies, it is anticipated that the increase workload will be minimal and can be accomplished in the daily operations of these patrols.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. William Engfer, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until June 9, 2006. 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. Engfer.

Notice of Hearing Natural Resources (Fish, Game, etc.)

[CR 06-037]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 and 227.11, Stats., interpreting s. 29.014, Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 10 and 45, Wis. Adm. Code, relating to correcting management unit boundaries, clarifying trapping requirements, correcting cross-references and update rules on the identification of tree stands on state lands. Annually the Department updates administrative code language to correct inconsistencies and outdated language and provide clarification where appropriate. This year, the

Department is proposing the following changes relating to hunting and trapping:

1. Correct an inaccurate statutory cross-reference in ch. NR 10.

2. Clarify that site exposed bait and scent restrictions in place for trapping only apply to all traps, including snares and cable restraints.

3. Clarify that the trapper who catches or kills a bobcat, fisher or otter must use their own carcass tag on the animal.

4. Correct and clarify the boundaries between wild turkey hunting zones and bear hunting zones in Lincoln County and provide consistency between deer, turkey and bear hunting zone boundaries.

5. Correct and clarify boundaries in Deer Management Units 41, 40, 41A, 67A and 67B.

6. Update regulations regarding the identification of tree stands on state-owned lands.

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

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

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

Thursday, **May 16, 2006** at 11:00 a.m.

Gathering Waters Room, DNR South Central Region Headquarters

3911 Fish Hatchery Road

Fitchburg

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

Fiscal Estimate

There is no fiscal effect anticipated.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 18, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Thiede.

**Notice of Hearings
Natural Resources
(Fish, Game, etc.)**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.733 (2) (f) and 227.11 (2), Stats., interpreting s. 29.733, Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 19.91 (3) and 19.94 (7), Wis. Adm. Code, relating to permitting the use of natural bodies of water as fish farms. This amendment of s. NR 19.91 (3) will eliminate regulation of legally constructed artificial wetland ponds. This will allow fish farming in manmade isolated wetland ponds without a natural waterbody permit. The proposed revisions to s. NR 19.94 (7) will modify public notice requirements. Statutory standards are restrictive in limiting new fish farms to self-contained freeze-out ponds which have no public access or harm to public or private interests. Eliminating the notice requirement for projects which clearly do not meet statutory standards, and make the notice requirement discretionary for those projects where the DNR needs additional information to evaluate impacts to the public interest. This change will improve the process efficiency and focus resources on projects which require greater scrutiny.

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

- a. Types of small businesses affected: Registered fish farms utilizing natural bodies of water.
- b. Description of reporting and bookkeeping procedures required: No new procedures.
- c. Description of professional skills required: No new skills.

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@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 HERBY FURTHER GIVEN that the hearings will be held on:

Tuesday, **May 30, 2006** at 6:00 p.m.

Gathering Waters Room
DNR South Central Region Hdqrs.
3922 Fish Hatchery Road
Fitchburg

Wednesday, **May 31, 2006** at 6:00 p.m.

Room C106, North Central Voc. Technical School
1000 Campus Drive
Wausau

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please

call Steve Hewett at (608) 267-7501 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no net fiscal effect.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Steve Hewett, Bureau of Fisheries Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until June 2, 2006. 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. Hewett.

**Notice of Hearings
Natural Resources
[CR 06-038]**

(Environmental Protection – Water Management)

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12, 30.123 and 227.11 (2), Stats., interpreting ss. 30.12, 30.123 and 30.206, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 320, Wis. Adm. Code, relating to the regulation of bridges and culverts in or over navigable waterways. The purpose of the proposed revisions is to create an additional general permit to continue permit streamlining and implementation of 2003 Wisconsin Act 118. The proposed revisions contain construction, design and location standards for a general permit for temporary in-stream crossings, a technique used by the forest industry during logging projects. Revisions also include some housekeeping changes to consolidate standards that apply to all general permits in the rule and to repeal unnecessary clearance standards for temporary bridges.

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: Building contractors, small-scale land developers and consultants who provide plans or design for projects along public navigable waterways
- b. Description of reporting and bookkeeping procedures required. The person responsible for a project in or along a lake of stream must develop plans and occasionally conduct some analyses, submit an application, and observe the site during construction. For some activities, photographs of the completed project are required.

c. Description of professional skills required: Map reading, basic computer use, mathematics, drawing to scale and clear writing are the skills needed to comply with these rules. While it may be helpful or efficient, hiring a consulting firm is not necessary to comply with these requirements. Many projects are planner and conducted by individuals with no professional background. If the site has particularly challenging features, then professional ecological or engineering expertise may be helpful.

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@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:

Thursday, **May 11, 2006** at 2:00 p.m.

Room 511, GEF #2

101 South Webster Street

Madison

Monday, **May 15, 2006** at 2:00 p.m.

Room E101, North Central Voc. Tech. School

1000 Campus Drive

Wausau

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Roberta Lund at (608) 266-2220 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The rule proposal will result in decreased revenue of \$5,400 and decreased costs of \$5,000.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: adminrules.wisconsin.gov. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Roberta Lund, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until May 19, 2006. 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 Ms. Lund.

Notice of Hearing Transportation [CR 06-041]

NOTICE IS HEREBY GIVEN that pursuant to s. 85.16 and 227.11 (2), Stats., and interpreting ch. 351, Stats., the Department of Transportation will hold a public hearing in Room 394 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **16th day of May, 2006**, at 3:00 p.m., to consider the amendment of ch. Trans 103, Wisconsin Administrative Code, relating to habitual traffic offenders.

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.

Parking for persons with disabilities and an accessible entrance are available on the south side of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Ch. 351, Stats.

Statutory authority: ss. 85.16 and 227.11 (2), Stats.

Explanation of agency authority: Sections 85.16 (1), Stats., grant the Department broad authority to "make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department." Similar authority is granted to the Department under s. 227.11 (2), Stats.

The Department administers the Habitual Traffic Offender law, ch. 351, Stats. The Department reviews the driver records for all drivers and determines whether a person qualifies as a habitual traffic offender. If the Department concludes a person qualifies as a habitual traffic offender, the Department revokes the person's operating privilege for 5 years as required by s. 351.025, Stats.

Ch. Trans 103 has been promulgated by the Department to carry out this administrative task.

Related statute or rule: Ch. 351, Stats.

Plain language analysis: The Department administers the Habitual Traffic Offender law, ch. 351, Stats. The Department reviews the driver records for all drivers and determines whether a person qualifies as a habitual traffic offender. If the Department concludes a person qualifies as a habitual traffic offender, the Department revokes the person's operating privilege for 5 years as required by s. 351.025, Stats.

2005 Wis. Act 25 amended ch. 351, Stats., to change the definition of "habitual traffic offender" as used in that chapter. Under prior law, any offense resulting in the assessment of demerit points or other moving violation could be counted as a "minor offense" under the HTO law. Accumulation of 12 such offenses resulted in a mandatory 5-year HTO revocation of driving privileges.

Under the law as amended by 2005 Act 25, only violations of the rules of the road enumerated in ch. 346, Stats., count as "minor offenses." Thus, only persons who commit 12 or more violations of ch. 346, Stats., are deemed "Habitual Traffic Offenders" under the amended law. This rule makes minor changes to ch. Trans 103 to make it consistent with the new statutory provisions.

The amended law gave DOT authority to count or not to count offenses reported to DOT before the effective date of the law for purposes of making determinations of HTO status. The Department has counted all offenses reported prior to that effective date for purposes of implementing the new law. As a result, courts are being inundated with requests to reopen old cases and then re-report them to DOT. This activity results in WisDOT being legally obliged to re-calculate the person's HTO status and often to release the person's HTO revocation. In addition, individuals are petitioning circuit courts for review of HTO determinations under the provisions of ch. 351, Stats.

This mechanism is administratively inefficient in two respects. First, it results in time consuming case-by-case work by courts. Second, it requires DOT to deal with individual HTO cases on a one-by-one basis. DOT can reassess all drivers' status at one time through the use of its computer systems. Courts have asked the Department to do this, and the Department believes doing so will be a more efficient mechanism for both the courts and the Department. The rule making will permit the Department to do so.

As a result of this rule making, all persons' HTO status will be determined according to the same rules, rather than having different requirements for persons whose convictions were reported before and after the effective date of 2005 Wis. Act

25. The Department believes this will be fairer to all individuals affected by the HTO law.

This rule making also makes clear that the Department will continue to count all major violations as minor violations, regardless of whether the violations are for violations of statutes outside ch. 346. Thus, great bodily harm and homicide by intoxicated use of a vehicle, violations of ss. 940.25 and 940.09, Stats., will be counted as both major and minor offenses under this rule making.

Summary of, and preliminary comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation requiring states to impose an HTO law.

Comparison with Rules in Adjacent States:

Michigan: A review of Michigan traffic statutes did not reveal a similar law to Wisconsin's Habitual Traffic Offender Law, Ch. 351, Stats., in that state.

Minnesota: Under s. 171.18 (4), MN Stats., the Minnesota commissioner of public safety may suspend the driver license of a "habitual traffic offender" for up to 1 year (Wisconsin revokes for 5 years). The commissioner determines which offenses shall be counted in that state by rule. This system is more similar to Wisconsin's demerit point system than Wisconsin's Habitual Traffic Offender law. Minnesota does not appear to have a 5-year license revocation for habitual violations like Wisconsin.

Illinois: In Illinois, a driver's license will be suspended if the driver is convicted of three traffic violations committed within any 12-month period. Drivers under age 21 at the time of arrest will be suspended if convicted of two traffic violations within any 24-month period. Drivers under age 18 are required to successfully complete a driver remedial education course to reinstate their driving privileges. In addition, such drivers may be required to submit to a complete driver's license examination to be re-issued a driver's license. The length of the suspension varies according to the seriousness of the traffic offenses. This system is more similar to Wisconsin's demerit point system than Wisconsin's Habitual Traffic Offender law. Illinois does not appear to have a 5-year license revocation for habitual violations like Wisconsin.

Iowa: In Iowa, a driver who is convicted of 3 serious offenses in a 6-year period or 6 minor offenses in a 2-year period is subject to a 2-year to 6-year license revocation as a habitual traffic offender. The driver is ineligible for an occupational license for one year. Iowa counts all traffic offenses reported to its driver licensing authority identically and does not distinguish between violations of the rules of the road, equipment violations, and other violations of the traffic code. Iowa Code ss. 321.555 through 321.562.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Approximately 15,000 drivers are currently revoked as Habitual Traffic Offenders under Wisconsin law. DOT estimates that if all drivers' status are reassessed consistent with the requirements of 2005 Wis. Act 25's amendments to the HTO law, that approximately 10,000 to 12,000 drivers will no longer be subject to a 5-year revocation and may be eligible to reinstate their operating privileges earlier than otherwise anticipated.

Analysis and supporting documentation used to determine effect on small businesses: This rulemaking is not anticipated to effect small business in any fashion as it does not regulate or impose requirements upon businesses.

Effect on small business: This rule making will have no effect upon small businesses, except to the extent that it permits some employees to reinstate driver licenses. The Department's Regulatory Review Coordinator may be

contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department expects no significant fiscal effect from implementing this regulation. The Department will incur data processing costs to recalculate the HTO status of persons currently revoked under the HTO laws. These costs, however, will undoubtedly be less than the costs of the Department and courts dealing with these cases on a one-by-one basis.

Agency contact person and 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 Kent Buehler, Department of Transportation, Bureau of Driver Services, Citations and Withdrawal Section, Room 305, P. O. Box 7917, Madison, WI 53707-7917. You may also contact Mr. Buehler by phone at (608) 266-9901.

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 06-042]

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:

May 16, 2006

Department of Transportation
Hill Farms State Transportation Office
Room 639
Madison, WI
10:30 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 s. 348.07 (2), Stats., and s. 348.08 (1), Stats. This act created ss. 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created s. 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 s 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 s. 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 s. Trans 276.07 (10) and (24), Wisconsin Administrative Code, to add two segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segments¹ that this rule adds to the designated highway system are:

Hwy.	From	To
STH 49	Waupaca	Iola
STH 161	Nelsonville	Symco

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 feet², 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 segments 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.

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.

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. The Department’s Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

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.

Contact Person and 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 05-036]

NOTICE IS HEREBY GIVEN that pursuant to ss. 84.185, 85.16 and 227.11, Stats., and interpreting s. 84.185 (3) (b) 1., (3m), (4), (6m) and (8r), Stats., the Department of Transportation will hold a public hearing in Room 144-B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **25th day of May, 2006**, at 10:00 a.m., to consider the amendment of ch. Trans 510, Wisconsin Administrative Code, relating to the Transportation Facilities Economic Assistance and Development (TEA) Program.

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.

Parking for persons with disabilities and an accessible entrance are available on the south side of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 84.185 (3) (b) 1., (3m), (4), (6m) and (8r), Stats.

Statutory authority: s. 84.185, 85.16 and 227.11, Stats.

Explanation of agency authority: The secretary has the authority, pursuant to s. 84.185, Stats., to provide economic assistance for transportation facility improvements.

Related statute or rule: s. 84.185, Stats.

Plain Language Analysis: This proposed rule modifies ch. Trans 510 relating to the Transportation Facilities Economic Assistance and Development (TEA) Program by: (1) establishing criteria and procedures for the granting of TEA loans in addition to TEA grants; (2) changing funding cycles from quarterly to a year round first-come, first-serve basis; (3) correcting program contacts due to recent reorganizations; (4) eliminating program inconsistencies that both prohibit and allow grant ceiling adjustments; and (5) requiring ethanol plant constructions to be competitively bid in order to be eligible for TEA.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: There are no existing or proposed federal regulations.

Comparison with Rules in Adjacent States:

Michigan: (Transportation Economic Development Fund)

(1) Loans – 20% of projects

(2) Cycles – quarterly

(3) Contacts changed No

(4) Adjust awards upward – Yes

(5) Ethanol plants competitively bid requirement – No.

Minnesota: No program

Illinois: (Economic Development Program)

(1) Loans – No

(2) Cycles – Year round (July 1 – June 30) 50% must be proposed locally

(3) Contacts – same throughout history

(4) Adjust awards upward Formerly could, no more (budget issues)

(5) Ethanol plants must be bid – No, just transportation improvements do.

Iowa: (Revitalize Iowa's Sound Economy Fund (RISE) Program)

(1) Loans – Have ability, but not used. Grants are sum sufficient.

(2) Cycles – Year round, but 50% to job creation, 50% to local transportation improvements.

(3) Contacts changed Yes, one office now oversees entire program (formerly split).

(4) Adjust up – No.

(5) Ethanol plants must be bid – No, just transportation improvements do.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen:

TEA Loans. No TEA loans have been made to date as we have permissory authority to institute loans; they are not mandatory (see s. 84.185 (6m), Stats.). Although TEA loans may be an effective economic development tool where TEA grants cannot be given, rules need to be promulgated that include the criteria and procedures for the repayment of TEA loans (see s. 84.185 (4), Stats.). From 18 years of TEA program experience, projects in more rural areas that pay a weighted average hourly wage far below the industry standard produce benefit/cost ratios less than 1.0, i.e., they are poor investments. However, these projects may be very desirous to local communities for economic development. We are proposing to give TEA loans instead of grants to these projects. These loans could not exceed 50% of project costs (see s. 84.185 (6m), Stats. limitation). We propose repayment to commence up to one year after project completion to allow communities to arrange financing. Loan repayment terms would be 7 years, the same time that a guaranteed number of jobs have to be generated by the project. Interest would be at prevailing rates for loans to a government, typically the lowest rates available anywhere.

Funding Cycles. The 2004-2005 Biennial Budget changed TEA funding to first-come, first-serve. TEA was formerly funded quarterly, with a priority ranking employed. Because there are no more specific funding dates, ss. Trans 510.03 (2) and 510.07 (2) are being amended to reflect this change. TEA applications are more likely to be successful under first come, first serve, since priority ranking would only be employed late in the fiscal year when funding is nearly depleted. Projects not funded would be deferred to the next fiscal year.

Contacts. Previous TEA contacts no longer exist due to departmental reorganization. Therefore, s. Trans 510.03 (1) and (2) are being amended to reflect more general contact points.

Adjust award. Ch. Trans 510 both allows and disallows TEA grant ceiling increases [ss. Trans 510.02 (7) and 510.06 (1)]. This proposed rule removes conflicting and ambiguous language. The ability to revise grant ceilings upward in

special circumstances is specifically allowed per s. 84.185 (3) (b) (1), Stats.

Ethanol plants. This will require private business construction of ethanol plants to be competitively bid in order to be eligible for TEA. This change was enacted as part of the 2005–2007 Biennial Budget in s. 84.185 (8r), Stats. Change was enacted because two contractors (both outside Wisconsin) currently build all ethanol plants. Local Wisconsin contractors also feel they have the capability to build these facilities. Competitive bidding should lower construction costs thereby allowing Wisconsin contractors to compete yet ensure that unqualified bidders be dismissed. This rule seems to be good for all even though it requires competitive bidding for private facilities. We recommend requiring copies of bid ads in the Western Builder, the Daily Report, or Dodge Reports as proof of competitive bidding.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The proposed rule changes will make TEA more available to small business: (1) Loans to communities will reduce local transportation infrastructure improvement costs helping small businesses to proceed with their expansion plans; (2) First–come, first–serve funding will allow formerly lower ranked projects (typically smaller businesses with low hourly wages) to more likely be funded (especially if early in fiscal year); and (3) Wisconsin contractors will be allowed to bid on ethanol plant construction, a privilege previously controlled by just two national contractor specialists. Other proposed changes to ch. Trans 510 only clarify program functionality, so there is no change upon small business. The Department’s Regulatory Review Coordinator may be contacted by e–mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438–4585.

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 a potential positive impact on state revenues. The Department expects the TEA program to become partially self–funded due to interest income earned in the TEA loan program. TEA grants or loans will lower infrastructure development costs to the private sector. The program is intended as an inducement for business to expand in or relocate to Wisconsin. TEA is usually used in coordination with the Wisconsin Department of Commerce business incentives to present a more complete inducement package. These proposed rule changes will not alter that; it will make TEA available to a larger segment of the private sector. There could be an impact on the cost of private ethanol plant construction.

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 Gati Grundmanis, Department of Transportation, Bureau of Planning and Economic Development, Room 901, P. O. Box 7913, Madison, WI 53707–7913. You may also contact Mr. Grundmanis by phone at (608) 266–3488.

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>.

Submittal of proposed rules to the legislature

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

Commerce

(CR 05-049)

Ch. Comm 3, relating to stop work, stop use and petition for variance procedures.

Insurance

(CR 05-111)

Chs. Ins 6, 26 and 28, relating to agent licensing procedures and requirements and affecting small business.

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.

Administration (CR 05-069)

An order affecting chs. Adm 20 and 21, relating to architecture, engineering and construction solicitation, bidding and contracting.
Effective 6-1-06.

Commerce (CR 05-110)

An order affecting ch. Comm 155, relating to interest on real estate trust accounts.
Effective 6-1-06.

Natural Resources (CR 05-032)

An order affecting chs. NR 590, 600, 605, 610, 615, 620, 625, 630, 631, 632, 633, 635, 636, 640, 647, 677, 656, 660, 662, 663, 664, 665, 666, 670, 675, 668, 670, 673 and 679, relating to hazardous waste management.
Effective 8-1-06.

Workforce Development (CR 06-004)

An order affecting chs. DWD 290 and 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.
Effective 6-1-06.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the **April 30, 2006**, 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.

Agriculture, Trade and Consumer Protection (CR 05-014)

An order affecting ch. ATCP 51, relating to livestock facility siting. Effective 5-1-06 and 7-1-06.

Summary of Final Regulatory Flexibility Analysis

This rule will have a significant impact on livestock businesses in this state. This rule will facilitate the orderly growth and modernization of Wisconsin's critical livestock industry by providing a more uniform, objective and predictable process that local governments must follow in issuing local permits for new and expanded livestock facilities.

This rule directly affects only a small number of livestock operators – those who voluntarily choose to build new or expanded livestock facilities in jurisdictions that require local approval. The affected facilities will typically have over 500 “animal units” (some smaller facilities may be affected, in local jurisdictions that had lower permit thresholds prior to July 19, 2003).

DATCP estimates that this rule will directly affect only about 50-70 livestock facilities per year. But the rule will have a significant impact in those cases. It will also have a long-term, indirect impact on the growth and development of the state's livestock industry as a whole. The rule will facilitate more orderly planning, more appropriate siting choices, more predictability for livestock operators and their lenders, and more efficient and environmentally sustainable industry development.

Prior to the Livestock Facility Siting Law, some individual livestock operators spent hundreds of thousands of dollars on *unsuccessful applications* for local siting approval. When local approval was denied, the operators lost income opportunities. Other operators, though ultimately successful, incurred extraordinary (and often unnecessary) costs and delays.

Contentious local proceedings have exacted a heavy emotional toll on livestock operators and their families, and harmed community relations. The unpredictability of local approval has discouraged lending and capital investment.

New and expanding operations will need to comply with regulations spelled out in this rule. This may add costs for some new or expanding operations, but will also save costs related to local siting disputes and litigation. Operators will be able to evaluate compliance needs before applying for local approval, and will be able to plan their investments accordingly.

DATCP has developed *preliminary cost estimates* for livestock facilities directly affected by this rule. DATCP

estimates the following average cost (or savings) range per siting, by livestock facility size category:

Under 500 “animal units:” (\$15,500 savings) to \$18,500

500 to 1,000 “animal units:” (\$46,150 savings) to \$48,200

Over 1,000 “animal units:” (\$163,590 savings) to \$159,000

Based on reports of livestock siting disputes prior to the Livestock Facility Siting Law, DATCP believes that the *net costs* of this rule may actually be much lower, and that savings may actually be much higher. Net costs may also be offset, in some cases, by government cost-sharing grants. An applicant for local approval is not ordinarily entitled to cost-sharing for conservation practices needed to comply with this rule. *However a local government may provide cost-sharing if it wishes to do so.*

This rule affects local approval of livestock facilities that will have 500 or more “animal units” (or that will exceed a lower threshold established by local zoning ordinance prior to July 19, 2003). Many of these operations would be considered a “small business” as defined in s. 227.114 (1) (a), Stats, or under the definition of “small business” as defined in s. 227.114 (1), Stats. as amended by 2003 Act 145. The department has attempted to accommodate the interests of small businesses by establishing less rigorous standards for existing structures, allowing the addition of a “separate species facilities” without triggering local permit requirements, completely exempting smaller livestock operations from the odor management and nutrient management standards, and capping the permit application fee charged by local governments. In other respects, this rule requires the same procedures for small businesses as other businesses.

Summary of Comments by Legislative Review Committees

On November 1, 2005, DATCP referred its final draft rule to the Legislature, for standing committee review. The rule was assigned to the Senate Committee on Agriculture and Insurance and the Assembly Committee on Agriculture.

On December 9, 2005, the Senate Committee on Agriculture and Insurance asked DATCP to consider modifications to the rule (the committee did not specify the modifications requested). On December 21, 2005, the Assembly Committee on Agriculture also asked DATCP to consider modifications to the rule. The Assembly Committee attached a motion identifying, in general terms, the modifications requested (the Assembly Committee also attached lists of modifications requested by individual members of the committee).

DATCP carefully considered all of the requested modifications, including those requested by individual committee members, and made significant modifications to the final draft rule. The DATCP Board approved the requested modifications on February 8, 2006. DATCP forwarded the proposed modifications to the Senate and Assembly review committees on February 9, 2006. Neither committee requested any further modifications, or took further action on the rule. The legislative committee review period has now expired.

Agriculture, Trade and Consumer Protection (CR 05-068)

An order affecting chs. ATCP 99, 100 and 101, relating to agricultural producer security. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

Rule Description

This rule amends current rules related to the agricultural producer security program under ch. 126, Stats. The program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as “contractors”) who procure agricultural commodities from producers.

This rule does all of the following:

- It permits a licensed contractor to file *voluntary* security for the benefit of producers if the contractor’s estimated default exposure exceeds the maximum amount payable from the Wisconsin agricultural producer security fund. A contractor who files voluntary security may pay lower fund assessments and make more favorable disclosures to producers. A voluntary security filing does not relieve a contractor of any other duty to file security or pay fund assessments.

- It changes and simplifies the disclosures that contractors must give to producers.

- It clarifies current grain warehouse keeper record keeping requirements.

Businesses Affected

This rule affects grain dealers, grain warehouse keepers, milk contractors and vegetable contractors that procure agricultural commodities from agricultural producers. Many of these businesses are small businesses, but others are very large. This rule benefits agricultural producers (many of whom are small businesses), by improving security protection for those producers.

Effects on Business

This rule will have a minimal impact on most grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. It gives some contractors the *option* of filing additional security (it does not change or add to current mandatory filing requirements).

Contractors who file voluntary security may benefit from reduced fund assessments and more favorable disclosures to producers. The security provisions in this rule affect very large contractors, and do not affect small contractors.

This rule changes and simplifies current contractor disclosures to producers. In some cases, current disclosures overstate the amount of security coverage afforded to producers. Some contractors may incur one-time costs to change their disclosure forms, but this will not be a major expense for affected contractors.

This rule clarifies current grain warehouse record keeping requirements, but does not add major new record keeping requirements. The changes will not have a major impact on affected contractors.

Effects on Small Business

This rule will not have significant impact on “small business,” except that it will have a positive impact on agricultural producers. Producers will receive more accurate information from contractors, and in some cases will receive more complete security protection. Because this rule has no significant adverse effects on small business, and has a positive impact on agricultural producers, there is no need to provide any special accommodation for small business.

Conclusion

This rule will benefit agricultural producers, and will not have a significant adverse effect on other businesses. This rule will not have a significant effect on small business, except that it will benefit agricultural producers. Compliance with this rule will not require additional professional services, and will not entail significant costs. While some (large) businesses may entail significant costs for security filings, that cost is *voluntary* and may be offset by other benefits.

Summary of Comments by Legislative Review Committees

On December 15, 2005, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture and Insurance and to the Assembly Committee on Agriculture. The Assembly Committee on Agriculture took no action on the rule during the review period.

The Chair of the Senate Committee on Agriculture and Insurance requested a meeting with DATCP on the rule. Based on discussions with the Senate Committee Chair, DATCP agreed to add notes clarifying the rule definition of “affiliate.” These notes do not change the intent of the rule, but help to clarify that intent. Based on DATCP’s agreement to add the notes, the Senate Committee took no action on the rule during its review period.

Conclusion

This rule will benefit agricultural producers, and will not have a significant adverse effect on other businesses. This rule will not have a significant effect on small business, except that it will benefit agricultural producers. Compliance with this rule will not require additional professional services, and will not entail significant costs. While some (large) businesses may entail significant costs for security filings, that cost is *voluntary* and may be offset by other benefits.

Educational Approval Board (CR 05-112)

An order affecting ch. EAB 4, relating to student protection fees paid by schools subject to the approval of the EAB. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

The potential impact of this rule on small businesses is limited to the extent that such businesses meet the statutory definition of a school and are subject to the EAB approval. The EAB currently approves 140 for-profit and non-profit postsecondary schools. These schools consist of technical, career, distance-learning and degree-granting institutions that offer more than 600 degree and non-degree programs to over 30,000 Wisconsin adults annually. Typical programs includes truck driving, massage therapy, home inspection,

teacher licensure, IT certifications, CAD drafting, as well as traditional bachelor and master degrees.

Summary of Comments by Legislative Review Committees

No comments were received.

**Insurance
(CR 05-099)**

An order affecting ch. Ins 8, relating to the small employer uniform employee application for group health insurance. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

**Natural Resources
(CR 05-083)**

An order affecting ch. NR 10, relating to deer hunting season at Straight Lake State Park. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

the proposed rule creates a deer hunting season at Straight Lake state park and is applicable to individual sportspersons and imposes no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. The Assembly Committee on Natural Resources held a public hearing on January 18, 2006. There were no comments or requests for modifications received by the department.

**Technical College System Board
(CR 05-107)**

An order affecting ch. TCS 17, relating to training program grants. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

Small businesses may access training or education through the training program grants, but there is no mandated participation in the program.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 05-109)**

An order affecting ch. Trans 102, relating to the time period within which a person moving to Wisconsin may operate a motor vehicle under a driver license from his or her previous state of residence. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

This proposed rule would have no effect on small business. It applies only to individuals moving to Wisconsin from other jurisdictions. The department's Regulatory Review Coordinator may be contacted by e-mail at: andrew.ruiz@dot.state.wi.us or by calling (414) 438-4585.

Summary of Comments by Legislative Review Committees

No comments were received.

**Workforce Development
(CR 02-137)**

An order affecting ch. DWD 100, relating to unemployment insurance availability. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

The rule affects small businesses as defined in s. 227.114, Stats., but will not have a significant economic impact on a substantial number of small businesses. The impact on a particular employer will depend, in part, on the employer's experience with the unemployment insurance system.

Summary of Comments by Legislative Review Committees

The Senate Committee on Job Creation, Economic Development and Consumer Affairs held a hearing on February 7, 2006. There were no comments.

**Workforce Development
(CR 05-067)**

An order affecting ch. DWD 278, relating to garnishment. Effective 5-1-06.

Summary of Final Regulatory Flexibility Analysis

The rule does not affect small businesses as defined in s. 227.114, 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 **April 2006**, 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

Agriculture, Trade, and Consumer Protection

Ch. ATCP 51 (Entire chapter)

Ch. ATCP 99

S. ATCP 99.01 (1), (4m), (6m), (8m), and 14m)

S. ATCP 99.135 (1) and (2) (intro.)

S. ATCP 99.14 (2)

S. ATCP 99.255 (1) and (2) (intro.)

S. ATCP 99.26 (2)

S. ATCP 99.27

Ch. ATCP 100

S. ATCP 100.01 (1), (1m), (2m), (4g), (4m), (4p) and (14r)

S. ATCP 100.135 (1) and (2) (intro.)

S. ATCP 100.20 (2)

Ch. ATCP 101

S. ATCP 101.20 (1), (2m), (3g), (3m) and (3r)

S. ATCP 101.255 (1) and (2) (intro.)

S. ATCP 101.26 (2)

Educational Approval Board

Ch. EAB 4

S. EAB 4.06 (2) (b)

Insurance

Ch. Ins 8

S. Ins 8.49 Appendix 1

Natural Resources

Ch. NR 10

S. NR 10.01 (3) (e)

Transportation

Ch. Trans 102

S. Trans 102.14 (4)

S. Trans 102.15 (6) (intro.)

Wisconsin Technical College System Board

Ch. TCS 17 (Entire chapter)

Workforce Development

Ch. DWD 100

S. DWD 100.02 (28)

Ch. DWD 278 (Entire chapter)

Editorial corrections

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

Educational Approval Board

Ch. EAB 4

S. EAB 4.01 (1)

Errata

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

Natural Resources

Ch. NR 507

S. NR 507.30 tables

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 142. 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 Adam VanAlstine of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

Executive Order 143. Relating to the Governor's Homeland Security Council.

Executive Order 144. 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 Nicholas Anderson of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

Executive Order 145. Relating to Conserve Wisconsin and the creation of high performance green building standards and energy conservation for state facilities and operations.

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