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## Emergency rules now in effect

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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](http://www.legis.state.wi.us/rsb/code).*

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### 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

**Extension Through:** September 30, 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

### Health and Family Services (Community Services, Chs. HFS 30—) (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 105 and 107** and creating **ch. HFS 36**, relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community–based psychosocial rehabilitation services under the medical assistance program.

#### Exemption from finding of emergency

2003 Wisconsin Act 33, s. 9124 (10m) authorizes the Department to promulgate these rules using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Similar initial proposed rules were submitted to the Legislative Council Rules Clearinghouse on March 23, 2004.

#### Plain language analysis

The Department through this proposed order establishes the scope of community–based psychosocial rehabilitation services programs, standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community–based psychosocial rehabilitation services under the medical assistance program as authorized by ss. 49.45 (30e) and 51.42 (7) (b), Stats. The Department anticipates that the rules created in this order will complement services provided by existing community support programs under s. 51.421, Stats., by making a fuller array of mental health and substance–use disorder services potentially available to those in need in each county or tribe. The Department further anticipates that this order will allow for the creation of a broad range of flexible, consumer–centered, recovery–oriented psychosocial rehabilitation services to both minors and adults, including elders, whose psychosocial needs require more than outpatient therapy, but less than the level of services provided by existing community support programs. Certified community–based psychosocial rehabilitation services programs that meet the requirements of s. 49.45 (30e), Stats., and this order may be fully or partially funded by medical assistance with county or tribal match. These programs may also coordinate with other existing funding sources.

**Publication Date:** June 29, 2004  
**Effective Date:** July 1, 2004  
**Expiration Date:** November 28, 2004

### Health and Family Services (Health, Chs. HFS 110—)

Rules adopted revising **ch. HFS 119**, relating to operation of the health insurance risk–sharing plan (HIRSP).

#### Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk–Sharing Plan (HIRSP) Board of Governors on April 21, 2004 regarding the rules, as required by s. 149.20, Stats.

#### Plain language analysis

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan (HIRSP). HIRSP provides major medical health insurance for persons who are covered under Medicare because they are disabled, persons who have tested positive for HIV, and persons who have been refused coverage or who cannot get coverage at an affordable price in the private health insurance market because of their mental or physical health conditions. Also eligible for coverage are persons who do not currently have health insurance coverage, but who were covered under certain types of health insurance coverage (called creditable coverage) for at least 18 months in the past. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co–equal twenty percent amounts.

**Publication Date:** June 29, 2004  
**Effective Date:** July 1, 2004  
**Expiration Date:** November 28, 2004

### Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2004.

#### Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish PCF fees is first available in December of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2004.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No.

04–032, will be filed with the secretary of state in time to take effect October 1, 2004. Because the fund fee provisions of this rule first apply on July 1, 2004, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 18, 2004.

**Publication Date:** June 22, 2004  
**Effective Date:** July 1, 2004  
**Expiration Date:** November 28, 2004

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

- 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 Dates:** May 19, 2004

\* On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended these rules effective July 24, 2004. On July 22, 2004, the Joint Committee for Review of Administrative Rules modified its June 24th action by suspending these rules effective August 20, 2004, except for s. NR 1.106 which is immediately suspended.

- 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, it’s 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 Dates:** August 25 and 26, 2004

- Rules adopted amending s. NR 25.09 (2) (b) 2. e., relating to commercial fishing with trap nets in Lake Michigan.

#### Finding of emergency

The use of the emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect public peace, health, safety or welfare. A statement of facts constituting the emergency is: The rule change will clarify the boundaries of the trap net area and thus reduce or prevent potential user conflicts between recreational and commercial fishers in the Manitowoc/Two Rivers area by changing the locations where commercial trap nets may be set from June 28 to Labor Day.

**Publication Date:** June 28, 2004  
**Effective Date:** June 28, 2004  
**Expiration Date:** November 25, 2004  
**Hearing Dates:** August 2, 2004

### Natural Resources (10) (Environmental Protection – Water Regulation, Chs. NR 300–)

- 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:

- 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 Dates:** May 19, 2004

\*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended s. NR 310.17 (4) (a).

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:

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 Dates:** 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:

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 Dates:** 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:

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 Dates:** 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:

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 Dates:** May 19, 2004

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

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:

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 Dates:** May 19, 2004

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

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 Dates:** 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.

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 Dates:** 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:

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 Dates:** May 19, 2004

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

**Finding of emergency**

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

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

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

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

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

**Publication Date:** May 19, 2004  
**Effective Date:** May 19, 2004  
**Expiration Date:** October 16, 2004  
**Hearing Dates:** June 16, 2004

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**Public Instruction**

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

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**Regulation and Licensing**

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

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**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  
**Hearing Dates:** June 18, 2004

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### **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.

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## Scope statements

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### Commerce

#### Subject

*Objective of the rule.* The objective of this rule revision, incorporated into one or more rule packages in chapter Comm 5 and other associated/related chapters, is to address at least the following subjects:

- a) Establish requirements for completion of an approved course for persons with a master plumber–restricted appliance license and who install or modify multipurpose piping systems.
- b) Evaluate and possibly incorporate requirements for the responsibilities for a registered automatic fire sprinkler system tester.
- c) Evaluate and possibly incorporate requirements for continuing education for a registered automatic fire sprinkler system tester.
- d) Create requirements for the licensure of manufactured home installers.
- e) Evaluate and revise license, certification and registration rules as needed to coordinate with other revised codes or programs.
- f) Evaluate and possibly incorporate requirements for the registration of inspection agencies.

#### Policy analysis

Under chapter Comm 5, master plumbers who are responsible for the installation of a multipurpose piping system are required to complete an educational course on the system installation. An oversight did not impose a similar requirement on a person with a master plumber–restricted appliance license who may also install and work on multipurpose piping systems.

Chapter Comm 5 currently does not specify any responsibilities or continuing education requirements for registered automatic fire sprinkler system testers. This code project will evaluate the current activities being performed by registered automatic fire sprinkler system testers and study the possible need for continuing education for renewal of the tester registration.

The Department currently does not have any requirements applying to installers of manufactured homes in Wisconsin. In response to recent federal legislation and as a State Adminstrating Agency (SAA), Wisconsin must develop standards for the installation of manufactured homes, including regulations covering the training and licensing of installers of the homes.

#### Statutory authority

Sections 101.02 (1) and (15) (h) to (j), and 145.14, Stats. Title 42 USC section 5404 requires the federal Department of Housing and Urban Development (HUD) to establish and implement a manufactured home installation program, including the training and licensing of manufactured home installers. HUD’s program will be implemented in states that do not have their own qualifying installation program. If

Wisconsin remains an SAA, the Department must have a qualifying installation program.

#### Staff time required

The Department estimates that it will take approximately 200 hours to develop this rule. This time includes meeting with affected industry groups, then drafting the rule and processing the rule through public hearings, legislative review and 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

There are no existing or proposed federal regulations that address the activities to be regulated by the rules applying to a master plumber–restricted appliance or an automatic fire sprinkler system tester.

There are no existing or proposed federal regulations that address the licensure of manufactured home installers. In the March 10, 2003, Federal Register, the Department of Housing and Urban Development (HUD) published an advanced notice of proposed rulemaking relating to the manufactured housing installation program. This notice requested public comments on the licensure of manufactured home installers. An advisory committee is working with HUD to develop draft model standards that HUD may adopt. After review of the model standards, HUD will publish the standards as proposed federal regulations in the Federal Register. State installation standards must provide protection that equals or exceeds the protection provided by the federal regulations enforced by HUD for its national program.

### Commerce

#### Subject

*Objective of the rule.* The objective of the rule is to update chapter Comm 16 – Electrical Code, including the adoption by reference of the 2005 National Electrical Code (NEC) published by the National Fire Protection Association (NFPA) as NFPA standard No. 70. The rule may also address administration issues related to fees for electrical inspection.

#### Policy analysis

The state electrical code has adopted the NEC by reference since 1972. Currently, the 2002 edition of the NEC is adopted in chapter Comm 16. This rule project will update the state code to the 2005 edition of the NEC, while evaluating the electrical requirements in chapter Comm 16 that add to and modify the requirements in the NEC. This rule project will also review the electrical inspection requirements in chapter Comm 16.

The alternative of not updating chapter Comm 16 would result in the state electrical code not being up–to–date with current nationally recognized standards for the design, installation and operation of electrical conductors and equipment in all buildings and structures.

#### Statutory authority

The statutory authority for chapter Comm 16 is contained in sections 101.63 (1), 101.73 (1), 101.82 (1) and 101.865,

Stats. The statutory authority for electrical inspection fees is contained in section 101.82 (3m) and (4), Stats.

### Staff time required

The department estimates that it will take approximately 400 hours to develop this rule. This time includes re–forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

### Description of all of the entities that will be affected by the rule

The rule will affect any building or structure in which the installation of electrical wiring will be undertaken. The rule will also affect any designer, installer or inspector of electrical wiring.

### Comparison to federal regulations

There are several existing federal regulations that relate to the installation of electrical wiring and equipment. Some of these regulations require compliance with various editions of the National Electrical Code (NEC). An Internet–based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to the activities to be regulated by the rule.

Title 7 CFR Part 1755 – Telecommunications Standards and Specifications for Materials, Equipment and Construction. This regulation in the Department of Agriculture applies to telecommunication wiring and equipment, and requires compliance with the 1993 NEC.

Title 24 CFR Part 3280 – Manufactured Home Construction and Safety Standards. This regulation in the Department of Housing and Urban Development covers electrical systems in manufactured homes, and requires compliance with the 1993 NEC.

Title 29 CFR Part 1910 – Occupational Safety and Health Standards. Subpart S of this regulation in the Department of Labor contains detailed electrical safety requirements that are necessary for the practical safeguarding of employees in their workplaces.

Title 29 CFR Part 1926 – Safety and Health Regulations for Construction. Subpart K of this regulation in the Department of Labor contains detailed electrical safety requirements that are necessary for the practical safeguarding of employees involved in construction work.

Title 30 CFR Part 57 – Safety and Health Standards — Underground Metal and Nonmetal Mines. Subpart K of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground metal and nonmetal mines.

Title 30 CFR Part 75 – Mandatory Safety and Health Standards — Underground Coal Mines. Subpart F of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground coal mines.

An Internet–based search of the 2003 and 2004 issues of the *Federal Register* found a proposed rule action relating to electrical standards in the April 5, 2004 register. The Occupational Safety and Health Administration in the Department of Labor is proposing to revise the general industry electrical installation standard found in Subpart S of 29 CFR part 1910. The requirements in the revised standard draw heavily from the 2002 edition of the NEC.

## Commerce

### Subject

*Objective of the rule.* Under s. 101.1205, Stats., the Department of Commerce is to establish statewide standards for erosion control at building sites for the construction of public buildings and places of employment. Under s. 101.653, Stats., the Department of Commerce is to establish standards for erosion control at building sites for the construction of one– and 2–family dwellings.

Both the United States Environmental Protection Agency and the Wisconsin Department of Natural Resources have recently revised standards that affect erosion control for construction projects disturbing one acre or more. The purpose of revising chapters Comm 60 and Comm 20 and 21 is to coordinate and revise Commerce erosion control standards in light of these other agencies' updates.

### Policy analysis

Chapters Comm 61 to 65, Wisconsin Commercial Building Code, contain the Department's requirements for the design, construction, maintenance, and inspection of public buildings and places of employment. The code includes minimal erosion control requirements for sites that disturb 5 or more acres of land at a commercial building construction site. The rules require the development and the implementation of erosion control plans for such sites.

The erosion control rules under chapters Comm 20–21 for one– and 2–family dwellings were adopted in 1992 and have not been revised since 1997.

The only feasible alternative at this point in time would be a temporary delay in the rule–making process. A delay would potentially place building owners in a state of confusion with standards of various agencies that are not coordinated.

### Statutory authority

Sections 101.02 (1), 101.1205 (1), and 101.653 (2), Stats.

### Staff time required

The Department estimates approximately 300 hours will be needed to develop the rule revisions. This time includes drafting the revisions – in consultation with the Uniform Dwelling Code Council, the Multifamily Dwelling Code Council and the Commercial Building Code Council – and processing the changes through public hearings, legislative review, and adoption. The Department will assign existing staff to develop the rule revisions. Other than reimbursement of incidental transportation and meal expenses for some of the council members, no additional resources will be needed.

### Description of all of the entities that will be affected by the rule.

The proposed rules would affect any person or entity that is involved with a land–disturbing activity under taken in conjunction with the construction of any of the following:

- A new one– or 2–family dwelling.
- A modification to an existing one– or 2–family dwelling the initial construction that was started on or after June 1, 1980.
- A new commercial building that serves as a public building or place of employment.
- A modification to an existing commercial building.

### Comparison to federal regulations

Under the Federal Clean Water Act the Environmental Protection Agency has established erosion control regulations, 40 CFR Parts 9, 122, 123 and 124, for land

disturbing activities involving one or more acres at construction sites. The regulations establish a permitting process under the National Pollutant Discharge Elimination System, NPDES, that may be implemented by state jurisdictions. The regulations require the design, implementation and maintenance of best management practices to improve water quality by reducing pollutants in storm water runoff.

The Department of Natural Resources under ch. NR 216 implements the EPA permitting process mandate in Wisconsin. Under s. NR 216.42 (3), the Department of Natural Resources recognizes commercial building construction falling under Department of Commerce rules as complying with the Wisconsin Pollutant Discharge Elimination System permitting. That recognition in turns helps to achieve the state's implementation of the EPA permitting process for construction site erosion control.

## **Insurance**

### **Subject**

*Objective of the rule.* The proposed rule will revise the OCI rules relating to Medicare supplement, Medicare select, Medicare cost, Medicare replacement, Medicare advantage and Medicare + choice plans to reflect the revisions and requirements under federal law enacted by the Medicare Improvement and Modernization Act of 2003 (HR1).

### **Policy analysis**

The current rules reflect the requirements of federal law as contained in the NAIC models. The revised rules will reflect the changes made by Congress when it adopted HR1 and the revisions made to the NAIC models to reflect those changes. These changes may include removing any prescription drug benefit contained in current and future Medicare supplement coverages after December 31, 2005, in most instances and creating 2 federally–specified Medicare supplement and Medicare select plans with higher cost–sharing provisions than under current plans.

### **Statutory authority**

Sections 600.03 (28p), 601.41, 628.34, 632.81, Stats., provide authority for this rule.

### **Staff time required**

300 hours.

### **Comparison to federal regulations**

There is no federal regulation that addresses the activities regulated by this rule.

## **Insurance**

### **Subject**

*Objective of the rule.* The proposed rule will bring the administrative requirements in compliance with the modifications made to ch. 609, Wis. Stats., by enactment of 2001 Wisconsin Act 16. Modifications are proposed to treat the varying types of health benefit and health care plans in a manner that reflects the unique nature of the insurance product. Modifications will also include consumer protection requirements necessary to ensure minimum access to participating providers for insurance plans marketed as comprehensive health insurance.

### **Policy analysis**

The existing administrative code reflects prior statutory law that may be inconsistent with statutory requirements. The proposed rule will incorporate appropriate oversight of all types of health insurance including requirements that reflect the nature of each product. The Office will establish minimum requirements for access and benefit coverage.

There is no viable alternative to establishing by rule the requirements for these health insurance products. The statutory framework contained within ch. 609 and s. 632.85, Wis. Stats., raise the issues that the proposed rule will address.

### **Statutory authority**

Sections 601.42 (3), 609.20, 609.38, and 632.85, Wis. Stats.

### **Staff time required**

200 hours.

### **Comparison to federal regulations**

The Office is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

## **Public Service Commission**

### **Subject**

The proposed rule will revise provisions in chs. PSC 111 and 112 to specify information to be included in an electric utility construction as a result of statutory changes enacted in 2003 Wisconsin Act 89. Specifically, the rules will include provisions to revise the information needed in a utility application for authority to construct an electric transmission line that may be eligible for expedited review under Wis. Stat. s. 196.491 (3b), and information needed in electric construction applications to demonstrate how transmission line siting priorities were considered and how brownfield sites were considered for electric generation projects.

### **Policy analysis**

*Objective of the rule.* Wisconsin Statutes § 196.491(3b)(b), created by 2003 Wisconsin Act 89, directs the Commission to promulgate rules to specify information to be included in an application to construct a high–voltage transmission line that may be eligible for expedited review by the Commission. To be eligible for expedited review, the construction is limited to adding conductors to existing transmission poles or towers and all related construction activity is to take place in the area of an existing electric transmission line right–of–way.

The Commission currently has detailed rules describing the information to be included in an application for authority to construct electric transmission lines in ch. PSC 111 of the Wisconsin Administrative Code. This rulemaking docket may revise provisions in that chapter and in ch. PSC 112, as necessary to reflect the new expedited procedure. The application information should be sufficient to allow the Commission to make a completeness determination and to also determine if the expedited review process should apply.

Act 89 creates new priorities for siting electric transmission lines. This rulemaking may revise rules that describe the application information required from a utility to demonstrate compliance with the siting priorities in Wis. Stat. s. 1.12 (6). Act 89 also requires utilities to consider using brownfield sites to the extent practicable for siting new electric generation construction projects. This rulemaking

may revise rules that describe the application information required from a utility to demonstrate compliance with this siting consideration required under Wis. Stat. ss. 196.49 (4) and 196.491 (3) (d) 8.

Additionally, this rulemaking will consider other revisions to rules relating to the application process to reflect Act 89 provisions. For example, rule revisions may reflect information needed by the Commission to do a joint environmental review with the Department of Natural Resources and may also reflect terminology or other changes enacted in Act 89.

In summary, Act 89 revised several statutory provisions relating to utility construction projects and agency review of

the applications for authority to proceed with utility construction projects. This rulemaking will revise administrative rules relating to electric construction applications to reflect the revised statutes.

**Statutory Authority**

Wis. Stat. ss. 196.02 (3), 196.491 (3b) (b) and 227.11 (2).

**Staff time required**

The Commission estimates less than 200 hours of staff time will be required to develop these rules. No additional resources are likely to be needed in order to complete this project.

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## Submittal of rules to legislative council clearinghouse

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

### Financial Institutions – Banking

**Rule Submittal Date**

On July 28, 2004, the Department of Financial Institutions – Banking submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule creates ch. DFI–Bkg 46, relating to responsible high cost mortgage lending.

**Agency Procedure for Promulgation**

A public hearing on the rule has been scheduled for August 26, 2004.

**Contact Information**

If you have any questions regarding this matter, please do not hesitate to contact

Mark Schlei  
Deputy General Counsel  
(608) 267–1705

### Natural Resources

**Rule Submittal Date**

On July 26, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule revises chs. NR 340 and 341, relating to regulation of grading on the bank of a navigable waterway.

**Agency Procedure for Promulgation**

Public hearings on the rule have been scheduled for August 31 and September 1 and 2, 2004.

**Contact Information**

Mary Ann Lowndes  
The Bureau of Fisheries Management and Habitat Protection.  
(608) 261–6420

### Natural Resources

**Rule Submittal Date**

On July 26, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule revises ch. NR 320, relating to regulation of bridges and culverts in or over navigable waterways.

**Agency Procedure for Promulgation**

Public hearings on the rule have been scheduled for August 31 and September 1 and 2, 2004.

**Contact Information**

Karl Scheidegger  
The Bureau of Fisheries Management and Habitat Protection.  
(608) 267–9426

### Natural Resources

**Rule Submittal Date**

On July 26, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule revises ch. NR 343, relating to regulation of construction, dredging and enlargement of an artificial waterbody.

**Agency Procedure for Promulgation**

Public hearings on the rule have been scheduled for August 31 and September 1 and 2, 2004.

**Contact Information**

Mary Ann Lowndes  
The Bureau of Fisheries Management and Habitat Protection.  
(608) 261–6420

**Natural Resources****Rule Submittal Date**

On July 26, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule revises ch. NR 345, relating to dredging in navigable waterways.

**Agency Procedure for Promulgation**

Public hearings on the rule have been scheduled for August 31 and September 1 and 2, 2004.

**Contact Information**

Dan Helsel

The Bureau of Fisheries Management and Habitat Protection.

(715) 284–1431

**Revenue****Rule Submittal Date**

On July 16, 2004, the Department of Revenue submitted

a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

The proposed rule revises ch. Tax 61, and in particular s. Tax 61.085, relating to the retailer performance program of the Wisconsin Lottery.

**Agency Procedure for Promulgation**

A public hearing on the proposed rule has been scheduled for August 26, 2004.

**Contact Information**

The Office of the Secretary is primarily responsible for the promulgation of the proposed rule.

If you have any questions, you may contact:

James Amberson

Lottery Division

(608) 267–4840

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## Rule–making notices

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### Notice of Hearing

#### Financial Institutions – Banking

[CR 04–089]

NOTICE IS HEREBY GIVEN That pursuant to ss. 428.210 (1) and 227.11 (2), Stats., and interpreting 428.202 (2), 428.203 (6) and (7), and 428.208, Stats., the Department of Financial Institutions, Division of Banking will hold a public hearing at 345 W. Washington Avenue, 5<sup>th</sup> Floor in the city of Madison, Wisconsin, on the **26<sup>th</sup> day of August, 2004**, at 10:00 a.m. to consider the creation of a rule relating to responsible high cost mortgage lending.

#### Analysis Prepared by the Division of Banking

Statute(s) interpreted: ss. 428.202 (2), 428.203 (6) and (7), and 428.208, Stats.

Statutory authority: ss. 428.210 (1) and 227.11 (2), Stats.

Explanation of agency authority: Pursuant to subch. II, ch. 428, Stats., the department regulates certain high cost mortgage lending.

Related statute or rule: None.

Plain language analysis: The objective of the rule is to respond to the promulgation authority and requirements of 2003 Act 257. The rule provides certain definitions, provides guidelines regarding a customer's ability to repay a covered loan, establishes requirements regarding verification of a borrower's ability to repay a high risk home loan, and sets forth criteria for related disclosure forms.

Summary of and preliminary comparison with existing or proposed federal regulation: 12 CFR 226.32 contains requirements for certain closed–end home mortgages, including disclosures and limitations, and sets forth definitions and criteria for applicability.

Comparison with rules in adjacent states: Michigan and Illinois have comparable regulations; Iowa and Minnesota do not.

Summary of factual data and analytical methodologies: The department reviewed comparable statutes and regulations in Michigan and Illinois.

Analysis and supporting documentation used to determine effect on small business: The rule does not have a significant economic impact on small business.

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

Effect on small business: The rule does not have a significant economic impact on small business. The rule adds no requirements beyond those already set forth in statute.

Enforcement: ss 428.209, and 428.210 (2) and (3), Stats.

#### 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.

#### Initial Regulatory Flexibility Analysis

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

#### Contact Person

A copy of the proposed rule and fiscal estimate may be obtained from, and written comments regarding the proposed rule may be submitted to, 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. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institutions' website, [www.wdfi.org](http://www.wdfi.org). Comments may also be submitted via the department's website contact page, e–mail the secretary. All comments must be received prior to the hearing set for this rule.

### Notice of Hearings

(revised from 7–31–04 Register)

#### Natural Resources

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

[CR 04–084]

[CR 04–085]

[CR 04–086]

[CR 04–087]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12, 30.123 and 227.11 (2), Stats., interpreting ss. 30.12, 30.123 and 30.206, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 320, Wis. Adm. Code, relating to the regulation of bridges and culverts in or over navigable waterways. Chapter NR 320 defines and describes design standards for two types of culvert replacements that qualify for exemptions in all waters other than “areas of special natural resource interest” (ASNRIs). The rule also establishes a general permit for clear span bridges over a navigable water less than 35 feet. Department staff will work with stakeholders to develop two additional general permits: non–exempt culvert replacements over a navigable water less than 35 feet in width and bridges supported only by culverts.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 30.19 (1d), (1g) (c), (1m), (3r) (a) 2. and (4) and 227.11 (2), Stats., interpreting ss. 30.19 (1d), (1g) (c), (1m), (3r) (a) 2. and (4), Stats., the Department of Natural Resources will hold public hearings on the repeal of ss. NR 340.02 (2), (8) and (19) and the creation of ch. NR 341, Wis. Adm. Code, relating to regulation of grading on the bank of a navigable waterway. Proposed ch. NR 341 determines what constitutes a “bank” for priority navigable waterways and other navigable waterways; establishes criteria to define those activities which need a grading permit, and specifies conditions under which general or individual permit coverage is required. The proposed rule recognizes the overlap between the requirements and standards of a ch. 30 grading permit and a ch. NR 216 stormwater construction site discharge permit. This rule specifies permit requirements necessary to protect public health, safety, welfare, rights and interest and to protect riparian landowner rights and property. Specifically, the proposal defines “bank” for priority navigable waterways and other navigable waterways, establishes a protocol for measuring the “bank”, establishes two general permits for grading projects, and deletes obsolete definitions of “bank”, “grade or otherwise remove” and “topsoil” from ch. NR 340.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 30.19 (1g) (a) and (am), (1m), (3r) (a) 1. and (4), 30.206 and 227.11 (2), Stats., interpreting ss. 30.19 (1g) (a) and (am), (1m), (3r) (a) 1. and 30.206, Stats., the Department of Natural Resources will hold public hearings on the repeal of ss. NR 340.02 (18) and (20) and the creation of ch. NR 343, Wis. Adm. Code, relating to the regulation of construction, dredging and enlargement of an artificial water body. Proposed ch. NR 343 recognizes artificial water bodies constructed for the purpose of meeting the performance standards under ch. NR 151 and allows such artificial water bodies to be eligible for a general permit under this chapter with several design standards. The proposed rule establishes general permits for three activities: wildlife ponds, landscape ponds and stormwater ponds. Proposed ch. NR 343 also clarifies jurisdiction for ponds located within 500 feet of a navigable waterway, and specifies permit requirements necessary to protect public health, safety, welfare, rights and interest and to protect riparian landowner's rights and property.

The proposed permanent rule differs from the current emergency rule in that it modifies the definition of "stormwater management pond" to clarify timeframe and purpose, clarifies that any constructed portion of a pond is subject to the 500 foot jurisdiction, adds general permit conditions to prevent fish entrapment and exclude mining, makes conditions more consistent for general permits and deletes conditions that restricted unconnected ponds within 500 feet of a public rights feature.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 30.20 (1), (1k), (1t) and (2), 30.206 and 227.11 (2), Stats., interpreting ss. 30.20 (1), (1g), (1k), (1m), (1t) and (2) and 30.206, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 345, Wis. Adm. Code, relating to dredging in navigable waterways. Proposed ch. NR 345 cross–references the rules for exempt structures where the standards for associated dredging are set. It also sets standards under which hand–held dredging activities are exempt which include: not in an area of special natural resource interest or a public rights feature; may not contain hazardous substances; dredged material disposed of in uplands or approved solid waste facility, erosion control best management practice utilized; and not more than 4 cubic yards of material removed or displaced. Proposed ch. NR 345 also establishes general permits for installation of utility lines and maintenance dredging of up to 3000 cubic yards in established drainage districts. The standards are similar to those required for exemptions above but have some additional standards specific to the activity being conducted including compliance with DATCP rules for drainage districts.

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

a. Types of small businesses affected: Building contractors, small–scale land developers and consultants who provide plans or designs for projects along public navigable waterways.

b. Description of reporting and bookkeeping procedures required: The person responsible for a project in or along a lake or stream must develop plans and occasionally conduct some analyses, submit an application, and observe the site during construction. For some activities, photographs of the completed project are required.

c. Description of professional skills required: Map reading, basic computer use, mathematics, drawing to scale, and clear writing.

While it may be helpful or efficient, hiring a consulting firm is not necessary to comply with these requirements. Many projects are planned and conducted by individuals with no professional background. If the site has particularly challenging features, such as steep slopes, erosive soils, highly variable features or if the intensity of neighboring uses are likely to create controversy, then professional ecological or engineering expertise may be helpful.

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 Department will hold an open house from 3:00 p.m. to 5:00 p.m. prior to each hearing. Department staff will be available to answer questions regarding the proposed rules.

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

Tuesday, **August 31, 2004**, at 6:00 p.m.

**Video conference participation** will be available at:

Rooms 332 and 335, Pyle Center, UW–Madison, 702 Langdon Street, Madison

Room 130, Chippewa Valley Tech College, Gateway Campus, 2320 Alpine Road, Eau Claire

Rooms 271 and 276, UW–Washington Co., 400 University Dr., West Bend

Wednesday, **September 1, 2004** at 6:00 p.m.

**Video conference participation** will be available at:

Rooms 327 and 227, Pyle Center, UW–Madison, 702 Langdon Street, Madison

Auditorium, Wis. Indianhead Tech. College, 600 N. 21 Street, Superior

Thursday, **September 2, 2004** at 6:00 p.m.

**Video conference participation** will be available at:

Rooms 332 and 335, Pyle Center, UW–Madison, 702 Langdon Street, Madison

Room SC132, Northeast Tech College, 2740 W. Mason Street, Green Bay

Room 102, Wing Communication Bldg., UW–La Crosse, 1725 State St., La Crosse

Science D279, UW–Stevens Point, 1101 Reserve St., Stevens Point

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

The proposed rules may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Ms. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 17, 2004. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Lund.

## **Notice of Hearing**

### **Revenue**

#### **[CR 04–083]**

Notice is hereby given that, pursuant to ss. 227.11 (2) (a) and 565.10 (14) (b) 3m., Stats., and interpreting ss. 565.02 (4) (g) and 565.10 (14) (b) 3m., Stats., the Department of Revenue will hold a public hearing at the time and place indicated below to consider the proposed permanent rule order revising ch. WGC 61, relating to general Lottery retailer provisions, the Wisconsin Lottery's retailer performance program, both potentially affecting small business.

#### **Hearing Information**

The hearing will be at 11:00 a.m. on Wednesday, **August 26th 2004**, and will be held at the Wisconsin Lottery Office located within the Department of Revenue Building at 2135 Rimrock Road, Madison, WI.

Handicap access is available at the main front entrance of the building.

#### **Analysis Prepared by the Department of Revenue**

Statutory authority: ss. 227.11 (2) (a) and 565.10 (14) (b) 3m., Stats.

Statutes interpreted: ss. 565.02 (4) (g) and 565.10 (14) (b) 3m., Stats.

The proposed order is intended to improve ch. Tax 61. The Wisconsin Lottery is proposing an amendment to the rule authority for the Retailer Performance Program (RPP). Administratively, it is apparent that under the current rules, some retailers could receive payment for performance which is not completely consistent with the intent of the program. These proposed changes will address those issues in a manner consistent with current program standards regarding eligibility, qualification and payment, and are expected to improve the overall return on investment. Additionally, under this rule order there are technical changes being proposed which update Lottery operations of retailer contracting, ticket security and product definition.

Statutory small business review: ss. 227.114 (2), Stats.

Consistent with s. 227.114 (2) (c), Stats., the proposed order is intended to implement technical changes which allow Wisconsin Lottery retailers to more easily and simply satisfy requirements of the Lottery's retailer contract. Specifically, Sections 10 through 22 of this rule order are examples of improvements to small business compliance, and affecting small businesses.

None of the proposed changes generate increased cost of compliance to Lottery retailer small businesses, and in some cases may reduce slightly some operating costs.

Overall the changes to the Retailer Performance Program in particular may improve the likelihood that a small business could earn increased revenues from the sale of lottery products.

Consistent with s. 227.114 (2) (d), Stats., the proposed order is intended to clarify the expected sales performance of retailers who wish to earn incentives within the Retailer Performance Program (RPP) under s. Tax 61.085. Within this rule order, from Section 24 onward, the remaining sections re-align the RPP consistent with the expectations of the Legislative Audit Bureau, as represented in Audit Report 02–9, May 2002.

Consistent with the review required by 2003 Wisconsin Act 118, there is no relevant outstanding federal legislation that would require comparative review.

Consistent with the review required by 2003 Wisconsin Act 118, the Wisconsin Lottery examined the administrative rules in other adjacent states, all of which offer a lottery. Adjacent states tend to codify less lottery retailer small business policy into administrative rules. Therefore, the Wisconsin Lottery's administrative rules are typically more comprehensive and detailed than adjacent states. Further, the Lottery has discussed retailer business policies with lottery management from other states, to identify any best practices that have impact upon small business lottery retailers. In particular, industry publications such as La Fleur's 2004 World Lottery Almanac, by TFL Publications, cover the topic of retailer compensation nation-wide in some detail. It appears that each state uses unique rules and guidelines for interaction with small business, and often mixes administrative rules, feature and procedure documents, and policy documents in ways that encourage sound small business practices.

Consistent with s. 227.114 (4) (b), Stats., the Lottery has sought and received feedback from the Lottery retailer small business community, by directly contacting representative trade associations as well as corporate and independent retailer representatives. Specific changes to the program have been discussed, both in terms of the changes to the utilization of the funding, as well as regarding the details of program eligibility and qualification. In particular, Sections 35, 38, 40, 42 and 45 of this order were highlighted and reviewed. The responses thus far have been generally positive, with few negative comments.

Consistent with s. 227.114 (4) (b), Stats., the Wisconsin Lottery has also conducted focus group research methodology to perform analysis of these proposed changes to small business rules. Lottery retailers attended two small-group discussions conducted by the Lottery, regarding the proposed changes to the Lottery business model. These sessions, on April 28th and May 4th of 2004, were recorded on videotape. Additional discussions were incorporated into retail industry conferences, as well as regularly scheduled meetings with key corporate and independent retail managers. These groups were given one-to-one discussion time, which included those proposed administrative rule changes that were considered potentially restrictive to small business. For example, the language proposed under Section 45 of this rule order, where notice for short-term incentives would be shortened from 21 to 14 days, was discussed with retailers. Retailers generally considered this change as positive, because the current 21-day notice is often too long; retailers often forget about the program announcement, as it happened too many days prior to the event. The Lottery also produced an article in its monthly retailer newsletter, and plans to do follow-up discussions regarding the changes prior to the implementation of the rule changes.

The resultant feedback was compared to the best-practices review mentioned previously, as well as to the Legislative Audit Bureau's report. Specifically, Sections 10 to 22 of this rule order include many changes to lottery retailer requirements that were a direct result of the feedback from these discussions.

SECTION 1. Tax 61.02(2) is amended, to clarify the definition of "commencement of a game".

SECTION 2. Tax 61.02(3) is amended, to clarify the definition of "lottery ticket".

SECTION 3. Tax 61.02(3)(a) is created, to expand the definition of "lottery ticket" where it applies to instant scratch ticket games.

SECTION 4. Tax 61.02(3)(b) is created, to expand the definition of "lottery ticket" where it applies to on–line ticket games.

SECTION 5. Tax 61.02(3)(c) is created, to expand the definition of "lottery ticket" where it applies to break–open ticket games.

SECTION 6. Tax 61.02(4) is amended, to bring the definition of "low tier prize" up to date with current industry standards of product development.

SECTION 7. Tax 61.02(8) is renumbered Tax 61.02(9), and is amended to remove language that is cumbersome, and to clarify the definition.

SECTION 8. Tax 61.02(8) is created, to define the term "Validation".

SECTION 9. Tax 61.02(9) is renumbered Tax 61.02(10), and is amended to remove a repeated word.

SECTION 10. Tax 61.04(1)(b) is repealed and recreated to allow lottery retailers the ability to affirm the security measures they are expected to take to protect Lottery tickets, products and equipment.

SECTIONS 11, 16, 17 and 20. Tax 61.04(1)(c), Tax 61.08(11)(h), (12) and (15), are repealed, as the language in each is no longer necessary for appropriate Lottery operations.

SECTIONS 12, 15 and 23. Tax 61.04(1)(d), Tax 61.08(11)(c) and (21)(c) are amended, with language which clearly and consistently states the performance expectations which a retailer must achieve to contract with the Lottery to sell the Lottery's products.

SECTION 13 and 14. Tax 61.05(1) and (2) are amended, to provide the Lottery the authority to accept irrevocable letter of credit in addition to fidelity bond. An irrevocable letter of credit is generally less expensive and less cumbersome for a retailer to obtain, and can be claimed directly by the Lottery avoiding additional administrative costs currently associated with the collection of overdue retailer debt.

SECTION 18. Tax 61.08(13)(a) is amended, to improve customer service by providing the authority necessary to account for unsalable tickets returned for credit.

SECTION 19. Tax 61.08(13)(c) and (d) are created, to provide specific conditions for the return for credit of unsalable tickets, and for tickets returned consistent with a settlement date declared by the administrator, respectively.

SECTION 21. Tax 61.08(16)(a) is amended, to clarify language that allows for the industry practice of cross–redemption, which is the redeeming of lottery tickets at a location different from where the tickets were purchased. This language was inadvertently omitted from previous proposed rule orders regarding Chapter Tax 61.

SECTION 22. Tax 61.08(17)(a) is repealed and recreated as Tax 61.08(17)(a) and (a)1., 2., and 3., to provide for reasonable circumstances under which the Lottery administrator may allow the return of break–open tickets

sold to retailers. This language is similar to language under Chapter Tax 63.06(11)(c), which provides for returns of break–open tickets by non–profit organizations.

SECTION 24. Tax 61.085(2)(a) is amended, to broaden the definition of the term "Appropriate sales history" consistent with changes in the RPP which will make both quarterly and annual payments.

SECTION 25. Tax 61.085(2)(b) is renumbered Tax 61.085(2)(c).

SECTION 26. Tax 61.085(2)(b) is created, to create the definition for comparable history fiscal year, consistent with the changes to the RPP.

SECTION 27, 28 and 29. Tax 61.085(2)(c), (d) and (e) are renumbered Tax 61.085(2)(d), (e) and (g).

SECTION 30. Tax 61.085(2)(f) is renumbered Tax 61.085(2)(h) and amended, to clarify language that improves the definition consistent with the intent of the program improvements.

SECTION 31. Tax 61.085(2)(f) is created, to define instant ticket for purposes of the retailer performance program.

SECTIONS 32, 33 and 34. Tax 61.085(2)(g), (h), and (i) are renumbered Tax 61.085(2)(i), (j) and (k), respectively.

SECTION 35. Tax 61.085(4)(a)1. is amended, to provide caps on funding for winning ticket payments, so that a single drawing of a winning number prize level will not cause payments in excess of those intended.

SECTION 36. Tax 61.085(4)(a)2. is amended, to clarify language for payment of winning tickets from TV show entries.

SECTION 37. Tax 61.085(4)(b) is amended, to clarify language that supports sales goal performance payments.

SECTION 38. Tax 61.085(4)(b)1. is renumbered Tax 61.085(4)(b)1.a. and is amended, to reduce the funding available for quarterly payments from 10% to up to 2% of sales increases of instant tickets, consistent with overall changes to the retailer performance program (RPP).

SECTION 39. Tax 61.085(4)(b)1. is created, to clarify quarterly payments of the RPP.

SECTION 40. Tax 61.085(4)(b)2. is renumbered Tax 61.085(4)(b)1.b., and is amended, to reduce the funding available for quarterly payments from 10% to up to 2% of sales increases of non–jackpot terminal–generated tickets, consistent with overall changes to the retailer performance program (RPP).

SECTION 41. Tax 61.085(4)(b)2. is created, to provide for authority to make fiscal year sales goal payments, consistent with overall changes to the RPP.

SECTION 42. Tax 61.085(4)(b)2.a. is created, to provide authority for fiscal year performance payments made for instant ticket sales goals.

SECTION 43. Tax 61.085(4)(b)2.b. is created, to provide authority for fiscal year performance payments made for non–jackpot terminal–generated ticket sales goals.

SECTION 44. Tax 61.085(4)(b)3. is renumbered Tax 61.085(4)(b)2.c. and amended, to provide authority for fiscal year performance payments made for jackpot terminal–generated ticket sales goals.

SECTION 45. Tax 61.085(4)(c) is amended, to remove or improve restrictions on the offering of short–term performance incentive payments, consistent with overall changes to the RPP.

SECTIONS 46, 47 and 48. Tax 61.085(4)(c)3., 4. and 6. are amended, to clarify the length of time, the amount of funding and the use of industry merchandise as payment, for short–term incentives.

SECTIONS 49, 50, 51 and 52. Tax 61.085(4)(d), and (d)1., 2. and 3. are created, to provide authority and control for the proper procurement and accounting of industry merchandise as payment for short–term incentives.

SECTION 53. Tax 61.085(5)(a) is amended, to clarify how a retailer will qualify for annual sales goals payments.

SECTION 54. Tax 61.085(5)(a)1. is created, to provide for secondary qualification for annual sales goal payments.

SECTION 55. Tax 61.085(5)(b) is amended, to clarify how a retailer will qualify for quarterly sales goals payments.

SECTIONS 56, 57 and 58. Tax 61.085(5)(b)1., 2. and 3. are amended, to provide for secondary qualification for quarterly sales goal payments.

SECTION 59. Tax 61.085(6) is amended, to list the proper sequence of incentive payments for the retailer performance program.

SECTION 60. Tax 61.085(6)(a) is renumbered Tax 61.085(6)(e)1.

SECTION 61. Tax 61.085(6)(a) is created, to list winning ticket incentives.

SECTION 62. Tax 61.085(6)(b) is renumbered Tax 61.085(6)(e)3., and is amended, to focus the language around quarterly payment activity.

SECTION 63. Tax 61.085(6)(b) is created, to list short–term incentives.

SECTION 64. Tax 61.085(6)(c) is repealed and recreated, to remove language which becomes redundant, and to list quarterly sales incentive payments.

SECTIONS 65, 66, 67 and 68. Tax 61.085(6)(d), (e), (e)2. and (e)4. are created, to list quarterly sales goals and annual sales goals, and to identify the appropriate manner of payments for the retailer performance program, respectively.

SECTION 69. Tax 61.085(7) is amended, to remove language that unintentionally limits the authority of the administrator in situations where an adjustment of RPP payments is fiscally necessary.

#### **Initial Regulatory Flexibility Analysis**

This order does not have a significant economic impact on a substantial number of small businesses, and does not

generate new costs for any small businesses. This order does simplify and clarify a number of small business processes between the state and lottery retailers, and also improves the retailer performance program in ways which make the expected performance clearer and more consistent with state policy and lottery retailer activities.

#### **Fiscal Estimate**

Under current law, the Lottery pays retailers basic compensation of 5.5% of the sales price of scratch–off tickets and 6.25% of the sales price of on–line tickets. The law also allows the Wisconsin Lottery to pay additional compensation incentives to retailers that exceed performance goals. The amount of additional compensation incentives and the performance goals are set by administrative rule, ch. Tax 61, which provides for the Retailer Performance Program.

In general, the proposed rule updates definitions and procedures for new lottery products and these rule changes do not have a fiscal effect.

A fiscal effect may result from the proposed changes to the Retailer Performance Program. According to the Lottery, payments of additional compensation incentives to underperforming retailers would decrease by a total of about \$400,00 under the proposed rule. However, the decrease in incentive payment would be offset in part by payments of new incentives allowed under the proposed rule. To the extent the proposed rule changes to the Retailer Performance Program result in a net decrease in Lottery administrative costs, Lottery–funded property tax relief would increase, up to about \$400,00.

Administrative costs would be absorbed by the Department, except for Retailer Performance Program costs as discussed above.

#### **Comments on the Rule**

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than Friday, September 3rd, 2004, which is no less consideration as testimony presented at the hearing.

#### **Contact Person**

James Amberson  
Department of Revenue  
2135 Rimrock Road  
P.O. Box 8941  
Madison, WI 53708–8941  
608 267–4840

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## Cancellation of rule–making hearings

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### Notice of Cancellation of Hearings

#### Natural Resources

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

The Department of Natural Resources has cancelled the hearings announced in the July 31, 2004, Wisconsin Administrative Register on page 23. The hearings were to consider the revision of ch. NR 326, relating to the regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways. Hearings on these proposed rules will be scheduled at a later date.

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## Submittal of proposed rules to the legislature

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

**Commerce****(CR 04–016)**

Chapters Comm 61 to 65, relating to construction of public buildings and places of employment.

**Commerce****(CR 04–035)**

Chapters Comm 2, and 81 to 87, relating to fees and uniform state plumbing code.

**Health and Family Services****(CR 04–025)**

Chapter HFS 34, relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services and other conditions of coverage of community–based psychosocial service under the medical assistance program.

**Health and Family Services****(CR 04–040)**

Chapters HFS 10, 13, 52, 54, 55, 57, 59, 83, 94, 124, 131, 132, 134, 136 and 252, relating to minor and technical changes to a variety of DHFS administrative rules.

**Health and Family Services****(CR 04–050)**

Chapter HFS 109, relating to the SeniorCare program.

**Health and Family Services****(CR 04–051)**

Chapters HFS 152, 153 and 154, relating to the provision and reimbursement of services under the Wisconsin chronic disease program.

**Health and Family Services****(CR 04–053)**

Chapters HFS 132 and 134, relating to nursing homes and facilities for the developmentally disabled.

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## Rule orders filed with the revisor of statutes bureau

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*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.*

### **Natural Resources (CR 02–046)**

An order affecting ch. NR 2, relating to department procedures for administrative hearings.  
Effective 10–1–04.

### **Natural Resources (CR 04–011)**

An order affecting chs. NR 10 and 15, relating to hunting and trapping regulation changes.  
Effective 11–1–04 and 4–1–05.

### **Natural Resources (CR 04–012)**

An order affecting chs. NR 20, 23 and 26, relating to fishing on the inland, outlying, and boundary waters of Wisconsin.  
Effective 3–1–05 and 4–1–05.

### **Natural Resources (CR 04–014)**

An order affecting ch. NR 50, relating to the snowmobile trail grant program.  
Effective 10–1–04.

### **Natural Resources (CR 04–015)**

An order affecting ch. NR 168, relating to the administration of the brownfield site assessment grant program.  
Effective 10–1–04.

### **Transportation (CR 04–029)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.  
Effective 10–1–04.

### **Transportation (CR 04–034)**

An order affecting ch. Trans 1, relating to the elderly and disabled transportation assistance to counties.  
Effective 10–1–04 and 1–1–06.

### **Transportation (CR 04–042)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.  
Effective 10–1–04.

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## Notice of suspension of an administrative rule

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The Joint Committee for the Review of Administrative Rules met in Executive Session on July 21, 2004 and adopted the following motions:

**Emergency Rule NR 1.1016, 1.05, 1.06 and 1.07 Relating to Natural Resources Board policies on protection and management of public waters.**

1. That the Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 1., 3., and 6. and 227.26 (2) (d), Stats., suspends s. NR 1.016.

**Motion Carried: 9 Ayes, 1 Noes**

2. That the Joint Committee for Review of Administrative Rules modifies its June 24, 2004 motion relating to emergency rule ch. NR 1 by: (a) removing s. NR 1.016 for separate consideration and (b) providing that the suspension of emergency rule ch. NR 1, except for the provisions of s. NR 1.016, will take effect on August 20 2004.

**Motion Carried: 10 Ayes, 0 Noes**

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