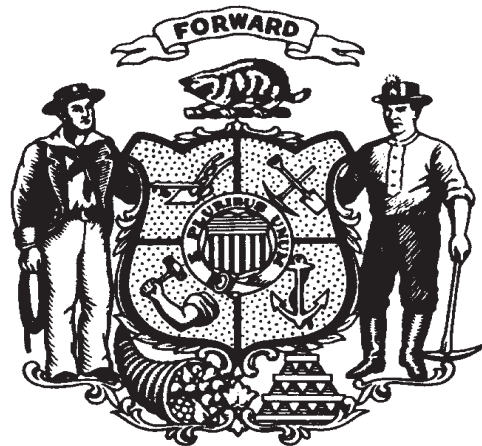


Wisconsin Administrative Register

No. 548



Publication Date: August 31, 2001
Effective Date: September 1, 2001



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Emergency rules now in effect

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

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

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, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

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

Commerce

(Flammable and Combustible Liquids – Ch. Comm 10)

Rules adopted revising **s. Comm 10.345**, relating to the effective date of required upgrades to aboveground bulk tanks that were in existence on May 1, 1991.

Finding of emergency

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

Wisconsin Administrative Code ch. Comm 10, Flammable and Combustible Liquids Code, became effective on 5/1/91. Section Comm 10.345 (2) contains requirements for bulk tanks in existence on that date to be provided with specific containment or leak detection upgrades within 10 years of that date. Some concerns have been expressed on the impact that compliance date could have on heating oil supplies and prices this winter. Construction requirements could result in a substantial number of tanks storing heating oil to be closed during the winter heating season in preparation for the required upgrades.

Based on these concerns, the department has agreed to extend the compliance deadline for 3 months until 8/1/01 if approvable tank system upgrade plans have been submitted to the department by 2/1/01.

Publication Date: January 6, 2001
Effective Date: January 6, 2001
Expiration Date: June 4, 2001
Hearing Date: February 27, 2001
Extension Through: August 2, 2001

Commerce

(Financial Assistance for Businesses and Communities) (Chs. Comm 105–128)

Rules adopted revising **ch. Comm 113** relating to the allocation of volume cap on tax-exempt private activity bonds.

Finding of emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Pursuant to s. 560.032, Stats., the Department of Commerce (Commerce) is responsible for administering the allocation of volume cap. The emergency rule is being adopted to incorporate in the administrative code recent changes to the Internal Revenue Code (Section CFR 146) which increases state volume cap limits on tax-exempt private activity bonds. The year 2000 limit was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002, the limit will be \$75.00; and thereafter, the limit will be indexed to inflation. The rule identifies a formula for the allocation of volume cap for the year 2001 and future years. This emergency rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and Commerce. The rules are also being revised to provide an allocation process that will allow Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

Publication Date: April 26, 2001
Effective Date: April 26, 2001
Expiration Date: September 23, 2001
Hearing Date: July 16, 2001

Financial Institutions – Corporate and Consumer Services

Rules adopted repealing **ch. SS 3** and creating **chs. DFI-CCS 1 to 6**, relating to the Uniform Commercial Code.

Finding of emergency

2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code (“UCC”), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to operate either a state-wide lien filing system or give effect to the provisions of the UCC before permanent rules can be promulgated. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation-wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, and other notices of liens under the UCC.

Publication Date: July 2, 2001
Effective Date: July 2, 2001
Expiration Date: November 29, 2001

Health & Family Services

(Community Services, Chs. HFS 30–)

A rule was adopted amending s. HFS 94.20 (3), relating to patients' rights.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates secure mental facilities for the treatment of ch. 980, Stats., sexually violent patients. Departmental investigations have indicated that a portion of the ch. 980 inpatient population has routinely abused their s. HFS 94.20 telephone rights by making inappropriate calls to members of the public, by fraudulently placing numerous long distance calls that are billed to innocent third-parties or by operating fraudulent schemes. Since the Department has previously had no means of monitoring patient telephone use, the extent of this activity is unknown, but given the experience of investigations triggered by citizen complaints, it is clear that these sorts of activities are not infrequent among this population. In addition, experience with telephone monitoring in other secure institutions indicates that call monitoring can and does help staff detect contraband and other security-related issues and activities. These abuses are clearly contrary to the therapeutic activities conducted at the secure mental health facilities.

Until recently, the Department has been unable to stop these abuses because the Department's facilities lacked secure telephone systems. Previous DHFS efforts to obtain secure telephone systems from the telephone system's vendor used by the Department of Corrections were not successful because the call volume at DHFS's secure mental health facilities were viewed as insufficient to support the telephone system.

In late 2000, the Department of Corrections selected a new vendor for its secure telephone system. In May 2001, the new vendor agreed to also install the system in DHFS's secure mental health facilities. The installation of the system at the facilities will be completed by June 20, 2001. The systems will allow the Department to establish and enforce calling lists for each inpatient and monitor inpatients' calls for counter-therapeutic activity. An inpatient's calling lists is a finite number of telephone numbers associated with persons the inpatient is approved to contact by telephone. Use of calling lists alone, however, is insufficient to discourage and minimize inpatient attempts to subvert the system. The Department must monitor phone calls made by ch. 980 inpatients to discourage and minimize the occurrence of inpatients calling persons on their calling list who, in turn, subvert the secure system by forwarding the inpatient's call for the prohibited purposes and activities previously described. The Department must be able to monitor the phone calls of ch. 980 inpatients both to protect the public and promote therapeutic activities at the secure mental health facilities.

The Department is issuing these rules on an emergency basis to protect the public's safety by minimizing the recurring fraudulent activity associated with telephone use. These rules also ensure the public's safety and welfare by

promoting the effective treatment mission of the secure mental health facilities. The recording capability of the telephone system hardware that has been installed at the Wisconsin Resource Center and the Sand Ridge Secure Treatment Center cannot be turned off, i.e., when the system is functional, all features of the system are fully operational. If the secure telephone system is not operational, both the Wisconsin Resource Center and the Sand Ridge facility will lose the therapeutic and safety advantages afforded by the system. Since the Sand Ridge facility is accepting its first patients during the week of June 18th, there is not alternative telephone system for patients.

Publication Date: June 22, 2001
Effective Date: June 22, 2001
Expiration Date: November 19, 2001
Hearing Date: September 12, 2001

[See Notice This Register]

Health & Family Services

(Health, Chs. HFS 110–)

Rules adopted revising ch. HFS 119, relating to 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 25, 2001 on the rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty-six percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. This increase reflects industry-wide premium increases and takes into account the increase in costs associated with Plan 1 claims. According to state law, HIRSP premiums must fund 60% of plan costs and cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market.

A second type of medical coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Fourteen percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific

policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry-wide cost increases.

The Department through this rulemaking order proposes to amend ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2000. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2001. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$19,982,024. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$19,617,772. On April 25, 2001, the HIRSP Board of Governors approved the calendar year 2000 reconciliation process and the HIRSP budget for the plan year July 1, 2001 through June 30, 2002.

The fiscal changes contained in this order also reflect the conversion of HIRSP from cash accounting to accrual accounting, as recommended by the Legislative Audit Bureau and the HIRSP Board of Governors. Cash accounting recognizes the costs of claims and expenses when paid. Accrual accounting recognizes the costs of claims and expenses in the time period when first incurred. Basically, HIRSP program liabilities have been understated under the cash accounting methodology. The net effect of the HIRSP conversion to accrual accounting is to provide a more accurate reflection of the program's financial condition.

Publication Date: June 29, 2001
Effective Date: July 1, 2001
Expiration Date: November 28, 2001

Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees.

Finding of emergency

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

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule No. 01-035, 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, 2001.

The commissioner expects the permanent rule will be filed with the secretary of state in time to take effect October 1, 2001. Because the fund fee provisions of this rule first apply on July 1, 2001, 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 16, 2001.

Publication Date: June 12, 2001
Effective Date: July 1, 2001
Expiration Date: November 28, 2001

Natural Resources – (2)

(Fish, Game, etc., Chs. NR 1–)

1. Rules adopted amending **s. NR 20.20 (73) (j) 1. and 2.**, relating to sport fishing for yellow perch in Green Bay and its tributaries and **s. NR 25.06 (2) (b) 1.**, relating to commercial fishing for yellow perch in Green Bay.

Finding of emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Yellow perch contribute significantly to the welfare of Wisconsin citizens by supporting popular and economically valuable sport and commercial fisheries. The yellow perch population in Green Bay is rapidly declining. This decline reflects a number of years of very poor reproduction. The only recent year with reasonably good natural reproduction was 1998. The fish spawned that year contributed to the sport harvest in 2001 and will become vulnerable to commercial gear this summer. Sport and commercial harvests of adult yellow perch must be limited immediately in order to protect those fish and maximize the probability of good reproduction in the near future.

Publication Date: June 30, 2001
Effective Date: July 1, 2001
Expiration Date: November 28, 2001
Hearing Date: August 13, 2001

2. Rules adopted revising **ch. NR 10**, pertaining to deer hunting in various deer management units.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and forest resources, and to minimize deer nuisance problems, thereby protecting the public peace, health, safety and welfare. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify the rules will result in excessively high deer populations well above established goal levels, causing substantial deer damage to agricultural lands and forest resources, and potential for disease.

Publication Date: May 16, 2001
Effective Date: September 1, 2001
Expiration Date: January 29, 2002
Hearing Date: June 11, 2001

Public Service Commission

Rules adopted amending s. PSC 116.03 (4) and creating s. PSC 116.04 (6) relating to the definition of fuel and permissible fuel costs.

Finding of emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend ch. PSC 116 Wis. Adm. Code. Amending

the definition of "fuel" in s. PSC 116.03 (4) and creating s. PSC 116.04 (6) would allow investor-owned utilities the ability to incorporate the cost of voluntary curtailment into the cost of fuel to increase the reliability of electric service in Wisconsin for the summer of 2001 and beyond. This change would assist in implementing the requirement of 1999 Wis. Act 9, s. 196.192 (2) (a), Stats.

Publication Date: May 19, 2001
Effective Date: May 19, 2001
Expiration Date: October 16, 2001

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Food and Dairy License Fees. *Objective of rule:* Provide adequate funding for state food safety programs. This rule could increase license fees for any or all of the following:

- Food processing plants
- Food warehouses
- Retail food establishments
- Dairy plants
- Dairy farms

Policy Analysis

The Department of Agriculture, Trade and Consumer Protection enforces Wisconsin's food safety laws. Among other things, the department licenses and inspects food processing plants, retail food establishments, food warehouses, dairy plants and dairy farms. These programs are designed to safeguard public health, and ensure a safe and wholesome food supply. They also facilitate the sale of Wisconsin dairy and food products in interstate and international markets.

Wisconsin's food safety programs are funded by general tax dollars (GPR) and industry license fees (PR). In 1991, license fees funded about 40% of program costs. The 1993–95 biennial budget act reduced GPR funding, and required a higher percentage (50%) of license fee funding. Annual program costs increase due to external factors, such as inflation and statewide pay increases which are not under the department's control. Because of these factors, fees were raised again in 1998. Currently, annual expenditures exceed annual revenues due to the rising costs. The department estimates a balance at the end of FY 2002–2003 that is equivalent to two months operating expenses. In FY 2003–2004, a new fee schedule will need to be in place to ensure the account has sufficient revenues and is not in a deficit.

In order to maintain current food safety inspection services, the department is considering the need to increase license fees by rule. The department has not yet determined whether, or to what extent, specific license fees may be increased.

Policy Alternatives

- Keep food and dairy license fees at their current levels. If the department continues to inspect food and dairy establishments at the current frequency, this will produce a deficit in the food safety program revenue account beginning in FY 2003–04.

- Reduce the current frequency of food safety inspection. This could have the following consequences:

- Increased food safety risks. In 1990, a Food Safety Task Force found that the department was not inspecting food establishments with adequate frequency, and recommended increased inspection for food safety. (This finding was limited to food, not dairy, establishments.) As a result, during the past decade, as the number of dairy farms has decreased, inspection resources have been reallocated to other, higher risk food inspection activities (e.g., food processors and food retail establishments that process potentially hazardous food).

- Interstate sales of milk and dairy products would be jeopardized. Wisconsin sells approximately 85 percent of its dairy output in interstate commerce. Dairy inspection frequency is dictated by the interstate Pasteurized Milk Ordinance (PMO), and cannot be unilaterally altered by the State of Wisconsin. If the department fails to inspect at the frequency dictated by the PMO, the federal Food and Drug Administration will decertify the state, and other states will refuse to accept shipments of grade A milk and dairy products from Wisconsin. This will cripple Wisconsin's dairy industry.

Statutory authority

- The department licenses and inspects food processing plants under s. 97.29, Wis. Stats., and ch. ATCP 70, Wis. Adm. Code. Under s. 97.29 (3), Wis. Stats., the department may adjust license fees by rule.

- The department licenses and inspects food warehouses under s. 97.27, Wis. Stats., and ch. ATCP 71, Wis. Adm. Code. Under s. 97.27 (3), Wis. Stats., the department may adjust license fees by rule.

- The department licenses and inspects retail food establishments under s. 97.30, Wis. Stats., and ch. ATCP 75, Wis. Adm. Code. Under s. 97.30 (3), Wis. Stats., the department may adjust license fees by rule.

- The department licenses and inspects dairy plants under s. 97.20, Wis. Stats., and ch. ATCP 80, Wis. Adm. Code. Under s. 97.20 (2), Wis. Stats., the Department may adjust license fees by rule.

- The department licenses and inspects dairy farms under s. 97.22, Wis. Stats., and ch. ATCP 60, Wis. Adm. Code. Under s. 97.22 (2), Wis. Stats., the department may adjust license fees by rule.

Staff Time Required

The department estimates that it will use approximately 0.5 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, consulting with stakeholders, holding public hearings, and communicating with other affected persons and groups. The department will assign existing staff to develop this rule.

Barbering and Cosmetology Examining Board

Subject

Regulation of barbers, cosmetologists, aestheticians, electrologists and manicurists. *Objective of the Rule.* To make changes relating to laser hair removal, microdermabrasion and chemical skin peels; tattooing, body piercing and tanning booths; limitations on the use of lancets; massages for cosmetic purposes; and non-evasive cutting.

Policy Analysis

The current law does not clearly address issues pertaining to laser hair removal, microdermabrasion and chemical skin peels.

The law pertaining to body piercing, tattooing and tanning booths is clearly stated in statutes and rules enforced by the Department of Health and Family Services.

The law permits the use of lancets; it does not adequately address the sterilization and disposal of lancets.

The law defines "manicuring" to include "massaging that is limited to the hands, feet or nails of the human body."

The law defines “manicuring” to include “cutting” that is limited to the hands, feet or nails of the human body.

The proposed rules would identify procedures, such as laser hair removal services, microdermabrasion and certain chemical skin peels, that may only be done as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the client services provided. The proposed rules would prescribe formal written protocols.

The proposed rules would provide references to the regulation of body piercing, tattooing and tanning booths by the Department of Health and Family Services.

The proposed rules would limit the use of lancets and prescribe how they would be disposed of.

The proposed rules would define “massaging” and “cutting,” as these terms are used in certain subsections under s. 454.01, Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 454.01, 454.02, 454.05 and 454.15, Stats.

Staff Time Required

100 hours.

Commerce

Subject

Mine safety fees. *Objective of the rule.* To revise the provisions of the Department’s administrative rules, Chs. Comm 2 & 8 relating to the mine safety fees charged by the Division of Safety and Buildings. This revision is intended to provide a more equitable fee structure for those people receiving mine safety services from the Department.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

Policy Analysis

Section 101.19, Stats., requires the Department to fix and collect fees by rule which shall, as closely as possible, equal the cost of providing services. The Department’s current fees for the mine safety program in chapter Comm 2 basically consist of an annual safety service fee based on aggregate production and do not accurately relate to the level of services provided. The proposed rule would reduce the production-based fees and create a more equitable fee-for-service mechanism. A fee more closely related to the cost of the mine safety courses conducted by the Department will be instituted. Concern has been expressed about the mine safety program not operating under a fee-for-service concept similar to other programs within the Division. The alternative of not revising the fees would result in the continued payment of fees by some people for services not received from the Department.

Statutory authority

Section 101.19, Stats.

Staff Time Required

The Department estimates that it will take approximately 100 hours to develop this rule. This time includes meeting with an advisory council, then drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

Mechanical Refrigeration. *Objective of the rule.* The objective of the rule is to update ch. Comm 45 to current national standards and to compare that chapter with the International Mechanical Code (IMC).

Policy Analysis

Chapter Comm 45 establishes minimum technical standards for the safe design, construction, installation, operation and inspection of mechanical refrigeration systems. The chapter closely follows a national standard issued by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. This rule project will update the chapter and it will evaluate adopting by reference the IMC to replace some of the provisions in chapter Comm 45.

The alternative of not revising the chapter would result in the Administrative Code not being up-to-date with current national standards.

Statutory authority

Sections 101.02 (15) (h) to (j), 101.17 and 101.19 (1) (b), Stats.

Staff Time Required

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

Natural Resources

Subject

Chapter NR 18, Falconry. A) Establishment of falconry fee for resident and nonresident falconers. The proposed fee is \$75 for a 3-year resident license and \$100 for a 1-year nonresident license. B) Elimination of restrictions on type of raptor used for educational purposes. Resident and nonresident falconers will be affected by the proposed rule.

Policy Analysis

The proposed rule represents a change from past policy. The facts that necessitate the proposed change include the following: 1) Currently there is no fee associated with the practice of falconry for resident falconers and there is no fee associated with a nonresident trapping permit. Nonresidents currently must purchase a valid small game or general hunting license when hunting with a raptor. 2) Currently, a permittee may use only buteos, falcons and great horned owls for educational programs.

Statutory authority

Section 29.175 (1), Stats.

Staff Time Required

28 hours.

Natural Resources

Subject

Amend ch. NR 115 – Wisconsin’s Shoreland Management Program. Pursuant to ss. 59.692 and 281.31 Wis. Stats., ch. NR 115 provides that shoreland zoning regulations shall: “further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses, and reserve shore cover

and natural beauty.” Chapter NR 115 contains the statewide minimum standards for the shoreland zoning in unincorporated areas. With the exception of the wetland provisions added in the early 1980’s, the basic county shoreland zoning standards have essentially remained unchanged since ch. NR 115 was created. However, a number of the provisions found in ch. NR 115 are outdated and/or difficult to enforce. In addition, development pressures have increased, more property owners want to improve nonconforming structures, are seeking variances, and the resulting impacts need to be addressed.

Groups likely to be impacted by these issues include a) property owners; b) zoning administrators and county officials; c) realtors; d) contractors, and others who provide land alteration services; e) members of the public who recreate on or near navigable waters.

Policy Analysis

The county shoreland zoning standards found in ch. NR 115 were established in the late 1960’s based on a combination of the best available scientific information, professional judgment, and the feasibility of implementation. The standards for minimum lot widths, restrictions on vegetative cutting, and the building setback distances were intended to create a buffer to minimize disturbances to aquatic resources and preserve the natural beauty of our lakes, rivers and streams.

Current development pressures pose major challenges to the Shoreland Management Program, primarily because the state standards in ch. NR 115 have not been amended to keep pace with the changing times. Waterfront development is booming across the state, with property values increasing up to 400% in the early 1990s for some northern counties. In southeast Wisconsin, most lakes larger than 10 acres have developed shorelines. Many homeowners and visitors seek out lakes and rivers as havens to enjoy natural beauty in a quiet setting, yet the sheer number of users and owners can create user conflicts and put pressure on limited resources. The scarcity of prime waterfront lands means that areas once passed over for residential development are now being developed.

The rule will contain new minimum standards for local shoreland zoning ordinances indirectly affecting polluted

runoff, but the rule will not directly address pollution prevention or waste minimization.

Statutory authority

Sections 59.692 and 281.31, Wis. Stats.

Staff Time Required

820 hours.

Natural Resources

Subject

Creation of ch. NR 353 relating to the regulation of wetland conservation and management activities.

Wetland conservation (restoration, establishment, enhancement, protection/maintenance) and management activities are both a national and state priority. These activities have become an important and significant program component of many of the natural resource agencies and non-governmental organizations operating in Wisconsin. The use of existing waterway and wetland regulations for wetland conservation and management activities has caused frustration, delays and lost opportunities in a number of cases. The major interest groups will be the Natural Resources Conservation Service, U.S. Fish and Wildlife Service, Wisconsin Waterfowler Association, Wetlanders, Wisconsin Wetlands Association, Sierra Club, Ducks Unlimited and a number of private wetland restoration consultants.

Policy Analysis

The department’s wetland strategy, “Reversing the Loss” and s. NR. 1.95, “Wetland Policy”, recognize the need to both encourage wetland conservation and management activities that meet a full range of ecological concerns and multiple purposes while allowing, in certain cases, the restoration, establishment, enhancement, protection/maintenance and management of wetlands for a single purpose.

Statutory authority

Chapters 30 and 31, Wis. Stats., 33 USC ss1251 et.seq., 2001 Wisconsin Act 6.

Staff Time Required

485 hours.

Submittal of rules to legislative council clearinghouse

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

Employee Trust Funds

Rule Submittal Date

Notice is hereby given that on August 13, 2001 the Department of Employee Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ss. ETF 20.04 and 20.05.

Analysis

The subject matter of the proposed rule relates to the joint and survivor annuity reduced to 25% upon death of annuitant or named survivor.

Agency Procedure for Promulgation

A public hearing is scheduled for Thursday, September 13, 2001, at 1:00 p.m. at the Department of Employee Trust Funds, 801 West Badger Road, Madison, in room 2B.

Contact Person

If you have any questions, you may contact:
Linda Owen
Division of Retirement Services
Telephone (608) 261-8164.

Social Workers, Marriage and Family Therapists and Professional Counselors

Rule Submittal Date

On August 3, 2001, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to the minimum number of hours to be required in a social worker training certificate internship.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 18, 2001 at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions regarding the proposed rule, please contact:
Pamela Haack, Paralegal
Office of Administrative Rules

Telephone (608) 266-0495

Social Workers, Marriage and Family Therapists and Professional Counselors

Rule Submittal Date

On August 3, 2001, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to the social worker temporary certificate to conform to a new procedure for computerized examinations.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 18, 2001 at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions regarding the proposed rule, please contact:
Pamela Haack, Paralegal
Office of Administrative Rules
Telephone (608) 266-0495

Department of Transportation

Rule Submittal Date

On August 15, 2001, the Wisconsin Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Relating to allowing the operation of double bottoms and certain other vehicles on specified highways.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 25, 2001.

Contact Information

Julie A. Johnson, Paralegal
Office of General Counsel
4802 Sheboygan Avenue, Room 115B
P. O. Box 7910
Madison, WI 53707-7910

Rule-making notices

Notice of Hearings Department of Administration [CR 01-086]

Notice is hereby given that pursuant to ss. 16.004 (1), 16.965 (5) and 227.11 (2) (a), Stats., and interpreting ss. 16.965 (2), and 16.9651 (2), Stats., the Department of Administration will hold public hearings to consider the creation of ch. Adm 48 of the Wis. Adm. Code, relating to the department's comprehensive planning and transportation planning grants to local governmental units.

Hearing Date, Time and Location

Date: September 13, 2001
Time: 8:30 a.m. – 9:30 a.m.
Location: Brown County Central Library Auditorium (Lower Level)
 515 Pine Street
 Green Bay, WI 54301
 (Use Pine Street Entrance)

Date: September 13, 2001
Time: 2:00 p.m. – 3:00 p.m.
Location: Marathon County Public Library
 Wausau Room (3rd Floor)
 300 1st Street
 Wausau, WI 54403

Date: September 14, 2001
Time: 9:00 a.m. – 10:00 a.m.
Location: Eau Claire County Courthouse
 Room 2560 (2nd Floor)
 721 Oxford Avenue
 Eau Claire, WI 54701

Date: September 17, 2001
Time: 1:00 p.m. – 2:00 p.m.
Location: Dept. of Administration State Office Building
 St. Croix Room (1st Floor)
 101 W. Wilson Street
 Madison, WI 53701

Date: September 18, 2001
Time: 1:30 p.m. – 2:30 p.m.
Location: Waukesha County Administration Center
 Room 255 (2nd Floor)
 1320 Pewaukee Road
 Waukesha, WI 53186

The hearing sites are accessible to people with disabilities. Interested persons are invited to present information at the hearing. People appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings should be directed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707-7864. Written comments must be

received by September 30, 2001, to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Administration:

Statutory Authority: ss. 16.004 (1), 16.965(5) and 227.11 (2) (a), Stats.

Statutes Interpreted: ss. 16.965 (2), and 16.9651 (2), Stats.

The Wisconsin Land Council is attached to the Department of Administration. The Council is authorized to promulgate rules relating to the methodology of determining preferences in awarding grants.

The purpose of the code is to establish the procedures, methodology and evaluation criteria for planning grants to local governmental units. The proposed rule codifies the application, evaluation and award process used by the department and approved by the Wisconsin Land Council for the FY2001 comprehensive planning and transportation planning grant cycle.

The following are the major provisions proposed by the Department:

1. Specify the activities and costs eligible for grant funding, including consultant services, computer hardware, software and data acquisition and education, outreach and other activities related to development and adoption of a comprehensive plan. [Adm 48.03 (1)]

2. Establish annual grant application procedures and time frames. The department requires the planning grant manual, including all application materials and instructions, to be available by September 1, of each year. The grant application deadline is November 1. [Adm 48.04(1) & (5)]

3. Establish base funding levels based on population estimates of the local governmental unit. At a minimum, the department will fund 50% of the base funding level. [Adm 48.05 (1) & (2)]

4. Provide a financial incentive for local governmental units that incur comprehensive plan development costs below the unit's base funding level. The department may fund up to 75% of the actual plan cost when the cost is less than the base funding level. [Adm 48.05 (3)]

5. Provide a financial incentive for multi-jurisdictional plans when 2 or more local governmental units participate in the development of a single plan that covers the jurisdictions of those governmental units and where the plan is adopted separately by each unit. Funding for each city, village and town participating will be increased by 10% of their base funding level. [Adm 48.05 (5)]

6. Provide a financial incentive for multi-jurisdictional plans when all towns within a county participate jointly under a county plan. In addition to each town being eligible to receive an additional amount equal to 10% of the town base funding level, the county will also be eligible to receive an additional amount equal to 10% of the county base funding level. [Adm 48.05 (6)]

7. Prohibit the local governmental unit from using federal grants to fund more than 50% of the required local match. The required local match is the difference between the comprehensive plan cost and the grant provided by the department. [Adm 48.05 (7)]

8. Establish the scoring criteria for evaluating grant applications based on the preferences in s. 16.695(4), Stats. [Adm 48.06]

9. Establish the percentage of the total points assigned to each preference. [Adm 48.06]

10. Require the department to prepare the planning grant priority list based on the established scoring criteria and available funds. To comply with ss. 16.965 (4) & 16.9651 (2), the department will obtain approval from the Council and department of transportation before awarding comprehensive planning and transportation planning grants. [Adm 48.07 (3) & 48.08]

11. Establish the grant period for the local governmental unit to complete and submit the adopted plan to the department. The grant period will be 30 months, 36 months or 42 months based on population unless the local governmental unit committed to a shorter time in the grant application. Multi-jurisdictional plans will have an additional 6 months to complete the process. [Adm 48.09 (2)]

12. Specify that the department withhold 25% of the grant award until the grantee submits a copy of the adopted comprehensive plan to the department and the department verifies that the plan meets the provisions of s. 66.1001, Stats. If the project has not been completed, the department may seek repayment of previously distributed funds. [Adm 48.09 (4) & (8)]

Initial Regulatory Flexibility Analysis:

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

Text of Rule:

SECTION 1: Adm 48 is created to read.

Chapter Adm 48

Comprehensive Planning and Transportation Planning Grants Program

Adm 48.01 Purpose and authority. This chapter is promulgated under the authority of ss. 16.004(1), 16.965(5), and 227.11, Stats., to implement ss. 16.965 and 16.9651, Stats.

Adm 48.02 Definitions. In this chapter:

(1) "Applicant" means a local governmental unit as defined in ss. 16.965(1)(a) and 16.9651(1), Stats., applying for a grant under this chapter.

(2) "Base funding level" means the levels found in the table in s. Adm 48.05(1).

(3) "Comprehensive plan" means a plan as defined in s. 66.1001(1)(a), Stats.

(4) "Council" means the Wisconsin land council as defined in s. 15.107(16), Stats.

(5) "Department" means the department of administration.

(6) "Grantee" means an applicant that has been awarded a grant under a signed grant agreement with the department.

(7) "Grant agreement" or "agreement" means a contract signed by the local governmental unit to complete a comprehensive plan under s. 66.1001, Stats., and the department.

(8) "Grant period" means the period of time specified in s. Adm 48.09(2).

(9) "In-kind services" means services rendered by the local governmental unit defined in s. 66.1001(1)(b), Stats. Federal grant funds are not included as in-kind services.

(10) "Multi-jurisdictional plan" means 2 or more local governmental units participating in the development of a

single comprehensive plan that covers the jurisdictions of those local governmental units which is adopted separately by each unit under s. 66.1001, Stats. A county comprehensive plan is a multi-jurisdictional plan if the county and 2 or more local governmental units located in the county participate and adopt the plan.

(11) "Plan" and "planning effort" means a comprehensive plan as defined in s. 66.1001(1)(a), Stats.

(12) "Plan update" means a revision to an existing county development plan under s. 59.69(2) or (3), Stats., or to a master plan under ss. 62.23(2) or (3), or, 66.0309(8), (9) or (10), Stats., to comply with the comprehensive plan provisions of s. 66.1001, Stats. A plan update may include a revision to an existing comprehensive plan under s. 66.1001, Stats.

(13) "Planning grant manual" means the document published annually by the department which includes the grant application, instructions, application and scoring timelines, detailed scoring, application review process, funding availability, and other pertinent information relating to the current grant cycle.

(14) "Planning grant priority list" means the department's ranking of grant applications by the numeric order of the scores.

Adm 48.03 Eligible activities. (1) An applicant may apply to the department for a grant to develop a plan or plan update for any of the following activities:

(a) Services and activities included in ss. 16.965(2) and 16.9651(2), Stats., including contracting for planning consultant services, public planning sessions, educational activities, and purchase of computerized planning data, planning software and hardware required to utilize planning data or software.

(b) Development of the plan document including printing costs.

(c) Public participation and outreach activities including educational materials, citizen surveys, internet activities and newsletters.

(d) Development, purchase and documentation of data, maps and computerized information used within the plan or plan update.

1. Digital mapping and data development activities funded under this grant such as geographic information system development must be consistent with applicable county land records modernization plans developed under s. 59.72(3)(b), Stats.

2. Digital mapping and data development activities funded under this grant may not duplicate efforts funded through the Wisconsin land information program under s. 16.966, Stats.

NOTE: Approved land records modernization plans and the planning grant manual can be obtained from the Office of Land Information Services, Department of Administration, P. O. Box 1645, Madison, WI 53701-1645 (telephone 608/267-2707). This information can also be obtained at the following website: <http://www.doa.state.wi.us/olis/>.

(e) Other activities that the applicant deems necessary in the preparation of a plan or plan update except ineligible activities noted under s. Adm 48.03(2).

(2) The following activities are ineligible for funding under this grant:

(a) Segmented activities not related to the development of a plan or plan update such as highway corridor plans, outdoor recreational plans and recreational trail plans.

(b) Planning activities and plan development costs incurred by the applicant prior to the council approving the grant priority list under s. Adm 48.08.

(c) Costs incurred by the applicant to prepare the grant application.

(d) Applicants that have received a fully funded planning grant under s. Adm 48.05 within the previous ten years.

(e) Purchase of property or land.

Adm 48.04 Grant application. (1) The department shall make the planning grant manual available by September 1st of each year.

(2) All grant applications shall be completed on forms provided by the department and follow instructions according to the planning grant manual.

(3) All grant applications shall be approved by specific action of each governmental unit participating.

(4) The department shall review the submitted application for consistency with eligible activity requirements and reserves the right to delete parts of the request for grant funding that does not reasonably relate to the development and adoption of a plan.

(5) Signed grant applications must be received by the department by November 1st.

(6) The department shall make copies of submitted application materials available to the public after the planning grant priority list has been approved under s. Adm 48.08(1).

Adm 48.05 Planning grants. (1) The department shall provide grants based on the population from the department's official population estimates of the local governmental unit and the base funding level noted in the table below.

| Population | Base Funding Level |
|--------------------|--------------------|
| 1 to 2,000 | \$20,000 |
| 2,001 to 5,000 | \$30,000 |
| 5,001 to 10,000 | \$40,000 |
| 10,001 to 25,000 | \$60,000 |
| 25,001 to 50,000 | \$100,000 |
| 50,001 to 100,000 | \$150,000 |
| 100,001 to 200,000 | \$200,000 |
| Over 200,000 | \$350,000 |

(2) Subject to availability of funds, applicants shall be eligible for not less than 50% of the base funding level noted in sub. (1).

(3) When an applicant's cost for the comprehensive plan is less than the base funding level noted in sub. (1), the community shall be eligible for up to 75% of the actual plan costs not to exceed the eligible grant amount in sub. (2).

Example: A town's population is 300. The town's proposed cost of plan is \$12,000. The town would be eligible for up to a \$9,000 grant.

(4) When the population of the applicant is within 5% of the next higher population category, the applicant's base funding level shall be the average of the 2 categories.

Example: A village's population is 1,993. The eligible base funding level of the village is \$25,000

(5) For a multi-jurisdictional plan, each local governmental unit participating within the application shall add together the base funding levels of each unit participating plus add an additional 10% incentive of the total base funding level for each city, village and town.

Example 1:

| | |
|-------------------------------------|------------------------|
| Town of Badger (pop: 1,400) | \$20,000 |
| Village of Dairyland (pop: 2,700) + | <u>\$30,000</u> |
| Total Base = | <u>\$50,000</u> |

| | |
|--------------------------------------|-----------------|
| 50% base award = | \$25,000 |
| <u>10% Incentive on Total Base</u> + | <u>\$ 5,000</u> |
| Maximum Grant Award = | \$30,000 |

Example 2:

| | |
|-----------------------------------|-------------------------|
| County of Holstein (pop: 112,600) | 200,000 |
| Town of Robin (pop: 1,400) | + \$20,000 |
| Town of Galena (pop: 947) | + \$20,000 |
| Town of Guernsey (pop: 2,700) | + \$30,000 |
| Town of Violet (pop: 865) | + \$20,000 |
| Town of Granite (pop: 1,180) | + <u>\$20,000</u> |
| Total Base | <u>\$310,000</u> |

| | |
|--------------------------------------|-----------------|
| 50% base award = | \$155,000 |
| <u>10% Incentive for each town</u> + | <u>\$11,000</u> |
| Maximum Grant Award = | \$166,000 |

(6) For a multi-jurisdictional plan where all towns within a county participate jointly under a county plan and are included within a single grant application, the maximum grant award shall also include a 10% incentive of the county base funding level.

In s. Adm 48.05(5), Example 2, if all towns in Holstein Co. participate, the maximum grant award increases by the additional \$20,000 incentive (10% of \$200,000 = \$20,000).

(7) A grantee's local match is the difference between the total cost for the comprehensive plan development and the grant provided under this chapter. A grantee's local match can be financed in the annual budget, by in-kind services and through grants from other sources. Not more than 50% of the local match may be through federal grants.

(8) The grant may contain multiple state and federal funding sources. The department shall comply with the requirements and provisions of the funding sources and shall require grantees to comply with any requirements related to the funding sources. Requirements of these funding sources shall be outlined in the planning grant manual.

Adm 48.06 Grant application scoring criteria. The grant application scoring criteria is based upon preferences in s. 16.965(4), Stats., and shall be scored as follows:

(1) Applicants that address the interests of overlapping or neighboring jurisdictions. Thirty percent of the total points available shall be assigned to this subsection. Applications may be evaluated based on the applicant:

(a) Providing a list of participants anticipated within the development of a plan or plan update and addressing coordination efforts within the planning process with these participants.

(b) Identifying the process to review existing plans of these participants and identifying discrepancies between plans.

(c) Addressing consistency of plans especially border issues between jurisdictions.

(d) Addressing implementation efforts to minimize conflicts between jurisdictions.

(e) Including proposals for coordination within extraterritorial boundaries through intergovernmental cooperation techniques.

(f) Including proposals for cooperative agreements.

(g) Engaging in a multi-jurisdictional plan as defined in s. Adm 48.02(10).

(2) Applicants that provide a specific description of the means by which all of the local, comprehensive planning goals specified in s. 16.965(4), Stats., will be achieved. Twenty-five percent of the total points available shall be assigned to this subsection. Applications may be evaluated based on the applicant:

(a) Addressing each of the goals and discussing the specific elements within s. 66.1001, Stats., in which each of these goals will be addressed.

(b) Describing specific locational issues within the discussion of the goals such as population changes, transportation needs, environmental issues, housing issues and other planning issues.

(c) Describing the goals in a coherent and consistent manner between all goals.

(3) Applicants that provide a description of the process to identify smart growth areas. Under s. 16.965, Stats., a smart growth area is an area that will enable the development and redevelopment of lands with existing infrastructure and municipal, state and utility services, where practicable, or that will encourage efficient development patterns that are both contiguous to existing development and at densities which have relatively low municipal, state governmental and utility costs. Twenty percent of the total points available shall be assigned to this subsection. Applications may be evaluated based on the applicant:

(a) Identifying the planning process for identifying potential smart growth areas and the policy implications for implementing these areas.

(b) Describing the implementation of smart growth areas.

(c) Developing these areas cooperatively with adjacent and overlapping jurisdictions.

(d) Identifying demographic, social and economic changes within the past ten years.

(4) Applicants that include planning efforts, including subsequent updates and amendments, that include development of implementing ordinances, including ordinances pertaining to zoning, subdivisions and land division. Twelve percent of the total points available shall be assigned to this subsection. Applications may be evaluated based on the applicant:

(a) Addressing the process of developing or updating ordinances and other implementation strategies that are consistent with the provisions of the plan or plan update.

(b) Identifying land use issues related to new, anticipated, or potential transportation facilities or improvements.

(c) Identifying innovative plan implementation techniques such as improved processes and coordination techniques among neighboring and overlapping jurisdictions, community design guidelines and other techniques.

(d) Describing the level of applicant's zoning authority.

(5) Applicants that include planning efforts contemplated for completion within 30 months from the date the grant is awarded. One percent of the total points available shall be assigned to this subsection.

(6) Applicants that include planning efforts that provide opportunities for public participation throughout the planning process. Twelve percent of the total points available shall be assigned to this subsection. Applications may be evaluated based on the applicant:

(a) Identifying the process for determining and adopting public participation procedures and address all requirements found in s. 66.1001(4)(a), Stats.

(b) Proposing creative, innovative public participation efforts.

(c) Providing a variety of opportunities for broad public participation throughout the planning process.

(d) Providing opportunities for neighboring and overlapping jurisdictions to participate.

Adm 48.07 Grant application evaluation. (1) The department shall evaluate and score applications based on the scoring established by the council under s. Adm 48.06.

(2) When developing the planning grant priority list, the department through a peer review process identified within the planning grant manual, shall rank all applications according to the applicant's total score received.

(3) The department shall establish the threshold in the planning grant priority list for determining which applications will be funded on the basis of the grant evaluation under this section and the availability of grant funds.

(4) The department shall prepare a detailed summary of expenditures for proposed grant awardees identified under sub. (3), including funding sources and any funding source requirements. The department shall forward the summary to the council as required by s. 16.965, Stats., the department of transportation as required by s. 16.9651, Stats., and any other agency as necessary due to funding sources.

Adm 48.08 Grant awards. (1) The council shall review and approve or disapprove by resolution, the grant priority list including activities proposed to be funded in compliance with ss. 16.965(4) and 16.9651(2), Stats. The department shall receive approval from the council before awarding a grant.

(2) The department shall provide the department of transportation and other agencies, where required, with the detailed summary of activities proposed to be funded through transportation planning grants in compliance with s. 16.9651(2), Stats. The department shall receive written approval from the secretary of the department of transportation before awarding a transportation planning grant.

(3) Grant awards are contingent upon the execution of a grant agreement. Failure of an applicant to execute a grant agreement shall result in withdrawal of the offer. The department and the applicant may negotiate the specific budget items, and other terms and conditions prior to executing the grant agreement. Terms of a grant award shall be administered through the grant agreement.

Adm 48.09 Grant Administration. (1) Accounting for all project funds shall be in conformance with generally accepted accounting principles and practices, and shall be recorded by the grantee. Supporting records of expenditures shall be maintained in sufficient detail to show that costs were incurred for the purposes for which the grant was made. Grant records shall be maintained for a period of 3 years after the grant award.

(2) The grant period extends from the date that the department executes the grant agreement to the date the local governmental unit submits the adopted plan to the department in compliance with s. 66.1001(4)(b), Stats. The contract dates shall not extend beyond time limits for consistency requirements of a comprehensive plan under s. 66.1001(3), Stats. Unless the applicant commits to a shorter time in the application, the applicable grant period assigned in the grant agreement shall be as follows:

| Population Plan | Single-Jurisdictional Plan | Multi-Jurisdictional Plan |
|------------------|----------------------------|---------------------------|
| 1 to 25,000 | 30 months | 36 months |
| 25,001 to 50,000 | 36 months | 42 months |
| 50,001 and up | 42 months | 48 months |

(3) The grantee may submit claims for payment to the department on forms provided by the department. The grantee shall submit at least one claim during each 12 month time

period commencing with the date the department signs the grant agreement. The department shall reimburse awardees not more than quarterly. All claims shall be consistent with the grant agreement relative to expenditures within the scope of work and estimated costs. All claims shall include documentation of progress under the terms of the grant agreement.

(4) The department shall withhold 25% of the grant award as final payment until:

(a) The grantee provides the department with a copy of the adopted plan as provided by s. 66.1001 (4)(b), Stats., and the department verifies the plan meets all provisions of s. 66.1001, Stats.

Note: This verification does not indicate a certification of compliance with s. 66.1001, Stats. This verification also does not indicate council or department approval of the plan content or policies. It is an indication that the grantee has completed the plan within the statutory requirements.

(b) The provisions of the grant agreement are met.

(5) In developing digital map data, the grantee shall adhere to widely accepted standards and use appropriate existing source data referenced in the planning grant manual.

(6) The local governmental unit shall make data developed under this grant available for public dissemination.

(7) For multi-jurisdictional plans, where one or more of the local governmental units participating in the grant have not adopted the plan by the end of the grant period, that unit or units award amount shall be withheld from the final payment under s. Adm 48.09(4).

(8) If the department finds that the project has not been completed pursuant to s. Adm 48.09(4), by the end of the grant period, the department may seek repayment of the state share or a portion of the state share previously distributed to the grantee.

Fiscal Estimate

Although local government units (statutorily defined as towns, villages, cities, counties and regional planning commissions) are not required to develop and adopt comprehensive plans, s. 66.1001(3), Wis. Stats., specifies that beginning on January 1, 2010, any program or action of a local governmental unit that affects land use shall be consistent with that local governmental unit's comprehensive plan.

Sections 16.965(2) and 16.9651(2), Stats., require that a local governmental unit receiving planning grants, finance a percentage of the costs of preparing the plan from the resources of the local governmental unit.

The proposed rule codifies the current application, evaluation and award process used for FY 2001 comprehensive and transportation planning grants.

The amount of funds available for comprehensive and transportation planning grants will not change as a result of these rules.

Contact Person

Donna Sorenson
Department of Administration
101 East Wilson Street, 10th Floor
P.O. Box 7864
Madison, WI 53707-7864
(608) 266-2887

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 01-090]

Repeated from mid-August Register

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to amend s. ATCP 3.02 (1), to repeal and recreate ch. ATCP 50, and to create s. ATCP 40.11 Wis. Adm. Code, relating to the soil and water resource management program. The department will hold five hearings at the times and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until September 14, 2001, for additional written comments.

You may obtain a free copy of this rule by contacting Bonnie Shebelski at the Wisconsin Department of Agriculture, Trade and Consumer Protection, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, Wisconsin 53708-8911, telephone: 608/224-4620. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **August 20, 2001**, by writing Bonnie Shebelski, DATCP, P.O. Box 8911, Madison, WI 53708-8911, telephone 608/224-4620. Alternatively, you may contact the department TDD at 608/224-5058. Handicap access is available at the hearings.

Hearings are scheduled at:

Tuesday, August 28, 2001, 1:00 – 4:30 p.m.

Jefferson County Courthouse, Room 202
320 S. Main Street
Jefferson, Wisconsin

Tuesday, August 28, 2001, 1:00 – 4:30 p.m.

Multipurpose Room
Dunn County Judicial Center
615 Parkway Drive
Menomonie, Wisconsin

Wednesday, August 29, 2001, 1:00–4:30 p.m.

Richland Center Community Center
600 W. Seminary Street
Richland Center, Wisconsin

Wednesday, August 29, 2001, 1:00 – 4:30 p.m.

UWEX Meeting Rooms A and B
County Normal Building
104 S. Eyder Avenue
Phillips, Wisconsin

Thursday, August 30, 2001, 1:00 to 4:30 p.m.

Brown County Agriculture & Extension Center, Room 114
1150 Bellevue Street
Green Bay, Wisconsin

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 92.05 (3) (c) and (k), 92.14 (8), 92.15 (3) (b), 92.16, 92.18 (1), 93.07 (1), and 281.16 (3) (b) and (c), Stats.

Statutes interpreted: s. 91.80, ch. 92, and s. 281.16, Stats.

This rule repeals and recreates current rules related to Wisconsin's soil and water resource management program. The department of agriculture, trade and consumer protection ("DATCP") administers this program under ch. 92, Stats. Among other things, this rule:

- Requires farm conservation practices.
- Creates a farm nutrient management program.
- Updates standards for county soil and water conservation programs, including county land and water resource management plans.
- Updates standards and procedures for DATCP grants to counties.
- Updates standards and procedures for county cost-share grants to landowners.
- Establishes technical standards for cost-shared conservation practices.
- Transfers some nonpoint source pollution abatement grant programs from DNR to DATCP, as directed by the Legislature.

Background

General

DATCP administers Wisconsin's soil and water resource management program under ch. 92, Stats. The program is designed to conserve the state's soil and water resources, reduce soil erosion, prevent nonpoint source pollution and enhance water quality. This rule spells out program standards and procedures.

DATCP administers this program in cooperation with county land conservation committees, the state land and water conservation board ("LWCB"), the department of natural resources ("DNR"), the natural resource conservation service of the U.S. department of agriculture ("NRCS") and other agencies. DATCP coordinates soil and water management efforts by these agencies. DATCP funds county soil and water conservation programs, and finances county cost-share grants to landowners to implement conservation practices. DNR administers a related cost-share program aimed at preventing nonpoint source pollution.

In 1997 Wis. Act 27 and 1999 Wis. Act 9, the Legislature mandated a comprehensive redesign of state programs related to nonpoint source pollution. Among other things, the Legislature directed DATCP and DNR to establish conservation standards and practices for farms. The Legislature also directed DATCP to adopt rules related to nutrient management on farms. This rule implements the redesigned nonpoint program.

County Programs

DATCP administers soil and water conservation programs in cooperation with county land conservation committees. Counties adopt land and water resource management plans, administer county ordinances, adopt conservation compliance standards for farmers claiming farmland preservation tax credits, provide information and technical assistance, and make cost-share grants to landowners installing conservation practices.

DATCP awards soil and water grants to counties. Grants reimburse county staff and support costs, and finance county cost-share grants to landowners. DATCP reviews county grant applications and awards grants according to an annual grant allocation plan reviewed by the LWCB. Counties must ensure that cost-shared practices are installed according to state standards, and must account for all grant funds received.

Soil and Water Conservation on Farms

Farm Conservation Practices

DNR is primarily responsible for adopting farm performance standards to prevent nonpoint source pollution. DATCP must prescribe conservation practices to implement the DNR standards. DATCP must also establish soil conservation and farm nutrient management requirements. Counties will take the lead role in implementing conservation practices on farms. Counties will receive staff funding from DATCP. Counties will receive cost-share funding from DATCP and DNR.

Under this rule, every farm must implement conservation practices that achieve compliance with DNR performance standards. This rule cross-references, but does not restate or duplicate, DNR performance standards. Conservation requirements are contingent on cost sharing (see below).

DATCP (not DNR) is primarily responsible for establishing conservation requirements related to cropland soil erosion and nutrient management. This rule establishes the following soil erosion and nutrient management requirements, which are contingent on cost sharing (see below):

- Soil erosion. A farmer must manage croplands and cropping practices so that soil erosion rates on cropped soils do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 3 to 5 tons of soil loss per acre per year. DNR rules will establish more specific runoff standards for riparian areas and waterways.
- Annual nutrient management plan. A farmer applying manure or commercial fertilizer must have an annual nutrient management plan, and must follow that plan.
- Nutrient management plan; preparation. A qualified nutrient management planner (see below) must prepare each nutrient management plan required under this rule. A farmer may prepare his or her own nutrient management plan if the farmer has, within the previous 4 years, completed a department-approved training course.
- A person selling bulk fertilizer to a farmer must record the name and address of the nutrient management planner who prepared the farmer's nutrient management plan (if the farmer has a plan).
- Nutrient management plan; contents. A nutrient management plan must be based on soil tests, and must comply with standards under this rule. Nutrient applications may not exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin in UWEX publication A-2809, Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998), unless the nutrient management planner documents a special agronomic need for the deviation. Appendix B contains a convenient summary of the UW recommendations for selected crops.

County Implementation

Counties will take the lead role in implementing farm conservation practices under this rule (see below). Counties must adopt land and water resource management plans to implement the conservation practices on farms. DATCP must approve county plans, as provided in ch. 92, Stats. Counties must update conservation standards for farmers claiming farmland preservation tax credits, and may adopt ordinances requiring other farmers to implement conservation practices. With DATCP financial help, counties may also provide cost-share grants, technical assistance and information to farmers.

Installing Conservation Practices; Technical Standards

A farmer may implement the conservation practices under this rule in a variety of different ways. DATCP, UW-extension, NRCS and the counties will provide information and recommendations.

If a landowner receives cost-share funding to install a conservation practice, the practice must comply with technical standards under this rule. The county must also determine that the funded practice is cost-effective. This rule specifies technical standards (including required maintenance periods) for the following cost-shared practices:

- Manure storage systems
- Manure storage system closure
- Barnyard runoff control systems
- Access roads and cattle crossings
- Animal trails and walkways
- Contour farming
- Cover and green manure crop
- Critical area stabilization
- Diversions
- Field windbreaks
- Filter strips
- Grade stabilization structures
- Heavy use area protection
- Livestock fencing
- Livestock watering facilities
- Milking center waste control systems
- Nutrient management
- Pesticide management
- Prescribed grazing
- Relocating or abandoning animal feeding operations
- Residue management
- Riparian buffers
- Roofs
- Roof runoff systems
- Sediment basins
- Sinkhole treatment
- Streambank and shoreline protection
- Strip-cropping
- Subsurface drains
- Terrace systems
- Underground outlets
- Waste transfer systems
- Water and sediment control basins
- Waterway systems
- Well decommissioning
- Wetland development or restoration

This rule does not change or eliminate any current technical standards, or add any new technical standards, except that this rule:

- Adds a standard for cover and green manure crops.
- Adds a standard for riparian buffers (the new standard is similar to the existing standard for filter strips).
- Adds a standard for sinkhole treatments.
- Splits the nutrient and pesticide management standard into 2 separate standards.
- Eliminates the standard for cattle mounds.
- Renames several standards.
- Eliminates restrictions on the length of cost-share contracts for the following practices:
 - * Residue management

- * Contour farming
- * Cover and green manure crops (new standard)
- * Prescribed grazing
- * Nutrient management
- * Pesticide management

This rule spells out a procedure by which DATCP may change technical standards in the future. DATCP will adopt future changes, if any, by rule (as it has in the past). The rulemaking process provides opportunity for public review and input. DATCP will make available complete copies of any technical standards that it incorporates by reference in a rule. DATCP will prepare a fiscal estimate and small business analysis on each proposed rule change, and may seek input from a DATCP advisory council.

DATCP will cooperate with the current Standards Oversight Council (SOC) in the development of technical standards. DATCP will consider SOC technical recommendations, but is not bound to adopt SOC recommendations as rules. SOC is a voluntary, multi-agency committee that works to share technical information and coordinate state and federal technical standards. SOC has no rulemaking authority. This rule does not change SOC's current role or operations. DATCP will encourage SOC to seek public input and cost information as SOC develops technical recommendations.

Cost Sharing Required

Many landowners will need to install new conservation practices in order to comply with this rule. This rule clarifies that a landowner is not required to do any of the following unless the landowner receives at least 70% cost sharing (90% if the county finds that there is an "economic hardship"):

- Discontinue or modify that part of a facility or practice that exists on the effective date of the rule.
- Obtain or implement an annual nutrient management plan.
- Change annual cropping or tillage practices.

This rule clarifies that the 70% (90% hardship) cost-sharing requirement applies to all of the following:

- The landowner's reasonable and necessary out-of-pocket expenditures to install and maintain the conservation practice.
 - Reasonable compensation for necessary labor, equipment and supplies provided by the landowner.
 - The value of the landowner's cost to take land out of agricultural production. The rule provides a formula for determining value, authorizing payment for the greater of:
 - The prevailing agricultural land rental rates in the county (as determined by USDA).
 - The payment that would be offered under the state-federal conservation reserve enhancement program (CREP), whether or not the land is eligible for the program.

This rule clarifies that the 70% (90% hardship) cost-sharing requirement does not apply to any of the following:

- A conservation practice for which DATCP "technical standards" specify a minimum cost-share contract period (typically 10 years) if the landowner has already received a cost-share grant (at the rate required in this rule) for that period. But a county must continue to provide cost sharing in subsequent years if the county requires the landowner to keep land out of agricultural production.
- A conservation practice (such as conservation tillage or nutrient management) for which DATCP rules specify no minimum maintenance period if the landowner has already received a cost-share grant (at the rate required in this rule)

for at least 3 years. For example, if a county has already paid a landowner to implement nutrient management for at least 3 years, the county may require the landowner to comply with state nutrient management standards in subsequent years without further cost-sharing.

- Conservation practices or costs for which this rule prohibits cost sharing.

This rule clarifies that:

- Cost-share grants from any public or private source, or combination of sources, may be counted toward the 70% (90% hardship) cost-share payment.
- A loan is not a grant.
- The 70% (90% hardship) cost-sharing requirement also applies to conservation practices required by county and local ordinances.

Cost-Share Funding for Conservation Practices

Under this rule, DATCP will finance county cost-share grants to farmers and rural landowners who install conservation practices – including practices designed to abate nonpoint source pollution. But DATCP will no longer finance cost-share grants to landowners who receive specific pollution discharge notices from DNR. Funding for that purpose is transferred to DNR. DNR will also continue to fund cost-share grants to urban landowners.

DATCP and DNR will jointly review county funding requests to determine the appropriate source of cost-share funding. Each county will determine its cost-share priorities based on the county land and water resource management plan. DATCP will allocate available cost-share dollars among the counties, based on state and county priorities.

DATCP will enter into an annual funding contract with each county receiving cost-share funds. The county, in turn, must enter into cost-share contracts with individual landowners. DATCP must be a party to a landowner cost-share contract if the contract is for more than \$50,000. This rule spells out requirements for county cost-share contracts with landowners (see below).

DATCP reimburses cost-share payments after the county certifies that the cost-shared practice has been properly installed and paid for. Some conservation practices must be designed and certified by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient planner (see below).

County Cost-Share Grants to Landowners

This rule spells out standards for county cost-share grants to landowners. The county must enter into a cost-share contract with the landowner. The county may cost-share conservation practices identified in this rule (or other practices specifically approved by DATCP). The cost-shared practice must comply with “technical standards” specified in this rule.

This rule clarifies that a cost-share grant may include a landowner’s cost to maintain (not just install) a cost-shared practice for the period specified in the cost-share contract. The county and landowner may negotiate the contract maintenance period, but DATCP “technical standards” require a minimum maintenance period (typically 10 years) for many practices.

Cost-Share Payments for Land Taken Out of Production

If a cost-share contract requires a landowner to take land out of agricultural production, the landowner’s cost is

calculated as the sum of the annual costs that the landowner will incur over the contract maintenance period.

The landowner’s projected annual cost, for each year of the maintenance period, equals the greater of the following:

- The number of affected acres multiplied by the per-acre weighted average soil rental rate in the county (as determined by the United States department of agriculture) on the date of the cost-share contract. (That annual cost is then multiplied by the number of years in the maintenance period.)
- The annual value of payments that would be offered under the combined state-federal conservation reserve enhancement program (CREP) if the affected lands were enrolled in that program. (That annual value is then multiplied by the number of years in the maintenance period.)

If a county pays a landowner to take land out of production, the county may require the landowner to grant the county an easement on the land taken out of production. The county must record the easement with the county register of deeds.

Maximum Cost-Share Rates

A cost-share contract reimburses a portion of the landowner’s cost to install the cost-shared practice. The county must implement cost-containment procedures (such as competitive bidding or other procedures described in this rule) to ensure that costs are reasonable.

This rule limits cost-share rates as follows:

- Generally speaking, a county may not use DATCP funds to pay more than 70% of the cost of a conservation practice (see s. 92.14 (6) (gm), Stats.).
- A county may pay 90% if the county makes an “economic hardship” finding. A county may do so if it finds that the landowner has inadequate cash flow to make the normal 30% cost-share contribution. This must be verified by a CPA or an accredited financial institution.
- A county land conservation committee may combine DATCP and DNR funds, up to the above limits.
- The cost-share limits in this rule do not apply to cost-share funds provided by non-state sources. A county may combine state funds with funds from other sources.
- A county may provide additional cost-share funds to replace a cost-shared practice that is damaged or destroyed by natural causes. The same cost-share limits apply to the replacement funding.
- For installation of the following practices, the county may pay the maximum percentage or the following maximum amount, whichever is higher:
 - * For contour farming, \$9 per acre.
 - * For cover and green manure crop, \$25 per acre.
 - * For strip-cropping, \$13.50 per acre.
 - * For field strip-cropping, \$7.50 per acre.
 - * For high residue management systems, no-till systems, ridge till systems or mulch till systems, \$18.50 per acre.
 - * For riparian buffers, \$100 per acre.
 - * For nutrient management or pesticide management, \$7.00 per acre.
- No cost-share grant to relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure management system or 70% of eligible relocation costs, whichever is less.

If a county cost-share grant to a landowner exceeds \$50,000, DATCP must be a party to the contract (with the county and the landowner). If the cost-share contract exceeds \$25,000, the county or landowner must record the contract with the county register of deeds.

Cost–Share Contracts with Landowners

A county land conservation committee must enter into a written contract with every landowner to whom the committee awards a cost–share grant financed by DATCP. The contract must include the following terms, among others:

- The location where the cost–shared practice will be installed, and a specific legal description if the cost–share grant exceeds \$25,000.
- Design specifications for the cost–shared practice. Cost–shared practices must be designed and installed according to this rule.
- The estimated cost of the practice.
- The rate and maximum amount of the cost–share grant.
- A construction timetable.
- A required maintenance period. The maintenance requirement runs with the land, and is binding on subsequent owners, if the cost–share grant is for more than \$25,000.
- A procedure for pre–approving material construction changes.
- A requirement that the landowner must properly install the cost–shared practice and make all payments for which the landowner is responsible before the county makes any cost–share payment to the landowner. The county may make partial payments for partial installations that have independent conservation benefits. Some cost–shared practices must be reviewed by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient management planner (see below).
- County remedies for breach of contract.

Nutrient Management Program

General

This rule creates a nutrient management program, as required by 1997 Wis. Act 27. The program is designed to reduce excessive nutrient applications and nutrient runoff that may pollute surface water and groundwater. This program includes the following elements:

- Annual nutrient management plan. A farmer applying commercial fertilizer or manure must have an annual nutrient management plan (see above), and must follow that plan. The requirement is contingent on cost–sharing for at least 3 years.
- Nutrient management plan; preparation and contents. A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare his or her own plan if, within the preceding 4 years, the farmer has completed a DATCP–approved training course.
- Nutrient applications may not exceed crop fertility levels recommended by the university of Wisconsin, unless the nutrient management planner documents that the deviation is justified by special agronomic needs (see above).
- Cost–share grants for animal waste and nutrient management. A county may award cost–share grants for animal waste and nutrient management practices installed by farmers. Cost–shared practices must comply with technical standards under this rule.

Soil Testing Laboratories

Soil tests required by this rule must be performed by the university of Wisconsin or another soil testing laboratory certified by DATCP. To be certified, a laboratory must show that it is qualified and equipped to perform accurate soil tests. If a certified laboratory recommends nutrient applications that exceed the amounts needed to achieve applicable crop

fertility levels recommended by the university of Wisconsin, the laboratory must make the following disclosure:

IMPORTANT NOTICE

Our recommended nutrient applications exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin. The amounts required to achieve the UW's recommended crop fertility levels are shown for comparison. Excessive nutrient applications may increase your costs, and may cause surface water and groundwater pollution. If you apply nutrients at the rates we recommend, you will not comply with state soil and water conservation standards. You may contact your county land conservation committee for more information.

A certified laboratory must keep, for at least 4 years, copies of all its soil tests and nutrient recommendations. DATCP may deny, suspend or revoke a laboratory certification for cause. The affected laboratory may request a formal hearing under ch. 227, Stats.

Nutrient Management Planners

A qualified nutrient management planner must prepare each nutrient management plan required under this rule. A farmer may prepare his or her own nutrient management plan if the farmer has completed a DATCP–approved training course within the preceding 4 years. A qualified nutrient management planner must prepare plans according to this rule.

A qualified nutrient management planner must be knowledgeable and competent in all of the following areas:

- Using soil tests.
- Calculating nutrient needs.
- Crediting manure and other nutrient sources.
- State and federal standards related to nutrient management.
- Preparing nutrient management plans according to this rule.

A nutrient management planner is presumed to be qualified if at least one of the following applies:

- The planner is recognized as a certified professional crop consultant by the national alliance of independent crop consultants.
 - The planner is recognized as a certified crop advisor by the American society of agronomy, Wisconsin certified crop advisors board.
 - The planner is registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American registry of certified professionals in agronomy, crops and soils.
 - The planner holds equivalent credentials recognized by DATCP. A farmer is presumptively qualified to prepare a nutrient management plan for his or her farm (but not for others) if all of the following apply:
 - The farmer has completed a DATCP–approved training course within the preceding 4 years.
 - The course instructor or another qualified nutrient management planner approves the farmer's initial plan.
- No person may misrepresent that he or she is a qualified nutrient management planner. A nutrient management planner must keep, for at least 4 years, a record of all nutrient management plans that he or she prepares under this rule.

DATCP may issue a written notice disqualifying a nutrient management planner if the planner fails to prepare nutrient management plans according to this rule, or lacks other qualifications required under this rule. A nutrient management planner who receives a disqualification notice may request a formal hearing under ch. 227, Stats.

County Soil and Water Conservation Programs

General

This rule establishes standards for county soil and water resource management programs. Under this rule, a county program must include all of the following:

- A county land and water resource management plan, and a program to implement that plan.
- County conservation standards that implement state soil and water conservation requirements on farms.
- A program to apply for, receive, distribute and account for state soil and water resource management grants.

w A program for distributing cost-share grants to landowners. A county must ensure that cost-shared conservation practices are designed and installed according to this rule.

- A recordkeeping and reporting system. A county must file an annual report with DATCP.

Land and Water Resource Management Plans

Under s. 92.10, Stats., every county must prepare a land and water resource management plan. DATCP must approve the county plan, for up to 5 years, after consulting with the LWCB. DATCP may not award soil and water conservation grants to a county that lacks an approved plan.

A county land and water resource management plan must, at a minimum, describe all of the following in reasonable detail:

- Water quality and soil erosion conditions throughout the county.
- State and local regulations that are relevant to the county plan. The plan must disclose whether local regulations will require farm conservation practices that differ materially from the practices required under this rule.
- Water quality objectives for each water basin, priority watershed and priority lake. The county must consult with DNR when determining water quality objectives.
- Key water quality and soil erosion problem areas. The county must consult with DNR when determining key water quality problem areas.
- Conservation practices needed to address key water quality and soil erosion problems.
- A plan to identify priority farms in the county.
- Compliance procedures, including notice, enforcement and appeal procedures, that may apply if a farmer fails to comply with applicable requirements.
- The county's multi-year workplan to achieve compliance with water quality objectives and implement farm conservation practices. The plan must identify priorities and expected costs.
 - How the county will monitor and measure its progress.
 - How the county will provide information and education to farmers, including information related to conservation practices and cost-share funding.
 - How the county will coordinate its program with other agencies.

When preparing a land and water resource management plan, a county must do all of the following:

- Appoint and consult with a local advisory committee of interested persons.
- Assemble relevant data, including relevant data on land use, natural resources, water quality and soils.
- Consult with DNR.
- Assess resource conditions and identify problem areas.
- Establish and document priorities and objectives.
- Project available funding and resources.
- Establish and document a plan of action.
- Identify roles and responsibilities.

Before a county submits a land and water resource management plan for DATCP approval, the county must hold at least one public hearing on the plan. The county must also make a reasonable effort to notify farmers affected by county findings, and give them an opportunity to contest the findings.

DATCP may review a county's ongoing implementation of a DATCP-approved county plan. DATCP may consider information obtained in its review when it makes its annual grant allocations to counties.

County Ordinances

A county may require farm conservation practices by ordinance. DATCP must review, and may comment on, proposed ordinances that establish farm conservation requirements. DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, Stats., if those ordinances regulate farm conservation practices.

A county need not obtain DATCP approval to adopt an ordinance, except in certain cases prescribed by statute. This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below). Conservation practices required under a county ordinance are subject to the cost-sharing requirements in this rule (see above).

Farmland Preservation; Conservation Standards

Farmers who claim farmland preservation tax credits must currently meet county farm conservation standards. This rule requires every county to incorporate in its standards the farm conservation practices required under this rule (see above). In a county that fails to comply, farmers may be disqualified from claiming tax credits. DATCP may also deny soil and water conservation funding to a noncomplying county.

This rule spells out the procedure by which a county must adopt conservation standards for farms receiving tax credits under the farmland preservation program. The county must hold a public hearing on the proposed standards. The county must also submit the proposed standards for LWCB approval, as required under s. 92.105, Stats.

A farmer must comply with the county conservation standards in order to claim farmland preservation tax credits. A county may ask a farmer to certify compliance on an annual or other periodic basis, and must inspect a farmer's compliance at least once every 6 years. The county must issue a notice of noncompliance if the county finds that a farmer is not complying with the standards. If the farmer fails to comply by a deadline specified in the notice, the farmer may no longer claim farmland preservation tax credits. The farmer may meet with the county land conservation committee to discuss or contest a notice.

A farmer who fails to meet farmland preservation conservation standards may continue to claim tax credits if the farmer complies with a farm conservation plan that will

achieve full compliance within 5 years. A farm conservation plan is a written agreement between the farmer and county, in which the farmer agrees to install specified conservation practices by a specified date.

Annual Grant Application

By April 15 of each calendar year, a county must file its funding application with DATCP for the next calendar year. The county may request any of the following:

- An annual staffing grant. A staffing grant is used to finance county staff engaged in soil and water conservation programs (see below). Staff may include county employees and independent contractors who work for the county land conservation committee. A grant may include training and support for county employees. The grant application must identify the activities that the staff will perform, and the amount of funding requested. DATCP will reimburse county staff and employee support costs at the rate specified in s. 92.14, Stats., up to the amount of the annual staffing grant award.
- Cost–share funding for farm conservation practices. The county must identify the amount of cost–share funding requested, and the purposes for which the county will use that funding. DATCP distributes cost–share funding on a reimbursement basis, after the county certifies that the cost–shared practices are properly installed and paid for.

Annual Report

By April 15 of each year, a county must file with DATCP a year–end report for the preceding calendar year. The report must describe the county’s activities and accomplishments, including progress toward the objectives identified in the county land and water resource management plan (see above).

Accounting and Recordkeeping

Every county land conservation committee, in consultation with the county’s chief financial officer, must establish and maintain an accounting and recordkeeping system that fully and clearly accounts for all soil and water conservation funds. The records must document compliance with applicable rules and contracts.

DATCP Review

DATCP may review county activities under this rule, and may require the county to provide relevant records and information.

Training for County Staff

DATCP may provide training, distribute training funds to counties (see below), make training recommendations, and take other action to ensure adequate training of county staff. Under this rule, DATCP must appoint a training advisory committee to advise DATCP on county staff training activities. The committee must include representatives of all of the following:

- DNR.
- NRCS.
- The university of Wisconsin–extension.
- The statewide association of land conservation committees.
- The statewide association of land conservation committee staff.

Grants to Counties

DATCP awards soil and water conservation grants to counties. These grants finance county staff and support, as well as county cost–share grants to landowners. DATCP does

not provide grants to local government. In certain limited cases, DATCP may authorize a county to reallocate county staffing grant funds to local governments or tribes.

DATCP may award grants (service contracts) to governmental or non–governmental entities for information, education, training and other services related to DATCP’s administration of the soil and water conservation program. Under this rule, DATCP will no longer award cost–share grants directly to individual landowners.

Annual Grant Allocation Plan

This rule requires DATCP to allocate soil and water conservation grants according to an annual grant allocation plan. The DATCP secretary signs the allocation plan after consulting with the LWCB. The plan must specify, for the next calendar year, all of the following:

- The total amount appropriated to DATCP for possible allocation under the plan, including the amounts derived from general purpose revenue (GPR), segregated revenue (SEG) and bond revenue sources.
- The total amount allocated under the plan, including the amounts allocated from GPR, SEG and bond revenue sources.
- The total amount allocated for annual staffing grants to counties, the total and subtotal amounts allocated to each county, and an explanation for any material difference in allocations between counties.
- The total amount allocated to counties for cost–share grants to landowners, the total and subtotal amounts allocated to each county, and an explanation for those allocations.
- The amounts allocated to non–county grant recipients, and an explanation for those allocations.

DATCP must prepare the annual grant allocation plan after reviewing county grant applications. DATCP will normally provide a draft plan to DNR, the LWCB and every county land conservation committee by August 1 of the year preceding the calendar year to which the plan applies.

DATCP must adopt an annual allocation plan by December 31 of the year preceding the calendar year to which the plan applies. The final draft plan may include changes recommended by the LWCB, as well as updated estimates of project costs. DATCP must provide copies of the plan to DNR, the LWCB and every county land conservation committee.

Revising the Allocation Plan

DATCP may make certain revisions to an annual grant allocation plan after it adopts that plan. The DATCP secretary must sign each plan revision. A revision may do any of the following:

- Extend funding for landowner cost–share contracts that were signed by December 1 of the preceding year, but not completed during that year. Counties must apply by December 31 for contract funding extensions.
- Increase the total grant to any county. DATCP must give all counties notice and an equal opportunity to compete for funding increases (other than funding extensions for existing cost–share contracts).
- Reduce a grant award to any county.
- Reallocate a county’s annual grant between grant categories, to the extent authorized by law and with the agreement of the county.

Before DATCP revises an annual grant allocation plan, it must do all of the following:

- Provide notice and a draft revision to DNR, the LWCB and every county land conservation committee. The notice must clearly identify and explain the proposed revision.

- Obtain LWCB recommendations on the proposed revision.

Grant Priorities

Under this rule, DATCP must consider all of the following when preparing an annual grant allocation plan:

- County staff and project continuity. DATCP must give high priority to maintaining county staff and project continuity. DATCP must also consider priorities identified in the county grant application and in the county's approved land and water resource management plan.

- Statewide priorities. DATCP may give priority to county projects that address the following statewide priorities:

- * Farms discharging pollutants to waters that DNR has listed as "impaired waters" under 33 USC 1313 (d) (1) (A).

- * Farms whose cropland erosion is more than twice T-value.

- * Farms discharging substantial pollution to waters of the state.

- * Farms claiming tax credits under the farmland preservation program.

- Other factors. DATCP may also consider the following factors, among others, when determining grant allocation priorities:

- * The strength of the county's plan and documentation.

- * A county's demonstrated commitment to adopt and implement the farm conservation practices required under this rule.

- * The likelihood that funded activities will address and resolve high priority problems identified in approved county land and water resource management plans.

- * The relative severity and priority of the water quality and soil erosion problems addressed.

- * The relative cost-effectiveness of funded activities in addressing and resolving high priority problems.

- * The extent to which funded activities are part of a systematic and comprehensive approach to soil erosion and water quality problems.

- * The timeliness of county grant applications and annual reports.

- * The completeness of county grant applications and supporting data.

- * The county's demonstrated ability, cooperation and commitment, including its commitment of staff and financial resources.

- * The degree to which funded projects contribute to a coordinated soil and water resource management program and avoid duplication of effort.

- * The degree to which funded projects meet county needs and state requirements.

- * The degree to which county activities are consistent with the county's approved land and water resource management plan.

Annual Staffing Grants to Counties

DATCP must award an annual staffing grant to each eligible county that makes a required commitment of county funds. DATCP may not use bond revenue funds for county staffing grants. DATCP must distribute an annual staffing grant according to an annual grant contract with the county. With DATCP permission, the county may reallocate staffing grant funds to a local government or tribe.

A county must use an annual staffing grant in the year for which it is made. The county may use the grant for any of the following purposes, subject to the grant contract:

- Employee salaries, employee fringe benefits and contractor fees for county employees and independent contractors engaged in soil and water resource management activities on behalf of the county land conservation committee.

- Training for county employees and county land conservation committee members.

- Any of the following employee support costs identified in the grant application:

- * Mileage expenses at the state rate. A staffing grant may not be used to lease or purchase a vehicle.

- * Personal computers, software, printers and related devices.

- * A proportionate share of costs for required financial and compliance audits.

- * Other staff support costs that DATCP identifies, in the grant application form, as being reimbursable for all counties.

DATCP may award different staffing grant amounts to different counties, based on statutory requirements and DATCP's assessment of funding needs and priorities. Subject to the availability of funds, DATCP will award at least \$50,000 to each county.

A county may redirect unused staffing grant funds for landowner cost-share grants if DATCP approves in writing. The county must use the redirected funds in the year for which they are allocated. (See cost-share reimbursement procedures below.)

To qualify for a staffing grant, a county must maintain its soil and water resource management effort at or above the amounts that the county expended in each of the years 1985 and 1986 (see s. 92.14(7), Stats.) A county may count, as part of its "maintenance of effort" contribution, expenditures for any county staff (employees and independent contractors) engaged in soil or water resource management work for the county land conservation committee. A county may not count capital improvement expenditures, expenditures for county staff not working for the land conservation committee, or the expenditure of grant revenues received from other government sources.

A county land conservation committee must keep records related to annual staffing grants. The records must document that the county used grant funds according to this rule and the grant contract. The county must retain the records for at least 3 years.

Paying Staffing Grants

DATCP will make staffing grant payments on a reimbursement basis. DATCP will pay reimbursement, at the prescribed statutory rate, on costs identified in a valid county reimbursement request. Total payments may not exceed the total annual grant award to the county. DATCP will reimburse costs that the county incurs during the grant year (and pays by January 31 of the following year). Unspent grant funds remain with DATCP, for allocation in future years.

A county may file 2 reimbursement requests for each grant year. A county may file its first reimbursement request on or after July 1 for costs incurred before July 1 of the grant year. A county may file a second reimbursement request for costs incurred on or after July 1 of the grant year. A county must file all of its requests by April 15 of the following year. DATCP will pay reimbursement within 30 days after a county submits a valid request.

The county must file its reimbursement request on a form provided by DATCP. In its reimbursement request, the county must identify the costs for which it seeks reimbursement. The reimbursement rate is based on a statutory formula. The rate depends on the number of staff in the county, and whether

those staff are working on the DNR priority watershed program. The county must provide information needed to determine the reimbursement rate.

If a county reallocates part of its staffing grant to a local government or tribe, the county must submit reimbursement requests on behalf of that local government or tribe. DATCP may then pay reimbursement directly to the local government or tribe.

Grants for Conservation Practices

DATCP may award grants to eligible counties to finance cost-share grants to landowners. DATCP must enter into an annual contract with each county receiving cost-share funds. DATCP will pay the county on a reimbursement basis, after the landowner installs the cost-shared practice and the county does all of the following:

- Files with DATCP a copy of the county's cost-share contract with the landowner. The cost-share contract must comply with this rule (see above).
- Certifies the reimbursement amount due.
- Certifies, based on documentation filed in the county, that the cost-shared practice is properly designed, installed and paid for (see above).

Cost-share funds may be used to finance conservation practices identified in this rule (see above), except that bond revenues may not be used to finance any of the following practices:

- Conservation tillage.
- Contour farming.
- Cropland cover (green manure).
- Intensive grazing management.
- Nutrient or pesticide management.
- Strip-cropping.

DATCP may not use cost-share grant funds to reimburse a county for costs incurred after December 31 of the grant year (or paid after January 31 of the following year). Unspent funds remain with DATCP, for distribution under a future year's allocation plan. If a landowner signs a funded cost-share contract by December 1 of the initial grant year, but does not complete that contract in that grant year (e.g., because of bona fide construction delays), DATCP may extend funding to the next year. DATCP will normally extend funding if the county requests the extension by December 31. DATCP will not extend funding for more than one year.

A county land conservation committee must keep all of the following records related to cost-share grant funds received from DATCP:

- Copies of all county cost-share contracts with landowners.
- Documentation to support each county reimbursement request to DATCP (see above).
- Documentation showing all county receipts and disbursements of grant funds.
- Other records needed to document county compliance with this rule and the grant contract.

A county land conservation committee must retain cost-share records for at least 3 years after the committee makes its last cost-share payment to the landowner, or for the duration of the required maintenance period, whichever is longer. The committee must make the records available to DATCP and grant auditors upon request.

Priority Watershed Program; County Staffing Grants

As part of the legislative restructuring of the state's nonpoint source pollution abatement program, DNR is phasing out its priority watershed program under ch. NR 120. DNR will continue to provide cost-share funding for priority watershed projects established prior to July 1, 1998. But DNR will establish no new priority watershed projects, and has established no new projects since July 1, 1998. DNR will no longer provide funding for county and local government staff engaged in the priority watershed program.

DATCP currently provides grants to pay for county soil and water conservation staff (see above). Under the redesigned nonpoint source pollution abatement program, DATCP will also fund county and local staff who are still engaged in DNR's priority watershed program. Funding for these county staff will be added to, and included in, DATCP's annual staffing grants to counties.

Agricultural Engineering Practitioners; Certification

Under s. 92.18, Stats., DATCP must certify persons who design, review or approve cost-shared agricultural engineering practices. This rule identifies the agricultural engineering practices for which certification is required. This rule continues, without change, the certification program established under current rules. No certification is required for a professional engineer certified under ch. 443, Stats.

Applying for Certification

Under this rule, a person who wishes to be certified as an agricultural engineering practitioner must apply to DATCP or a county land conservation committee. A person may apply orally or in writing. DATCP or the committee must promptly refer the application to a DATCP field engineer. Within 30 days, the DATCP field engineer must rate the applicant and issue a decision granting or denying the application.

Certification Rating

The DATCP field engineer must rate an applicant using the rating form shown in Appendix E to this rule. The field engineer must rate the applicant based on the applicant's demonstrated knowledge, training, experience, and record of appropriately seeking assistance. For the purpose of rating an applicant, a field engineer may conduct interviews, perform inspections, and require answers and documentation from the applicant.

For each type of agricultural engineering practice, the rating form identifies 5 job classes requiring progressively more complex planning, design and construction. Under this rule, the field engineer must identify the most complex of the 5 job classes for which the applicant is authorized to certify that the practice is properly designed and installed. A certified practitioner may not certify any agricultural engineering practice in a job class more complex than that for which the practitioner is certified.

Appealing a Certification Decision

A field engineer must issue a certification decision in writing, and must include a complete rating form. An applicant may appeal a certification decision or rating by filing a written appeal with the field engineer. The field engineer must meet with the appellant in person or by telephone to discuss the matters at issue.

If the appeal is not resolved, DATCP must schedule an informal hearing before a qualified DATCP employee other than the field engineer. After the informal hearing, the

presiding officer must issue a written decision that affirms, modifies or reverses the field engineer's action. If the applicant disputes the presiding officer's decision, the applicant may request a formal hearing under ch. 227, Stats.

Reviewing Certification Ratings

Under this rule, a DATCP field engineer must review the certification rating of every agricultural engineering practitioner at least once every 3 years. A field engineer must also review a certification rating at the request of the person certified. A field engineer may not reduce a rating without good cause, and all reductions must be in writing.

Suspending or Revoking Certification

Under this rule, DATCP may suspend or revoke a certification for cause. DATCP may summarily suspend a certification, without prior notice or hearing, if DATCP makes a written finding that the summary suspension is necessary to prevent an imminent threat to the public health, safety or welfare. The practitioner may request a formal hearing under ch. 227, Stats.

County and Local Ordinances

General

Farm conservation requirements adopted by a county, city, village, town or local governmental unit must be reasonably consistent with this rule. DATCP must review, and may comment on, proposed county ordinances requiring farm conservation practices. DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, if those ordinances regulate farm conservation practices.

Counties must submit relevant ordinances for review. They need not obtain DATCP approval of their proposed ordinances, except in specific cases provided by statute. This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below).

Manure Storage Ordinances

A county, city, village or town may enact a manure storage ordinance under s. 92.16, Stats. Current rules spell out standards for manure storage ordinances. This rule incorporates those standards without change.

Under this rule, a county or local manure storage ordinance adopted under s. 92.16, Stats., must require persons constructing manure storage systems to obtain a county or local permit. A person constructing a manure storage system must have a nutrient management plan that complies with this rule, and must comply with applicable design and construction standards.

A manure storage ordinance may prohibit any person from abandoning a manure storage system unless that person submits an abandonment plan and obtains an abandonment permit. The rule spells out suggested abandonment requirements for those ordinances that regulate abandonment.

Agricultural Shoreland Management Ordinances

A county, city, village or town may enact an agricultural shoreland management ordinance under s. 92.17, Stats., with DATCP approval. Current rules spell out standards for agricultural shoreland management ordinances. This rule adopts the current rules without change. DATCP must seek

DNR and LWCB recommendations before it approves an ordinance or amendment, except that DATCP may summarily approve an ordinance amendment that presents no significant legal or policy issues.

Local Regulation of Livestock Operations

A local governmental unit may regulate livestock operations under s. 92.15, Stats., and other statutes. Local regulations must comply with s. 92.15, Stats., as applicable.

Waivers

DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has received permission from the attorney general and the revisor of statutes to incorporate by reference in this rule NRCS technical guide standards, ASAE engineering practice standards, DNR construction site erosion control standards, the UW-extension pollution control guide for milking center waste water management, and the UW-extension guide on rotational grazing. Copies of these standards are on file with the department, the secretary of state and the revisor of statutes, but are not reproduced in this rule. Where technical standards have changed, DATCP is seeking permission from the attorney general and the revisor of statutes to incorporate by reference the modified standards.

NRCS technical guide nutrient management standard 590 is attached as Appendix D to this rule. Appendix B contains a summary of UWEX publication A-2809, Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998), for selected crops. The department is seeking permission from the attorney general and revisor of statutes to incorporate the complete UWEX publication by reference in this rule. The complete publication and the summary are available from UW-extension, and will be on file with the department, the secretary of state and the revisor of statutes.

Fiscal Estimate

See page 22 mid-August 2001, Wis. Adm. Register

Environmental Assessment

The department has prepared a preliminary environmental assessment for this administrative rule. The assessment finds that the proposed repeal and recreation of chapter ATCP 50 would have no significant adverse environmental impact and is not a major state action significantly affecting the quality of the human environment. It is expected that the proposed rule will have a positive impact on protecting soil resources and improving and protecting water quality. Alternatives to this proposed rule, discussed in the assessment, will not reach program goals as effectively as the proposed rule. No environmental impact statement is necessary under S. 1.11 (2), Stats.

You may obtain a free copy of the environmental assessment by contacting Bonnie Shebelski at the Wisconsin Department of Agriculture, Trade and Consumer Protection, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, Wisconsin 53708-8911, telephone: 608/224-4620. Copies will also be available at the hearings.

Notice of Hearing

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

[CR 01-092]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 443.06 (2) (am), Stats., the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors will hold a public hearing at the time and place indicated below to consider an order to amend s. A-E 6.04 (2) (b), relating to the number of required semester credits in land surveying for an applicant applying with a bachelor's degree in civil engineering.

Hearing Date, Time and Location

Date: October 11, 2001
Time: 10:00 A.M.
Location: 1400 East Washington Avenue
 Room 180
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by October 25, 2001 to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statute interpreted: s. 443.06 (2) (am), Stats.

Current rules of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors require a land surveyor applicant applying with a degree in civil engineering of not less than 4 years duration from a college or university, to have only 12 credits in courses concentrating on land surveyor education. The proposed rule will require a candidate to complete core land surveying courses that the Land Surveyors Section deems necessary as the minimal competency educational standard for the protection of the health, safety and welfare of the citizenry of Wisconsin.

Text of Rule

SECTION 1. A-E 6.04 (2) (b) is amended to read:

A-E 6.04 (2) (b) Received a bachelor's degree in civil engineering of not less than 4 years duration from a college or university accredited by a regional accrediting agency approved by the state where the college or university is located. The curriculum shall include no less than ~~12~~ 24 semester credits in courses concentrating on the legal principles of land surveying and the technical aspects of land surveying. These courses shall include areas of study such as research of public and private records, principles of evidence and the interpretation of written documents used in boundary determination, the study of the legal elements of land surveying including those involving resurveys, boundary

disputes, defective descriptions, riparian rights and adverse possession, the study of the professional and judicial functions of a land surveyor, the study of surveying methods for measuring distance and angular values, note keeping, computation and writing descriptions and the study of the Wisconsin statutes and local ordinances relating to the preparation of subdivision maps and plats.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

Notice of Hearing

Department of Employee Trust Funds

[CR 01-096]

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review this proposed rule, which amends ss. ETF 20.04 (1), (2) and (3) and 20.05 (title), (1) and (2), Wis. Adm. Code, relating to joint and survivor annuity reduced 25% upon death of annuitant or named survivor in accordance with the provisions of s. 227.16 (1), Wisconsin Statutes.

Hearing Date, Time and Location

Date: September 13, 2001
Time: 1:00 P.M.
Location: 801 West Badger Road
 Room 2B
 Madison, Wisconsin

The public record on this proposed rule making will be held open until 4:30 p.m. on Friday, September 14, 2001, to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Linda Owen, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

Some Wisconsin Retirement System (WRS) annuity options are defined by administrative rule, as authorized by Wis. Stats. s. 40.24 (1) (g). Section ETF 20.04 (1) creates an option for a joint and survivor annuity with payments reduced by 25% upon the death of either the participant or the joint survivor named on the original annuity application. At present, this reduction affects the annuity payment for the month in which either the participant or the named survivor

dies. Since the effect is currently retroactive to the first of the month, when the joint survivor dies an overpayment to the participant routinely occurs, requiring collection efforts or other adjustments. The proposed rulemaking will amend s. ETF 20.04 (1) to specify that a reduction in payment due to the death of the named survivor will not take effect until the end of the month in which the death occurs. No change is proposed with respect to the reduction resulting from the death of the participant; this avoids any conflict with the portion of Wis. Stats. s. 40.02 (5) concerning the last payment of an annuity due to an annuitant.

The proposed rulemaking will include several non-substantive, technical amendments that will conform the rules to changes in terminology used by the department, correct cross-references to renumbered statutes and conform the language of the rules to newly defined terms. The proposed rulemaking will amend terminology in s. ETF 20.04 (1) and (2) to conform the rules to the newly defined terms "joint and survivor annuity" and "named survivor" found in Wis. Stats. s. 40.02 (39r) and (41r), created by 1997 Wis. Act 110.

One type of annuity available from the WRS is intended to provide enhanced WRS benefits until the annuitant becomes eligible for Social Security benefits at age 62. It is the intent of this option that the annuitant's total anticipated income from both the WRS and Social Security will be the same each month, both before and after reaching age 62. This type of annuity was previously called a "Social Security Integrated" annuity. The department has now adopted the term "Accelerated Payment Annuity" to describe this option, to preclude the misperception that this option involves the department interacting with the Social Security Administration to coordinate and calculate this benefit. The proposed rulemaking will amend ss. ETF 20.04 (3) and 20.05 (1), to replace the description "social security integrated annuity" with the terminology "accelerated payment annuity" to describe the temporary annuity authorized by Wis. Stats. s. 40.24 (1) (e).

The proposed rulemaking will add "alternate payee" to the list of persons in s. ETF 20.05 who may not choose the accelerated annuity option described in Wis. Stats. s. 40.24 (1) (e), if the result would be that the amount of the lifetime annuity would be less than a specified threshold. This reflects the harmonizing of the accelerated payment option under Wis. Stats. s. 40.24 (1) (e) with the threshold in Wis. Stats. s. 40.25 (1) (a) for payment of a life annuity. The dollar amount of this threshold is indexed annually by the salary index defined in Wis. Stats. s. 40.02 (52). The proposed rulemaking will also update the stated dollar amount of the threshold (\$25 in 1982) to the present indexed amount (\$129 in 2001).

In addition, the proposed rulemaking will revise the cross-references in ss. ETF 20.04 (3) and 20.05 (1) and (2) from "s. 40.24 (4)" to "s. 40.24 (1) (e)." This reflects the renumbering of Wis. Stats. s. 40.24 (1) to (5) by 1989 Wisconsin Act 166.

Authority for Rule

Wis. Stats. s. 40.03 (1) (m), (2) (i), (7) (d) and (8) (d).

Initial Fiscal Estimate

The proposed rule has no fiscal impact on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. The rule itself has no anticipated state fiscal effect during the current biennium and no future side effect on state funds. The department's actuary has indicated that the proposed rule would have such a negligible effect on the benefit liabilities

of the annuity reserve for this annuity option that no change to the actuarial factor used to calculate this option would be necessary.

Initial Regulatory Flexibility Analysis

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Copies of Rule and Contact Persons

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 266-1071. For questions about this rule making, please call Linda Owen, Policy Analyst, Division of Retirement Services, at (608) 261-8164.

Notice of Hearing

Health and Family Services (Community Services – HFS 30–) [CR 01–089]

Notice is hereby given that, pursuant to ss. 51.61 (9) and 227.11 (2) (a), Stats., the Department of Health and Family Services will hold a public hearing on both the Department's emergency rulemaking order and proposed permanent order amending s. HFS 94.20 (3), relating to the rights of patients to make telephone calls.

Hearing Date, Time and Location

Date: September 12, 2001
Time: 10:30 a.m.
Location: Conference Room B-145
 State Office Building
 1 West Wilson Street
 Madison, Wisconsin

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Department of Health and Family Services

The Department operates secure mental health facilities for the evaluation, treatment and detention of ch. 980, Stats., sexually violent patients. Departmental investigations have indicated that a portion of the ch. 980 inpatient population has routinely abused their s. HFS 94.20 telephone rights by making inappropriate calls to the members of the public, by fraudulently placing numerous long distance calls that are billed to innocent third-parties or by operating fraudulent schemes. Since the Department has previously had no means of monitoring patient telephone use, the extent of this activity is unknown, but given the experience of investigations triggered by citizen complaints, it is clear that these sorts of activities are not infrequent among this population. In addition, experience with telephone monitoring in other secure institutions indicates that call monitoring can and does help staff detect contraband and other security-related issues and activities. These abuses are clearly contrary to the therapeutic activities conducted at the secure mental health facilities.

Until recently, the Department has been unable to stop these abuses because the Department's facilities lacked

secure telephone systems. Previous DHFS efforts to obtain secure telephone systems from the telephone system's vendor used by the Department of Corrections were not successful because the call volume at DHFS's secure mental health facilities were viewed as insufficient to support the telephone system.

In late 2000, the Department of Corrections selected a new vendor for its secure telephone system. In May 2001, the new vendor agreed to also install the system in DHFS's secure mental health facilities. On June 22, 2001, the Department issued these proposed permanent rules as emergency rules that became effective as of that date. The telephone systems allow the Department to establish and enforce calling lists for each inpatient and monitor inpatients' calls for counter-therapeutic activity. An inpatient's calling list is a finite number of telephone numbers associated with persons the inpatient is approved to contact by telephone. Use of calling lists alone, however, is insufficient to discourage and minimize inpatient attempts to subvert the system. The Department must monitor phone calls made by ch. 980 inpatients to discourage and minimize the occurrence of inpatients calling persons on their calling list who, in turn, subvert the secure system by forwarding the inpatient's call for the prohibited purposes and activities previously described. The Department must be able to monitor the phone calls of ch. 980 inpatients both to protect the public and promote therapeutic activities at the secure mental health facilities.

The Department is proposing these rules to protect the public's safety by minimizing the recurring fraudulent activity associated with telephone use. Pursuant to an earlier emergency rule promulgated by the Department, the Sand Ridge Secure Treatment Center and the Wisconsin Resource Center have been operating with the secure telephone system since late June and early July, 2001.

Contact Person

To find out more about the hearing or request a copy of the proposed rule, please write or phone:

James Yeadon
Division of Care and Treatment Facilities
P. O. Box 7851, Room 850
Madison, WI 53707-7851
608-266-5525 or,
if you are hearing impaired,
608-266-1511 (TTY)

To comment on or discuss the content of the proposed rule, please e-mail or phone:

Steve Watters, Director
Sand Ridge Secure Treatment Center
1111 North Rd.
P.O. Box 700
Mauston, WI 53948
608-847-1720 or,
if you are hearing impaired,
608-266-2511 (TTY)

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter, or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rule received at the above address no later than September 24, 2001, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This rule applies to facility created under s. 980.065, Stats. The two state facilities created under that law are the Wisconsin Resource Center in Oshkosh and the Sand Ridge Secure Treatment Center in Mauston. The secure telephone system that has been implemented at the two facilities does not create any additional costs for State or Local governments. The immediate cost of installing and operating the system is paid by the vendor that provides the secure telephone system to the State. Ultimately, the costs associated with this telephone system will be borne by the patients who use the system, or by individuals who accept collect calls from these patients, through user fees collected by the vendor.

It is anticipated that the implementation of this system will reduce the number of incidents of telephone fraud and inappropriate telephone calls to the general public that originate from Chapter 980 patients.

A copy of the full fiscal estimate may be obtained from James Yeadon who may be contacted via the contact information provided in this notice.

Initial Regulatory Flexibility Analysis

The rule changes will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Notice of Hearings

Department of Natural Resources

Environmental Protection – Water Regulation

Chs. NR 300 –

[CR 01-080]

NOTICE IS HEREBY GIVEN that pursuant to ss. 31.02 (4) (c), (4r) and (4g), Stats., interpreting s. 31.02 (4r) and (4g), Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 331, Wis. Adm. Code, relating to fish passages around barriers on Wisconsin's rivers and streams. The proposed rule will specifically address the public rights issues on navigable waters with fish passages and describe the cost-share program. Additionally, there is information on the factors to consider and the decision process on when the Department will order fish passages.

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

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

Hearing Date, Time and Location

Date: September 14, 2001
Time: 10:00 a.m.
Location: Room 027
GEF #2
101 South Webster Street

Madison, Wisconsin
Date: **September 18, 2001**
Time: 10:00 a.m.
Location: Auditorium
 Bay Beach Wildlife Sanctuary
 1660 East Shore Drive
 Green Bay, Wisconsin

Date: **September 20, 2001**
Time: 10:00 a.m.
Location: Room 185
 DNR West Central Region Headquarters
 1300 W. Clairmont Avenue
 Eau Claire, Wisconsin

Date: **September 25, 2001**
Time: 10:00 a.m.
Location: Auditorium
 Park Falls Library
 410 Division Street
 Park Falls, Wisconsin

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 Karl Scheidegger at (608) 267-9426 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rules may be submitted to Mr. Karl Scheidegger, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than September 30, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH 29-01] and fiscal estimate may be obtained from Mr. Scheidegger.

Fiscal Impact

None. These rules are promulgated pursuant to Wis. Stats. s. 31.02 (4r), which was created in 1999 Wis. Act 9, the biennial budget bill. The Department anticipates no fiscal impacts associated with these rules beyond any considered by the Legislature in the debate over 1999 Wis. Act 9.

Notice of Hearings

Department of Natural Resources

Environmental Protection – Air Pollution Control Chs. NR 400– [CR 01–081]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11 (9), Stats., interpreting s. 285.11 (9), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 400, 405, 406, 408, 439, 445 and 446 and the creation of subch. II of ch. NR 446, Wis. Adm. Code, relating to the control of the atmospheric deposition of mercury. The proposed rule contains a phased mercury reduction schedule for four major electric utilities covering a 15-year period. Five years after promulgation, a 30% reduction in baseline mercury emissions must be achieved by each major utility. A 50% reduction in baseline emissions is required after 10 years, and a final reduction of 90% is to be achieved after 15 years.

In addition to the emission reductions by large electric utilities, the proposed rules include an emissions ceiling on

mercury or more. The rule requires that a mercury emission cap be established for such sources. These sources include industrial boilers, waste incinerators and chlor-alkali plants. After the effective date of the rule, stationary sources that subsequently have mercury emissions of 10 pounds or more would become subject to an emission ceiling and need to determine baseline emissions.

Major utilities and stationary sources of mercury will need to establish baseline emissions. Baseline emissions are the average annual mercury emissions over a three year period, 1998 through 2000. An alternative baseline can be requested if this period of time is determined not to be representative. Adjustments will be required for any period of noncompliance that affects mercury emissions during the three-year period used to determine baseline emissions.

In addition, four years after promulgation, the proposed rules require that increases in mercury emissions of 10 pounds or more from new or modified sources be offset by mercury emission reductions at a ratio of 1.5 + 1.0. The proposed rules also require DNR staff to prepare periodic reports evaluating the proposed rules.

The Department is also soliciting comments on alternatives to proposed rule provisions pertaining to the amount and timetable for mercury emission reductions, the emission offset requirement for new or modified sources, and the timing and issues to be addressed to DNR's evaluations of the rule.

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

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, the Department has prepared an Environmental Assessment for this action. The Department has made a preliminary determination that the proposal will not cause significant adverse environmental effects and that an Environmental Impact Statement will not be required.

Hearing Date, Time and Location

Date: **September 26, 2001**
Time: 4:30 p.m.
Location: Auditorium M103
 Chippewa Valley Technical College
 620 W. Clairmont Avenue
 Eau Claire, Wisconsin

Date: **September 27, 2001**
Time: 4:30 p.m.
Location: Auditorium
 James William Jr. High School
 915 Acacia Lane
 Rhinelander, Wisconsin

Date: **October 1, 2001**
Time: 4:30 p.m.
Location: Auditorium
 DNR Havenwoods State Forest
 6141 N. Hopkins
 Milwaukee, Wisconsin

Date: **October 2, 2001**
Time: 4:30 p.m.
Location: Mallard Room
 Dar Boy Club
 N9695 Cty. Hwy. N
 Appleton, Wisconsin

Date: **October 3, 2001**
Time: 4:30 p.m.

Location: Room 027
 GEF #2 Bldg.
 101 South Webster Street
 Madison, Wisconsin

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 Jon Heinrich at (608) 267-7547 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule and Environmental Assessment may be submitted to Mr. Jon Heinrich, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than October 15, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings.

A copy of proposed rule AM-27-01, its fiscal estimate and the Environmental Assessment may be obtained from:

Proposed Rules
 Bureau of Air Management
 P.O. Box 7921
 Madison, WI 53707

Phone: (608) 266-7718
 FAX: (608) 267-0560

Fiscal Impact

There will be cost and expense to implement and administer the requirements in the proposed rule. Effort will be required in the four year period immediately following promulgation to develop guidance to implement provisions in the rule such as the determination of baselines emissions and the development of the certified emission reduction registry. A reallocation of staff will be needed to complete these tasks in this initial period after promulgation.

Longer term, implementation of rule requirements will be accomplished through the issuance of construction permits and the issuance and renewal of operation permits by existing permit review staff.

Notice of Hearing

Social Workers, Marriage and Family Therapists and Professional Counselors

[CR 01-094]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats., and interpreting s. 457.09 (1) (c) and (4m) (b), Stats., the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors will hold a public hearing at the time and place indicated below to consider an order to amend s. SFC 3.13 (3) (a), relating to the minimum number of hours to be required in a social worker training certificate internship.

Hearing Date, Time and Location

Date: September 18, 2001
 Time: 9:30 A.M.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by October 2, 2001 to be included in the record of rule-making proceedings. Analysis prepared by the Department of Regulation and Licensing.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Statutes interpreted: s. 457.09 (1) (c) and (4m) (b), Stats.

The Social Worker Section of the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors amends s. SFC 3.13 (3) (a) to specify a minimum number of hours to be required in an internship performed by a holder of a social worker training certificate. Holders of social worker training certificates must complete either a human services internship or one year of supervised social work experience. Current law specifies no minimum duration for an internship. Specifying a minimum number of hours for a human services internship will help to protect the public by ensuring that holders of social worker training certificates, who by definition are seeking to enter the social work profession without an adequate background, supplement their education and experience.

Text of Rule

SECTION 1. SFC 3.13 (3) (a) is amended to read:

SFC 3.13 (3) (a) A human services internship of at least 400 hours that was part of the program leading to the degree the certificate holder specified to satisfy the requirement in s. 457.09 (1) (c) and (4m) (b), Stats., or completed while holding the training certificate, and involved direct practice with clients and that was supervised by a social worker certified under s. 457.08, Stats., and who has a bachelor's or master's degree in social work and provides direct, on-site supervision of the intern.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

Notice of Hearing

Social Workers, Marriage and Family Therapists and Professional Counselors

[CR 01-095]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats., and interpreting s. 457.14, Stats., the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors will hold a public hearing at the time and place indicated below to consider an order to amend s. SFC 3.11, relating to the social worker temporary certificate to conform to a new procedure for computerized examinations.

Hearing Date, Time and Location

Date: September 18, 2001
Time: 9:30 A.M.
Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by October 2, 2001 to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Statutes interpreted: s. 457.14, Stats.

The Social Worker Section of the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors amends s. SFC 3.11 to conform to a new procedure for computerized examinations. Under current law, a social worker temporary certificate expires "9 months from date of issue of the temporary certificate, or release of the examination scores from the next available examination after the date of the application for the temporary certificate, whichever is earlier." Until recently, examinations were offered only a few times per year. Computerized examinations will soon be offered at any time. Under the current language, the maximum duration of a temporary certificate would be reduced to a few days, and the language must be changed to effect the purpose of the rule.

Text of Rule

SECTION 1. SFC 3.11 is amended to read:

SFC 3.11 Temporary certificate. The social worker section may issue a temporary certificate permitting the use of the title "social worker" to an individual who pays the fee under s. 440.05 (6), Stats., and who meets all the qualifications for the certificate except for passing the required examination. ~~The temporary certificate shall be valid for a period of 9 months from date of issue of the temporary certificate, or release of the examination scores from the next available examination after the date of the application for the temporary certificate, whichever is earlier.~~ The temporary certificate expires upon

notification of ~~failure of the examination results~~ or expiration of the 9 month period, whichever is earlier. The temporary certificate of an individual who fails the examination must be returned to the social worker section. The temporary certificate may not be renewed.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

Notice of Hearing

Department of Transportation

[CR 01-097]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of ch. Trans 276, Wis. Adm. Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

Hearing Date, Time and Location

Date: September 25, 2001
Time: 1:00 p.m.
Location: Hill Farms State Transportation Building
 4802 Sheboygan Avenue
 Room 419
 Madison, Wisconsin

Appearances at the Hearing

Parking is available for persons with disabilities.

The public record on this proposed rule making will be held open until close of business on the date of the hearing to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments should be submitted to Ashwani K. Sharma, Traffic Operations Engineer, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, Wisconsin, 53707-7986.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory authority: ss. 85.16 (1) and 348.07 (4), Stats.

Statute interpreted: s. 348.07 (4), Stats.

This proposed rule amends s. Trans 276.07 (16), (18) and (19), and creates s. Trans 276.07 (34m) and (34r), Wisconsin Administrative Code, to add seven segments of highway to the designated highway system established under s. 348.07

(4), Stats. The actual highway segments that this proposed rule adds to the designated highway system are:

| Hwy. | From | To |
|-------------|---------------------|-------------------|
| STH 107 | CTH "A" | STH 64 |
| CTH "A" | STH 97 | CTH "K" |
| CTH "K" | USH 51 N. of Wausau | STH 64 in Merrill |
| CTH "Q" | CTH "K" | USH 51 |
| CTH "U" | STH 107 | USH 51 |
| STH 97 | STH 29 S. of Athens | STH 64 |
| STH 77 | USH 53 in Minong | USH 63 in Hayward |

The long trucks to which this proposed rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this proposed rule will be to extend the provisions of ss. 348.07 (2) (f), (fm), (gm) and (gr), and 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highways. Specifically, this means there will be no overall length limitation for a tractor-semitrailer combination, a double bottom or an automobile haulaway on the affected highway segments. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor-semitrailer

combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

Fiscal Impact

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district.

Initial Regulatory Flexibility Analysis

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to the office of the State Traffic Engineer, P. O. Box 7986, Room 501, Madison, Wisconsin, 53707-7986, telephone (608) 266-1273. For questions about this rule making, please call Ashwani Sharma, Traffic Operations Engineer at (608) 266-1273. Alternate formats of the proposed rule will be provided to individuals at their request.

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 01-004)

Ch. ATCP 48 – Relating to grants to drainage boards.

Funeral Directors Examining Board

(CR 01-063)

Chs. FD 1 and 4 – Relating to apprenticeship credit and continuing education.

Insurance

(CR 01-050)

Ch. Ins 50 – Relating to the required footnotes in the financial statements of insurance companies.

Natural Resources

(CR 00-164)

Ch. NR 103 – Relating to wetland compensatory mitigation.

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board

(CR 01-026)

Chs. SFC 7, 12, 13, 14 and 20 – Relating to conforming existing rules to present practices and to other rules.

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board

(CR 01-027)

Ch. SFC 11 – Relating to professional counselors training certificates.

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board

(CR 01-064)

Ch. SFC 1 – Relating to the state jurisprudence examination.

Transportation

(CR 01-065)

Ch. Trans 276 – Relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Veterinary Examining Board

(CR 01-061)

Ch. VE 7 – Relating to the definition of unprofessional conduct of the practice of veterinary medicine.

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 (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Agriculture, Trade and Consumer Protection (CR 00-028)

An order affecting chs. ATCP 1, 29, 30, 57, 91, 92, 98, 101, 109, 110, 111, 116, and 121, relating to minor remedial changes to department rules.

Effective 10-1-01

Agriculture, Trade and Consumer Protection (CR 00-149)

An order affecting ch. ATCP 74, relating to reimbursement costs for cities and counties that contract with DATCP to license and inspect retail food establishments.

Effective 10-1-01

Commerce (CR 00-159)

An order affecting chs. Comm 2, 5 and 20, relating to uniform dwelling code inspection agencies.

Effective 10-1-01 and 12-1-01

Department of Health and Family Services (CR 00-051)

An order affecting ch. HFS 120, relating to the collection, analysis and dissemination of health care information.

Effective 10-1-01

Department of Health and Family Services (CR 00-052)

An order affecting ch. HFS 110, relating to licensing of ambulance service providers and licensing of emergency medical technicians—basic and emergency medical technicians—basic IV.

Effective 10-1-01

Division of Hearings and Appeals (CR 01-018)

An order affecting ch. HA 2, relating to the revocation of extended supervision of persons serving a bifurcated sentence.

Effective 10-1-01

Department of Transportation (CR 01-040)

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

Effective 10-1-01

Department of Workforce Development (CR 01-128)

An order affecting ch. DWD 128, relating to unemployment insurance requirement of ability to work and availability for work.

Effective 10-1-01

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the August 31, 2001 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 00-149)

An order affecting ch. ATCP 74 relating to fees required of city and county inspection and licensing agents.
Effective 9-1-01

Final Regulatory Flexibility Analysis

DATCP licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., DATCP may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments for DATCP. DATCP monitors and assists the agent city or county. From the license fees that it collects, an agent city or county must pay DATCP an annual fee to cover DATCP's costs.

DATCP, by rule, establishes state license fees for retail food establishments that it licenses directly.

Summary of Comments of Legislative Standing Committees

No comments were reported.

Commerce (CR 00-132)

An order affecting chs. Comm 2 and 33, relating to tramways, lifts and tows.
Effective 9-1-01

Final Regulatory Flexibility Analysis

Sections 101.02 (1) and 101.17, Stats., authorize the Department of promulgate rules prescribing minimum installation and operation standards for tramway, lift and tow devices utilized at public buildings and places of employment. The proposed rules of Clearinghouse Rule No. 00-132 are minimum requirements to meet the directives of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

Summary of Comments of Legislative Standing Committees

No comments were reported.

Corrections (CR 01-022)

An order affecting ch. DOC 309, relating to resources for inmates.
Effective 9-1-01

Final Regulatory Flexibility Analysis

The proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1), Stats.

Summary of Comments of Legislative Standing Committees

One written comment was received opposing the rule.

Financial Institutions-Savings Institutions (CR 01-041)

An order affecting ch. DFI-SB 16, relating to investments in development companies.
Effective 9-1-01

Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

No comments were reported.

Financial Institutions-Savings Institutions (CR 01-056)

An order affecting ch. DFI-SL 16, relating to investments in development companies.
Effective 9-1-01

Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

No comments were reported.

Health and Family Services (CR 00-056)

An order affecting ch. HFS 73, relating to criteria for county agency determination under the long-term support community options (COP) and community integration (CIP) programs.
Effective 9-1-01

Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments were reported.

Law Enforcement Standards Board (CR 99-115)

An order affecting chs. LES 1 and 3, relating to model standards for law enforcement vehicular pursuits and for related training.
Effective 9-1-01

Final Regulatory Flexibility Analysis

Proposed rules do not impact small businesses as defined in ch. 227, Stats.

Summary of Comments of Legislative Standing Committees

No comments were reported.

**Natural Resources
(CR 01-006)**

An order affecting chs. NR 10, 12 and 19, relating to hunting, trapping and nuisance wildlife control.
Effective 9-1-01

Final Regulatory Flexibility Analysis

The rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources. On June 21, 2001, the Senate Committee on Environmental Resources held a public hearing. The main focus of the hearing was the provision that would allow the harassment of birds causing damage by landowners in urban areas and golf courses. No modifications were requested as a result of the public hearing.

**Natural Resources
(CR 00-160)**

An order affecting chs. NR 422 and 484, relating to volatile organic compound emissions and national emission standards for hazardous air pollutants for wood furniture manufacturing.
Effective 9-1-01

Final Regulatory Flexibility Analysis

In 1998, the Department notified the U.S. EPA that 17 facilities were thought to be major hazardous air pollutant sources subject to the national emission standard for hazardous air pollutants. None of the facilities which notified as an affected major source qualify as a small business. However, the U.S. EPA did comply with the requirements of the federal Regulatory Flexibility Act to assure that small businesses could meet the emission limits for finishing materials and adhesives through the use of compliant materials.

Summary of Comments of Legislative Standing Committees

No comments were reported.

**Natural Resources
(CR 00-174)**

An order affecting ch. NR 422, relating to reducing ambient ozone concentrations in southeastern Wisconsin by controlling volatile organic compound (VOC) emissions.
Effective 9-1-01

Final Regulatory Flexibility Analysis

The proposed revisions will impact major sources of non-RACT regulated VOC emissions with plastic parts coating operations. Recordkeeping requirements are the minimum necessary and are consistent with those specified for other coating operations addressed in ch. NR 422.

Summary of Comments of Legislative Standing Committees

No comments were reported.

**Nursing
(CR 00-167)**

An order affecting ch. N 6, relating to defining the practice of nursing to include acting under the direction of optometrists.
Effective 9-1-01

Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments were reported.

**Nursing
(CR 00-168)**

An order affecting ch. N 8, relating to continuing education
Effective 9-1-01

Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were reported.

**Pharmacy Examining Board
(CR 01-023)**

An order affecting ch. Phar 6, relating to minimum equipment.
Effective 9-1-01

Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were reported.

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board
(CR 00-147)**

An order affecting ch. SFC 2, relating to clinical social work concentration and supervised clinical field training.
Effective 9-1-01

Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were reported.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **August 2001**, 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 74

S. ATCP 74.08 (1)

Ch. NR 12

S. NR 12.10 (1) (b)

S. NR 12.16 (1)

Commerce:

(Fee Schedule, Ch. Comm 2)

Ch. Comm 2

S. Comm 2.21 (entire section)

Ch. NR 19

S. NR 19.25 (entire section)

(Passenger Ropeways, Ch. Comm 33)

Ch. Comm 33 (entire chapter)

(Air Pollution Control, Chs. NR 400--)

Ch. NR 422

S. NR 422.02 (5), (7v), (7y), (8), (12m), (19s), (21m), (22m), (53e), (53s), (61m), (64m), (75g), (75r), (85m), (87s), (89), (90m), (95m) and (106m)

S. NR 422.04 (1) (a)

S. NR 422.083 (entire section)

S. NR 422.095 (4) (a) to (d) and Tables 1 and 2

S. NR 422.125 (4) (intro.)

S. NR 422.135 (2) (a) and (b) and Tables 2, 3 and 4

Corrections:

Ch. DOC 309

S. DOC 309.02 (7m), (14) and (16)

S. DOC 309.04 (4) (c)

Ch. NR 439

S. NR 439.04 (5) (a)

Financial Institutions—Savings Banks:

Ch. DFI-SB 16

S. DFI-SB 16.03 (7)

Ch. NR 465 (entire chapter)

Financial Institutions—Savings and Loans:

Ch. DFI-SL 16

S. DFI-SL 16.05 (entire section)

Ch. NR 484

S. NR 484.03 Table 1

S. NR 484.04 (9) and (24) of Table 2

S. NR 484.05 (1) of Table 3

S. NR 484.06 (intro.) and (5)

S. NR 484.11 (7), (8) and (10) and Tables 6G and 6H

Health and Family Services:

(Community Services, Chs. HFS 1--)

Ch. HFS 73

S. HFS 73.01 (entire section)

S. HFS 73.10 (1)

S. HFS 73.11 (entire section)

Nursing, Board of:

Ch. N 6

S. N 6.02 (2) (intro.), (3) (intro.) and (4)

S. N 6.03 (2) (c) and (d)

S. N 6.04 (1) (intro.), (d) and (e) and (2) (a) and (b)

Law Enforcement Standards Board:

Ch. LES 1

S. LES 1.03 (18m)

Ch. LES 3

S. LES 3.07 (entire section)

Ch. N 8

S. N 8.02 (6m)

S. N 8.05 (3)

Natural Resources:

(Fish, Game, etc., Chs. NR 1--)

Ch. NR 10

S. NR 10.01 (1) (g)

S. NR 10.06 (5) Table

S. NR 10.103 (1)

S. NR 10.13 (1) (b)

Pharmacy Examining Board:

Ch. Phar 6

S. Phar 6.06 (1) (intro.), (a) to (c), (j) and (k)

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board:

Ch. SFC 2

S. SFC 2.01 (9) and (11) to (19)

Editorial corrections

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

Corrections:

Ch. DOC 309

S. DOC 309.02 (4) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. DOC 309.20 (4) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. DOC 311

S. DOC 311.07 (2) (f) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Financial Institutions—Savings Banks:

Ch. DFI—SB 1

S. DFI—SB 1.03 (10) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Health and Family Services:

(Community Services, Chs. HFS 30—)

Ch. HFS 73

S. HFS 73.04 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. HFS 73.07 (1) (f) had a correction made under s. 13.93 (2m) (b) 7., Stats.

(Health, Chs. HFS 110—)

Ch. HFS 133

S. HFS 133.02 (8m) had corrections made under s. 13.93 (2m) (b) 1., Stats.

Natural Resources:

(Fish, Game, etc., Chs. NR 1—)

Ch. NR 10

S. NR 10.07 (1) (g) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 10.23 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

(Air Pollution Control, Chs. NR 400—)

Ch. NR 422

S. NR 422.02 (49m) and (67m) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. NR 439

S. NR 439.01 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 439.098 (1) (c) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Tourism:

Ch. Tour 2

S. Tour 2.02 (4) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Errata

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

Public Instruction:

Ch. PI 26 (entire chapter) Corrected effective date.

Sections affected by revisor's corrections not published

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

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

| Location of invalid cross-reference | Invalid cross-reference | Correction |
|-------------------------------------|-------------------------|---|
| PI 1.01 (2) (b) | Ch. PI 3 or 4 | Ch. PI 3 or 34 |
| PI 1.01 (2) (b) | PI 4.03 | PI 34.07 |
| PI 1.01 (2) (d) | PI 3.04 (twice) | PI 34.35 (twice) |
| PI 15.01 | 116.04 (1) (b) | Note inserted: Note: There is no s. 116.04 (1) (b). 1995 Wis. Act 27 repealed and recreated s. 116.04, Stats. |
| PI 25.02 (1) | 48.02 (3m) | 938.02 (3m) |
| PI 39.01 (4) and 39.02 (1) | 115.28 (35) | Note inserted: Note: 1997 Wis. Act 113 repealed s. 115.28 (35), Stats. |
| PI 42.03 (3) (intro.) | 115.341 (1) (c) | Note inserted: Note: There is no s. 115.341 (1) (c). 1999 Wis. Act 9 repealed and recreated s. 115.341, Stats. |
| PI 43.01 | 115.28 (38) | Note inserted: Note: 1997 Wis. Act 27 repealed s. 115.28 (38), Stats. |
| PI 43.02 | 118.37 | 118.55 |
| PI 43.03 (5) | 118.37 | 118.55 |
| PI 43.04 (4) | 118.37 | 118.55 |

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 18. Relating to Amendment of Executive Order No. 17.

Executive Order 19. Relating to Executive Order 6.

Executive Order 20. Relating to a Proclamation that the

Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Brave Men and Women of the Armed Forces of the United States Who Lost Their Lives in the Korean War.

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