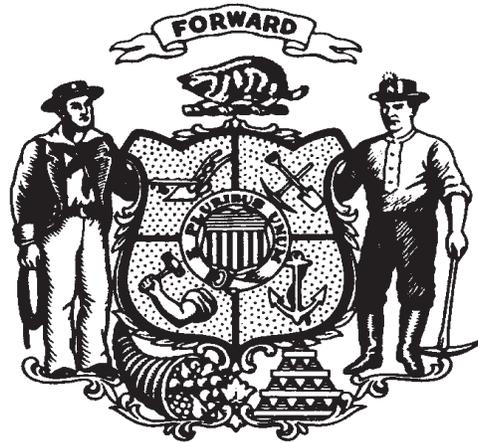


Wisconsin Administrative Register

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

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

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

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

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

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

Commerce

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

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

Finding of Emergency

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

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

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

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

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has historically ranked low in the development of new start-ups and in the attraction of risk capital.

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

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

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

Publication Date: December 2, 2004

Effective Date: December 2, 2004

Expiration Date: May 1, 2005

Hearing Date: January 12, 2005

Elections Board

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

Finding of Emergency

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

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

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

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under

circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

Publication Date: February 3, 2005
Effective Date: February 3, 2005
Expiration Date: July 3, 2005

Insurance

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

Finding of Emergency

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

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

Publication Date: December 10, 2004
Effective Date: December 10, 2004
Expiration Date: May 9, 2005

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

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

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. The state legislature has also delegated to the department rule – making authority in 2003 Wisconsin Act 240 to regulate feeding of wild animals for non-hunting purposes including recreational and supplemental feeding. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

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

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

Finding of emergency

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

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

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).
- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.
- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

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

- Rules were adopted revising **s. NR 20.33 (5) (c)**, relating to the closure of sturgeon spearing on the Lake Winnebago system.

Finding of emergency

The Department of Natural Resources find that an emergency exists and a rule is necessary for the immediate

preservation of the public health, safety or welfare. The facts constituting this emergency are:

During the 2004 sturgeon spearing on Lake Winnebago, spearkers harvested a record 1,303 sturgeon on opening day, exceeding the season harvest cap for adult female sturgeon. The spearing season lasted only two days and resulted in an overall harvest of 1,854 sturgeon. The total harvest included 822 males, 348 juvenile females, and 684 adult females, 509 of which came on opening day, exceeding the harvest cap of 425. Population reduction due to overharvest of lake sturgeon could take years to reverse given the life history of lake sturgeon.

Publication Date: February 2, 2005
Effective Date: February 2, 2005
Expiration Date: July 2, 2005
Hearing Date: February 23, 2005

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

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

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

Natural Resources (7)

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

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

Finding of emergency

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to

establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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

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

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

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

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

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

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

Finding of emergency

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

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or

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

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

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

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

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

Public Instruction (2)

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

Finding of emergency

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

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

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

2. Rules adopted repealing **s. PI 24.02 (3)** and repealing and recreating **subchapter II of chapter PI 24**, relating to the

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

Finding of emergency

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

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

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

Regulation and Licensing (2)

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Regulation and Licensing

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

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

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

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

Exemption from finding of emergency

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

(2) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.9935 of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide findings of emergency for rules promulgated under this subsection.

Analysis prepared by the Department of Regulation and Licensing

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

Statutes interpreted: Chapter 440, Subchapter XII.

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

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

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

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

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

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

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

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

Revenue (3)

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

Finding of emergency

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

The emergency rule is to clarify the following terms as they apply to the dairy investment credit:

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

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

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

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

Finding of emergency

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

Publication Date: December 29, 2004

Effective Date: December 29, 2004

Expiration Date: May 28, 2005

Transportation (3)

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Transportation

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

Publication Date: September 1, 2004

Effective Date: September 1, 2004

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

Hearing Date: September 14, 2004

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Transportation

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

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

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

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

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

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

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

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

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

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

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

1. Allows physician to certify driver is following treatment plan for cerebrovascular function, without such certification of the patient.

2. Shortens from 12 to 6 months the period during which a school bus driver must be free of any cerebrovascular incident.

3. Eliminates the 12 month period during which school bus driver must be free of destructive behavior or suicidal tendencies, instead making eligible a driver who is free of such behaviors or tendencies at the time of application.

4. Provides that a license restriction imposed on a physician's recommendation may be lifted only by the physician that recommended the restriction or by the Department following its evaluation of the person's ability to drive.

5. Provides that a person who does not meet minimum waiting periods following certain medical disqualifications cannot request a medical review board assessment of those disqualifications, because those waiting periods cannot be waived.

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

3. Rules adopted creating ss. **Trans 254.12 (6) and 255.12 (17)**, relating to the issuance of single and multiple trip oversize and overweight permits.

Finding of emergency

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public safety and welfare. Although the Department will pursue promulgation of this rule through

normal procedure, the Department finds an emergency exists for the following reasons: (1) current administrative rules have size limitations that prevent the use of the Milwaukee Expressway for vehicles or load or dimensions greater than 11 feet in width, 13½ feet in height, or 100 feet in length on the Milwaukee Freeway; (2) structural beams and girders that exceed the above transport limits are currently being manufactured for the initial stages of construction of the Marquette Interchange Reconstruction project; and (3) these steel and concrete bridge components must be delivered to the construction site beginning in February 2005 to keep the project on time and on-budget. Routing these oversized loads on the Milwaukee surface street system may not be possible due to the load lengths and the turning radiuses required. If the street geometry does allow the movement, these street systems may not be designed to carry the weight of such loads. Doing so will result in unsafe and possible permanent damage to the surface street system. Without this rule amendment, the other alternative is to reduce the size of these structural members (beams and girders) to meet these existing size limitations which will significantly increase the total projects costs and the time required to complete the project because of the necessary redesign.

Publication Date: February 1, 2005
Effective Date: February 1, 2005
Expiration Date: July 1, 2005
Hearing Date: March 1, 2005

Veterans Affairs

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

Finding of emergency

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

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

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

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

Publication Date: January 3, 2005
Effective Date: January 3, 2005
Expiration Date: June 1, 2005
Hearing Date: February 16, 2005

Workforce Development

(Labor Standards, Chs. DWD 270–279)

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

Finding of emergency

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

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

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

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

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

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

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

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

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

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

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

Workforce Development

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

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

Finding of emergency

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

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

Publication Date: December 20, 2004
Effective Date: January 1, 2005
Expiration Date: May 30, 2005
Hearing Date: February 14, 2005

Scope statements

Financial Institutions – Banking

Financial Institutions – Savings Banks

Financial Institutions – Savings and Loan

Subject

Sections DFI—Bkg 3.08 and DFI—SB 16.04, and ch. DFI—SL 21 relating to debt cancellation contracts and debt suspension agreements.

Policy analysis

The objective of the rule is to create ss. DFI—Bkg 3.08 and DFI—SB 16.04, and ch. DFI—SL 21 relating to debt cancellation contracts and debt suspension agreements. The purpose of this rule is to authorize Wisconsin–chartered banks, savings banks, and savings and loan associations to provide debt cancellation contracts and debt suspension agreements in the same manner that such products are provided by federally–chartered banks, savings banks, and savings and loan associations. The rule assists Wisconsin–chartered banks, savings banks, and savings and loans in remaining competitive with federally chartered banks, savings banks, and savings and loan associations regarding these products. The promulgation of this rule requires the approval of the Banking Review Board and the Savings Institution Review Board.

Statutory authority

Statutory authority: ss. 220.04 (8), 214.03 (2), 214.715 (1) (d), 215.02 (18) and 227.11 (2), Stats.

Staff time required

120 hours.

Entities affected by rule

Wisconsin–chartered banks, savings banks, and savings and loan associations.

Comparison with federal requirements

12 CFR Part 37, OTS Opinion Letter 9/15/93, and OTS Opinion Letter 12/18/95.

Financial Institutions – Credit Unions

Subject

Chapter DFI—CU 74 relating to incidental powers activity authority parity with federal credit unions.

Policy analysis

The objective of the rule is to create ch. DFI—CU 73 relating to incidental powers activity authority parity with federal credit unions. The purpose of this rule is to permit Wisconsin–chartered credit unions to provide certain loan–related products in the same manner that such products are provided by federally–chartered credit unions. The rule assists Wisconsin–chartered credit unions in remaining competitive with federal credit unions regarding these products. The promulgation of this rule has been approved by the Credit Union Review Board.

Statutory authority

Sections 186.115 (2), 186.235 (8) and 227.11 (2), Stats.

Staff time required

120 hours.

Entities affected by rule

State–chartered credit unions.

Comparison with federal requirements

NCUA Rules and Regulations Part 721.

Natural Resources

Subject

Objective of the rule. The development and adoption of an updated stationary source nitrogen oxide (NO_x) control program to meet Clean Air Act requirements and demonstrate attainment by 2010 of the 8–hour ozone air quality standard.

New regulatory requirements are anticipated to be incorporated into ch. NR 428, Wis. Adm. Code “Control of Nitrogen Compound Emissions” and ch. NR 406, Wis. Adm. Code “Construction Permits”.

Policy analysis

In June of 2004 the US EPA designated ten Wisconsin counties non–attainment for the 8–hour ozone ambient air quality standard. The counties of Kenosha, Racine, Milwaukee, Waukesha, Washington, Ozaukee, and Sheboygan are designated “Moderate” non–attainment areas for the 8–hr ozone standard. The remaining counties of Manitowoc, Kewaunee, and Door are designated “Basic” non–attainment areas.

The designation triggered Clean Air Act requirements for adopting rules that reduce nitrogen oxide emissions sufficiently to demonstrate attainment of the standard by 2010. A minimum requirement is the adoption of reasonably available control measures (RACM) for stationary sources in all non–attainment counties as expeditiously as possible per section 172(c) of the CAA. An overlapping requirement in “moderate” counties is adoption of reasonably available control technology (RACT) for major NO_x sources. It is anticipated the RACM and RACT requirements will be equivalent for many emission units. The level of control represented by RACM and RACT is yet to be determined by the department based on an evaluation of available controls and information from potentially affected sources.

The demonstration of attainment may require more stringent controls than the minimum RACM and RACT requirements and/or include additional source categories. The additional reduction may address sources outside of the non–attainment counties but which influence the air quality in non–attainment areas. The extent of NO_x control for sources and source categories is related to technical control feasibility and cost considerations in addition to projected non–attainment area air quality impacts. The overall control achievable and implemented by the stationary source program will also be balanced against NO_x reductions in other emitting sector categories (mobile, area, etc.) and

potentially from sources of volatile organic compounds (VOCs). Additional factors in setting the reduction targets may relate to visibility (regional haze) improvement planning needs, Industrial Boiler MACT, state and federal mercury regulation, federal requirements promulgated during rule development, and regional Governors agreements addressing regional emission reductions.

Statutory authority

Sections 172 (c) (1) and (6) and 182 (a) (2) (A) and (b) (2) and (f) [42 USC 7502 (c) (1) and (6) and 7511a (a) (2) (A) and (b) (2) and (f)]; and 285.11 (6) and 285.14, Stats.

Staff time required

The department estimates approximately 1,500 hours will be required to develop a NOx RACT program and rules.

Comparison with federal requirements

The “NOx SIP” call, developed in 1998, provides the most recent indication of the minimum level of control expected by a Wisconsin stationary source NOx control program. The SIP call applies to twenty-one eastern states (excluding Wisconsin) to address regional NOx transport affecting 1-hour ozone attainment.

A major component of the NOx SIP call is a 70 to 80% emission reduction for the electric utility sector characterized by USEPA as “highly-cost effective”. In comparison, the minimum RACT control required for the Wisconsin control program is defined by the CAA as reasonably available and cost-effective. This definition leads to an expectation that RACT controls would have an allowable cost greater than the highly cost-effective NOx SIP call control levels. Therefore, electric utility control levels for RACT in the Wisconsin NOx control program are expected to be equivalent to or greater than NOx SIP control levels.

The NOx SIP call also addressed NOx control for large sources. EPA assumed reductions of 60% for large industrial boilers, 90% for stationary internal combustion engines, and 30% for cement kilns. This range of emission reductions provides a minimum expectation for larger non-utility source RACT level of control.

Entities affected by rule

Any facility operating a combustion process such as electric generation, industrial steam generation, process heating, internal combustion engines, and incineration is potentially affected by a NOx control program. The minimum RACT requirement applies to all facilities with the potential to emit greater than 100 tons per year of nitrogen oxides. A facility emitting above this threshold is considered a major source with reductions applying to its NOx emission units and processes. As a result, RACT will apply to numerous sources and include a wide range of emission unit types and sizes. The broader RACT requirement is not limited to a major source and may extend to smaller sources or individual units as compared to the RACT requirement.

Natural Resources

Subject

Objective of the rule. Volatile organic compounds (VOC) are those organic compounds, which contribute to ozone formation through atmospheric photochemical reactions. It has been EPA’s policy that organic compounds with a negligible level of reactivity need not be regulated to reduce ozone. The EPA lists these compounds in its regulations at 40

CFR 51.100(s) and excludes them from the definition of VOC. The Department’s definition of “volatile organic compounds” has been identical with the federal definition. On November 29, 2004, EPA revised the definition of VOC by identifying additional compounds to be excluded from the definition of VOC. The Department is proposing to revise the definition of VOC in ch. NR 400 to be consistent with the federal regulation. The compounds proposed to be excluded from the VOC definition are listed in the attached Rule Agenda / Board Action Checklist.

In addition the Department is proposing to revise the VOC emission control requirements for yeast manufacturing in s. 424.05. The change is intended to address an inconsistency with requirements in the national emission standards for hazardous air pollutants (NESHAP) for yeast manufacturing promulgated by EPA on May 21, 2001. The proposed revision addresses the provision in the NESHAP that 98%, rather than 100%, of the fermentation batches need to meet the existing VOC emission limits.

Policy analysis

The proposed revisions do not include any changes in policy. However the revision of the VOC definition introduces a new type of compound, an organic compound which is not considered a VOC for purposes of VOC emission limitations or VOC content requirements, but it is a VOC for purposes of recordkeeping, emission reporting, and inventory requirements.

Statutory authority

The proposed revisions are based on 40 CFR 51.100(s) and 40 CFR Part 63, Subpart CCCC Table 1; and s. 285.11 (6), Wis. Stats.

Staff time required

The estimated time needed to develop the proposed rule is approximately 330 hours

Comparison with federal requirements

Under s. NR 400.02 (162), Wis. Adm. Code, VOC is defined as any organic compound, which participates in atmospheric photochemical reactions excluding specific organic compounds listed in s. NR 400.02 (162). The listed compounds have been the same as those listed in a corresponding federal regulation at 40 CFR 51.100(s). On November 29, 2004 EPA revised the regulation and added some compounds to the list of compounds excluded from the definition of VOC. To incorporate the federal revision into the state regulation the Department is proposing to revise the VOC definition in ch. NR 400.

As indicated above, the NESHAP for yeast manufacturing facilities establishes that 98% of fermentation batches are required to meet the established VOC concentration limits. Compliance with these limits is based on a 12-month rolling average. The Department proposes to incorporate these same provisions into the state regulation for VOC emission limits for yeast manufacturing in s. NR 424.05.

Entities affected by rule

The proposed revision to the VOC definition in ch. NR 400 affects compounds, which have potential for use as refrigerants, fire suppressant, aerosol propellants, blowing agent for manufacturing of foamed plastic, and solvents. In addition some of these compounds may be used as an alternative to ozone depleting substances such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). Industries using or manufacturing these compounds will be affected by the rule. Others who may be interested in the rule include public health agencies, environmental organizations and the general public. There is

only one yeast manufacturer in Wisconsin who will be directly affected by the revision to s. NR 424.05.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 117 to remove references to CDL Occupational Licenses and any authority to issue any occupational license authorizing operation of commercial motor vehicles. It will also clean up various administrative concerns with current occupational driver license procedures.

Policy analysis

2003 Wisconsin Act 33 caused the amendment of s. 343.10, Stats., removing the authority to issue a Wisconsin occupational driver license authorizing operation of a commercial motor vehicle.

Comparison with federal requirements

Federal Motor Carrier Safety Improvement Act of 1999 established requirements that mandate no type of hardship or occupational driver license might be issued during a period of driver license revocation or suspension.

Entities affected by rule

Drivers of commercial motor vehicles.

Statutory authority

Section 343.10, Stats.

Staff time required

80 hours

Transportation

Subject

Objective of the rule. This proposed rule making will amend ch. Trans 201, relating to “Control of Outdoor Advertising Along and Visible from Highways on the Interstate and Federal–Aid Systems,” as it pertains to abandoned nonconforming signs, consistent with federal guidance issued on January 17, 1977, interpreting 23 CFR 750.707(d)(6)(ii). The Department is facing increasingly numerous legal challenges to its longstanding policies regarding abandoned signs. Continued federal funding depends on the Department’s current policies remaining in effect. The purpose of this rule making is to codify Department policy, insure continued eligibility for federal funds, and reduce litigation on this issue.

Policy analysis

Currently, the Department considers “abandoned” any nonconforming sign that for a period of 12 months or more bears only “sign for rent,” a telephone number, a message offering the sign for sale, or other similar message intended to convey the availability of the sign. The Department notifies a sign owner that the Department considers a sign “abandoned” only after the 12–month period has expired.

Comparison with federal requirements

Existing federal regulations state that a nonconforming sign may continue to exist as long as it is not destroyed,

abandoned or discontinued. Each state must develop criteria for defining “abandonment.” The criteria may provide that a nonconforming sign that displays obsolete advertising matter or is without advertising matter for a designated period of time may be considered “abandoned” and subject to removal without compensation. 23 CFR 750.707(6). There are no proposed federal regulations intended to address nonconforming outdoor advertising signs.

Entities affected by rule

Members of the public who have occasion to see an abandoned nonconforming sign, owners of nonconforming signs, real property owners on whose lands nonconforming signs rest, advertisers, Department employees whose job is to inventory and observe outdoor advertising signs, Department attorneys who must litigate appeals of abandoned sign removal orders, private attorneys hired to appeal abandoned sign removal orders, Division of Hearings and Appeals hearing examiners whose job is to hear appeals of the Department’s sign removal orders, outdoor advertising trade associations, anti–outdoor advertising associations, and FHWA officials who determine whether this state complies with the federal Highway Beautification Act

Statutory authority

Sections 84.01 (15), 84.015, 84.30, 227.10, Stats., and 23 USC 131.

Staff time required

40 hours.

Workforce Development

Subject

The Department proposes to create ch. DWD 2, relating to the discretion the agency will use in the enforcement of rules and guidelines against a small business.

Policy analysis

Section 895.59, Stats., as created by 2003 Wisconsin Act 145, requires each state agency to promulgate a rule that requires the agency to disclose the discretion that the agency will use in the enforcement of rules and guidelines against a small business. The rule must include a reduction or waiver of penalties for voluntary disclosure by a small business of actual or potential violations of rules or guidelines and may include consideration of a violator’s ability to pay when determining the amount of any monetary penalty, assessment, or surcharge. Section 895.59 (2), Stats., lists circumstances under which discretion is not allowed. The Department proposes to create a rule consistent with these requirements.

Entities affected by rule

“Small business” as defined under s. 895.59 (1) (b), Stats., means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer employees or which has gross annual sales of less than \$5,000,000.

Comparison with federal requirements

None.

Statutory authority

Sections 895.59 (2) and 227.11 (2), Stats.

Staff time required

150 hours.

Rule-making notices

Notice of Hearing Natural Resources

(Environmental Protection – Air Pollution Control)

[CR 04–106]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1) and (6), 285.62 and 285.67, Stats., interpreting ss. 285.11 (6), 285.62 and 285.67, Stats., the Department of Natural Resources will hold an additional public hearing on revisions to chs. NR 400, 406 and 407, Wis. Adm. Code, relating to permitting of activities that result in air emissions. The State Implementation Plan developed under s. 285.11 (6), Stats., will also be revised. The proposed rule revision establishes criteria and procedures for the identification of “state-only” requirements in construction permits and incorporation of construction permit requirements into operation permits.

Currently, all emission limitations and specific conditions that are contained within a construction permit are considered federally enforceable because there is no mechanism within the construction permit program to identify “state-only” requirements whose underlying authority does not rest within Wisconsin’s State Implementation Plan. These rule revisions will enable Wisconsin to identify requirements as “state-only” conditions in construction permits where the underlying rule has not been submitted to U.S. Environmental Protection Agency for inclusion in the State Implementation Plan and, thus, not intended to be federally enforceable, or is not required by federal law.

These rule revisions will provide industry and the Department with a streamlined approach to incorporating construction permit conditions into operation permits. The Department is required to use review and noticing procedures for construction permitting that are substantially equivalent to those used for operation permits. The Department is proposing that terms and conditions from construction permits be included in operation permits using administrative or minor revision processes.

NOTICE IS HEREBY FURTHER GIVEN that the proposed rule revisions make several changes to the original version of the rule that went to public hearing in 2004. These changes were made to address comments received in regard to incorporation of construction permit conditions into an operation permit. Changes made to the rule include:

- Deletion of linkage conditions to proposed rule revisions to adopt federal new source review rule changes and
- Incorporation of construction permit conditions into operation permits using administrative revision and minor revision processes.

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

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this

action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department’s consideration of the impacts of the proposal and reasonable alternatives.

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

Tuesday, **March 29, 2005** at 10:00 a.m.
Room 511, GEF #2
101 South Webster Street
Madison

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

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments may be submitted at the additional public hearing or by regular mail, fax or email to Jeffrey Hanson, Department of Natural Resources, Bureau of Air Management, PO Box 7921, Madison WI 53707; Fax: (608) 267–0560; jeffrey.hanson@dnr.state.wi.us.

Comments may be submitted until March 29, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained by writing Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 by calling (608) 266–7718 or by fax at (608) 267–0560.

Notice of Hearings Transportation [CR 05–019]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1), 85.095 and 227.11 (2), Stats., and interpreting s. 85.095, Stats., including s. 85.095 (1) (a), (1) (am) and (5), Stats., as amended or created by 2003 Wis. Act 208, the Department of Transportation will hold public hearings at the following locations to consider the amendment of ch. Trans 28, Wisconsin Administrative Code, relating to expanding eligibility for Harbor Assistance Program grants to private owners of harbor facilities:

April 6, 2005
Milwaukee Amtrak Depot, 3rd Floor
Community East Room
433 W. St. Paul Avenue
Milwaukee, WI

1:00 PM

April 7, 2005

Hill Farms State Transportation Building

4802 Sheboygan Avenue

Room 419

Madison, WI

1:00 PM

The hearing locations are accessible to persons with disabilities.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16 (1), 85.095 and 227.11 (2), Stats.

STATUTES INTERPRETED: s. 85.095, Stats., including s. 85.095 (1) (a), (1) (am) and (5), Stats., as amended or created by 2003 Wis. Act 208.

Plain Language Analysis: 2003 Wisconsin Act 208 amended s. 85.095, Stats., providing eligibility to private owners of commercial harbor facilities to make direct grant application to the Wisconsin Department of Transportation's Harbor Assistance Program (HAP) rather than through a public harbor authority under a lease-back arrangement. Applications are solicited semi-annually from Wisconsin's commercial ports to present infrastructure improvement projects for consideration and possible funding by the HAP. The grant applications are reviewed for responsiveness to the requirements of ch. Trans 28, Wis. Adm. Code. They are then ranked and scored by the program's Harbor Advisory Council (HAC), which is comprised of representatives from prescribed constituencies. The HAC, upon due consideration, makes recommendations to the Secretary of the Department of Transportation as to which application(s) should be funded. These recommendations are then forwarded to the Governor for his consideration. The announcement of a grant award is made through the Governor's office.

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

Comparison with Rules in Adjacent States:

Michigan: Harbor assistance in Michigan takes the form of operating and capital assistance to port authorities that

oversee ferryboat operations. The capital assistance is found in a marine capital line item and is limited to \$800,000 per year.

Minnesota: Minnesota created a Port Development Assistance Program in 1996. It is similar to Wisconsin's HAP in that it mixes bonding authority with state dollars to fund infrastructure improvement projects.

Illinois: None

Iowa: None

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: No data or analytical methodology was employed in considering this proposed rule making.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: This proposed rule should not impact small businesses. You may contact the Department's small business regulatory coordinator by phone at (608) 267-3703, or via e-mail at the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

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

Place Where Comments are to be Submitted and Deadline for Submission: The public record on this proposed rule making will be held open until close of business April 14, 2005, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Larry Kieck, Department of Transportation, Bureau of Rails and Harbors, Room 701, P. O. Box 7914, Madison, WI 53707-7914. You may also contact Mr. Kieck by phone at (608) 267-9319. Copies of the proposed rule and alternative formats of the rule are available upon request.

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

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 04-096)

Chapter ATCP 75, relating to retail food establishments.

Employee Trust Funds

(CR 04-104)

Chapter ETF 10, relating to the receipt of facsimile and electronic mail communications by the department.

Gaming

(CR 04-073)

Chapters Game 41-44, relating to charitable gaming.

Health and Family Services

(CR 04-093)

Chapter HFS 196 and Appendix, relating to restaurants and the Wisconsin Food Code.

Insurance

(CR 04-131)

Chapter Ins 5, relating to administrative hearing procedures.

Insurance

(CR 04-133)

Chapter Ins 14, relating to vehicle protection product warranties.

Regulation and Licensing

(CR 04-097)

Chapters RL 4 and 31, relating to criminal background investigations and fingerprinting of applicants.

Transportation

(CR 05-003)

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

Workforce Development

(CR 05-007)

Chapter DWD 290, relating to adjustment of thresholds for application of prevailing wage rates.

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.

**Revenue
(CR 04-049)**

An order affecting ch. Tax 1, relating to electronic funds transfer.
Effective 5-1-05

**Revenue
(CR 04-115)**

An order affecting ch. Tax 2, relating to the dairy investment credit.
Effective 4-1-05

**Revenue
(CR 04-116)**

An order affecting ch. Tax 3, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.
Effective 4-1-05

**Transportation
(CR 04-090)**

An order affecting ch. Trans 135, relating to creation of a school bus oxidation catalyst grant program in certain counties.
Effective 5-1-05

**Transportation
(CR 04-099)**

An order affecting ch. Trans 102, relating to the issuance

of driver licenses and identification cards.
Effective 4-1-05

**Transportation
(CR 04-114)**

An order affecting ch. Trans 302, relating to vehicle marking and affecting small businesses.
Effective 5-1-05

**Transportation
(CR 04-117)**

An order affecting ch. Trans 112, relating to medical standards for driver licensing and general standards for school bus endorsements.
Effective 5-1-05

**Transportation
(CR 04-122)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.
Effective 5-1-05

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

An order affecting ch. VA 14, relating to the determination of interment fees and assessments at the state veterans cemeteries.
Effective 4-1-05

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