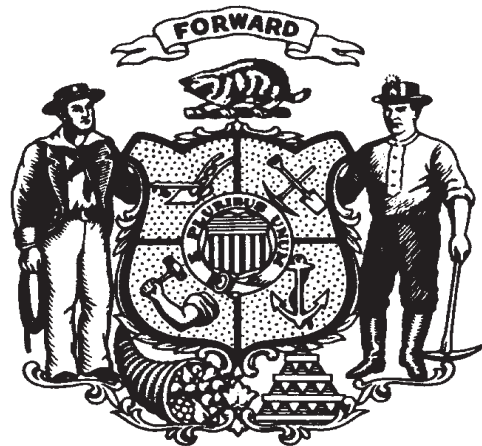


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Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection (2)

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

Finding of emergency

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

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

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

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

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

Publication Date: January 29, 2004

Effective Date: January 29, 2004

Expiration Date: June 27, 2004

Hearing Dates: April 26 and 27, 2004

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

Finding of emergency

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

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

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

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

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

assessments for these contractors, to compensate for the added security costs that the contractors must incur.

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

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

Gaming

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

Finding of emergency

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

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

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

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

Publication Date: January 8, 2004
Effective Date: January 8, 2004
Expiration Date: June 6, 2004
Hearing Date: March 16, 2004
Extension Through: August 4, 2004

Natural Resources

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

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

Finding of emergency.

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

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

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

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

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

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

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

Natural Resources (10)

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

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

Finding of emergency

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

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

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).
- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.
- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to

establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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

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

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

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

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

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

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

Finding of emergency

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

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

in administering the new law, the following severe problems will occur:

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

Veterans Affairs

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Veterans Affairs.

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

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

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

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

Workforce Development (Labor Standards, Chs. DWD 270–279)

Rules adopted revising ss. DWD 274.015 and 274.03 and creating s. DWD 274.035, relating to overtime pay for employees performing companionship services.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person’s life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours

per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s.

DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

Publication Date: March 1, 2004
Effective Date: March 1, 2004*
Expiration Date: July 29, 2004

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

Scope statements

Commerce

Subject

Rule affecting ch. Comm 129, relating to technology commercialization programs.

Policy analysis

The objective of the rule is to create chapter Comm 129 in response to 2003 Wisconsin Act 255. This Act directs Commerce to develop rules to administer a technology commercialization grant and loan program, an angel investment tax credit program, and an early stage seed investment tax credit program.

This chapter will at least address the following:

- Developing the criteria and process for certifying a qualified new business venture and defining a “bona fide angel investment”.
- Developing the criteria and process for certifying an eligible seed fund manager.
- Outlining standards for limits on aggregate amount of tax credits that may be claimed.
- Developing the process and requirements for application, reporting, auditing and monitoring the technology commercialization grant and loan program.

Existing policies. The Department recognizes that there is a need to promote entrepreneurialism and to grow new high–tech business ventures in the state.

New policies. This is a new Wisconsin initiative to encourage venture capital investment in Wisconsin businesses.

Policy alternatives. The alternative of not creating this code chapter would result negatively in the state’s ability to tap venture capital and to grow new high–tech businesses which will create high–wage, high–skilled jobs, create new investment and attract related industries.

Statutory authority

Sections 560.205 (3) (d) and 560.275 (7) (b), Stats., as created by 2003 Wisconsin Act 255.

Staff time required

The Department estimates that it will take approximately 400 hours to develop this rule. This time includes meeting with affected industry groups, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Federal regulation addressing the activities

There are no existing or proposed federal regulations that address or impact the activities to be regulated by this rule.

Financial Institutions – Banking

Subject

Rules pertaining to loan solicitors, competency examinations, continuing education, consumer mortgage brokerage agreements and consumer disclosure statements.

Policy analysis

2003 Act 260 requires that the department, by rule, define loan solicitor, establish standards for the approval by the loan originator council of examinations in the law of mortgage banking and mortgage brokering, establish standards for the approval by the loan originator council of curricula of education and minimum number of hours, prescribe the form and content for mortgage brokerage agreements, and prescribe the form and content of consumer disclosure statements. The rules set forth this definition, set forth guidelines regarding the examinations, curricula and hours; and set forth criteria for the form and content of the agreements and statements.

Statutory authority

Sections 224.72 (7p), 224.79 (1) and (2), and 227.11 (2), Stats.

Staff time required

500 hours.

Federal regulation addressing the activities

12 USC 2607 may affect the definition of loan solicitor.

Natural Resources

Subject

Development of the General Air Permit and Registration Air Permit Programs. This will affect chapters NR 406, 407 and 410, Wis. Adm. Code. The Rule package may also include waivers from construction permit requirements and identification of additional exemptions from construction permit requirements, should criteria for such changes be identified prior to a request for hearings on the proposed Rule package. The Rule package may also include the ability to identify construction permit conditions as “state–only” requirements when appropriate.

Policy analysis

The Department has been given statutory authority for the development of a general permit program and a registration permit program. These programs will allow the air program to issue general air pollution control construction and operation permits to those specific industries/processes that are similar, or registration permits to sources which have low actual or potential emissions, in a more timely and efficient manner. Fees associated with this program will also be included under ch. NR 410, Wis. Adm. Code. The existing policy of construction and operation permitting is not changed by this rule proposal. This rule action will only modify the construction and operation permit requirements imposed on presently regulated sources.

Additionally, the Department will be holding public meetings in July 2004 concerning its overall strategy for regulating stationary air pollution sources. As a result of these meetings, the Department may include additional material in the proposed rule package then is presently anticipated to be included in that rule package.

Statutory authority

Sections 227.11 (2) (a), 285.11 (1) and 285.60 (2g) and (3), Stats.

Staff time required

510 hours.

Summary and Comparison With Existing or Proposed Federal Regulations

The federal operation permit program contained in 40 CFR part 70 allows states to issue general operation permits, and Air Management has already issued some general operation permits. There are no federal regulations concerning general construction permits or registration permits. Some Federal regulations, such as those that require case-by-case analyses, would likely preclude their use for certain air polluting activities.

Entities Affected by the Rule

These rules could potentially impact a large number of presently regulated facilities in the State. Entities which they are most likely to impact include asphalt plants, rock crushers, small printers, small electrical generators and other relatively small air pollution sources.

Natural Resources**Subject**

The purpose of this rule package is to update chs. NR 406 and NR 407, Wis. Adm. Code, to provide for greater flexibility to major emission sources which use some of the new elements of the proposed changes to chs. NR 405 and NR 408, Wis. Adm. Code. The changes to chs. NR 405 and 408 have been proposed to implement portions promulgated federal air permitting requirements, known as new source review (NSR). Additionally, changes to ch. NR 410 are being proposed to update permit fees for the proposed changes to chs. NR 405-408, Wis. Adm. Code. These changes will potentially impact numerous major emission sources including paper mills, printers, foundries and utilities.

Policy analysis

The Department has 3 years (until January 2, 2006) to take final action to determine which features of the new federal NSR regulations should be implemented into Wisconsin rules. Since Wisconsin is proposing to incorporate an amended version of the federal NSR permitting requirements into the administrative rules, it is appropriate now to propose changes to the construction permit fee structure and minor source permitting program to coordinate it with the changes to the major source rules.

This proposal will make changes to the existing minor new source review program, operation permit program and permit fees to provide additional flexibility to affected facilities and to institute fees for Department review work which will become necessary under the proposed changes to chs. NR 405-408, Wis. Adm. Code.

The new NSR regulations are very controversial. Thirteen states, including Wisconsin, have filed lawsuits challenging EPA's decision to revise the NSR program. The petitions are based on the states' claims that the revised regulations will result in emission increases that will have a variety of negative impacts, such as making the achievement of air quality standards for ozone more difficult. Nine states have filed motions to intervene in the lawsuit in support of EPA's regulatory changes. These lawsuits are still pending in Federal court.

Statutory authority

Sections 227.11 (2) (a), 285.11 (1), (6) and (17), 285.60 (6) and 285.69 (1), Stats.

Staff time required

1100 hours

Summary and comparison with existing or proposed federal regulations

Minor source construction permit programs are required under Title I of the Clean Air Act. However, there are no specific Federal regulations which state how these rules are to be written or the specific content of these rules. Thus, the Department has significant flexibility to develop and implement a minor source construction permit program.

The operation permit program for major sources is governed by specific Federal regulations as to the content of permits, how programs are to be funded, what sources must be permitted and numerous other specific requirements. The changes which will be proposed under this Rule package will be consistent with these Federal regulations while still seeking to allow for additional flexibility for affected facilities.

Entities affected by the rule

This Rule will impact major sources of air pollution throughout the State. Examples of such sources are pulp and paper mills, foundries and utilities.

Natural Resources**Subject**

Objective of the rule. 2003 Wisconsin Act 239 authorized the use of captive coyote, bobcat and fox for dog training and trialing. These rules establish regulations under which the training and trialing of dogs on these species under the authority of a hound dog training, trialing or dog club training license will be regulated. These rules include provisions that will allow these species to be used inside enclosures and in the wild. These rules are put in place to ensure humane care and treatment of these species while being used for dog training and competitive field trials.

Description of policy issues

The use of coyote, bobcat and fox for dog training were prohibited under ch. 169, Stats. (Captive Wildlife). It was the department's intent that these species not be included in the list of species that are allowed for use under the authority of a hound dog training, trialing or dog club training license. However, with the passage of Act 239, the department has initiated this rule making process to develop regulations involving the use of the captive wild animals.

Statutory authority

Section 169.20 (4) and 169.21 (3), Stats.

Staff time required

Approximately 244 hours will be required to promulgate the proposed rule.

Groups likely affected by the proposed rule

Hound dog trainers.

Preliminary federal regulatory analysis

There are no Federal guidelines that regulate the use of captive coyote, fox or bobcat for dog training purposes.

Natural Resources**Subject**

Objective of the rule. These rule changes are being proposed to reflect changes made to Subchapter VI (Managed Forest law) Chapter 77 Wis. Stats., in 2003 Wisconsin Act 228, and to implement one additional change recommended

in the Governor's Council on Forestry, in their report *December 2002 Review of Wisconsin's Managed Forest Law*.

Description of policy issues/analysis of policy alternatives

MFL Application Changes: Includes new application deadlines, requires that title documents be *recorded* and that existing certified survey maps be included with the application, establishes a second filing deadline, and allows use of the application fee for recording fees and contracting for consultant prepared MFL plans.

Plan Writer Specifications: Includes requirement that all plans be prepared by the Department or a plan writer certified by the department, and directs the Department to establish criteria for plan writer certification.

Open/Closed Acreage: Increase allowable closed acreage to 160 acres per ownership per municipality for new entries and allows for owners to change the open/closed designation of lands entered up to two times during the order period.

Fee Changes: Includes a revised transfer fee and a new withdrawal fee.

Yield Tax: Exempts new entries from yield tax during first 5 years.

Statutory authority

Section 77.82 (3) (c) (intro), 77.82 (7) (c) 3., 227.11 (2) (a), Stats.

Staff time required

160 hours from department central office and field Forest Tax Section (FTS) staff, and additional 30 hours from non-Department individuals assisting with the drafting the certified plan writer provisions.

Summary and comparison with existing or proposed federal regulations

There are no existing or proposed federal regulations relating to these rule changes.

Public Instruction

Subject

Objective of the rule. Set forth by administrative rule how private schools participating in the MPCP will meet the requirements of 2003 Act 155 and how the department will implement and administer those requirements.

Description of policy issues

A revision to the current method for participating private schools to claim facility costs.

Describe any new policies to be included in the administrative rule

Under Act 155, the schools participating in the MPCP are required to do the following: (a) provide the department with evidence of sound fiscal practices; (b) submit evidence of financial viability; (c) submit proof that the administrator has participated in a fiscal management training program approved by the department.

Under Act 155, the State Superintendent is given statutory authority to do the following: (a) withhold aid if a participating school is not in compliance with program

requirements; (b) under certain circumstances, issue an order prohibiting a private school from participating in the program in the current year; and (c) immediately terminate a school's participation in the program if conditions at the school present an imminent threat to the health and safety of pupils. Whenever the State Superintendent issues an order terminating a school's participation he or she must notify the parent or guardian of each pupil.

Policy alternatives

None. 2003 Act 155 provides that "[t]he department shall promulgate rules to implement and administer this section."

Staff time required

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Summary and comparison with existing or proposed federal regulations

None.

Transportation

Subject

Objective of the rules. This rule making will create ch. Trans 135 to establish guidelines for administering a school bus oxidation catalyst retrofit grant program. The program, created by 2003 Wis. Act 220, will be effective in Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties. This rule making will implement the statutory provision.

Description of policy issues

2003 Wis. Act 220 created s. 110.215, Stats., requiring the Department, in consultation with DNR, to develop and administer a program to provide grants for the purchase and installation of oxidation catalysts on school buses customarily kept in one of the above counties. The Act also amends §20.395(5)(hq), Stats., to provide funds for the grant program under WisDOT's vehicle inspection/maintenance (I/M) program appropriation. The school bus retrofit grant program has no analog among existing WisDOT activities.

Summary and comparison with existing or proposed federal regulations

In 2001, the EPA promulgated its "Heavy-Duty Engines and Vehicle Standards and Highway Diesel Sulfur Control Requirements" rule (40 CFR Parts 69, 80, and 86). This rule establishes requirements that mandate and enable emissions reductions for highway diesel motor vehicles, including school buses. The requirements become effective in 2006.

No federal regulations specifically address school bus emissions-related retrofits.

Statutory authority

Sections 20.395 (5) (hq) and 110.215, Stats.

Staff time required

120 hours.

Submittal of rules to legislative council clearinghouse

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

Commerce

Rule Submittal Date

On May 20, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. Comm 40, relating to gas systems.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 18, 2004.

Agency Contacts

Ronald Acker
(608) 267-7907

Health and Family Services

Rule Submittal Date

On May 24, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Ch. HFS 118, relating to the Wisconsin's statewide trauma care system.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats., will be held on June 30, 2004.

Names and Phone Numbers of Agency Contacts

Marianne Peck, 266-0601
Nan Turner, 261-6870

Health and Family Services

Rule Submittal Date

On May 18, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Chs. HFS 132 and 134, relating to sundry changes to administrative rules for Wisconsin nursing homes and facilities for the developmentally disabled.

Agency Procedure for Promulgation

Before the end of May, the Department will submit a request to the Attorney General's Office to incorporate the 2000 Life Safety Code by reference into both chs. HFS 132 and 134. The Department will conduct a public hearing on June 30, 2004.

Names and Phone Numbers of Agency Contacts

Cheryl Bell-Marek
608 264-9896

Rule–making notices

Notice of Hearing

Commerce

(Gas Systems, Ch. Comm 40)

[CR 04–054]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (15) (h) to (j) and 101.16, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 40, relating to gas systems.

The public hearing will be held as follows:

Date and Time:

Monday, June 28, 2004

10:00 a.m.

Location:

Room 3C, Thompson Commerce Center

201 West Washington Avenue

Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **July 12, 2004**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Ronald Acker, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at racker@commerce.state.wi.us.

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

Analysis Prepared by the Department of Commerce

Statutory Authority: Sections 101.02 (15)(h) to (j), and 101.16, Stats.

Statutes Interpreted: Sections 101.02 (15)(h) to (j), and 101.16, Stats.

General Summary

Under section 101.02 (15) (h) to (j), Stats., the Department of Commerce has the authority for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. Under section 101.16, Stats., the Department has the responsibility for developing rules specifically for the storage, handling and use of liquefied petroleum gas. Chapter Comm 40 currently contains minimum safety standards for the design, construction, installation, operation, inspection, repair and maintenance of liquefied petroleum gas systems, liquefied natural gas systems, and compressed natural gas

systems. The proposed rules consist of an update of chapter Comm 40.

Detailed Summary

The following listing is a summary of the major changes in the proposed rules.

1. Adding gaseous hydrogen systems and liquefied hydrogen systems to the definition of gas systems. [SECTION 2]

2. Revising the requirements relating to the submittal information for plan examination. [SECTION 4]

3. Clarifying that 2 site inspections are included with the plan examination and inspection fees submitted in accordance with the fee schedule. [SECTION 7]

4. Adding a new rule for the reporting of accidents. [SECTION 8]

5. Updating the national standards currently incorporated by reference and deleting the standard for recreational vehicles. [SECTION 9]

6. Adding new National Fire Protection Association (NFPA) standards for gaseous hydrogen systems and liquefied hydrogen systems. [SECTION 10]

7. Applying the secondhand pressure vessel rules to all gas systems instead of only liquefied petroleum gas systems. [SECTION 15]

8. Requiring plan approval for liquefied natural gas installations where the aggregate water capacity will be 4000 gallons or larger. [SECTION 16]

9. Adding new subchapters for gaseous hydrogen facilities and liquefied hydrogen facilities. [SECTION 19]

Federal Comparison

An Internet–based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to liquefied petroleum gas, liquefied natural gas, compressed natural gas, gaseous hydrogen, and liquefied hydrogen as covered in the proposed update of chapter Comm 40.

- 29 CFR 1910.110 — Storage and Handling of Liquefied Petroleum Gases. This regulation in the federal Department of Labor applies to the design, construction, location, installation and operation of liquefied petroleum gas systems.

- 33 CFR 127 Subpart B — Waterfront Facilities Handling Liquefied Natural Gas. This regulation in the federal Department of Homeland Security applies to the marine transfer area of waterfront facilities handling liquefied natural gas.

- 29 CFR 1910.103 — Hydrogen. This regulation in the federal Department of Labor applies to the installation of gaseous hydrogen systems and liquefied hydrogen systems on consumer premises.

These federal regulations appear to be very similar to the proposed rules. In addition to containing specific requirements for the various gas systems, the federal regulations incorporate by reference several national standards published by the NFPA, the American National Standards Institute, the Compressed Gas Association, and the American Society of Mechanical Engineers.

An Internet–based search of the 2003 and 2004 issues of the *Federal Register* did not find any proposed regulations

relating to gas systems as covered in the proposed update of chapter Comm 40.

State Comparison

An Internet-based search of adjacent states' rules found the following regulations that include requirements relating to liquefied petroleum gas, liquefied natural gas, compressed natural gas, gaseous hydrogen, and liquefied hydrogen.

- Minnesota incorporates by reference the 2000 edition of the International Fire Code (IFC) into the Minnesota State Fire Code. The IFC references NFPA standard numbers 50A, 50B, 52, 58 and 59A. These are the same NFPA standards that are included in the proposed rules.

- Michigan's Department of Environmental Quality administers rules relating to liquefied petroleum gas and liquefied natural gas. These rules adopt NFPA 58 and NFPA 59A. Michigan's Department of Consumer and Industry Services administers rules for compressed natural gas and hydrogen. These rules adopt NFPA 52 and federal Occupational Safety and Health Administration regulations 29 CFR 1910.103 for gaseous and liquefied hydrogen. These regulations cover the same gas systems as the proposed rules.

- Iowa's Division of the State Fire Marshal is responsible for the regulation of liquefied petroleum gas and liquefied natural gas in Iowa Administrative Code Chapter 51. That chapter adopts by reference NFPA standard numbers 54, 58 and 59A. The state of Iowa does not have rules for compressed natural gas or hydrogen.

- Illinois' Office of the State Fire Marshal has adopted rules relating to liquefied petroleum gas under Title 41, Chapter I Part 200. That part incorporates by reference NFPA standard numbers 54, 58, 59 and 501C, and API standard 2510. The state of Illinois does not have rules for liquefied natural gas, compressed natural gas or hydrogen.

Advisory Council

The proposed rules have been developed with the assistance of the Gas Systems Code Advisory Council. The members of that citizen advisory council are as follows:

Name	Representing
Ed Aldridge	Growmark, Inc.
Bruce Barganz	Wisconsin Fertilizer & Chemical Assn.
Tim Clay	Wisconsin Federation of Cooperatives
David A. Duey	ANGI International
Kingsley H. Forbes	National Propane Gas Association
Art Herschberger	Wisconsin Propane Gas Association
Gary Puljas	Wisconsin Fire Inspectors Association
Gene Reece	Wisconsin State Fire Chiefs Association
Timothy Temperly	City of Milwaukee
John Wehmeier	Wisconsin Utilities Association
Bob Willder	Wisconsin Agri-Service Association

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at rward@commerce.state.wi.us, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Initial Regulatory Flexibility Analysis

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

The rules will affect any business involved with the design, construction, installation, operation, inspection, repair or maintenance of liquefied petroleum gas systems, liquefied

natural gas systems, compressed natural gas systems, gaseous hydrogen systems or liquefied hydrogen systems.

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

The rules require some additional plan submittal information to be provided to the Department for those gas system installations that require plan approval.

The rules contain a new requirement for reporting of accidents whenever gas system equipment or system components fail and cause injury to any person.

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

There are no types of professional skills necessary for compliance with the rules.

Fiscal Impact

The Safety and Buildings Division is responsible for administering and enforcing the current rules for gas systems. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing those rules. Any additional workload as the result of adding gaseous hydrogen and liquefied hydrogen will be handled by existing staff. It is estimated that 2 plans for hydrogen systems will be submitted for review on an annual basis. This will result in a revenue increase of \$480 per year, assuming 4 hours per plan for review at \$60 per hour. Therefore, the proposed rules will not have a significant fiscal effect on the Division.

Local municipalities may voluntarily enforce the rules for gas systems, and they have the authority to offset any costs by charging appropriate fees.

The proposed rules will not have a significant fiscal effect on the private sector. The anticipated costs that will be incurred by the private sector are the plan review and site inspection fees as the result of adding gaseous hydrogen and liquefied hydrogen to chapter Comm 40.

Environmental Analysis

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

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at rward@commerce.state.wi.us, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Notice of Hearing

Financial Institutions – Securities

NOTICE IS HEREBY GIVEN that pursuant to section 551.63 (1) and (2), Stats., the Division of Securities of the Department of Financial Institutions will hold a public hearing at 345 West Washington Avenue, 4th Floor Conference Room, at 3:00 PM. on Wednesday, **August 11, 2004** to consider the repeal and recreation and the amendment of certain Wisconsin Securities Law investment adviser licensing rules relating to custody of customer funds and/or securities.

Analysis Prepared by the Department of Financial Institutions, Division of Securities

Statutes Interpreted: s. 551.33 (6) & (8), Stats.

Statutory Authority: ss. 551.32 (1s), 551.33 (6) & (8), and 551.63 (1) and (2), Stats.

Explanation of agency authority:

The agency has authority to license and regulate the business conduct of securities investment advisers doing business with Wisconsin customers. That authority includes the ability to establish rules for the conduct of business by investment advisers [551.33(6)], and to cooperate with the securities administrators of other states as well as the U.S. Securities & Exchange Commission ("SEC") to achieve uniformity in regulatory requirements [551.32(1s) and 551.63(2)].

Related statute or rule: DFI–Sec 5.035, Wis. Adm. Code.

Plain language analysis

The rulemaking procedures under Chapter 227 of the Wisconsin Statutes are being implemented for the purpose of replacing Wisconsin's existing Securities Law rule requirements applicable to Wisconsin-licensed investment advisers that have custody of customer funds and/or securities, with amended Model Rules on that subject recently developed and adopted by the North American Securities Administrators Association ("NASAA").

Current rule DFI–Sec 5.035, Wis. Adm. Code, under the Wisconsin Securities Law sets forth the regulatory requirements for state-licensed investment advisers who have custody of customer funds or securities. In 1999, NASAA previously developed Model.

Investment Adviser Custody Rules that could be used by any state jurisdiction in connection with their regulation of state-licensed investment advisers. (Wisconsin's current rule DFI–Sec 5.035, amended most recently in 2000, incorporated some of the elements of the NASAA Model Rules.)

Summary of, and comparison with existing or proposed federal regulations:

Recently, the U.S. Securities & Exchange Commission adopted for effectiveness on September 25, 2003, amendments to the federal custody rule under the Investment Advisers Act of 1940 applicable to federally-registered investment advisers. However, pursuant to the National Securities Markets Improvement Act of 1996, such federal changes are not applicable to investment advisers licensed solely in state jurisdictions.

The amended SEC rules for the first time define "custody" and require federally-registered advisers having "custody" to maintain client funds or securities with a "qualified custodian." Because the prior NASAA Model Rules were drafted based on the predecessor federal rules that did not contain a definition of custody, the September 2003 federal custody rule changes necessitated changes in the NASAA Model rules to provide needed uniformity on that issue between the regulation of federal-registered and non-federal registered investment advisers, as well as to provide equivalent levels of investor protection.

Accordingly, the NASAA Investment Adviser Regulatory Policy and Review Project Group was charged with developing amendments to the NASAA Custody Rules to bring them into alignment with the September 2003 federal custody rule. That Project Group completed its development of needed amendments to the NASAA Custody Rules, and those amendments were adopted by vote of the NASAA state member jurisdictions at the 2004 NASAA Spring Conference in Washington D.C. on April 18, 2004.

Comparison with rules in adjacent states:

Similar to Wisconsin, the adjacent states of Iowa, Illinois and Minnesota have existing regulatory requirements for state licensed investment advisers that have custody over customer funds and/or securities based on the NASAA Model Custody Rules as they existed prior to the recent April 2004 amendments. Michigan does not have any custody rules because their regulations prohibit investment advisers from having custody of customer assets. Among the Midwest states in this region, Wisconsin is the first state to commence adoption of the newly-amended NASAA Custody Rules.

Summary of factual data and analytical methodologies:

No factual data or analytical methodologies were used because the proposed rules are revisions/amendments to existing Wisconsin Securities Law regulatory requirements applicable to Wisconsin-licensed investment advisers having custody of customer assets, and are necessary to reflect parallel changes recently made at the federal level to federally-regulated investment advisers.

Analysis and supporting documentation used to determine effect on small business:

Because the proposed rules are revisions/amendments to existing Wisconsin Securities Law regulatory requirements applicable solely to Wisconsin-licensed investment advisers having custody of customer assets — which requirements those licensees should already be in compliance with — the proposed rules will not have an effect on "small-business" in general (outside the investment advisory business). Also, see the Initial Regulatory Flexibility Analysis below.

A summary of the proposed rules follows:

1. The NASAA Project Group determined that amendments were required to five NASAA Model Rules pertaining to Custody. Accordingly, substantive amendments were made to the Asset Audit Rule [Rule 102(e)(1)–1], a books and records-related rule [Rule 203(a)2], and to the Minimum Financial Requirements for Investment Advisers rule [Rule 202(d)–1]. Less substantive amendments were made to a separate rule regarding bonding requirements [Rule 202(e)–1, and an Unethical Practices provision [Rule 102(a)(4)–1]. The April 2004 amended NASAA Model Custody Rules incorporate the changes to all five of those rules and will be included in a repealed and re-created rule DFI–Sec 5.035, Wis. Adm. Code.

2. The existing Wisconsin rule defining "custody" in DFI–Sec 1.02 (17), Wis. Adm. Code, will be amended.

3. The existing Wisconsin net capital rule in DFI–Sec 5.02 (2), Wis. Adm. Code, applicable to investment advisers having custody of customer assets will be amended.

4. The existing Wisconsin rule in DFI–Sec 5.03 (2), Wis. Adm. Code, prescribing certain books and recordkeeping requirements for investment advisers having custody of customer assets will be repealed and re-created.

5. The existing Wisconsin business practices rule in DFI–Sec 5.06 (12), Wis. Adm. Code, applicable to investment advisers having custody of customer assets will be amended.

Initial Regulatory Flexibility Analysis

Types of small businesses that could be affected by certain of the rule revisions are:

1. Investment adviser licensees under the Wisconsin Securities Law with fewer than 25 full-time employees who meet the other criteria of sec. 227.114(l)(a), Wis. Stats. The proposed revisions to the securities investment adviser custody requirements will be applicable equally to all licensed investment advisers because the requirements involved are for the protection and benefit of all Wisconsin customers of those firms. All Wisconsin customers of Wisconsin-licensed securities investment advisers are entitled to the public investor protection benefits of the licensing requirements and

Rule of Conduct provisions, irrespective of the size of the firm providing the investment advisory services. Under the rule-making procedures used by the Division of Securities, a copy of the proposed rules is mailed to each investment adviser licensed or notice-filed in Wisconsin, as well as to each broker-dealer licensed in Wisconsin, notifying them of the proposed revisions and soliciting written comments or attendance at the public hearing regarding the proposed rules.

Also, repeating what was stated in a preceding section, because the proposed rules are revisions/amendments to existing Wisconsin Securities Law regulatory requirements applicable solely to Wisconsin-licensed investment advisers having custody of customer assets — which requirements those licensees should already be in compliance with — the proposed rules will not have an effect on "small-business" in general (outside the investment advisory business).

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

See numbered Item 4 of the Summary above.

Fiscal Estimate Summary

A summary of the fiscal effects of the proposed rule revisions is as follows: (i) No one-time revenue fluctuations; (ii) No annual fiscal effects; (iii) No long-range fiscal implications; (iv) No fiscal effect on local units of government.

Contact Person

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

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

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

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

Written comments in lieu of public hearing testimony may be submitted which must be received no later than the hearing date and should be addressed to the Administrator of the Division of Securities, 345 West Washington Avenue, PO Box 1768, Madison Wisconsin, 53701.

Notice of Hearings

Health and Family Services

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

[CR 04-025]

Notice is hereby given that pursuant to ss. 227.16 (1), 227.17, 227.18, and 227.24 (4), Stats., the Department of Health and Family Services will hold public hearings to consider the proposed permanent rules and emergency rules amending s. HFS 107.13 (2) (c) 5., and (4) (c) 4., and creating ch. HFS 36, ss. HFS 105.257 and 107.13 (6) (b) 4., and (7), relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based

psychosocial rehabilitation services under the medical assistance program.

The Department anticipates that the emergency rules will take effect on July 1, 2004.

Hearing Information

The public hearings will be held:

<u>Date & Time</u>	<u>Location</u>
July 6, 2004 Tuesday 10:00 a.m. to 1:00 p.m.	SRO Room 176 2917 International Lane Madison, WI
July 7, 2004 Wednesday 10:00 a.m. to 1:00 p.m.	WRO Room 123 610 Gibson Street Eau Claire, WI
July 8, 2004 Thursday 10:00 a.m. to 1:00 p.m.	NERO Room 152 A 200 N. Jefferson Street Green Bay, WI

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

Written comments, on both the proposed permanent rules and the emergency rules, may be submitted in lieu of attending a public hearing, by regular mail or email to the contact person listed below. Written comments for the proposed permanent rules and the emergency rules may also be submitted using the Wisconsin Administrative Rules website at the web address listed below.

The deadline for submitting comments on both the proposed permanent rules and the emergency rules is **4:30 p.m., July 13, 2004.**

Analysis Prepared by the Department of Health and Family Services

The Department proposes to establish the scope of community-based psychosocial rehabilitation services programs, standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based psychosocial rehabilitation services under the medical assistance program as authorized by ss. 49.45 (30e) and 51.42 (7) (b), Stats. The Department anticipates that the rules created will complement services provided by existing community support programs under s. 51.421, Stats., by making a fuller array of mental health and substance-use and addiction disorder services potentially available to those in need in each county or tribe. The Department further anticipates that the rules will allow for the creation of a broad range of flexible, consumer-centered, recovery-oriented psychosocial rehabilitation services to both minors and adults, including elders, whose psychosocial needs require more than outpatient therapy, but less than the level of services provided by existing community support programs. Certified community-based psychosocial rehabilitation services programs that meet the requirements of s. 49.45 (30e), Stats., and the proposed ch. HFS 36 and applicable requirements or chs. HFS 105 and 107 may be fully or partially funded by medical assistance with county or tribal match. These programs may also coordinate with other existing funding sources.

Statutory Authority: Sections 49.45 (30e) (b), 51.42 (7) (b), and 227.11 (2) (a), Stats.

Statutes Interpreted: Sections 49.45 (30e), 49.46 (2) (b) 6. Lm, 51.04, 51.42 (7) (b), and 51.61, Stats.

Fiscal Estimate

This order implements a new mental health program created under s. 49.45 (30e) (b), Stats., by 1997 Wisconsin Act 27. The Act 27 provision allows counties to receive federal Medical Assistance (MA) funding for services to individuals with mental health problems that require more than outpatient services and less than Community Support Program services. Counties receive the federal funding if they supply the state match funding. These individuals with mental health problems are now being served by counties under case management services, which provide limited reimbursement from MA, with the state match provided by county and state Community Aids. Many of the case management clients require additional treatment and rehabilitation services that are not covered under the targeted case management provisions of MA. This new mental health program will allow coverage by the MA program for these services if the county elects to allocate the funding. The net effect should be an increase in federal revenue to the State and counties for providing services that are presently funded completely by Community Aids and county tax levy.

The Bureau of Quality Assurance (BQA) with the Division of Health Care Financing certifies, licenses and surveys approximately 46 kinds of health care and residential programs in the State of Wisconsin. BQA has identified the following workload and cost increases related to the implementation of this rule. Since this is a new program, BQA Program Certification staff would be required to certify county community-based psychosocial service programs to receive this new MA reimbursement. BQA estimates that an additional 72 surveys (taking 14 hours to complete) and 5 complaint surveys (taking 6.5 hours to complete), would entail an additional 1.00 FTE's worth of work at a total cost of \$60,200 all funds. The costs would be split funded 25% PRO (\$15,100) and 75% FED (\$45,100), since certifying, licensing and surveying are considered MA-billable functions. Also, given the current number of county programs, BQA estimates that 6 counties (at most) would see a \$50 fee increase. Since the Department intends to absorb the additional workload related to the implementation of this rule, this rule will not affect revenues or expenditures beyond what was already assumed in Act 27.

Effect on Small Business

There will be no adverse affect on small businesses. If psychosocial rehabilitation services currently are being provided, then the individual consumer or the county of responsibility is paying for the cost of the services. This rule will permit the county of responsibility to use their existing funds that are being expended for these services as the required match to the federal portion of Medicaid funding (federal financial participation or FFP). The increase in available funding may result in an increase in revenues for a local small business if the county and the consumer select the business as a provider of a component of the psychosocial rehabilitation services for the consumer.

For More Information

A copy of the full text of the rules and the full text of the fiscal estimate, and other documents associated with this rulemaking may be obtained, at no charge, from the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>. At this website you can also register to receive email notification whenever the

Department posts new information about this rulemaking and, during the public comment period, you can submit comments on the rulemaking order electronically and view comments that others have submitted about the rule.

A copy of the full text of the rule and the fiscal estimate may also be obtained by contacting the Department's representative listed below:

Sally Raschick
Bureau of Mental Health and Substance Abuse Services
1 West Wilson Street
P.O. Box 7851
Madison, WI 53707-7851
(608) 261-9313 or, if you are hearing impaired,
(608) 261-9314 (TTY)
raschsc@dhfs.state.wi.us

Notice of Hearing Health and Family Services (Medical Assistance, Chs. HFS 100—) [CR 04-050]

Notice is hereby given that, pursuant to ss. 49.688, Stats., the Department of Health and Family Services will hold a public hearing to consider revisions to ch. HFS 109, Wis. Adm. Code, relating to operation of the SeniorCare prescription drug assistance program.

Hearing Information

The public hearing will be held:

<u>Date & Time</u>	<u>Location</u>
June 30, 2004	Room 751
Wednesday	State Office Building
From 10:00 AM to Noon	1 West Wilson St. Madison WI

The hearing site is fully accessible to people with disabilities. Parking that accommodates 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

SeniorCare is Wisconsin's Prescription Drug Assistance Program for Wisconsin residents who are 65 years of age or older and who meet eligibility requirements. The Department administers the program under ch. HFS 109. 2003 Wisconsin Act 33 revised the following cost sharing provisions of SeniorCare:

- It increased the annual enrollment fee from \$20 to \$30.
- It increased annual program deductibles for persons whose family income is more than 200% of the federal poverty level from \$500 to \$850.

Through this order, the Department proposes to revise ch. HFS 109 to conform to these statutory changes.

Contact Person

To find out more about the hearings or to request a copy of the proposed rules, you may write, phone, or e-mail:

Alfred Matano
Division of Health Care Financing
P.O. Box 309, Room 350
Madison, WI 53701-0309

608-267-6848 or, if you are hearing impaired,
608-266-1511 (TTY)
matana@dhfs.state.wi.us

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large-print or taped version of the hearing document, contact the person at the address or phone number 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 emergency rules received at the above address no later than **July 16, 2004** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

Since the provisions of this rule have already been budgeted in Act 33 and implemented, the proposed rule will have no budgetary or fiscal effect. The FY03-05 biennial budget bill, Act 33, increased the SeniorCare enrollment fee from \$20 to \$30 and increased the deductible for individuals with incomes over 200% of the FPL to \$850.

It is estimated that increasing the annual enrollment fee from \$20 to \$30 will reduce SeniorCare funding by \$772,500 (-\$419,200 GPR, -\$353,300 FED) in FY04 and \$720,900 (-\$410,700 GPR, -\$310,200 FED) in FY05 and increase program revenues by \$772,500 PR in FY04 and \$720,900 PR in FY05.

Increasing the deductible from \$500 to \$850 for recipients with incomes over 200% is estimated to reduce SeniorCare funding by \$5,659,700 (-\$4,255,400 GPR and -\$1,404,300 PR) in FY04 and \$8,016,500 (-\$6,069,600 GPR and -1,946,900 PR) in FY05.

Initial Regulatory Flexibility Analysis

The rules for the SeniorCare program apply to the Department, to families that are applicants or recipients of the health care coverage provided by SeniorCare and to county social service or human service departments that take applications and determine eligibility for SeniorCare. The Department is proposing these rule changes pursuant to statutory changes made by the legislature through 2003 Act 33. None of these changes affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Notice of Hearing

Health and Family Services

(Health, Chs. HFS 110—)

[CR 04-053]

Notice is hereby given that pursuant to ss. 227.16 (1), 227.17 and 227.18, Stats., the Department of Health and Family Services (DHFS) will hold a public hearing to consider proposed changes to chapters HFS 132 and 134, relating to nursing homes and facilities for the developmentally disabled.

Hearing Information

The public hearing will be held:

<u>Date & Time</u>	<u>Location</u>
June 30, 2004	Room B139, DHFS
Wednesday	1 West Wilson Street
9:00 AM – 11:00 AM	Madison, WI

The hearing site is fully accessible to people with disabilities. If you are hearing or visually impaired, do not

speak English, or have circumstances that might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Deadline for Comment Submission

Written comments for this rule that are submitted using the Department's website or which the Department receives by mail or email to the contact person listed below, no later than **4:30 p.m., Wednesday, July 7, 2004** will be given the same consideration as testimony presented at the hearing.

Purpose of Rulemaking

This proposed rulemaking order contains a variety of revisions to ch. HFS 132, relating to the licensure and regulation of nursing homes and ch. HFS 134, relating to the licensure and regulation of facilities serving people with developmental disabilities. Both of these chapters have not been substantially revised for over 10 years. These administrative rule chapters have many similar requirements and both are administered by the Department's Bureau of Quality Assurance. Given the similarity of provisions in both chapters, the Department proposes to promulgate these rule modifications through a single "long-term care" facility rulemaking order.

The Department is proposing these changes for several general reasons. First, the Department wants to modify some errors and ambiguities in the existing rules that have little or no substantive effect on entities regulated under these chapters. Second, it wants to eliminate rules that have become outdated due to changes in federal regulations or related state or federal laws. Third, some existing policies in these rules need to be updated to recognize changes in service delivery and technology. For example, the proposed language for the "Resident and Staff Communication" section replaces the prescriptive requirements of the conventional hard-wired nurse call system. The new language incorporates a generic allowance to provide a means for residents to communicate with facility staff that can be activated from the residents' rooms. The Department will also be encouraging nursing facilities to adopt modern design and new program concepts by proposing to eliminate the requirement for a centralized nurse station. Another example is the Department's proposal for new standards for pain management issues. Currently, no federal regulations specifically address pain management issues. Adopting rules that reflect and expand on current knowledge in this area will facilitate a nursing home's ability to better meet the needs of its residents. Fourth, the Department wants to eliminate overly prescriptive rules where possible. Finally, the Department is striving to make the rules more reflective of and compatible with comparable federal regulations.

Statutory Authority

The Department's authority to amend and create these rules is found in s. 50.02 (2) (a), Stats.

Statutes Interpreted

The rules interpret ss. 50.02 and 50.03, Stats.

Fiscal Estimate

Generally the rule changes relieve regulatory requirements, eliminate rules and expand definitions. It is assumed that easing and/or eliminating rules would have a positive effect on the regulated entity.

The proposed s. HFS 132.46 (7) requires nursing homes to create a 'Quality Assessment and Assurance Committee' of at least 5 members to meet quarterly. This appears to add a modest administrative task however, this increase will be

offset with the repealing of s. HFS 132.65 (3) (a) that required a Pharmacy committee.

The proposed s. HFS 132.82 and 134.82 (1) adopts the federal Life Safety Code 2000. These standards may require some facilities to make repairs/upgrades. However, the rules provide an alternative solution to avoid costs to the facilities.

The fiscal impact on small business as defined in s. 227.114 (1), Stats., is listed as having no fiscal impact on the private sector. Available department statistics show only 2 of the current 443 licensed nursing homes and FDDs as small business entities and it is indeterminate if the rule changes will affect those 2 facilities.

Effect on Small Business

The fiscal impact on small business as defined in s. 227.114 (1), Stats., will be minimal. As described previously in this order, the majority of the proposed rule revisions either eliminate rules and prescriptive language, expand and update definitions for current terminology, or ease an existing standard. In addition, no new anticipated small business impact will be associated with the parallel Wisconsin proposed adoption of the 2000 edition of the Life Safety Code.

For More Information

A copy of the full text of the rule and the full text of the

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

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

Cheryl Bell-Marek, Quality Assurance Program
Specialist-Senior

Department of Health and Family Services

Bureau of Quality Assurance

1 West Wilson Street, Room 950

P.O. Box 2969

Madison, WI 53701-2969

phone: 608-264-9896, fax: 608-267-7119

e-mail: bellmcj@dhfs.state.wi.us

Submittal of proposed rules to the legislature

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

Financial Institutions – Banking

(CR 04-041)

Chapter DFI-Bkg 74, relating to authorization to collect a returned check fee.

Public Instruction

(CR 04-008)

Chapter PI 36, relating to public school inter-district open enrollment.

Transportation

(CR 04-029)

Chapter Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Rule orders filed with the revisor of statutes bureau

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

Gaming Division (CR 04-019)

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

Kickapoo Reserve Management Board (CR 03-108)

An order affecting ch. KB 1, relating to use of the land, water and facilities in the Kickapoo Valley Reserve.
Effective 7-1-04.

Medical Examining Board (CR 04-017)

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

Natural Resources (CR 03-028)

An order affecting ch. NR 216, relating to storm water

discharge permits.
Effective 8-1-04.

Natural Resources (CR 03-081)

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

Natural Resources (CR 03-106)

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

Psychology Examining Board (CR 04-021)

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

Public notices

Health and Family Services

(Medical Assistance Reimbursement for Services Provided by Free-Standing End Stage Renal Disease Providers)

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The Wisconsin Department of Health and Family Services is proposing to modify the reimbursement methodology for services provided by free-standing end stage renal disease (ESRD) providers. The Department's proposal involves no change in services.

2003 Act 33, the 2003–2005 biennial budget, directed the Department to change the Medicaid reimbursement structure for free-standing ESRD clinics. The Department will establish a free-standing ESRD provider-specific composite rate per dialysis visit that includes all covered ESRD services provided to Wisconsin Medicaid recipients eligible on the date of service. The provider-specific composite rate shall be based primarily on Medicare reimbursement. Free-standing ESRD provider-specific composite rates may be adjusted to reflect changes in pharmaceutical costs and state budgetary constraints, among other things.

Composite reimbursement rates will cover the dialysis and all dialysis-related services, including but not limited to, pharmaceutical drugs and supplies. Providers will not receive separate reimbursement for these items. The composite reimbursement will be paid each time dialysis is provided. For each covered dialysis service, the Department shall pay the free-standing ESRD provider-specific composite rate established by the Department.

Proposed Change

The proposed change is to adopt a free-standing ESRD provider-specific composite rate per dialysis visit that includes all covered end stage renal disease services that are or could be provided to a Wisconsin Medicaid recipient on the date of service. The change will apply to dialysis services provided on dates of service on or after July 1, 2004.

The projected fiscal effect of these changes is a savings of \$4.79 million GPR and \$6.71 FED for a total of \$11.5 million AF in state fiscal year 2005.

Copies of the Proposed Change:

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail

Marge Hannon Pifer

Bureau of Fee-for-Service Health Care Benefits

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701-0309

Phone

Marge Hannon Pifer

(608) 266-1940

FAX

(608) 266-1096

Attention: Marge Hannon Pifer

E-Mail

pifermh@dhfs.state.wi.us

A copy of the proposed change are available for review at the main office of any county department of social services or human services.

Written Comments:

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Department. The FAX number is (608) 266-1096. The e-mail address is pifermh@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

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