

Wisconsin Administrative Register

No. 627



Publication Date: March 31, 2008

Effective Date: April 1, 2008



Legislative Reference Bureau
<http://www.legis.state.wi.us/rsb/code.htm>

The Wisconsin Administrative Register is published twice
monthly by the Legislative Reference Bureau.

Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590
email: bruce.hoesly@legis.state.wi.us

The Wisconsin Administrative Register and Administrative Code
may be obtained from the
Department of Administration
Office of Document Sales
(608) 266-3358
and may be accessed on the internet at:
<http://www.legis.state.wi.us/rsb/code.htm>

Table of Contents

Emergency Rules Now in Effect.**Pages 5 to 10**

Agriculture, Trade and Consumer Protection:

Revises ch. ATCP 10, relating to diseases of fish and farm-raised deer.

Creates subch. IV of ch. ATCP 161, relating to the “buy local” grant program. **EmR 0804**

Commerce:

Licenses, Certifications, etc., Ch. Comm 5

Revises ch. Comm 5, relating to licensing of elevator contractors and installers.

Financial Resources for Businesses and Communities, Chs. Comm 104–135Creates ch. Comm 132, relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses. **EmR 0802**

Employment Relations Commission:

Revises s. ERC 10.08, relating to increased filing fees.

Government Accountability Board:

Repeals ss. Eth 3.01 and 3.04, and amends s. ElBd 10.01, relating to written communications, transcripts of proceedings, and procedures for complaints to the former State Elections Board. **EmR 0803**

Health and Family Services:

Health, Chs. HFS 110—

Creates s. HFS 115.04 (14), relating to including the condition known as Severe Combined Immunodeficiency (SCID) and related conditions of immunodeficiency to the list of disorders and disorder types found in s. HFS 115.04.

Natural Resources:

Fish and Game, etc., Chs. NR 1—

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

Environmental Protection—Water Regulation, Chs. NR 300—

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

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

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

Public Instruction:

Creates ch. PI 33, relating to grants for nursing services.

Creates ch. PI 31, relating to grants for science, technology, engineering, and mathematics programs. **EmR 0801**Creates ch. PI 16, relating to grants for four-year-old kindergarten. **EmR 0805**

Revenue:	Amends s. Tax 2.505, relating to the computation of the apportionment fraction by multistate professional sports clubs. Revises s. Tax 8.63, relating to liquor wholesaler warehouse facilities.
Transportation:	Creates ch. Trans 178, relating to the unified carrier registration system.
Workforce Development:	<i>Family Supports, Chs. DWD 12–59</i> Revises s. DWD 56.01, relating to child care rates. Amends s. DWD 56.08 (1) and (2) and repeals and recreates Table DWD 56.08, relating to child care copayments and affecting small businesses. EmR 0806 <i>Public Works Construction Contracts, Chs. DWD 290–294</i> Amends ss. DWD 290.155 and 293.02, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements and affecting small businesses.

Scope Statements.**Pages 11 to 15**

Commerce:	Revises chs. Comm 14, 40, 43, 45 and 60 to 66, relating to the Fire Prevention Code and the Wisconsin Commercial Building Code.
Corrections:	Amends s. DOC 309.466, relating to inmate release account funds.
Employee Trust Funds:	Revises s. ETF 50.52 (1) (b) 3., relating to the age at which a person's long-term disability insurance benefits will be reduced because the person was eligible for a pension from the Wisconsin Retirement System but chose not to begin receiving the pension benefits.
Government Accountability Board:	Creates ch. GAB 13, relating to the training of election officials, including inspectors (other than chief inspectors), special voting deputies and special registration deputies.
Regulation and Licensing:	Revises ch. RL 16, relating to the use of department-approved real estate contract forms to provide clarification relating to the ability to alter or change such forms.
Transportation:	Amends s. Trans 250.04, relating to the fee for obtaining an oversize and/or overweight routing permit or permit amendment that is applied for or issued by Internet or telephone call-in procedures.
Workforce Development:	<i>Family Supports, Chs. DWD 12–59</i> Revises ch. DWD 56, relating to child care enrollment underutilization.

Submittal of Rules to Legislative Council Clearinghouse.**Page 16**

Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Revises chs. NR 1, 8, 10, 11, 12, 15, 16, 17 and 19, relating to hunting, trapping, captive wild animals, dog training, nuisance animal removal, wildlife rehabilitation and license issuance. CR 08–021
--------------------	---

Creates ss. NR 10.275 (4) and 45.09 (10), relating to hunting in state parks, including department managed portions of state trails. **CR 08-022**

Revises ss. NR 46.15, 46.16 and 46.30, relating to the administration of the forest crop law and managed forest law. **CR 08-023**

Rule-Making Notices.

Pages 17 to 22

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Hearing to consider rules revising chs. NR 1, 8, 10, 11, 12, 15, 16, 17 and 19, relating to hunting, trapping, captive wild animals, dog training, nuisance animal removal, wildlife rehabilitation and license issuance. **CR 08-021**

Hearings to consider rules creating ss. NR 10.275 (4) and 45.09 (10), relating to hunting in state parks, including department-managed portions of state trails. **CR 08-022**

Hearings to consider rules revising ch. NR 46, relating to administration of the Forest Crop Law and Managed Forest Law. **CR 08-023**

Public Instruction:

Hearing to consider emergency and permanent rules creating ch. PI 16, relating to four-year-old kindergarten grants. **CR 08-018**

Submittal of Proposed Rules to the Legislature.

Page 23

Commerce:

Licenses, Certifications and Registrations, Ch. Comm 5 Elevators, Escalators and Lift Devices, Ch. Comm 18

Revises chs. Comm 5 and 18, relating to the licensing of elevator contractors and installers. **CR 07-089**

Plumbing, Chs. Comm 81-87

Revises chs. Comm 81 to 87, relating to private onsite wastewater treatment systems. **CR 07-100**

Grants for Construction Career Academies, Ch. Comm 4

Creates ch. Comm 4, relating to grants for construction career academies. **CR 07-117**

Employment Relations Commission:

Amends s. ERC 10.08 relating to increased filing fees. **CR 07-092**

Financial Institutions – General:

Creates ch. DFI-Gen 2, relating to small business enforcement discretion. **CR 07-092**

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Repeals and recreates s. NR 20.40, relating to the regulation of fishing tournaments in inland, outlying and boundary waters of Wisconsin. **CR 06-108**

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

Revises chs. NR 406, 407, and 445, relating to hazardous air pollutant emissions associated with agricultural waste and affecting small business. **CR 07-076**

Rule Orders Filed with the Legislative Reference Bureau.**Page 24**

Agriculture, Trade and Consumer Protection:

Revises chs. ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85, relating to food and dairy license and reinspection fees. **CR 07-037**

Natural Resources:

Fish, Game, etc., Chs. NR 1—Revises chs. NR 10, 12, and 16, relating to hunting, nuisance wild animal removal, and captive wildlife. **CR 07-035**Amends s. NR 25.06 (2) (b) 1., relating to commercial fishing for yellow perch in zone 1 (Green Bay). **CR 07-075*****Environmental Protection – General, Chs. NR 100—***Repeals and recreates ch. NR 149, relating to laboratory certification and registration. **CR 06-005**

Revenue:

Revises chs. Tax 61 and 63, relating to billing terms options for Wisconsin lottery retailers, shipping options at cost, requirements in the lottery retailer performance program, voluntary disclosure requirements of 2003 Wis. Act 145, and correcting minor technical problems. **CR 07-087****Rules Published with this Register and Final Regulatory Flexibility Analyses.****Pages 25 to 27****Sections Affected by Rule Revisions and Corrections.****Pages 28 to 29****Executive Orders.****Page 30****Public Notices.****Pages 31 to 44**

Government Accountability Board:

2008 Review Schedule of Formal Opinions, Administrative Rules, Guidance and Internal Operating Procedures

Natural Resources:

Notice of hearing on general permit NFW-GP-2008-WI, relating to the regulation of filling activities conducted in non-federal wetlands.

Emergency Rules Now in Effect

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

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

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

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

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

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

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR 0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade & Consumer Protection (2)

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

Finding of Emergency

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

Disease Testing of Fish

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

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

farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (*including bait*) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non-salmonids imported from states where VHS has not yet been found.

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

Disease-Free Herd Certification of Farm-Raised Deer Herds

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

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

Publication Date: October 31, 2007

Effective Date: October 31, 2007

Expiration Date: March 29, 2008

Hearing Date: January 14, 2008

Extension Through: April 7, 2008

2. **EmR 0804** – Creating **subch. IV of ch. ATCP 161**, relating to the “buy local” grant program created under s. 93.48, Stats.

Exemption From Finding of Emergency

DATCP has general authority under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 93.48 (1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal “finding of emergency,” pending the adoption of “permanent” rules. This temporary emergency rule implements the “buy local” grant program on an interim basis, pending the adoption of “permanent” rules.

Publication Date: February 22, 2008
Effective Date: February 22, 2008
Expiration Date: May 1, 2009

Commerce

Licenses, Certifications, etc., Ch. Comm 5

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

Exemption From Finding of Emergency

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

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

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

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104–135

EmR 0802 – Creating **ch. Comm 132**, relating to implementing a program for certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as "constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015." Section 71.07 (3p) (c) 2m. a. of the Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007–08 is \$600,000.

Section 560.207 of the Statutes, as likewise created in 2007 Wisconsin Act 20, requires the Department to (1) implement a program for certifying taxpayers as eligible for the dairy manufacturing facility investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2007 Wisconsin Act 20, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been incurred during taxable years that began after December 31, 2006.

Entities that may be eligible for the tax credits for the 2007–08 fiscal year face near-term time constraints for filing their tax returns with the Department of Revenue. Although the Department of Commerce has begun promulgating the permanent rule that is required by 2007 Act 20, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to readily accommodate claiming the tax credits for the 2007–08 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that need to soon file their tax returns for taxable years beginning after December 31, 2006.

Publication Date: February 4, 2008
Effective Date: February 4, 2008
Expiration Date: July 3, 2008

Employment Relations Commission

Rule adopted amending **s. ERC 10.08 (1), (2), (3), (4), and (5)**, relating to increased filing fees.

Finding of Emergency

The Employment Relations Commission finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. 2003 Wisconsin Act 33 eliminated \$400,000 in General Program Revenue (GPR) and 4.0 GPR supported positions from the Commission's 2003–2005 budget and increased the number of Program Revenue (PR) filing fee supported positions by 2.0, from 3.0 to 5.0. The same legislation also abolished the Personnel Commission and transferred certain of that agency's former responsibilities to the Employment Relations Commission, without additional staff or funding.

3. The 2005–07 budget maintained the same reduced GPR funding and position levels and the additional PR positions as authorized in 2003 Wisconsin Act 33. The Governor's proposed budget for 2007–09 maintains the same number of GPR and PR funded positions as the previous two budgets.

4. In order to support the 5.0 PR positions provided in the state budgets since 2003, the Employment Relations Commission doubled its filing fees in August, 2003. Despite that increase, filing fee income has averaged \$381,359 over

the past four fiscal years, an amount that was approximately \$130,350 less each year than the average budget–authorized PR position expenditures for those same years. As a result the Commission’s PR fund balance has been reduced to a level that is wholly insufficient to meet current PR expenditures.

5. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 5.0 positions provided in the PR portion of the Commission’s budget, the Commission’s ability to provide timely and expeditious dispute resolution services will be significantly harmed.

Publication Date: December 19, 2007
Effective Date: January 2, 2008
Expiration Date: May 31, 2008
Hearing Date: November 12, 2007

Government Accountability Board

EmR 0803 – Repealing s. **Eth 3.01**, relating to the filing of all written communications and documents intended for the former Ethics Board; repealing s. **Eth 3.04**, relating to transcripts of proceedings before the former Ethics Board; and amending s. **EIBd 10.01**, relating to procedures for complaints with the former State Elections Board.

Finding of Emergency

The Government Accountability Board adopts this rule to clarify the complaint procedure applicable to complaints that will be filed with the Board under ethics, lobbying, contract–disclosure and campaign finance law and the separate complaint procedure applicable to complaints filed under elections law and the Help America Vote Act.

The Government Accountability Board finds that an emergency exists in the 2007 change in Wisconsin law that establishes the Wisconsin Government Accountability Board (effective January 10, 2008). Under 2007 Wisconsin Act 1, a statutory procedure or framework for investigation of complaints related to ethics, lobbying, contract disclosure and campaign finance, was established. That framework does not include the necessity of the filing of a complaint. Under the rules of the former Elections Board, Chapter EIBd 10, however, an investigation will not be commenced without the filing of a verified complaint. The Government Accountability Board finds that an emergency exists in the possible confusion that potential complainants may find in attempting to file a complaint with the Government Accountability Board and, as a result of that confusion, those complainants may be dissuaded from filing a complaint over which the Board has jurisdiction, or, because of that confusion, may fail to file that complaint in a timely fashion.

Publication Date: February 10, 2008
Effective Date: February 10, 2008
Expiration Date: July 19, 2008

Health and Family Services

Health, Chs. HFS 110—

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

Finding of Emergency

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

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

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

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

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

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

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: March 6, 2008

Natural Resources

Fish, Game, etc., Chs. NR 1—

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

Finding of Emergency

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

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

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

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

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

Natural Resources

Environmental Protection – Water Regulation, Chs. NR 300—

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

Finding of Emergency

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

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

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

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

Publication Date: July 12, 2007
Effective Date: July 12, 2007
Expiration Date: December 9, 2007
Hearing Date: August 13, 2007
Extension Through: April 5, 2008

Natural Resources

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

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

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S.

Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court-ordered vacatur of the federal regulations. Normal rule-making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

Publication Date: September 13, 2007
Effective Date: September 13, 2007
Expiration Date: February 10, 2008
Hearing Date: October 26, 2007
Extension Through: June 9, 2008

Public Instruction (3)

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

Finding of Emergency

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

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

Publication Date: November 24, 2007
Effective Date: November 24, 2007
Expiration Date: April 23, 2008
Hearing Date: February 21, 2008

2. **EmR 0801** – Creating **ch. PI 31**, relating to grants for science, technology, engineering, and mathematics programs.

Finding of Emergency

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

The STEM program under s. 115.28 (46), Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$61,500 annually beginning in the 2007-08 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date: January 30, 2008
Effective Date: January 30, 2008
Expiration Date: June 28, 2008
Hearing Dates: March 18 and 21, 2008

3. **EmR 0805** – Creating **ch. PI 16**, relating to four-year-old kindergarten grants.

Finding of Emergency

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

The 4-year-old kindergarten grant program under s. 115.445, Stats., was created under 2007 Wisconsin Act 20. The Act became effective October 27, 2007, and appropriated \$3 million annually beginning in the 2008-09 school year. In order for school districts to develop application criteria and procedures in time for the program to operate in the upcoming school year, rules must be in place as soon as possible.

Publication Date: February 25, 2008
Effective Date: February 25, 2008
Expiration Date: July 24, 2008
Hearing Date: April 17, 2008
[See Notice this Register]

Revenue (2)

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

Finding of Emergency

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

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

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

Publication Date: October 12, 2007
Effective Date: October 12, 2007
Expiration Date: March 10, 2008
Extension Through: May 9, 2008

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

Finding of Emergency

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

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

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

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

Publication Date: October 29, 2007
Effective Date: October 29, 2007
Expiration Date: March 27, 2008
Hearing Date: January 2, 2008
Extension Through: May 26, 2008

Transportation

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

Analysis

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

Exemption From Finding of Emergency

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

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

Workforce Development (2)

Family Supports, Chs. DWD 12 to 59

1. Rule adopted amending **s. DWD 56.06 (1) (a) 1. and creating s. DWD 56.06 (1) (a) 1. r.**, relating to child care rates.

Finding of Emergency

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

2007 Wisconsin Act 20 reflects that child care rates will not be increased for the 2008–2009 biennium. Chapter DWD 56 currently provides that child care rates shall be set annually in accordance with a market rate survey and procedures described in s. DWD 56.06 (1). Historically, the rate adjustments have been effective January 1 of the new year. This emergency rule is necessary to provide that child care rates will not be adjusted for 2008 in accordance with 2007 Wisconsin Act 20. A corresponding permanent rule will provide that child care rates will not be adjusted for 2008 and 2009.

Publication Date: December 27, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: March 10, 2008

2. **EmR 0806** – Rule adopted amending **s. DWD 56.08 (1) and (2) (a), (e), and (f)** and repealing and recreating **Table**

DWD 56.08, relating to child care copayments and affecting small businesses.

Finding of Emergency

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

The federal Department of Health and Human Services is requiring that Wisconsin eliminate different copayment amounts for families who receive child care services from a certified provider and families who receive child care services from a licensed provider. The change to the copayment schedule must be implemented by April 1, 2008, or Wisconsin risks losing \$82 million annually from the Child Care Development Fund.

Publication Date: February 27, 2008
Effective Date: March 30, 2008
Expiration Date: August 27, 2008
Hearing Date: April 11, 2008

Workforce Development

Public Works Construction Contracts, Chs. DWD 290 to 294

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

Finding of Emergency

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

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. 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, 2007
Effective Date: January 1, 2008
Expiration Date: May 30, 2008
Hearing Date: February 14, 2008

Scope Statements

Commerce

Subject

Revising chs. Comm 14, 40, 43, 45, and 60 to 66, relating to the Fire Prevention Code and the Wisconsin Commercial Building Code.

Objective of the Rule

The primary objective of this rulemaking project is to evaluate and update provisions of the *Fire Prevention Code*, ch. Comm 14, and the *Wisconsin Commercial Building Code*, chs. Comm 60–66. This rulemaking update is to keep the codes consistent with dynamic, contemporary regional and national construction and fire prevention practices and standards and legislative initiatives enacted during the 2007–2008 session relating to public buildings and places of employment. In addition, the project will evaluate other administrative codes of the department that may be affected by the update of *Fire Prevention Code* and the *Wisconsin Commercial Building Code*, including at least chapters Comm 40, 43 and 45 relating to gas systems, anhydrous ammonia and mechanical refrigeration. This evaluation may result in changes and the update of rules under these chapters. The objectives of this rule project may be incorporated to one or more rule packages.

Policy Analysis

The *Fire Prevention Code* and the *Wisconsin Commercial Building Code* contain standards for the design, construction, maintenance, use and inspection of public buildings and places of employment. The most recent code updates are based upon the 2006 editions of model codes developed by the National Fire Protection Association and the International Code Council. The *Fire Prevention Code* adopts and references NFPA 1, Uniform Fire Code, and the *Wisconsin Commercial Building Code* adopts and references the International Building Code, IBC, the International Energy Conservation Code, IECC, the International Mechanical Code, IMC, the International Fuel Gas Code, IFGC, and the International Existing Buildings Code, IEBC. The *Fire Prevention Code* also establishes duties for fire departments and requirements for fire departments that receive dues payments from the Department

The primary purpose of the codes under consideration is to protect public health, safety, and welfare. Periodic review and update of the Codes is necessary to ensure that the Codes still achieve that purpose. In addition, the review and update allows the opportunity to recognize new construction products and practices. The review and update process will include evaluation of the 2009 editions of the above-mentioned national model codes for incorporation.

The primary alternative would be to delay the rule-review process. This delay would reduce the public benefits that would otherwise occur by beginning this review now.

Statutory Authority

Sections 101.02 (1) and (15), 101.027, 101.10, 101.13, 101.14 (1), (2) and (4) (a), 101.16, 101.17, 101.132, and 101.973 (1) and (2), Stats.

Entities Affected by the Rule

The requirements of the Fire Prevention Code and the Commercial Building Code impact all businesses, regardless of size, utilizing public buildings and places of employment in Wisconsin. The codes impact a variety of businesses particularly those businesses that design, build, or maintain commercial buildings; provide or produce building materials or components; own or occupy commercial buildings. The rule-making project may also affect those business that design, install, own or operate gas systems, anhydrous ammonia systems or mechanical refrigeration systems falling under the scopes of chapters Comm 40, 43 and 45.

Comparison with Federal Regulations

Fire Prevention

An Internet-based search for “fire prevention” in the *Code of Federal Regulations* identified the following existing federal regulations that potentially address fire prevention at places of employment in Wisconsin: 29CFR1910–Occupational Safety and Health Standards, 29CFR1926–Safety and Health Regulations for Construction, 30CFR56–Safety and Health Standards–Surface Metal and Nonmetal Mines, 30CFR57–Safety and Health Standards–Underground Metal and Nonmetal Mines, 33CFR127–Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas, 46CFR28–Requirements for Commercial Fishing Industry Vessels, 46CFR34–Firefighting Equipment (on tankships), 46CFR76–Fire Protection Equipment (on shipping vessels), and 41CFR102–Safety and Environmental Management (for federally owned and leased buildings). No changes to Comm 14 are expected to supersede those federal requirements, so no comparison is made here to those requirements.

An Internet-based search for “fire prevention” in the 2006 and 2007 issues of the *Federal Register* did not identify any proposed federal regulations that address fire prevention at public buildings or places of employment in Wisconsin.

Building

Code of Federal Regulations. An internet-based search for “federal commercial building code” and “building code regulations” in the Code of Federal Regulations did not identify any existing federal regulations that address these topics.

Federal Register. An internet-based search for “federal commercial building code” and “building code regulations” in the Federal Register did not identify any proposed federal regulations that address these topics.

Accessibility

Code of Federal Regulations. The portions of the Code of Federal Regulations relating to accessibility in commercial buildings and facilities include the following:

28 CFR 35–Nondiscrimination on the Basis of Disability in State and Local Government Services

28 CFR 36– Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

24 CFR 1–Finals Fair Housing Accessibility Guidelines

The purpose of both 28 CFR 35 and 28 CFR 36 is to require the design and construction of commercial buildings in accordance with the regulations specified under the Americans with Disabilities Act Accessibility Guidelines (ADAAG). The purpose of 24 CFR 1 is to provide technical guidance on the design and construction of dwelling units as required by the federal Fair Housing Amendments Act of 1988. In Wisconsin those provisions are found in the Wisconsin Commercial Building Code through the adoption of the *International Building Code*[®] (IBC). The intent of the *Wisconsin Commercial Building Code* is to meet or exceed those federal laws and regulations.

Federal Register. The portions of the Federal Registers relating to accessibility in commercial buildings and facilities include the following:

Federal Register January 13, 1998, ADAAG; State and Local Government Facilities

Federal Register January 13, 1998, ADAAG; Building Elements Designed for Children's use

Federal Register November 16, 1999, ADAAG revisions and updates

The International Code Council (ICC) actively monitors changes to the federal standards affecting accessibility such that the IBC and the standards referenced therein remain in alignment with the most current provisions.

The Department must revise and update the current *Wisconsin Commercial Building Code* to stay abreast of and up to date with all those requirements.

Energy Conservation

Code of Federal Regulations. The portion of the *Code of Federal Regulations* relating to energy conservation for commercial buildings and facilities is found under 10 CFR 420–State Energy Program. The purpose of this regulation is to promote the conservation of energy, to reduce the rate of growth of energy demand, and to reduce dependence on imported oil—through the development and implementation of comprehensive state energy programs. This regulation requires that each state's energy conservation rules for new buildings be no less stringent than the provisions of the 1989 edition of Standard 90.1–*Energy Standard for Buildings Except Low–Rise Residential Buildings* from the American Society of Heating, Refrigerating and Air–Conditioning Engineers (ASHRAE). Each state is also required to certify to the Secretary of Energy that it has reviewed and updated the provisions of its commercial code to the specified standard. In Wisconsin those provisions are found in the *Wisconsin Commercial Building Code* through the adoption of the *International Energy Conservation Code*[®] (IECC).

Federal Register. As indicated in the July 15, 2002, *Federal Register*, the Secretary of the Interior amended the federal energy conservation regulations in 2002 by mandating compliance with the 1999 edition of the ASHRAE 90.1 standard. The current *Wisconsin Commercial Building Code* is in compliance and by reviewing the most current provisions of the model codes and standards, the Department will remain so. By staying abreast of the most current codes and standards, we do not risk being out of compliance with the federal regulations.

The Department must revise and update the current *Wisconsin Commercial Building Code* to stay abreast of and up to date with all those requirements.

Safety Standards for Glazing Materials

Code of Federal Regulations. The portion of the *Code of Federal Regulations* relating to safety glazing material in commercial buildings and facilities is found under 16 CFR 1201–Safety Standard for Architectural Glazing Materials. This standard prescribes the safety requirements for glazing materials used in architectural products, such as doors, sliding glass doors, bathtub doors and enclosures, and shower doors and enclosures. The current *Wisconsin Commercial Building Code* is in compliance and by reviewing the most current provisions of the model codes and standards, the Department will remain so.

Federal Register. An Internet–based search for changes to 16 CFR 1201 in the 2007 issues of the *Federal Register* did not identify any proposed changes to this standard.

Estimate of Time Needed to Develop the Rule

The Department estimates approximately 2000 hours will be needed to perform the review and develop any needed rule changes. This time includes drafting the changes – in consultation with the Comm 14 Council, the Commercial Building Code Council and the Multifamily Dwelling Code Council – and processing the changes through public hearings, legislative review, and adoption. The Department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

Corrections

Subject

The rule amends s. DOC 309.466, relating to inmate release account funds.

Objective of the Rule

The objective of the rule is to expand the listed pre–release uses of inmate release account funds to permit the purchase of items or services which will assist the Department of Corrections and an inmate in the process of reentry to the community following an inmate's release from incarceration. In addition, the Department will review the maximum amount (\$500.00) that can be accumulated.

Policy Analysis

The current rule limits the use of release account funds before release from prison to the purchase of clothing which is appropriate upon release and out of state transportation. The release fund is intended for use by an inmate upon release for housing, employment, and other needs. In addition, the current rule provides for a 15% deduction of all income earned by or received for the benefit of an inmate, except from work release or study release funds under chapter DOC 324. The release fund is capped at \$500.00. The section of the rules has not been reviewed since 1986.

Statutory Authority

Sections 227.11 (2), 301.02, and 301.03 (2), Stats.

Entities Affected by the Rule

This proposed rule will affect inmates and the public, including the families of inmates, treatment providers, and other vendors who provide services to inmates and offenders.

Comparison with Federal Regulations

None.

Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 50 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

Employee Trust Funds

Subject

Revising s. ETF 50.52 (1) (b) 3., relating to the age at which a person's long-term disability insurance benefits will be reduced because the person was eligible for a pension from the Wisconsin Retirement System but chose not to begin receiving the pension benefits.

Objective of the Rule

The long-term disability insurance (LTDI) plan of s. ETF 50.40, *et seq.*, was created by the Group Insurance Board in 1992 in response to the federal Older Worker's Benefit Protection Act (OWBPA). That legislation amended the federal Age Discrimination in Employment Act (ADEA) to specifically prohibit employers from denying benefits to older employees. The WRS disability annuity benefit provided under s. § 40.63, Stats., was considered discriminatory because the older of two otherwise identically situated employees would receive a lower monthly disability annuity benefit. OWBPA required that new employees be covered exclusively under a plan, which could include long-term disability insurance, that complied with the ADEA (as amended). Existing employees could be allowed to choose between the new and the old, potentially discriminatory disability plans.

In the LTDI plan, a person's monthly long-term disability insurance (LTDI) benefits are reduced based upon actual receipt of a monthly annuity received from the Wisconsin Retirement System (WRS) which is based on the person's WRS-covered employment. Only the portion of the annuity actually taxable to the person operates to reduce the LTDI benefits.

Section ETF 50.52 (1) (b) 3., is intended to encourage a person receiving LTDI benefits to apply for the WRS pension benefits for which the person is eligible. If a person is eligible, but chooses not to apply for the pension, and has reached normal retirement age, then the person's LTDI benefits are reduced by the amount of the normal form annuity available to the person.

The normal form of a WRS annuity, as provided by s. 40.23 (2m) (a), Stats., is a straight life annuity payable for the life of the annuitant. This is normally the annuity option paying the highest monthly benefit.

Normal retirement date is defined by s. 40.02 (42) as:

- Age 53 for a protective occupation participant with 25 or more years of creditable service.
- Age 54 for a protective occupation participant with less than 25 years of creditable service.
- Age 62 for elected officials or executive participating employees.
- Age 65 for all other employees covered by the WRS.

This rule-making will provide that the reduction of benefits under s. ETF 50.52 (1) (b) 3. will never apply before age 62. If the person earned any creditable service with a normal retirement date later than age 62 (i.e., so-called "general" category of employment), then this particular reduction of benefits will not occur until that date is reached. This will be true regardless of the category of employment of the person's last WRS-covered employment or the category of employment in which the person was employed at the time the disability arose.

If a person actually begins to receive WRS pension benefits, then a separate reduction of LTDI benefits will apply

under s. ETF 50.52 (1) (b) 2., which is not affected by this rule-making.

Policy Analysis

This rule-making primarily benefits protective occupation participants who are entitled to LTDI benefits. Protective occupation participants are the only participants in the WRS whose normal retirement date is before age 62.

This rule-making also benefits a few persons who are entitled to LTDI benefits and who have earned their creditable service in the WRS under more than one category of employment, if one of those categories is the so-called "general" category. The general category includes all persons who are not protective occupation participants, elected officials, or executive participating employees. For example, teachers and educational support personnel are general category employees. General category employees are the only class with a normal retirement date older than age 62.

Although any reduction in benefits associated with age is potentially discriminatory, this rule-making allows the LTDI program to take advantage of a specific "safe harbor" in federal age discrimination law. Title 29 U.S. Code s. 623(1)(3)(B) allows a long-term disability benefit plan to reduce benefits based upon pension benefits for which the individual is eligible, provided the person has reached the later of age 62 or normal retirement age.

The proposed rule differs from current Department practice in that it will rely on the latest normal retirement date of all that apply to the individual's WRS career not just the normal retirement date associated with the most recent employment.

Statutory Authority

Section 40.03 (6) (b), Stats.

Entities Affected by the Rule

The only persons affected by this rule are those who meet all of the following criteria: (1) are entitled to receive long-term disability insurance benefits; (2) who are eligible for but not yet begun receiving a pension benefit from the Wisconsin Retirement System, and whose normal retirement date is under age 62. Protective occupation participants are the only class of WRS participants whose normal retirement date is under age 62. The normal retirement date will be the latest, not the earliest, one applicable to the person. This change will affect only the relatively few persons who have service in different categories of employment, and then only if the person had service in the general category with its age 65 normal retirement date.

Comparison with Federal Regulations

The federal safe harbor provision concerning reduction of long-term disability benefit based on eligibility for pension benefits is found only in 29 USC 623(1)(3), not in federal regulations. This portion of the federal statute prohibiting age discrimination reads:

(3) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

(A) paid to the individual that the individual voluntarily elects to receive; or

(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.

Estimate of Time Needed to Develop the Rule

The Department estimates that state employees will spend 60 hours to develop this rule.

Government Accountability Board**Subject**

Creating ch. GAB 13, relating to the training of election officials, including inspectors (other than chief inspectors), special voting deputies and special registration deputies.

Objective of the Rule

Under s. 7.315, Stats., “The board shall, by rule, prescribe the contents of the training that municipal clerks must provide to inspectors, other than chief inspectors, to special voting deputies appointed under s. 6.875, and to special registration deputies appointed under ss. 6.26 and 6.55 (6).” And “Each inspector other than a chief inspector and each special voting deputy appointed under s. 6.875 and special registration deputy appointed under s. 6.26 or 6.55 (6) shall view or attend at least one training program every 2 years.

Policy Analysis

With the many recent changes in election law, the legislature has determined that all persons who act in the capacity of an election official, including inspectors, special voting deputies and special registration deputies, need to receive up–dated training in election law. To prescribe that training and to ensure that each election official receives the required training, as the statute requires, the Board proposes to adopt this rule.

Statutory Authority

Sections 5.05 (1) (f), 227.11 (2) (a), and 7.315, Stats

Entities Affected by the Rule

All municipal clerks and the staff of the City of Milwaukee Board of Election Commissioners will be affected by the rule in that they are required to provide the training that is the subject of this rule and any person seeking to act as an election official will be affected by the rule because they are required to complete the training that is the subject of this rule.

Comparison with Federal Regulations

The federal government does not regulate local election officials and does not have federal regulations that apply to the election training of local election officials. Although federal law does not have a comparable provision for the training of local election officials, federal law – the Help America Vote Act of 2002 or “HAVA,” (Public Law 107–252, Oct. 29, 2002) – has mandated the training of election officials and poll workers in each of the 50 states.

Estimate of Time Needed to Develop the Rule

At least 80 hours of state employees’ time.

Regulation and Licensing**Subject**

Revising ch. RL 16, relating to the use of department–approved real estate contract forms to provide clarification relating to the ability to alter or change such forms.

Objective of the Rule

To provide additional clarification to the rules relating to the ability to alter or change department–approved real estate contract forms.

Policy Analysis

Existing rules relating to the use of department–approved real estate contract forms can be found in ch. RL 16, which provides requirements on the ability to produce or print a department–approved real estate contract form. This rule change would provide additional clarification as to how the department–approved forms may be altered or changed.

Statutory Authority

Sections 15.045 (11), 227.11 (2), 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

Entities Affected by the Rule

Real estate licensees.

Comparison with Federal Regulations

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

Estimate of Time Needed to Develop the Rule

100 hours

Transportation**Subject**

Amending s. Trans 250.04, relating to the fee for obtaining an oversize and/or overweight routing permit or permit amendment that is applied for or issued by Internet or telephone call–in procedures.

Objective of the Rule

2003 Wisconsin Act 33, Section 2604, amended s. 348.25 (8) (e), Stats., to provide that the amount of the fee is to be established by the Department by rule, and shall approximate the cost to the Department for providing this service. The current \$5 fee was based on the Department’s cost to provide telephone and internet service in 2003. Recently, the Department has determined that the current actual cost per transaction is about \$1.49, but that is subject to change in the future as the Department’s annual cost assessment indicates.

The Department proposes to amend s. Trans 250.04 to establish that the Department shall determine the fee annually to approximate the cost to the Department for providing the transaction, not to exceed \$5 per transaction. In determining the fee per transaction for the current year, the Department shall review, from the previous year, the total cost of the service, the number of transactions, and other material factors. The current fee shall be published on the Department’s internet web site and in communication materials distributed to eligible motor carriers. This approach is modeled on ch. Trans 196 language that was promulgated in 2005 for Internet and phone registration renewal transactions.

Policy Analysis

The Department has successfully implemented fee calculation and publication under ch. Trans 196. The Department proposes similar treatment of the convenience fee for oversize/overweight permit applications by internet and telephone call–in procedures.

Statutory Authority

Sections 85.16 (1), 227.11 (2) (a), 348.25 (3) and 348.25 (8) (e), Stats.

Entities Affected by the Rule

Motor carriers who apply for oversize/overweight permits.

Comparison with Federal Regulations

No federal regulations relate to this fee.

Estimate of Time Needed to Develop the Rule

20 hours

Workforce Development***Family Supports, Chs. DWD 12–59*****Subject**

Revising ch. DWD 56, relating to child care enrollment underutilization.

Policy Analysis

The Department projects a potential current year deficit in the child care subsidy program of \$18.6 million if no corrective measures are taken. Due to this projected budget shortfall, the Department proposes to reinstate the child care enrollment underutilization policy that was in effect April to October 2007. The underutilization policy was implemented in response to a significant 06–07 budget shortfall and was withdrawn in October 2007 upon passage of 2007 Wisconsin Act 20.

The current methodology for authorizing payment to licensed providers has caused the child care subsidy program to pay for significant amounts of time when care is not actually being provided. The proposed rule will control costs by reducing payments to licensed child care providers for authorized child care services that are significantly underused. The rule will repeal the presumption of enrollment authorization for licensed providers and provide that a local child care administrative agency shall authorize on either an enrollment or attendance basis as follows:

- The agency shall authorize the number of hours needed on an enrollment basis if the need for care is anticipated to be approximately the same number of hours each week.
- The agency shall authorize payment based on the hours of actual attendance by each child if the need for care is anticipated to vary from week to week or if the child has a history of variable attendance.

- The agency may authorize payment on the hours of actual attendance if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

For any week in which a child whose authorized payments are on an enrollment basis attends less than 50% of the of the authorized hours of care, payment will be made on the basis of actual hours of attendance used, unless the agency determines that the absence is for a reason approved by the Department, such as short-term illness of the child or death in the family.

This rule will also increase the penalties for a provider who submits false or inaccurate attendance reports. The current s. DWD 56.04 (5) (c) allows for the child care administrative agency to refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months, revoke existing child care authorizations to the provider, or refuse to issue payment to the provider until the violation is corrected. The proposed rule will provide additional penalties in the following situations:

- If it is the provider's second documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$1,000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 1 year.
- If it is the provider's third or subsequent documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$5,000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 5 years.

Statutory Authority

Sections 49.155 and 227.11 (2), Stats.

Entities Affected by the Rule

Licensed child care providers and families who receive assistance under the child care subsidy program and receive child care services from a licensed provider.

Comparison with Federal Regulations

None

Estimate of Time Needed to Develop the Rule

300 hours

Submittal of Rules to Legislative Council Clearinghouse

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

Natural Resources

Fish, Game, etc., Chs. NR 1— CR 08–021

On March 12, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises chs. NR 1, 8, 10, 11, 12, 15, 16, 17 and 19, relating to hunting, trapping, captive wild animals, dog training, nuisance animal removal, wildlife rehabilitation and license issuance.

Agency Procedure for Promulgation

A public hearing is scheduled for April 15, 2008.

Contact Information

Scott Loomans
Bureau of Wildlife Management
Phone: (608) 267–2452

Natural Resources

Fish, Game, etc., Chs. NR 1— CR 08–022

On March 12, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates ss. NR 10.275 (4) and 45.09 (10), relating to hunting in state parks, including department managed portions of state trails.

Agency Procedure for Promulgation

Public hearings are scheduled for April 15, 16, and 24, 2008.

Contact Information

Scott Loomans
Bureau of Wildlife Management
Phone: (608) 267–2452

Natural Resources

Fish, Game, etc., Chs. NR 1— CR 08–023

On March 14, 2008, the Department of Natural Resources submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises ss. NR 46.15, 46.16 and 46.30, relating to the administration of the forest crop law and managed forest law.

Agency Procedure for Promulgation

A public hearing is scheduled for April 16, 2008.

Contact Information

Kathryn Nelson
Forest Tax Section
Phone: (608) 266–3545

Rule-Making Notices

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08-021

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.16, 23.322, 23.325 (2), 23.33, 27.01 (7), 29.014, 29.889 (7m), 30.52, 169.19 (6), 169.20 (6), 169.21 (3), 169.24 and 227.11, Stats., interpreting ss. 23.16, 23.322, 23.325 (2), 23.33, 27.01 (7), 29.014, 29.889 (7m), 30.52, 169.19 (6), 169.20 (6), 169.21 (3) and 169.24, Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 1, 8, 10, 11, 12, 15, 16, 17 and 19, Wis. Adm. Code, relating to hunting, trapping, captive wild animals, dog training, nuisance animal removal, wildlife rehabilitation and license issuance.

Hearing Information

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

<p>April 15, 2008 Tuesday at 1:00 p.m.</p>	<p>Room 608 GEF #2 Office Building 101 S. Webster Street Madison</p>
---	--

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

Submission of Written Comments, Agency Contact, and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 16, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Analysis Prepared by Department of Natural Resources

Statutory authority

Sections 23.16, 23.322, 23.325 (2), 23.33, 27.01 (7), 29.014, 29.889 (7m), 30.52, 169.19 (6), 169.20 (6), 169.21 (3), 169.24 and 227.11, Stats.,

Statutes interpreted

Sections 23.16, 23.322, 23.325 (2), 23.33, 27.01 (7), 29.014, 29.889 (7m), 30.52, 169.19 (6), 169.20 (6), 169.21 (3) and 169.24, Stats.

Plain language analysis

Annually the department updates administrative code language to correct inconsistencies, update outdated language and provide clarification where appropriate. This year, the department is proposing the following changes:

- Designate elk as big game animals
- Allow the issuance of all approvals, permits, licenses, subscriptions and passes through the automated licensing system
- Eliminate duplicative deer hunting season language
- Correct a drafting error related to the youth deer hunting season
- Correct a cross reference to continue allowing hunting certain species at night during the December and October deer hunts
- Correct a cross reference related to type of legal archery hunting equipment
- Adjust bear management zones A and D to account for the Bad River Indian Reservation
- Update wildlife damage and nuisance control rules to be consistent with recently passed legislation
- Update rules which establish the Horicon Marsh Fur Farm to include newly acquired lands which are part of the marsh
- Reestablish pheasant management zones for the purposes of regulating Class B shooting preserves
- Eliminate the sunset of a rule which allows training dogs with the aid of raccoon and rabbits at certain times
- Define the term “preserve” in order to eliminate confusion about when a Taxidermy or Fur Buyers license is required
- Waive department fur tagging requirements for tribes that have their own fur tagging systems
- Repeal the “initial” advanced license for wildlife rehabilitation
- Clarify that animals which are being rehabilitated may not be exposed to domestic animals during rehabilitation
- Correct a typographical error related to wildlife rehabilitation regulations

Initial Regulatory Flexibility Analysis

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

Environmental Analysis

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

Fiscal Estimate

Summary

The intent of these rule changes is to correct drafting errors, provide clarification to existing rules, simplify regulations, increase access to department services, and update administrative code language and references. The department anticipates only minimal fiscal impacts.

State fiscal effect

None

Local government fiscal effect

None

Long-range fiscal implications

Adding new purchase options to the automated licensing system may result in an increase in permits and services which are sold and an increase in revenue to the department. However, since no specific services are proposed to be included at this time it is not feasible to predict long range implications.

Notice of Hearings

Natural Resources

Fish, Game, etc., Chs. NR 1— CR 08–022

NOTICE IS HEREBY GIVEN that pursuant to ss. 27.01 and 29.089, Stats., interpreting ss. 27.01 and 29.089, Stats., the Department of Natural Resources will hold public hearings creating ss. NR 10.275 (4) and 45.09 (10), Wis. Adm. Code, relating to hunting in state parks, including department-managed portions of state trails.

Hearing Information

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

April 15, 2008 Tuesday at 5:00 p.m.	Glacier Room DNR S. Central Region Hdqrs. 3911 Fish Hatchery Road Fitchburg
April 16, 2008 Wednesday at 3:00 p.m.	Room 218 UW–Marathon County 518 South 7 th Avenue Wausau
April 24, 2008 Thursday at 5:00 p.m.	Auditorium, Havenwood State Forest Environmental Awareness Center 641 N. Hopkins Street Milwaukee

NOTICE IS HEREBY FURTHER GIVEN that the hearings on April 15, 2008 and April 24, 2008, in Fitchburg and Milwaukee, respectively, will close no sooner than 6:00 p.m. The hearing on April 16, 2008, will close at the completion of public testimony.

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

Submission of Written Comments, Agency Contact, and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 25, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Analysis Prepared by Department of Natural Resources

Statutory authority

Sections 27.01 and 29.089, Stats.

Statutes interpreted

Sections 27.01 and 29.089, Stats.

Plain language analysis

The proposed rule would authorize hunting on State Ice Age Trail areas unless the area is posted as closed to hunting. The Department would be able to post certain portions of an Ice Age Trail property as closed to hunting in order to protect public safety, protect a unique animal or plant community, or to accommodate usership patterns. Hunting and firearms discharge would not be allowed on the actual traveled portions of the trail or in an area extending 50 feet from the center of the trail.

Also in state parks, possession of loaded or uncased firearms is illegal where hunting is not allowed. This rule would authorize crossing the traveled portion of a trail in a State Ice Age trail area with a firearm that is not enclosed in a carrying case but which is unloaded. This provision would also apply on other types of state trails.

Initial Regulatory Flexibility Analysis

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

Environmental Analysis

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

Fiscal Estimate

Summary

The primary costs associated with this rule are for signage that is required in order to indicate where hunting is not allowed on existing Ice Age Trail area properties. Additionally, the department typically identifies the boundaries of Ice Age trail areas and may provide information about allowable activities but that is not a requirement of this rule.

The department has recently purchased standard size masonite signs for \$2.55 each from Badger State Industries

and a regular supplier of sign posts charges \$6.50 a piece. Including labor and mileage, it is estimated that each sign will cost \$20.00 to place. If signs were placed at each corner and one per quarter mile of length of a true 80 acre parcel, then 6 signs X \$20.00 = \$120.00 of expense for signage at that parcel.

There are currently 54 Ice Age trail areas with an average size of 80 acres. Therefore, 54 parcels X \$120.00 = \$6,480 for signage. Actual costs resulting from this proposal may be lower because signs may already have been placed on some properties and because signage is only required where hunting is prohibited. An exact estimate of costs is difficult to make because irregularly shaped parcels will require different levels of signage.

The department estimates that these one-time costs can be absorbed in the current budget.

In some cases local governments and other entities cooperate with the department in the management of state trail properties. Since the proposed rules will only apply on department managed properties there should be no fiscal effect on department cooperators.

Annualized costs due to this rule proposal are expected to be minimal. 2007 ACT 20 has already required that all new properties acquired with stewardship funds provide notice of public access by the placement of signs. In most cases, these signs can serve the dual purpose of informing the public about access and about allowable activities.

State fiscal effect

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

Local government fiscal effect

None

Fund sources affected

SEG

Affected Chapter 20 Appropriations

Section 20.370 (1) (ea) and (mu), Stats.

Long-range fiscal implications

New properties will require signs and signs will require maintenance however these expenses are not necessarily new since posting property boundaries is a standard DNR practice. Long range fiscal implications will be minimal and can be absorbed within current budgets.

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08–023

NOTICE IS HEREBY GIVEN that pursuant to ss. 77.06 (2), 77.82 (3) (c), 77.91 (1) and 227.11, Stats., interpreting s. 77.06 (2) and subch. VI of ch. 77, Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 46, Wis. Adm. Code, relating to administration of the Forest Crop Law and Managed Forest Law.

Hearing Information

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

April 16, 2008 **Video conference participation** will be available at:
Wednesday
at 10:00 a.m.

Room 139, State Office Building
718 W. Clairemont Avenue
Eau Claire

Room 618, State Office Building
200 N. Jefferson Street
Green Bay

Room 8F, State Office Building
101 E. Wilson Street
Madison

Communications Art Center
UW–Stevens Point
1101 Reserve Street
Stevens Point

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kathy Nelson at (608) 266–3545 with specific information on your request at least 10 days before the date of the scheduled hearing.

Submission of Written Comments, Agency Contact, and Copy of Rule

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Ken Symes, Forest Tax Section, Bureau of Forest Management, P.O. Box 7963, Madison, WI 53707. Comments may be submitted until April 30, 2008. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Symes.

Analysis Prepared by Department of Natural Resources

Statutory authority

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

Statutes interpreted

Section 77.06 (2) and subch. VI of ch. 77, Stats.

Plain language analysis

The proposed changes to ch. NR 46, include:

- Annual stumpage rate adjustments. Sections 77.06(2) and 77.91(1), Stats., require that the Department establish stumpage rates used in calculating severance and yield taxes on timber harvested from land enrolled in the Forest Crop Law (FCL) and Managed Forest Law (MFL). This rule would repeal and recreate s. NR 46.30(2)(a) to (d) to revise the stumpage rates used in calculating severance taxes and yield taxes for timber harvested during the period of November 1, 2008 and October 31, 2009. Thirteen separate zones reflect varying stumpage rates for different species and products across the state. The average change from current rates is a 0.10% increase for pulpwood and a 0.14% decrease for piece products. Private timber sales were used in calculating the proposed stumpage rates.

- Definitions used the MFL program in s. NR 46.15 are being changed to streamline administration and processing of MFL orders, transfer and withdrawals
- Changes to ss. NR 46.16 (1) (b) and (6) relate to the processing of petitions and orders of designation. One change will allow landowners to amend their initial petition prior to submission of the management plan packet. As a result of this change it will be easier for landowners to enter lands under the MFL program
- NR 46.16 (1) (b) clarifies that a management plan packet for the May 15 deadline must be submitted with the petition.

Initial Regulatory Flexibility Analysis

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

Types of small businesses affected

Any business with land enrolled in either the Managed Forest Law or the Forest Crop Law or wishing to enroll land under the Managed Forest Law

Description of reporting or bookkeeping procedures required

No procedures not already required.

Description of professional skills required

No new skills are required.

Small Business Regulatory Coordinator

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

Environmental Analysis

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

Fiscal Estimate

Summary

This proposed rule change addresses the annual stumpage rate changes used in the calculation of severance and yield tax collections under Forest Cop Law (FCL) and Managed Forest Law (MFL) when timber is harvested from the private lands enrolled in the programs. Other changes proposed include are clarification and procedural and have no fiscal effect.

There is an estimated net increase in state revenues of approximately \$2,400.00 due to the processing of MFL transfers.

There is an estimated net increase in local revenues of approximately \$3,090.00 due to the changes in stumpage rates.

Timber prices have been stable over the past year. The proposed 2009 stumpage rate schedule includes an average 0.10% increase in sawtimber prices and an average 0.19% increase in cordwood prices. Prices of mixed products (combined sawlogs and pulpwood for red pine, white pine and spruce) decreased 0.14%. Of all total 629 prices calculated,

227 (36%) increased, 125 (20%) decreased and 277 (44%) stayed the same.

The severance and yield tax collected in CY 2006 was \$2,078,390.00. Of this, 46% of the gross revenue was from sawtimber harvests. Fifty-four (54%) percent of the revenue was from cordwood harvests. There were no recorded mixed product sales in CY 2006. Based on the very small statewide increase in timber prices an estimated \$3,090.00 will be collected for municipalities.

Estimates are based on the average change in rates across species and zone for each product type (cordwood, sawtimber and mixed), the volumes reported and paid for in CY 2006, and the assumption that the volume and the ratio of the cordwood and sawtimber will remain the same. Actual impact for a county and municipality will vary by the number of harvests completed and the actual species and products cut.

State fiscal effect

None

Types of local governmental units affected

Towns, Counties, Villages, Cities

Fund sources affected

SEG

Affected Chapter 20 Appropriations

Section 20.370 (1) (cr), Stats.

Long-range fiscal implications

None

Notice of Hearing

Public Instruction

CR 08-018

NOTICE IS HEREBY GIVEN That pursuant to ss. 115.445 (2) (b) and (3) and 227.11 (2) (a), Stats., and interpreting s. 115.445, Stats., the Department of Public Instruction will hold a public hearing as follows to consider emergency and proposed permanent rules creating Chapter PI 16, relating to four-year-old kindergarten grants. The hearing will be held as follows:

Hearing Information

April 17, 2008

3:00 – 4:30 p.m.

Madison

GEF 3 Building

125 South Webster Street

Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please contact Jill Haglund, Early Childhood Consultant at jill.haglund@dpi.wi.gov, (608) 267-9625 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copy of Rule

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.wi.gov or by writing to:

Lori Slauson

Administrative Rules and Federal Grants Coordinator

Department of Public Instruction

125 South Webster Street

P.O. Box 7841

Madison, WI 53707

Submission of Written Comments

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than April 24, 2008, will be given the same consideration as testimony presented at the hearing.

Agency Contact Person

Jill Haglund, Early Childhood Consultant, (608) 267-9625, jill.haglund@dpi.wi.gov.

Analysis Prepared by Department of Public Instruction

Statute interpreted

Section 115.445, Stats.

Statutory authority

Sections 115.445 (2) (b) and (3) and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 115.445 (3), Stats., requires the department to promulgate rules to implement the program. Section 115.445 (2) (b), Stats., requires the department to define "community approaches to early education" as school boards that use this approach must receive preference in receiving funds.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

N/A

Plain language analysis

2007 Wisconsin Act 20, the biennial budget bill, created s. 115.445, Stats., relating to 4-year-old kindergarten grants. Beginning in the 2008-09 school year, the Act appropriated \$3,000,000 and allows school boards to apply to the department for a 2-year grant to implement a 4-year-old kindergarten program.

In the first school year of the grant, the school board may receive up to \$3,000 for each 4-year-old kindergarten pupil; in the succeeding school year, \$1,500 per 4-year-old pupil. If funds are insufficient, the department may prorate the payments.

The department is required to promulgate rules for the program and particularly to define "community approaches to early education" as school boards that use this approach must receive preference in receiving funds.

The proposed rule establishes criteria and procedures for awarding grants to eligible school districts.

These rules were promulgated as emergency rules on February 25, 2008, in order to establish application criteria and procedures in time for the program to operate in the upcoming school year.

Comparison with federal regulations

N/A

Comparison with rules in adjacent states

Illinois has an early childhood block grant program serving children ages 3 years old to kindergarten enrollment age. The block grant provides for three programs: preschool for at-risk children, preschool for all children and social and emotional consultation services. It appears funds are made available on a competitive basis as opposed to Wisconsin's per child amount. Funds are available to an eligible applicant regardless of whether or not they have an existing program. Eligible applicants include public or private not-for-profit or for-profit entities with experience in providing educational,

health, social and/or child development services to young children and their families. Grantees must collaborate with their local Head Start program. A program may receive continued funding if a need continues to exist for the program and in the previous year, the applicant complied with the terms and conditions of the grant it received.

Iowa has a statewide voluntary preschool program for four-year-old children whose families choose to access such programs. Funds are made available (it appears on a competitive basis as opposed to Wisconsin's per child amount) to assist local school districts in the implementation of these programs. Funds are available to any eligible district regardless of whether or not they have an existing program. Only public schools may apply for funds. Programs must be approved by the department of education and must collaborate with community based providers, such as Head Start, licensed child care centers, etc. The programs must meet specific personnel, ratio of staff to children, maximum class size, instruction time, space, materials, meal and parental involvement standards. If the number of requests exceeds funding available, priority is given to high poverty school districts and to school districts that do not have existing preschool programming (as opposed to Wisconsin's prorating of funds per pupil).

Michigan and Minnesota – do not have rules relating to grants for 4-year-old kindergarten.

Summary of factual data and analytical methodologies

Wisconsin recognizes the importance of education in the lives of very young children. The state constitution sets the stage for school responsibilities beginning with 4-year-olds, and state and federal laws require school services for children with disabilities beginning at age three. A child's success in school is dramatically influenced by their experiences before school age, including health care and quality early care and education. Schools and communities across the state are sharing responsibilities to ensure that quality opportunities are available for young children before they enter school and during their early school years. A coordinated plan to expand access and improve the quality of early learning opportunities is needed to build a foundation for a quality statewide system that builds community, maximizes resources, and assures quality environments and competent professionals.

While state law recognizes the importance of parental involvement and provides a financial incentive to incorporate it into 4K programs, no equivalent incentive is provided for districts using "community approaches." During the 2005-06 school year, 234 of the state's 426 school districts operated a 4K program, but only 33 of these districts used community approaches, where school districts work cooperatively with child care and Head Start partners. Community approaches help maximize existing resources, minimize the number of transitions young children must make among programs, and reduce barriers to participation by increasing access to full-day programs for working families and to health and social services for low-income children. The integration of multiple types of funding sources and a wide range of early care providers enhances overall quality of services to children and families. However, the planning and community building needed to design, implement and sustain a 4K program using a community approach is time consuming and requires ongoing staff effort.

The department is committed to expanding the number of 4K programs offered in the state. Support for the approximately 100 school districts currently exploring the implementation of a 4K program is critical. In the past, funding through a grant from the Trust for Early Education

(TEE), allowed the department to establish a network of support (Forces for Four-Year Olds Advisory Committee, Preserving Early Childhood Conference) and to provide resource materials to districts exploring or implementing 4K programs. This temporary private funding is no longer available, but the demand and need for support to these districts continues.

This 4-year-old-kindergarten grant program will help to support some school districts in implementing their 4K programs and will give preference to programs that use community approaches to early education. The rule proposal is based on extensive research and developed through cooperation among four of the department's divisions, with input from two other state agencies. It builds on past successes and incorporates plans and efforts endorsed by the Forces for Four-Year Olds Advisory Committee.

Initial Regulatory Flexibility Analysis

The proposed rules will indirectly benefit small business as priority is given to 4K programs that involve child care

centers. However, the proposed rules will not have a significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Fiscal Estimate

Summary

Under s. 20.255 (2) (dp), Stats., 2007 Wisconsin Act 20 appropriated \$3 million annually beginning in 2008-09 for school districts to apply to the department for a 2-year grant to implement a 4-year-old kindergarten program.

In the first year of the grant, the school board may receive up to \$3,000 for each 4-year-old kindergarten pupil; in the succeeding year, \$1,500 per 4-year old pupils. If funds are insufficient, the department may prorate the payments.

The rule establishes criteria and procedures for awarding grants under this program. The rules will have no fiscal effect on local governments or small businesses as defined in s. 227.114 (1) (a), Stats.

The costs associated with administering this grant program will be absorbed by the department.

Submittal of Proposed Rules to the Legislature

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

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5

Elevators, Escalators and Lift Devices, Ch. Comm 18

CR 07-089

A rule-making order revising chs. Comm 5 and 18, relating to the licensing of elevator contractors and installers.

Commerce

Plumbing, Chs. Comm 81-87

CR 07-100

A rule-making order revising chs. Comm 81 to 87, relating to private onsite wastewater treatment systems.

Commerce

Grants for Construction Career Academies, Ch. Comm 4

CR 07-117

A rule-making order creating ch. Comm 4, relating to grants for construction career academies.

Employment Relations Commission

CR 07-092

A rule-making order amending s. ERC 10.08 (1) to (5), relating to increased filing fees.

Financial Institutions – General

CR 08-015

A rule-making order creating ch. DFI-Gen 2, relating to small business enforcement discretion.

Natural Resources

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

CR 06-108

A rule-making order repealing and recreating s. NR 20.40, relating to the regulation of fishing tournaments in inland, outlying and boundary waters of Wisconsin.

Natural Resources

*Environmental Protection – Air Pollution Control,
Chs. NR 400-*

CR 07-076

A rule-making order revising chs. NR 406, 407, and 445, relating to hazardous air pollutant emissions associated with agricultural waste and affecting small business.

Rule Orders Filed with the Legislative Reference Bureau

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

Agriculture, Trade and Consumer Protection **CR 07-037**

A rule-making order revising chs. ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85, relating to food and dairy license and reinspection fees.
Effective 5-1-08.

Natural Resources ***Fish, Game, etc., Chs. NR 1—*** **CR 07-035**

A rule-making order revising chs. NR 10, 12, and 16, relating to hunting, nuisance wild animal removal, and captive wildlife.
Effective 5-1-08.

Natural Resources ***Fish, Game, etc., Chs. NR 1—*** **CR 07-075**

A rule-making order amending s. NR 25.06 (2) (b) 1., relating to commercial fishing for yellow perch in zone 1 (Green Bay).
Effective 5-1-08.

Natural Resources

Environmental Protection – General, Chs. NR 100— **CR 06-005**

A rule-making order repealing and recreating ch. NR 149, relating to laboratory certification and registration.
Effective 5-1-08.

Revenue **CR 07-087**

A rule-making order revising chs. Tax 61 and 63, creating billing terms options for Wisconsin lottery retailers, creating additional shipping options at cost in situations where the retailer requests those options, correcting minor requirements in the lottery retailer performance program, creating rules relating to the voluntary disclosure requirements of 2003 Wis. Act 145, and correcting minor technical problems.
Effective 5-1-08.

Rules Published with this Register and Final Regulatory Flexibility Analyses

*The following administrative rule orders have been adopted and published in the **March 31, 2008**, 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 07-085

A rule-making order revising ch. ATCP 21, relating to voluntary certification of firewood dealers. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

This rule will allow certified firewood dealers to supply firewood to Wisconsin state parks. Certified firewood dealers must follow procedures to ensure that firewood is free of Emerald Ash Borer and other serious pests. The Department of Agriculture, Trade and Consumer Protection ("DATCP") is adopting this rule as part of a cooperative effort with the Department of Natural Resources ("DNR").

This rule creates a *voluntary* firewood dealer certification program for the benefit of Wisconsin firewood dealers. A firewood dealer is not required to be certified in order to sell firewood in this state. However, certification will make it possible for certified firewood dealers to supply firewood to Wisconsin state parks (current DNR rules might otherwise preclude them from doing so).

This rule will not have any adverse impact on firewood dealers. This rule does not require firewood dealers to be certified, nor does it restrict the sale or distribution of firewood by uncertified dealers. This rule creates a voluntary certification program, which may benefit some firewood dealers in this state. Those firewood dealers who are certified must pay a \$50 annual certification fee.

DNR state park rules prohibit a firewood dealer from supplying firewood to a state park located more than 50 miles away from the source of the firewood unless the firewood dealer is certified by DATCP. This rule will allow certified firewood dealers to supply firewood to state parks throughout the state, regardless of the firewood dealer's distance from the park.

This rule will primarily benefit large firewood dealers who can afford to implement the firewood treatment regimen required for certification. Certification under this rule is available only to firewood dealers who treat the firewood with a method that eliminates pests.

This rule does not authorize or prohibit imports of firewood from outside this state. Current DATCP rules under ATCP 21.17 prohibit imports of firewood from areas which the U.S. department of agriculture has formally designated as being infested with certain wood pests, such as Emerald Ash Borer.

Many firewood dealers are "small businesses." This rule does not make special provisions for "small businesses," because pest infestations are unrelated to business size.

Firewood dealers of any size may be certified under this rule, provided that they are capable of implementing acceptable firewood treatment options.

As a practical matter, certification will be attractive mainly for larger firewood dealers who can afford to implement acceptable treatment options (some of those larger firewood dealers may still meet the statutory definition of "small businesses"). This rule includes a range of treatment options, some of which may be more economical for small businesses.

This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22 (2) (e), Stats.

Summary of Comments by Legislative Review Committees

On December 14, 2007, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education and to the Assembly Committee on Forestry. The Senate Committee took no action on the proposed rule. The Assembly Committee on Forestry held a hearing on the rule on February 12, 2008 and voted the rule out of committee with no changes.

Commerce

CR 07-005

A rule-making order creating ch. Comm 200, relating to small business enforcement discretion. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

The rules do not impose any mandates on small businesses, other than to inform the Department that they are a small business, in the event they desire the enforcement discretion which is disclosed in the rules.

Summary of Comments by Legislative Review Committees

No comments were received.

Employee Trust Funds

CR 07-066

A rule-making order amending ss. ETF 11.06 (1) and 11.12 (2) (b), relating to hearsay evidence in administrative appeal hearings. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

The rule has no effect on small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

Employee Trust Funds

CR 07-068

A rule-making order creating s. ETF 20.37, relating to the status of a non-annuitant Wisconsin Retirement System participant at death, for purposes of determining the applicable death benefit. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

The rule has no significant effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

Summary of Comments by Legislative Review Committees

No comments were reported.

Funeral Directors Examining Board

CR 07-049

A rule-making order revising s. FD 4.04, relating to continuing education requirements. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

Government Accountability Board

CR 06-137

A rule-making order creating s. ElBd 3.04, relating to election-day voter registration. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

The rule has no effect on small business.

Summary of Comments by Legislative Review Committees

No comments were reported.

Insurance

CR 07-096

A rule-making order revising ss. Ins 6.50, 6.59, 26.04, and 28.04, relating to creating a limited line of authority for travel insurance, exempting an applicant for a managing general agent's license from examination, and clarifying the procedure for applying for a resident intermediary agent license. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

This rule would have a positive effect on small businesses that offer travel insurance in Wisconsin and other states.

Summary of Comments by Legislative Review Committees

No comments were reported.

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

CR 07-047

A rule-making order revising s. MPSW 17.03, relating to training licenses for marriage and family therapists. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

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

CR 07-048

A rule-making order revising ss. MPSW 10.01 and 11.015, relating to training licenses for professional counselors. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

Natural Resources

CR 07-056

A rule-making order revising ch. NR 8, relating to implementation of the wildlife violator compact. Effective 4-1-08 or on the date on which the department of natural resources becomes a "participating member" under s. 29.03 (8), Stats., whichever is later.

Summary of Final Regulatory Flexibility Analysis

These rules are applicable to individuals who hunt, fish and trap and do not impose compliance or reporting requirements for small businesses. 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 Environment and Natural Resources and the Assembly Committee on Natural Resources. On December 19, 2007, the Assembly Committee on Natural Resources held a public hearing. The Committee did not request any modifications as a result of this hearing.

Public Instruction

CR 07-057

A rule-making order amending s. PI 8.01 (2) (t) 2., relating to the identification of gifted and talented pupils. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

The rules will have no significant economic impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

Revenue
CR 07-091

A rule-making order amending s. Tax 2.505, relating to the computation of the apportionment fraction by multistate professional sports clubs. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

Workforce Development
CR 07-054

A rule-making order revising ss. DWD 128.01 and 128.03, and repealing s. DWD 128.02, relating to unemployment insurance rules for determining a claimant's ability and availability for work. Effective 4-1-08.

Summary of Final Regulatory Flexibility Analysis

This rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections Affected by Rule Revisions and Corrections

The following administrative rule revisions and corrections have taken place in **March 2008**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 21

S. ATCP 21.01 (6p), (6r), (9), and (12m)
S. ATCP 21.20

Commerce

Ch. Comm 200 (Entire Chapter)

Employee Trust Funds

Ch. ETF 11

S. ETF 11.06 (1)
S. ETF 11.12 (2) (b)

Ch. ETF 20

S. ETF 20.37

Funeral Directors Examining Board

Ch. FD 4

S. FD 4.04 (1) (intro.) and (8)

Government Accountability Board

Ch. EIBd 3

S. EIBd 3.04

Insurance

Ch. Ins 6

S. Ins 6.50 (2) (b)
S. Ins 6.59 (2) and (4) (a)

Ch. Ins 26

S. Ins 26.04 (2) (a)

Ch. Ins 28

S. Ins 28.04 (2) (a)

Marriage & Family Therapy, Counseling and Social Worker Examining Board

Ch. MPSW 10

S. MPSW 10.01 (2) and (3)

Ch. MPSW 11

S. MPSW 11.015

Ch. MPSW 17

S. MPSW 17.03 (1) (intro.), (c), (d) and (2)

Natural Resources

Ch. NR 8

Ch. NR 8 (title) and Subchs. I and II (titles)
Ss. NR 8.50 to 8.57

Public Instruction

Ch. PI 8

S. PI 8.01 (2) (t)

Revenue

Ch. Tax 2

S. Tax 2.505 (title), (intro.) to (3) (intro.) and (d)

Workforce Development

Ch. DWD 128

S. DWD 128.01
S. DWD 128.02
S. DWD 128.03

Editorial Corrections

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

Agriculture, Trade and Consumer Protection

Ch. ATCP 21

S. ATCP 21.01 (12m)

Funeral Directors Examining Board

Ch. FD 4

S. FD 4.04 (8)

Natural Resources

Ch. NR 8

S. NR 8.04 (2) (a)

S. NR 8.52 (1) (a) and (b)

Public Instruction

Ch. PI 8

S. PI 8.01 (2) (s)

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 240. Relating to a Proclamation Declaring a State of Emergency relating to the Transportation of Abrasives or Salt for Highway Winter Maintenance.

Executive Order 241. Relating to a Special Session of the Legislature.

Executive Order 242. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Staff Sergeant Christopher Frost of the United States Air Force Who Lost His Life During Operation Iraqi Freedom.

Executive Order 243. Relating to a Special Session of the Legislature and Amending Executive Order # 241.

Public Notices

Government Accountability Board

2008 Review Schedule of Formal Opinions, Administrative Rules, Guidance and Internal Operating Procedures

Explanation of GAB Review

The Government Accountability Board (GAB) is required to hold one or more public hearings on the question of reaffirmation of each administrative rule, formal opinion, guideline, and each order promulgated, issued or developed by the State Elections Board and the State Ethics Board that is presently in effect. 2007 Wisconsin Act 1, Section 209 (2), (3). The GAB is also required to review certain internal operating procedures of the former boards.

The administrative rules, formal opinions, guidelines and orders of the former agencies expire one year from the initiation date of 2007 Wisconsin Act 1, subject to a limited extension by the GAB. The initiation date has been established as January 10, 2008.

The Board has developed a schedule to complete the review process. The rules, opinions, guidelines, procedures and orders are organized by subject matter. The schedule may be modified by the Director with the approval of the Board Chair.

Schedule of Hearings to Review Formal Opinions, Administrative Rules, Guidelines and Internal Operating Procedures, pursuant to 2007 Wisconsin Act 1

Monday, January 28, 2008

Complaints: ElBd Chapter 10, ETH 3.01, ETH 3.04

Training Election Officials: ElBd Chapter 12, ElBd Chapter 13

Monday, February 25, 2008 [written testimony deadline: February 18]

Petitions: (2 opinions – ElBd. Op. 76–8, ElBd. Op. 86–2); ElBd Chapter 2

Recount: (1 opinion – ElBd. Op. 76–11)

State Officials – Conflicts of Interest: (17 ETH opinions)

Settlement Offer Schedules

Wednesday, March 26, 2008 [written testimony deadline: March 17]

Coordination of Campaign Activity: (1 opinion – ElBd. Op. 00–2)

Government Resources: (4 opinions – ElBd. Op. 74–6, ElBd. Op. 76–12, ElBd. Op. 76–16, ElBd. Op. 78–12)

Independent Expenditures: (1 opinion – ElBd. Op. 78–8); ElBd 1.42, ElBd 1.50

Scope of Regulation: (11 opinions – ElBd. Op. 74–4, ElBd. Op. 76–12, ElBd. Op. 76–16, ElBd. Op. 77–3, ElBd. Op. 79–2, ElBd. Op. 79–3, ElBd. Op. 79–4, ElBd. Op. 86–3, ElBd. Op. 00–2, ElBd. Op. 03–1, ElBd. Op. 06–1); ElBd 1.28, ElBd 1.29

State Officials – Representing Clients before State Agencies

State Employee Activity: (3 opinions – ElBd. Op. 75–2, ElBd. Op. 76–2, ElBd. Op. 76–16)

Voter Registration: (3 opinions – ElBd. Op. 76–10, ElBd. Op. 80–1, ElBd. Op. 81–1), ElBd Chapter 3

Monday, May 5, 2008 [written testimony deadline: April 28]

Non-Resident Committees: (2 opinions – ElBd. Op. 74–7, ElBd. Op. 75–3); ElBd 1.10

Recordkeeping and Reporting: (13 opinions – ElBd. Op. 74–9, ElBd. Op. 74–10, ElBd. Op. 74–16, ElBd. Op. 74–17, ElBd. Op. 75–5, ElBd. Op. 76–1, ElBd. Op. 76–4, ElBd. Op. 76–13, ElBd. Op. 77–9, ElBd. Op. 78–2, ElBd. Op. 88–3, ElBd. Op. 00–1, ElBd. Op. 01–1); ElBd 1.05, ElBd 1.11, ElBd 1.15; ElBd 1.20, ElBd 1.26; ElBd 1.30, ElBd 1.43, ElBd 1.46, ElBd 1.55, ElBd 1.56; ElBd 1.60, ElBd 1.65

Registration: (1 opinion – ElBd. Op. 74–13); ElBd 1.02; ElBd 1.41, ElBd 6.02

Ballots: (8 opinions – ElBd. Op. 76–9, ElBd. Op. 78–14, ElBd. Op. 78–16, ElBd. Op. 78–17, ElBd. Op. 79–1, ElBd. Op. 80–2, ElBd. Op. 87–1, ElBd. Op. 88–1)

Ballot and Voting Equipment Security: ElBd Chapter 5

Challenging Electors: ElBd Chapter 9

Observers: ElBd Chapter 4

Recount: Manual

Voting Equipment: ElBd Chapter 7

Monday, June 9, 2008 [written testimony deadline: June 2]

Contribution Limits: (8 opinions – ElBd. Op. 74–2, ElBd. Op. 74–5, ElBd. Op. 75–7, ElBd. Op. 77–1, ElBd. Op. 78–4, ElBd. Op. 78–15, ElBd. Op. 81–2, ElBd. Op. 97–1); ElBd 1.04, ElBd 1.25, ElBd 1.32, ElBd 1.385, ElBd 1.95
Disclaimers: (3 opinions – ElBd. Op. 74–6, ElBd. Op. 76–14, ElBd. Op. 77–10); ElBd 1.655
Spending: (3 opinions – ElBd. Op. 74–19, ElBd. Op. 75–4, ElBd. Op. 76–7); ElBd 1.44, ElBd 1.70, ElBd 1.75
Absentee Voting: (1 opinion – ElBd. Op. 77–4, ElBd. Op. 88–2)
Electioneering: (3 opinions – ElBd. Op. 78–7, ElBd. Op. 81–3, ElBd. Op. 07–1)
Campaign activity and contributions: (16 ETH opinions)
Lobbying Guidelines: (4)

Wednesday, July 16, 2008 [written testimony deadline: July 7]

Soliciting and accepting items and services of substantial value: (46 ETH opinions)
Improper use of state resources: (3 ETH opinions)
Statements of Economic Interests: (2 ETH opinions); ETH 2
Substantive Ethics Guidelines: (39)
Financial Disclosure Guidelines: (5)
Counting Votes: (1 opinion – ElBd. Op. 77–5)
Election Costs: (1 opinion, ElBd. Op. 94–1); Clerk Manual

Thursday, August 28, 2008 [written testimony deadline: March 17]

Solicitation: (2 opinions – ElBd. Op. 77–7, ElBd. Op. 78–6)
Wisconsin Election Campaign Fund: (4 opinions – ElBd. Op. 78–3, ElBd. Op. 78–5, ElBd. Op. 78–9, ElBd. Op. 84–1); ElBd 1.34, ElBd 1.36, ElBd 1.38, ElBd 1.45, ElBd 1.455
Accepting meals and travel: (22 ETH opinions)
Acceptance of fees and honoraria: (5 ETH opinions)
Registration and reporting: (15 ETH opinions); ETH 1
Accepting meals, gifts, employment, etc.: (51 ETH opinions)

Monday, October 6, 2008 [written testimony deadline: September 29]

Conduits: (5 opinions – ElBd. Op. 74–1, ElBd. Op. 76–15, ElBd. Op. 78–1, ElBd. Op. 89–1, ElBd. Op. 98–1); ElBd 1.85, ElBd 1.855
Corporations and PACs: (14 opinions – ElBd. Op. 74–18, ElBd. Op. 75–6, ElBd. Op. 75–8, ElBd. Op. 76–5, ElBd. Op. 76–6, ElBd. Op. 77–8, ElBd. Op. 78–10, ElBd. Op. 78–11, ElBd. Op. 78–13, ElBd. Op. 79–5, ElBd. Op. 80–3, ElBd. Op. 82–1, ElBd. Op. 88–4, ElBd. Op. 91–1); ElBd 1.06, ElBd 1.33
Earmarking: (2 opinions – ElBd. Op. 76–3, ElBd. Op. 77–6)
Joint Fundraising: (1 opinion – ElBd. Op. 86–1)

Monday, November 10, 2008 [written testimony deadline: November 3]

Treasurer: (2 opinions – ElBd. Op. 74–11, ElBd. Op. 74–15)
Training Election Officials: (1 opinion – ElBd. Op. 75–1); ElBd Chapter 11
Local Officials Conflicts of interest: (33 opinions)
Local Officials Acceptance of items: (3 opinions)
Local Officials Other: (2 opinions)

Wednesday, December 17, 2008 [written testimony deadline: December 8]

Federal Campaigns: (4 opinions – ElBd. Op. 74–3, ElBd. Op. 77–2, ElBd. Op. 77–3, ElBd. Op. 00–3); ElBd 1.39
Vacancy: (3 opinions – ElBd. Op. 89–2, ElBd. Op. 95–1, ElBd. Op. 05–1)
Recall: Manual
Electronic Filing: ElBd 6.03, ElBd 6.04
Forms: ElBd Chapter 8, ETH 5
Staff Assistance: ElBd 6.02, ETH 3.30

Contact Information

Government Accountability Board
608–266–8005
<http://gab.wi.gov>
gab@wisconsin.gov

Natural Resources

NOTICE IS HEREBY GIVEN that pursuant to s. 281.36 (8) (d), Stats., the Department of Natural Resources will hold a public hearing on proposed general permit NFW-GP-2008-WI, relating to the regulation of filling activities conducted in non-federal wetlands that will cause only minimal adverse environmental effects if they are performed separately and the cumulative adverse effect on the environment by the discharges will be minimal.

Date and Time:

Friday, April 11, 2008
10:00 am

Location:

Room G-09
Natural Resources Building, GEF II
101 S. Webster Street
Madison, WI

The proposed general permit was also published as a Class I notice under ch. 985, Stats., in the Wisconsin State Journal on March 6, 2008 and is also available for viewing at the following link:

http://dnr.wi.gov/org/water/fhp/waterway/permits/GP_nonfederal_wetlands.pdf

Questions concerning the proposed general permit should be directed to Dale Simon at 608-267-9868, email Byron.Simon@wisconsin.gov

A copy of the proposed general permit follows:

WISCONSIN DEPARTMENT OF NATURAL RESOURCES NONFEDERAL WETLANDS WATER QUALITY CERTIFICATION GENERAL PERMIT

Permittee: The General Public in Wisconsin
Permit No. NONFEDERAL WETLANDS-GP-2008-WI (NFWGP-WI)
Issuing Office: Waterways and Wetlands Protection Section
Bureau of Watershed Management
Issuance Date: February 1, 2008
Expiration Date: January 31, 2013

NOTE: The term "you" and its derivatives, as used in this general water quality certification permit, means the permittee. The term "this office" refers to the appropriate Department of Natural Resources (DNR) Service Center, DNR Region or Central Office headquarters of the Wisconsin DNR having jurisdiction over the authorized activity or the appropriate official of that office acting under the authority of the Secretary of the Department.

GENERAL PERMIT AUTHORIZATIONS: The general public in the State of Wisconsin is authorized to perform work in accordance with the terms and conditions of the general permit specified below, after satisfying all applicable permit terms and conditions.

IMPORTANT: The authorizations are provisional and require that project proponents obtain any other local, state or federal permit before any work is authorized. NONFEDERAL WETLANDS-GP-2008-WI (NFWGP-WI) authorizations are subject to all applicable terms and conditions specified in this permit. Refer to the appropriate sections of this permit for a description of NFWGP-WI procedures, eligible activities, conditions, exclusions and application instructions.

PROJECT DESCRIPTION AND LOCATION: NONFEDERAL WETLANDS-GP-2008-WI (NFWGP-WI) applies to certain discharges, less than 2 acres in size, of dredged and/or fill material into non-federal wetlands, as described herein, in the State of Wisconsin.

Department of Natural Resources (DNR) General Conditions (applicable to all NONFEDERAL WETLANDS-GP-2008-WI (NFWGP-WI) authorizations):

1. This NFWGP-WI expires on December 31, 2013. The time limit for completing work authorized by the provisions of NFWGP-WI ends upon the expiration date of NFWGP-WI or three years from the date of the DNR letter confirming the project complies with the requirements for the NFWGP-WI, but no more than three years unless a permit extension(1 yr. maximum) is granted by the department.
2. You must maintain the activity authorized by NFWGP-WI in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity. Should you wish to cease to maintain an activity authorized by NFWGP-WI or should you desire to abandon it, you must obtain a modification of the authorization from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing any activity authorized by NFWGP-WI, you must immediately stop work and notify this office and the State Historical Society of what you have found. The State Historical Society will determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. You must allow representatives from this office to inspect the proposed project site during reasonable hours and the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of NFWGP-WI.
5. If a confirmation letter from DNR has been issued for your project, you must comply with all conditions specified in NFWGP-WI.
6. Reliance on Applicant's Data: The determination by this office that a confirmation of authorization is not contrary to the public interest will be made in reliance on the information provided by the applicant and any other information required by the DNR.

- 7. Authorization to undertake the activities described above is pursuant to s. 281.36(8), Wis. Stats.
- 8. Limits of this authorization.
 - a. NFWGP–WI does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. NFWGP–WI does not grant any property rights or exclusive privileges.
 - c. NFWGP–WI does not authorize any injury to the property or rights of others.
 - d. NFWGP–WI authorized activities are non–transferable.
- 9. Limits of State Liability. In authorizing work, the State Government does not assume any liability, including for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the State in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this NFWGP–WI.
- 10. Reevaluation of Decision. This office may reevaluate its decision on any individual authorization under NFWGP–WI at any time the circumstances warrant and may suspend, modify or revoke any previously authorized activity and may result in enforcement pursuant to s. 281.98, Wis. Stats. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. The applicant fails to comply with the terms and conditions of this NFWGP–WI.
 - b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate (see 6 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

This General Permit becomes effective when the Secretary, for the Department of Natural Resources has signed below.

Matthew J. Frank
Secretary, Department of Natural Resources

Date

NONFEDERAL WETLANDS–GP–2008–WI TERMS AND

PROCEDURES

This describes the NONFEDERAL WETLANDS–GP–2008–WI (NFWGP–WI) permit authorization procedures implemented by the DNR.

Persons proposing to do work should especially note that, in ALL cases, NFWGP–WI requires that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practicable. Also, activities that would adversely affect Federal or State endangered plant or animal species or certain cultural or archaeological resources, are not eligible for authorization under NFWGP–WI.

1. NON–REPORTING ACTIVITIES.

The following discharges, for a single and complete project, that comply with all terms and conditions of NFWGP–WI are authorized by this permit. **No DNR application or notification is required for certain activities under this NFWGP–WI. Project proponents may proceed with the described discharges after very carefully making sure that the work will meet all applicable terms and conditions of NFWGP–WI.**

Certain activities, as noted below, are authorized under the non–reporting section of NFWGP–WI only if they are regulated and approved by the Wisconsin Department of Natural Resources (WDNR) under chapters 30 or 31, Wis. States or specifically exempted from WDNR regulation.

Applicants for all activities should consult with local or federal governments concerning permit requirements.

Note the areas and activities that are EXCLUDED from this non–reporting section of NFWGP–WI in section b., below.

a. NON–REPORTING ACTIVITIES ELIGIBLE FOR AUTHORIZATION UNDER NFWGP–2008–WI (NFWGP–WI):

1. Maintenance activities. Discharges of dredged or fill material for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or any currently serviceable structure or fill authorized under ch. 30/31, Wis. Stats., sections 281.36, 281.37, Stats., NR 299, Wis. Adm. Code, that affect waters of the State., including non–federal wetlands. The structure or fill is not to be put to uses differing from those uses specified or contemplated in the original authorization or most recently authorized modification. Minor deviations are allowed where necessary to conform to modern construction practices, materials, construction codes, or safety standards. This section of NFWGP–WI may be used for public road projects that

include the replacement of bridge abutments and/or culverts and reconditioning of the roadbed. NFWGP–WI may not be used for roadway widening beyond the existing footprint or for the addition of new lanes.

2. Scientific Measurement Devices. Regulated discharges for staff gages, tide gages, water recording devices, water monitoring wells, water quality testing and improvement devices and similar structures.

3. Survey Activities. Regulated discharges for survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory–type bore holes. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this section; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this section of NFWGP–WI. The discharge of drilling mud and cuttings may require a permit under the WPDES program.

4. Oil/Hazardous Substances Containment/Cleanup. Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan, (40 CFR Part 300), provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing State contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action

5. Wetland Restoration Activities regulated under NR 353. NFWGP–WI does not authorize any conversion of sedge meadow and forested wetland to other wetland types. It covers the restoration and enhancement of wetlands and riparian areas, the enhancement or restoration of degraded wetlands and riparian areas on: (i) public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulation; or (ii) on any Federal land. (The future reversion discussed below does not apply to wetlands created, restored or enhanced as mitigation for a mitigation bank); or (iii) by a state agency on any public or private land. NFWGP–WI cannot be used to authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously

existed. However, NFWGP–WI may be used to relocate aquatic habitat types on the project site, provided there are net gains in aquatic resource functions and values. Reversion: For enhancement, restoration and creation projects conducted under paragraph (ii) and (iii), NFWGP–WI does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required at that time for any reversion

6. Moist Soil Management for Wildlife. Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on state or federal owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: the repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or disking to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies to preclude water quality degradation due to erosion and sedimentation. NFWGP–WI does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. NFWGP–WI does not authorize converting wetlands to uplands, impoundments or other open water bodies.

7. Emergency Watershed Protection –Rehabilitation. Work done by or funded by the Natural Resource Conservation Service qualifying as an "exigency" situation (requiring immediate action) under its Emergency Watershed Protection Program (7 CFR Part 624) and work done or funded by the Forest Service under its Burned–Area Emergency Rehabilitation Handbook (FSH 509.13).

8. Outfall Structures. This activity is authorized provided that the work is regulated and approved under ch. 30/31, Wis. Stats., or the work is exempt from regulation under those statutes. Activities related to construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or which are otherwise in compliance with regulations issued under the Wisconsin Pollutant Discharge Elimination System program.

9. Bank Stabilization. This activity is authorized provided that the work is regulated and approved under ch. 30/31 Wis. Stats, or, the work is exempt from regulation under that statute .

10. Boat Ramps. This activity is authorized under the non–reporting GP provided that the work is regulated and approved under ch. 30/31 Wis. Stats.

11. Minor fills. Minor wetland fills that occur in conjunction with activities that are authorized under ch. 30/31 Wis. Stats., to a maximum of 500 square feet.

b. AREAS/ACTIVITIES EXCLUDED FROM THE NON–REPORTING SECTION OF NFWGP–WI.

1. The non–reporting section of NFWGP–WI does not authorize any activity in:

A. Calcareous fens as identified by the DNR, and waters of the state within 300 feet of such fens. All regulated activities in these areas require evaluation under individual wetland water quality certification procedures.

B. Listed impaired waters. This permit may not be used to authorize projects that involve filling, draining, or inundating more than one acre of non–federal wetlands located in the watershed of any waterbodies, that are listed on the EPA–approved list of Wisconsin impaired waters pursuant to Section 303(d) of the Clean Water Act. This exclusion applies only to those impaired waters that are listed for one or more of the following reasons: nutrients, dissolved oxygen (DO), ammonia, suspended solids, turbidity, sediment, streambank erosion, flow habitat, hydrological modification, wetland loss, siltation and organic enrichment. Such projects in these areas may be eligible for evaluation under the individual wetland water quality certification procedure.

C. Coastal non–federal wetlands in ridge and swale complexes as identified on DNR Wisconsin Wetland Inventory maps.

2. Activities detrimental to waters of the state, including wetlands, that would adversely affect designated areas of special natural resource interest as defined in NR 103.04, Wis. Adm. Code.

3. Activities, individually or cumulatively, detrimental to waters of the state, including wetlands, that would further the substantial degradation of designated impaired waters of the state.

4. All regulated activities under 1., 2. and 3. above, require evaluation under individual wetland water quality certification procedures (except oil – hazardous material spill confinement and cleanup).

c. APPLICATION/EVALUATION PROCEDURES UNDER THE NON–REPORTING SECTION OF NFWGP–WI:

An activity authorized by this NFWGP–WI may commence when project proponents have carefully

confirmed that the activity will be conducted in compliance with all of the terms and conditions of NFWGP–WI. No application to the DNR is required; however, if requested, the DNR will confirm whether or not proposed work is authorized by the NFWGP–WI. Persons proposing to do work should note that **conditions of the NFWGP–WI require that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practicable.** Activities that would adversely affect Federal or State endangered plant or animal species or certain cultural/archaeological resources are not authorized by this non–reporting general permit. Information about Federal and State endangered species may be obtained by contacting the U. S. Fish and Wildlife Service at (920) 465–7440 or the DNR at (608) 266–7012. If investigations of previously identified archaeological sites and/or historic structures present within the area covered under this permit result in recommendations to avoid or otherwise mitigate adverse impacts to those site and/or structures, you are required to comply with those recommendations. Note that burial sites are protected against any unauthorized disturbances under provisions of Wisconsin Statutes. Information concerning cultural resources may be obtained by contacting the State Historic Preservation Office at (608) 264–6505. Project proponents are encouraged to contact these agencies early in project planning because doing so can help avoid violations of State law and potentially lengthy project delays.

Persons performing work should be aware that Federal or State regulations concerning endangered species and cultural resources may apply to their projects whether or not the work requires DNR authorization.

2. REPORTING ACTIVITIES FOR NONFEDERAL WETLANDS–GP–2008–WI (NFWGP–WI).

The following discharge activities, for a single and complete project, that comply with all terms and conditions of NFWGP–WI are eligible for authorization by this permit. Wetland alteration activities authorized under NFWGP–WI may not exceed 2 acres of wetland impact. **Persons proposing to do work should note that conditions of NFWGP–WI require that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practicable.**

Note that certain areas and activities are EXCLUDED from this permit as described in item b., below.

a. ACTIVITIES ELIGIBLE FOR AUTHORIZATION BY NFWGP–WI:

1. Activities that are excluded from authorization by the non–reporting section of NFWGP–WI because

they are in a coastal wetland area described at 1.b.1.C.

2. Return Water From Upland Contained Disposal Areas. Return water from an upland, contained dredged material disposal area.

3. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. For discharges in special aquatic sites, including wetlands, the application must include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by NFWGP–WI. This general permit does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

4. Completed Enforcement Actions. Discharges of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with the terms of a final written DNR non–judicial settlement agreement resolving a violation, or the terms of a state settlement agreement or order resolving a violation of ch. 30/31, sections 281.15, 281.17(10), 281.36, 281.37, 283.33, Wis. Stats., and NR 299, Wis. Adm. Code, and is limited to cases involving water/wetland impacts of 5 acres or less.

5. Temporary Construction, Access and Dewatering. Temporary structures and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided the associated permanent activity was previously authorized by the DNR. Fill must be of materials and placed in a manner that will not erode. Temporary fill must be entirely removed to upland areas following completion of the construction activity and the affected areas restored to the pre–project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use. The application for this general permit must include a restoration plan of reasonable measures to avoid and minimize impacts to aquatic resources. This general permit does not authorize temporary structures or fill associated with mining activities or the construction of marina basins that have not been authorized by the DNR.

6. Structural Discharges. Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member such as a utility pole, bridge support, ramp surface, or retaining wall. This activity does not include building foundations or other structures such as pilings intended for use as building supports.

7. Utility Line Discharges. Activities required for the construction, maintenance and repair of utility lines and associated facilities in non-federal wetlands as follows:

(i) Utility lines: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in non-federal wetlands, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. Material resulting from trench excavation may under limited circumstances, as determined by DNR, be temporarily sidcast (up to two weeks) into non-federal wetlands provided the erosion control measures meet or exceed the technical standards for erosion control approved by the DNR under subch. V of ch. NR 151, Wis. Adm. Code. Any area where topsoil is exposed during construction shall be immediately seeded and mulched or rippaped to stabilize disturbed areas and prevent soils from being eroded and washed into a water of the state, including wetlands.

Note: These standards can be found at the following website:
<http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm>.

The top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain non-federal wetlands. (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the state through which the utility line is installed.

(ii) Utility line substations: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-federal wetlands provided the activity does not result in the loss of greater than 10,000 square feet of wetland.

(iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in non-federal wetlands provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

The term "utility line" does not include activities which drain an isolated wetland, such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NFWGP-WI, the loss of non-federal wetlands includes the filled area plus

wetlands that are adversely affected by flooding, excavation, or drainage as a result of the project.

Activities authorized by paragraphs (i) through (iii) may not exceed a total of 10,000 square feet loss of non-federal wetlands. Jurisdictional wetlands temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, are not included in the calculation of permanent loss of wetlands. This includes temporary construction mats (e.g., timber, steel, composite, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of wetlands are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland, are considered a permanent wetland loss. Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, and foundations for overhead utility lines is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of wetland that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, and foundations. Excess material must be removed to upland areas immediately upon completion of construction. If using directional-drilling method of utility line installation, the applicant has provided a detailed narrative describing water supply intake(s) and recapture and disposal methods for used drilling fluids. A plan must be submitted describing the correctional steps to be taken in the event of a leak, either through the substrate into the wetland, or onto the upland area with possible return to the wetland or waterway.

8. Commercial, Residential, Industrial, Agricultural, Recreational and Public Development (including roads for these purposes). Discharges of dredged or fill material for a single and complete project that directly and/or indirectly impact by filling, draining, excavating and/or inundating not more than 2.0 acres of wetland/water area for commercial, residential, industrial or recreational development projects, including associated roads. It is important for applicants for NFWGP-WI to include information with their application that clearly shows that an alternatives analysis has been conducted and the proposed work is the least environmentally damaging way that is practicable to accomplish the purpose of the project. This will minimize delays in evaluation procedures and increase the chance that the project will receive prompt and favorable review.

9. Wildlife Ponds. Discharges of dredged or fill material for the construction of wildlife ponds that are regulated and approved under NR 343, Wis. Adm. Code. The wildlife ponds shall be constructed with

irregular shorelines, shallow side slopes (e.g., 8-foot H to 1-foot V), and up to 5-foot water depth. Excess fill material not needed for construction of the pond must be removed to an upland location. The primary purpose of this activity must be wildlife habitat improvement. NFWGP-WI does not authorize the discharge of fill material for the construction of wildlife ponds in forested wetlands, sedge meadows or calcareous fens.

b. AREAS/ACTIVITIES EXCLUDED FROM NFWGP-WI.

1. NFWGP-WI does not authorize any activity in;

A. Calcareous fens as identified by the DNR, and waters of the state within 300 feet of such fens.

B. Listed impaired waters. This permit may not be used to authorize projects that involve filling, draining, or inundating more than one acre of non-federal wetlands located in the watershed of any waterbodies, that are listed on the EPA-approved list of Wisconsin impaired waters pursuant to Section 303(d) of the Clean Water Act. This exclusion applies only to those impaired waters that are listed for one or more of the following reasons: nutrients, dissolved oxygen (DO), ammonia, suspended solids, turbidity, sediment, streambank erosion, flow, habitat, hydrological modification, wetland loss, siltation and organic enrichment. Such projects in these areas may be eligible for evaluation under the individual wetland water quality certification procedure.

C. Coastal non-federal wetlands in ridge and swale complexes as identified on DNR Wisconsin Wetland Inventory maps.

2. Activities detrimental to waters of the state, including wetlands, that would adversely affect designated areas of special natural resource interest as defined in NR 103.04, Wis. Adm. Code.

3. Activities, individually or cumulatively, detrimental to waters of the state, including wetlands, that would further the substantial degradation of designated impaired waters of the state.

4. All regulated activities under 1., 2. and 3. above require evaluation under individual wetland water quality certification procedures (except oil – hazardous material spill confinement and cleanup).

c. APPLICATION/EVALUATION PROCEDURES UNDER NFWGP-WI:

Applicants must submit a complete application to the DNR using the joint State-Federal application form that is available from DNR offices and on the following website:

http://www.dnr.state.wi.us/org/water/fhp/waterway/ind_ex.shtml.

Upon receipt of a permit application for authorization under NFWGP-WI, and the appropriate permit fee, the department will review the information to determine the completeness of the application and eligibility for NFWGP-WI. A complete application consists of the following information:

1. Name and address of the applicant and authorized agent.
2. Description of the proposed activity. The description should be of sufficient detail to provide a thorough understanding of the project so that it can be explained to other agencies and the general public.
3. The application should identify all activities that affect waters of the state and that are reasonably related to the same project for which an application has been submitted (see definition of Single and Complete Project under Definitions, below).
4. Name and address of adjacent landowners.
5. Project location. The application should identify the wetland impacted and identification of the specific location of the impact(s).
6. A description of any work already completed as part of the project in waters of the state, including non-federal wetlands .
7. Signature of Applicant or authorized agent.
8. Drawings, plans, or sketches of sufficient detail to understand the existing and proposed conditions at the site. Detailed engineering plans and specifications may be required.
9. A practicable alternatives analysis demonstrating that the proposed activity avoids and minimizes wetland impacts to the maximum extent practicable.
10. The applicable permit processing fee.
11. Any other information as required by the department.

In most cases, the department will require a wetland delineation prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual before the application will be considered complete.

Applicants are encouraged to obtain the services of professional consultants in planning projects and preparing applications, wetland determinations/delineations, and mitigation plans. The department may request additional information from the applicant in order to complete its determination of compliance with NFWGP-WI.

Once an application has been determined to be complete, the department will conduct its evaluation of the permit application as described in the following paragraphs.

Applicants are encouraged to help speed the department's evaluation and increase the chance of receiving a favorable review and authorization by including information with their application that clearly shows that the proposed work is the least environmentally damaging way that is practicable to accomplish the basic purpose of the project. The department will generally deny any request for

authorization under the NFWGP–WI unless the applicant demonstrates that the work proposed is the least environmentally damaging practicable alternative to accomplish the basic project purpose, and that impacts to non–federal wetlands cannot reasonably be avoided or further minimized. The department will also deny authorization for any regulated activity that it determines is contrary to the public interest.

The department will do the level of analysis required to determine whether or not the proposal meets all authorization criteria. Projects that fail to meet any authorization criteria will be denied authorization.

If the department's decision is to approve the activity under NFWGP–WI, the DNR will send a confirmation letter to the applicant. The DNR will simultaneously send a copy of the letter to the COE.

Time limits associated with determinations made by the department under this general permit are not applicable for applications after October 1 in any calendar year and if a field investigation is required before the department has adequate information to make a decision. The weather delayed processing time is limited to November 1 of any calendar year and April 1 of the succeeding calendar year.

ENDANGERED SPECIES AND CULTURAL RESOURCES REVIEW.

The DNR review will include a determination concerning compliance of the project with Section 7 of the Endangered Species Act, s. 29.604, Wis. Stats. (State Endangered and Threatened Species Protected), Section 106 of the National Historic Preservation Act and s. 44.40, Wis. Stats., (State Historic Preservation). Projects found not to comply with any of these Acts/laws are automatically deemed incomplete applications and will not be authorized until actions are taken so that compliance with both Acts/laws is assured. The state cultural resources review will be conducted in a manner similar to the endangered species review. If investigations of previously identified archaeological sites and/or historic structures present within the area covered under this permit result in recommendations to avoid or otherwise mitigate adverse impacts to those site and/or structures, you are required to comply with those recommendations. Note that burial sites are protected against any unauthorized disturbances under provisions of Wisconsin statutes.

VOLUNTARY COMPENSATORY MITIGATION

Applicants whose project includes voluntary compensatory mitigation should include a mitigation plan prepared in accordance with the *Guidelines for Wetland Compensatory Mitigation in Wisconsin* (February 2002) that describes the measures proposed to offset the adverse impacts of the project.

Voluntary compensatory mitigation that is proposed to satisfy state requirements may, but will not necessarily, satisfy a local requirement.

NFWGP–WI PROVISIONS

DEFINITIONS.

Calculation of Aquatic Impact Thresholds: For those activities with threshold limits, substantial adverse modification impacts shall be determined by calculating area of waters of the state (including non–federal wetlands) filled plus the impacts to waters of the state that are excavated, inundated, or drained as a result of the regulated discharge.

Discharge of Fill Material: the term fill material means material placed in waters of the state (including non–federal wetlands) where the material has the effect of:

- (i) Replacing any portion of a water of the state with dry land or having the same/similar affect as to change a water of the state to a different use; or
- (ii) Changing the elevation of any portion of a water of the state.

Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, plant debris (lawn clippings), construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. The term fill material includes any material that changes the water of the state into a different wetland type or to non–wetland.

Loss of waters. Refers to waters of the state (including non–federal wetlands) that are filled or permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above–grade, at–grade, or below–grade fills/alterations that change an aquatic area to dry land or change its use, wetland function, value or type. Temporary fill in non–federal wetlands is regulated by s. 281.36 Wis. Stats.

Practicable: available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose.

Single and Complete Project. For purposes of this permit the term, "single and complete project" means the total project affecting a single isolated wetland proposed by the project proponent. However if a project proponent's project affects several non–federal wetlands but each wetland activity is dependent on the other for completing the project, the cumulative total of all the filled areas is the basis for deciding the projects total wetland impact. For example, if construction of a residential development

or linear project such as a road or utility line affects several different non-federal wetlands, the cumulative total of all filled areas is the basis for deciding the project's total wetland impact. For "phased" developments, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed.

NFWGP-WI STANDARD CONDITIONS

1. Discretionary Authority. The DNR retains discretionary authority to require an individual wetland water quality certification of any activity eligible for authorization under NFWGP-WI based on concern for the aquatic environment or for any public interest factor.

2. Record Keeping. All NFWGP-WI confirmations will be recorded in the DNR's permit database for impact tracking and program evaluation.

3. Mitigation/Sequencing. Discharges of dredged or fill material into non-federal wetlands **must be avoided and minimized to the maximum extent practicable in conformance with NR 103, Wis. Adm. Code.**

4. Proper maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety, and monitoring and removal of invasive plant species.

5. Erosion and siltation controls. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date. Work should be done in accordance with state-approved published practices that meet or exceed the technical standards for erosion control approved by the DNR under subch V of ch. NR 151, Wis. Adm. Code. Any area where topsoil is exposed during construction shall be immediately seeded and mulched or ripped to stabilize disturbed areas and prevent soils from being eroded and washed into a water of the state, including wetlands.

Note: These standards can be found at the following website:
<http://dnr.wi.gov/org/water/wm/nps/stormwater/techtstds.htm>.

6. Removal of temporary fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

7. Federal and State Threatened and Endangered Species. NFWGP-WI does not affect the DNR's

responsibility to insure that all authorizations comply with Section 7 of the Federal Endangered Species Act, s. 29.604, Wis. Stats. No DNR authorization under this permit will be granted for projects found not to comply with these Acts/laws. No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act and/ or State law or which is likely to destroy or adversely modify the critical habitat of such species. Authorization of an activity under NFWGP-WI does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act or State law.

8. Historic properties, cultural resources. NFWGP-WI does not affect the DNR's responsibility to insure that all authorizations comply with Section 106 of the National Historic Preservation Act and s. 44.40, Wis. Stats. No DNR authorization under this permit will be granted for projects found not to comply with these Acts/laws. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must include notification to the District in the permit application if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.

9. Spawning areas. Discharges in fish, amphibian and reptile spawning areas during spawning seasons, and wildlife nesting must be avoided to the maximum extent practicable.

10. Alterations to Hydrology. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal hydrology or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

11. Adverse effects from impoundments. If the discharge creates an impoundment of water, adverse effects on the aquatic system shall be minimized to the maximum extent practicable.

12. Waterfowl breeding areas. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

13. Navigation. No activity may cause more than a minimal adverse effect on navigation.

14. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

15. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

16. Wetland water quality standards. All work or discharges to a nonfederal wetland resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable State water quality and effluent standards on a continuing basis.

17. Preventive measures. Measures must be adopted to prevent potential pollutants from entering the isolated wetland. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter the isolated wetland as a result of spillage, natural runoff, or flooding.

18. Disposal sites. If dredged or excavated material is placed on an upland disposal site (not in the wetland) the site must be securely diked or contained by an acceptable method that prevents the return of potentially polluting materials to the wetland by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal site, must be fully completed prior to the placement of any dredged material.

19. Suitable fill material. All fill (including riprap), if authorized under this permit, must consist of suitable material (e.g, no trash, debris, car bodies, asphalt, etc.,) free from toxic pollutants in other than trace quantities(see Section 307 of the Clean Water Act) and free of invasive and exotic plant species. In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened up to obtain fill material, the State Historic Preservation Officer (SHPO) must be notified prior to the use of the new site. Evidence of this consultation with the SHPO will be forwarded to the applicable DNR Service Center.

20. Water intakes/activities. An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and

turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

21. Spill contingency plan. A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the State Duty Officer at **1-800-943-0003** and the U.S. Coast Guard at telephone number **1-800-424-8802**.

22. Other permit requirements. No NFWGP-WI authorization eliminates the need for other local, state or Federal authorizations, including but not limited to National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits.

23. The applicant shall allow the WDNR reasonable entry and access to the discharge site to inspect the proposed discharge for compliance with this certification and applicable laws and to inspect permitted discharges for compliance with this certification and applicable laws.

24. If any conditions of this certification are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.

25. The applicant receives written confirmation from the department that their proposed activity(s) is consistent with the requirements of NFWGP-WI, and the Department confirms that the applicant has adequately demonstrated that no other practicable alternative exists which would not adversely impact wetlands and would not result in other significant adverse environmental consequences and the Department confirms that the activity is consistent with the requirements of NR 103.08, Wis. Adm. Code.

26. An operator shall decontaminate all equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, for invasive species and viruses before and after use or prior to use within another waterbody or wetland, as follows:

- a. Inspect all equipment and remove all aquatic plants, and animals, and mud.
- b. Drain all water from all equipment.

- c. Dispose of aquatic plants and animals in the trash. An operator may not transfer aquatic plants or animals or water from one water body to another.
- d. Do one of the following:
- i. Wash all equipment at a temperature of not less than 212 degrees Fahrenheit water (steam clean).
 - ii. Wash all equipment with soap and water or high pressure water of not less than 2000 pounds per square inch and allow all equipment to dry thoroughly for not less than 5 days.
 - iii. Disinfect all equipment with 200 parts per million (0.5 ounces per gallon) Chlorine solution for not less than 10 minutes. Every effort should be made to keep the disinfection solution and rinse water out of surface

waters and wetlands.

- iv. Follow the most recent disinfection protocols for infested waters. The department shall maintain on its website and make available at its offices the most recent disinfection protocols for invasive species and viruses and a consolidated list of infested waters containing known aquatic invasive species and viruses.

Note: See the department's website at dnr.wi.gov under the topic "Aquatic Invasive Species"

Note: An application fee is required for authorization under NFWGP-WI.

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



First Class Mail

Dated Material. Please Do Not Delay!