Wisconsin Administrative Register

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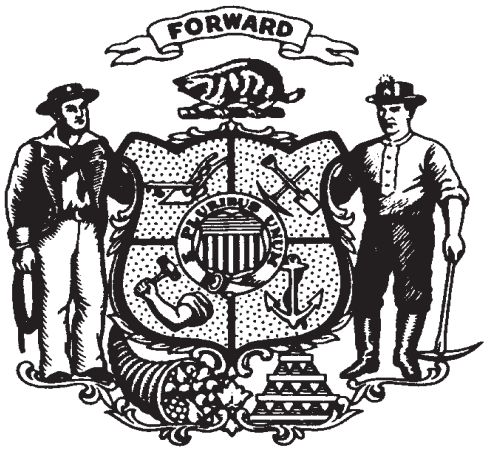

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Table of contents

	Rules revising **ch. NR 340,** and creating **ch. NR 343**, relating to regulation of construction, dredging, and enlargement of an artificial water body. **[First Appearance]**
	Rules revising **ch. NR 345,** relating to dredging in navigable waterways. **[First Appearance]**
Veterans Affairs:	Rules relating to the administration of the registered nurse education stipend program.
Workforce Development:	Labor Standards, Chs. DWD 270−279 Rules relating to overtime pay for employees performing companionship services.
	Public Works Construction, Chs. DWD 290−294 Rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.
Scope statements.	**Pages 13 to 21**
Agriculture, Trade & Consumer Protection:	Rules relating to nutrient management on farms.
	Rules relating to standards for siting and expanding livestock facilities.
Commerce:	Rules creating ch. Comm 72, relating to abrasive cleaning of historic buildings.
	Rules revising chs. Comm 14, 61 to 65, relating to the *Wisconsin Commercial Building Code* and *Fire Prevention Code.*
Employee Trust Funds.	Rules relating to a group health insurance program to local government employers including the same health plans, such as Health Maintenance Organizations (HMOs) that are available to state employees in the area.
Employment Relations, Office of State:	Rules relating to daycare grants, entry professional program, leave, resignation, compensation and supervisor training.
Employment Relations, Office of State: − Division of Merit Recruitment and Selection:	Rules relating to demotion, transfer, promotion, certification, acting assignments, layoff, reinstatement and code of ethics.
Health and Family Services:	Rules revising chs. HFS 139 & 140, relating to public health professionals employed by local health departments and public health services of local health departments.
	Rules revising ch. HFS 159, relating to asbestos certification and training accreditation.
Public Instruction:	Rules relating to the implementation and administration of the payment of state aid under the SAGE program.

Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection (2)

1. Rules adopted creating **ss. ATCP 99.13, 99.25, 100.13 and 101.25**, relating to the partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection currently administers an agricultural producer security program under ch. 126, Stats. (“producer security law”). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors who procure agricultural commodities from producers.

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund (“the fund”). If a contractor defaults in payments to producers, the department may compensate producers from the fund. A contractor’s annual fund assessment is based, in large part, on the contractor’s annual financial statement. The producer security law spells out a formula for calculating assessments. However, the department may modify assessments by rule.

(3) The fund assessment formula is designed to require higher assessments of contractors who have weak financial statements (and may thus present greater default risks). But the statutory formula may generate unexpectedly high assessments in some cases, where a contractor’s strong financial condition is *temporarily* affected by financial transactions related to a merger or acquisition. This may cause unfair hardship, and may unfairly penalize some mergers or acquisitions that actually strengthen security for agricultural producers. This may have an unnecessarily adverse impact on contractors, producers and Wisconsin economic development.

(4) The department may adjust assessments by rule, in order to ameliorate unintended results. But the normal rulemaking process will require at least a year to complete. The temporary emergency rule is needed to address this matter in the short term, and to provide relief for contractors already affected.

Publication Date:	**January 29, 2004**
Effective Date:	**January 29, 2004**
Expiration Date:	**June 27, 2004**
Hearing Dates:	**April 26 and 27, 2004**

2. Rules adopted creating **ss. ATCP 99.135, 99.255, 100.135 and 101.255**, relating to the reduction of certain annual agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (”DATCP”) currently administers an agricultural producer security program under ch. 126, Stats. (”producer security law”). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors who procure agricultural commodities from producers.

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund (”the fund”). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. Fund assessments are calculated according to a statutory formula, but DATCP may modify fund assessments by rule.

(3) The law directs DATCP to obtain bonds or other backup security for the fund. The backup security is intended to protect producers against large contractor defaults that may exceed the capacity of the fund. But changes in the insurance and bonding industry have prevented DATCP from obtaining any backup security (DATCP has received no acceptable bids).

(4) Before the fund was created in 2002, contractors who failed to meet minimum financial standards were required to file individual security (typically a bond or letter of credit) with DATCP. The amount of security was based on the size of the contractor’s producer payroll (potential default exposure). DATCP returned much of this security after the fund was created. But because DATCP was unable to obtain backup security for the fund, DATCP retained security from some of the largest contractors. DATCP did this in order to protect agricultural producers against large contractor defaults that might exceed the capacity of the fund.

(5) DATCP’s action protected agricultural producers against catastrophic defaults, but imposed additional costs on some large contractors. The affected contractors (approximately 6 contractors) must now pay security costs *and* fund assessments. This emergency rule reduces fund

assessments for these contractors, to compensate for the added security costs that the contractors must incur.

(6) This temporary emergency rule will provide needed financial relief (assessment reductions) to the affected contractors in the current license year, pending the adoption of permanent rules to provide longer term relief. This emergency rule will provide cost savings and fairer treatment to the affected contractors, consistent with the original intent of the producer security law, pending the adoption of permanent rules. This emergency rule will promote the public welfare by helping to maintain the security, stability and competitiveness of Wisconsin's agricultural economy and processing industry.

Publication Date: **April 29, 2004**
Effective Date: **April 29, 2004**
Expiration Date: **September 26, 2004**

Gaming

Rules adopting repealing **s. Game 23.02 (2)** of the Wisconsin Administrative Code, relating to the computation of purses.

Finding of emergency

The Wisconsin Department of Administration finds that an emergency exists and that a rule is necessary in order to repeal an existing rule for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Section Game 23.02 (2) was created in the Department's rulemaking order (03−070). The Department is repealing this section due to the unforeseen hardship that it has created on the Wisconsin racetracks. This financial hardship presents itself in multiple ways. The racetracks rely on an outside vendor to compute the purses earned by all individuals. The vendor produces a similar system for most greyhound racetracks in the country. The purses are generated by the amount of money wagered on all races over a period of time. The current system does not provide for bonus purses to be paid out based upon the residency of certain owners. The current system would have to be reprogrammed at a significant cost to the racetracks. Although the bonus purses could be calculated and paid without a computer, it would create excessive clerical work that would also be costly to the racetracks.

Additionally, Geneva Lakes Greyhound Track committed to paying a minimum payout of purses to the greyhound and kennel owners that race in Delavan. Geneva Lakes Greyhound Track will supplement out of their own money any purse amount that does not exceed the minimum payout. As a result of paying the bonus purse to Wisconsin owned greyhounds, the variance between the actual purse and the minimum purse is increased and the financial liability to the racetrack is increased. Since this supplement is voluntary, the racetrack has indicated that it will probably have to cease the supplemental purses to the participants. This would result in reduced payments to the vast majority of the kennel owners and greyhound owners participating at the racetrack.

In creating this rule, the Department did not intend to create the disadvantages caused by this rule.

Publication Date: **January 8, 2004**
Effective Date: **January 8, 2004**
Expiration Date: **June 6, 2004**
Hearing Date: **March 16, 2004**

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

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.

Finding of emergency

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

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child−bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child−bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: **January 31, 2003**
Effective Date: **January 31, 2003***
Expiration Date: **June 30, 2003****
Hearing Dates: **April 25 & 28, 2003**

***** The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003.

** Legislation required to make this suspension permanent failed to pass the Legislature. There remains 60 days of the original 150 day effective period. This rule will expire on May 31, 2004.

Natural Resources (2)
(Fish, Game, etc., Chs. NR 1−)

1. Rules were adopted revising **ch. NR 10,** relating to Chronic Wasting Disease (CWD) in Wisconsin.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule − making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, it's citizens and businesses. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date:	**September 11, 2003**
Effective Date:	**September 11, 2003**
Expiration Date:	**February 8, 2004**
Hearing Date:	**October 13, 2003**
Extension Through:	**June 6, 2004**

2. Rules adopted creating **ss. NR 1.016, 1.05, 1.06 and 1.07** relating to Natural Resources Board policies on protection and management of public waters.

Finding of emergency.

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

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

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

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

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

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

Natural Resources (9)
(Environmental Protection − Water Regulation, Chs. NR 300—)

1. Rules adopted revising **ch. NR 300,** creating **ch. NR 310** and repealing **ch. NR 322**, relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Finding of emergency

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

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

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

• Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of

neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water−based recreation and tourism industry.

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

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

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

Finding of emergency

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

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

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

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

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

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

3. Rules adopted revising **ch. NR 323,** relating to fish and wildlife habitat structures in navigable waterways.

Finding of emergency

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

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

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

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

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

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

4. Rules adopted revising **ch. NR 325,** relating to boathouses and fixed houseboats in navigable waterways.

Finding of emergency

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

Finding of emergency

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

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

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

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

Veterans Affairs

Rules adopted creating **ch. VA 18**, relating to the administration of the registered nurse education stipend program.

Exemption from finding of emergency

The legislature by Section 9158 of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Veterans Affairs.

Statutory authority: s. 45.365 (7), Stats.

Statute interpreted: s. 45.365 (7), Stats.

The creation of chapter VA 18 establishes the application process, eligibility criteria, stipend amount, repayment provisions, and employment requirements for the administration of the stipend program authorized by the legislature and governor in 2003 Wis. Act 33. The stipend program was enacted to provide stipends to individuals to attend school and receive the necessary credentials to become employed at the Veterans Homes operated by the Department of Veterans Affairs at King and Union Grove, Wisconsin.

Publication Date:	**March 30, 2004**
Effective Date:	**March 30, 2004**
Expiration Date:	**August 27, 2004**

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

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

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that "no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day,

night or week, as is prejudicial to the person's life, health, safety or welfare." Section 103.01 (3), Stats., defines "place of employment" as "any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel."

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

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

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

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

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

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

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

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

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

Finding of emergency

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

The Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the last adjustment.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule−making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule−making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid 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 department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

Publication Date: **December 18, 2003**
Effective Date: **January 1, 2004**
Expiration Date: **May 30, 2004**
Hearing Date: **February 19, 2004**

Scope statements

Agriculture, Trade & Consumer Protection

Subject

Nutrient Management on Farms.

Administrative Code Reference: Chapter ATCP 50, Wis. Adm. Code (Existing).

Objectives of the rule. This rule may do the following:\

• Update current nutrient management standards for farms. This rule may substitute, for current nitrogen−based standards, new phosphorus− and nitrogen−based standards adopted by the Natural Resources Conservation Service of the United States Department of Agriculture (NRCS).

− Make other clarifications and updates as necessary.

This rule is related to livestock facility siting rules that DATCP is required to adopt under 2003 Wis. Act 235. DATCP is publishing a separate scope statement for the livestock facility siting rules, and will coordinate the 2 rulemaking proceedings to maintain consistency.

Policy analysis

Under ss. 92.05 (3) (k) and 281.16 (3), Stats., DATCP must adopt rules related to agricultural nutrient management. DATCP has adopted nutrient management rules under ch. ATCP 50, Wis. Adm. Code to reduce excessive nutrient applications and minimize nutrient runoff that may pollute surface water and groundwater.

Under current rules, farmers must apply manure and other nutrients according to nutrient management plans that comply with the nitrogen−based NRCS nutrient management standard 590 dated March, 1999. NRCS is currently revising its standard. NRCS will likely adopt a new standard, based on phosphorus and nitrogen, in late 2004. DATCP must initiate rulemaking by January 1, 2005 to adopt the new NRCS standard if NRCS has adopted the new standard by that date (see ATCP 50.04 (3) (e) 5., Wis. Adm. Code).

Nutrient management plans may not recommend nutrient applications that exceed amounts required to achieve crop fertility levels recommended by the University of Wisconsin−Extension. Current rules provide certain exemptions. This rule may update and clarify those exemptions.

Under current and proposed NRCS standards, the nutrient content of manure must be determined by laboratory analysis or standard tables. Under current rules, DATCP must certify laboratories that conduct soil analysis, but not laboratories that analyze manure. This rule may require certification of laboratories that analyze manure for purposes of nutrient management on farms.

Policy Alternatives:

If DATCP takes no action, current nutrient management rules will remain in effect. The current rules will soon be outdated, and will not adequately address nonpoint pollution concerns related to phosphorus. State and federal standards will not be consistent.

Comparison to federal regulations

Under the federal Clean Water Act, certain concentrated animal feeding operations are subject to federal regulation as water pollution "point sources." The Wisconsin Department of Natural Resources (DNR) regulates these operations by permit, under authority delegated from the United States Environmental Protection Agency (EPA).

NRCS has adopted nutrient management standards for livestock operations. NRCS does not enforce these as mandatory standards, except for operations that receive cost−share funding from NRCS. However, EPA and the Wisconsin DNR incorporate NRCS standards as mandatory standards for animal feeding operations that are required to hold "point source" pollution discharge permits under the federal Clean Water Act. NRCS will likely adopt a new standard, based on phosphorus and nitrogen, in late 2004.

DNR is currently revising its rules for animal feeding operations that are required to hold "point source" pollution discharge permits from DNR (including concentrated animal feeding operations with 1,000 animal units or more). The new DNR rules will likely incorporate new NRCS nutrient management standards, based on phosphorus and nitrogen, by December 31, 2006.

EPA requires states to identify "impaired" waters that are not expected to achieve water quality standards after implementing required "point source" controls. States must establish allowable levels or total maximum daily loads (TMDLs) for non−point source pollutants, such as sediment and phosphorus, to meet water quality standards in these impaired waters. DNR has identified "impaired" waters in Wisconsin. Under current DATCP rules, DATCP nutrient management requirements first apply to cropland located in "impaired" watersheds on January 1, 2005 and to existing cropland in other areas on January 1, 2008.

Statutory authority

DATCP proposes to adopt this rule under authority of ss. 92.05 (3) (k) and 281.16 (3). Stats.

Staff time required

DATCP estimates that it will use approximately 0.6 FTE staff to develop this rule. This includes time required for planning and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Agriculture, Trade & Consumer Protection

Subject

Standards for Siting and Expanding Livestock Facilities.

Administrative Code Reference: Chapter ATCP 51, Wis. Adm. Code (new).

Objective of the rules. Implement 2003 Wisconsin Act 235, related to livestock facility siting and expansion.

Policy analysis

2003 Wisconsin Act 235, published April 27, 2004, does the following things among others:

• It requires DATCP to adopt, by rule, standards for the siting or expansion of livestock facilities in this state. DATCP must develop the rules in consultation with a committee of experts appointed by the DATCP Secretary. The DATCP

rules may incorporate by reference (and may not conflict with) existing rules related to soil and water conservation, animal waste management and water pollution control. The DATCP rules may also include other standards, as appropriate. DATCP must consider whether the standards (other than the existing standards that are incorporated by reference) are all of the following:

− Protective of public health or safety.

− Practical and workable.

− Cost−effective.

− Objective.

− Based upon peer−reviewed scientific information.

− Designed to promote the growth and viability of animal agriculture.

− Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.

− Usable by local officials.

• It requires local governments (counties, towns, cities and villages) to apply state standards (adopted by DATCP) when granting or denying approval for the siting or expansion of livestock facilities (there are some exceptions). A local government must make a record indicating the basis for its decision. DATCP must adopt rules that spell out all of the following:

− The information that a livestock operator must include in an application for approval, in order to demonstrate that the proposed siting or expansion complies with applicable state standards.

− The information and documentation that a local government must include in its decisionmaking record.

• It creates a livestock facility siting review board with authority to review local decisions for compliance with state standards.

This rule will do all of the following, as directed by 2003 Wis. Act 235:

• Establish standards for the siting and expansion of livestock facilities in this state.

• Spell out information that a livestock operator must include in an application for approval, in order to demonstrate that the proposed siting or expansion complies with applicable state standards.

• Spell out information and documentation that a local government must include in its decisionmaking record.

• Include other provisions, if any, that are needed for the implementation of 2003 Wis. Act 235.

DATCP must submit a hearing draft rule to the Legislative Council Rules Clearinghouse no later than the first day of the 12th month following the April 28, 2004 effective date of Act 235. DATCP proposes to adopt and publish a final draft rule by the date on which key portions of Act 235 are scheduled to take effect (18 months after the April 28, 2004).

Policy alternatives

Act 235 requires DATCP to adopt rules as described in this scope statement (rulemaking is essential for the implementation of Act 235). DATCP has some discretion related to the content of the rules. DATCP has not yet determined the rule contents, but will consider policy options in consultation with an expert advisory panel. DATCP will also consult with the advisory committee that recommended the provisions contained in Act 235.

Comparison to federal regulations

This rule may affect animal feeding operations that the Department of Natural Resources (DNR) regulates under authority delegated to DNR under the federal Clean Air Act and Clean Water Act.

Under the Clean Air Act, DNR may require animal feeding operations to meet air quality standards and take certain actions to control air emissions. To the extent that the DATCP rule addresses air quality, it will likely focus on odor and dust management rather than air pollutants that are the subject of Clean Air Act regulations. The DATCP rule may indirectly affect the emission of air pollutants that are subject to Clean Air Act regulation.

Under the Clean Water Act, DNR may regulate all animal feeding operations with 1,000 or more "animal units" by permit, as pollution "point sources." DNR may regulate animal feeding operations with fewer than 1,000 "animal units" in certain situations. The DATCP livestock siting rule will not conflict with Clean Water Act regulations related to operations regulated by DNR.

Federal programs such as the Environmental Quality Incentives Program (EQIP), Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP) may provide cost−sharing for livestock producers to meet standards developed under the proposed rule.

Statutory authority

The department proposes to adopt this rule under authority of ss. 93.07 (1) and 93.90 (2), Stats.

Staff time required

DATCP estimates that it will use approximately 3.0 FTE staff to develop and adopt this rule over a projected time period of 18 months. This includes planning and other preliminary activities, coordinating advisory committee meetings, presentation to advisory committee, preparing rule drafts and related documents, holding public hearings, making DATCP Board and legislative presentations, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule. The estimated staff time reflects the complex and sensitive nature of the rule, and its effect on local authority and operations.

Commerce

Subject

Abrasive cleaning of historic buildings.

Objective of the rule. The objective of the rule is to create requirements for the use of abrasive cleaning methods on the exterior of qualified historic buildings. The Department in consultation with the State Historical Society will establish rules for when the abrasive cleaning methods may be used on qualified historic buildings.

Policy analysis

Currently, the Department has no rules for the use of abrasive cleaners on the exterior of qualified historic buildings. In accordance with s. 101.1215, Stats., the Department is required to develop requirements for the use of abrasive cleaners on the exterior of qualified historic buildings, including both commercial buildings and one−and two−family dwellings.

The alternative of not developing rules may result in the risk that qualified historic buildings may be adversely affected by improper cleaning of the exterior surfaces.

Statutory authority

Section 101.1215.

Staff time required

The Department estimates that it will take approximately 100 hours to develop these rules. This time includes meeting with an advisory council, researching and drafting the rule, and processing the rules from public hearing to adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Comparison to federal regulations

An Internet−based search for "abrasive cleaning of exterior surfaces of historic buildings" in the Code of Federal Regulations identified the following existing federal regulations that address abrasive cleaning of historic buildings:

1. 36CFR67–Historic Preservation Certifications Pursuant to Sec. 48(g) and Sec. 170(h) of the Internal Revenue Code of 1986

2. 36CFR68–The Secretary of the Interior Standards for the Treatment of Historic Properties.

3. 36CFR800–Protection of Historic Properties

Under these existing federal regulations, chemical or physical treatments may be used on historic properties for preservation, rehabilitation, or restoration; however, the treatments used must be the gentlest means possible. Treatments that cause damage to historic materials are not to be used. The rules to be developed by the Department of Commerce, in conjunction with the State Historical Society, are not expected to supercede those federal requirements, so no comparison has been made to those requirements.

An Internet−based search for "abrasive cleaning of exterior surfaces of historic buildings" of the 2003 and 2004 issues of the Federal Register did not identify any proposed federal regulations that address abrasive cleaning of exterior surfaces of historic buildings.

Commerce

Subject

Chapters Comm 61 to 65 and 14, the *Wisconsin Commercial Building Code* and *Fire Prevention Code*.

Objective of the rule. To update various design and construction related requirements of the *Wisconsin Commercial Building Code* and any corresponding criteria in the *Fire Prevention Code*, so that these codes remain consistent with dynamic, contemporary regional and national construction practices and standards relating to public buildings and places of employment.

Policy analysis

The *Wisconsin Commercial Building Code* – chapters Comm 61 to 65 – and the *Fire Prevention Code* – chapter Comm 14 – contain standards for the design, construction, operation, maintenance, and inspection of public buildings and places of employment. These chapters, which were developed in 2001 and became effective on July 1, 2002, replaced previous requirements for such facilities with model−code requirements that are substantially in use elsewhere in this country. Those model−code requirements of the International Code Council® and the National Fire Protection Association were initially published in 2000, and were then substantially updated and republished in 2003.

The primary purpose of the *Wisconsin Commercial Building Code* and of the *Fire Prevention Code* 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 is expected to span two years during which the 2003 and 2006 editions of model codes will be considered. This update activity may include minor modifications to other Comm codes, in order to update any references in those codes to the corresponding changes to chapters Comm 61 to 65 and 14.

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, 101.13, 101.132, 101.14 (4) (a), and 101.973 (1) and (2), Stats.

Staff time required

The Department estimates approximately 1500 hours will be needed to perform the review and develop any needed rule changes. This time includes drafting the changes – in consultation with 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.

Comparison to federal regulations

General Building Code

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 2003 and 2004 issues of the *Federal Register* did not identify any proposed federal regulations that address these topics.

Energy Conservation Requirements

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 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, chapter Comm 63–Energy Conservation, establishes the minimum energy conservation requirements for commercial buildings by adopting the 2000 edition of the *International Energy Conservation Code*® (IECC) and by including amendments that provide for greater energy savings than specified under the 1989 edition of the ASHRAE 90.1 standard. The Department of Commerce has filed information of compliance with the Department of Energy.

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 Department plans to update the current energy conservation requirements to be consistent with the 1999 edition of the ASHRAE 90.1 standard, and will send either a certification of compliance or a request for an extension to the Department of Energy by July 15, 2004.

Accessibility Requirements

Code of Federal Regulations

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

1. 28 CFR 35–Nondiscrimination on the Basis of Disability in State and Local Government Services

2. 28 CFR 36–Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

3. 24 CFR 1–Final Fair Housing Accessibility Guidelines

The purpose of 28 CFR 35 and 28 CFR 36 is to require public buildings and commercial facilities, including government–owned and –operated buildings and facilities, to be designed, constructed, and altered in compliance with the accessibility construction regulations specified under the federal 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, the accessibility requirements for the design and construction of public buildings and places of employment, including government–owned and –operated facilities and dwelling units are found under chapter Comm 62 and the 2000 edition of the *International Building Code*® (IBC) as adopted by reference under section Comm 61.05. The intent of the IBC and the amendments included under chapter Comm 62 is to ensure the Wisconsin construction requirements related to accessibility are substantially equivalent to these applicable federal laws and regulations.

Federal Register

New proposed federal regulations and amendments to established federal regulations for accessibility are found in the following *Federal Registers*:

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

2. Federal Register January 13, 1998, ADAAG; Building Elements Designed for Children's Use

3. Federal Register November 16, 1999, ADAAG revisions and updates

The International Code Council® (ICC) is actively monitoring the proposed changes to the federal standards affecting accessibility and will include these changes in the revised and updated 2006 edition of the IBC and the ICC/ANSI A117.1–Accessible and Usable Buildings and Facilities Standard. The Department will need to revise and update chapter Comm 62 and adopt by reference the latest edition of the IBC and the ICC/ANSI A117.1 standard to be consistent with the changes proposed in these federal regulations relating to accessibility.

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. Currently, IBC section 2406 requires glazing material located in human impact locations to comply with 16 CFR 1201.

Federal Register

An Internet−based search for changes to 16 CFR 1201 in the 2003 or 2004 issues of the Federal Register did not identify any proposed changes to this standard.

Employee Trust Funds

Subject

The State of Wisconsin Group Insurance Board (Board) offers a group health insurance program to local government employers including the same health plans, such as Health Maintenance Organizations (HMOs) that are available to state employees in the area. Under 2003 Wis. Act 33, the Board is now required to place each of the offered plans into one of three premium contribution tiers for state employees. The intent of this Act is to contain rising health insurance costs and encourage plans to become more efficient. This proposed rule change would allow local government employers to adopt the same tiered structure for premium contributions, although the minimum required percentage paid by local government employers might differ from the state's percentage.

Objectives of the rule. The objective of this proposed rule is to allow local employers access to a tiered contribution rate structure established by the Board, while leaving each local governmental unit the choice to continue operating under the contribution structure that currently exists.

Policy analysis

At present, local government employers are required to contribute an amount between 50% and 105% of the lowest cost qualified plan towards the health insurance premiums of their insured employees — other than part−time employees and retirees, who are covered under other contribution rules. The existing rule was loosely based on former s. 40.05 (4) (ag) 2., Stats., which set the state's premium contribution for its employees at the lesser of 90% of the Standard Plan premium or 105% of the least costly qualifying plan within the county, but not more than the total amount of the premium. The state's contribution could be modified through collective bargaining. However, s. 40.05 (4) (ag), Stats., was repealed and recreated by 2003 Wis. Act 33 with the intent to alter employer contributions towards health insurance effective January 1, 2004. This Act also amended s. 40.51 (6), Stats., to now require the Board to place each of the offered plans into one of three tiers. The tiers are separated according to the employee's share of premium costs.

Under the new law enacted by 2003 Wis. Act 33, the State of Wisconsin's minimum premium contribution for its insured full−time employees is 80% of the average premium cost of plans offered in the tier with the lowest employee premium cost. The Board has not yet determined whether this 80% minimum is the appropriate percentage to apply to local government employers, and the final percentage in the rule will depend in part on comments received on the proposed rule.

The proposed rule change itself does not alter local government premium contributions, and it would continue to allow local government employers to base their employer contributions solely on the 50−105% formula. However, the

rule change would allow local government employers more options in setting their future contributions. Many local government employers base premium contributions on collectively bargained agreements. The proposed rule cannot impair existing contracts, so it would have no effect on contracted premium contributions until the existing agreements expire, are amended or otherwise renegotiated.

While a local government employer could theoretically adopt a tiered premium contribution strategy under the current rule, the contributions must still fall within the parameters of the 50−105% formula. Consequently, the tiered premium structure that local government employers could offer to their employees could might be less cost effective, and more difficult to administer, than the type of structure that state employers can now offer.

Policy alternatives to the proposed rule

(1) Take no action.

DETF could allow the present administrative rule to continue unchanged. This alternative would limit the strategies available to local government employers to contain health care insurance costs.

(2) Modify rule to a span greater than 50% and 105% of lowest cost plan.

DETF considers it undesirable to modify the rule to allow employers to pay less than 50% and/or more than 105% of the lowest cost qualified plan, since this particular structure may now be less effective than the tiered model for encouraging plans to become more cost effective.

Statutory authority

Wis. Stats. ss. 40.03 (2) (ig) and (6) (d) and 40.51 (1) and (7).

Staff time required

DETF estimates that state employees will spend 25 hours developing this rule.

Description of all entities affected by the rule

The proposed rule change would affect Wisconsin local government employers who choose to participate in the State of Wisconsin Group Health Benefit Program and potentially affect their insured employees.

Comparison to federal regulations

There appear to be no existing or proposed federal regulations directly affecting the Wisconsin local government employer's health insurance premium contribution provisions.

Office of State Employment Relations

Subject

Objective of the rule. Changes to ch. ER 3 governing classification actions to provide language referencing the Compensation Plan.

Deletion of ch. ER 4 governing grants to day care providers to repeal obsolete language.

Changes to ch. ER 8 governing the Entry Professional Program to remove annual reporting requirements.

Changes to ch. ER 10 governing leave time for Limited Term Employees (LTEs) to vote, making the provisions consistent with statutory language that requires paid leave be granted to employees to vote if the only time they can do so is during work hours.

Changes to ch. ER 18 governing leave time to vote, catastrophic leave, annual leave, continuous service, annual leave conversion options, and minor and technical rule changes to:

- Provide catastrophic leave eligibility provisions that allow unclassified employees to participate, as authorized by s. 230.35, Stats.
- Provide annual leave language that is consistent with recent changes to s. 230.35, Stats., giving employees an accelerated leave schedule if they are in exempt status under the Federal Labor Standards Act (FLSA).
- Provide continuous service language that is consistent with recent changes to s. 230.35, Stats., giving uninterrupted continuous service (adjusted for any break in service) to employees who return to state service after July 1, 2003, if they have or acquire FLSA exempt status.
- Provide annual leave conversion option language that is consistent with recent changes to s. 230.35, Stats., for employees at the 216−hour annual leave level.
- Repeal annual leave conversion option language that requires proration for part−time employees whose eligibility is based on accumulation of 520 hours of sick leave.
- Provide language that grants 5−year eligibility in provisions that now have 3−year or 5−year eligibility based on the effective date of the eligibility.
- Provide language that will make ER rules consistent with statutory language that requires paid leave be granted to employees to vote if the only time they can do so is during work hours.
- Add bone marrow and organ donation language that is consistent with s. 230.35, Stats.

Changes to ch. ER 29 governing pay on appointment, and minor and technical rule changes or additions to:

- Provide language that indicates the Compensation Plan should be referenced for nonrepresented employee compensation administration.
- Repeal language regarding 6−month increases for project appointees.
- Provide language that allows a current classified state employee to be appointed to another classified position using Hiring Above the Minimum (HAM).
- Provide language clarifying that "last rate received" in the pay on reinstatement provisions does not include present rate of pay.
- Provide language that grants 5−year eligibility in provisions that now have 3−year or 5−year eligibility based on the effective date of the eligibility.

Changes to ch. ER 34 governing project employment to provide language referencing the Compensation Plan.

Changes to ch. ER 44 governing new supervisor training to repeal obsolete language that requires OSER approval regarding aspects of new supervisor training.

Policy analysis

Chapter ER 3

Compensation administration provisions for nonrepresented employees are now provided in the Compensation Plan. Therefore, the related reference in s. ER 3.03(4) should include the Plan.

Chapter ER 4

Sec. 230.048, Stats., has been repealed. OSER no longer is authorized to have a program for grants to day care providers and an appropriation is no longer provided. Therefore, ch. ER 4 no longer is necessary.

Chapter ER 8

The use of the Entry Professional Program has been reduced, significantly diminishing the need to provide

separate information on it for the annual affirmative action report. Therefore, s. ER 8.03 no longer is necessary.

Chapter ER 10

In accordance with s. 230.35(4e), Stats., employees **shall** be given paid leave to vote if the only time they can vote is during work hours. Sec. ER 10.02 (4) says that LTEs can only be paid for hours worked. Changes to s. ER 10.02 (4) are necessary to make them consistent with the statute.

Chapter ER 18

Changes in s. 230.35 (2r), Stats., removed statutory restrictions that allowed only classified employees to participate in a catastrophic leave program established in the rules of the Director of the State Office of Employment Relations. This was done to allow unclassified employees to participate. Section ER 18.15 governs catastrophic leave participation and rules, but currently applies only to classified employees. Therefore, changes to s. ER 18.15 are necessary.

2003 Wisconsin Act 22 changed s. 230.35 (1m), Stats., to allow employees with FLSA exempt status to receive the accelerated annual leave schedule previously only granted to career executives, attorneys, and certain unclassified positions. Changes to s. ER 18.02 (3) are necessary to make it consistent with the statute.

The change created by Wisconsin Act 22 also expanded the group of employees whose continuous service is considered uninterrupted under s. 230.35 (1m) (f), Stats., to include those with FLSA exempt status. Changes to s. ER 18.02 (2) (b) 6., will provide language consistent with the statute.

2003 Wisconsin Act 117 changed s. 230.35 (1p), Stats., to increase the annual leave option hours from 80 hours to 120 hours for those employees at the 216−hour annual leave rate. Changes to s. ER 18.02 (5) are necessary to make it consistent with the statute.

Section ER 18.02 (5) also requires proration of annual leave options for nonrepresented employees who have worked less than 2088 hours in a calendar year no matter how eligibility is acquired. Collective bargaining agreements do not have any requirement to prorate for working less than 2088 hours if the eligibility is based on accumulation of 520 hours of sick leave, and there is no apparent justification for treating nonrepresented employees differently. Removal of the proration requirement for annual leave options if the eligibility of a nonrepresented employee is based on accumulated sick leave will provide parity and uniformity, and simplify administration of the annual leave option process.

Effective July 5, 1998, reinstatement eligibility and other eligibility historically tied to reinstatement, was increased from 3 years to 5 years. Because more than five years have passed, a distinction between 3−year eligibility and 5−year eligibility is no longer necessary. Changes to all provisions noting the distinction should now be made to simplify the eligibility to be 5 years in all cases. Therefore, changes to s. ER 18.02 (2) regarding continuous service and s. ER 18.03 (5) regarding sick leave credit continuation are necessary.

In accordance with s. 230.35 (4e), Stats., employees **shall** be given paid leave to vote if the only time they can vote is during work hours. Sec. ER 18.11 says employees **may** be given paid leave. Changes to s. ER 18.11 are necessary to make it consistent with the statute.

Chapter ER 18 does not make any reference to the bone marrow or organ donation benefits added to s. 230.35, Stats., by 1999 Wisconsin Act 125. Therefore, changes to ch. ER 18 are necessary.

Chapter ER 29

Except for s. ER 29.05, all compensation administration provisions for nonrepresented employees are now provided in the Compensation Plan. Therefore, ch. ER 29 should indicate when reference to the Compensation Plan is appropriate.

The language describing the 6−month increase for project appointees in s. ER 29.03 (2m) is no longer applicable, and therefore, should be deleted. Section E., 3.01 of the 2003−2005 Compensation Plan states that projects are not eligible for a 6−month increase.

The language describing the pay for various appointments in s. ER 29.03 does not include any provision for use of HAM for current classified employees. Pay on appointment flexibility has been provided for broadband pay schedules and should also be provided for non−broadband schedules. Due to the labor market, many employees new to state service are being hired at pay rates higher than those being paid to current employees. Changes to s. ER 29.03 are necessary to allow current employees with the same skills and experience to be paid the same as a new employee would be paid upon an original appointment.

The language describing pay on reinstatement in s. ER 29.03 (6) states that "last rate received" is "the highest base pay rate received in any position in which the employee held permanent status." The intent of this language was to include only previously held positions, not the employee's current position. Changes to s. ER 29.03 (6) are necessary to more clearly state that intent.

Effective July 5, 1998, reinstatement eligibility and other eligibility historically tied to reinstatement, was increased from 3 years to 5 years. Because more than five years have passed, a distinction between 3−year eligibility and 5−year eligibility is no longer necessary. Changes to all provisions noting the distinction should now be made to simplify the eligibility to be 5 years in all cases. Therefore, changes to s. ER 29.03 (6) regarding reinstatement are necessary.

Chapter ER 34

Compensation administration provisions for project employees are now provided in the Compensation Plan. Therefore, related references in ss. ER 34.04 and 34.05 should be to, or include, the Plan.

Chapter ER 44

Sec. 230.046, Stats., has been amended so that agencies no longer need to get OSER approval to offer their own basic supervision courses, to waive the basic supervision requirements, and for an agency's training tracking system. Sections ER 44.03 (1) and (2) and 44.07 (2) reflect prior law and are inconsistent with current law. Therefore, changes to those sections of ch. ER 44 are necessary to make them consistent with the statute.

Statutory authority

Section 230.04, Stats., charges the Director of the Office of State Employment Relations with the effective administration of ch. 230, Stats., and the promulgation of rules related to the performance of the Director's duties.

Section 230.046 (2), Stats., requires appointing authorities to ensure that each classified service supervisor completes a supervisory development program.

Section 230.35 (2r) (b), Stats., allows the Director of the Office of State Employment Relations to establish, by rule, a catastrophic leave program.

Comparison to federal regulations

There are no comparable existing or proposed federal requirements that address the issues outlined in these proposed rule revisions.

Staff time required

The estimated time to be spent by state employees is 120 hours. No other resources are necessary.

Office of State Employment Relations − Division of Merit Recruitment and Selection

Subject

Objective of the rule. Changes to ch. ER−MRS 8 governing the Entry Professional Program to remove annual reporting requirements.

Changes to ch. ER−MRS 12 governing certification and appointment to more accurately reflect the types of certification requests received.

Changes to ch. ER−MRS 12 governing the Disabled Expanded Certification (DEC) program to:

- More clearly define those eligible for the program.
- Require the participant to verify eligibility for every job category for which he or she applies.
- Accurately reflect those professionals who are qualified to diagnose and verify eligibility for the program.

Changes to ch. ER−MRS 14 governing promotion to:

- Allow the appointing authority the discretion to treat an appointment as a promotion.
- Provide language referencing the Compensation Plan.

Changes to ch. ER−MRS 15 to clarify that involuntary transfers within the same employing unit of an agency are permitted and to provide that involuntary transfers between different employing units within the same agency are also permitted.

Changes to ch. ER−MRS 16 governing reinstatement and restoration to remove obsolete language regarding 3−year eligibility for reinstatement resulting from terminations prior to July 5, 1998.

Changes to ch. ER−MRS 17 governing demotion to

- repeal language that requires the appointing authority to provide the DMRS administrator with copies of letters referencing notice of demotion and an employee's acceptance of a demotion.

Changes to ch. ER−MRS 22 governing layoff to remove incorrect references, clarify application of the rules in particular situations, and correct sentence structure.

Changes to ch. ER−MRS 24, governing the code of ethics to update the definition of "state property."

Changes to ch. ER−MRS 32 governing acting assignments to repeal language requiring the appointing authority to provide the DMRS administrator with acting assignment notices. The rule order may also include modifications to various provisions of the ER−MRS rule to delete obsolete references, correct cross−references, clarify language or make other minor, technical changes.

Policy analysis

Ch. ER−MRS 8

The use of the Entry Professional Program has been reduced, significantly diminishing the need to provide separate information on it for the annual affirmative action report. Therefore, s. ER−MRS 8.26 is no longer necessary.

Ch. ER−MRS 12

References to a prescribed form for certification requests will be removed. Certification requests may be submitted in a variety of forms, both on paper and electronically.

New language will be added to the definition of disability that requires the applicant to explain how the disability affects his or her ability to work. In the case of those who are regarded as having a disability, the applicant will explain why he or she is perceived or regarded as having a disability. These changes will more clearly define those eligible for the program.

The definition of disability will be modified to indicate that the impairment must be related to the specific job or category of jobs for which the applicant is applying. This change will clarify that the applicant must submit a verification form for every job category for which he or she applies.

The list of qualified professionals will be modified to include only those who are certified to give a diagnosis on an individual's condition. This change will provide a more accurate list of those professionals who are qualified to diagnose and verify eligibility for the program.

Ch. ER−MRS 14

Under certain conditions, an appointment from a register currently must be considered a promotion even though the appointee has reinstatement eligibility. Changes are needed to give the appointing authority the discretion to treat the appointment as a promotion.

Determining the rate of pay on promotion needs to include references to the Compensation Plan. Therefore, related references to s. ER 29.03 in ch. ER−MRS 14 should include the Plan.

Ch. ER−MRS 15

The reference to "or is transferred" when referring to a transfer within an employing unit will be modified to clearly state that this means an involuntary transfer, and the language regarding transfers between employing units of an agency will be modified to permit involuntary transfers. These changes will make it clear that transfers and involuntary transfers within an agency are treated in the same manner.

Ch. ER−MRS 16

Sections 230.25 (3) (a), 230.31 (1) (intro) and (a), 230.33 (1) and 230.40 (3), Stats., were amended by 1997 Wisconsin Act 307 to increase the reinstatement eligibility period for state employees from 3 years to 5 years, effective July 5, 1998. Because more than 5 years have passed, a distinction between 3−year eligibility and 5−year eligibility is no longer necessary. Removal of all provisions noting the distinction should now be made to simplify the eligibility to be 5 years in all cases. Therefore, changes to ch. ER−MRS 16 are necessary.

Ch. ER−MRS 17

The language will be modified to eliminate various requirements that agencies submit copies of transactions to the administrator, specifically when the appointing authority notifies the employee of a demotion or when the employee accepts a demotion within an agency or between agencies. The process will be better served by the appointing authority keeping a copy of these transactions in the employee's personnel file.

Ch. ER−MRS 22

The language will be modified to eliminate two incorrect references to the administrator, to clarify application of the rules in certain situations, and to correct sentence structure.

Ch. ER−MRS 24

The definition of "state property" should be updated to reflect technology−based resources. Therefore, changes to ch. ER−MRS 24 are necessary.

Ch. ER−MRS 32

The language should be modified to eliminate the requirement that the appointing authority submit a copy of the acting assignment notice to the administrator. The process will be better served by the appointing authority maintaining a copy in the employee's personnel file.

Statutory authority

Section 230.05 (5), Stats., grants the Administrator of the Division of Merit Recruitment and Selection general authority to promulgate rules on provisions for which the administrator has statutory responsibility.

Section 230.25 (3) (a), Stats., as amended by Wisconsin Act 307, provides that the reinstatement eligibility period for state employees is five years.

Section 230.25 (1n) (a), Stats., permits the Administrator of the Division of Merit Recruitment and Selection to engage in expanded certification.

Section 19.45 (11) (a), Wis. Stats., requires the Administrator to promulgate rules to implement a code of ethics for certain classified and unclassified state employees.

Comparison to federal regulations

There are no comparable existing or proposed federal requirements that address the issues outlined in these proposed rule revisions.

Staff time required

The estimated time to be spent by state employees is 200 hours. No other resources are necessary.

Health and Family Services

Subject

The Department proposes to modify chapter HFS 139 and chapter HFS 140 relating to public health professionals employed by local health departments and public health services of local health departments.

Policy analysis

Chapter HFS 139, which identifies and prescribes qualifications for certain professional employees under the authority of ss. 250.04 (7), 250.06 (1), and 251.06 (3) (e), Stats., was last updated effective August 1, 1998. Chapter HFS 140, which prescribes the required services of local health departments under the authority of s. 251.20, Stats., was last updated effective August 1, 1998. Portions of these chapters lack clarity, are redundant or require redundant implementation, or do not reflect current or desired practices or requirements, including the objectives of Wisconsin's current public health plan: "Healthiest Wisconsin 2010". The department proposes to update chs. HFS 139 and 140 to alleviate these issues and to create requirements concerning interim local health officers.

Sections 227. 11 (2), 250. 04 (7), 250.06 (1), 251.06 (3) (e) and 251.20, Stats., authorize the department to draft rules relating to public health professionals employed by local health departments and required services of local health departments.

Staff time required

The Department's Division of Public Health convened an 18−member workgroup. The workgroup consisted of eight state public health staff and ten local health officers. Each of the five Division of Public Health regions and each of the three local health department levels were represented. Approximately 80 hours of staff time will be required to develop the rule.

Comparison to federal regulations

At this time, the department is unable to identify comparable federal regulations that address qualifications of public health professionals or required services of local health departments.

Health and Family Services

Subject

The Department proposes to repeal and recreate ch. HFS 159, rules relating to asbestos certification and training accreditation.

Policy analysis

In 1987, legislation was passed that authorized the first asbestos rule. Chapter HFS 159 was revised several times prior to 1995 to comply with regulations of the U.S. Environmental Protection Agency (EPA) for training and certification programs and to add reduced training and certification requirements for asbestos roofers. Certification fees have not been increased since the program began.

Chapter HFS 159 requires individuals to complete training and obtain certification from the Department before they conduct asbestos management or any activity that disturbs asbestos−containing material in or on school buildings, or other buildings. Currently, certification is not required for small operations and maintenance jobs or for work in an owned or leased residential building having fewer than 10 dwelling units when the work is done by the owner or the owner's employees or by the lessee or the lessee's employees.

The Department's goals in repealing and recreating ch. HFS 159 are as follows:

- Revise training and certification requirements to be clear and consistent with federal asbestos regulations issued by EPA and the U.S. Occupational, Health and Safety Administration (OSHA).
- Reduce the regulatory burden whenever possible, while continuing to protect citizens and the environment.
- Reduce the impact of certification application processing time on an individual's ability to work.
- Increase coordination with the Department of Natural Resources (DNR) to eliminate duplication of effort.
- Assist schools in complying with federal school asbestos regulations administered by EPA.
- Increase revenues using a method that collects a larger share from persons requiring more services or more monitoring.

After reviewing the current rule and other pertinent asbestos regulations, the Department proposes the following:

1. Redefine scope of rule to follow language of OSHA work categories and to eliminate subjective terms such as "small". Although OSHA−compliant training and work practices are always required when disturbing asbestos−containing materials, this proposal is expected to eliminate certification requirements for some activities.

2. Add options for category−specific training and certification for Class II asbestos work involving removal of intact asbestos−containing siding, such as transite siding, and asbestos−containing resilient flooring, as allowed under EPA and OSHA regulations. Under the current rule, roofing

removal may be conducted by certified roofing workers (1 day of training) and roofing supervisors (2 days of training), but flooring and siding removal may be conducted only by certified asbestos workers (4 days of training) and asbestos supervisors (5 days of training). By treating siding and resilient flooring the same as roofing, the Department proposes to reduce the regulatory burden on persons who remove intact asbestos−containing siding or resilient flooring materials.

3. Add asbestos company certification requirements and specific responsibilities for asbestos−disturbing work. The current rule only requires individuals to be certified, although many other states require companies to be certified. This proposal allows the Department to take an enforcement action against the business rather than the employee whose activities are being directed by management.

Statutory authority

The Department's specific authority to promulgate these rules is under ss. 254.20−254.21, Stats.

Comparison to federal regulations

The Department's program for asbestos certification and training accreditation is authorized by EPA and must be no less stringent than EPA's Model Accreditation Plan under Appendix C to Subpart E of 40 CFR Part 763.

The following federal EPA regulations also apply to asbestos work:

− 40 CFR 763, Subpart E, which regulates asbestos−containing materials in schools;

− 40 CFR 763, Subpart G, which provides for asbestos worker protections for certain state and local government employees who are not protected by OSHA regulations.

− 40 CFR 61, Subpart M, National Emission Standards For Hazardous Air Pollutants, which regulates asbestos emissions.

The following federal OSHA regulations apply to asbestos work:

− 29 CFR 1910, which provides standards for asbestos work in general industry.

− 29 CFR 1926.1101, which provides standards for asbestos work in construction.

Staff time required

The Department estimates it will take 40 hours of staff time to prepare the proposed rule for submission. A preliminary draft of the rule will be released to the asbestos industry and interested parties for preliminary review and comment before the proposed rule is finalized and formally submitted for hearing and comment.

Public Instruction

Subject

Objective of the rule. Section 118.43 (6m) requires the department to promulgate rules to implement and administer the payment of state aid under the SAGE program. The proposed rules will clarify the low−income reporting process and timelines and describe an aid proration process to be used, if necessary. Currently, the law provides for payment of aid for each low−income pupil enrolled in grades K−3 in schools participating in the SAGE program and limits the payment to $2,000 for each low−income pupil.

Policy analysis

The department computes SAGE aid on a current year basis from information submitted by participating schools in the fall of each year. Schools are asked to report the number of students enrolled in the SAGE grades as of the third Friday in September – the same day as the department collects enrollment and membership information for state aid and other reporting purposes.

The proposed rules will codify the current administrative practice of asking schools to report and claim aid only for pupils actually enrolled on the third Friday in September by submitting an initial count of low income pupils by mid−October to enable the department to provide an aid estimate for the year to all schools. The proposed rules will clarify the process by which the initial count can be: 1) amended to correct reporting errors and 2) updated to add to the count low income pupils present on the third Friday of September those for whom documentation of low income status was not available at the time the initial count was submitted. The new process may be able to use the new student reporting system expected to be implemented in the fall of 2004.

Policy Alternatives

Statutes require the department to promulgate rules to implement and administer the payment of SAGE aid. Therefore, there are no alternatives.

Statutory authority

Section 118.43 (6m)

Staff time required

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Comparison to federal regulations

The law defines "low income" as the definition used by the LEA for the purposes of targeting Title I funds under ESEA (the law references 20 USC 2723 – that section of federal law appears to have been repealed and replaced by 20 USCA 6313 (a) (5)).

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On April 29, 2004, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

This proposal amends chapter ATCP 34 of the Wisconsin Administrative Code. The proposed rule relates to agricultural and household hazardous waste collection (clean sweep) grant program.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule after the Rules Clearinghouse completes its review. The department's Agricultural Resource Management Division has primary responsibility for this rule.

Contact

If you have questions, you may contact Ned Zuelsdorff at 608−224−4550.

Commerce

Rule Submittal Date

On April 30, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposal amends ch. Comm 70 and ss. Comm 62.0903, 62.0905 and 62.3001, relating to historic and existing buildings.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule.

Contact

If you have questions, you may contact Diane Meredith at 608−266−8982.

Financial Institutions − Banking

Rule Submittal Date

On April 30, 2004, the Department of Financial Institutions − Banking, submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposal amends s. DFI−Bkg 74.14 (16) and (17), relating to authorization to collect a returned check fee.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule May 27, 2004.

The organizational unit primarily responsible for the promulgation of this rules is the Department of Financial Institutions, Division of Banking.

Contact

If you have questions, you may contact Mark Schlei at 608−267−1705.

Health and Family Services

Rule Submittal Date

On April 28, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rulemaking order contains a variety of minor and technical changes relating to chs. HFS 10, family care; HFS 13, reporting and investigation of caregiver misconduct; HFS 52, residential care centers for children and youth, HFS 54, child−placing agencies; HFS 55, day camps for children and day care programs established by school boards; HFS 57 group foster care; HFS 59, shelter care for children; HFS 83, community−based residential care facilities; HFS 94, patient rights and resolution of grievances; HFS 124, hospitals; HFS 131, hospices; HFS 132, nursing homes; HFS 134, facilities serving people with developmental disabilities; HFS 136, embalming standards; HFS 181, reporting blood test results; and HFS 252, electronic benefits transfer.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Names and Phone Numbers of Agency Contacts

Rosie Greer
1 W. Wilson Street
Madison, WI 53702
608−266−1279
greerrj@dhfs.state.wi.us

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

Rule Submittal Date

On May 3, 2004, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Statutory authority: ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 457.03 (1), Stats., as amended by 2001 Wisconsin Act 80.

The proposed rule−making order relates to alcohol and drug counseling.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 9, 2004, at 8:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, WI 53702.

Contact Person

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266−0495

Public Defender

Rule Submittal Date

On April 28, 2004, Office of the State Public Defender submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The Wisconsin State Public Defender Board proposes an order to repeal s. PD 6.025 (2) (a); renumber s. PD 6.025 (2) (b) (c)and(d) and amend ss. PD 6.01, 6.02 (a), all relating to repayment of attorney costs. The rule changes clarify language, eliminate obsolete references, and make other changes that promote staff efficiencies.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for June 7, 2004, 1−3 p.m. at 315 N. Henry St. 2nd Floor, Madison WI 53703. The organizational unit primarily responsible for promulgation of the rule is the agency legal counsel.

Contact Information

If you have questions regarding this rule, you may contact:

Kellie M. Krake
Legal Counsel
(608)267−0299
krakek@mail.opd.state.wi.us

Transportation

Rule Submittal Date

On April 30, 2004, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending chapter Trans 276 of the Wisconsin Administrative Code. The proposed rule relates to allowing the operation of double bottoms and certain other vehicles on specified highways.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for June 1, 2004. The Division of Transportation Infrastructure Development, Bureau of Highway Operations is the organizational unit responsible for promulgation of the proposed rule.

Contact Information

Julie A. Johnson, Paralegal
608 266−8810

Veterans Affairs

Rule Submittal Date

On April 19, 2004, the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse creating chapter VA 18 of the Wisconsin Administrative Code. The proposed rule relates to the administration of the registered nurse education stipend program.

Analysis

The creation of chapter VA 18 establishes the application procedure, eligibility criteria, stipend amount, repayment provisions, and employment requirements for the administration of the registered nurse stipend program. The stipend program was authorized by the legislature in 2003 Wis. Act 33. It was created to provide stipends to individuals to attend school and receive the necessary credentials to become employed at the Veterans Homes operated by Department of Veterans Affairs at King and Union Grove. The statutory provisions direct the Department of Veterans Affairs to promulgate rules for the stated purposes. The position of “registered nurse” has been identified as a critical recruitment area for the purpose of providing the stipend.

Agency Procedure for Promulgation

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

Contact

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

Rule−making notices

Notice of Hearing

Agriculture, Trade & Consumer Protection

[CR 04−039]

Rules related to agricultural and household hazardous waste.

Collection (Clean Sweep) Grant Program.

The State of Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) announces that it will hold a public hearing on a rule which will consolidate Wisconsin's agricultural and urban "clean sweep" grant programs. Since the early 1990s, DATCP has collected unwanted agricultural pesticides and chemicals under ch. ATCP 34, Wis. Administrative Code. In 2003, the Household Hazardous Waste Collection Grant program was transferred from the Department of Natural Resources to DATCP. The proposed rule revision will allow DATCP to consolidate and efficiently manage both programs.

DATCP will hold one public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, June 11, 2004 for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department Agriculture, Trade, and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, Madison, WI 53708−8911, or by calling 608−224−4545. Copies will also be available at the public hearing.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Thursday, May 27, 2004 by writing to Kris Gordon, Division of Agricultural Resource Management, 2811 Agriculture Drive, Madison, WI 53708−8911, telephone 608−224−4509. Alternatively, you may contact the DATCP TDD at 608−224−5058. Handicap access is available at the hearings.

Hearing Location:

Thursday, **June 3, 2004**, 1 p.m. to 5 p.m.

Prairie Oak State Office Building

2811 Agriculture Drive

Board Room

Madison, WI 53708

Handicapped accessible

Analysis Prepared by the Department of Agriculture, Trade & Consumer Protection

Statutory Authority: s. 93.07 (1), Stats.

Statutes Interpreted: ss. 93.55 and 93.57, Stats.

This rule consolidates the agricultural "clean sweep" program under s. 93.55, Stats., and the urban "clean sweep" program under s. 93.57, Stats., and establishes standards and procedures for the consolidated program. DATCP provides grants to local governments for "clean sweep" programs to collect and safely dispose of waste agricultural and household chemicals.

Background

The Department of Agriculture, Trade and Consumer Protection ("DATCP") currently administers an agricultural chemical and container collection program (agricultural "clean sweep" program). This program is designed to collect and safely dispose of waste pesticides and agricultural chemicals, including chemical containers. DATCP may provide grants to counties to operate agricultural "clean sweep" events (s. 93.55, Stats.). DATCP has adopted agricultural "clean sweep" rules under ch. ATCP 34, Wis. Adm. Code.

Until recently, the Department of Natural Resources ("DNR") administered a similar but smaller urban "clean sweep" program for household hazardous waste. The biennial budget act (2003 Wis. Act 33) transferred the urban "clean sweep" program from DNR to DATCP, and consolidated funding for the urban and agricultural programs. DATCP may provide grants to counties *or municipalities* to establish urban "clean sweep" events (s. 93.57, Stats.).

DATCP must operate the urban "clean sweep" program under DNR rules until DATCP adopts its own rules for the program (see 2003 Wis. Act 33, *nonstatutory provisions*). DATCP has general authority to adopt rules for programs that DATCP administers (see s. 93.07(1), Stats.) This rule consolidates the agricultural and urban "clean sweep" programs, and establishes standards and procedures for the consolidated program.

Rule Content

This rule repeals and recreates DATCP's current "clean sweep" rules under ch. ATCP 34, Wis. Adm. Code. This rule does all of the following:

- It consolidates the urban and agricultural "clean sweep" programs, and creates standards and procedures for the consolidated program.
- It provides target levels of funding for agricultural and urban "clean sweep" grants that are consistent with pre−consolidation funding levels, but provides greater flexibility to move unused funds between programs to maximize overall "clean sweep" benefits.
- It streamlines and clarifies "clean sweep" grant procedures, including procedures for grant applications, grant awards and contracts.
- It facilitates cost−effective cooperation between counties and municipalities.
- It updates minimum standards for urban and agricultural "clean sweep" projects.

"Clean Sweep" Grants; General

Under s. 93.55, Stats., and this rule, DATCP may award an agricultural "clean sweep" grant to a county (or group of counties). The county may use the grant to collect waste agricultural chemicals from farmers and from certain businesses that qualify as "very small quantity generators" (these businesses must pay a share of their collection costs).

Under s. 93.57, Stats., and this rule, DATCP may award an urban "clean sweep" grant to a county *or municipality* (or to a group of counties or municipalities). A county may combine an urban "clean sweep" with an agricultural "clean sweep."

Eligible Costs

A "clean sweep" grant may reimburse direct "clean sweep" project costs, including:

• Direct costs to hire a hazardous waste contractor to receive, pack, transport and dispose of chemical waste.

• Direct costs for equipment rentals, supplies and services to operate the collection site and handle collected chemical waste.

• Direct costs for county or municipal staff to receive and pack chemical waste at a "continuous collection event" that lasts 4 or more days.

• Direct costs for local educational and promotional activities related to the "clean sweep" project.

A grant recipient must fund a portion of the "clean sweep" project costs. DATCP, in its annual call for grant applications, must specify a local cost−share contribution that is at least 25% of project costs.

Grant Application Procedures

If funding is available, DATCP will issue an annual written announcement soliciting "clean sweep" grant applications from counties and municipalities. The notice will specify the following, among other things:

• The total funding available, including separate amounts available for agricultural and urban "clean sweep" grants. Subject to available appropriations, the department will offer at least $400,000 for agricultural "clean sweeps" and $200,000 for urban "clean sweeps" (consistent with pre−consolidation funding levels). Unused funds in either category may be used in the other category.

• The purposes for which grant funds may be used.

• Grant eligibility criteria, including the required local cost−share contribution.

• Grant evaluation criteria.

• Grant application deadlines and procedures.

Grant Applications

A grant application must include the following, among other things:

• The purpose and scope of the proposed "clean sweep" project.

• The proposed collection dates, times, locations, facilities and procedures.

• Whether the project will collect farm chemical waste or hazardous household waste, or both.

• The types and amounts of waste that the applicant expects to collect.

• The proposed hazardous waste contractor.

• The fees, if any, that the applicant proposes to charge to persons delivering waste materials for disposal (a grant recipient may not charge a farmer for the first 200 lbs. of farm chemical waste delivered to an agricultural "clean sweep" event).

• The public information program that will accompany the project.

• The project budget, and the nature and amount of the applicant's proposed contribution.

Evaluating Grant Applications

DATCP must review each grant application to determine whether it meets minimum eligibility requirements. DATCP must then rank each year's eligible grant applications. DATCP may consider the following criteria, among others:

• The types of chemical wastes to be collected.

• The extent of intergovernmental coordination, including coordination with other counties or municipalities.

• The convenience of the proposed collection services.

• The scope and quality of public information and promotional programs that will accompany the project.

• The applicant's capacity to carry out the project.

• The safety and suitability of project facilities and procedures.

• The overall quality of the project, including likely cost −effectiveness and impact.

Grant Award and Contract

DATCP must announce grant awards within 60 business days after the grant application deadline, based on DATCP's ranking of grant applications. DATCP must enter into a contract with each grant recipient, specifying the terms and conditions of the grant.

A grant recipient must take responsibility, as the "hazardous waste generator" under state and federal law, for managing hazardous wastes that the grant recipient collects (there are limited exceptions). The grant recipient must contract with a qualified hazardous waste contractor to receive, pack, transport and dispose of the hazardous waste. The hazardous waste contractor must attend training sponsored by DATCP. For a "clean sweep" project that lasts less than 4 days, the grant recipient must contract with the hazardous waste contractor who manages the State of Wisconsin's hazardous wastes.

Grants are contingent on funding appropriations. If appropriations are not adequate to fund all of the grants awarded, DATCP may cancel grant contracts or reduce grant amounts. Funds allocated but not used for agricultural "clean sweeps" may be reallocated to urban "clean sweeps" and *vice versa*.

Reports and Payments

A grant recipient must provide DATCP with a final report within 60 days after completing a funded "clean sweep" project. DATCP will not make any grant payment until it receives the final report, except that DATCP may make interim payments for a continuous collection event that lasts 4 days or more (the grant recipient must file interim reports). DATCP will make final payment within 60 days after DATCP accepts the grant recipient's final report.

A grant recipient's final report must indicate the number of participants, types and amounts of waste collected, total cost of the project (including supporting documentation), an evaluation of the project and related pubic information program, and an estimate of types and amounts of wastes yet to be collected.

Contract Termination for Cause

DATCP may terminate a grant contract, or withhold contract payments, if the grant recipient violates DATCP rules or the grant contract, fails to perform the "clean sweep" project, obtains the grant contract by fraud, or engages in illegal or grossly negligent practices. The grant recipient may demand a hearing on DATCP's action.

Business Impact

This rule will have a positive impact on farmers, and on businesses that qualify as "very small quantity generators" of waste pesticides. These may include businesses such as lawn care companies, structural and aerial applicators, golf courses, agricultural chemical dealers, hardware stores, discount stores, marinas, parks, cemeteries, and construction companies.

This rule implements the statewide "clean sweep" program which helps these persons dispose of waste chemicals at little or no cost. Businesses that deliver pesticide wastes must pay a portion of the collection and disposal costs. Farmers may deliver up to 200 lbs. of farm chemical waste without charge (local governments may impose a charge for larger amounts).

The safe removal of chemical waste from farm and business locations also reduces health and environmental hazards, and related financial liability.

Many of the beneficiaries of this rule are small businesses. This rule will have no adverse effect on large or small businesses.

Fiscal Impact

This rule will have no fiscal impact on DATCP or local units of government. The Legislature has already created a state "clean sweep" grant program and provided funding for that program. This rule will not increase or decrease the amount of available funding. This rule merely spells out standards and procedures for the distribution of state "clean sweep" grants and the operation of "clean sweep" programs by grant recipients. Local government participation in the "clean sweep" program is entirely voluntary. This rule will not affect DATCP costs to administer the "clean sweep" program.

Environmental Assessment

This rule will have no adverse environmental impact. This rule will streamline and clarify the state "clean sweep" program, which has a positive impact on the environment, public health and the economy of the state.

Federal Programs

This rule implements a grant program for local government collection of waste chemicals. State and federal laws regulate hazardous waste management, but there are no federal laws related to "clean sweep" grant programs. This rule is consistent with state and federal laws on hazardous waste management.

Surrounding State Programs

All surrounding states have state−local cooperative programs to collect household hazardous wastes and certain farm chemicals, but programs vary widely from state to state.

• Michigan. The Michigan Department of Environmental Quality funds 15 permanent household waste collection sites. The Michigan Department of Agriculture uses federal grants, when available, to support agricultural pesticide collections at these household sites.

• Illinois. The Illinois Environmental Protection Agency provides grants for household collections. The Illinois Department of Agriculture typically sponsors two multi−county agricultural events each year.

• Iowa. The Iowa Department of Natural Resources provides start−up grants for local permanent collection facilities, and sponsors Toxic Clean Days that provide collection of both agricultural pesticides and household hazardous wastes.

• Minnesota. Minnesota's law recently changed. Under the revised law, Minnesota's Pollution Control Agency provides funding for 64 permanent household hazardous wastes sites. Minnesota's Department of Agriculture can fund agricultural pesticide collections through any of these local sites that seek funding for those collections.

Notice of Hearing

Commerce

(Commercial Building Code, Chs. Comm 61 to 65 Historic Buildings, Ch. Comm 70)

[CR 04−043]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and 101.121, Stats., the Department of Commerce will hold a public hearing on proposed rules relating to historic and existing buildings.

The public hearing will be held as follows:

Date and Time:	**Location:**
Monday, June 7, 2004	Thompson Commerce Center
Starting at 10:00 a.m.	Third Floor, Room 3C
	201 W. Washington Avenue
	Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **June 18, 2004** to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Diane Meredith, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701−2689, or Email at dmeredith@commerce.state.wi.us.

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

Analysis Prepared by the Department of Commerce

Statutory Authority: ss. 101.02 (1) and (15) and 101.121, Stats.

Statutes Interpreted: ss. 101.02 (1) and (15) and 101.121, Stats.

General Summary

Under sections 101.02 (1) and (15), Stats., the Department has authority to protect public health, safety, and welfare, at public buildings and places of employment, by promulgating and enforcing requirements for construction and maintenance of those facilities.

Under section 101.121, Stats., the Department also has the responsibility to develop reasonable rules for the preservation and restoration of buildings designated as historic buildings. Owners of qualified historic buildings that are altered or changed in occupancy may choose to follow the compliance alternatives established under Comm 70 in lieu of strict compliance with chapters Comm 61 to 65, which is the *Wisconsin Commercial Building Code* (WCBC).

Currently, the Department adopts by reference the suite of International Codes as the base building construction rules under chapters Comm 61 to 65. The purpose of the rule modifications in chapter Comm 70 and the creation of rules under chapter Comm 62 is to improve the consistency of application of the construction requirements to historic buildings with the application of the WCBC to non−historic buildings, and to update the existing technical requirements relating to historic buildings.

The energy conservation requirements are reprinted in this rule package but there are no substantive changes proposed to these energy rules. Therefore, it is determined these rules are an environmental type III action, which does not require the preparation of an environmental analysis.

Detailed Summary

Although the entire chapter Comm 70 would be repealed and recreated under this proposal, many of the current requirements and provisions would not change. The reason

for reprinting the entire chapter is to have all of the technical requirements available for reference to those requirements being changed, and to modify the format and terminology for consistency with other codes.

The following are the major changes contained in the revised chapters Comm 62 and 70:

1. Require a review of IBC chapter 9 for the installation of automatic sprinkler systems when an existing building is changed to include a Group A−2–assembly occupancy. This requirement will ensure consistent application of the sprinkler requirements for both historic and existing buildings and structures. [Comm 62.0903 (1m)]

2. Require automatic sprinkler systems, standpipes, and elevator controls for emergency recall and in−car operation that comply with the applicable requirements in the IBC for an existing building or portion of an existing building, when an existing building greater than 60 feet in height is changed to include a Group R−1–transient−type residential or R−2–permanent−type residential occupancy. These requirements will ensure consistent application of the sprinkler requirements for both historic and existing buildings and structures. [Comm 62.0903 (1m) (b), Comm 62.0905 and Comm 62.3001 (4)]

3. Clarify the application and election requirements of Comm 70 relating to the repair, alteration, or change of occupancy to a qualified historic building. [Comm 70.03 (2)]

4. Modify the administration and enforcement requirements by cross−referencing ch. Comm 61 for consistency in application. [Comm 70, subchapter II]

5. Eliminate duplicative terms and definitions relating to repair, alteration, and change of occupancy. Terms deleted include restored, preserved, reconstituted and reproduced. [Comm 70.17]

6. Clarify the requirements under Comm 70.22 (1) by evaluating only the number of stories to the prevailing code. The height of the building as specified in the prevailing code under IBC Table 503 will not be evaluated. Also, modify Table 70.22−1 relating to number of stories by clarifying the numerical value of zero (0) means the building is at the maximum number of stories under the prevailing code. [Comm 70.22 (1) and Table 70.22−1]

7. Modify the title of Table 70.22−4 to attic draftstopping and compartmentalization and the title of Table 70.22−5 to fireblocking, which are consistent with comparable terminology and requirements in the IBC. [Table 70.22−4 and Table 70.22−5]

8. Eliminate the sentence under Comm 70.22 (5) relating to fireblocking and draftstopping in existing walls and create a new section relating to fireblocking. [Comm 70.36]

9. Eliminate the footnote under Table 70.22−6, which states where a 3−hour separation is required and a 4−hour separation is provided the maximum numerical value is zero. Suggest that a numerical value of +2 be assigned when an increase of at least 1−hour fire−resistive rating increase is provided above that required in the prevailing code. [Table 70.22−6]

10. Clarify that the single numerical value for shaft enclosures is to be accumulative using the worst case conditions for all the openings. [Comm 70.22 (7)]

11. Modify Comm 70.22 (8) to require the existing HVAC system to be evaluated in accordance with the prevailing code for fire and smoke dampers and use conditions similar to the *International Existing Building Code*® (IEBC). The existing duct system is to be evaluated under Table 70.22−7 for vertical shaft requirements. [Tables 70.22−7 and 70.22−8]

12. Include new conditions under Table 70.22−11 relating to smoke control systems. The conditions would state that smoke control systems and operable windows required and provided in accordance with the prevailing code would receive a numerical value of zero (0). [Table 70.22−11]

13. Clarify that the emergency power requirement under Table 70.22−15 relates to illumination emergency power. [Table 70.22−15]

14. Revise the requirements under Table 70.22−16 to be closer to the conditions listed under the IEBC for elevator controls and to modify the numerical values. [Table 70.22−16]

15. Modify the sprinkler requirements by using terminology and values consistent with the IBC, eliminating the footnotes relating to partial sprinklers, and altering the values for the sprinkler table based on values from other Tables. [Table 70.22−17]

16. Consolidate all the separate subchapters relating to structural, accessibility, energy, mechanical and electric under the specific requirements under subchapter V relating to miscellaneous building requirements.

17. Group all of the means of egress requirements under one code section and modify them for consistency with the application of the IBC to non−historic buildings and also to the exemptions specified under the IEBC for historic buildings, including transom windows in corridors. [Comm 70.30]

18. Include specific requirements for high−rise buildings that are converted to R−residential occupancies. The new requirements state that sprinklers and standpipes are required in all the work areas, which is defined as the area of all reconfigured spaces, and specify that elevators serving the work areas are to be provided with Phase I and Phase II operations complying with chapter Comm 18. [Comm 70.34]

19. Revise the structural requirements to be consistent with the minimum requirements for non−historic buildings. [Comm 70.38 and 70.39]

20. Create Comm 70.41 that requires the protection of penetrations in fire−resistive assemblies created by electrical and mechanical systems. [Comm 70.41]

Federal Comparisons

An Internet−based search for "historic building code regulations" in the *Code of Federal Regulations* (CFR) did not identify any existing or proposed federal regulations establishing building construction standards to protect public safety and welfare for historic buildings that are altered or changed in occupancy. However, it did identify the following existing federal regulations that address the preservation of historic buildings for tax relief and incentives:

- 36 CFR 67–*Historic Preservation Certifications Pursuant to Sec. 48(g) and Sec. 170(h) of the Internal Revenue Code of 1986*. Under t:
- 36 CFR 68–*The Secretary of the Interior Standards for the Treatment of Historic Properties*.

An Internet−based search for the referenced federal regulations of the 2003 and 2004 issues of the *Federal Register* did not identify any proposed changes to these regulations relating to the preservation of historic buildings.

State Comparisons

An internet−based search of adjacent states' codes resulted in the following codes that establish building construction requirements relating to alteration and change of occupancy of historic buildings:

- Minnesota incorporates by reference the 2000 edition of the Guidelines for the Rehabilitation of Existing Buildings as

published by the International Conference of Building Officials, Whittier, California. It appears these rules may be an earlier version of the *International Existing Building Code*® (IEBC), which covers similar safety construction topic areas to those covered under Comm 70. Both the IEBC and Comm 70 are based upon the requirements in the *International Building Code*® (IBC).

- Under Michigan's Rehabilitation Code for Existing Buildings the 2003 edition of the IEBC is incorporated by reference. The IEBC covers similar safety construction topic areas to those covered under Comm 70, and both the IEBC and Comm 70 are based upon the requirements in the IBC.
- Iowa incorporates by reference the 1994 edition of the Uniform Building Code (UBC), as the State Building Code. Under the Iowa State Building Code, repairs, alterations and additions to historic buildings may be made without conformance to the UBC, only when authorized by those municipalities exercising jurisdiction. The UBC is a precursor to the IBC.
- Illinois does not have a statewide building code covering historic buildings. In Illinois enactment of building codes is at the local municipal level.

Council Members and Representation

The proposed rules were developed with the assistance of the Historic Building Code Advisory Council. The members of that citizen advisory council are as follows:

Name	Representing
Bruce Johnson	Wisconsin Builders Association
Steve Gleisner	City of Milwaukee Fire Department
Charles Quagliana . . .	AIA−Wisconsin
Chris Rute	Milwaukee Historic Preservation Commission
Jim Sewell	Wisconsin Historical Society
Harry Sulzer	City of Madison
David Vos	Project Developers/Alexander Company

Copies of Rule

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

Environmental Assessment

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

Initial Regulatory Flexibility Analysis

A small business located in or involved with an alteration to or involved with a change of occupancy in a qualified historic building or existing building may be affected by these rules. Owners of qualified historic buildings that are altered or changed in occupancy may choose to follow the compliance alternatives established under Ch. Comm 70 in lieu of strict compliance with Chs. Comm 61 to 65, *Wisconsin Commercial Building Code* (WCBC). The primary reason for the rule change is to modify existing terminology for consistency with the *International Building Code*® (IBC), and to include specific safety requirements for certain qualified historic buildings or existing buildings that include a change to a Group A–assembly occupancy, Group R−1–transient−type residential occupancy or Group R−2–permanent−type residential occupancy. The impact on small businesses should be minimal.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing Chs. Comm 62 and 70 as they relate to historic buildings and existing buildings. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing Chs. Comm 62 and 70. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Notice of Hearing
Financial Institutions − Banking
[CR 04−041]

NOTICE IS HEREBY GIVEN That pursuant to ss. 218.04 (7) (d) and 227.11 (2), Stats., and interpreting ss. 404.401 (1), 403.401 and 403.402, Stats., and s. DFI—Bkg 74.14 (11), Admin. Code, the Department of Financial Institutions, Division of Banking will hold a public hearing at Department of Financial Institutions, 345 W. Washington Avenue, 5th Floor in the city of Madison, Wisconsin, on the **27th day of May, 2004**, at 3:00 p.m. to consider the creation of a rule relating to authorization to collect a returned check fee.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

Statute(s) interpreted: ss. 404.401 (1), 403.401 and 403.402, Stats., and s. DFI—Bkg 74.14 (11), Adm. Code.

Statutory authority: ss. 218.04 (7) (d) and 227.11 (2), Stats.

Explanation of agency authority: Pursuant to ss. 218.04, and 220.02 (3) and (4), Stats., the division regulates collection agencies.

Plain language analysis: The objective of the rule is to create s. DFI—Bkg 74.14 (16) and (17). The purpose of the rule is to prohibit as oppressive and deceptive practices the collection of returned check fees through an Automated Clearing House Network transaction or paper draft without proper authorization from the customer. The rule provides that, upon request by the division, the licensee shall provide documentation that it has the customer's authorization, and incorporates certain National Automated Clearing House Association standards.

Summary of and preliminary comparison with existing or proposed federal regulation: Federal regulations do not prohibit the authorizations proposed.

Comparison with rules in adjacent states: Similar rules do not exist in adjacent states.

Summary of factual data and analytical methodologies: The proposed rule is in response to a court determination that the department may set forth the requirements of proposed s. DFI—Bkg 74.14 (16) but must do so through the rules promulgation process. Because a licensee using the Automated Clearing House Network agrees to comply with the standards of the National Automated Clearing House Association by virtue of its participation in the network, the

rule codifies an existing practice. Although there is statutory authority for s. DFI—Bkg 74.14 (17), because the court invalidated a policy letter containing both these requirements, the department formalizes the paper draft requirements in proposed s. DFI—Bkg 74.14 (17).

Analysis and supporting documentation used to determine effect on small business: Because the rule codifies existing practices and statutory requirements of which licensees should already be in compliance, the rule will not have an effect on small business.

Agency contact persons: For substantive questions on the rule: Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707−7876, tel. (608) 266−0451. For the agency's internal processing of the rule: Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708−8861, tel. (608) 267−1705.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses.

Fiscal Estimate

There is no state fiscal effect, and there are no local government costs. No funding sources or ch. 20 appropriations are affected. There are no long−range fiscal implications.

Contact Person

For a copy of the proposed rule and fiscal estimate, or to submit written comments regarding the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708−8861, tel. (608) 267−1705. Written comments must be submitted prior to the public hearing. A copy of the proposed rule may also be obtained at the Department of Financial Institutions' website, www.wdfi.org.

Notice of Hearing

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

[CR 04−044]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 457.03 (1), Stats., as amended by 2001 Wisconsin Act 80, and interpreting s. 457.02 (5m), Stats., as created by 2001 Wisconsin Act 80, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. MPSW 1.09; and to create s. MPSW 1.09 (1) (b) to (d) and (2) to (5), relating to alcohol and drug counseling.

Hearing Date, Time and Location

Date:	**June 9, 2004**
Time:	8:30 a.m.
Location:	1400 East Washington Avenue Room 179A Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by June 9, 2004, to be included in the record of rule−making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 457.03 (1), Stats., as amended by 2001 Wisconsin Act 80.

Statutes interpreted: s. 457.02 (5m), Stats., as created by 2001 Wisconsin Act 80.

A person credentialed by the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board may practice and use the title "alcohol and drug counselor" or "chemical dependency counselor" if they are certified as an alcohol and drug counselor or a chemical dependency counselor through a process recognized by the Department of Health and Family Services. A person credentialed by the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board who treats alcohol or substance dependency or abuse in a certified clinic under ch. HFS 75 must hold a credential issued by the Wisconsin Certification Board.

In order to treat persons with a DSM diagnosis of substance dependence, to treat the substance dependence issues of a person with a dual diagnosis, to advertise themselves as an AODA specialist, or be identified in an employed position as an AODA specialist, a marriage and family therapist, professional counselor or social worker who is not credentialed by the Wisconsin Certification Board and who is working outside of a chapter HFS 75 clinic must satisfy the qualifications in s. MPSW 1.09 (2). A credential holder may refer and continue to work with that client until the referral is completed. The credential holder may work with the non−AODA issues of the client that is being referred and may treat the client who is in recovery, following treatment for substance dependence.

The credential holder must show evidence of the qualifications that are authorized by the board to treat alcohol, substance dependence or abuse as a specialty.

The credential holder must satisfy all of the requirements that are administered by the Department of Health and Family Services or a designee pursuant to the interagency agreement reached with the Department of Regulation and Licensing upon verification of these requirements by the credential holder. The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board notifies the credential holder and a record is kept at the Department of Regulation and Licensing that the credential holder has authority to treat alcohol or substance dependence or abuse as a specialty.

A list is provided of the categories of individuals that are qualified to provide face−to−face supervision, and authorizes practice under supervision by marriage and family therapists, professional counselors and social workers while obtaining the necessary experience.

Persons who treat alcohol, substance dependency or abuse as a specialty are required to obtain at least 10 continuing education hours in alcohol, substance dependency or abuse education during each biennial credentialing period. Up to 18 hours may be used against the required biennial continuing education for credential renewal.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

Experience: Three (3) years of full−time supervised experience or 6,000 hours of supervised experience as an alcoholism and/or drug abuse counselor.

Supervision: The supervision must be provided by a licensed or certified practitioner.

Education: Two−hundred seventy (270) contact hours of education and training in alcoholism, and/or drug abuse or related training. These hours can be in the form of formal education, in−service training, and professional development courses.

Continuing education: Requirement is at least 40−60 hours of continuing education units (CEU) during each two year period.

Testing: A passing score on a national test is a requirement. The test establishes a national standard that must be met to practice.

A comparison of similar rules in adjacent states.

Minnesota – Experience: Eight−hundred eighty (880) clock hours of supervised alcohol and drug counseling practicum. Education: An associate degree, or an equivalent number of credit hours, and a certificate in alcohol and drug counseling, including 18 semester credits or 270 clock hours of academic course work from an accredited school or educational program. Continuing education: N/A. Testing: Complete a written case presentation and satisfactorily pass an oral and written examination by the commissioner.

Iowa, Illinois and Michigan: A search produced no certification requirements.

The rule will require the department to develop a certification form and mail the form to qualified credential holders. The rule will require the department to keep a record of certifications.

This rule will have $4,346 impact on the department's operations.

Printing and distributing the rule changes will cost $500. Developing the certification form will take 15 hours of Program Manager time at $36 per hour including fringe, and 15 hours of Program Assistant time at $17 per hour including fringe, for total program staff time of $795.

Mailing each form will cost $.50, so if the department mails 500 forms the cost will be $250.

Changes to IT systems to record and track the certifications will cost 80 hours of programmer time at $35 per hour including fringe, for a total IT cost of $2,800.

Private Sector Fiscal Impact

The department has determined that this rule has no significant fiscal effect on the private sector.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266−0495

Notice of Hearing

Public Defender

[CR 04−038]

NOTICE IS HEREBY GIVEN that pursuant to s. 977.02 (4m) Stats., and interpreting s. 977.075 (1) Stats., the Office of the State Public Defender will hold a public hearing at 315 North Henry Street, 2nd Floor, in the city of Madison, Wisconsin, on the **7th day of June 2004**, from 1:00 p.m. to 3:00 p.m. to consider the amendment of a rules, ss. PD 6.01, 6.02 (1), 6.025 (2) (a), related to the repayment of cost of legal representation. Reasonable accommodations will be made at the hearing for persons with disabilities.

Summary and Analysis by Agency

Prepared by: Kellie M. Krake and Arlene Banoul

Proposed Action:

• PD 6.01: increasing the fees for repayment and prepayment of legal representation by 20%

• PD 6.02 (1): specifying petitions for supervised release and discharge under Ch. 980 as commitment case types

• PD 6.025 (2) (a): deleting a finding of partial indigency as a method for determining ability to pay

Wis. Stat. sec. 977.075 requires that the state public defender board establish by rule a program for repayment of the cost of legal representation, including reimbursement and prepayment options. PD 6.01 and PD 6.02 (1) establish a payment schedule based on the type of case. Petition for supervised release and petition for discharge from commitment under the sexual predator law were not specifically listed in this schedule although these types of cases have been included under "commitment" since the law was enacted. Partial indigency determination had been used as a criterion for determination of ability to pay has been replaced by the collection statute.

In January 2002, the state public defender board authorized a statewide pilot program increasing reimbursement and prepayment amounts by 20% to continue until sufficient results were available to determine the fiscal effect. The chart below summarizes the revenue increase:

	Average # Payments	Average Monthly collection	Percent Who Pay	Average Payment
Prior to March 2002	1,276	$59,851	16.26%	$48.33
March 2002 thru present	1,426	$82,558	16.72%	$57.17
Difference in average payment				$8.84
Monthly revenue increase				$12,605.84
Annual revenue increase				$151,270.08
Biennial revenue increase				$302,540.16

Fiscal Estimate

The fiscal effect of this pilot project has been to increase collections revenues by $302,000 biennially.

We do not anticipate the proposed rule change clarifying petitions for supervised release and discharge under Ch. 980 as commitment case types under the current payment schedule to have a fiscal impact because this proposed rule change reflects current practice.

We do not anticipate the proposed rule change deleting partial indigency as a method for determining ability to pay because this proposed rule change reflects current practice.

Initial Regulatory Flexibility Analysis:

The proposed amendment would not have a regulatory effect on small businesses.

Contact Person

For copies of the proposed amendment to the rules, or if you have questions, please contact Kellie M. Krake, Legal Counsel, 315 North Henry Street, Madison, WI 53703−3018; (608) 267−0299.

Written Comments

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public hearing. Such comments should be addressed to the contact person at the address stated above, and must be received by 5:00pm June 7, 2004.

Notice of Hearing
Public Instruction
[CR 04−027]

NOTICE IS HEREBY GIVEN That pursuant to ss. 43.09 and 227.11 (2) (a), Stats., and interpreting s. 43.09, Stats., the Department of Public Instruction will a hold public hearing as follows to consider the amending of Chapter PI 6, relating to public librarian certification.

The hearing will be held as follows:

Date, Time and Location

May 27, 2004, 10:00 a.m. to noon

Reference and Loan Library

109 South Stoughton Road

Madison

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Peg Branson, Continuing Education Consultant, Public Library Development Team, at (608) 266−2413 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.

Copies of Rule and Contact Person

The administrative rule and fiscal note are available on the internet at:

http://www.dpi.state.wi.us/dpi/dfm/pb/libcert.html and http://www.dpi.state.wi.us/dpi/dfm/pb/libcertfn.html, respectively.

A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.state.wi.us 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

Written comments on the proposed rules received by Ms. Slauson at the above address no later than June 1, 2004, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

Section 43.09 (1), Stats., requires the Division for Libraries, Technology and Community Learning in the Department of Public Instruction to issue certificates to public librarians and promulgate, under ch. 227, Stats., necessary standards for public librarians. Section 43.09 (2), Stats., allows the department to promulgate rules regarding necessary standards for public library systems.

Comparison to Existing or Proposed Federal Regulations:

Not applicable.

Summary of Rule Modifications:

Subchapter I of ch. PI 6, Wis. Admin. Code, pertains to public librarian certification and specifies certification requirements for administrators who serve in municipal, joint, and county public libraries with certain populations. The proposed rules:

Update public librarian certification requirements. The rules do not change the coursework required to receive Grade II or III certification, but change the timeframe and sequence in which the courses must be taken. The rules also allow four years of temporary certification for an individual to complete the courses needed to receive regular Grade II or III certification.

Eliminate references to obsolete language relating to certificates issued prior to or after January 1, 1995. This information was pertinent when the rules were modified effective January 1, 1995, but is no longer necessary.

The proposed rules will apply to individuals applying for Grade III regular certification and certification renewal and for individuals applying for Grade II and III temporary certification upon the effective date of this rule.

Summary of Factual Data and Analytical Methodologies:

During the fall of 2002 and spring of 2003, Division for Libraries, Technology, and Community Learning (DLTCL) staff worked with a Certification Study Committee to assess the library education and training required for the certification of directors of public libraries in Wisconsin, particularly those in small communities. The committee was composed of representatives of public library systems serving primarily small and rural public libraries and representatives of the Council on Library and Network Development (Wis. Stats. 43.07). The committee focused on the following question: What basic library management and other information is needed to enable new directors of small public libraries to serve their communities effectively and when do they need to have this information.

The Council on Library and Network Development, which has responsibility for making recommendations to the State Superintendent on standards for the certification of public librarians (Wis. Stats. 43.07(1)), endorsed the recommendations of the study committee for certification at its meeting on May 2, 2003. The Council asked DLTCL to seek additional input on the recommendations from the public library community prior to initiating the process for making administrative code rule changes. In response to that recommendation, DLTCL staff reviewed the

recommendations for certification with a variety of public librarian and public library trustee groups throughout the summer and fall of 2003. In addition, the recommendations were published in the DLTCL newsletters and posted on the division's website, and DLTCL provided an information session at the Wisconsin Library Association annual conference in the fall of 2003.

Comparison of Similar Rules in Adjacent States:

Michigan, Iowa and Indiana have public librarian certification programs that are similar to Wisconsin's. Among the features of their certification programs are:

Certification of the directors of public libraries is required in all three states; Michigan also has staffing standards that require selected staff in libraries, in addition to the director, to be certified.

All of the certification programs have multiple levels of certification based on the populations of the communities served.

All of the certification programs require specified educational attainments and additional library courses based on grade level.

All of the certification programs require initial certification and recertification at specified time intervals.

The certification programs in Michigan and Iowa require that libraries have certified staff as a condition of receiving state funds.

Illinois doesn't have a state certification program; each public library system establishes its own rules for membership requirements. The certification program in Minnesota is voluntary for library employees.

Effect on Small Businesses:

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

Fiscal Estimate

The proposed rules will update public librarian certification requirements. The rules do not change the coursework required to receive Grade II or III certification, but change the timeframe and sequence in which the courses must be taken. The rules also allow four years of temporary certification for an individual to complete the courses needed to receive regular certification.

It is assumed the proposed rules will have no fiscal impact on libraries, school districts, the department or small businesses.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearing

Transportation

[CR 04−042]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

June 1, 2004 at 11:30 a.m.

WisDOT District #3

944 Vanderperren Way

Conference Room #4

Green Bay, WI

(Parking is available for persons with disabilities)

The public record on this proposed rule making will be held open until close of business on the date of the hearing to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments should be submitted to Ashwani K. Sharma, Traffic Operations Engineer, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, Wisconsin, 53707−7986, or via e−mail: ashwani.sharma@dot.state.wi.us

Analysis Prepared by the Wisconsin Department of Transportation

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

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

General Summary of Proposed Rule

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

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

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

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

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National

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

This proposed rule amends s. Trans 276.07 (7) and (22), Wisconsin Administrative Code, to add two segments of highway to the designated highway system established under s. 348.07 (4), Stats. The actual highway segments that this proposed rule adds to the designated highway system are:

Hwy.	From	To
STH 139	STH 70	Long Lake
STH 32	Laona	STH 64

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

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

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

Fiscal Impact

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally−recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Initial Regulatory Flexibility Analysis

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly−designated routes.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to the office of the State Traffic Engineer, P. O. Box 7986, Room 501, Madison, Wisconsin, 53707−7986, telephone (608) 266−1273, or via e−mail: ashwani.sharma@dot.state.wi.us. For questions about this rule making, please call Ashwani Sharma, Traffic Operations Engineer at (608) 266−1273. Alternate formats of the proposed rule will be provided to individuals at their request.

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

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

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 03−120)

Chapter ATCP 40, relating to fertilizer license fee surcharges for agricultural chemical cleanup program.

Public Instruction

(CR 03−112)

Section PI 27.03, relating to commencement of a school term.

Rule orders filed with the revisor of statutes bureau

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

Financial Institutions − Banking
(CR 04−001)

An order affecting ch. DFI−Bkg 17, relating to the process for the organization of interim banks.

Effective 7−1−04.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board
(CR 03−058)

An order affecting chs. MPSW 10 and 13, relating to the National Counselor Mental Health Certification Examination.

Effective 7−1−04.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board
(CR 03−090)

An order affecting chs. MPSW 3, 11 and 16, relating to the determination of the equivalency of a foreign degree to a degree from an institution accredited in the United States, and to require some candidates to demonstrate English proficiency.

Effective 7−1−04.

Veterans Affairs
(CR 04−003)

An order affecting ch. VA 2, relating to the recovery of erroneous payments made under the tuition and fee reimbursement, part−time study, and retraining grant programs.

Effective 7−1−04.

Notice of suspension of an administrative rule

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 28, 2004 and adopted the following motion:

> **Emergency Rule DWD 274.035 Relating to overtime pay for employees performing companionship services.** Moved by Representative Grothman, seconded by Senator Lazich that, pursuant to s. 227.26 (2) (d) and 227.19 (4) (d) 1. to 3., Stats., the suspends Emergency Rule DWD 274.035 in its entirety.

Motion Carried: 6 Ayes, 4 Noes

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