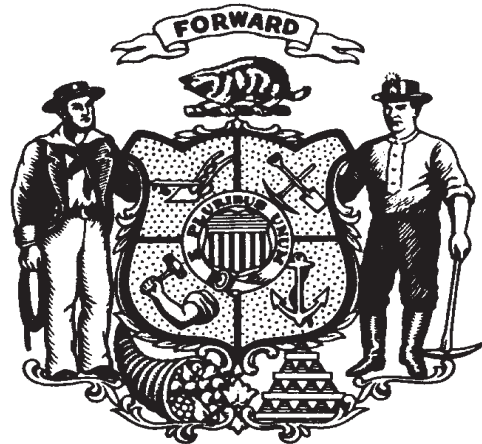


Wisconsin Administrative Register

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Table of contents

Emergency rules now in effect.**Pages 4 to 13**

Agriculture, Trade and Consumer Protection:

Rules relating to the partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk and vegetable contractors.

Rules relating to the reduction of certain annual agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk and vegetable contractors.

Health and Family Services:

Community Services, Chs. HFS 30—Medical Assistance, Chs. HFS 100—

Rules 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.

Health, Chs. HFS 110—

Rules relating to operation of the health insurance risk-sharing plan (HIRSP).

Insurance:

Rules relating to annual patients compensation fund and mediation fund fees.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to Natural Resources Board policies on protection and management of public waters.

Rules relating to baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

Rules relating to commercial fishing with trap nets in Lake Michigan.

Environmental Protection—Water Regulation, Chs. NR 300—

Rules relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Rules relating to the regulation of bridges and culverts in or over navigable waterways.

Rules relating to fish and wildlife habitat structures in navigable waterways.

Rules relating to boathouses and fixed houseboats in navigable waterways.

Rules relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

Rules relating to shore erosion control of inland lakes and impoundments.

	Rules relating to miscellaneous structures in navigable waterways.
	Rules relating to regulation of construction, dredging, and enlargement of an artificial water body.
	Rules relating to dredging in navigable waterways.
	Rules relating to grading on the bank of a navigable waterway.
Public Instruction:	Rules relating to financial reporting requirements under the Milwaukee Parental Choice Program.
Regulation and Licensing:	Rules relating to criminal background investigations of applicants.
Transportation:	Rules adopted creating ch. Trans 135 , relating to creation of a school bus oxidation catalyst grant program in certain counties. [First Appearance]
Veterans Affairs:	Rules relating to the administration of the registered nurse education stipend program.
Workforce Development:	<u>Labor Standards, Chs. DWD 270–279</u> Rules relating to overtime pay for employees performing companionship services.
Scope statements.	Pages 14 to 18
Barbering and Cosmetology Examining Board:	Rules relating to waxing, managers' responsibilities and other minor changes. Rules relating to the provision of chemical peel and microdermabrasion services by board licensees.
Insurance:	Rules relating to the administrative requirements in compliance with the modifications made to ch. 609, Wis. Stats., by 2001 Wis. Act 16.
Natural Resources:	Rules relating to ch. NR 488 affecting requirements to those handling equipment containing some refrigerants that are substitutes for ozone-depleting refrigerants; clarify operator training and recordkeeping requirements; and specify increases in registration fees. Rules relating to revising certain motor vehicle emission limitations in Table 1 of s. NR 485.04 and revision to the catalytic converter replacement provisions in s. NR 485.06 (2).
Regulation and Licensing:	Creation of rules to reflect newly created statutory requirements for athlete agent credentialing, practice, and discipline. Rules relating to ch. RL 87, Appendix I, incorporating the revisions to the appraisal standards that will be published in the 2005 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).
Transportation:	Rules affecting ch. Trans 194, relating to the fee charged for a replacement title.

Submittal of rules to legislative council clearinghouse.**Page 19**

Natural Resources:

Rules affecting chs. NR 1, 10, 45 and 51, relating to use of department properties.

Rules affecting ch. NR 10, relating to deer management unit population goals and boundaries.

Transportation:

Rules relating to creation of a school bus oxidation catalyst grant program in certain counties.

Rule-making notices.**Pages 20 to 27**

Natural Resources:

Hearings to consider revising chs. NR 1, 10, 45 and 51, relating to use of Department properties.

Hearings to consider revising ch. NR 10, relating to deer management unit population goals and boundaries.

Public Instruction:

Hearing to consider revising ch. PI 35, relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Revenue:

Hearing to consider revising s. Tax 2.49 relating to the apportionment of net business incomes of interstate financial organizations.

Transportation:

Hearing to consider ch. Trans 135, relating to the creation of a school bus oxidation catalyst grant program in certain counties.

Submittal of proposed rules to the legislature.**Page 28**

Commerce:

CR 04-054 – Ch. Comm 40

Commerce:

CR 04-043 – Ch. Comm 70

Health and Family Services:

CR 04-056 – Ch. HFS 119

Public Instruction:

CR 04-027 – Ch. PI 6

Public Service Commission:

CR 04-026 – Ch. PSC 173

Rule orders filed with the revisor of statutes bureau.**Page 29**

Agriculture, Trade and Consumer Protection:

CR 03-121 – Chs. ATCP 10 to 12

CR 04-005 – Chs. ATCP 10, 12, 42, 50, 60, 74, 80, 92, 118, 134, 140 and 162

CR 04-030 – Chs. ATCP 99 to 101

Commerce:

CR 03-097 – Chs. Comm 20 and 21

Natural Resources:

CR 04-046 – Chs. NR 1, 10 and 12

Public Instruction:

CR 04-008 – Ch. PI 36

Veterans Affairs:

CR 04-037 – Ch. VA 18

Rules published with this register and final regulatory flexibility analyses.**Pages 30 to 31****Sections affected by rule revisions and corrections.****Page 32****Executive orders.****Page 33**

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: September 30, 2004

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

Finding of emergency

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

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

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

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

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

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

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

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

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

Exemption from finding of emergency

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

Plain language analysis

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

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

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

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

Exemption from finding of emergency

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

Plain language analysis

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

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

Insurance

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

Finding of emergency

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

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

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

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

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

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

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

Finding of emergency.

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

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

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

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

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

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

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

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

Finding of emergency

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

Publication Date: June 10, 2004
Effective Date: June 10, 2004
Expiration Date: November 7, 2004
Hearing Date: August 25 and 26, 2004

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

Finding of emergency

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

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

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

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

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

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

Finding of emergency

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

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be

undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

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.

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

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

- 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.

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

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

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

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

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

Finding of emergency

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

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

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

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption

determinations, slowing the decisions on individual permit applications.

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

*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 Date: May 19, 2004

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams.
- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

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

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

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
Hearing Date: September 13, 2004
 [See Notice This Register]

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

Transportation

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Transportation

Plain Language Analysis: 2003 Wis. Act 220 requires the Wisconsin Department of Transportation, in consultation

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

Publication Date: September 1, 2004

Effective Date: September 1, 2004

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

Hearing Date: September 14, 2004

[See Notice this Register]

Veterans Affairs

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Veterans Affairs.

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

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

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

Publication Date: March 30, 2004

Effective Date: March 30, 2004

Expiration Date: August 27, 2004

Hearing Date: June 18, 2004

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

Barbering and Cosmetology Examining Board

Subject

Waxing, managers' responsibilities and other minor changes.

Objective of the rule. To specify requirements for waxing by all licensees, to revise requirements regarding the presence of a manager on-site and the supervision of apprentices by managers, and to make other minor changes, such as replacing the limited term "artificial nails" with the broader term "nail enhancement."

Policy analysis

The Board wishes to incorporate into the rules a specific reference to the practice of waxing by all licensees, which is implicit in the rules already because it is listed in the school curricula for licensees.

The Board recognizes that requirements regarding the presence of a manager on-site and the supervision of apprentices by managers may safely be relaxed for brief periods if the manager delegates his or her responsibilities to an experienced practitioner.

No important or controversial policies would be affected by the other minor rule changes. For example, the Board wishes to replace the term "artificial nails" with the more current and comprehensive term "nail enhancement" in numerous places in the rules.

Comparison to federal regulations

The federal government does not regulate barbers and cosmetologists, and a search of the United States Code Services (USCS) and the Code of Federal Regulations (CFR) returned no entries for waxing, managers, artificial nails, or nail technology for barbers or cosmetologists.

Comparison with similar rules in adjacent states.

In Illinois, waxing is listed as a curriculum requirement for schools of aesthetics (68 I.A.C. 1175.835). Illinois has no rule comparable to the Wisconsin Board's rule regarding a manager's responsibility to be present in the salon at all times. Illinois rules use the term "nail technology" and do not use "artificial nails."

Indiana rules mention waxing as a curriculum requirement for aesthetics (820 IAC 4-4-7.1), but do not refer to barber/cosmetology managers, nail technology or artificial nails.

Iowa rules list waxing as an aesthetics practice (Iowa Code 157.1). Iowa has no rule comparable to the Wisconsin Board's rule regarding a manager's responsibility to be present in the salon at all times. Iowa rules use the term "nail technology" and do not use "artificial nails."

Michigan rules do not mention waxing or a manager's responsibility to be present in the salon at all times. Michigan rules use the term "artificial nails" and do not use "nail technology."

Minnesota rules use the term "artificial nails" but do not mention waxing or "nail technology". Minnesota rules permit

a licensed manager to designate a responsible person to act in the manager's absence (Minn.R. 2642.0390).

Anticipated impact on the private sector

Most licensees of the board (barbers, cosmetologists, aestheticians, electrologists, and manicurists) practice in small businesses in the private sector. The recognition of waxing services in the rules will provide explicit authority for licensees to offer those services and to expand their practices, and the revision of requirements regarding the presence of a manager will eliminate unnecessary restrictions on a manager's activities.

Statutory authority

Wis. Stats., sections 15.08 (5) (b) and 227.11 (2).

Staff time required

Total: 30 hours.

Barbering and Cosmetology Examining Board

Subject

Objective of the rule. To refine existing rules regarding the provision of chemical peel and microdermabrasion services by board licensees.

Policy analysis

The Board recently placed restrictions on its licensees performing microdermabrasion, chemical skin peels, and laser hair removal. Based on further experience with those technologies, the Board recognizes that the restrictions can be relaxed for microdermabrasion and chemical skin peels.

Comparison to federal regulations

The federal government does not regulate barbers and cosmetologists, and a search of the United States Code Services (USCS) and the Code of Federal Regulations (CFR) returned no entries for microdermabrasion or chemical peels for barbers or cosmetologists.

Comparison with similar rules in adjacent states

Three of the five surrounding states – Illinois, Iowa and Michigan — have no regulations that address the provision of microdermabrasion or chemical peel services by barbers or cosmetologists. Indiana considers microdermabrasion to be a medical procedure. The last of the five surrounding states – Minnesota — refers to microdermabrasion as a medical procedure and chemical peels as a health service. This leads to the conclusion that Wisconsin has already taken the lead in this area by permitting board licensees to perform the services under the supervision of a medical professional, and Wisconsin will continue to lead by creating definitions that distinguish services that may be provided without medical supervision.

Anticipated impact on the private sector.

Most barbers and cosmetologists practice in small businesses in the private sector. The removal of existing restrictions would allow barbers and cosmetologists to safely offer microderm and chemical peel services without medical supervision. This will permit licensees to expand their

practices. No written analysis or formal research was involved in reaching this conclusion.

Statutory authority

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Staff time required

Total: 72 hours.

Insurance

Subject

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

Policy analysis

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

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

Statutory authority

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

Staff time required

200 Hours.

Description of all entities affected by the rule

The proposed rule will affect insurers which offer defined network plans, health maintenance organizations, preferred provider plans and limited service health organization plans. Insurers will be required to revise their relationships, including provider and insurance contracts, with health care providers, health care provider networks, employers and individuals.

Comparison to federal regulations

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

Natural Resources

Subject

Objective of the rule. The revisions proposed to ch. NR 488 will apply existing requirements to those handling equipment containing some refrigerants that are substitutes for ozone-depleting refrigerants; clarify operator training and recordkeeping requirements; and specify increases in registration fees.

Policy analysis

Adding Substitutes for Ozone-Depleting Refrigerants: The original regulatory programs for Department of Natural Resources, Dept. of Agriculture, Trade & Consumer Protection (DATCP) and Commerce (previously Dept. of Industry, Labor and Human Relations, DILHR) were meant to control emissions of ozone-depleting refrigerants (ODRs) when servicing and salvaging equipment. In 1995 the state legislature provided statutory authority for the refrigerant programs to add other, non-ozone-depleting refrigerants which are substitutes for ODRs to these regulatory schemes (see s. 285.59(6), Wis. Stats.). Many of these substitutes are global-warming gases and have already been added to the DATCP program regulating those who perform service on vehicle air-conditioning equipment. Vehicles and many other types of refrigeration and air-conditioning equipment are now entering the salvage arena with these substitute refrigerants, so controlling their emissions during salvage will prevent additional damage to the environment.

Under existing ch. NR 488 provisions, those who salvage or dismantle refrigeration or air-conditioning equipment containing ODRs must properly recover the refrigerants using approved equipment operated by qualified technicians. The entity recovering the refrigerants must register annually with the Department, maintain certain records, and supply documentation to whoever is receiving that equipment for scrapping that the refrigerants were properly removed. Those who transport appliances containing ODRs must certify their "safe transport" to the Department. The proposed revisions will apply these same standards to persons salvaging or transporting equipment containing ODR substitutes which are global-warming substances.

Other substitutes for ozone-depleting refrigerants, such as ammonia, nitrogen, water and carbon dioxide, are not global-warming substances, and either do not pose a significant harm to the environment or are controlled by other regulatory programs, so these revisions will not apply to those substances.

Clarify Operator Qualifications: Existing ch. NR 488 language allows individuals who qualify for refrigerant recovery under Department of Commerce regulations to also qualify for this program. For individuals who recover refrigerants from "stationary" equipment (e.g., home appliances, building air conditioners) language will be updated to continue to accept persons qualified under modified Commerce Department regulations and to accept appropriate U.S. EPA operator certifications.

Clarify Recordkeeping for Salvaged Equipment: Current language requires those recovering refrigerants to keep records of "the type and quantity of refrigeration equipment salvaged or dismantled." Thus records can simply indicate they have processed "12 refrigerators, 7 ACs, 5 humidifiers in May 2004." This has posed a problem for the Department when trying to determine exactly what has been processed. Language will be proposed to require more specific identification of individual units processed to allow better tracking and review of regulated activity.

Fee Increases: Registration fees imposed on regulated parties (salvagers and safe transporters) fund the ch. NR 488 program. The fees have not been raised since the rule became effective in 1993. Program expenses are expected to exceed revenues in the near future, so the fees must be increased. Those who are basically "salvagers" (mostly auto and appliance salvagers) pay \$250 annually to register to recover refrigerants. If they are already registered with DATCP or Commerce and only "salvage" as a minor activity incidental

to providing their repair service, they are charged \$125/year. Safe Transporters pay a \$75/year base fee and \$25 per vehicle used to haul appliances. The \$75 is waived for those already registered to salvage in this program. Registration fees for salvagers and safe transporters will be increased about 20% in order to cover increasing program costs.

Statutory authority

Chapter NR 488 regulations were promulgated to administer s. 285.59, Wis. Stats. In 1995, the state legislature provided additional authority by adding s. 285.59(6): "Department Powers. The Department may promulgate rules providing that any portion of sub. (2), (3), or (4) applies with respect to a substance used as a substitute for an ozone-depleting substance."

Staff time required

328 hours.

Comparison to federal regulations

The 1990 Clean Air Act Amendments (Section 608) regulate the recovery of ozone-depleting refrigerants from salvaged equipment. Regulations developed under this section (40 CFR Part 82) require those who perform recovery to notify EPA of their activities on a one-time form with no fee and set standards for recovery equipment, operator certification and documentation of recovery to the final disposal entity (e.g., scrap metal processors). Section 608 also includes a "self-effecting" statutory ban on the release of refrigerants that are substitutes for ozone-depleting refrigerants, which became effective November 15, 1995. Further regulatory clarification of this ban was presented as a final rule amending 40 CFR Part 82 on March 12, 2004, extending the disposal requirements specifically to equipment containing any substitute refrigerants except those specifically exempted in certain applications. In this ruling U.S. EPA determined that global-warming refrigerants "have adverse environmental effects" and thus are continuing the statutory ban for releasing these refrigerants.

All entities affected by the rule

Vehicle and appliance salvagers are the largest group of affected entities. They can choose to register and recover refrigerants themselves or hire another registered entity to perform this work at their facilities. Scrap metal processors receive the processed equipment and require verification that all remaining refrigerants have been removed. Heating, ventilating and air conditioning (HVAC) service businesses are regulated when they recover refrigerants from building air-conditioning or refrigeration systems that are being retired during replacement or demolition. Private and public waste haulers that collect discarded refrigerated appliances from residents and businesses must prevent refrigerant releases and certify Safe Transport of this equipment. Demolition contractors must arrange for any AC or other equipment at the site to be properly recovered before scrapping. They will usually subcontract this service to an HVAC business. Individuals who recover refrigerants from salvaged equipment, or those who supervise these individuals, must meet specified training requirements.

Natural Resources

Subject

Objective of the rule. This proposal revises certain motor vehicle emission limitations in Table 1 of s. NR 485.04, Wis. Adm. Code. It also makes a minor revision to the catalytic converter replacement provisions in s. NR 485.06 (2), Wis. Adm. Code.

A. Emission Limitations:

The emission limitations subject to this revision are the pass/fail standards for the state's motor vehicle inspection and maintenance (I/M) program. This program is operating in the seven southeastern Wisconsin Counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha.

The proposed rule will make the following changes to the I/M program's emission limitations. First, it will relax the emission limitations for oxides of nitrogen (NOx) for some groups of trucks and older cars to provide adequate allowance for deterioration of the emission control systems for these vehicles. Second, it will establish new emission limitations for model year 2005 and newer heavy-duty trucks to account for the new federal certification standards required for these trucks. And, third, it will simplify the emission limitations for some categories of model year 1994-1996 vehicles so that the lane inspector would not need to decode data under the vehicle's hood in order to determine the proper limitations. These changes are recommended in a report evaluating Wisconsin's I/M program, prepared for the Wisconsin Legislature by the Departments of Natural Resources and Transportation.

B. Catalytic Converter Replacement Provisions

The current rule allows for the replacement of a vehicle's original catalytic converter with aftermarket equipment certified by the U.S. Environmental Protection Agency if the vehicle is older than 5 model years or has more than 50,000 miles on the odometer. However, federal regulations warrant the original equipment catalytic converter for model year 1995 and newer vehicles for 8 years or 80,000 miles (whichever comes first). The proposed rule will revise the provisions for catalytic converter replacement to make them consistent with federal age and mileage limits for warranty.

Policy analysis

The proposed rule will not impose any new requirements. It continues the Department's policy, as required under s. 285.30 (2) (b), Stats., of revising the motor vehicles emission limitations, as needed, to levels attainable by reasonable preventive maintenance practices. The most important reason why the proposed rule is needed to relax the NOx emission limitations is because the I/M program found some of the NOx emission limitations to be too close to the vehicles' federal certification standards, providing inadequate allowance for deterioration due to age and mileage. The changes in the NOx emission limitations could result in fewer NOx emission reductions from the I/M program than the DNR projected for attainment of the 1-Hour ozone standard.

The main policy issue is deciding how to offset the NOx reductions lost from relaxing the NOx emission limitations.

The department is proposing to accomplish this offset by compensating for the lost NOx reductions by reducing the “safety margin” in the State Implementation Plan (SIP) associated with the transportation sector. This safety margin is provided in the state’s plan for attaining air quality standards. The lost NOx reductions would comprise less than 3% of the NOx safety margin. This small reduction in the safety margin would not jeopardize the state’s air quality plan. Nor would it significantly put at risk the conformity of transportation plans and programs to the state’s air quality plan.

Statutory authority

Sections 227.11 (2) (a), 285.11 (1) and 285.30 (2), Stats.

Staff time required

The department will need about 284 hours of total staff time.

Comparison to federal regulations

The federal motor vehicle certification standards regulation addresses the activities regulated by the proposed rule. Motor vehicles must be certified by the U.S. Environmental Protection Agency to comply with these emission standards before they can be sold in the United States. These standards are more stringent than the emission limitations in the proposed rule. In fact, a key reason for proposing this rule is that the Wisconsin I/M program found some of the current emission limitations to be too close to the federal certification standards, thus providing inadequate allowance for deterioration due to age and mileage.

All entities affected by the rule

The entities affected by the proposed rule are some vehicle owners and vehicle repair technicians in the seven-county I/M program area. Slightly fewer vehicles would fail the emissions test because of the relaxed NOx emission limitations. These will largely be older vehicles of model year 1995 and older. Thus, slightly fewer vehicle owners would need to take their vehicle to a repair garage for repairs to pass a retest.

Regulation and Licensing

Subject

Creation of rules to reflect newly created statutory requirements for Athlete Agent credentialing, practice, and discipline.

Objective of the rule. To implement the statutory provisions of 2003 Wisconsin Act 150.

Policy analysis

The creation of administrative rules for the regulation of athlete agents is necessary to implement newly created Subchapter XII of chapter 440 of the Wisconsin Statutes pursuant to 2003 Wisconsin Act 150, governing the registration of athlete agents. The proposed rules will implement required credentialing requirements, definitions of acts constituting unprofessional conduct, and set fees for initial and renewal credentials.

Statutory authority

Sections 227.11 (2) and 440.08 (2) (a) 14d., Stats., and subchapter XII of chapter 440, Stats., as created by 2003 Wisconsin Act 150.

Comparison to federal regulations

No existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Staff time required

Total hours: 250.

Regulation and Licensing

Subject

Revisions to administrative rules relating to the regulation of licensed and certified appraisers.

Objective of the rule. Repeal and recreate Ch. RL 87, Appendix I, to incorporate by reference the revisions to the appraisal standards that will be published in the 2005 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

[Note: The Uniform Standards of Professional Appraisal Practice (USPAP) is published by the Appraisal Standards Board of the Appraisal Foundation.]

Policy analysis

Under s. RL 86.01 (2), Code, all appraisals performed by licensed and certified appraisers must conform to the version of the Uniform Standards of Professional Appraisal Practice that is incorporated into Appendix I of ch. RL 87, Code. These rules will incorporate, by reference, in Appendix I of ch. RL 87, Code, the most up-to-date version of USPAP.

Comparison to federal regulations

The Federal Institutions Reform, Recovery, and Enforcement Act (“FIRREA”), 12 U.S.C. 3331 et seq., (Title XI) was enacted in 1989. Under FIRREA, insured financial institutions and insured credit unions are required to obtain the services of a State certified or licensed appraiser for appraisals conducted in connection with “federally related transactions”.

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council is authorized under FIRREA to monitor the requirements established by States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions. *21 USC 3333; Appraisal Subcommittee – Policy Statements Regarding State Certification and Licensing of Appraisers.*

Under FIRREA, real estate appraisals performed in connection with federally related transaction are required to be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation. *21 USC 3339; Appraisal Subcommittee – Policy Statements Regarding State Certification and Licensing of Appraisers, Statement 3.*

The appraisal standards promulgated by the ASB are contained in the Uniform Standards of Professional Appraisal Practice (USPAP) and is available on the Appraisal Foundation’s website at: <http://www.appraisalfoundation.org>

States Regulations

Under FIRREA, all states, including Illinois, Iowa, Indiana, Michigan and Minnesota, must assure that certified appraisers comply with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board. In Wisconsin, USPAP has been incorporated by reference in Appendix I to ch. RL 87, Code. See also, s. 458.24, Stats.

Statutory authority

The Department of Regulation and Licensing has the statutory authority under ss. 227.11 (2) and 458.24, Stats., to promulgate rules to reflect revisions to the Uniform Standards of Professional Appraisal Practice.

Staff time required

15 hours.

Transportation**Subject**

Objective of the rule. This rule making will create ch. Trans 194 which will establish DOT's interpretation of s. 342.14 (5), Stats., the fee charged for a replacement title.

Policy analysis

In the past, DOT has interpreted the fee charged for a

replacement title to apply only to replacement titles issued under s. 342.13, Stats., describing lost, stolen, mutilated or destroyed titles. This rule will establish that DOT will charge the replacement title fee for any replacement title, regardless of the reason the title must be replaced. However, DOT will not charge the fee for a title correction that corrects a DMV error.

Comparison to federal regulations

This is a state law. No existing or proposed federal regulation applies to this situation.

Description of all entities affected by the rule

Any applicant – individual or business – that applies for a replacement title.

Statutory authority

Section 85.16, Stats., and Ch. 227, Stats.

Staff time required

Total staff time of 40 hours.

Submittal of rules to legislative council clearinghouse

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

Natural Resources

Rule Submittal Date

On August 16, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule revises chs. NR 1, 10, 45 and 51, relating to use of department properties.

Agency Procedure for Promulgation

Public hearings are scheduled for September 28 and 30, 2004.

The Bureau of Parks and Recreation is the organization unit responsible for promulgation of the proposed rule.

Contact Information

Kate Fitzgerald
(608) 267-2764

Natural Resources

Rule Submittal Date

On August 16, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule revises ch. NR 10, relating to deer management unit population goals and boundaries.

Agency Procedure for Promulgation

Public hearings are scheduled for September 22, 23, 27 and 28, 2004.

The Bureau of Wildlife Management is the organization unit responsible for promulgation of the proposed rule.

Contact Information

Kurt Thiede
(608) 267-2452

Transportation

Rule Submittal Date

On August 11, 2004, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule revises ch. Trans 135, relating to creation of a school bus oxidation catalyst grant program in certain counties.

Agency Procedure for Promulgation

A public hearing on the rule has been scheduled for September 14, 2004.

The Division of Motor Vehicles, Bureau of Vehicle Services is the organization unit responsible for promulgation of the proposed rule.

Contact Information

Julie Johnson, Paralegal
(608) 266-8810

Rule-making notices

Notice of Hearings

Natural Resources

Fish & Game, etc. Chs. NR 1—

[CR 04-092]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.091, 23.09 (2) (intro.), 23.11 (1), 23.28 (3), 23.293, 27.01 (2) (j), (10) (b) and (f) and 227.11 (2) (a), Stats., interpreting ss. 23.091, 23.09 (2) (intro.), 23.11 (4), 23.17, 23.175, 23.28 (3), 23.293, 27.01 (2) (I) and (j) and (10) (f) and 28.04 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 1, 10, 45 and 51, Wis. Adm. Code, relating to use of Department properties. The proposed rules address issues that have arisen on Department properties since these rules were last revised in 2003. In addition revisions are included to clarify the purpose of the North Country Trail and Ice Age Trail areas and include an update to the list of state trails in ch. NR 51. Other revisions include a number of fee increases and policy changes for camping and other uses on Department property.

Fees: Fee increases are being proposed for items such as picnic shelter rentals, camping at Devil's Lake, Kohler-Andrae, Mirror Lake, Peninsula, Big Bay, Willow River and Hartman Creek state parks and the Point Beach state forest, and for electrified group campsites.

Camping policies: Registrants without an advance registration must occupy the site with a camping unit the first night of the registration and every night thereafter. For reserved sites, the registrant must occupy the camping unit on the reserved site by 3:00 p.m. on the second day of the reservation. The maximum length of allowed camping stays will be reduced. Extending camping reservation end dates will be prohibited. Ice Age Trail areas are added to the list of property types or areas where camping may be permitted.

Turkey hunting in parks: Turkey hunting in state parks was previously permitted, but the regulations necessary for issuing the permits is being implemented.

Miscellaneous: A physically disabled person is defined for purposes of ch. NR 45 to mean a person who has been determined by the Department of Transportation to have a permanent disability and has been issued a disabled registration plate or special identification card or who has been issued an approval under s. 29.193, Stats., for a permanent disability. A provision stating that no person may resist or obstruct a law enforcement officer when that officer is doing any act in an official capacity and with lawful authority allows minor obstructions to be charged as civil forfeitures. State natural areas are added to the list of areas and properties that do not allow airguns (paintball guns) due to the sensitive nature of these properties. All waters in Governor Tommy Thompson State Park do not allow motorboats except battery-powered electric motors at a slow-no-wake speed.

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, September 28, 2004 at 1:30 p.m.

Room 409, GEF #3
125 South Webster Street
Madison

Thursday, September 30, 2004 at 1:00 p.m.

Wausau Room Marathon County Public Library
300 N. First St.
Wausau

Thursday, September 30, 2004 at 5:00 p.m.

Room 604, Green Bay City Hall
100 N. Jefferson Street
Green Bay

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 Kate Fitzgerald at (608) 267-2764 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

This rule package amends Chapter NR45 (Natural Resources). NR45 contains the administrative regulations for the use of facilities and lands owned, acquired by easement, or leased by the Department. This chapter is reviewed and revisions proposed by Department staff on a regular basis. There are also changes as part of the rule package to NR 1, and NR 51 that have no fiscal impact.

Fee increases are being proposed for picnic shelter rentals within the Wisconsin State Park System and for camping at selected Wisconsin State Park campgrounds, based on local market conditions. The Wisconsin State Park System picnic shelters continue to generate strong demand and public use. A review of county and mid-west state park system's current rate structure demonstrates state park shelter fees are comparatively low. This proposal includes a modest average \$10 fee increase. In addition, a \$5 fee is being added to the price of each shelter reservation to cover the administrative costs of processing, recording, notifying and managing the shelter reservations. The additional revenues generated by these fees will be used to support general park services consumed by visitors such as sewer, waste disposal, electricity and staff patrol.

This package also includes a request to increase camping fees at a select group of state parks. Wisconsin State Statute s. 27.01 (10) (h) states, "... the Department shall determine which state campgrounds are located in areas where local market conditions justify the establishment of higher camping fees to be charged by the Department." After a review of local market conditions fee increases for Devil's Lake, Kohler-Andrae, Mirror Lake, Peninsula, Big Bay, Willow River, Hartman Creek State Parks and Point Beach Southern Forest are justified during the prime camping season. It has been twelve years since the last base camping fee increase. Local market conditions and high customer demand, indicate that moderate camping fee increases at these eight properties are supportable.

The increased fees are needed to address the continued rising costs of providing quality agency services. Without these increases the agency would be forced to reallocate resources away from core functions and will be forced to reduce recreational and customer services currently demanded by visitors.

1. Shelter Rental Fees NR 45.12 (4) (g) –This proposal increases shelter reservation fees by

Open Picnic Shelter Rental – Increase the base shelter rate, previously \$25, by \$10 and incorporate \$5 reservation processing fee. Assumes 15 shelters x rental season includes 44 days x 45% occupancy x base rental increase = \$4,455.

Open Picnic Shelter with Electricity — Increase the base shelter rate, previously \$25, by \$10 and incorporate \$5 reservation processing fee. Assumes 38 shelters x rental season (includes 44 days) x 45% occupancy x base rental increase = \$11,300.

Enclosed Picnic Shelter — Increase the base shelter rate, previously \$25, by \$15 and incorporate \$5 reservation processing fee. Assumes 2 shelters x rental season (includes 44 days) x 45% occupancy x base rental increase = \$800.

Enclosed Picnic Shelter w/o electricity (less than 50 people) — Increase the base shelter rate, previously \$25, by \$20 and incorporate \$5 reservation processing fee. Assumes 3 shelters x rental season (includes 44 days) x 45% occupancy x base rental increase = \$1,485.

Enclosed Picnic Shelter w/o electricity (more than 50 people) — Increase the base shelter rate, previously \$25, by \$40 and incorporate \$5 reservation processing fee. Assumes 14 shelters x rental season (includes 44 days) x 45% occupancy x base rental increase = \$12,500.

Total Increased Shelter Revenue = \$30540

Park Account Revenue (80%) \$24,432

Forestry Account Revenue (20%) \$ 6,108

2. NR 45.12 (2) (b) to increase camping fees at Devil's Lake, Kohler-Andrae, Mirror Lake, Peninsula, Big Bay, Willow River, Hartman Creek State Parks and Point Beach Southern Forest by \$3 per night Memorial Day through Labor Day and on Friday and Saturday nights through October.

Assumptions: A revenue increase of \$411,683 is projected for this change. The increase revenue is based upon a calculation that includes the number of camping days per season (Memorial Day through Labor Day =101 plus 8 weekend nights in September and early October for a total of 109 camping nights). The number of camper nights is then multiplied by the total number of impacted campsites (1378 and 127 sites respectively) times the average seasonal occupancy per campground, multiplied by a \$3 per night fee increase.

Park Account Revenue: \$379,872

Forestry Account Revenue: \$31,811

Total \$411,683

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. Kate Fitzgerald, Bureau of Parks and Recreation, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 15, 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. Fitzgerald.

Notice of Hearings

Natural Resources

Fish & Game, etc. Chs. NR 1—

[CR 04-091]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 and 227.11, Stats., interpreting s. 29.014, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to deer management unit population goals and boundaries. The proposed rule would modify the boundaries of Deer Management Units 35, 38, 39, 75A and 76. In addition, the rule would modify the overwinter deer populations goals for Units 3, 4, 15, 28, 29A, 61 and 74A.

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 Department will hold an open house for one-half hour prior to each hearing. Department staff will be available to answer questions regarding the proposed rule.

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

Wednesday, September 22, 2004

Bill Lazansky Community Center
13412 Hwy. 32/64, Mountain at 6:30 p.m.

Iron River Community Center
East U.S. Highway 2, Iron River at 7:30 p.m.

Thursday, September 23, 2004

2nd Floor Conference Room
Law Enforcement Center
222 N. Beaumont
Prairie du Chien at 6:30 p.m.

Lower Level Meeting Room
Terminal Building
Rhineland/Oneida County Airport
Airport Road off U.S. Highway 8 West
Rhineland at 630 p.m.

Town of Brooklyn Administrative Building
400 Main Street
Brooklyn at 6:30 p.m.

Monday, September 27, 2004

Chippewa Valley Technical College
620 W. Clairemont Ave.
Eau Claire at 7:00 p.m.

Tuesday, September 28, 2004

UW Extension Ag Research Station
W6646 Hwy. 70 East
Spooner at 5:30 p.m.

Mercer Community Center
2648 W. Margaret Street
Mercer at 6:30 p.m.

Lower Level West Meeting Room
Rusk Co. Community Library
418 W. Corbett Avenue
Ladysmith at 6:30 p.m.

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

Fiscal Estimate

The only fiscal impact, outside of minor costs associated with updating regulations and maps, is the potential agricultural damage and associated claims and abatement costs. However, these impacts would be negligible. All of the proposed increases are 5 or less deer per square mile of deer range. Most are in northern units where there is little agriculture and the few in the southwest are going from 15 to 20 deer per sq. mi., which is similar to the populations have been in recent years.

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 Mr. Brad Koele, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 30, 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. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707.

**Notice of Hearing
Public Instruction
[CR 04-076]**

NOTICE IS HEREBY GIVEN That pursuant to ss. 119.23 (7) (am) 2. and (d) 2., (10) (a) 3., and (11), Stats., and 227.11 (2) (a), Stats., and interpreting s. 119.23 (7) and (10), Stats., the Department of Public Instruction will hold a public hearing as follows to consider the amending of ch. PI 35, relating to financial reporting requirements under the Milwaukee Parental Choice Program. The hearing will be held as follows:

Date, Time and Location

September 13, 2004

3:30 p.m. – 5:30 p.m.

Milwaukee

Milwaukee Public Schools District Office

5225 W. Vliet Street

Auditorium

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please contact Tricia Collins, Consultant, Milwaukee Parental Choice Program, tricia.collins@dpi.state.wi.us, (608) 266-2853, or leave a message with the Teletypewriter (TTY), (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

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

<http://www.dpi.state.wi.us/dpi/dfm/pb/mpcprptm.html> and <http://www.dpi.state.wi.us/dpi/dfm/pb/mpcprptfn.html>, respectively. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson, Administrative Rules and Federal Grants Coordinator

Department of Public Instruction

125 South Webster Street

P.O. Box 7841

Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mailing or email address no later than September 17, 2004, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Statute interpreted: s. 119.23 (7) and (10), Stats.

Statutory authority: s. 119.23 (7) (am) 2. and (d) 2., (10) (a) 3., and (11), Stats.

Explanation of agency authority: Section 119.23 (7) (am) 2. and (d) 2., Stats., requires private schools participating in the Milwaukee Parental Choice Program (MPCP) to provide evidence of sound fiscal practices and financial viability as prescribed by the department by rule.

Section 119.23 (10) (a) 3., Stats., allows the department to specify by rule the date by which a participating private school must refund the department of any overpayment made to it.

Section 119.23 (11), Stats., gives the department authority to promulgate rules to implement and administer the entire program.

Court Decisions Directly Relevant: There are pending civil and criminal cases in Milwaukee county related to financial issues addressed in this rule.

Related statute or rule: None.

Plain language analysis: 2003 Wisconsin Act 155 made a number of changes to the Milwaukee Parental Choice Program (MPCP), under which certain low-income pupils who reside in the city of Milwaukee may attend participating private schools in the city at state expense. The Act requires participating private schools to:

Provide the department with evidence of financial viability.

Provide the department with evidence of sound fiscal practices.

Provide proof that the administrator has participated in a fiscal management training program approved by the department.

The Act also gives the state superintendent the authority to:

Withhold aid if a participating private school is not in compliance with program requirements.

Under certain circumstances, issue an order prohibiting a private school from participating in the program in the current year.

Immediately terminate a private school's participation in the program if conditions at the school present an imminent threat to the health and safety of pupils.

Whenever the state superintendent issues an order terminating a school's participation, he or she must notify the parent or guardian of each pupil.

The proposed rules set forth the process by which the department will implement the provisions under the Act, which is effective starting in the 2004-05 school year. The proposed rules also specify the responsibilities of auditors and the department in determining if the school is meeting the requirements under the Act.

Summary of, and comparison with, existing or proposed federal regulations: None.

Comparison with rules in adjacent states: None.

Summary of factual data and analytical methodologies: The rule was developed based on a review of fiscal practices contained in policy manuals for non-governmental organizations affiliated with MPCP private schools, recommended practices by national organizations, requirements that other state agencies have for private and non-profit organizations, and internal control practices contained in professional accounting and auditing literature. Financial practices and audit requirements included in the rule are similar to those required for school districts, charter schools, other state agency requirements for non-profit and for-profit organizations, and are consistent with generally accepted national standards. An overview of rule items was provided to interested parties, but discussion was limited due to the short implementation timeframe imposed under 2003 Wisconsin Act 155.

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

Anticipated costs incurred by private sector: The proposed rules establish how private schools participating in the MPCP program will meet the new financial reporting requirements established under 2003 Wisconsin Act 155.

In January 2004, there were 106 private schools participating in the MPCP, with a total enrollment of 12,231 students in the program. It is anticipated that the private school financial audit requirements will have a slight fiscal effect since many of the participating schools currently have limited audit procedures in place. Auditing costs for small public school districts range from \$2,000 – \$5,000 annually. It is assumed that auditing costs to participating private schools will fall within the higher end of the \$2,000 – \$5,000 range and are not considered significant. The actual costs will vary depending on the number of financial transactions and expertise of the private school's accounting staff. The status of the financial records maintained by the private school staff will directly affect the time involved in auditing those records.

Effect on small business: See "Anticipated costs incurred by private sector."

Agency contact person: (including email and telephone)

Dennis Hanson, School Finance Auditor

(608) 267-1291

dennis.hanson@dpi.state.wi.us

Tricia Collins, Consultant

Milwaukee Parental Choice Program

(608) 266-2853

tricia.collins@dpi.state.wi.us

Description of any forms (attach copies if available): Milwaukee Parental Choice Program Budget and Anticipated Cash Flow Form.

Fiscal Estimate

The proposed rules establish how private schools participating in the MPCP program will meet the new financial reporting requirements established under 2003 Wisconsin Act 155.

In January 2004, there were 106 private schools participating in the MPCP, with a total enrollment of 12,231 students in the program. It is anticipated that the private school financial audit requirements will have a fiscal effect since many of the participating schools currently have limited audit procedures in place. Auditing costs for small public school districts range from \$2,000 – \$5,000 annually. It is assumed that auditing costs to participating private schools will fall within the higher end of the \$2,000 – \$5,000 range and are not considered significant. The actual costs will vary depending on the number of financial transactions and expertise of the private school's accounting staff. The status of the financial records maintained by the private school staff will directly affect the time involved in auditing those records.

The Act and the rules have additional administration requirements for the program that will have a fiscal effect on the department. It is assumed such costs could be absorbed within the agency's operating budget.

The rules will not have a fiscal effect on the Milwaukee Public Schools.

Initial Regulatory Flexibility Analysis

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

**Notice of Hearing
Revenue**

Notice is hereby given that, pursuant to s. 71.80 (1) (c), Stats., and interpreting ss. 71.04 (4) (e), (8) (c), and (11) and 71.25 (6) (e), (10) (c), and (12), Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the repeal and recreation and

creation of rules relating to the apportionment of net business incomes of interstate financial organizations.

Hearing Information

The hearing will be held at 9:00 A.M. on Friday, **October 1, 2004**, in Conference Room 6S-02 (6th floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than October 8, 2004, and will be given the same consideration as testimony presented at the hearing.

Contact Person

Dale Kleven
 Department of Revenue
 Mail Stop 6-40
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708-8933
 Telephone (608) 266-8253
 E-mail dkleven@dor.state.wi.us

Analysis by the Department of Revenue

Statutes interpreted: ss. 71.04 (4) (e), (8) (c), and (11) and 71.25 (6) (e), (10) (c), and (12), Stats.

Statutory authority: s. 71.80 (1) (c), Stats.

Explanation of agency authority: Under s. 71.80 (1) (c), Stats., the department may make such regulations as it shall deem necessary in order to carry out chapter 71 of the Wisconsin Statutes, relating to income and franchise taxes. Additionally, section 33, 2003 Wisconsin Act 37, requires the department to promulgate a rule requiring financial organizations to use an apportionment formula consisting solely of a sales factor.

Related statute or rule: ss. 71.04 (4) (e), (8) (c), and (11) and 71.25 (6) (e), (10) (c), and (12), Stats.

Plain language analysis: SECTION 1. Tax 2.49 is repealed and recreated to prescribe the method of apportioning the net business income of interstate financial organizations, other than brokerage houses, investment companies, and insurance companies, as required by ss. 71.04 (4) (e) and (8) (c) and 71.25 (6) (e) and (10) (c), Stats. This section of the rule order does all of the following:

a. Defines "financial institution" and other terms used in the rule.

b. Extends the application of Tax 2.49 to mortgage bankers, as authorized by ss. 71.04 (11) and 71.25 (12), Stats. Sections 71.04 (8) (a) and 71.25 (10) (a), Stats., exclude mortgage bankers from the definition of "financial organization."

c. Phases in the use of an apportionment formula consisting solely of a receipts factor:

- For taxable years beginning after December 31, 2004, and before January 1, 2006, net business income is apportioned using an apportionment fraction composed of a receipts factor representing 50% of the fraction and a payroll factor representing 50% of the fraction.

- For taxable years beginning after December 31, 2005, and before January 1, 2007, net business income is apportioned using an apportionment fraction composed of a

receipts factor representing 60% of the fraction and a payroll factor representing 40% of the fraction.

- For taxable years beginning after December 31, 2006, and before January 1, 2008, net business income is apportioned using an apportionment fraction composed of a receipts factor representing 80% of the fraction and a payroll factor representing 20% of the fraction.

- For taxable years beginning after December 31, 2007, net business income is apportioned using an apportionment fraction consisting of the receipts factor.

d. Expands the types of income included in the receipts factor. In the existing rule, "gross receipts" includes all business income associated with the lending of money in the normal course of business, such as interest, discounts, finance charges or fees, and service charges or fees. In the proposed rule, receipts also include the following:

- Net gain from the sale of loans and credit card receivables.

- Gross receipts from credit card receivables, credit card issuer's reimbursement fees, and merchant discount.

- Loan servicing fees.

- Gross receipts from travelers checks, cashiers checks, certified checks, and money orders.

- Gross receipts from automated teller machines, debit card transactions, and electronic funds transfer.

- Gross receipts from maintaining accounts, safety deposit boxes, investment banking services, cash management services, international trade services, data processing and microfilming services, research services, trust services, investment banking services, and security brokerage services.

- Gross receipts from leasing real or tangible personal property.

- Gross royalties for the use of intangible property.

- Gross receipts from other services.

- Gross receipts from sales of tangible personal property.

- Gross receipts passed through from partnerships.

e. Changes the way that receipts are attributed to Wisconsin. The existing rule assigns gross receipts to Wisconsin if the transaction producing the income was principally negotiated in this state. The proposed rule specifies which receipts are assigned to Wisconsin, based on the type of receipt. For example, interest and other fees from loans secured by real property and net gains from the sale of loans secured by real property are assigned to Wisconsin if the real property is located in Wisconsin. Interest and other fees charged to credit card holders and net gains from the sale of credit card receivables are assigned to Wisconsin if the billing address of the credit card holder is in Wisconsin.

SECTION 2. Tax 2.495 is created to prescribe the method of apportioning the net business income of interstate brokerage houses, investment companies, and underwriters, as required by ss. 71.04 (4) (e) and (8) and 71.25 (6) (e) and (10), Stats. This section of the rule order does all of the following:

a. Defines "brokerage house" and other terms used in the rule.

b. Prescribes the method of apportioning the net business income of investment advisers, as authorized by ss. 71.04 (11) and 71.25 (12), Stats. Sections 71.04 (8) (a) and 71.25 (10) (a), Stats., exclude investment advisers from the definition of "financial organization."

c. Phases in the use of an apportionment formula consisting solely of a receipts factor:

- For taxable years beginning after December 31, 2004, and before January 1, 2006, net business income is

apportioned using an apportionment fraction composed of a receipts factor representing 50% of the fraction, a payroll factor representing 25% of the fraction, and a property factor representing 25% of the fraction.

- For taxable years beginning after December 31, 2005, and before January 1, 2007, net business income is apportioned using an apportionment fraction composed of a receipts factor representing 60% of the fraction, a payroll factor representing 20% of the fraction, and a property factor representing 20% of the fraction.

- For taxable years beginning after December 31, 2006, and before January 1, 2008, net business income is apportioned using an apportionment fraction composed of a receipts factor representing 80% of the fraction, a payroll factor representing 10% of the fraction, and a property factor representing 10% of the fraction.

- For taxable years beginning after December 31, 2007, net business income is apportioned using an apportionment fraction consisting of the receipts factor.

d. Prescribes the types of income included in the receipts factor.

e. Specifies which receipts are assigned to Wisconsin, based on the type of receipt.

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: Iowa and Minnesota generally use a market-based approach for assigning gross receipts from the performance of services; that is, the gross receipts are assigned to the location of the customer. Illinois and Michigan generally assign gross receipts from the performance of services to the location where the services are performed. This rule proposes a market-based approach for assigning gross receipts from the performance of services.

Summary of factual data and analytical methodologies: The department started with the Recommended Formula for Apportionment and Allocation of Net Income of Financial Institutions, which was adopted by the Multistate Tax Commission (MTC) on November 17, 1994. The MTC is an organization of state governments that works with taxpayers to develop and recommend uniform laws and regulations to promote equitable state tax treatment of multistate businesses. The MTC spent more than seven years working with state tax departments and multistate and multinational financial institutions from across the country in developing this apportionment formula. The laws, regulations, rules, and tax returns of the other states that impose a franchise or income tax on financial institutions and brokerage firms were then reviewed. Since state apportionment formulas are not uniform, neighboring states' apportionment formulas were the primary focus of this review. Revisions to these formulas were then made, based on suggestions from Wisconsin's banking associations.

Analysis and supporting documents used to determine effect on small business: The department has prepared a fiscal estimate for 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.

Effect on small business: This proposed rule order does not have a significant fiscal effect on small business.

Fiscal Estimate

Under the proposed rules, financial institutions and broker-dealers and underwriters would apportion income for taxable years beginning in 2006 based on a formula that weights the sales factor at 60% and the payroll factor at 40%. For taxable years beginning in 2007, the sales factor would be weighted at 80% and the payroll factor at 20%. For taxable years beginning in 2008, the sales factor would be 100% of the apportionment formula. These changes have no fiscal effect beyond those included in the estimate for 2003 Act 37.

In addition, the rules more specifically define the receipts that would be included in the receipts factor for financial institutions and broker-dealers and underwriters to reflect changes in the financial services industry under current law. An estimate of the impact of these changes is not known, but is believed to be minimal.

Agency 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.

Place where comments are to be submitted and deadline for submission: Written comments may be submitted to the contact person shown below no later than October 8, 2004, and will be given the same consideration as testimony presented at the hearing that will take place on October 1, 2004.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

Notice of Hearing Transportation [CR 04-090]

NOTICE IS HEREBY GIVEN that pursuant to 2003 Wis. Act 220, Stats., and interpreting ss. 20.395 (5) (hq), s. 110.20 (5) and (6) (a), and s. 227.114 (1), Stats., the Department of Transportation will hold a public hearing in **Room 144-B** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **14th day of September, 2004, at 1:30 PM**, to consider the creation of ch. Trans 135, Wisconsin Administrative Code, both as an emergency rule and permanent rule relating to the creation of a school bus oxidation catalyst grant program in certain counties.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Copies of the emergency rule or permanent rule can be obtained upon request from Carson Frazier (see end of this notice)

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: 2003 Wis. Act 220. Act 220 modifies ss. 20.395 (5) (hq) and 110.20 (6) (a), Stats., and creates s. 110.215, Stats.

Statutes Interpreted: ss. 20.395 (5) (hq), s. 110.20 (5) and (6) (a), which addresses model year vehicles exempted from participating in the I/M program;

s. 110.20 (5), which identifies the counties in which the I/M program and grant program apply; and s. 227.114 (1), Stats. which defines a “small business” as it applies to this hearing notice.

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

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: In the past few years, the U.S. Environmental Protection Agency (USEPA) has issued rules establishing new emission standards for heavy-duty diesel vehicles (including school buses) and engines (including school bus engines) that are effective in 2004 and in 2007. These increasingly stringent emission standards apply to newly manufactured vehicles and engines. According to USEPA, these standards will reduce nitrogen oxide (NOx) and hydrocarbon (HC) emissions from trucks and buses by 95 percent beyond current levels and particulate matter (PM) emissions by 90 percent beyond current levels.

In order to meet these more stringent standards for diesel engines, USEPA’s rules also mandate that the sulfur content of diesel fuel be capped at 15 parts per million – a 97 percent reduction over current levels – by 2007.

Oxidation catalysts can reduce PM emissions by 20 percent, HC emissions by 50 percent, and carbon monoxide (CO) by about 40 percent. Consequently, retrofitting school buses manufactured before 2004 with oxidation catalysts will reduce their emissions, but they will still emit substantially more than model year 2004 and newer school buses will.

Because new diesel vehicles will comprise a minority of the national vehicle fleet for several years, USEPA encourages emission control retrofits for existing vehicles. Nonetheless, while the impact of the new federal standards will increase over time, the grant program’s impact on air quality in southeast Wisconsin will diminish over time, because school buses in affected Wisconsin counties typically are removed from service by the time they are 10 years old.

Comparison with Rules in Adjacent States:

Michigan: Michigan has no rules addressing school bus retrofits or school bus emissions. However, the Michigan Department of Environmental Quality has helped secure federal funds through USEPA’s 2004 Clean School Bus USA Demonstration Grants Program to purchase diesel oxidation catalysts for 110 Ann Arbor Public School public school buses, to operate a fleet of 18 school buses on biodiesel B20 (diesel fuel blended with 20 percent biodiesel), and to purchase diesel oxidation catalysts and crankcase filtration systems for 40 to 50 Okemos Public School buses. Collectively, these grants amount to approximately \$165,000.

Minnesota: Minnesota has no rules addressing school bus retrofits. However, in May 2002, Minnesota adopted legislation intended to protect the health and safety of children from harmful diesel school bus emissions. The law requires schools to reduce unnecessary idling of school buses in front of schools, and reroute bus parking zones away from air-intake vents (or if necessary, relocate the air-intake vents). In conjunction with the law, the Minnesota Office of Environmental Assistance has coordinated with

environmental and health-based organizations to provide resources to schools to help with implementing the law.

Additionally, the South Washington County School District near St. Paul has retrofitted approximately 65 school buses with diesel oxidation catalysts with \$62,225 in supplemental environmental project funds provided by 3M Corporation.

Illinois: Illinois has no rules addressing school bus retrofits. However, the state operates a clean school bus grant program administered by the Illinois EPA (IEPA). Under the grant program, IEPA accepts grant applications for purchasing and installing oxidation catalysts and for purchasing other means of reducing school bus emissions, including anti-idling equipment and biodiesel fuel.

Funding for the program comes primarily from two sources: USEPA’s Clean School Bus USA Demonstration Grants Program and proceeds of an IEPA enforcement case against Archer Daniels Midland. Funding obtained through the latter is a one-time source of \$2.3 million, but may be used only in twenty-four central and western Illinois counties.

Presently, IEPA has awarded grants to two school districts and is evaluating applications from several others.

Iowa: Iowa has no rules addressing school bus retrofits. However, the Iowa Department of Natural Resources (IDNR) has established the Bus Emissions Education Program (BEEP), a voluntary bus emissions testing program. The program is intended to detect emissions and combustion inefficiencies, and thereby help schools save money by enabling them to properly tune their buses. Iowa organizations and businesses provide program funding.

In addition to emissions testing, the IDNR will be partnering with various school districts to install diesel oxidation catalysts on about 125 buses over the next few years, and subsequently fueling them with biodiesel.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: In addition to creating the school bus oxidation catalyst retrofit grant program, Act 220 exempts two additional model years from testing in Wisconsin’s vehicle emission inspection and maintenance (I/M) program. The underlying legislation, 2003 Senate Bill 436, relied on an analysis provided by the Wisconsin Department of Natural Resources, Bureau of Air Management (DNR).

DNR’s analysis indicated that the lost emission reductions associated with the model year exemption could be substantively offset by, among other measures, retrofitting 300 school buses in the program area with oxidation catalysts. DNR’s analysis, in turn, relied on bus emission and oxidation catalyst performance information provided by USEPA and oxidation catalyst vendors.

DNR’s analysis is considered adequate for this hearing notice given the grant program’s limited scope and duration.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: None of the equipment vendors known to, or expected to, submit bids for the grant program are small businesses per s. 227.114 (1), Stats. A minority of the school bus companies known to, or expected to, participate in the grant program are small businesses.

School buses retrofitted under this rule will experience somewhere between a negligible and modest appreciation in value. Additionally, the program may provide participants with favorable media coverage. On the other hand, participating school bus companies will be required to supply the labor for, or cover the cost of, installing the oxidation

catalysts. For most buses, installation will require one to two hours of labor by a qualified mechanic.

On balance, the rule is expected to have no significant effect on business practices or net worth of participating small bus companies. This assessment is based on consultations with diesel oxidation catalyst vendors, affected school bus companies, and representatives of other state grant programs.

You may contact the Department's small business regulatory coordinator by phone at (608) 267-3703, or via e-mail at the following website:

<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Fiscal Effect and Anticipated Costs Incurred by Private Sector

See previous section. The grant program will result in a net benefit to the private sector, as oxidation catalyst vendors will sell additional units and bus companies will receive them free

of charge. The grant program is expected to cover the purchase of 300 oxidation catalysts at approximately \$1,000 each.

Place Where Comments are to be Submitted and Deadline for Submission: The public record on this proposed rule making will be held open until close of business September 24, 2004, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857.

To view the proposed rule and submit written comments via e-mail/internet, you may visit the following website:

<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Submittal of proposed rules to the legislature

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

Commerce
(CR 04–054)

Chapter Comm 40, relating to gas systems.

Commerce
(CR 04–043)

Chapter Comm 70, relating to historic and existing buildings.

Health and Family Services
(CR 04–056)

Chapter HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).

Public Instruction
(CR 04–027)

Chapter PI 6, relating to public librarian certification.

Public Service Commission
(CR 04–026)

Chapter PSC 173, relating to establishing a wireless 911 fund to promote an emergency telephone number service for wireless subscribers.

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.

Agriculture, Trade and Consumer Protection (CR 03-121)

An order affecting chs. ATCP 10 to 12, relating to captive wildlife and animal health.
Effective 11-1-04 and 1-1-05.

Agriculture, Trade and Consumer Protection (CR 04-005)

An order affecting chs. ATCP 10, 12, 42, 50, 60, 74, 80, 92, 118, 134, 140 and 162, relating to remedial technical rule changes.
Effective 11-1-04.

Agriculture, Trade and Consumer Protection (CR 04-030)

An order affecting chs. ATCP 99, 100 and 101, relating to agricultural producer security.
Effective 11-1-04.

Commerce (CR 03-97)

An order affecting chs. Comm 20 and 21, relating to

inspections, spindle spacing and exiting under the uniform dwelling code.
Effective 1-1-05.

Natural Resources (CR 04-046)

An order affecting chs. NR 1, 10 and 12, relating to hunting and trapping.
Effective 10-1-04.

Public Instruction (CR 04-008)

An order affecting ch. PI 36, relating to public school inter-district open enrollment.
Effective 10-1-04.

Veterans Affairs (CR 04-037)

An order affecting ch. VA 18, relating to the administration of the registered nurse education stipend program.
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 **August 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.

Agriculture, Trade and Consumer Protection (CR 03-120)

An order affecting ch. ATPC 40, relating to fertilizer tonnage fee surcharges for agricultural chemical cleanup program. Effective 9-1-04.

Summary of Final Regulatory Flexibility Analysis

This rule will have the following effects on businesses:

- It will increase fertilizer tonnage fees paid by farm centers and agricultural cooperatives that supply fertilizers to farmers. Many of these businesses may be "small businesses". This rule will not increase record keeping or reporting requirements for these businesses.

- The increase in tonnage fees may result in a \$0.48 per ton increase in the price of fertilizer to farmers, many of whom are "small businesses". However, this tonnage fee increase reflects an increase in fertilizer prices of less than 3/10ths of one percent.

- The increased tonnage fees will help keep the agricultural chemical cleanup program solvent. This will help many businesses, particularly farm supply businesses and farmers, by helping them pay for costly cleanups of agricultural chemicals. In some cases, this may allow affected businesses to stay in business.

Summary of Comments by Legislative Review Committees

This rule was transmitted for legislative review on April 28, 2004. The rule was assigned to the Assembly Committee on Agriculture on May 4, 2004 and the Senate Committee on Agriculture, Financial Institutions and Insurance on May 5, 2004, with the following committee responses:

- The Assembly committee scheduled a hearing for May 21, 2004, but cancelled that hearing before it occurred. The review period expired on June 21, 2004.

- The Senate committee took no action on the rule and the review period expired on June 5, 2004.

Commerce (CR 04-009)

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

Summary of Final Regulatory Flexibility Analysis

The proposed rules will not affect any small businesses

as defined in s. 227.114 (1) (a), Stats. The proposed rules apply to public sector employers and employees.

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 03-091)

An order affecting ch. NR 116, relating to the definition of a deck and provision that the construction of deck is not a modification or addition to a nonconforming structure. Effective 9-1-04.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources held public hearings on the proposed rule. No requests for modification were received.

Natural Resources (CR 04-020)

An order affecting chs. NR 10, 12 and 19, relating to the control and management of chronic wasting disease. Effective 9-1-04.

Summary of Final Regulatory Flexibility Analysis

The proposed rules pertain to the rules relating to the control and eventual eradication of chronic wasting disease from the state's deer herd and impose no compliance or reporting requirements for small businesses; nor are there any design or operational standards contained within the proposed rule.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources held public hearings on the proposed rule. No requests for modification were received.

**Regulation and Licensing
(CR 04-007)**

An order affecting chs. RL 81, 82, 83 and 85, relating to applications, examinations, appraisal experience and continuing education (Real Estate Appraisers Board). Effective 9-1-04.

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.

Sections affected by rule revisions and corrections

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

Agriculture, Trade and Consumer Protection

Ch. ATCP 40

S. ATCP 40.06 (3) (a)

S. NR 10.106 (2) (f)

S. NR 10.27 (5) (b), (g) and (m), (6) and (10)

S. NR 10.28 (3)

S. NR 10.41

Ch. NR 12

S. NR 12.06 (2), (3) (a) and (4) (b)

Ch. NR 19

S. NR 19.02 (2) and (3) (c)

Ch. NR 116

S. NR 116.03 (6m)

S. NR 116.15 (1) (a), (am) and (as)

Commerce

Ch. Comm 32

S. Comm 32.003 (2)

S. Comm 32.11

S. Comm 32.35 (1)

S. Comm 32.38 (1)

S. Comm 32.50 (1)

Natural Resources

Ch. NR 10

S. NR 10.001 (6p), (6t), (11) and (23m)

S. NR 10.01 (3) (e) and (et)

S. NR 10.06 (8) (a)

S. NR 10.07 (1) (a) and (3)

S. NR 10.09 (1) (c)

S. NR 10.104 (11) (intro.), (a) (intro.), (b) (intro.) and (13) (intro.)

S. NR 10.105 (3) and (4)

Regulation and Licensing

Ch. RL 81

SS. RL 81.01 and 81.02

Ch. RL 82

S. RL 82.01 (1), (4), (5) and (6)

Ch. RL 83

S. RL 83.01 (2)

Ch. RL 85

S. RL 85.01 (1)

Editorial corrections

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

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 65. Relating to a recreation of the statewide independent living council for individuals with disabilities.

Executive Order 66. Relating to the creation of the governor's inter-agency council on homelessness.

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