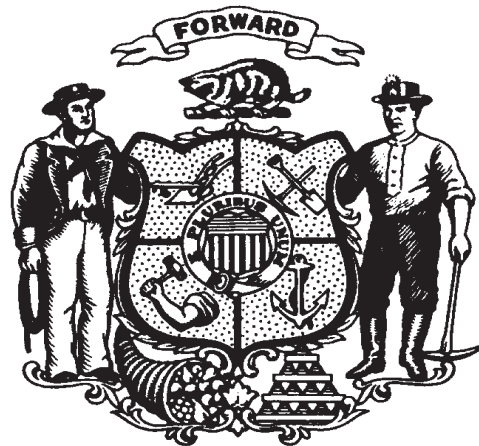


# Wisconsin Administrative Register

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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**

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

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## Gaming

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

### Finding of emergency

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

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

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

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

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

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

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

### Finding of emergency

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

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

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

### Finding of emergency.

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

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

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

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

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards



as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

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

Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

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

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

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**Natural Resources (10)**

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

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

**Finding of emergency**

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

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

- 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.

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  
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**Hearing Date:** May 19, 2004

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

#### **Finding of emergency**

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

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

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  
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**Hearing Date:** May 19, 2004

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

#### **Finding of emergency**

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

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

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

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

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

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

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

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

#### **Finding of emergency**

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

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

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

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

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

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

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

**Finding of emergency**

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

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

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

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

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

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

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

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

**Finding of emergency**

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

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

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

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation.



Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

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

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

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

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

#### **Finding of emergency**

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

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

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

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

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

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

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

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

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 Date:** 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 Date:** June 16, 2004  
 (See Notice This Register)

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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 Date:** June 18, 2004  
 (See Notice This Register)

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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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### Employee Trust Funds

The Department of Employee Trust Funds (DETF) gives notice pursuant to s. 227.135, Stats., that it proposes to modify an existing administrative rule, specifically s. ETF 10.12, and create or amend other provisions of the administrative code as necessary to accomplish the goals of this proposed administrative rule change.

#### Subject

The proposed rule revision would change the method used to value accounts of separate retirement systems in the retirement trust fund.

*Objectives of the rule.* The main purpose of the proposed rule revision in s. ETF 10.12 is to change the formulas used to value investments of separate accounts to be consistent with recommended financial industry practice. The revision would also fine tune transaction definitions to facilitate the most effective implementation of the new formulas. For example, the revision might redefine deposits to allow deposits on the last day of the month rather than the first day.

#### Policy analysis

Section ETF 10.12 currently prescribes an investment valuation formula that is not totally consistent with recommended practice or conducive to establishing levels of process quality assurance. For example, the current rule does not enable a rate of earnings comparison between the separate accounts with the rate of earnings of the trust fund as a whole.

Since the existing rule was first implemented, departmental experience and guidance from financial experts of the State of Wisconsin Investment Board have identified ways to improve the valuation method and to add procedures that will help ensure complete and accurate valuations.

#### Policy alternatives to the proposed rule

Take no action.

DETF could allow the present administrative rule to remain in effect, but considers this undesirable. Existing rule allows neither full compliance with recommended practices of the financial industry, nor efficient, effective quality assurance of the valuations.

Its anticipated effect is mainly upon the Department of Employee Trust Funds, the State of Wisconsin Investment Board, the Retirement Trust Fund, and separate retirement systems participating in the Retirement Trust Fund.

#### Statutory authority

Sections 40.03 (2) (i) and 227.10 (1), Stats.

#### Staff time required

The Department estimates that state employees will spend 20 hours developing this rule.

#### Description of all entities affected by the rule.

Its anticipated effect is mainly upon the Department of Employee Trust Funds, the State of Wisconsin Investment Board, the Retirement Trust Fund, and separate retirement systems participating in the Retirement Trust Fund.

### Comparison to federal regulations

There appear to be no existing or proposed federal regulations directly affecting the valuation of investments made by separate retirement systems into the Retirement Trust Fund.

### Employee Trust Funds

The Department of Employee Trust Funds (DETF) hereby gives notice pursuant to s. 227.135, Stats., that it proposes to modify an existing administrative rule, specifically ss. ETF 10.30 (5) (b) and (8), 10.75 (2) (a), and 10.82 (2), and create or amend other provisions of the administrative code as necessary concerning the receipt of documents by facsimile (fax).

#### Subject

This proposed rule change is concerned with the Department's acceptance of documents, including benefit application forms and similar documents, by fax without requiring the filing of the original document.

*Objectives of the rule.* The proposed rule change is to codify a general policy that receipt of a document via fax is functionally identical to receipt of that document by other available means, such as mail delivery or delivery by hand, for purposes of administering benefits under ch. 40 of the Wisconsin Statutes.

#### Policy analysis

In 1995 the DETF promulgated s. ETF 10.82 for the purpose of clarifying when documents were received by, and filed with, the Department. Eligibility for benefit and other determinations related to benefits administered by the Department are often affected by the date the document is received. The rule also allowed for documents to be filed via fax transmission, in order to preserve the earliest possible date of receipt, and it included several additional requirements, including that the original of the document be provided to DETF within 14 days so that it could be added to the participant's file for future reference. The rule expressly applied only to forms listed in the rule.

The purpose of the 1995 rule was to allow a person to "lock in" an earlier date of receipt by DETF than might be possible if the applicant relied only on mail or other delivery methods that are less immediate than electronic transmission.

Since then, an occasional question has arisen about whether the rule prohibited receiving documents by fax if the document was not specifically listed in the rule or whether DETF had technically "received" a document at all if it arrived by fax but some criteria of the rule had not been fully satisfied.

Some administrative rules written since 1995 have included specific authorization to receive a particular document by fax. See ss. ETF 10.30 (5) (b) and (8) and 10.75 (2) (a) for examples. The Secretary has determined that a general policy, rather than a piecemeal approach, can and should now be codified.

Beginning in 1997, DETF has optically imaged participant files to computer instead of retaining paper copies of documents. Since then, for DETF record keeping purposes, a fax is functionally identical to the original document.

The Secretary of DETF has decided to propose a rule expressly acknowledging that DETF may receive almost any document by fax. If, during the course of the rule-making process, any document is identified for which this general policy is inadvisable, the rule will identify that document as an exception to the general rule. For example, one exception to this policy will be a document, such as some powers-of-attorney, which expressly state that a copy may not be relied upon to the same extent as the original. Court orders may be another exception, unless received directly from the signing judge.

#### **Policy alternatives to the proposed rule**

- (1) Take no action.

DETF could allow the present administrative rule to remain in effect as is, but considers this undesirable. The existing rule has the potential for creating confusion about whether DETF has ever technically “received” a document listed in the rule if, for example, it is faxed to a different DETF fax machine than listed in the rule, or if the original of the document is not supplied within 14 days, or if some other criteria in the rule is not fully satisfied. The documents listed in the rule do not include every possible document DETF might be offered, so questions have arisen about the rule’s impact, if any, on non-listed documents.

- (2) Impose greater restrictions on use of fax documents.

DETF considers it undesirable to unnecessarily or unreasonably limit use of technology or available means of transmitting documents and information between DETF and persons having an interest in benefits administered by this Department. While legitimate concerns about privacy, security and accuracy must be addressed, these concerns do not outweigh the purpose of improving DETF responsiveness to its clients by allowing for more rapid forms of communication.

#### **Statutory authority**

Sections 40.03 (2) (i) and 227.10 (1).

#### **Staff time required**

The Department estimates that state employees will spend 20 hours developing this rule.

#### **Description of all entities affected by the rule.**

The rule is not regulatory. Its anticipated effect is mainly upon the Department, but any person or entity who might voluntarily choose to communicate with DETF by using a fax machine may take advantage of the proposed rule. It is anticipated that these persons will mainly be participants in the Wisconsin Retirement System or their authorized representatives or beneficiaries.

#### **Comparison to federal regulations**

There appear to be no existing or proposed federal regulations directly affecting the submission of documents to DETF by fax, or DETF’s ability to accept fax documents.

### **Financial Institutions – Banking**

#### **Subject**

Section DFI—Bkg 74.09 (5) relating to authorizations to consolidate accounts.

#### **Policy analysis**

The objective of the rule is to create s. DFI—Bkg 74.09 (5). The purpose of the rule is to set forth requirements for an authorization received by a licensee from a creditor for consolidating accounts. The rule establishes criteria regarding the form and content of the authorization.

#### **Statutory authority**

Sections 218.04 (7) (d) and 227.11 (2), Stats.

#### **Staff time required**

80 hours.

#### **Comparison to federal regulations**

None.

### **Health and Family Services**

#### **Subject**

The Department proposes to develop a rulemaking order that modifies ch. HFS 119 regarding the Wisconsin Health Insurance Risk-Sharing Plan (HIRSP). Modifications to ch. HFS 119 need to reflect the annual actuarial update of HIRSP policyholder health insurance premiums and insurer and provider assessments for the time period beginning July 1, 2004.

#### **Policy analysis**

HIRSP is a longstanding program for high medically at-risk citizens. The Department has amended ch. HFS 119 each state fiscal year since 1998. This proposed rulemaking order involves the HIRSP update for the state fiscal year beginning July 1, 2004. The amended rule focuses on policyholder premiums and insurance and provider assessments. Rule changes occur annually in accordance with updated HIRSP costs and funding requirements, statutory requirements, Wisconsin’s 2003–05 biennial budget, generally accepted actuarial principles, and the actions taken by the HIRSP Board of Governors at its April 21, 2004, meeting. By law, the HIRSP Board is diverse including consumers, insurers, health care providers, small business and other affected parties.

The specific entities affected by this rule are HIRSP policyholders, Wisconsin’s health insurers who are required by law to fund a portion of HIRSP’s costs, and health care providers who serve HIRSP policyholders and who are also required to fund a portion of HIRSP’s costs. The larger effect of this rule involves the health care marketplace. HIRSP increases the number of Wisconsin citizens with health insurance. HIRSP offers health care insurance to high medically at-risk citizens, at rates subsidized by health care insurers and providers of service. Wisconsin citizens are helped because they can obtain otherwise unavailable health insurance coverage. This allows them to improve their health status. Health insurers find themselves unable to serve this marketplace niche and health care providers receive additional customers.

The effect of the amended rule will be to ensure compliance with state statutes as well as Department coverage of ongoing HIRSP costs for state fiscal year 2005. Without this annual update, HIRSP costs will soon exceed HIRSP revenues.

#### **Comparison to federal regulations**

There are no existing or proposed federal regulations that address rates for the HIRSP program.

#### **Statutory authority**

Sections 149.143 (2) (a) 2., 3., and 4., and (3) and 227.11 (2) Stats. The rule interprets ss. 149.14 (5m), 149.14 (8),

149.142, 149.143, 149.146, 149.16 (3) (b), 149.165, and 149.17 (4), Stats.

#### **Staff time required**

The estimated DHCF staff time and other resources needed to develop and promulgate these rules will be about 130 hours. Included in this estimate is the time required to make actuarial calculations, rule drafting and promulgation.

## **Natural Resources**

### **Subject**

*Objective of the rule.* Rule changes to Chapters 106, 149, and 219 are needed to authorize use of the 2<sup>nd</sup> Edition of the Whole Effluent Toxicity Testing Methods Manual for WPDES Permits.

In whole effluent toxicity (WET) tests, fish and other aquatic organisms are exposed to wastewater effluent samples for a specific time period to determine if those effluents contains harmful mixtures of pollutants that may cause death (acute toxicity) or interfere with growth or reproduction to test organisms (chronic toxicity). Monitoring for acute and chronic toxicity is required in many Wisconsin Pollutant Discharge Elimination System (WPDES) permits in order to determine the potential for impairment of fish and aquatic life communities that may exist in the streams or lakes receiving the wastewater. WPDES Permit holders and consultants working on their behalf conduct these toxicity tests in accordance with a 1996 Methods Manual entitled “*State of Wisconsin Aquatic Life Toxicity Testing Methods Manual, 1<sup>st</sup> Edition*” (PUBL–WW–033–96). Improvements to the test methods based on the latest science warrant updating the Methods Manual to a 2<sup>nd</sup> Edition.

This rule change effort was first brought to the Natural Resource Board’s attention in a Pink Sheet dated March 8, 1999. Revisions to the Wisconsin Administrative Code are needed in order to replace the 1<sup>st</sup> edition of the Methods Manual with a 2<sup>nd</sup> edition (PUBL–WT–797–04, 2004). Attached is a revised pink sheet for code modifications to Sections NR 106.09 (1), NR 149.22, and NR 219.04 (Table A, footnote 8) to allow incorporation of the 2<sup>nd</sup> Edition of the Methods Manual by reference. Upon adoption of these changes, all permittees and associated laboratories will be required to follow the methods included in the revised document in order to submit tests for compliance with a WPDES permit or to maintain laboratory certification or registration.

### **Description of Policy Issues/Analysis of Policy Alternatives**

Since the 1<sup>st</sup> Edition of the Methods Manual was created in 1996, Department staff have worked cooperatively with the UW–Madison State Lab of Hygiene (SLH), private WET labs, permittees, and others to develop and pilot revisions to whole effluent toxicity test methods. Staff have collected data and met face–to–face with laboratories and permittees who have experience with WET tests in order to gain their input and learn from their experiences; conducted research at the SLH to develop and pilot proposed method revisions; and held discussions regarding implementation issues surrounding proposed method changes. Much work has been done to improve WET test reliability, including research that was done by the SLH to reduce problems associated with federal chronic WET test methods using the fathead minnow. Changes also include additional test acceptability criteria, new lab staff qualifications and training requirements, and

other adjustments to help insure quality data for use when determining compliance with WPDES permit requirements.

Early drafts of the 2<sup>nd</sup> Edition also included the addition of methods for testing an algal species in order to extend the protections afforded by WET testing to Wisconsin’s aquatic plant community. However, those methods have been withdrawn from the 2<sup>nd</sup> Edition at this time due to limitations on resources needed to conduct field validation studies and internal concerns over the effects of implementation on WPDES Permit backlogs.

Adoption of the 2<sup>nd</sup> Edition of the WET Methods Manual will benefit several constituents, including WPDES Permittees, consultants, and other interested parties. Specifically, these changes will bring test methods up–to–date with the current science while providing needed details on specific testing and sampling procedures, types of tests, definitions, quality control/quality assurance procedures, etc.

### **Statutory authority**

Sections 227.11 (2), 281.15, and 283.13, Stats.

Statutes interpreted: ss. 281.15 and 283.13, Stats.

### **Staff time required**

Sections NR 106.09, NR 149.22, and NR 219.04, Wis. Adm. Code, currently incorporate the Methods Manual by reference, all with language similar to the following (from NR 219.04, Table A, footnote 8):

*“Compliance monitoring must be performed in accordance with the specifications in the ”State of Wisconsin Aquatic Life Toxicity Testing Methods Manual, 1st Edition,” Wisconsin Department of Natural Resources, 1996...”*

Since the actual rule revisions needed to incorporate the latest edition will be simple (i.e., in ss. NR 219.04, only need to change the “1<sup>st</sup> edition” to say “2<sup>nd</sup> edition” and “1996” to “2004”), staff do not believe that significant time or explanation will be needed to explain the proposed language changes.

To further simplify rule language, and to streamline future revisions to the Methods Manual, staff are proposing to change applicable language in ss. NR 106.09 and NR 149.22, Wis. Adm. Code, to refer to the language shown above from NR 219.04, which incorporates the Methods Manual by reference. Doing this will allow future editions of the Methods Manual to be incorporated by revising only ch. NR 219, Wis. Adm. Code.

Staff do not believe that any significant unresolved issues exist with this package since actual rule language changes are not complicated and a significant amount of information sharing was accomplished by soliciting input from external constituents on preliminary drafts while making improvements to the Methods Manual. Approximately 150 hours of staff time will be needed to process this rule.

### **Comparison to federal regulations**

The United States Environmental Protection Agency (USEPA) promulgated regulations concerning the use of WET methods to protect aquatic life in National Pollutant Discharge Elimination System (NPDES) permits in 1995 (60 FR 53529, October 16, 1995). The USEPA–approved WET methods are specified in the “Guidelines Establishing Test Procedures for the Analysis of Pollutants”, 40 CFR 136.3, Tables IA and II, of the Clean Water Act. These WET methods employ standardized, freshwater, marine, and estuarine vertebrates, invertebrates, and plants to directly measure acute and chronic effects of effluents and receiving waters monitored under NPDES permits. On November 19, 2002,



USEPA revised and made available updated method manual editions.

As regulations, adherence to the specific test procedures outlined in these USEPA documents is required when monitoring WET under the NPDES program. The extent that such procedures are “requirements” depends on the text of the documents themselves (i.e., words of obligation, such as “must” or “shall” indicate a required procedure; “may” or “should” provide flexibility so that states and laboratories may optimize test methods for specific situations). Wisconsin’s Methods Manual is intended to comply with the requirements of 40 CFR part 136, while providing testing and laboratory procedures specific to those performing WET testing for the WPDES program. EPA’s methods, out of necessity, include many provisions which allow different protocols to be followed, depending on the intended use of the test results and the area of the country in which the test is to be applied. Wisconsin’s Methods Manual eliminates many of these optional parameters in order to insure the consistency of methods used by Wisconsin labs and permittees and, where possible, to improve upon available WET methods and make them more appropriate for use by Wisconsin permittees.

#### All Entities Affected by the Rule

The Methods Manual contains WET test methods that must be followed by permittees and their contract laboratories when required in a WPDES permit. WET tests are required in a WPDES permit when an effluent is discharged to a surface water and site-specific factors suggest that there is a potential for the discharge of toxic substances in amounts that may be harmful to fish and aquatic life. **Therefore, municipal and industrial permittees with surface water discharges that have WET test requirements in their permits are affected by these rules.** Laboratories that perform WET tests for WPDES compliance are also affected.

## Natural Resources

### Subject

*Objective of the rule.* SB 324 was recently passed by the Wisconsin Legislature at the recommendation of the DNR, the Wisconsin Fabricare Institute, the Governor’s Council for the Dry Cleaner Environmental Response Fund (DERF) Program, and the Department of Revenue. This law contains changes to s. 292.65, Wis. Stats., relating to the Dry Cleaner Environmental Response Fund program, administered by the DNR. Based on these statutory changes, ch. NR 169 will need to be modified to incorporate the new provisions in the law. The most significant change relates to the deadline date for submittal of reimbursement applications for eligible applicants who are conducting environmental investigations and cleanups per ch. NR 169 and the ch. NR 700 cleanup rule series. A rule revision advisory group will be established comprised of DNR representatives, drycleaning industry representatives, representatives of the Governor’s Council for the DERF program, and consulting firm representatives. Changes to the rule will affect these customers.

### Description of Policy Issues/Analysis of Policy Alternatives

The following summarizes the statutory changes contained in SB 324 that will need to be addressed in ch. NR 169, Wis. Admin. Rule. In addition, enhancements to the current rule

language will be discussed and recommended as necessary by the rule-revision advisory group.

- Eligibility clarification:

Statutory changes include clarification that past operators, as well as past drycleaner owners are eligible for the program; that for closed facilities that were once licensed, property owners that owned the property when the facility was in operation are eligible for the program, but not new property owners after a facility has closed; and that an agent may submit the reimbursement application for an award without having the eligible applicant sign off on the reimbursement application.

- Reimbursements from other sources

Requires owners or operators to notify the department of any application, including any insurance claim made to obtain funds to cover eligible costs or to obtain a tax credit based on eligible costs, as well as any funds or tax credits arising from the application. Such payments shall be either repaid to the department if the reimbursement has already occurred, or will be subtracted out of the reimbursement application request.

- Deadline Date

Stipulates that an owner or operator may not submit a reimbursement application if they have not submitted a potential claim notification form by August 30, 2008.

- Payment of fees

Stipulates that all fees, interest and penalties must be paid or an application shall be denied, but does not specify who must make those payments.

- Environmental Fund Clarification

Stipulates that the DERF fund can reimburse the Environmental Fund if there would otherwise be an eligible applicant for the site, and that all costs are reimbursed minus the deductible.

- Third Party Site Discovery Costs

Allows some limited third party site scoping costs to be included in the reimbursement application from an eligible applicant, if the costs were incurred prior to the Department or the drycleaner knowing there was a release from their facility. Costs are limited to only the discovery of contamination and do not include other investigative or remedial action costs incurred by the third party.

### Statutory authority

Section 292.65, Wis. Stats. authorizes the DNR to create rules to implement the Dry Cleaner Environmental Response Fund Program. Chapter NR 169 became effective in January 2000, and was revised in May, 2003 to incorporate previous statutory changes and other program enhancements.

### Staff time required

Staff estimate approximately 4 months to revise the rule and request public hearing from the NRB. The final rule should be completed within 9 months of the initiation of rule changes. The changes being considered are not substantial changes to how the program is being implemented, but incorporation of necessary refinements to the program. Working with the affected parties in drafting the rules should expedite the rule-making process.

### Comparison to federal regulations

There are no federal regulations regarding the remediation of drycleaner facilities. This rule addresses implementation issues associated with the reimbursement program, and does not affect existing cleanup rules already in place in the ch. NR 700 rule series.

## Transportation

### Subject

*Objective of the rule.* This proposed rule making will amend ch. Trans 112 by modifying the type of driver record and criminal offenses that makes a person ineligible to obtain a school bus endorsement or to transport pupils. The rule extends the disqualification period to more than 5 years for specific crimes and creates a lifetime disqualification for some crimes. The proposed rule defines procedures for requesting and processing out-of-state criminal background checks for drivers that have lived in Wisconsin for less than 2 years and establishes a fee for the background check. The proposed rule will also define standards for employment of school bus drivers and others that transport pupils. Additional proposed amendments will clarify for the driver, the board physicians, employers and the Department of Justice (DOJ) issues that have proved to be problematic when sanctions are reviewed in a judicial review proceeding.

### Policy alternatives to the proposed rule

Currently, ch. Trans 112 defines certain driver record and criminal offenses that make a person ineligible to obtain a school bus endorsement or transport pupils, but there are many serious crimes, which are not included. DMV is the source for the driver record information and DOJ is the source for the criminal background information. If the driver has resided in Wisconsin for less than 2 years, there is no background check conducted with the former state of residency. There are no checks done against other Wisconsin state agency Registry files that contain reported or criminal activity.

The proposed rule changes are required under 2003 Wis. Act 280. The rule will define a procedure for conducting an out-of-state criminal background check and establish fees only to cover the cost of the process. The changes to the ineligibility periods will be defined by the severity of the crime and the likelihood that the person could rehabilitate and become safe to drive pupils. For example, an individual convicted of serious sexual crimes against children may never be eligible to obtain a school bus endorsement or to transport pupils. The proposed amendments are intended to protect pupils during transportation to, from and during school activities.

The proposed amendments to ss. Trans 112.04, 112.18 and 112.20 will clarify for the driver, the board physicians, employers and DOJ issues that have proved to be problematic when sanctions are reviewed in a judicial review proceeding.

### Comparison to federal regulations

None.

### Statutory authority

Sections 343.12 (4) (b) and 343.12 (8) (a) to (c), Stats., as created by 2003 Wis. Act 280, section 30; and s. 343.16 (5), Stats.

### Staff time required

Approximately 200 hours.

## Workforce Development

### Subject

Ch. DWD 12, grievance procedure for resolving complaints of employment displacement under the Wisconsin Works program.

### Policy analysis

Section 49.141 (5) (am), Stats., as renumbered by 2003 Wisconsin Act 173, and s. DWD 12.05 (9) prohibit the filling of a vacancy created by an employer terminating a regular employee for the purpose of filling the position with a W-2 participant or a position of a person on layoff, strike, or other labor dispute from the same or a substantially equivalent job within the same organizational unit by a W-2 participant.

The department has an existing grievance procedure that sets forth the steps for resolving complaints of alleged violations of this prohibition. Section 49.141 (5) (bm), Stats., as created by 2003 Wisconsin Act 173, requires the department to promulgate a rule specifying the grievance procedure. The procedure provides the steps a complainant must take to file a complaint, the program agency responsibilities for initial review and investigation of a complaint, the procedures and time limits for hearing complaints and issuing decisions, and provisions for appealing program agency action on a complaint.

### Comparison to federal regulations

Federal law prohibits an adult in a family receiving assistance under a state program funded by a federal Temporary Assistance for Needy Families (TANF) block grant from being employed or assigned when any other individual is on layoff from the same or any substantially equivalent job or if the employer has terminated the employment of any regular employee to fill the vacancy with a participant in a TANF-funded program. States are required to establish and maintain a grievance procedure for resolving complaints of alleged violations of this prohibition.

### Statutory authority

Sections 49.141 (5) (bm), as affected by 2003 Wisconsin Act 173, and 227.11, Stats.

### Staff time required

100 hours.

## Workforce Development

### Subject

Ch. DWD 290, prevailing wage rates on state or local public works projects.

### Policy analysis

Sections 66.0903 (1) (g) and 103.49 (1) (d), Stats., provide a two-tiered definition of "prevailing wage rate" under which the rate in any area is the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, for a majority of hours worked in the trade or occupation on projects in the area. If there is no rate at which a majority of the hours worked is paid, a weighted average methodology applies based on the pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area.

The department has had an informal policy of looking at the hourly basic rate of pay and fringe equivalent as separate figures and requiring an exact match of both the hourly rate of pay and the fringe equivalent in determining whether there is a majority at a particular rate. The department has now determined that it is more appropriate to determine whether there is a majority of hours reported that receive a certain total economic benefit that is the combined value of the hourly rate of pay and fringe equivalent. If there is a majority of reported hours paid at a certain total economic benefit, the department will issue a prevailing wage determination that is the most

commonly reported hourly rate of pay and fringe equivalent that receive that total economic benefit.

**Comparison to federal regulations**

There are no federal prevailing wage rate regulations that apply to state or local public works projects. The federal prevailing wage regulations that apply to federally-funded public works projects determine the prevailing hourly rate of pay and the prevailing fringe equivalent as completely separate inquiries. Under the federal system, the resulting

combination of the hourly rate of pay and fringe equivalent issued by the U.S. Department of Labor may result in a combination of hourly pay and fringe equivalent that is not the most commonly paid total economic benefit on private projects.

**Statutory authority**

Sections 66.0903, 103.005 (1), 103.49, and 227.11, Stats.

**Staff time required**

100 hours.



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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.*

### Commerce

#### Rule Submittal Date

On May 17, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject Matter

Chs. Comm 90 and 2, relating to the design and construction of public swimming pools and fees.

#### Agency Procedure for Promulgation

A public hearing is required and will be held on June 17, 2004.

#### Agency Contacts

Jean MacCubbin  
(608) 266-0955

### Health and Family Services

#### Rule Submittal Date

On May 6, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject Matter

The Department of Health and Family Services is responsible for monitoring radiation emissions around nuclear plants operating in or near Wisconsin. The Department assesses a fee to operating nuclear plants in Wisconsin that supports the Department's and local health agencies' collection of emissions and analysis activities. Chapter HFS 158 specifies the Department's annual base fee, which is currently \$47,500. Chapter HFS 158 also allows the Department to raise the fee each year based on changes in the consumer price index. Consequently, the current fee is \$55,940.

#### Agency Procedure for Promulgation

A public hearing will be held on June 22, 2004.

#### Names and Phone Numbers of Agency Contacts

Paul Schmidt  
267-4792

### Health and Family Services

#### Rule Submittal Date

On May 14, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Subject Matter

HFS 109, Wis. Adm. Code, SeniorCare.

Statutory Authority: Sections 49.688 and 227.11 (2), Stats.

#### Agency Procedure for Promulgation

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

#### Names and Phone Numbers of Agency Contacts

Al Matano  
267-6848  
matana@dhfs.state.wi.us

### Health and Family Services

#### Rule Submittal Date

On May 14, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject Matter

Chs. HFS 152, 153 and 154, Wis. Adm. Code, relating to Wisconsin Chronic Disease Program.

Statutory Authority: Sections 49.68 (2) (a) to (c) and (3), 49.683, 49.685 (8) (c) and 49.687 (1), (1m), (2) and (2m), Stats.

#### Agency Procedure for Promulgation

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

#### Names and Phone Numbers of Agency Contacts

Al Matano  
267-6848  
matana@dhfs.state.wi.us

### Natural Resources

#### Rule Submittal Date

On May 13, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

#### Subject Matter

Chs. NR 10, 12 and 19, hunting and trapping regulations.

#### Agency Procedure for Promulgation

A public hearing will be held June 11, 2004

#### Names and Phone Numbers of Agency Contacts

Kurt Thiede  
Bureau of Wildlife Management  
608-267-2452

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

On May 13, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

Administration of the Forest Crop Law and Managed Forest Law.

**Agency Procedure for Promulgation**

A public hearing will be held June 14, 2004

**Names and Phone Numbers of Agency Contacts**

Linda De Paul  
Bureau of Forestry  
608-266-3545

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

On May 13, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

Ch. NR 114, septage operator certification.

**Agency Procedure for Promulgation**

A public hearing will be held June 16, 2004

**Names and Phone Numbers of Agency Contacts**

Greg Kester  
Bureau of Watershed Management  
608-267-7781

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

On May 13, 2004 the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule revises Tax 1.12 (4) (a) (intro.) and creates Tax 1.12 (4) (a) 12., relating to electronic funds transfer.

**Agency Procedure for Promulgation**

A public hearing is not required. The proposed rule will be published under the 30-day notice procedure, pursuant to s. 227.16 (2) (e), Stats.

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

**Contact Information**

If you have questions, please contact:  
Dale Kleven  
Income, Sales, and Excise Tax Division  
Telephone (608) 266-8253  
E-mail [dkleven@dor.state.wi.us](mailto:dkleven@dor.state.wi.us)

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## Rule-making notices

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### Notice of Hearing

#### Agriculture, Trade & Consumer Protection

[CR 04-039]

#### (Reprinted From Mid-May Wis. Adm. Register)

Rules related to agricultural and household hazardous waste.

#### Collection (Clean Sweep) Grant Program.

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

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

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

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

#### **Hearing Location:**

Thursday, **June 3, 2004**, 1 p.m. to 5 p.m.  
 Prairie Oak State Office Building  
 2811 Agriculture Drive  
 Board Room  
 Madison, WI 53708  
 Handicapped accessible

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

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

Statutes Interpreted: ss. 93.55 and 93.57, Stats.

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

#### Background

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

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

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

#### Rule Content

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

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

#### "Clean Sweep" Grants; General

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

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

#### Eligible Costs

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

- Direct costs to hire a hazardous waste contractor to receive, pack, transport and dispose of chemical waste.
- Direct costs for equipment rentals, supplies and services to operate the collection site and handle collected chemical waste.
- Direct costs for county or municipal staff to receive and pack chemical waste at a “continuous collection event” that lasts 4 or more days.
- Direct costs for local educational and promotional activities related to the “clean sweep” project.

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

#### Grant Application Procedures

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

- The total funding available, including separate amounts available for agricultural and urban “clean sweep” grants. Subject to available appropriations, the department will offer at least \$400,000 for agricultural “clean sweeps” and \$200,000 for urban “clean sweeps” (consistent with pre–consolidation funding levels). Unused funds in either category may be used in the other category.
- The purposes for which grant funds may be used.
- Grant eligibility criteria, including the required local cost–share contribution.
- Grant evaluation criteria.
- Grant application deadlines and procedures.

#### Grant Applications

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

- The purpose and scope of the proposed “clean sweep” project.
- The proposed collection dates, times, locations, facilities and procedures.
- Whether the project will collect farm chemical waste or hazardous household waste, or both.
- The types and amounts of waste that the applicant expects to collect.
- The proposed hazardous waste contractor.
- The fees, if any, that the applicant proposes to charge to persons delivering waste materials for disposal (a grant recipient may not charge a farmer for the first 200 lbs. of farm chemical waste delivered to an agricultural “clean sweep” event).
- The public information program that will accompany the project.
- The project budget, and the nature and amount of the applicant’s proposed contribution.

#### Evaluating Grant Applications

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

- The types of chemical wastes to be collected.
- The extent of intergovernmental coordination, including coordination with other counties or municipalities.

- The convenience of the proposed collection services.
- The scope and quality of public information and promotional programs that will accompany the project.
- The applicant’s capacity to carry out the project.
- The safety and suitability of project facilities and procedures.
- The overall quality of the project, including likely cost–effectiveness and impact.

#### Grant Award and Contract

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

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

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

#### Reports and Payments

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

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

#### Contract Termination for Cause

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

#### Business Impact

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

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



(local governments may impose a charge for larger amounts). The safe removal of chemical waste from farm and business locations also reduces health and environmental hazards, and related financial liability.

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

#### **Fiscal Impact**

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

#### **Environmental Assessment**

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

#### **Federal Programs**

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

#### **Surrounding State Programs**

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

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

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

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

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

### **Notice of Hearing**

#### **Commerce**

#### **(Fee Schedule, Ch. Comm 2) (Public Swimming Pools, Ch. Comm 90)**

**[CR 04–052]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.14 (4m) and 227.17, Stats., the Department of Commerce will

hold public hearings on proposed rules relating to the design and construction of public swimming pools, and fees; Chs. Comm 90 and 2.

#### **The public hearing(s) will be held as follows:**

Date and Time:

**Thursday June 17, 2004**

10:30 a.m.

Location:

T.G. Thompson Commerce Center

Conf. Room 3B

201 W. Washington Ave.

Madison WI

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until July 2, 2004, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

Jean M. MacCubbin, Department of Commerce  
Safety & Buildings Division

P.O. Box 2689

Madison, WI 53701–2689\

E –mail: [jmaccubbin@commerce.state.wi.us](mailto:jmaccubbin@commerce.state.wi.us).

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

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

Statutory authority: ss. 101.19 and 145.26, Stats.

Statutes interpreted: ss. 101.19 and 145.26, Stats.

The Division of Safety and Buildings within the Department of Commerce is responsible for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. Chapter Comm 90, Design and Construction of Public Swimming Pools, consists of minimum requirements that apply to the design and construction of all new public swimming pools, including whirlpools and water attractions, and to the reconstruction or alteration of any existing public swimming pool.

Section 101.19, Stats., provides the department the authority to fix and collect fees, which shall be as close as possible to the cost of providing the service.

Section 145.26, Stats., provides the department the authority for the establishment of administrative rules; defines public swimming pool and water attraction; provides authority for the department to establish fees for plan review and violations of this chapter. The statutes also require plan submittal and approval prior to any construction, alteration or reconstruction of a public swimming pool.

The proposed rules are created to revise a portion of chapter Comm 90, Design and Construction of Public Swimming Pools, while considering a draft model standard for water parks, ANSI/NSPI–9, Standard for Aquatic Recreation Facilities. This national standard is not being officially adopted by reference, with permission, but was used as a base

code, and subsequently modified for use in Wisconsin. The major proposed revisions to chapter Comm 90 relate to the creation of two subchapters:

Subchapter IV—Water Attractions, which includes water parks and other water attractions such as interactive play features, and Subchapter V—Slides, which is being created and expanded to address these common pool features.

Minor changes to the remainder of chapter Comm 90 were made either for consistency with the newly created subchapters, creating rules for slides and other play features installed in pools or water parks, or to reflect provisions in chapters Comm 81 to 87, the state uniform plumbing code and chapters Comm 61 to 65, the state commercial building code.

In addition, section Comm 2.68, Fees, is proposed for minor revisions to fees for associated slides, and plan review and inspection fees for water attractions and water attraction complexes.

The following summarizes by section the more significant revisions proposed in this rule revision.

- Subchapter headings are created to assist in directing users to specific areas of the code. For example, slides are no longer contained within the same section as swimming pools; provisions for water attractions also are now contained in a separate subchapter.

- Section Comm 90.03: With the addition of definitions specific to water attractions and play features, this section has been repealed and recreated. New definitions include: interactive play attraction and specific titles for water attractions to be consistent with NSPI-9.

- Section Comm 90.04: The plan review and approval provisions are being revised to include the requirements for water attractions and slides. Submittal details have been revised to reflect the numerous items common to public swimming pools as well as pool and water attraction complexes.

- Section Comm 90.11: Recirculation and turn over times have been revised to more accurately reflect industry standards and known health-related concerns.

- Sections Comm 90.13 and 90.14: Minor revisions to the construction of public swimming pools are included in this revision. These revisions include performance standards for pool circulation systems and the location of hosebibbs provided for pool maintenance.

- Section Comm 90.16: The layout and materials for dressing areas, shower rooms and toilet facilities have been revised to reflect the state commercial building code, chapters Comm 61 to 65. Revised sanitary fixture counts are proposed to address sanitation needs, particularly in instances where sanitary facilities are already available and accessible. Fixture counts are based on cumulative area of surface water of all pools and water attractions within a complex.

- Section Comm 90.18: For water-conserving measures as well as acknowledging turnover times needed to initially treat water, whirlpools and wading pools may be filled using pool water, providing that water meets standards as specified in section HFS 172.09 (2).

- Sections Comm 90.20, 90.205 and 90.206: A new subchapter is proposed to specifically address water attractions, play features and interactive play attractions. The sections contained in this subchapter are additions and modifications to a draft model standard for water parks, ANSI/NSPI-9, Standard for Aquatic Recreation Facilities. Basic principles of water attraction design are enumerated in this new subchapter; many design parameters allow designers flexibility while providing the necessary health and safety features for the user.

- Permanently installed play features are being addressed in this rule revision. Design and installation specifications are provided in responding to user safety issues such as entrapment, falls and other safety hazards.

- Interactive play features, commonly known as splash pads, are being addressed in this rule revision; these include items which may use water for user play. Provisions include water quality and supply, turnover times and recirculation, access points and fencing.

- Section Comm 90.30: Subchapter V is proposed regarding the design, manufacture and installation of all slides installed as appurtenances to public swimming pools or water attractions. Installation parameters are detailed in Table 90.30-1 by slide type; slides are now defined by height, amount of water running through the flume and depth of water at entry.

- Sections Comm 90.40 and 90.405: Subchapter VI, Incorporation of Standards, is created. Two standards are being adopted: ANSI/NSF 50-2001 and ANSI/ASME A112.19.8M-1987 (R1996). Section Comm 90.405 comprises previous section Comm 90.21, Enforcement.

- Appendices: Proposed additions to the appendix include updated information regarding submittals and fees as well as representatives of the department who are authorized to conduct construction inspections as provided in this chapter. In addition, a listing of nationally recognized agencies that are deemed accepted to the department is included. Other items have been added for clarification purposes or reprinting of pertinent sections of chapters Comm 81-87, the state uniform plumbing code.

A comparison of the four neighboring states found that all states have regulations for public swimming pools. The depth of the regulation is inconsistent however, as Iowa requires only registration whereas Minnesota, Illinois and Michigan require pool plan approval prior to construction. The emphasis of this proposal is on water attractions (waterslides, splash pads, activity pools, etc.) and Wisconsin's neighboring states have various mechanisms (or lack of mechanisms) for addressing new technology and imaginative designs. Illinois has addressed the water attraction design variability by allowing individual review for any installation that is not specifically addressed in the code. The Illinois code also has specific language for spray pads (interactive play attractions), slides and lazy rivers (leisure rivers). Michigan has rules for waterslide and pool slide construction and installation while Minnesota requires an individual approval where the designer must prove a design's compliance with the intent of the code.

An internet search was conducted to review and compare any federal rules or proposed federal rules for "water attractions", "water parks", "water recreation facilities" and "public swimming pools." No Federal rule or proposed rule was found that addresses public swimming pools, water parks or in-pool water attractions or play devices.

An internet search to review and compare any federal rules or proposed federal rules for "pool slides" resulted in the finding of 16CFR, Part 1207, Consumer Product Safety Commission Standards regarding swimming pool slides (revised January 2004). It is found that 75% of pool slides are installed in residential pools, not within the scope of this rule. No Federal rule or proposed rule was found that addresses the manufacture, construction or installation of water slides as they exist in today's water parks.

The proposed rule revisions were developed with the assistance of the Commerce Pool Advisory Code Council. This council consists of the following individuals:

**Name – Representing**

Dave Baker – Pool Operators

Bill Branson – City of LaCrosse/Plumbing Inspectors



Tracynda Davis/David St. Jules – Wisconsin Department of Health & Family Services

Duane Jackson – Wisconsin Environmental Health Professionals

Roxanne Johnson – Ramaker & Associates / Engineers

Julienne Heftner/Tom Carrico – Wisconsin Park & Recreation Association

Daryl Matzke (past chair) – Ramaker & Associates / Pool Designers

Chuck Neuman/Dean Mueller – World Water Park Association

Bill Rollins – Stubenrausch/Pool Designers

Peter Simon (chair) – Neuman Pools Inc./ Pool Designers

Sean O'Connor – Badger Swim Pools/ Pool Construction Contractors

Doug Voegeli – Madison Dept. of Public Health/Municipal Agents

Jack Waterman – Wisconsin Innkeepers Association

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at:

<http://www.commerce.state.wi.us/SB/SB-DivCodeDevelopment.html>. Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, E-mail [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

### Environmental Analysis

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

### Initial Regulatory Flexibility Analysis

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

- Hotel/motel industry where construction or alteration includes a public pool, water slide, water attraction or play feature may be made.

- Apartment complexes or campgrounds where construction or alteration includes of a public pool, water slide, water attraction or play feature may be an amenity.

- Newly constructed or altered municipally-owned pools, water slides, water attractions or play features.

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

None enumerated.

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

No additional skills are required to comply with this rule.

### Fiscal Estimate

This order revises the Department's rules for licensing emergency medical technicians – intermediate (EMTs – intermediate). Revision of the rules will not significantly affect the expenditures or revenues of state government or local governments. The only additional costs would be associated with increased

training hours for those services that want to be licensed at the new EMT-Intermediate level. There is no requirement for services to upgrade to this level of service, so any additional costs would be the result of the service wanting to increase their level of care.

## Notice of Hearing Health and Family Service (Health, Chs. 110—)

[CR 04-045]

Notice is hereby given that pursuant to ss. 227.16 (1), 227.17 and 227.18, Stats., the Department of Health and Family Services will hold a public hearing to consider the proposed amendment of s. HFS 158.04, relating to the fee for monitoring radiation emissions in the vicinity of nuclear power plants.

### Hearing Information

The public hearing will be held:

<u>Date &amp; Time</u>	<u>Location</u>
<b>June 22, 2004</b>	1 W. Wilson St
Tuesday	Room B155
1-2 pm	Madison, WI

The hearing site is fully accessible to people with disabilities. If you are hearing or visually impaired, do not speak English, or have circumstances that might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

### Deadline for Comment Submission

Written comments for this rule that are submitted using the Department's website or which the Department receives by mail or email to the contact person listed below, no later than **4:30 p.m., June 25, 2004**, will be given the same consideration as testimony presented at the hearing.

### Analysis Prepared by the Department of Health and Family Services

Under s. 254.41 of the Wisconsin statutes, the Department of Health and Family Services is responsible for monitoring radiation emissions around nuclear plants operating in or near Wisconsin. The Department assesses a fee to operating nuclear plants in Wisconsin that supports the Department's and local health agencies' collection of emissions and analysis activities. Chapter HFS 158 specifies the Department's annual base fee, which is currently \$47,500. Chapter HFS 158 also allows the Department to raise the fee each year based on changes in the consumer price index. Consequently, the current fee is \$55,940.

The Department's monitoring costs over the past 13 years have risen at a rate exceeding that of the consumer price index. In addition, federal and other funding sources that also supported monitoring activities have either been eliminated or reduced. Consequently, the fee has become the primary funding source for monitoring activities. In response to these revenue losses, the Department reduced the scope of monitoring activities rather than raise the base fee in ch. HFS 158. However, the Department cannot further reduce monitoring activities without compromising minimal national standards. Therefore, to continue to monitor activities at a minimum level consistent with national standards, the Department is proposing to increase the base fee in ch. HFS 158 to \$95,000.

**Statutory Authority**

The Department's authority to amend and create these rules is found in s. 254.41, Stats.

**Statutes Interpreted**

The rules interpret s. 254.41, Stats.

**Fiscal Estimate**

The Department of Health and Family Services is mandated by s. 254.41, Stats., to conduct environmental radiation monitoring within 20 miles of any nuclear plant impacting Wisconsin. The Department assesses an annual fee to the operating plants in Wisconsin that supports the Department's sample collection and analysis activities. The fee established in rule may be increased annually by the cost of living index. The current fee is \$55,940. Since the last fee increase by administrative rule in 1991, program costs have increased faster than the cost of living index. As a result, the Department is proposing to increase the fee in ch. HFS 158 to \$95,000.

The environmental monitoring program consists of 1.0 FTE with an SFY 2004 operating budget of \$206,864. SFY personnel costs are \$89,428 (salary and fringe) with total capital, supplies and services of \$117,436. SFY 2004 operating revenue of \$176,090 is derived from annual fees, voluntary contributions from the nuclear utility industry and SFY 03 carryover. The department projects a program deficit of \$30,774 in SFY 04.

The fiscal effect on the utilities operating nuclear plants in Wisconsin will be minimal.

**Effect on Small Business**

This proposed rule change will not affect small businesses.

**For More Information**

A copy of the full text of the rule and the full text of the fiscal estimate, and other documents associated with this rulemaking may be obtained, at no charge, from the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>. At this website, you can also register to receive email notification whenever the Department posts new information about this rulemaking. During the public comment period, you can submit comments on the rulemaking order and view comments that others have submitted about the rule.

A copy of the full text of the rule and the fiscal estimate may also be obtained by contacting:

Paul Schmidt  
Chief, Radiation Protection Section  
P.O. Box 2659  
Madison, WI 53701-2659  
608-267-4792  
schmips@dhs.state.wi.us

**Notice of Hearing****Natural Resources**

**(Fish, Game, etc., Chs. NR 1—)**

**[CR 04-046]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 and 227.11 (2) (a), Stats., interpreting s. 29.181, 29.132, 29.347 and 29.885 (4m), Stats., the Department of Natural Resources will hold a public hearing on amendments to chs.

NR 10, 12 and 19, Wis. Adm. Code, relating to hunting and trapping regulations. The proposed rule changes provide clarification to current rules, update definitions, increase management efficiency and alter limitations on hunters. The changes are minor in nature and non-controversial. This rule order includes rule changes that:

- Eliminate and update outdated administrative code language including definitions and citations.
- Clarify existing rules and, in some cases, simplify hunting and trapping rules and regulations.
- Define a number of hunting and trapping terms previously missing or which were placed in other areas of the administrative code.
- Eliminate references to tagging and license language made obsolete with the automated licensing system.
- Simplify and clarify firearm restrictions for turkey, deer and bear hunting.
- Clarify the use of crossbows for resident senior citizens.
- Clarify the code relating to trap placement and sets.
- Update deer hunting rules for the Sandhill wildlife area.
- Correct an omission relating to the sunset dates for small game and waterfowl hunting in state parks.
- Clarify the procedure for an individual to possess spotted deer hides.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

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

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

Friday, **June 11, 2004** at 1:00 p.m.  
Room 517, GEF #2,  
101 South Webster Street, Madison

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

**Fiscal Estimate**

No fiscal impact is anticipated.

Written comments on the proposed rules may be submitted to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than June 14, 2004. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Thiede.

**Notice of Hearings**  
**Natural Resources**  
**(Fish, Game, etc., Chs. NR 1—)**  
**[CR 04–048]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 77.06 (2), 77.91 (1) and 227.11 (2) (a), Stats., interpreting ss. 77.06 (2) and 77.91 (1), Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of s. NR 46.30 (2) (a) to (c) relating to the administration of the Forest Crop Law and Managed Forest Law. Sections 77.06 (2) and 77.91 (1), Stats., require an annual hearing relating to the determination of stumpage values used in calculating severance and yield taxes on timber cut from Forest Crop Lands (FCL) and Managed Forest Lands (MFL). This rule revises the annual stumpage values used to calculate severance and yield taxes due on timber cut during the period from November 1, 2004 through October 31, 2005. Thirteen separate zones reflect varying stumpage values for different species and products across the state. The average price change for sawtimber is a 7.29% increase over current rates. The pulpwood prices, on average, would increase 3.56%.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses.

**Initial Regulatory Flexibility Analysis**

a. Types of small businesses affected: Small private forest landowners and forest industries enrolled under the Forest Crop law and Managed Forest Law

b. Description of reporting and bookkeeping procedures required: No new procedures

c. Description of professional skills required: No new skills

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

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

Monday, **June 14, 2004** at 9:00 a.m.

Fitchburg Room, Fitchburg Community Center  
 5520 Lacy Road  
 Fitchburg

Jackson Co. UW Extension Office  
 227 S. 11<sup>th</sup> Street  
 Black River Falls

State Patrol Headquarters  
 2805 Martin  
 Wausau

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 Linda DePaul at (608) 266–3545 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Estimate**

The preliminary 2005 stumpage rate schedule includes an average 7.29 % increase in sawtimber prices and an increase of 3.56% in cordwood prices. The severance and yield tax collection in CY 2003 was \$1,050,000. Of this, about 20% of the gross revenue is from sawtimber harvests. Eighty percent of the revenue was related to cordwood harvests. As a result, a 7.29 % increase in sawtimber prices would generate an additional estimated \$15,309 in revenues. An increase of 3.56% in cordwood prices would generate an estimated additional \$29,904 in revenues. The cumulative effect would be a net increase in revenues of \$45,213. Under current statutes, the gross receipts are shared equally between the municipality and the state. The municipality in turn shares 20% of their receipts with the county.

The net fiscal impact is based on the assumption that the volume and the ratio of the pulpwood and sawtimber will remain the same this year as last year.

The net fiscal effect of this rule change will be an increase of approximately \$22,607 to both state and local revenues. The state revenue received from severance and yield taxes are deposited into the Forestry account of the Conservation Fund.

Written comments on the proposed rule may be submitted to Ms. Linda DePaul, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707 no later than June 14, 2004. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Ms. DePaul.

**Notice of Hearings**  
**Natural Resources**  
**(Environmental Protection—General,**  
**Chs. NR 100—)**  
**[CR 04–047]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 281.17 (3), Stats., interpreting ch. 281, Stats., the Department of Natural Resources will hold public hearings on amendments to subch. II of ch. NR 114, Wis. Adm. Code, relating to septage operator certification. The proposed rule removes the lifetime certification status and creates a more practical certification grading system. Those certified operators who are currently designated as an Operator–In–Charge (OIC) will automatically be classified as OIC's in the new certification system as well. Experience requirements are established along with a mandatory class and examination in order to become an OIC in the future. However, those who would have qualified for the lifetime certification status within three years of the effective date of the rule will be exempt from those requirements. Fees for examinations, certificate renewals, late fee penalties, and Operator–in–Training registrations are increased. In turn the department will use fees generated under this subchapter for the purposes of implementing this program and ch. NR 113. Specifically the proposed revisions achieve the following objectives:

- Eliminates the lifetime certification classification.
- Increases fees for examinations, certification renewals, late renewal penalties, and operator–in–training registrations.
- It is clearly stated that the department is to use fees generated by this program and from septage business



licensing only for the purposes of implementing this subchapter and chapter NR 113.

- Condense certification grades from 3 to 2. The distinction is based on whether any septage is land applied (Grade L) or if it is all hauled to a wastewater treatment plant (Grade T).

- Automatically extends Operator-in-Charge (OIC) status in the new grading system to those designated as OIC in the current system.

- Establishes minimum experience requirements, a mandatory class, and a mandatory examination in order to be designated as an OIC in the future. However, those whom would have been eligible for the lifetime certification within 3 years of the effective date of this rule are exempt from such requirements.

- Establishes a variance procedure to allow flexibility in implementing this subchapter for non-statutory sections. This would include situations that may arise and leave a part of the state in jeopardy of having no one to service systems, which could pose a public health threat such as on large islands. Another example would be for situations that may jeopardize the viability of a family business such as debilitating illness or death.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses.

#### Initial Regulatory Flexibility Analysis

a. Types of small businesses affected: Approximately 500 licensed septage businesses

b. Description of reporting and bookkeeping procedures required: The businesses will be required to continue reporting operator training and payment of fees

c. Description of professional skills required: No new skills will be required.

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

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

Wednesday, **June 16, 2004** at 10:00 a.m.

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

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

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

State Office Building  
Room B29  
3550 Mormon Coulee Road  
La Crosse

UW Extension Pyle Center  
Room 327  
702 Langdon Street  
Madison

UW-Platteville  
Ottensman Hall, Room 203  
1 University Plaza  
Platteville

DNR Northern Region Headquarters  
Room 3  
107 Sutliff Avenue  
Rhineland

DNR Northern Region Headquarters  
Conference Room, 810 W. Maple  
Spooner

UW-Stevens Point  
College of Professional Studies  
Room 104, 1901 Fourth Avenue  
Stevens Point

State Office Building  
Room 153, 141 NW Barstow Street  
Waukesha

#### Fiscal Estimate

The rule revisions will increase costs to the private sector as follows:

1. Annual certification examinations
  - Current cost ~ 175 exams @ \$25 each = \$4375
  - New cost ~ 175 exams @ \$100 each = \$17500
  - Increase ~ \$13125
2. Annual Certification Renewals
  - Current cost ~ 323 renewals @ \$45 each = \$14535
  - New cost ~ 323 renewals @ \$65 each = \$20995
  - Increase ~ \$6460
3. Late Fee Penalty
  - Current cost ~ 60% Late - 194 Late @ \$25 each = \$4850
  - New cost ~ 194 late @ \$100 each = \$19400
  - Increase ~ \$14550
4. Operator-in-Training Registration
  - Current cost ~ 60 OIT @ \$10 each = \$600
  - New cost ~ 60 OIT @ \$25 each = \$1500

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 Greg Kester at (608) 267-7611 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rules may be submitted to Mr. Greg Kester, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than June 25, 2004. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Kester.

### **Notice of Hearing Natural Resources**

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

NOTICE IS HEREBY GIVEN that pursuant to s. 30.19 (1g) (c), (1d), (1m), (3r) (a) 2. and 4., Stats., interpreting s. 30.19 (1g) (c), (1d), (1m), (3r) (a) 2. and 4., Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-21-04(E) to repeal s. NR 340.02 (2), (8) and (19) and to create ch. NR 341 relating to the regulation of grading on the bank of a navigable waterway. This emergency order has an effective date of May 19, 2004.

The rule determines what constitutes a bank for priority navigable waterways and navigable waterways; establishes criteria defining those activities needing a grading permit for grading sites located on the bank of a navigable waterway; and specifies conditions under which individual permit coverage is required. This rule recognizes the similarity between the requirements of a grading permit and the requirements of 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.

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

Wednesday, **June 16, 2004** at 3:00 p.m.

Room 041, GEF #3

125 South Webster Street

Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. MaryAnn Lowndes at (608) 261-6420 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the emergency rule may be submitted to Ms. MaryAnn Lowndes, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707-7921 no later than June 18, 2004. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule may be obtained by calling Ms. Roberta Lund at (608) 266-2220 or it is available on either the Revisor of Statutes website at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code) or the Department's website at:

[www.dnr.wi.gov/org/water/fhp/waterway/emergencyrules.shtml](http://www.dnr.wi.gov/org/water/fhp/waterway/emergencyrules.shtml).

### **Notice of Hearing Veterans Affairs [CR 04-037]**

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the **18th day of June, 2004**, at 9:30 a.m., in the Marden Center Multi-Purpose Room, at the Wisconsin Veterans Home at King, Wisconsin.

#### **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 financial incentives to individuals to attend school and receive the credentials necessary to become employed in a critical need position at the Veterans Homes operated by the Department of Veterans Affairs at King and Union Grove, Wisconsin. The critical need employment position identified in the proposed order is the position of registered nurse. The statutory authority directs the department of Veterans Affairs to promulgate rules for the stated purposes.

There are no current or pending federal regulations that address stipends for registered nurses as an inducement to become employees of State Veterans Homes. However, recent federal legislation has been proposed that, if enacted, could provide a subsidy of up to 50% of the amount of stipends paid under this program. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant fiscal effect upon the private sector. The rule provides an inducement to individuals to accept and retain employment as a registered nurse with the Department of Veterans Affairs.

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

This rule is not expected to have any adverse impact upon small businesses.

#### **Fiscal Estimate**

The implementation of the rule is not expected to have any fiscal impact. Funding for the program was provided under the provisions of 2003 Wisconsin Act 33.

A copy of the proposed rules and the full fiscal estimate may be obtained by contacting:

John Rosinski

Wisconsin Department of Veterans Affairs

PO Box 7843

Madison, WI 53707-7843

#### **Contact Person**

John Rosinski (608) 266-7916

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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.*

### **Agriculture, Trade and Consumer Protection**

**(CR 03–120)**

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

### **Commerce**

**(CR 04–009)**

Chapter Comm 32, relating to public employee safety and health.

### **Natural Resources**

**(CR 03–091)**

Chapter NR 116, relating to defining “deck” and providing that the construction of a deck is not a modification or addition to a nonconforming structure.

### **Natural Resources**

**(CR 04–020)**

Chapter NR 10, relating to control and management of chronic wasting disease.

### **Public Instruction**

**(CR 03–112)**

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



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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.*

### **Pharmacy Examining Board (CR 04-002)**

An order affecting ch. Phar 2, relating to the practical examination, NAPLEX and the multi-state pharmacy jurisprudence examination.  
Effective 7-1-04.

### **Workforce Development (CR 03-125)**

An order affecting ch. DWD 80, relating to worker's compensation.  
Effective 7-1-04.

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## Rules published with this register and final regulatory flexibility analyses

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*The following administrative rule orders have been adopted and published in the May 31, 2004, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

### **Accounting Examining Board (CR 03-071)**

An order affecting chs. Accy 1, 4, 5, 7 and 8, relating to updating code and changing requirements for licenses. Effective 6-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Educational Approval Board (CR 03-126)**

An order affecting chs. EAB 3 and 4 relating to the regulation of for-profit postsecondary schools; out-of-state, non-profit colleges and universities; and in-state, non-profit institutions incorporated after 1991. Effective 6-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

This proposed administrative rule will implement the provisions contained in the 2003-05 state budget (2003 Wisconsin Act 33) creating a student protection fund. Under the statutory provisions of the student protection fund, the Educational Approval Board (EAB) is required to develop rules for a new student protection fee. Funding generated from these fees will be placed in a separate appropriation to make payment to certain individuals who suffer a loss due to the closure of a school that has been approved by the EAB.

Under the proposed rule order, beginning in 2005, schools regulated by the EAB would pay an annual fee of \$0.50 per \$1,000 of school revenue. Reported school revenues for the 2004 approval year are \$92.6 million. It is estimated that school revenues will increase by 10 percent in 2005 to \$101.8 million. By applying the \$0.50 fee to this figure, it is estimated that \$50,900 will be generated in FY 05. The rule also includes a provision in which any unexpended operating revenues of the EAB exceeding a 20 percent reserve would be transferred to the fund.

While the proposed rule order imposes a new fee on schools, it will also reduce the current bonding requirements for schools. Under current rule, a school must obtain a surety bond equal to 125 percent of its unearned tuition, unless the EAB approves a reduction. For the 2004 approval year, schools will be required to obtain over \$9.3 million in bond coverage. Based on rate filings with the state's Office of the Commissioner of Insurance, the average cost charged by surety companies is approximately \$10 per \$1,000 of needed coverage. Therefore it is assumed that the required surety

bonds are currently costing schools roughly \$93,000 annually.

The proposed rule will modify the surety bond requirement and specify that the maximum surety bond needed would be \$25,000 or 125 percent of unearned tuition, whichever is less. This would require total bond coverage of about \$2.1 million. Using the same cost information, this level of bond coverage would cost schools approximately \$21,000. The resulting \$72,000 in savings would offset the \$50,900 of costs associated with the new fee.

The overall fiscal impact of this proposed rule on EAB-approved schools will result in estimated net savings of about \$21,100. However, individual schools will be affected differently based on their specific financial circumstances. Based on an analysis of individual school information, the proposed rule will result in savings for 55 schools. Forty-four schools will experience an increase of less than \$100 and 31 will incur an increase greater than \$100.

Although some schools will experience a cost increase, many of them are already experiencing savings because their current bond reflects a reduction granted by the EAB. Thus, the calculated increase may not be representative of the "true savings."

As the amount of revenue generated by schools subject to EAB oversight increases, so will the fees collected under the provisions of this rule. However, under s. 45.54 (10) (cm), Stats., the EAB is required to discontinue collecting fees to support the student protection fund during the period of time that the balance in the fund exceeds \$1.0 million. Assuming that no payments are made from the student protection fund and that unexpended annual operating revenues are transferred into the fund, it is estimated that it will take nearly 10 years to reach the \$1.0 million threshold. At that time, schools subject to EAB oversight would no longer be assessed a fee.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Pharmacy Examining Board (CR 03-096)**

An order affecting ch. Phar 6 relating to the professional service area requirements where the pharmacist is absent. Effective 6-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

**Psychology Examining Board  
(CR 03-079)**

An order affecting chs. Psy 1 and 5, relating to the definition of prohibited dual relationships, the elaboration of the prohibition on exploitative relationships, the responsibility of license-holders to cooperate with board investigations, a requirement to maintain records, and violations of board orders. Effective 6-1-04.

**Summary of Final Regulatory Flexibility Analysis**

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation  
(CR 03-122)**

An order affecting ch. Trans 149, relating to titling and registration of homemade, reconstructed or repaired salvage vehicles. Effective 6-1-04.

**Summary of Final Regulatory Flexibility Analysis**

The amendments of these rules have no direct effect on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Workforce Development  
(CR 04-006)**

An order affecting chs. DWD 290 and 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements. Effective 6-1-04.

**Summary of Final Regulatory Flexibility Analysis**

A final regulatory flexibility analysis is not required because the rule does not affect small business as defined in s. 227.114, Stats.

**Summary of Comments by Legislative Review Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in **May 2004**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### Revisions

#### Accounting Examining Board

##### Ch. Accy 1

Ss. Accy 1.001 to 1.003

Ss. Accy 1.102 and 1.103

S. Accy 1.201 (1), (2) (a) to (d)

Ss. Accy 1.202 to 1.205

Ss. Accy 1.301 and 1.302

Ss. Accy 1.401 to 1.406

##### Ch. Accy 3

Ss. Accy 3.06 and 3.07

##### Ch. Accy 4

Ss. Accy 4.01 to 4.03

Ss. Accy 4.037 to 4.11

**Ch. Accy 5** (Entire chapter)

##### Ch. Accy 7

S. Accy 7.02 (2) and (3)

S. Accy 7.03 (2)

S. Accy 7.035 (intro.)

S. Accy 7.05 (1) (b)

S. Accy 7.06

##### Ch. Accy 8

S. Accy 8.04 (1) and (3)

##### Ch. Accy 9

S. Accy 9.01 (4) to (9)

#### Educational Approval Board

##### Ch. EAB 3

S. EAB 3.01 (6) (a)

##### Ch. EAB 4

S. EAB 4.04 (1) (cm)

S. EAB 4.06

S. EAB 4.10 (2) (b)

#### Personnel Commission

**Ch. PC 2** (Entire chapter)

#### Pharmacy Examining Board

##### Ch. Phar 6

S. Phar 6.04 (3) (a) and (c)

#### Psychology Examining Board

##### Ch. Psy 1

S. 1.02 (5m) and (9)

##### Ch. Psy 5

S. Psy 5.01 (14) (intro.) and (c), (17), (24), (33) and (34)

#### Transportation

##### Ch. Trans 149

S. Trans 149.01 (2)

S. Trans 149.02 (6) (m)

S. Trans 149.05 (5) (a)

S. Trans 149.07 (1) (a)

S. Trans 149.08 (1)

##### Ch. Trans 305

S. Trans 305.065 (1) and (2) (b)

#### Workforce Development

##### Ch. DWD 290

S. DWD 290.155 (1)

##### Ch. DWD 293

S. DWD 293.02

### Editorial corrections

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

#### Personnel Commission

**Ch. PC 7** (Entire chapter)

#### Transportation

##### Ch. Trans 305

S. Trans 305.02 (8)



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## Sections affected by revisor's corrections not published

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**Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.**

**Subscriber's note:** Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
HFS 90.08 (3) (b) 9. and 12.	ch. PI 3	ch. PI 34
HFS 90.11 (6) (a) 12. and 15.	ch. PI 3	ch. PI 34
HFS 107.36 (1) (a) 2. (f) and (g)	ch. PI 3	ch. PI 34
PC 1.05 (1)	ss. PC 2.03 and 3.03	s. PC 3.03

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## Executive orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 47.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Private First class Gregory R. Goodrich of the United States Army Reserve who lost his life during Operation Iraqi Freedom.

**Executive Order 48.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Specialist Michael A. McGlothin of the United States Army who lost his life during Operation Iraqi Freedom.

**Executive Order 49.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Peace Officers who have given their lives in the line of duty.

**Executive Order 50.** Relating to the extension of eligibility to receive pay and benefits under Wis. Stats. s. 230.315.

**Executive Order 51.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Peace Officers who have given their lives in the line of duty.

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## Public notices

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### Health and Family Services (Medical Assistance Reimbursement of Nursing Homes) State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 04–05

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services.

The Department is proposing changes in the methods of setting rates for payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 2004.

The proposed changes would update the payment system and make various payment-related policy changes. Some of the changes are necessary to implement various budget policies contained in the Wisconsin 2003–2005 Biennial Budget. Several new policy proposals such as an incentive for phasing out entire facilities and are quality-of-care incentives are included. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving Medicaid residents is approximately \$23,314,000 all funds, (\$13,601,400 FFP), excluding patient liability.

The proposed changes implement Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2003–2005 Biennial Budget Bill and to disburse the \$23,314,000 allotted in the bill through a rate increase of approximately 2.6 percent. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.600, 5.700, 5.800 and 5.900, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.

2. Changing references to previous years for descriptive reasons will be done where necessary.

3. Adjust the labor factors listed in Section 5.410.

4. Delete the minimum occupancy factor in Section 3.030.

5. Change the dates in the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2004–2005 period.

6. Establish an incentive for phasing out entire facilities in Section 4.580.

7. Modify the incentive ratio in Sections 3.220, 3.251, 3.310 and 3.600.

8. Modify the targets in the property allowance in Section 3.532.

9. Modify Section 3.775, which deals with non-state operated government-owned facilities, to accommodate changes in cost finding and rate setting methods. Payment would be distributed primarily based on Medicaid patient days.

10. Revise the inflation percentages for property tax and municipal fees in Section 5.710.

11. Change the base allowance and the incentive for the Exceptional Medicaid/Medicare Utilization incentive in Sections 5.920 and 2.710.

12. Create a new cost center combining Support Services, Administration and Fuel and Utilities into a single cost center.

13. Eliminate the over-the-counter Drugs cost center and adjust the payment for Direct Care Supplies and Services.

14. Eliminate the labor adjustment factor for Direct Care Supplies and Services.

15. Create a quality-of-care incentive in Section 2.700.

16. Change bed hold provisions in Sections 1.500, 1.307 and 3.020.

17. Modify Section 4.500 to allow payment adjustments for a group of facilities with a common operator or common ownership, if they close a facility and have a significant reduction in Medicaid residents.

18. Modify cost report for ICF's--MR.

19. Establish a standard allowance for employee meals allocated to fringe benefits or stop treating employee meals as a fringe benefit.

20. Eliminate the individualized plan of care requirement for the Specialized Rehabilitation Psychiatric Services.

21. Clarify Direct Care language in Section 2.110.

22. Clarify definitions in Sections 3.500 and 5.810.

**Copies of the Proposed Changes**

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701-0309

Attention: Nursing Home Medicaid Payment Plan or by faxing James Cobb at 608-264-7720 The available proposed changes may be reviewed at the main office at any county department of social services or human services.

**Written Comments/Meetings**

Written comments on the proposed changes may be sent to the Division of Health Care Financing, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed changes based on comments received at these forums.



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