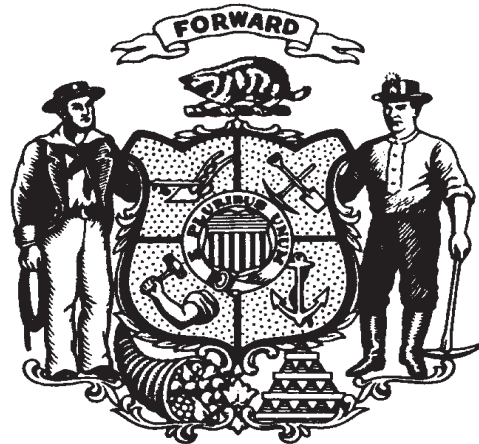


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Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection (2)

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

Finding of emergency

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

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

(3) The fund assessment formula is designed to require higher assessments of contractors who have weak financial statements (and may thus present greater default risks). But the statutory formula may generate unexpectedly high assessments in some cases, where a contractor's strong financial condition is temporarily affected by financial

transactions related to a merger or acquisition. This may cause unfair hardship, and may unfairly penalize some mergers or acquisitions that actually strengthen security for agricultural producers. This may have an unnecessarily adverse impact on contractors, producers and Wisconsin economic development.

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

Publication Date: January 29, 2004

Effective Date: January 29, 2004

Expiration Date: June 27, 2004

Hearing Dates: April 26 and 27, 2004

Extension Through: August 25, 2004

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

Finding of emergency

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

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

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

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

(5) DATCP's action protected agricultural producers against catastrophic defaults, but imposed additional costs on some large contractors. The affected contractors (approximately 6 contractors) must now pay security costs and fund assessments. This emergency rule reduces fund assessments for these contractors, to compensate for the added security costs that the contractors must incur.

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

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

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

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

Exemption from finding of emergency

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

Plain language analysis

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

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

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

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

Exemption from finding of emergency

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

Plain language analysis

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

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

Insurance

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

Finding of emergency

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

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

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

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

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

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

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

Finding of emergency.

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

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

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

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

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

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

* On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended these rules effective July 24, 2004.

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

Finding of emergency

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

Publication Date: June 10, 2004
Effective Date: June 10, 2004
Expiration Date: November 7, 2004
Hearing Dates: August 25 and 26, 2004
 [See Notice This Register]

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

Finding of emergency

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

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

Finding of emergency

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

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and

interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

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

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

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

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

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

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

Finding of emergency

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

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

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

example, all new riprap and culvert applications currently require public notices).

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

Public Instruction

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

Finding of emergency

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

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

Publication Date: June 30, 2004
Effective Date: June 30, 2004
Expiration Date: November 27, 2004

Regulation and Licensing

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Regulation and Licensing

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

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

Publication Date: July 3, 2004
Effective Date: July 3, 2004
Expiration Date: November 30, 2004

Veterans Affairs

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Veterans Affairs.

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

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

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

Publication Date: March 30, 2004
Effective Date: March 30, 2004
Expiration Date: August 27, 2004
Hearing Dates: June 18, 2004

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.

Scope statements

Elections Board

Subject

Create s. EIBd 3.03, regarding redacting confidential information from registration documents filed with municipal clerks or other election officials.

Policy analysis

Objective of the rule. To create an Elections Board rule to require that municipal clerks redact from voter registration documents available to the public any information that discloses: the voter's social security number, or any segment of the social security number; the voter's date of birth; or the voter's driver's license number. That information is prohibited, by s. 6.36 (1) (b) 1. a., Stats., from being viewed by any person except a restricted class of election officials.

Description of policies – relevant existing policies, proposed new policies and policy alternatives considered:

Section 6.36, Stats., requires that for each Wisconsin voter, the board shall compile and maintain electronically an official registration list. The list shall contain the name and address of each registered elector in the state, the date of birth of the elector, the ward and aldermanic district of the elector, if any, and, for each elector, a unique registration identification number assigned by the board, the number of a valid operator's license issued to the elector under ch. 343, if any, or the last 4 digits of the elector's social security account number, if any, any identification serial number issued to the elector under s. 6.47 (3). Sub. (1) (b) 1. a. of s. 6.36, Stats., provides that no person other than an employee of the board, a municipal clerk, a deputy clerk, an executive director of a city board of election commissioners, or a deputy designated by the executive director may view the date of birth, registration identification number, operator's license number, or social security account number of an elector, the address of an elector to whom an identification serial number is issued under s. 6.47 (3), or any indication of an accommodation required under s. 5.25 (4) (a) to permit voting by an elector. To prevent persons not entitled to access to from viewing the confidential information, the rule requires custodians of the information to redact it from documents available to the public.

Statutory authority

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

Comparison to federal regulations

None.

Staff time required

15 hours.

Natural Resources

Subject

Statement of scope for proposed trout fishing rules on Pine River and Melancthon Creek in Richland County.

Objective of proposed rules. The objective of the proposed rules is to satisfy the local anglers while protecting the resource and providing quality trout fishing for all anglers.

Policy analysis

The Department of Natural Resources (DNR) currently sets rules governing fishing in the waters of the state. The current trout fishing rules were last reviewed and modified in 2003. Several local anglers have concerns about the regulations on the Pine River and Melancthon Creek in Richland County. They have passed a resolution at the spring fish and wildlife hearings, sent in a petition asking for a change, and appearing at several Natural Resource Board meetings. The DNR has answered their calls and letters, made two informational presentations to the NR Board, surveyed the waters in question and written a summary of the information, and held a local public input meeting.

We are proposing to gather more public and Department input and return to the September NR Board meeting asking to go to public hearing on a rule change. Hearings will likely be held in October and we will return to the December Board meeting for rule adoption. Depending on legislative review, the rules should be in affect early in the 2005 fishing season.

Statutory authority

Sections 29.014 and 227.11, Stats.

Staff time required

Department personnel have already spent approximately 240 hours on these rules, and will spend approximately 180 additional hours on developing these rules.

Entities affected by the rules

The new rules may impact trout anglers fishing on the Pine River and Melancthon Creek, and potentially those businesses and local communities that benefit from the anglers visiting these waters.

Comparison to federal regulations

There are no federal regulations regarding trout fishing regulations.

Natural Resources

Subject

Statement of scope for a proposed administrative rule changing the location of commercial trap netting near Manitowoc during the summer.

Objective of proposed rules. The objective of this rule is to minimize user conflicts between commercial and sport fishers in the Manitowoc area. Commercial trap nets are prohibited during summer in Wisconsin waters of Lake Michigan south of Kewaunee, except in two designated areas, one near Sheboygan and one near Manitowoc. The area near Manitowoc has been controversial, with sport fishers wanting it eliminated or moved to the north. Senator Joe Leibham interceded at the request of sport fishers and has negotiated an agreement between the key sport and commercial fishers to

relocate the Manitowoc summer trap netting area. That agreement was implemented for the summer of 2004 by emergency order FH-49-04(E). The proposed rule will make permanent the new boundaries of the Manitowoc summer trap netting area.

Policy analysis

This rule attempts to resolve a significant user conflict, but does not represent a change in fundamental policy. Section NR 1.04 (Great Lakes fisheries management) states, "Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitations as to participation in the fisheries and allocation of allowable harvest among various users and the establishment of restricted areas."

Statutory authority

Sections. 29.014 (1), 29.041, 29.519 (1) (b) and 227.11 (2) (a), Stats.

Staff time required

Because the proposed permanent order is identical to an existing emergency order, the amount of time needed will be small.

Entities affected by the rules

The rule will affect commercial fishers directly and sport fishers indirectly.

Comparison to federal regulations

None applicable.

Transportation

Subject

Objective of the rule. This proposed rule making will

repeal ch. Trans 302, relating to Vehicle Marking. Chapter Trans 302 was created in 1982 to provide a uniform means for identifying the owner or operator of vehicles subject to ch. 194, Stats., and private vehicles having a gross vehicle weight of more than 12,000 pounds. Trans 325 and 327 currently adopt Title 49 CFR Part 390.21 (Marking of CMVs) for motor carriers engaged in both interstate and intrastate commerce. The marking requirements found in Part 390.21 conflict with ch. Trans 302 and, therefore, result in inconsistencies within the motor carrier industry.

Policy analysis

The Division of State Patrol currently encourages motor carriers to mark their vehicles in accordance with 49 CFR Part 390.21.

Comparison to federal regulations

Trans 302.06 currently establishes an exception to the marking requirements under ch. Trans 302 if the carrier is marked in accordance with 49 CFR Part 390.21. Trans 325 (interstate) and Trans 327 (intrastate) both adopt the requirements found in 49 CFR Part 390.21.

Entities affected by the rules

Wisconsin-based motor carriers and enforcement will be affected by repealing this rule.

Statutory authority

Section 194.09, Stats.

Staff time required

40 hours.

Submittal of rules to legislative council clearinghouse

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

Employee Trust Funds

Rule Submittal Date

On July 7, 2004, the Department of Employee Trust Funds submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. ETF 40.10 (1) and (2).

Subject Matter

The subject matter of the proposed rule relates to contributions towards employee health insurance premiums by local units of government that participate in group health insurance plans established by the state of Wisconsin group insurance board.

Agency Procedure for Promulgation

A public hearing is scheduled for Tuesday, August 17, 2004, at 1:00 p.m. in conference room GB at the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

Agency Contact

If you have any questions, you may contact Arlene Larson, Division of Insurance Services, at (608) 264-6624.

Financial Institutions – Securities

Rule Submittal Date

On July 6, 2004, the Department of Financial Institutions – Securities submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are being implemented by the Division that would replace Wisconsin's existing Securities Law rule requirements applicable to Wisconsin-licensed investment advisers that have custody of customer funds and/or securities, with amended Model Rules on the subject recently developed and adopted in April 2004 by the North American Securities Administrators Association. The recently amended NASAA Model Rules were themselves prompted by September 2003 changes by the U.S. Securities and Exchange Commission to the federal investment-adviser-custody-of-customer-assets rules applicable to federally-registered investment advisers.

Agency Procedure for Promulgation

The Division of Securities of the Department of Financial Institutions will hold a public hearing at 345 West Washington Avenue, 4th Floor Conference Room, at 3:00 PM. on Wednesday, August 11, 2004 to consider the proposed rules.

Agency Contact

A copy of the full text of the proposed rule revisions and fiscal estimate may be obtained from:

Randall E. Schumann (608) 266-3414
Legal Counsel for the Division of Securities
Department of Financial Institutions
345 West Washington Avenue, 4th Floor
P. O. Box 1768
Madison, WI 53701
[e-mail randall.schumann@dfi.state.wi.us]

Additionally, the full text of the proposed rules is available on-line at the DFI Website: www.wdfi.org/securities&franchising.

Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on July 15, 2004.

Analysis

These changes will affect Section Ins 18.10(2)(d), Wis. Adm. Code, relating to Annual Adjustment to the Minimum Necessary Cost or Payment to Access Independent Review.

Agency Procedure for Promulgation

The date for the public hearing is August 11, 2004.

Contact Person

A copy of the proposed rule may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Julie E. Walsh at (608) 264-8101 or e-mail at Julie.Walsh@oci.state.wi.us in the OCI Legal Unit.

Natural Resources

Rule Submittal Date

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

Subject Matter

The proposed rule amends chs. NR 10 and 19, relating to regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

Agency Procedure for Promulgation

Public hearings will be held August 25 and 26, 2004.

Agency Contact

Kurt Thiede
Bureau of Wildlife Management
608-267-2452

Natural Resources**Rule Submittal Date**

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

Subject Matter

The proposed rule amends ch. NR 500 series, relating to landfilling of solid waste.

Agency Procedure for Promulgation

Public hearings are scheduled for August 17 and 18, 2004.

Agency Contact

Dennis Mack
Bureau of Waste Management
608-267-9386

Public Instruction**Rule Submittal Date**

On July 9, 2004, the Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule amends ch. PI 35, relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Agency Procedure for Promulgation

Public hearings will be scheduled.

Agency Contact

The Division of Finance and Management is primarily responsible for promulgation of this rule. If you have questions regarding this rule, you may contact Dennis Hanson, School Finance Auditor, (608) 267-1291.

Veterans Affairs**Rules Submittal Date**

On July 14, 2004 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse creating VA 2.02 (8) and 2.04 (3) (g) of the Wisconsin Administrative Code.

Subject Matter

The proposed rule relates to the part-time study grant program and the tuition and fee reimbursement grant program.

The creation of VA 2.02 (8) and 2.04 (3) (g) will determine the circumstances under which an applicant will satisfactorily complete a course or a semester. Successful

completion of a course or a semester is an eligibility requirement for the respective grant.

The proposed rule would require that an applicant receive at least a grade of "C" for graded courses for the part-time study grant program and a "C" average for the semester for the tuition and fee reimbursement grant program.

Agency Procedure for Promulgation

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

Agency Contact

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

Workforce Development**Rules Submittal Date**

On July 15, 2004, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rules affect ch. DWD 12, relating to the grievance procedure for resolving complaints of employment displacement under the Wisconsin Works program and affecting small business.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 16, 2004. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Workforce Solutions.

Agency Contact

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Workforce Development**Rules Submittal Date**

Rule Submittal Date

On July 15, 2004, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rules affect ch. DWD 290, relating to the prevailing wage rate on public works projects and affecting small business.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 17, 2004. The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

Agency Contact

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearing Employee Trust Funds [CR 04-075]

The Wisconsin Department of Employee Trust Funds (DETF) a public hearing to review this proposed rule, which amends s. ETF 40.10 (1) and (2), and creates s. ETF 40.10 (2) (d) regarding the contributions towards employee health insurance premiums by local units of government that participate in the group health insurance plans in accordance with the provisions of s. 227.16 (1), Stats. The public hearing will be held on **August 17, 2004**, at 1:00 PM in the downstairs Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

The public record on this proposed rule making will be held open until 4:30 p.m. on Friday, August 18, 2004, to permit persons who are unable to attend the public hearing in person to submit written comments on the proposed rule. Any such written comments should be addressed to Arlene Larson, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931.

Statute interpreted: None.

Statutory authority: This proposed rule will be promulgated under the authority granted to the department of employee trust funds and the group insurance board under ss. 40.03 (2) (ig) and (6) (d) and 40.51 (1) and (7), Stats.

Explanation of agency authority: The DETF is authorized by s. 40.51 (7), Stats., to vary some aspects of the group health insurance plan for local employers, expressly including establishing employer contribution provisions that differ from those for the state. The DETF secretary is charged by s. 40.03 (2) (ig) with promulgating, with the approval of the group insurance board, all rules necessary to administer the group health insurance programs. The group insurance board has broad authority under s. 40.03 (6) (d) to take actions, as trustees, that the board deems advisable. The board has authority under s. 40.51 (1) to set premium provisions by rule.

Related statute or rule: Sections 40.05 (4) (ag) and 40.51 (6) as affected by 2003 Wis. Act 33.

Plain language analysis: The state of Wisconsin group insurance board offers a group health insurance program to local government employers, including the same alternate plans (such as HMOs) available to state employees in the area. The proposed rule authorizes an alternative method for making employer contributions. The proposed rule will allow Wisconsin public employers offering their employees group health insurance under s. 40.51 (7) the option of adopting a tiered premium strategy as a means of containing health insurance costs.

At present, local government employers are required to contribute an amount between 50% and 105% of the lowest cost qualified plan towards the health insurance premiums of their insured employees. A lesser contribution is required for part-time employees and no minimum contribution is required for insured retirees. The existing s. ETF 40.10 was loosely based on former s. 40.05 (4) (ag) 2., Stats., which set the state's premium contribution for its employees at the lesser of 90% of the standard plan premium or 105% of the

least costly qualifying plan within the county, but not more than the total amount of the premium. The state's contribution could be modified through collective bargaining.

Effective January 1, 2004, s. 40.05 (4) (ag) was repealed and recreated by 2003 Wis. Act 33 to alter state contributions towards employee health insurance. The same legislation also amended s. 40.51 (6), Stats., to require the group insurance board to place each of the health plans offered to state employees into one of three tiers. The tiers are separated according to the employee's share of premium costs.

Local government employees have access to the same HMOs and essentially the same health plans as offered to state employees in their area. The proposed rule will allow the group insurance board to establish tiers for the health plans as offered to local government employers. The tier into which a plan is placed may be the same as for state employees or may be different if the board and its actuary determine that the plan as offered to local employees, and its premium, warrants a different placement. Under the proposed rule, local government employers could use the tiers established by the board as a basis for their premium contribution arrangement. Under the new law enacted by 2003 Wis. Act 33, the state of Wisconsin's minimum premium contribution for its insured full-time employees is 80% of the average premium cost of plans offered in the tier with the lowest employee premium cost. Under the proposed rule, the local government employer's required minimum contribution will remain unchanged at the present 50% of the lowest cost plan (25% for part-time employees). If the local government employer adopts a tiered plan based on the Group Insurance Board's tiers, and provides that the employee's portion of the monthly premium will increase for plans in higher tiers by at least \$20 for single coverage and \$50 for family coverage for each successively higher tier, then the employer will not be limited to contributions of 105% of the premium for the lowest cost plan.

The proposed rule does not alter local government premium contributions. However, the rule change would allow local government employers more options in setting their future share of premiums.

Many local government employers base premium contributions on collectively bargained agreements. The proposed rule cannot impair existing contracts and so could have no effect on premium contributions being made under existing collective bargaining agreements until the existing agreements expire or are amended or otherwise renegotiated.

The proposed rule also amends the current language of s. ETF 40.10 in conformity with 1999 Act 185, section 193, which provided that wherever "employee," "employees," "employee's" or "employes' " appear in the statutes, "employee," "employees," "employee's" or "employes' " are substituted.

Summary of, and comparison with, existing or proposed federal regulation

There are no existing or proposed federal regulations applicable to the subject matter of this rule.

Comparison with rules in adjacent states

A search of legal databases on state administrative regulations has located no similar rules in adjacent states.

Summary of factual data and analytical methodologies and how the related findings support the approach chosen

The legislature required a change with respect to state contributions towards health insurance for state employees. One reason for the change was because the previous contribution strategy, the so-called "105% formula," was perceived as no longer being as effective as possible in holding down increases in health insurance premiums by health plans. The tiered approach is believed to better encourage health plans to become more cost efficient, thereby holding down the cost of health insurance. The board and DETF have decided that local units of government should be provided with access to the same tool to encourage cost efficiency in order to contain health care costs.

Under the proposed rule, participating Wisconsin public employers may continue to base their employer contribution solely on the so-called "105% formula," or alternatively, on the health plan tiers.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report

Section 40.02 (28), Stats. "Employer" as defined for purposes of ch. 40 does not include small businesses.

Anticipated costs incurred by private sector

None.

Effect on small business

No effect.

Agency contact

For questions about the proposed rule, please write or call Arlene Larson, Manager, Self-Insured Health Plans, Division of Insurance Services, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 264-6624. Fax: (608) 267-0633. E-mail: arlene.larson@etf.state.wi.us

Place where comments are to be submitted and deadline for submission

Written comments on the proposed rule may be submitted to Arlene Larson, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 PM on Wednesday, August 18, 2004.

Initial regulatory flexibility analysis

The proposed rule has no effect on small businesses because only governmental employers may participate in the group health insurance programs under ch. 40 of the statutes.

Fiscal estimate

The proposed rule has no direct fiscal impact. The proposed rule generates no revenues for any employer because it has no effect on the fiscal liabilities of any county, city, village, town, school district, technical college district or sewerage. The proposed rule only applies to the local government units electing to participate in the Group Insurance Board's group health program. The intended effect of the rule is to allow these employers an option that may reduce increases in future health care costs. Nothing in the rule, however, requires any employer to change its present contribution arrangement.

Free copies of proposed rule:

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707-7931, telephone (608) 266-1071.

Notice of Hearing Insurance [CR 04-079]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting section Ins 18.105, Wis. Adm. Code, relating to annual adjustment to the minimum necessary cost or payment to access independent review.

Hearing Information

Date: **August 11, 2004**

Time: 1:00 p.m., or as soon thereafter as the matter may be reached

Place: OCI, 2nd Floor Hearing Room, 125 South Webster Street, Madison, WI

Written comments or email comments submitted through the Wisconsin Administrative Rule website at <https://apps3.dhfs.state.wi.us/admrules/public/Home> on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 10 days following the date of the hearing.

Written comments should be sent to:

Julie E. Walsh

Legal Unit – OCI Rule Comment for Rule 18.105

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

1. Statutes interpreted: ss. 600.01, 628.34 (12), 632.835 (1) (a) – (b), and 632.835 (5) (c), Wis. Stats.

2. Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 632.835 (5) (c), Wis. Stats.

3. Explanation of the OCI's authority to promulgate the proposed rule: The statutes are clear in granting the Office authority to promulgate rules and in this case specifically state at s. 632.835 (5) (c), Wis. Stats., that the commissioner shall promulgate a rule implementing the statutory provision.

4. Related Statutes or rules: Section 632.835, (5) (c), Wis. Stats., requires that the minimum necessary cost or payment of a procedure or service must be at least \$250.00 as adjusted annually to reflect changes in the consumer price index for all urban consumers, U.S. city average as determined by the U.S. department of labor. The intent of the rule is to implement the statute by indicating the time and manner the CPI index will be posted and the modification to the minimum cost or payment requirement for accessing independent review.

5. The plain language analysis and summary of the proposed rule: The rule implements s. 632.835 (5) (c), Stats., requirement that the commissioner promulgate a rule adjusting the minimum requirements as found in s. 632.835 (1) (a) 4. and (1) (b) 4., Wis. Stats., at least annually. The rule proposes that the Commissioner post to the OCI website the CPI to be used for the year beginning on January 1 of each year. The Commissioner shall post the information on or before December 1 of each year.

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

There is no federal legislation that pertains to this rule.

7. Comparison of similar rules in adjacent states as found by OCI:

Iowa: No similar rules.

Illinois: No similar rules.

Minnesota: No similar rules.

Michigan: No similar rules.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The Office did not conduct a factual data using analytical methodologies as the rule proposes only to implement the notification of the CPI that will be used by consumers and insurers for the minimum cost or payment requirement to access independent review. There will be method selected to notify insurers and consumers is cost effective as it utilizes an existing communication tool.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

Health insurers doing an insurance business in Wisconsin do not qualify as small businesses and the effect of this rule alters the trigger dollar amount before an insured individual may access the independent review organization as it relates to health care for that insured. No small businesses will be effected by this rule.

10. If these changes will have a significant fiscal effect on the private sector, the anticipated costs possibly incurred by private sector:

There will not be a significant fiscal effect on the private sector. The change in the CPI assuming past trends in the CPI, would adjust the minimum cost or payment requirement approximately \$5.00 annually. Further, since the first year of independent review that included a retroactive review period, the number of requests for independent review have been steady with approximately 160 requests for independent review last year. The Commissioner does not anticipate the annual adjustment in the minimum cost or payment will alter the number of requests for independent review.

11. Effect on Small Business: There should be no effect on small business. The rule proposes to adjust the minimum cost or payment with which an insured would need to meet prior to obtaining independent review, provided other statutory requirements are also met.

12. Agency contact person: A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110, Inger.Williams@OCI.State.WI.US or at 125 South Webster Street – 2nd Floor, PO Box 7873, Madison WI 53707-7873.

13. Place where comments are to be submitted and deadline for submission:

Mailing address:

Julie E. Walsh

Legal Unit – OCI Rule Comment for Rule 18.10 (2)(d)

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Julie E. Walsh

Legal Unit – OCI Rule Comment for Rule 18.10 (2)(d)

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53702

The deadline for submitting comments is 4:00 p.m. on the 10th day after the date for the hearing stated in the Notice of Hearing.

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial regulatory flexibility analysis

This rule does not impose any additional requirements on small businesses.

Agency contact

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110, Inger.Williams@OCI.State.WI.US or at 125 South Webster Street – 2nd Floor, PO Box 7873, Madison WI 53707-7873.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 04-078]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.063, 29.335 and 227.11 (2) (a), Stats., interpreting ss. 29.014, 29.063 and 29.335, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10 and 19, Wis. Adm. Code, relating to regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis. The proposed rule will continue the ban on the placement of feed for deer in those areas at highest risk for chronic wasting disease (CWD), as required by 2003 Wisconsin Act 240. The proposed rule bans baiting and feeding in any county where CWD eradication zones or herd reduction zones have been established in the county or a portion of the county; or a CWD or bovine tuberculosis positive captive or free-roaming, domestic or wild animal has been confirmed after December 31, 1997 from the county; or if the county or portion of the county is within a 10-mile radius of a captive or free-roaming, domestic or wild animal that has been tested and confirmed to be positive for CWD or bovine tuberculosis after December 31, 1997. Additional counties meeting these criteria may be included in the ban by Secretary's Order.

Additionally, this rule clarifies various terms and conditions that were established by Act 240. These clarifications are necessary in order to enforce and explain the rule and regulations pertaining to deer and bear baiting and feeding for the remainder of the state where baiting and feeding is not banned. Act 240 also extended the department's authority to regulate feeding of wildlife. This rule establishes restrictions for wildlife feeding and specifically deer feeding for areas where the feeding of deer is not prohibited.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental

analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 29.014, 29.063, 29.335, 29.336, 227.11 and 227.24, Stats., interpreting ss. 29.014, 29.063, 29.335 and 29.336, Stats., the Department of Natural Resources will hold public hearings on Natural Resources Board Emergency Order No. WM-35-04(E) relating to regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis. This emergency order took effect on June 10, 2004. This emergency order continued the ban on the placement of feed for deer in those areas at highest risk for chronic wasting disease (CWD).

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

Wednesday, **August 25, 2004** at 7:00 p.m.

Resident Center

MacKenzie Environmental Education Center

W7303 County Highway CS

Poynette

Thursday, **August 26, 2004** at 7:00 p.m.

North Central Voc. Technical School

1000 Campus Drive

Wausau

Fiscal Estimate

There are no anticipated county, village, town, school district, technical college district and sewer district fiscal liabilities and revenues associated with this rule or Act 240.

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.

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 1, 2004. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Thiede.

Notice of Hearings

Natural Resources

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

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12, 30.123 and 227.11 (2), Stats., interpreting ss. 30.12, 30.123 and 30.206, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 320, Wis. Adm. Code, relating to the regulation of bridges and culverts in or over navigable waterways. Chapter NR 320 defines and describes design standards for two types of culvert replacements that qualify for exemptions in all waters other

than "areas of special natural resource interest" (ASNRIs). The rule also establishes a general permit for clear span bridges over a navigable water less than 35 feet. Department staff will work with stakeholders to develop two additional general permits: non-exempt culvert replacements over a navigable water less than 35 feet in width and bridges supported only by culverts.

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

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

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

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 30.20 (1), (1k), (1t) and (2), 30.206 and 227.11 (2), Stats., interpreting ss. 30.20 (1), (1g), (1k), (1m), (1t) and (2) and 30.206, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 345, Wis. Adm. Code, relating to dredging in navigable waterways. Proposed ch. NR 345 cross-references the rules for exempt structures where the standards for associated dredging are set. It also sets standards under which hand-held dredging activities are exempt which include: not in an area of special natural

resource interest or a public rights feature; may not contain hazardous substances; dredged material disposed of in uplands or approved solid waste facility, erosion control best management practice utilized; and not more than 4 cubic yards of material removed or displaced. Proposed ch. NR 345 also establishes general permits for installation of utility lines and maintenance dredging of up to 3000 cubic yards in established drainage districts. The standards are similar to those required for exemptions above but have some additional standards specific to the activity being conducted including compliance with DATCP rules for drainage districts.

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

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

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

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

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

The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

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

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

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

Video conference participation will be available at:

Pyle Center, UW-Madison
702 Langdon Street
Madison

Room 332, Chippewa Valley Tech College

620 W. Clairemont Ave.
Eau Claire
Rooms 285 & 271, UW-Washington Co.
400 University Dr.
West Bend

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

Video conference participation will be available at:

Pyle Center, UW-Madison
702 Langdon Street
Madison

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

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

Video conference participation will be available at:

Pyle Center, UW-Madison
702 Langdon Street
Madison

Northeast Tech College
2740 W. Mason Street
Green Bay

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

Fiscal Estimate

[NR 345] It is assumed there will be a decrease in the workload, and a decrease in revenue, related to dredging regulation. The workload decrease is estimated at about 1240 hours, or 0.60 FTE position, with an associated cost reduction of \$25,800 in salary and fringe benefits. The revenue decrease is estimated at about \$38,400 annually.

Overall, the full implementation of Act 118 and its multiple related rules is not expected to have a major impact on DNR water permit revenues or workload.

[NR 341] It is estimated that annual water permit revenues to the Department for grading activities will be reduced from an estimated \$218,000 to an estimated \$54,000, for a reduction in revenue of \$164,000. Prior to Act 118, all grading activities were subject to individual permits at a fee of \$300 or \$500. Under provisions of Act 118, it is estimated that about half of the grading activities will be exempt from any permit or fee, and the balance will be subject to an individual or general permit at a fee ranging from \$50 to \$500. Workload is anticipated to be reduced from an estimated 8700 hours to 2800 hours, for a workload reduction of an estimated 5900 hours or approximately 2.8 FTE positions and a cost reduction of \$129,400.

This reduction in revenue and workload related to grading is offset by increases in revenue and workload related to other water permitting activities modified by Act 118 that are not a part of this administrative rule. The ongoing fiscal impact of

a fully implemented Act 118 does not reduce revenues and is expected to result in an increase in workload of an estimated 5 FTE and \$248,000.

[NR 343] It is assumed there will be an increase in the workload, and an increase in revenue, related to regulating artificial water bodies. The workload increase is estimated at about 800 hours, or 0.40 FTE position, with associated costs of \$16,600 in salary and fringe benefits. The revenue increase is estimated at about \$59,100 annually. Overall, the full implementation of Act 118 and its multiple related rules is not expected to have a major impact on DNR water permit revenues or workload.

[NR 320] It is assumed there will be a reduction in the workload, and a minor increase in revenue, related to regulating the placement of culverts less than 35 feet in length. The workload reduction is estimated at about 900 hours, or 0.40 FTE position, with associated costs of \$18,600 in salary and fringe benefits. The revenue increase is estimated at about \$1,500 annually. It is assumed there will be no change in the workload or revenue related to regulating bridges, or culverts over 35 feet in length.

Overall, the full implementation of Act 118 and its multiple related rules is not expected to have a major impact on DNR water permit revenues or workload.

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

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

Notice of Hearings

Natural Resources (Environmental Protection – Water Management, Chs. NR 300—)

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12 (1), (1p) and (3) (br), 30.13 (1) and (1m), 30.206 and 227.11 (2), Stats., interpreting ss. 30.12 (1), (1g) (a), (b), (e) and (f), (1p), (3) and (3m), 30.13 (1) and (1m), 30.20 (1g) (b) 2. and 30.206, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 326, Wis. Adm. Code, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways. The proposed rule will implement 2003 Wisconsin Act 118 by establishing construction, design and placement standards for projects to be eligible for statutory exemptions, establishing general permits and establishing standards for projects that may be authorized under an individual permit. The proposed rule defines and describes design standards to qualify for exemptions for piers, wharves, seasonal boat shelters, boat hoists, boat lifts and swimming rafts. The rule establishes general permits for preexisting piers and permanent boat

shelters which meet certain conditions, and establishes standards for specific individual permits for piers. Department staff will work with stakeholders prior to public hearing to develop more specific standards for marinas, and identify any other general or individual permits that may be appropriate.

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

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

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

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

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

The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold an open house from 5:00 p.m. to 6:00 p.m. prior to the hearings in Waukesha, Eau Claire and Minocqua and from 11:00 to noon in Madison. Department staff will be available to answer questions regarding the proposed rules.

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

Tuesday **September 7, 2004** at 6:00 p.m.
Room 151, State Office Building
141 NW Barstow Street, Waukesha

Wednesday, **September 8, 2004** at 6:00 p.m.
Conference Room, DNR West Central Region Hdqrs.
1300 W. Clairemont
Eau Claire

Thursday, **September 9, 2004** at 6:00 p.m.
Minocqua Community Building

415 Menominee
Minocqua

Friday, **September 10, 2004** at 12:00 noon
Room 349, GEF #3
125 S. 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 Roberta Lund at (608) 266-2220 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

Most of the permitting activities covered by this administrative rule remain unchanged in terms of the workload required by Department staff and revenues generated by required permits. The exception is for the permanent boat shelter permits, which were issued on an individual permit basis prior to Act 118, and will be issued as general permits under this proposed administrative rule. The net fiscal impact is estimated to be a workload decrease of about 95 hours/year, which equates to about \$2,000 in salary and fringe benefits, and a revenue decrease of about \$4,800/year.

Overall, the full implementation of Act 118 and its multiple related rules is not expected to have a major impact on DNR water permit revenues or workload.

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

Notice of Hearings Natural Resources [CR 04-077]

NOTICE IS HEREBY GIVEN that pursuant to ss. 289.05, 289.06 and 289.07, Stats., interpreting ss. 289.24, 289.30 and 289.61, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 500, 504, 506, 507, 512, 514, 516 and 520, Wis. Adm. Code, relating to landfilling of solid waste. The proposed rule allows for the potential for longer leachate lines in municipal solid waste landfills, improved landfill design and construction standards, requires a stabilization plan, and allows the Department to approve practices that should lead to quicker biodegradation (stability) of the waste in municipal solid waste landfills.

The proposed rule revisions would allow the maximum length of leachate collection piping to increase from 1,200 feet to 2,000 feet. The proposed revision reflects changes in the current design and construction standards of municipal

solid waste landfills. The maximum width of municipal solid waste landfills would increase by approximately two-thirds and the height by about 100 feet. The volume of waste that could be placed in a single municipal solid waste landfill would approximately double.

The proposed rule would also allow the Department to approve adding liquids to degrade the waste faster thereby reducing the potential long-term threat of landfills. The Department is specifically asking for comments on the provisions to add additional liquids to foster quicker biodegradation and changes in final cover and run-on of water from precipitation.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

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

Tuesday, **August 17, 2004** at 10:30 a.m.
Gathering Waters Room
DNR South Central Region Hdqrs.,
3911 Fish Hatchery Road
Fitchburg

Wednesday, **August 18, 2004** at 1:30 p.m.
Schmeekle Room
UW-Stevens Point
2419 N. Point Drive
Stevens Point

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dennis Mack at (608) 267-9386 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The overall costs to counties and private companies that own, operate and develop landfills will be reduced. Allowing longer leachate lines (up to 2000 feet) will result in the following:

- Lower development cost per cubic yard of landfill volume and potentially lower disposal costs to landfill users,
- Reduced need to buy additional land to develop a new landfills (better existing landuse),

– Allow for better infra-structure use (associated roads, gas recovery, structures, etc.),

– Reduced impacts to sewerage system because leachate can be recirculated to help stabilize the landfill rather than being shipped to a publicly owned wastewater treatment facility for treatment, and

– Potentially negative impacts on recycling interests.

Fiscal impacts to the Waste Management Program (DNR) during this biennium (FY 05) will consist of the following:

– Develop guidance on the code revisions for staff, consultants and landfill staff (400 hours),

– No net increased of staff review and approval costs (complexity that is offset by program streamlining efforts of the new of modified landfills.

The estimated costs are \$18,000 in FY 05 and are a one time costs.

The following assumptions were made in this determination:

– Hourly staff cost is \$40 per hour (salary plus fringes),

– Developing guidance for staff, designers and owner/operators to use in their review and designs, will significantly reduce the staff and information resources needed to implement the rules in landfill designs.

– While the rule revisions will result in some extra resources being expended, the streamlining rule revisions will reduce the staff and information resources and result in a net resources increase/decrease of zero.

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

Notice of Proposed Rule

Revenue

[CR 04-049]

Notice is hereby given that, pursuant to s. 227.11 (2) (a), Stats., and interpreting ss. 71.01 (8r), 71.42 (3m), 71.63 (1m) and (5m), 71.65 (3) (a), 73.029, 77.58 (1m), 77.61 (14), 77.96 (5m), 78.12 (5), 78.55 (5m), 139.01 (5m), 139.30 (8m) and 139.75 (5m), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **August 1, 2004**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

Analysis by the Department of Revenue

Statutes interpreted: ss. 71.01 (8r), 71.42 (3m), 71.63 (1m) and (5m), 71.65 (3) (a), 73.029, 77.58 (1m), 77.61 (14), 77.96 (5m), 78.12 (5), 78.55 (5m), 139.01 (5m), 139.30 (8m) and 139.75 (5m), Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority: Each agency may promulgate rules interpreting the provisions of any statute

enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: There is no related statute or rule that specifically addresses a requirement to make payments of certain installment agreements on overdue tax accounts using electronic funds transfer.

Plain language analysis: The Wisconsin statutes provide that the department may require electronic funds transfer only by promulgating rules. This rule is being promulgated so that the department may require electronic funds transfer for payments on overdue tax accounts meeting at least one of the following requirements:

- The initial overdue balance is at least \$2,000.
- The installment agreement is for more than 2 years in length.
- The installment agreement was requested by an entity with an active business permit.
- The installment agreement is for a person with an out-of-state account.
- The payment history of the account dictates that it would be in the department's best interest to require electronic funds transfer.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Analysis and supporting documents used to determine effect on small business: The department has prepared a fiscal estimate regarding this proposed rule order. It was determined that there is not a significant fiscal effect on small business.

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

Text of Rule

SECTION 1. Tax 1.12 (4) (a) (intro.) is revised, to reflect the creation of a new subdivision.

SECTION 2. Tax 1.12 (4) (a) 12. is created, to provide that payments of certain installment agreements on overdue tax accounts are required to be made by electronic funds transfer.

SECTION 1. Tax 1.12 (4) (a) (intro.) is amended to read:

Tax 1.12 (4) (a) (intro.). Except as provided in sub. (11), the department requires a person who owes taxes and fees as described in subs. 1. to ~~4~~. 12. to pay or deposit the taxes and fees using the EFT payment method. The following taxes and fees are included in the EFT payment requirement:

Note to Revisor: In the note at the end of Tax 1.12 (4) (a) (3), replace "Tax 11.001 (4)" with "Tax 11.001 (2) (d)".

SECTION 2. Tax 1.12 (4) (a) 12. is created to read:

Tax 1.12 (4) (a) 12. Installment agreement payments on overdue tax accounts, if at least one of the following requirements are met:

- a. The initial overdue balance is at least \$2,000.
- b. The installment agreement is for more than 2 years in length.
- c. The installment agreement was requested by an entity with an active business permit.
- d. The installment agreement is for a person with an out-of-state account.
- e. The payment history of the account dictates that it would be in the department's best interest to require EFT.

Note to Revisor: 1) In the example at the end of Tax 1.12 (5), replace the year "1999" with "2003" and the year "2000" with "2004".

2) Replace the note at the end of Tax 1.12(6) with the following:

Note: A request for an EFT registration packet may be made by calling the department's EFT unit at (608) 264-9918, by writing to EFT Unit, Wisconsin Department of Revenue, PO Box 8912, Madison WI 53708-8912, or by submitting an on-line form via the department's web site at www.dor.state.wi.us.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

The rule would require payment by electronic fund transactions of installment agreement payments on overdue tax accounts meeting certain conditions. The change may increase tax collections by reducing the default rate on installment agreements, but any revenue increase is not expected to be significant.

Contact Person

Please contact Dale Kleven at (608) 266-8253 or dkleven@dor.state.wi.us, if you have any questions regarding this proposed rule order.

Notice of Hearing

Veterans Affairs

[CR 04-080]

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the **20th day of August, 2004**, at 9:30 a.m., in the Learning Center at the Wisconsin Veterans Home at Union Grove, Wisconsin.

Analysis Prepared by the Department of Veterans Affairs

Statutory authority: s. 45.35 (3), Stats.

Statute interpreted: ss. 45.25 and 45.396, Stats.

The creation of ss. VA 2.02 (8) and 2.04 (3) (g) will determine the circumstances under which an applicant will satisfactorily complete a semester or course. The rule language would impose the requirement that the applicant receives at least a grade of "C" for a graded course or a "pass" or "satisfactory" determination for other courses for which a part-time study grant is sought or at least a "C" average for the semester for which a tuition and fee reimbursement grant is sought. This requirement is similar to the requirement of the National Guard tuition grant under s. 21.49.

There is no current or pending federal regulations that address reimbursement for educational grants under state veterans' educational programs. 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.

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 expected to result in an annual reduction in expenditures of approximately \$28,782 in the part-time study grant program and \$83,926 in the tuition and fee reimbursement grant program.

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
John.rosinski@dva.state.wi.us

Notice of Hearing **Workforce Development**

[CR 04-082]

NOTICE IS HEREBY GIVEN that pursuant to Sections 49.141 (5) (bm), as created by 2003 Wisconsin Act 173, and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to the grievance procedure for resolving complaints of employment displacement under the Wisconsin Works program and affecting small business.

Hearing Information

Monday, **August 16, 2004** at 1:30 p.m.

GEF 1 Building, Room B103

201 E. Washington Avenue

Madison

Interested persons are invited to appear at a hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Section 49.141 (5) (bm), as created by 2003 Wisconsin Act 173, and 227.11, Stats.

Statutes interpreted: Section 49.141 (5) (am), Stats., as renumbered by 2003 Wisconsin Act 173

Relevant federal law: 42 USC 607(f) and 45 CFR 261.70

Federal law. 42 USC 607(f) and 45 CFR 261.70 prohibit 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 to a position in the following circumstances:

- Any other individual is on layoff from the same or any substantially equivalent job.
- The employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order 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.

Explanation of agency authority. Section 49.141 (5) (am), Stats., as renumbered by 2003 Wisconsin Act 173, provides that no Wisconsin Works employment position may be operated so as to do any of the following:

- Have the effect of filling a vacancy created by an employer terminating a regular employee or otherwise reducing its work force for the purpose of hiring a W-2 participant.

- Fill a position when any other person is on layoff or strike from the same or a substantially equivalent job within the same organizational unit.

- Fill a position when any other person is engaged in a labor dispute regarding the same or a substantially equivalent job within the same organizational unit.

Section 49.141 (5) (bm), Stats., as created by 2003 Wisconsin Act 173, directs the Department to promulgate rules specifying a grievance procedure for resolving complaints of alleged violations of the nondisplacement provisions.

Summary of the proposed changes. The current rule requires employers to provide a grievance procedure for regular employees to resolve complaints of employment displacement by a W-2 participant. The proposed rule provides that employers shall comply with the procedure developed by the Department.

The proposed rule requires each W-2 agency to designate staff responsible for receiving, investigating, and resolving complaints of violations of the nondisplacement provisions or maintain an agreement with a department grantee or contractor in the same locality to receive, investigate, and resolve such complaints. Each W-2 work training provider or employer of a participant in a W-2 employment position shall inform its employees of the right to file a complaint and provide information about how to obtain further information on the grievance procedure.

An employee, former employee, or employee's representative may file a written complaint with the W-2 agency or its designee that alleges facts that may constitute a violation of the nondisplacement provisions. The complaint must be filed within one year from the date of the alleged violation. Upon receipt of a complaint alleging a violation of the nondisplacement provisions, the W-2 agency or its designee shall investigate the complaint and assist the parties in attempting to reach an informal resolution to the complaint. If an informal resolution cannot be reached, the W-2 agency or its designee shall conduct a hearing within 30 calendar days from the date the complaint was filed. The W-2 agency or its designee shall issue a hearing decision to the parties within 60 calendar days from the date the complaint was filed.

A party may file a request for a department review within 10 days of receiving an adverse decision from the W-2 agency or its designee or within 15 days from the date the decision was due if the parties did not receive a decision. The review shall be conducted by the administrator of the department's division of workforce solutions. The department's final decision shall be issued within 30 calendar days from the date the request for departmental review was filed.

A W-2 employer or work training provider who is found to have violated any of the nondisplacement provisions may be subject to termination of existing W-2 or other work training agreements with the department or its contractors, termination of grants from the department or its contractors and disqualification for future grants, and disqualification for future work training agreements with the department or its contractors.

No employer or W-2 work training provider may retaliate against an employee, employee's representative, or witness who initiates or participates in the grievance procedure.

Summary of analytical methodology used to develop the proposed rule. The grievance procedure adopted for

employment displacement by W-2 participants is similar to the grievance procedure that the Department developed for complaints of employment displacement by participants in employment and training programs funded by grants under the federal Workforce Investment Act (WIA) and Welfare to Work. (The Welfare to Work program no longer exists.)

The grievance procedure was developed to comply with federal WIA and Welfare to Work regulations at 20 CFR 667.600 and 20 CFR 645.270. The preamble to the TANF regulations recommends that states use one set of grievance procedures for the TANF and Welfare to Work programs, 64 Federal Register 17797 (April 12, 1999). Although the Welfare to Work program no longer exists, the proposed rule allows for a common grievance procedure and a common complaint coordinator for complaints of employment displacement by participants in employment and training programs funded by grants under WIA and W-2.

Comparison with rules in adjacent states. *Iowa*. A complaint must be filed within one year with the program contractee. The contractee attempts to reach an informal resolution of the complaint. If informal resolution is not possible, a complainant may file a written appeal with the Department. The appeal procedures generally used for Department disputes are followed.

Illinois. A complaint may be filed with the Department. The Department holds an in-person conference to receive documents and statements and issues a decision.

Michigan. All complaints utilizing Michigan Department of Career Development/Office of Workforce Development funding sources follow the same complaint procedure. The complaint procedure is found in the WIA state plan.

Local agencies must make provisions for informal means to resolve complaints before they become grievances. If there is no informal resolution, the local agency conducts a hearing and issues a decision no later than 60 days from the date the grievance was filed. A grievance may be appealed to the Department and the Department may conduct a hearing. A decision is issued no later than 30 days after the filing of the appeal.

Minnesota. Minnesota has a state statute that applies to nondisplacement in union workplaces. They do not appear to have developed a grievance procedure that applies to all workplaces with a TANF-subsidized individual.

Anticipated costs incurred by private sector. There will be no significant fiscal effect on the private sector.

Effect on small business. The rule will affect privately-run W-2 agencies and small businesses that have a W-2 participant at their work site. The rule will not have a significant economic impact on a substantial number of small businesses.

Analysis and supporting documentation used to determine effect on small business. The rule merely outlines a procedure for resolving complaints. The grievance procedure is not expected to be used often.

Contact

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing "grievance procedure" in the search engine. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development

201 E. Washington Avenue
 P.O. Box 7946
 Madison, WI 53707-7946
 (608) 267-9403
 elaine.pridgen@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address or through the <http://adminrules.wisconsin.gov> web site no later than August 17, 2004, will be given the same consideration as testimony presented at the hearing.

Small Business Regulatory Coordinator

Hal Bergan
 (608) 266-8533
 hal.bergan@dwd.state.wi.us

Notice of Hearing Workforce Development [CR 04-081]

NOTICE IS HEREBY GIVEN that pursuant to Sections 66.0903, 103.005 (1), 103.49, and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to the prevailing wage rates on public works projects and affecting small business.

Hearing Information

Tuesday, **August 17, 2004** at 1:30 p.m.
 GEF 1 Building, Room B103
 201 E. Washington Avenue
 Madison

Interested persons are invited to appear at a hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 66.0903 (1) (g) and 103.49 (1) (d), Stats.

Explanation of agency authority. The Department of Workforce Development administers the statutory requirements that the prevailing wage rate must be paid for covered employees in a trade or occupation engaged in erection, construction, remodeling, repairing, or demolition on a state or local public works project.

Sections 66.0903 (1) (g) and 103.49 (1) (d), Stats., delineate how the Department determines the prevailing wage rate for a trade or occupation on a public works project. First, a survey is done to collect data on the hourly wage rates and

hourly fringe equivalent rates for a trade or occupation in that area. If there is a majority of hours worked at a particular wage rate plus fringe equivalent rate, those rates become the prevailing wage rate for that trade. If there is no rate at which a majority of the hours worked in that trade 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.

Summary of the proposed changes. The statutory language on determining prevailing wage rates was enacted in 1995 Wisconsin Act 215. Since that time, the Department has had an informal policy of looking at the hourly wage rate and hourly fringe equivalent rate as separate figures and requiring an exact match of both the hourly rate of pay and the hourly fringe equivalent rate in determining whether there is a majority of hours worked in a trade or occupation at a particular rate.

The Department's policy of requiring an exact match of both the hourly wage rate and the hourly fringe equivalent rate has resulted in situations that do not seem to comply with the intent of the prevailing wage law. For example, if a collective bargaining agreement is renegotiated and the hourly wage rate is reduced to cover the increased cost of health insurance in the fringe equivalent, the hours worked under the two different agreements will be considered as hours worked at different rates even though the total economic benefit and liability is the same. Counting the rates under the original and renegotiated collective bargaining agreements with the same total economic benefit and liability as different rates means that the union rates may not be selected as the prevailing wage rates even if a majority of hours worked in a trade were by union workers.

Section DWD 290.015 (3) provides that if the rates in a collective bargaining agreement are found to prevail for a particular trade in a particular area, any future increases or decreases in the collective bargaining agreement are to be included in the prevailing wage rate determinations. The proposed rule will make it less likely that a renegotiated collective bargaining agreement with the same total economic benefit and liability will negatively affect whether future increases or decreases under the collective bargaining agreement are incorporated in prevailing wage determinations. If the majority of hours worked in that trade in that area are by union workers, the future increases or decreases in the union contract will be reflected in the prevailing wage rates for that trade.

Under the proposed rule, the Department would determine whether there is a majority of hours reported that receive a total economic benefit that is the sum of the hourly rate of pay and hourly fringe equivalent. If there is a majority of hours worked at the rate that is that sum and there is more than one combination of hourly rates of pay plus hourly fringe equivalent rates that equal that sum, the prevailing wage rate will be the most commonly reported hourly basic rate of pay and corresponding hourly fringe equivalent rate that resulted in that sum.

Summary of analytical methodology used to develop the proposed rule. The statutory language that directs the Department to consider the "hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefits paid directly or indirectly, for a majority of the hours worked in the trade" could be interpreted to require either an exact match of the hourly wage rate and the hourly fringe equivalent rate as separate figures or a match of the hourly wage rate and fringe equivalent rate as a combined rate that is the sum of the two rates. The Department has determined that the method of using the sum of the hourly wage rate and

the hourly fringe equivalent more closely complies with statutory intent.

Federal law. 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.

Comparison with rules in adjacent states. *Iowa*. No prevailing wage law.

Minnesota. The prevailing hourly wage rate is set at the most commonly paid hourly wage rate. The fringe equivalent rate is set at the most commonly paid rate at that hourly wage rate.

Michigan. The prevailing wage rates are the collective bargaining agreement rates.

Illinois. Only employers who do work on public works projects are surveyed. The prevailing rates are the most commonly paid wage rates and the corresponding fringe equivalent rates.

Anticipated costs incurred by private sector. There will be no significant fiscal effect on the private sector.

Effect on small business. The proposed rule will affect small business as defined in s. 227.114 (1), Stats., but the rule will not have a significant economic impact on a substantial number of small businesses.

Analysis and supporting documentation used to determine effect on small business. Small businesses will have

increased flexibility to offer “cafeteria-style” benefit plans to their employees and have their wage rates selected as the prevailing wage.

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing “prevailing wage” in the search engine. This site allows you to view documents associated with this rule’s promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
201 E. Washington Avenue
P.O. Box 7946
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Written Comments

Written comments on the proposed rules received at the above address or through the <http://adminrules.wisconsin.gov> web site no later than August 18, 2004, will be given the same consideration as testimony presented at the hearing.

Small Business Regulatory Coordinator

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Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 03–119)

Chapter ATCP 35, relating to Agriculture Chemical Cleanup Program.

Health and Family Services

(CR 04–045)

Chapter HFS 158, relating to the fee for monitoring radiation emissions in the vicinity of nuclear power plants.

Health and Family Services

(CR 03–052)

Chapter HFS 46, relating to family and group child care centers.

Natural Resources

(CR 04–022)

Chapter NR 208, relating to wastewater treatment works compliance maintenance.

Rule orders filed with the revisor of statutes bureau

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

Commerce (CR 04-009)

An order affecting ch. Comm 32, relating to public employee safety and health.
Effective 9-1-04.

Natural Resources (CR 01-081)

An order affecting ch. NR 400 series, relating to the control of mercury emissions to address the atmospheric deposition of mercury.
Effective 10-1-04.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the July 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.

Chiropractic Examining Board (CR 03-082)

An order affecting chs. Chir 2 to 6, 9 and 10, relating to minor changes to conform the rules to current practices and to correct oversights and problematic language in current rules, especially related to the board's adoption of Part IV of the national examination in lieu of a state-administered examination to demonstrate clinical competence. Effective 8-1-04.

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.

Gaming (CR 04-019)

An order affecting ch. Game 23, relating to purses paid to greyhound owners who are residents of the state of Wisconsin. Effective 8-1-04.

Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Medical Examining Board (CR 04-017)

An order repealing ch. Med 19, relating to the certification and regulation of occupational therapists and occupational therapy assistants. Effective 8-1-04.

Summary of Final Regulatory Flexibility Analysis

These proposed 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.

Natural Resources (CR 03-028)

An order affecting ch. NR 216, relating to storm water discharge permits. Effective 8-1-04.

Summary of Final Regulatory Flexibility Analysis

The reporting requirements are minimal and determined by federal regulations for a construction site and for industrial certification of "no exposure." These cannot be made less stringent. With the addition of the industrial "no exposure" option, a small business can essentially be exempt from the requirements of the industrial permit requirements of subch. II or ch. NR 216. If they conduct their business and storage inside or under cover, they only need to certify once every 5 years that they have no exposure of storm water to industrial materials or activities.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. The Assembly Committee on Natural Resources held a public hearing on April 28, 2004. No modifications were requested as a result of this hearing.

Natural Resources (CR 03-081)

An order affecting chs. NR 10 and 27, relating to the classification of gray wolves. Effective 8-1-04.

Summary of Final Regulatory Flexibility Analysis

The proposed rule does not regulate small businesses; therefore, a final regulatory flexibility analysis is not needed.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. The Assembly Committee on Natural Resources held a public hearing on April 28, 2004. No modifications were requested as a result of this hearing.

Natural Resources (CR 03-106)

An order affecting ch. NR 25, relating to commercial fishing in Lake Michigan. Effective 8-1-04.

Summary of Final Regulatory Flexibility Analysis

Although the proposed rule does regulate commercial trap net fishers in Lake Michigan, it does not require any additional compliance or reporting requirements.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resource and the Senate Committee on Environment and Natural Resources. The Assembly Committee on Natural Resources held a public hearing on

April 28, 2004. No modifications were requested as a result of this hearing.

**Psychology Examining Board
(CR 04-021)**

An order affecting chs. Psy 1, 2 and 5, relating to the definitions of client and psychological treatment, degree requirements, interim determination of degree requirements met, continuing education courses and professional conduct. Effective 8-1-04.

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.

**Public Instruction
(CR 03-112)**

An order affecting ch. PI 27, relating to commencement of a school term. Effective 8-1-04.

Summary of Final Regulatory Flexibility Analysis

No significant impact is anticipated from this proposal.

**Summary of Comments by Legislative Review
Committees**

No comments reported.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **July 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

Chiropractic Examining Board

Ch. Chir 2

- S. Chir 2.01 (3)
- S. Chir 2.02 (intro.), (3), (4), (6) (a), (b), and (7)
- S. Chir 2.03 (2) (intro.)
- SS. Chir 2.04 to 2.06
- S. Chir 2.07 (3)
- SS. Chir 2.08 to 2.10
- S. Chir 2.11 (2) and (3)

Ch. Chir 3

- S. Chir 3.01
- S. Chir 3.02 (1) (intro.), (c), (d), (2) and (3) (a)
- S. Chir 3.03 (1) (intro.), (b), (c), (e), (h), (2) (d) to (g), and (k)
- S. Chir 3.035 (2)
- S. Chir 3.04
- SS. Chir 3.06 and 3.07
- S. Chir 3.09

Ch. Chir 4

- S. Chir 4.05 (1) (b)

Ch. Chir 5

- S. Chir 5.01 (1) (e)
- S. Chir 5.02 (1) (b), (h), and (4) (a)

Ch. Chir 6

- S. Chir 6.02 (14)

Ch. Chir 9

- S. Chir 9.03 (3) (intro.), (4) and (5)
- S. Chir 9.05 (1) (intro.) and (a)
- S. Chir 9.06

Ch. Chir 10

- S. Chir 10.01 (1) and (2)
- S. Chir 10.02 (3)
- S. Chir 10.04
- S. Chir 10.06

Gaming

Ch. Game 23

- S. Game 23.02 (2)

Medical Examining Board

Ch. Med 19 (Entire Chapter)

Natural Resources

Ch. NR 10

- S. NR 10.02 (1)

Ch. NR 25

- S. NR 25.09 (2) (b)

Ch. NR 27

- S. NR 27.03 (3) (a)

Ch. NR 120

- S. NR 120.16 (3) (a)

Ch. NR 162

- S. NR 162.003 (27) and (75)
- S. NR 162.08 (1) and (4) (e)

Ch. NR 216 (Entire chapter)

Psychology Examining Board

Ch. Psy 1

- S. Psy 1.02 (3) and (10)

Ch. Psy 2

- S. Psy 2.09 (1) (i) and (5)

Ch. Psy 4

- S. Psy 4.02 (2) (intro.) and (c)

Ch. Psy 5

- S. Psy 5.01 (14) (d)

Public Instruction

Ch. PI 27

- S. PI 27.02 (2m)
- S. PI 27.03 (5) (e)

Editorial corrections

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

Natural Resources

Ch. NR 120

- S. NR 120.16 (3) (a)

Ch. NR 151

- S. NR 151.26 (1)

Psychology Examining Board

Ch. Psy 2

- S. Psy 2.01 (intro.)

Sections affected by revisor's corrections not published

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
Ins 6.12 (1) (a)	641.09, 641.13, 641.14	Delete references
PI 8.01 (2) (s) 1. b.	ch. PI 16	ch. PI 13

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 57. Relating to a proclamation declaring a state of emergency in Executive Order #54.

Executive Order 58. 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 Justin Linden of the Army's National Guard who lost his life during Operation Iraqi Freedom.

Executive Order 59. Relating to the recovery from natural disaster as declared in Executive Orders #54 and #57.

Executive Order 60. Relating to the recreation of the Governor's Bicycle Coordinating Council.

Executive Order 61. Relating to a proclamation declaring a state of emergency.

Executive Order 62. Relating to the recovery from natural disaster as declared in Executive Order #61.

Executive Order 63. Relating to a proclamation that the flag of the United States and the flag of the state of Wisconsin be flown at half-staff as a mark of respect for Staff Sergeant Charles Kiser of the U.S. Army Reserve who lost his life during Operation Iraqi Freedom.

Executive Order 64. Relating to a proclamation that the flag of the United States and the flag of the state of Wisconsin be flown at half-staff as a mark of respect for Staff Sergeant Stephen Martin of the U.S. Army Reserve who lost his life during Operation Iraqi Freedom.

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