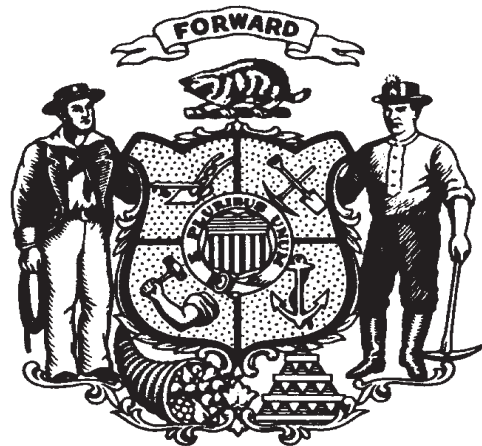


# Wisconsin Administrative Register

No. 582



Publication Date: June 30, 2004

Effective Date: July 1, 2004



Revisor of Statutes Bureau  
Suite 800, 131 West Wilson Street  
Madison, Wisconsin 53703-3233

## The 2001 – 02 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*<sup>®</sup> CD-ROM

### Bound Volumes:

Prices for the 2001 – 02 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u>	Hard Cover <u>Without Postage</u>	Soft Cover <u>With Postage</u>	Soft Cover <u>Without Postage</u>
<b>\$151.00</b>	<b>\$144.00</b>	<b>\$126.00</b>	<b>\$120.00</b>

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

### *WisLaw*<sup>®</sup> CD-ROM:

Up-to-date *WisLaw*<sup>®</sup> CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*<sup>®</sup> contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*<sup>®</sup> Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*<sup>®</sup> for their legal research. *WisLaw*<sup>®</sup> is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

*WisLaw*<sup>®</sup> is available only by annual subscription. *WisLaw*<sup>®</sup> End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin  
Department of Administration  
Bureau of Document Services  
Document Sales and Distribution Section  
P.O. Box 7840  
Madison, WI 53707–7840

---



---

## Table of contents

---



---

**Emergency rules now in effect.****Pages 5 to 12**

## Agriculture, Trade and Consumer Protection:

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

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

## Gaming:

Rule relating to the method of computing the purses earned by all individuals at the Wisconsin racetracks.

## Natural Resources:

Fish, Game, etc., Chs. NR 1—

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

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

Environmental Protection—Water Regulation, Chs. NR 300—

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

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

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

Rules relating to boathouses and fixed houseboats in navigable waterways.

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

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

Rules relating to miscellaneous structures in navigable waterways.

Rules relating to regulation of construction, dredging, and enlargement of an artificial water body.

Rules relating to dredging in navigable waterways.

Rules relating to grading on the bank of a navigable waterway.

Veterans Affairs:	Rules relating to the administration of the registered nurse education stipend program.
Workforce Development:	<u>Labor Standards, Chs. DWD 270–279</u> Rules relating to overtime pay for employees performing companionship services.
<b>Scope statements.</b>	<b>Pages 13 to 14</b>
Financial Institutions—Banking:	Rules relating to responsible high cost mortgage lending.
Health and Family Services:	Rules creating ch. HFS 148, relating to cancer drug repository programs.
Natural Resources:	Rules revising ch. NR 10, relating to the Deer Management Unit population goals and boundaries.
Transportation:	Rules affecting ch. Trans 28, relating to expanding eligibility for Harbor Assistance Program grants to private owners of harbor facilities.  Rules affecting ch. Trans 129, relating to motorcycle licensing and courses.
<b>Submittal of rules to legislative council clearinghouse.</b>	<b>Page 15</b>
Commerce:	Rules affecting chs. Comm 5 and 47, relating to petroleum environmental cleanup fund awards and associated credentials.
Health and Family Services:	Rules affecting ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).
Transportation:	Rules creating ch. Trans 202, relating to Wisconsin Scenic Byways Program.
<b>Rule-making notices.</b>	<b>Pages 16 to 32</b>
Commerce:	<u>Certifications, Licenses, etc., Ch. Comm 5</u> <u>PECFA, Ch. Comm 47</u> Hearing to consider rules relating to chs. Comm 5 and 47, Petroleum Environmental Cleanup Fund awards and associated credentials.
Health and Family Services:	<u>Management, Technology, etc., Chs. HFS 1—</u> <u>Community Services, Chs. HFS 30—</u> <u>Health, Chs. HFS 110—</u> Hearing to consider rules revising several HFS codes, relating to family care; reporting and investigation of caregiver misconduct; residential care centers for children and youth; child-placing agencies; day camps for children and day care programs established by school boards; group foster care; shelter care for children; community-based residential care facilities; patient rights and resolution of grievances; hospitals; hospices; embalming standards; reporting blood test results; and electronic benefits transfer.  <u>Community Services, Chs. HFS 30—</u> Hearing to consider rules affecting ch. HFS 57, the repeal and recreation of licensing standards relating to group foster homes for children and affecting small businesses.

Health, Chs. HFS 110—

Hearing to consider rules affecting ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).

Hearings to consider the proposed creation of chapter HFS 118, relating to Wisconsin’s Statewide Trauma Care System.

Hearings to consider rules relating to the provision and reimbursement of services under the Wisconsin Chronic Disease Program.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Environmental Protection—Water Regulation, Chs. NR 300—

Hearings to consider rules relating to the 2004 migratory game bird season.

Hearing to consider rules relating to Natural Resources Board policies on protection and management of public waters.

Environmental Protection—General, Chs. NR 100—

Hearing to consider rules relating to aquatic invasive species control grants.

Environmental Protection—Water Supply, Chs. NR 800—

Hearings on revisions to ch. NR 809, relating to reporting of analytical data to the department and the procedure for returning to compliance following an MCL violation of the nitrate, nitrite or combined nitrate and nitrite standards.

Transportation:

Hearing to consider rules affecting chs. Trans 201 and 202, relating to the Wisconsin scenic byways program.

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

**Page 33**

Insurance:

CR 04–032 – Ch. Ins 17

Natural Resources:

CR 04–011 – Chs. NR 10 and 11

CR 04–012 – Ch. NR 20

CR 04–014 – Ch. NR 50

CR 04–015 – Ch. NR 168

Public Defender:

CR 04–038 – Ch. PD 6

Transportation:

CR 04–034 – Ch. Trans 1

CR 04–042 – Ch. Trans 276

Workforce Development:

CR 04–036 – Ch. DWD 272

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

**Page 34**

Chiropractic Examining Board:

CR 04–007 – Chs. Chir 2 to 6, 9 and 10

Public Instruction:

CR 03–112 – Ch. PI 27

Regulation and Licensing:

CR 03–082 – Chs. RL 81, 82, 83 and 85

<b>Rules published with this register and final regulatory flexibility analyses.</b>	<b>Pages 35 to 36</b>
<b>Sections affected by rule revisions and corrections.</b>	<b>Pages 37 to 38</b>
<b>Sections affected by revisor's corrections not published.</b>	<b>Page 39</b>
<b>Executive orders.</b>	<b>Page 40</b>
<b>Public notices.</b>	<b>Page 41</b>
Health and Family Services:	Medical Assistance Reimbursement of Hospitals

---



---

## 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](http://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 (2) (Fish, Game, etc., Chs. NR 1-)

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

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

### Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule - making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting



Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. The state legislature has also delegated to the department rule – making authority in 2003 Wisconsin Act 240 to regulate feeding of wild animals for non-hunting purposes including recreational and supplemental feeding. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

**Publication Date:** June 10, 2004  
**Effective Date:** June 10, 2004  
**Expiration Date:** November 7, 2004

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

---

## 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

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

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

#### Finding of emergency

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

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

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

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

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

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

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

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

#### Finding of emergency

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

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

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

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

---



---

### Financial Institutions—Banking

#### Subject

Rule relating to responsible high cost mortgage lending.

#### Policy analysis

2003 Act 257 states that the department may promulgate rules for the administration of subch. II, ch. 428, Stats., regarding responsible high cost mortgage lending. This act states that such rules shall include guidelines for determining a customer's ability to repay a covered loan based upon the customer's debt-to-income ratio. The objective of the rule is to respond to the promulgation authority and requirements of 2003 Act 257. The rule discusses certain definitions, provides guidelines regarding prohibitions on and requirements of lenders and assignees, sets forth criteria regarding disclosures to customers, and includes guidelines for determining a customer's ability to repay a covered loan based upon the customer's debt-to-income ratio.

#### Statutory authority

Sections 428.210 (1) and 227.11 (2), Stats.

#### Staff time required

500 hours.

#### Federal regulation addressing the activities

12 CFR 226.32.

- establish the limit of the handling fee that medical facilities and pharmacies may charge for accepting, distributing or dispensing donated drugs or supplies; and

- establish the forms to be used to record the donation and dispersal of drugs and supplies.

Pursuant to section 2 of 2003 Wisconsin Act 175, the department is required to submit in proposed form the required rules to the Legislative Council Clearinghouse under s. 227.15 (1), Stats., by January 1, 2005.

#### Statutory authority

Section 255.055 (7), Stats.

#### Staff time required

The Department estimates it will take 100 hours of staff time to draft the rules. An advisory committee will provide opportunities for consumer, advocate and provider input to the drafting process.

#### Comparison to federal regulations

The proposed rules are affected by 21 CFR 200–299, 21 CFR 1300–1302, and 21 CFR 1304–1308. These regulations constitute the Food and Drug Administration (FDA) and Drug Enforcement Agency (DEA) regulations that will affect the type of medications that can be donated to the cancer drug repository.

### Health and Family Services

#### Subject

The Wisconsin Department of Health and Family Services proposes to create ch. HFS 148, relating to cancer drug repository programs.

#### Policy analysis

2003 Wisconsin Act 175 created s. 255.055, Stats., which requires the Department to establish and maintain a cancer drug repository program by July 1, 2005. The intent of the legislation is to reduce the financial burden that cancer drugs and supplies needed to administer cancer drugs have on patients with cancer. The legislation allows individuals to donate cancer drugs or supplies that meet specific requirements to the repository. Those drugs will then be dispensed to eligible persons with cancer. In doing so, the program will eliminate the potential waste of cancer drugs and supplies due to changes in physician orders or patient death. 2003 Wisconsin Act 175 requires the Department to promulgate rules for the program. The proposed rules will do all of the following:

- establish a list of cancer drugs and supplies that the cancer drug repository program will accept and not accept for dispensing;

- establish eligibility requirements and standards and procedures for medical facilities' and pharmacies' accepting, storing and dispensing drugs and supplies;

- establish criteria for and the means of identifying individuals who are eligible to receive donated cancer drugs or supplies;

### Natural Resources

#### Subject

Rule affecting Ch. NR 10 pertaining to the modification of Deer Management Unit (DMU) population goals and boundaries.

#### Policy analysis

Wisconsin Deer herds are managed separately in 135 DMUs. These units generally have recognizable boundaries, are large enough for herd monitoring, and encompass areas of similar land use. Population goals are prescribed for each management unit. These goals describe the number of deer per square mile of deer range during winter. Deer population goals are based on considerations of ecological, social, economic, and management capability issues. They are formed following considerable public input on all of these issues. Therefore, deer population goal decisions reflect the Ecosystem Management Model adopted by the Natural Resources Board, where socio-economic, ecological and institutional factors are all weighted together.

Deer unit boundaries and goals are reviewed every 3 years according to the Wis. Adm. Code (s. NR 10.104 (3)) requirements and Voigt case (Chippewa treaty rights) stipulations. However, given the constraints placed on agency resources due to CWD and the budget shortfall, the Department, in consultation with the Wisconsin Conservation Congress and Great Lakes Indian Fish and Wildlife Commission (GLIFWC) recommended a limited unit review in 2004.

The Conservation Congress, GLIFWC, and the Department determined which DMUs were selected for goal or boundary changes. The Department has evaluated the need for deer population goal reviews based on the following

criteria: 1) Intolerable level of agricultural damage when at goal; 2) Ability for of hunters to harvest enough deer to keep the population at the goal level; 3) Hunter demand for antlerless permits; 4) Vehicle–deer accident rate; and 5) Hunter buck harvest success rate.

**Statutory authority**

Section 29.014, Stats.

**Staff time required**

Approximately 263 hours will be needed by the department.

**Comparison to federal regulations**

Provided state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of Federal statutes and regulations, the regulation of hunting and trapping of native species has been delegated to state fish and wildlife agencies. None of the proposed rules exceed the authorities granted the states in 50 CFR 10.

**Entities affected by the rule**

Deer affect nearly every Wisconsin citizen's life in some way. Many of these effects are significant from a recreational, economic, and/or social perspective. We expect controversy with Department recommendations for deer management unit goals, because no one goal can satisfy the concerns of all stakeholders. We particularly expect dissatisfaction from the hunting community and farming community in some units as some goals will not keep deer herds as abundant as hunters would like and others will not go far enough to address the concerns of farmers experiencing crop damage. We also expect controversy where Department recommendations are not identical to those developed by people attending the local hearings. In addition, controversy is expected where the department is not recommending unit boundary modifications preferred by those attending the hearings.

**Transportation**

**Subject**

Rule will amend ch. Trans 28 by expanding eligibility for Harbor Assistance Program (HAP) grants to private owners of harbor facilities.

**Policy analysis**

2003 Wisconsin Act 208 expands the eligibility for program grants to private owners of harbor facilities. Section

85.095 (1) (a), Stats., was amended to define eligible applicant for a HAP grant to include a person who owns a harbor facility. Section 85.095 (5), Stats., was created to cause private owners of harbor facilities that receive HAP grants to hold the facilities benefiting from the grant open to public access for at least 10 years. This rule making will bring ch. Trans 28 into compliance with the statutory changes.

**Statutory authority**

Section 85.095, Stats., as amended by 2003 Wisconsin Act 208.

**Staff time required**

Approximately 160 hours.

**Comparison to federal regulations**

None.

**Transportation**

**Subject**

*Objective of the rule.* This rule making will amend ch. Trans 129, relating to motorcycle licensing and courses, by changing the time required for the Experienced Rider Course (ERC) from the existing eight (8) hours to five (5) hours as prescribed in the new ERC curriculum developed by the Motorcycle Safety Foundation.

**Policy analysis**

Currently the rule requires that the ERC course shall consist of at least 8 hours of instruction which includes both classroom and range instruction. The new curriculum is 5 hours in length and uses discussion on the range rather than in a classroom setting. Shorter courses are more efficient and allows more courses to be run, thus reducing the student waiting lists at training sites.

**Comparison to federal regulations**

None.

**Statutory authority**

Section 85.30, Stats.

**Staff time required**

Approximately 40 hours which includes time for preparing paperwork, attending meetings and/or hearings.

---

---

## 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 June 14, 2004, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

Chapters Comm 5 and 47, relating to petroleum environmental cleanup fund awards and associated credentials.

**Agency Procedure for Promulgation**

A public hearing will be held on July 15, 2004.

The Division of Environmental and Regulatory Services is the organizational unit responsible for promulgation of the proposed rule.

**Agency Contact**

Sam Rockweiler  
608 266-0797

### Health and Family Services

**Rule Submittal Date**

On June 8, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Subject Matter**

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

**Agency Procedure for Promulgation**

A public hearing has been scheduled for July 13, 2004.

**Agency Contact**

Randy McElhose, HIRSP Administrative Rules  
P.O. Box 309  
Room B274  
1 W. Wilson Street  
Madison, WI 53701-0309  
MCELHRF@dhfs.state.wi.us  
Phone: (608) 267-7127  
greerrj@dhfs.state.wi.us

### Transportation

**Rule Submittal Date**

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

**Subject Matter**

Ch. Trans 202, relating to Wisconsin Scenic Byways Program.

**Agency Procedure for Promulgation**

A public hearing has been scheduled for July 27, 2004.

The Division of Transportation Investment Management, Bureau of Planning, is the organizational unit responsible for promulgation of the proposed rule.

**Agency Contact**

Julie A. Johnson, Paralegal  
608 266-8810

---



---

## Rule-making notices

---



---

### Notice of Hearing

#### Commerce

#### (Certifications, Licenses, etc., Ch. Comm 5) (PECFA, Ch. Comm 47)

#### [CR 04-058]

NOTICE IS HEREBY GIVEN that pursuant to sections 101.143, 101.144, and 227.11 (2) (a) of the statutes, interpreting sections 101.143 and 101.144 of the statutes, the Department of Commerce will hold a public hearing on proposed rules for chapters Comm 5 and 47, relating to Petroleum Environmental Cleanup Fund awards and associated credentials.

The public hearing will be held as follows:

**Date and Time:**

Thursday

**July 15, 2004**

Commencing at 10:30 a.m.

**Location:**

Thompson Commerce Center, Third Floor, Room 3B

201 West Washington Avenue

Madison, Wisconsin

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, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until July 19, 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. E-mail comments should be sent to [srockweiler@commerce.state.wi.us](mailto:srockweiler@commerce.state.wi.us). If e-mail submittal is not possible, written comments may be submitted to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Renee Dickey at (608) 266-8765 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 of Proposed Rules**

Statutory Authority and Statutes Interpreted

Statutory Authority: ss. 101.143, 101.144, and 227.11 (2) (a) Stats., and s. 9110 (3yu) (c) of 1999 Wisconsin Act 9

Statutes Interpreted: ss. 101.143 and 101.144 Stats.

Summary

Under sections 101.143, 101.144, and 227.11 (2) (a) of the Wisconsin Statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the PECFA fund is to reimburse property owners for eligible costs incurred because

of a petroleum product discharge from a storage system or home oil tank system. Under section 9110 (3yu) (c) of 1999 Wisconsin Act 9, the Department is required to promulgate new rules that implement a usual-and-customary-cost schedule for items which are commonly associated with claims for reimbursement from the fund.

The Department's current rules for the PECFA fund are contained in chapter Comm 47. The proposed changes to Comm 47 would primarily (1) update the Department's criteria for reimbursing costs for cleanup of properties contaminated by petroleum product discharges, to be consistent with several statutory changes that have occurred after corresponding portions of this chapter were either established or revised; and (2) implement various improvements to the PECFA administrative and regulatory processes.

The major elements of these changes consist of (1) establishing Certified PECFA Program Managers, who would be responsible for managing the financial aspects of all PECFA projects; (2) codifying the Department's competitive public bidding process, and applying it to both existing and newly reported sites, in a prioritized manner that addresses the highest and most costly threats to human health and the environment first; and (3) establishing a usual and customary cost schedule, which would control costs for most of the work not covered by the public bidding process, such as for low-cost sites.

**Federal Programs**

The PECFA program was originally created in response to the federal Environmental Protection Agency's requirement that all underground storage tank system owners have the financial means to clean up any contamination caused by a leak from those systems. However, PECFA no longer provides that financial protection for newly installed tank systems, and therefore there are no existing federal regulations which impact on how the PECFA program operates. No proposed federal regulations are known that would likewise impact the PECFA program.

**Programs in Adjacent States**

Of the four adjacent states, only Minnesota and Illinois are operating programs similar to the PECFA program. Some of the information the Department used in drafting the proposed rules for usual and customary costs and for public bidding was obtained from the current rules in place in Minnesota. Due to a financial shortfall, Illinois is only in the early stages of restarting their program, after years of little to no activity.

**Data Sources and Fiscal Impacts**

A variety of sources were used to gather data to establish the new rules and corresponding cost schedule for usual and customary costs, and the proposed rules for public bidding. The Department contacted other states with similar programs and was provided with feedback on experiences in similar circumstances. The Department also surveyed stakeholders in the current program, asking for feedback; and consulted with an external advisory committee to assist in drafting the proposed rules.

Data collected to determine what costs are usual and customary indicates that the businesses which are participating in the PECFA program are able to provide the necessary services at the levels proposed in the corresponding cost schedule. Among the sources that were used to gather



this data were the Department's current bidding process, current invoices for these services, a survey of the participating firms and commodity service providers, staff with consulting experience, and RSMeans Environmental Cost Data.

### 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.

### Initial Regulatory Flexibility Analysis

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

The rules will impact small businesses that are or will be conducting remediations of petroleum product contaminations, if reimbursement from the PECFA fund is intended.

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

The rules will require submittal of standardized forms for (1) classifying PECFA occurrences that have been reported to the Department of Natural Resources but have not been closed, as of the effective date of the rule; (2) requesting reimbursement for usual and customary costs; (3) periodically reporting progress for site investigations; (4) submitting bids for performing remediations or investigations; and (5) periodically reporting progress in completing work covered by bidding.

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

The rules will not require any new or additional professional skills for compliance.

### Fiscal Estimate

There is no effect on state or local government.

The proposed rules and an analysis of the rules are available on the Internet at the Web site for petroleum products and PECFA at [commerce.wi.gov](http://commerce.wi.gov). Paper copies may be obtained without cost from Renee Dickey at the Department of Commerce, Bureau of PECFA, P.O. Box 7837, Madison, WI 53707-7837, or at [rdickey@commerce.state.wi.us](mailto:rdickey@commerce.state.wi.us), or at telephone (608) 264-8765 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

## Notice of Hearing

### Health and Family Services

(Management, Technology, etc., Chs. HFS 1—)  
(Community Services, Chs. HFS 30—)  
(Health, Chs. HFS 110—)

[CR 04-040]

NOTICE IS HEREBY GIVEN that pursuant to sections 46.286 (4) to (7), 46.287 (2) (a) 1. (intro.), 46.288, 48.67, 49.797 (7), 50.02 (2) and (3), 50.36 (1) and (2), 50.95, 51.61 (5) and (9), 146.40 (4g) and (4r), 157.01, 227.11 (2), 250.04 (7), and 254.13, Stats., the Department of Health and Family Services will hold a public hearing to consider the proposed

order to revise several HFS codes, relating to family care; reporting and investigation of caregiver misconduct; residential care centers for children and youth; child-placing agencies; day camps for children and day care programs established by school boards; group foster care; shelter care for children; community-based residential care facilities; patient rights and resolution of grievances; hospitals; hospices; embalming standards; reporting blood test results; and electronic benefits transfer.

### Hearing Information

#### Date and Time

**July 12, 2004**  
Monday  
10:00 a.m. to 1:00 p.m.

#### Location

Dept. of Health and Family  
Services  
Wilson Street State Office  
Building  
1 W. Wilson St., Rm. B272  
Madison, WI

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

Written comments may be submitted at the public hearing, or in lieu of attending a public hearing written comments can be submitted by regular mail or email to the contact person listed below. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at the web address listed below. **The deadline for submitting comments is 4:30 p.m., on July 20, 2004.**

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

The proposed rulemaking order contains a variety of minor and technical changes relating to chs. HFS 10, family care; HFS 13, reporting and investigation of caregiver misconduct; HFS 52, residential care centers for children and youth, HFS 54, child-placing agencies; HFS 55, day camps for children and day care programs established by school boards; HFS 57 group foster care; HFS 59, shelter care for children; HFS 83, community-based residential care facilities; HFS 94, patient rights and resolution of grievances; HFS 124, hospitals; HFS 131, hospices; HFS 136, embalming standards; HFS 181, reporting blood test results; and HFS 252, electronic benefits transfer.

In order to keep the Department's body of the administrative code updated, the Department proposes to make a variety of minor and technical changes to a number of its administrative rules. The Department is issuing these changes in a single order to conserve limited agency resources.

### Summary of Proposed Changes

**HFS 10, Family Care** – The Department proposes to revise HFS 10 to create a definition of “action” and “appeal” in reference to acts taken by an aging and disability resource center or county economic support unit; to create a definition of “frail elder”; to revise the definition of “requires ongoing care, assistance or supervision”; to simplify the description of a “family care target group”; to correct the usage of the term “screen” versus “screening” relating to eligibility; to change the reference concerning the council on long-term care; to replace the word “complaints” with the word “appeals” and to make miscellaneous word changes; to update notes and

internal cross-references; to expand the circumstances for notification of due process and hearing rights; to clarify when a fair hearing may be had; and to include an additional provision on client rights.

**HFS 13. Reporting and investigation of caregiver misconduct** – The Department proposes to revise HFS 13 to change the definition of “non-client resident” to have the meaning specified in s. 50.065 (1) (cn), Stats.; to remove the requirement that the Department send notices of decisions on caregiver misconduct by certified mail; and to adjust the time within which the subject of a substantiation decision of caregiver misconduct can request a hearing.

**HFS 52. Residential care centers for children and youth** – The Department proposes to revise HFS 52 to create or update notes to include the Department’s website address and or list of field office addresses; to remove citations to individual sections of the Wisconsin Commercial Building Code; and to remove the time interval within which building inspections are required.

**HFS 54. Child-placing agencies** – The Department proposes to revise HFS 54 to create or update notes to include the Department’s website address and or list of field office addresses; to include a requirement that agencies comply with federal, state, and local laws and license provisions; to identify the reasons that a license may be denied, revoked, suspended or enforcement actions and license conditions may be implemented; to include a provision requiring licensees to observe the patient rights under s. 51.61, Stats.; and to include the prohibition under s. 48.60, Stats., that disallows placements of a child in an agency by the Department or Department of Corrections, if a Department review fails to show the need for additional placement resources.

**HFS 55. Day camps for children and day care programs established by school boards** – The Department proposes to revise HFS 55 to require staff training on sudden infant death syndrome, if the camp is licensed to care for children under 1 year of age; to remove citations to individual sections of the Wisconsin Commercial Building Code; to create a note explaining the USDA Child and Adult Care Food Program meal pattern requirements; to update Appendix A, field office locations; to create Appendix B, relating to meal patterns for children 1–12 years of age; to create a provision to ban smoking on the premises as defined in the rule; and to clarify an internal cross reference in s. 55.44 (5) (d).

**HFS 57. Group foster care** – The Department proposes to revise HFS 57 to create or update notes to include the Department’s website address and or list of field office addresses; to include a provision requiring licensees to observe the patient rights under s. 51.61, Stats.; and to include a requirement that licensees comply with federal, state, and local laws and license provisions.

**HFS 59. Shelter care for children** – The Department proposes to revise HFS 59 to include a requirement that licensees comply with federal, state, and local laws and license provisions; to remove citations to individual sections of the Wisconsin Commercial Building Code; to include a provision requiring licensees to observe the patient rights under s. 51.61, Stats.; to identify the reasons that a license may be denied, revoked, suspended, an enforcement action taken, or when license conditions may be implemented.

**HFS 83. Community-based residential care facilities** – The Department proposes to revise HFS 83 to remove the requirement that controlled substances be destroyed by using U.S. drug enforcement agency (DEA) procedures and the related note.

**HFS 94. Patient rights and resolution of grievances** – The Department proposes to revise HFS 94 to create or update

notes to include the Department’s website address and or list of field office addresses.

**HFS 124. Hospital** – The Department proposes to revise HFS 124 to clarify provisions on infection control; to create a definition for “automated dispensing system; to revise the definition of “dietician”; to update references to the life safety code; and to update the provisions for critical access hospital bed complement.

**HFS 131. Hospices** – The Department proposes to revise HFS 131 to update references to the life safety code.

**HFS 136. Embalming standards** – The Department proposes to revise HFS 136 to include medical schools and mortuary schools locations where embalming may occur.

**HFS 181. Reporting of blood test results** – The Department proposes to revise HFS 181 relating to accessibility and the reporting responsibilities for blood sample test results. These changes clarify the role of the Department in communicating blood sample test results with health care providers.

**HFS 252. Electronic benefit transfer** – The Department proposes to revise HFS 252 to amend the definition of “coupon” and “IPV” (“intentional program violation”); to increase the time within which a recipient can contact customer service for dispute resolution; and to remove the requirement that food stamp groups moving out of Wisconsin have electronic food stamp benefits converted to paper coupons.

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

Some of the rules contained in this order affect small business; however, the proposed revisions to these rules are minor or technical and have little to no substantive effect on those regulated by these rules. Consequently, no costs to the private sector are anticipated.

#### **Fiscal Estimate**

The Department believes that the changes proposed in the associated rulemaking order will not have a fiscal effect.

#### **Copies of Rule and Contact Person**

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:

Rosie Greer  
DHFS–OLC–Rules Unit  
1 W. Wilson Street, Rm. 658  
Madison, WI 53702  
608–266–1279  
greerj@dhfs.state.wi.us

### **Notice of Hearing Health and Family Services (Community Services, Chs. HFS 30—) [CR 04–067]**

NOTICE IS HEREBY GIVEN that pursuant to Sections 48.67 and 227.11 (2) (a), Stats., interpreting Chs. 115 and 118 and ss. 46.036, 48.02 (1) and (12), 48.023, 48.57, 48.619, 48.625, 48.627, 48.63, 48.64, 48.66, 48.67, 48.68, 48.685,



48.69, 48.70, 48.715, 48.74, 48.78, 48.981 (1) (d), (2), (3) and (7), 48.988, 48.989, 49.857 (2), 51.30 (4), 51.61, 73.0301, 121.53 (1), 165.83 (1) (b), 227.51 (3), 252.04, 346.62, 346.63, 347.48 (1), 347.48 (2m), 448.01 (5) and (6), 450.01 (15), 457.08, 938.02 (13), 938.34 (4h), and 948.02 (10m), Stats., the Department of Health and Family Services will hold a public hearing to consider the repeal and recreation of licensing standards relating to group foster homes for children and affecting small businesses.

### Hearing Information

The public hearing will be held:

<u>Date &amp; Time</u>	<u>Location</u>
<b>July 26, 2004</b>	DCFS Southern Regional Office
Monday	Rm 156
1:00 p.m. to 4:00 p.m.	2917 International Lane
	Madison, WI

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

Written comments may be submitted at the public hearing, or in lieu of attending a public hearing written comments can be submitted by regular mail or email to the contact person listed below. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at the web address listed below.

Deadline for Comment Submission

The deadline for submitting comments is **4:30 p.m., on August 2, 2004.**

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

In Wisconsin, 120 group foster homes provide residence, care and services to children, adolescents and some young adults to age 19, if full-time in school and completing their high school education. The children, youth and young adults residing in group foster homes are under juvenile court jurisdiction and have one or more of the following conditions: emotional or behavioral disorders; drug, alcohol or other substance abuse problems; difficulty acquiring life skills; or a developmental disability.

Placements into group foster homes occur from youth correctional facilities and institutions, county human service or social service agencies and via the interstate compact for placement of children under ss. 48.988 and 48.989, Stats., or are made by courts or parents.

The Department is responsible under ss. 48.625, 48.66 and 48.67, Stats., for the licensure and supervision of group foster homes for children. Licensure requirements and standards for operating a group home are set forth in ch. HFS 57, Wis. Adm. Code. Chapter HFS 57 has not undergone any significant revision since its original promulgation in 1976. The proposed rules seek to update ch. HFS 57 to bring it into compliance with current drafting standards, statutes and other rules and will add new provisions which support the intent of s. 48.67, Stats., to protect the health, safety and welfare of children.

While the current group foster home rule addresses areas related to personnel, care of children, physical plant and environment, the service needs of children and youth have changed considerably since the original promulgation of the

group foster home standards in 1976. The complex treatment-related needs and level of services required by children and youth currently being placed in group foster homes necessitates a revision of licensing standards.

The Department proposes provisions related to all of the following:

- Staffing levels and staff qualifications.
- The roles and responsibilities of sponsoring agencies.
- Caregiver background checks.
- Child abuse and neglect reporting responsibilities.
- Admission criteria, individual service plan components, and documentation and review standards.
- Behavior management policies.
- Physical plant, and safety and health of children and youth in care.
- Medical care.
- Policies and procedures for discharging residents.
- Respite care.
- Care for custodial parents and expectant mothers.
- Care for children six years of age and younger.
- Serious incident reporting.
- Patient rights under s. 51.61, Stats., and ch. HFS 94. Inspections, complaint investigations, and enforcement actions.

### Effect on Small Business (Initial Regulatory Flexibility Analysis)

The proposed rule will affect applicants for licensure and the 120 group homes currently licensed by the Department. Section 48.625, Stats., allows individuals, profit and non-profit corporations, and privately owned licensed child welfare agencies to operate a group home so long as the person or entity is licensed by the Department. A majority of the licensed group homes are operated by private entities. The remaining number of group homes is operated by licensed county agencies.

### Fiscal Estimate

Licensing rules for group foster homes for children are currently in effect. The proposed revisions will not affect state operations regarding the licensure of these programs or the responsibilities of DHFS staff in licensing, investigating or monitoring of these programs.

### 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:

Kimberly Hahn  
 DCFS, Bureau of Regulation and Licensing  
 1 West Wilson Street; P.O. Box 8916  
 Madison, WI 53708-8916  
 (608) 266-9314  
[hahnks@dhfs.state.wi.us](mailto:hahnks@dhfs.state.wi.us)

**Notice of Hearing**  
**Health and Family Services**  
**(Health, Chs. HFS 110—)**  
**[CR 04–056]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 149.143 (2) (a) 2., 3., and 4., and (3), Stats., and 227.11 (2) Stats., interpreting ss. 149.14 (5m), 149.142, 149.143, 149.146, and 149.165, Stats., the Department of Health and Family Services will hold a public hearing to consider the proposed permanent rules and emergency rules amending ss. HFS 119.07 (6) (b) to (d) and 119.15 (2) and (3), relating to operation of the health insurance risk-sharing plan (HIRSP).

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

**Hearing Information**

<u>Date and Time</u>	<u>Location</u>
<b>July 13, 2004</b> Tuesday Beginning at 1:00 p.m.	Conference Room 372 (3 <sup>rd</sup> Floor) State Office Building 1 West Wilson Street <b>Madison, WI</b>

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

Written comments may be submitted at the public hearing, or in lieu of attending a public hearing written comments can be submitted by regular mail or email to the contact person listed below. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at the web address listed below. **The deadline for submitting comments is 4:30 p.m., on July, 19, 2004.**

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

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

HIRSP Plan 1 is for policyholders that do not have Medicare. Ninety percent of the 17,669 HIRSP policies in effect in February 2004 were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 12.2% for policyholders not receiving a premium reduction. The average rate increase for

policyholders receiving a premium reduction is also 12.2%. Rate increases for individual policyholders within Plan 1 range from 9.6% to 13.5%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. Plan 1 rate increases reflect general and industry-wide premium increases and take into account the increase in costs associated with Plan 1 claims.

HIRSP Plan 2 is for persons eligible for Medicare because of a disability or because they become age-eligible for Medicare while enrolled in HIRSP. Plan 2 has a \$500 deductible. Ten percent of the 17,669 HIRSP policies in effect in February 2004 were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 18.4% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is also 18.4%. Rate increases for individual policyholders within Plan 2 range from 15.7% to 20.0%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 rate increases reflect general and industry-wide cost increases and take into account the increase in costs associated with Plan 2 claims. Plan 2 premiums are also set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

**Initial Regulatory Flexibility Analysis**

HIRSP program statutes require an assessment of insurers and providers in order to help finance HIRSP. The rule changes do not affect health insurers who are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. The rules changes may affect some health care providers that are small businesses. The net fiscal impact of HIRSP on these small health care providers is unknown.

**Fiscal Estimate**

The Health Insurance Risk-Sharing Plan (HIRSP) has the purpose of making health insurance coverage available to medically uninsured residents of the state. This order updates HIRSP premiums for policyholders effective July 1, 2004. It also adjusts total HIRSP insurer assessments and provider payment rates for the 12-month period beginning July 1, 2004. This adjustment process is being done in order to reflect changing HIRSP costs and a statute-specified calculation methodology, in order to fund total HIRSP costs.

The fiscal adjustments contained in this order were developed by an independent actuarial firm on behalf of HIRSP. The projected adjustments have been reviewed by DHFS staff and approved by the HIRSP Board of Governors. By law, the Board is a diverse body composed of consumers, insurers, health care providers, small business and other affected parties. By statute, these adjustments include estimates for the annual reconciliation process, which is based on the previous calendar year and implemented in the subsequent plan year. The fiscal adjustments are based upon a combination of a retrospective reconciliation process, current HIRSP expenses, inflation trends in medical care and statutory requirements. The resulting adjustments are then applied to the time-period beginning July 1, 2004. Similar annual fiscal adjustments to the HIRSP rules have occurred in each state fiscal year since 1998.

The amount of \$152,283,191 will be required to be collected from insurers, providers and policyholder in order to fund HIRSP in SFY 2005. The total cost to fund HIRSP in SFY 2005 is estimated to be \$168,006,117. The total required contribution for insurers is \$35,216,294, but due to a prior year surplus of \$2,770,012, the insurers' assessment amount for SFY 2005 is \$32,446,282, a decrease of \$2,997,827 from SFY 2004. The total required contribution for providers is \$35,216,294, but due to a prior year surplus of \$1,0936,317, the providers' contribution amount for SFY 2005 is

\$34,122,977, a decrease of \$5,047,376 from SFY 2004. The total required contribution for policyholders is \$97,573,530, but due to a prior year surplus of \$11,859,597, policyholders' necessary premium contribution amount for SFY 2005 is \$85,713,933, a decrease of \$9,366,073 from SFY 2004. Although the total policyholder required amount decreases, this rule increases policyholder premiums in order to comply with the statutory requirements. Plan 1 premiums will increase an average of 12.2% to keep rates at the statutorily-established minimum rate, i.e., 140% of the industry standard rate. Premiums for Plan 2 (the plan for HIRSP policyholders who are also on Medicare) will increase an average of 18.4% based on the criteria established in statute. Therefore, policyholders will actually pay \$102,812,878 in premiums, which is \$5,239,348 above the required policyholder contribution.

HIRSP has an impact on policyholders, insurers and health providers. Under HIRSP, policyholders are required by law to fund 60% of its costs, while Wisconsin's health insurers and health care providers are each required to fund 20%. HIRSP offers health insurance to high medically at-risk citizens, at rates subsidized by healthcare insurers and providers of service. HIRSP has approximately 17,700 policyholders, out of a Wisconsin population of about 5.5 million. HIRSP increases the number of Wisconsin citizens with health insurance. Wisconsin citizens are helped because they can obtain otherwise unavailable health insurance coverage. This allows them to improve their health status. Health care insurers find themselves unable to serve this marketplace niche and health care providers receive additional customers.

#### Copies of Rule and Contact Person

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:

Randy McElhose  
Division of Health Care Financing  
P.O. Box 309, Room B274  
1 W. Wilson St.  
Madison, WI 53701-0309  
Phone: (608) 267-7127 or if you are hearing impaired,  
(608) 266-1511 (TTY)  
Fax: (608) 264-7720  
[Mcelhrf@dhfs.state.wi.us](mailto:Mcelhrf@dhfs.state.wi.us)

### Notice of Hearings Health and Family Services (Health, Chs. HFS 110—) [CR 04-055]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.16 (1), 227.17 and 227.18, Stats., and interpreting ss. 49.45 (30e), 49.46 (2) (b) 6. Lm, 51.04, 51.42 (7) (b), and 51.61, Stats., the Department of Health and Family Services will hold public hearings to consider the proposed creation of chapter HFS 118, relating to Wisconsin's Statewide Trauma Care System.

#### Hearing Information

The public hearings will be held:

<u>Date &amp; Time</u>	<u>Location</u>
<b>July 15, 2004</b> Thursday 10:00am – 2:00pm	Room B139 State Office Building 1 West Wilson Street Madison, WI
<b>July 15, 2004</b> Thursday 4:30pm – 6:30pm	Room B139 State Office Building 1 West Wilson Street Madison, WI
<b>July 16, 2004</b> Friday 10:00am – 2:00pm	Room 45 Milwaukee State Office Bldg. 819 North 6 <sup>th</sup> St. Milwaukee, WI
<b>July 22, 2004</b> Thursday  10:00am – 3pm	Room 152A Northeastern Regional Public Health Office 200 North Jefferson Street Green Bay, WI
<b>July 23, 2004</b> Friday 9:00am – 1:00pm	Conference Room Northern Regional Public Health Off. 1853 North Stevens Street Rhineland, WI
<b>July 27, 2004</b> Tuesday 11:00am – 3:00pm	Room 123 DHFS State Office Building 610 Gibson Street Eau Claire, 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 at the end of this notice at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments may be submitted at the public hearing or in lieu of attending a public hearing, written comments can be submitted by regular mail or email to the contact person listed below. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at the web address listed below.

#### Deadline for Comment Submission

The deadline for submitting comments is **4:30 p.m., August 6, 2004.**

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

The Department proposes to create ch. HFS 118, rules governing the development and operation of Wisconsin's Statewide Trauma Care System. The system's objective is to reduce death and disability resulting from traumatic injury by:

- Decreasing the incidence of trauma;
- Providing optimal care of trauma victims and their families; and
- Collecting and assessing trauma-related data.



Trauma is a sudden physical injury caused by the application of an external force or violence, such as a motor vehicle crash, a fall or a blow from a blunt or penetrating instrument. Trauma is the leading cause of death in Wisconsin among people under age 35 and is the fourth leading cause of death among the general Wisconsin population. Traumatic injury and its resultant care may, directly or indirectly, affect all Wisconsin residents and visitors. Section 146.56, Stats., directs the Department of Health and Family Services to develop and implement a statewide trauma care system. Through a statewide trauma system, health care and public safety participants will best be able to respond to and address the needs of trauma victims and their families. The Statewide Trauma Advisory Council, established under s. 15.197 (25), Stats., and appointed by the Secretary of the Department of Health and Family Services, has been collaborating with the Department for the past three years towards the development and implementation of Wisconsin's Statewide Trauma Care System. Wisconsin's Statewide Trauma Care System, when fully implemented, will enhance community health through an organized system of injury prevention, acute care and rehabilitation that is fully integrated with the public health care system in a community.

The Department is proposing the following through its creation of chapter HFS 118:

— A method by which to classify the emergency care capabilities of all Wisconsin hospitals;

— Use of the American College of Surgeons publication, *Resources for Optimal Care of the Injured Patient: 1999*, to evaluate the adequacy of hospitals' trauma care capabilities;

— Policies guiding the development and use of Regional Trauma Advisory Councils for the purpose of developing, implementing and monitoring the trauma care system; and

— Policies governing the establishment and operation of a statewide trauma registry; triage and transfer protocols among trauma care providers; and the promotion of improved trauma care provider performance.

Data collected from the state trauma registry on injury incidence, patient care and outcomes, specified in section HFS 118.09, will help identify problems and evaluate the performance of the existing trauma care system. Through this information, communities will be able to assess the nature of traumatic injuries in Wisconsin and establish appropriate injury prevention programs to reduce the occurrence of injuries, expedite patients' recovery and minimize the lasting effects of injuries.

### **Effect on Small Business**

This chapter will primarily affect Wisconsin hospitals, rural medical centers and ambulance service providers. Based on fiscal year 2002 data, three hospitals had annual revenues under \$5 million. There are currently 456 ambulance service providers in Wisconsin. The Department does not have annual revenue data for ambulance service providers. However, the Department presumes that most, if not all, ambulance service providers have annual revenues under \$5 million.

Under these proposed HFS 118 rules, the Department would require all ambulance service providers to affiliate and participate with a Regional Trauma Advisory Council (RTAC). The purpose of such affiliation is to participate in their region's trauma care system. The proposed rules require ambulance service providers to state their RTAC affiliation choice in the ambulance service provider's operational plan. Under chapter HFS 110, ambulance service providers already must submit operational plans to the Department. The Department collects operational plans to ensure the

appropriate operation of ambulance services. There will be no additional cost to fulfill this obligation.

### **Fiscal Estimate**

Section 146.56 of the statutes mandates a statewide trauma care system and requires the Department to promulgate rules to develop and implement the system. The statutes also require the Department to develop Regional Trauma Advisory Councils (RTACs). The rule requires hospitals to become affiliated with a Regional Trauma Advisory Council by December 31, 2004. There will be no fiscal effect as a result of this requirement.

Under this statute, hospitals are required to certify to the Department the classification level of trauma care services they provide. Trauma facilities are classified as Level I, II, III, or IV, depending on the comprehensiveness of the trauma care provided. Each hospital determines the level of trauma facility care for which it qualifies. If a hospital wishes to become a Level I or Level II trauma care facility, it must receive verification from the American College of Surgeons (ACS). Hospitals not seeking to obtain Level I or II trauma status need only do a self-report survey.

This rule requires hospitals to report the level of their trauma facilities to the Department. The rule does not require that hospitals attain a certain level of facility. Any costs that hospitals incur in becoming Level I or II facilities would be the result of the verification process, not the reporting requirement of the rule. There will, therefore, be no cost to hospitals as the result of this requirement.

The rule requires Emergency Medical Services (EMS) to become affiliated with an RTAC. There will be no cost to EMS providers for this affiliation.

The rule establishes policies governing the operation of a statewide trauma registry and the promotion of improved trauma provider performance. When the registry is operational, hospitals and EMS providers will be required to submit trauma data on a quarterly basis to the registry. The Department will use this data to improve trauma care.

It is likely that most agencies will collect trauma data for their own purposes. Hospitals with Level I and Level II trauma centers, for example, are required to collect trauma data as a condition of their verification. The requirements of this rule are not expected to result in significant additional cost for agencies that are already collecting this data. To the extent that hospitals and EMS providers will be required to gather data that has not previously been collected, this requirement may result in some costs to these agencies. It is not possible to estimate these costs, but they are not expected to be significant.

There are no new local government requirements.

The trauma system is implemented on a regional basis and requires Regional Trauma Advisory Councils for its implementation and evaluation. The RTACs and the trauma system will require long-term funding for its sustainability. Hospitals will need to reclassify themselves every three years, but the costs are the same as summarized above. The trauma system shall also require a state trauma registry in order to collect data for the evaluation of the system's effectiveness.

### **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 the Department's representative listed below:

Marianne Peck RN, MSN

Bureau of Local Health Support and Emergency Medical Services

Division of Public Health

1 W. Wilson St., Room 118

Madison, WI 53702

608-266-0601

[peckme@dhfs.state.wi.us](mailto:peckme@dhfs.state.wi.us)

**Notice of Hearings**  
**Health and Family Services**  
**(Health, Chs. HFS 110—)**  
**[CR 04-051]**

Notice is hereby given that, pursuant to ss. 49.68 (2) (a) to (c) and (3), 49.683, 49.685 (8) (c) and 49.687 (1), (1m), (2) and (2m), Stats., and interpreting ss. 49.68, 49.683, 49.685 and 49.687, Stats., the Department of Health and Family Services will hold public hearings to consider the proposed permanent rules amending ss. HFS 152.065 (2) and (6) 153.07 (2) and (4), and 154.07 (2) and (4); and creating ss. HFS 152.02 (2m) and (26m), 152.03 (1) (e), 152.035, 152.06 (3) (g) and (h), 152.065 (2) (f) to (h), 153.02 (1m), (11g), (11r) and (18), 153.03 (5), 153.035, 153.037, 153.06 (3) (g), 153.07 (2) (f) to (h), 154.02 (1m) and (17), 154.03 (5), 154.035, 154.037, 154.06 (3) (g) and 154.07 (2) (f) to (h), relating to the provision and reimbursement of services under the Wisconsin Chronic Disease Program.

**Hearing Information**

The public hearings will be held:

<b>Date &amp; Time</b>	<b>Location</b>
<b>July 19, 2004</b> Monday 10:00 a.m. to Noon	Conference Room #1 Portage County Courthouse Annex 1462 Strongs Ave. <b>Stevens Point, WI</b>
<b>July 20, 2004</b> Tuesday 10:00 AM to Noon	Room 151 State Office Building 141 NW Barstow <b>Waukesha, WI</b>

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 may be submitted at the public hearing or in lieu of attending a public hearing, written comments can be submitted by regular mail or email to the contact person listed below. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at the web address listed below.

Deadline for Comment Submission

The deadline for submitting comments is **4:30 p.m., on July 26, 2004.**

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

Using a legislative appropriation, the Wisconsin Chronic Disease Program (WCDP) reimburses health care providers for disease-related services provided to individuals with one of the following three illnesses: chronic renal disease; hemophilia; and cystic fibrosis. Because the benefit program requirements associated with each illness vary, the Department has established three individual chapters of administrative rules to administer the WCDP benefit program: chapters HFS 152 (chronic renal disease); 153 (hemophilia); and 154 (cystic fibrosis.) In the most recent biennial budget, 2003 Wisconsin Act 33, the Wisconsin Legislature and the Governor made a number of changes to the statutes that authorize the WCDP. These statutory changes require the Department to modify the three chapters of administrative rule so that they are once again consistent with and responsive to the statutes under which the WCDP benefit program operates.

Act 33 made several changes to the benefit programs, all of which are designed to allow the Department to contain the programs' costs:

1. It expanded the requirement that program beneficiaries must apply for other benefits provided under other health care coverage programs they may be eligible for before receiving benefits under WCDP, and authorized the Department to specify in rules what those other health care coverage programs are.

2. It instituted a statutorily-required prescription drug co-payment requirement for all 3 programs. The co-payment amount is \$7.50 for each generic drug and \$15 for each brand name drug. These amounts are currently \$5 and \$10, respectively, in chs. HFS 152, 153 and 154.

3. It established the requirement that persons whose family income is at or above 200% of the poverty line must pay a portion of their family income towards their care before the Department pays any benefits. The proportion a person must pay increases with the increase in family income.

4. It authorizes the Department to adopt managed care methods of cost containment for each of the three programs.

5. Under the chronic renal disease program, it requires health care providers to accept the Department's payment to them as payment in full, and prohibited providers from billing patients for charges above the amount paid by the Department.

A separate piece of legislation, 2003 Wisconsin Act 198, authorized the Department to waive the requirement that persons must apply for other health care coverage programs before applying for benefits under the financial assistance program for persons with hemophilia and other related congenital bleeding disorders.

Through this rulemaking order, the Department is proposing to reflect in chs. HFS 152, 153 and 154 these changes made by Acts 33 and 198 to the WCDP. Finally, the proposed rulemaking order clarifies that eligibility for benefits terminates under certain circumstances, such as death of the patient, and clarifies the limited circumstances under which retroactive eligibility is available under the chronic renal disease program.

**Effect on Small Business (Initial Regulatory Flexibility Analysis)**

The three chronic disease programs provide health care benefits to individuals. This rulemaking order does not have any foreseeable impact on small businesses.

### Fiscal Estimate

This administrative rule revision implements changes in the biennial budget bill, 2003 Wisconsin Act 33. Provisions in Act 33 increased drug co-payments and the income deductibles which patients are required to pay before becoming eligible for WCDP. Act 33 also required individuals applying for the program to apply first to other health insurance programs for which they might be eligible and required to Department to use managed care methods for cost containment in the WCDP. Act 33 assumed savings in WCDP as the result of these provisions. There should be no additional fiscal effect as the result of this rule.

#### 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:

Alfred Matano

Division of Health Care Financing, Bureau of  
Fee-for-Service Health Care Benefits

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

### Notice of Hearings

#### Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 04-059]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041 and 29.197, Stats., interpreting ss. 29.014, 29.041 and 29.197, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 2004 migratory game bird season. Under international treaty and federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulations process. Actual season lengths, dates and harvest allocations will change based on the federal framework regulations. The Department anticipates the regulations to include:

**Ducks** – The state is divided into two zones, each with 60-day seasons. The zones are subject to change based on public feedback and approval by the U.S. Fish and Wildlife Service. Under current U.S. FWS rules, a zone change is not allowed until 2006. The daily bag limit is expected to be 6 ducks including no more than 4 mallards, of which only one may be a hen, one black duck, one pintail, 2 wood ducks, 2 redheads and 3 scaup. The canvasback and pintail seasons may again be shorted than the 60-day season.

**Canada geese** – The state is apportioned into three goose hunting zones: Horicon, Collins and Exterior. Other special

goose management subzones within the Exterior Zone include Brown County, Burnett County, Rock Prairie and the Mississippi River. Season length are expected to be as follows: Collins Zone – 67 days; Horicon Zone – 95 days; Exterior Zone – 95 days; and Mississippi River Subzone – 70 days.

**Youth hunt** – The Canada goose bag limit is established for the youth waterfowl hunt and two days will be offered.

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

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

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

**August 2, 2004**                      Basement Auditorium, Admin. Ctr.  
Monday at 7:00 p.m.              400 4<sup>th</sup> Street North  
La Crosse

**August 3, 2004**                      University of Wisconsin  
Tuesday at 7:00 p.m.              Experimental Farm  
W6646 Hwy. 70  
Spooner

**August 4, 2004**                      Room 310, Green Bay City Hall  
Wednesday at 7:00 p.m.          100 N. Jefferson Street  
Green Bay

**August 5, 2004**                      Comfort Suites,  
Thursday at 7:00 p.m.              N14 W24121 Tower Place  
(Hwy. J & I-94)  
Pewaukee

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kent Van Horn at (608) 266-8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Fiscal Impact

The proposed changes will not result in any significant changes in spending or revenue. There are no government costs anticipated due to the provisions of this rule.

Written comments on the proposed rule may be submitted to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than August 5, 2004. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.



## Notice of Hearing

### Natural Resources

(Fish, Game, etc., Chs. NR 1—)

(Water Regulation, Chs. NR 300—)

[CR 04-062]

[CR 04-063]

[CR 04-064]

[CR 04-065]

[CR 04-066]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.01 (1am), 30.12 (1p) (a) 3. and (2m), 30.123 (6m) and (6s), 30.20 (1k) (a) 2. and (1m), 30.206 (1) (c), (3) and (3r) and 227.11 (2), Stats., interpreting ss. 30.01 (1am), 30.12 (1p) and (2m), 30.123 (6m) and (6s), 30.20 (1k) and (1m), 30.206 (1) (c), (3) and (3r), Stats., the Department of Natural Resources will hold public hearings on the creation of ss. NR 1.016, 1.05, 1.06 and 1.07, Wis. Adm. Code, relating to Natural Resources Board policies on protection and management of public waters. 2003 Wisconsin Act 118 modified provisions in ch. 30, Stats., governing the regulation of activities in Wisconsin's navigable public waters. The purpose of this rule is to establish policy guiding the Department's actions as a trustee of public waters and to set the process the Department will follow when determining waters to be Areas of Special Natural Resource Interest (ASNRI), waters or portions thereof containing Public Rights Features (PRF) and Priority Navigable Waters (PNW).

The proposed rule creates s. NR 1.05 (Areas of Special Natural Resource Interest) establishing board policy, describing qualities of waters with significant scientific value and identifying the ASNRI waters; s. NR 1.06 (Public Rights Features) identifying characteristics of locations of critical habitat, natural features and similar physical attributes essential to maintaining public rights; and s. NR 1.07 (Priority Navigable Waterways) identifying qualities of waters with sensitive fish and aquatic habitat and listing the PNW.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 30.12 (1p), 30.123 (6s), 30.20 (1k), 30.206, 30.208, 30.209, 30.28, 30.291, 30.298, 227.11 (2), 281.22, 281.36 and 281.37, Stats., interpreting ss. 30.10 to 30.27, 30.291, 31.02 to 31.38, 281.22, 281.36 and 281.37, Stats., the Department of Natural Resources will hold public hearings on the repeal of ch. NR 322, revisions to ch. NR 300 and the creation of ch. NR 310, Wis. Adm. Code, relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways. 2003 Wisconsin Act 118 modified provisions in ch. 30, Stats., governing the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new regulatory framework where activities are either:

1. Authorized as exemptions;
2. Allowed under a general permit through rules adopted by the Department; or
3. Reviewed under an individual permit process.

The legislation also modifies timelines for permit processing. The purpose of these rule changes is to establish clear procedures and timelines for the processing of exemption, general permits and individual permits under the revised law. Changes include:

- DNR must determine whether an application is complete within 30 calendar days (was 60 days)
- DNR must act on a general permit within 30 calendar days or the permit is presumptively approved (previously there were no general permits).

- DNR must make a final determination on individual permits not requiring a public notice within 105 calendar days (was generally 120 days).

- DNR must make a final determination on individual permits requiring a public notice within 150 calendar days (was generally 180 days).

- DNR must make determinations on exemption requests that grant permission to inspect the property within 15 days or the exemption is presumptively approved (previously there were not exemption determination requests).

Chapter NR 322 is repealed to eliminate an obsolete rule on general permits. It is replaced by ch. NR 310 which establishes specific procedures used for exemptions, general permits and individual permits. These processes were written to be in strict conformance with procedures and timelines established in Act 118. The most complex changes are in the public notice and hearing process that was significantly changed by the statute. Important changes include:

- Individual permits are required for all activities which are not exempt and not covered by a general permit. A 30-day public notice is now required for all individual permits.

- The applicant will be responsible for providing adequate written notice to all interested persons and publishing the public notice.

- A public hearing option is added before the DNR's decision, which is then subject to an administrative hearing.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 30.12 (1), (1p) and (3) (br), 30.123 (6s) and 227.11 (2), Stats., interpreting ss. 30.12 (1), (1g) (a), (c) and (d), (1p), (2m), (2r), (3) and (3m) and 30.20 (1g) (b) 2., Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of ch. NR 323, Wis. Adm. Code, related to fish and wildlife habitat structures in navigable waterways. 2003 Wisconsin Act 118 modified provisions in ch. 30, Stats., governing the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new regulatory framework where activities are either authorized as exemptions; allowed under a general permit through rules adopted by the Department; or reviewed under an individual permit process. This rule establishes standards for fish and wildlife structures that can be placed with an exemption or under a general or individual permit.

This rule establishes construction, design and placement standards for projects to be eligible for statutory exemptions, establish general permits and to establish standards for projects that may be authorized under an individual permit. Chapter NR 323 defines and described design standards for half a dozen commonly used fish habitat structures that would qualify for exemptions in all waters other than "areas of special natural resources interest" and establishes general permits for those same projects in "areas of special natural resources interest". These include: fish cribs, fish spawning reefs, wing deflectors, tree drops, half log structures and wildlife nesting structures.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 30.121 and 227.11 (2), Stats., interpreting s. 30.121, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 325, Wis. Adm. Code, relating to boathouses and fixed houseboats in navigable waterways. 2003 Wisconsin Act 118 modified provisions in ch. 30, Stats., governing the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new exception from the prohibition on over-the-water boathouse construction, for commercial boathouses that meet certain requirements. The purpose of this rule revision is to modify the existing rule to reflect the new and existing exception allowed under the statute, and to establish standards and clear

procedures for obtaining certification of boathouse repair, or certification that a project is eligible for a statutory exception.

Chapter NR 325 is revised to:

- Renumber sections to provide a more logical flow
- Repeal s. NR 325.06 relating to exemptions, which is obsolete based on statutory changes
- Establish a procedure in s. NR 325.07(5) that all certifications must be recorded with the Register of Deeds, to inform future property owners.
- Establish a procedure in s. NR 325.08 for obtaining certification that a project qualifies for an exception; the procedure is comparable to the existing procedure for repair certification.
- Make housekeeping changes to renumbered s. NR 325.10 to clarify the information to be submitted with an application for repair certification.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 30.12 (1), (1p) and (3)(br), 30.206 and 227.11(2), Stats., interpreting ss. 30.12 (1g) (a), (g), (h) and (km), (2m), (2r), (3) and (3m) and 30.20 (1g) (b) 2., Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 329, Wis. Adm. Code, relating to miscellaneous structures in navigable waterways. 2003 Wisconsin Act 118 modified provisions in ch. 30, Stats., governing the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new regulatory framework where activities are either authorized as exemptions; allowed under a general permit through rules adopted by the Department; or reviewed under an individual permit process. This rule establishes standards for fish and wildlife structures that can be placed with an exemption or under a general or individual permit.

This rule establishes construction, design and placement standards for projects to be eligible for statutory exemptions, establish general permits and to establish standards for projects that may be authorized under an individual permit. Chapter NR 329 defines and describes design standards for three activities — dry fire hydrants, intake/outfall structures and pilings — that qualify for exemptions in all waters other than “areas of special natural resource interest”, and establishes general permits for those same projects in “areas of special natural resource interest”. The rule also establishes general permits for three additional activities — fords across waterways, mechanical weed rakes and boat ramps. General permits are not allowed in areas of special natural resource interest and permits must follow technical standards similar to those previously used for short form permits or in Department guidance.

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

a. Types of small businesses affected: Small businesses affected will include building contractors, small-scale land developers and consultants to provide plans or design for projects along public navigable waterways.

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

c. Description of professional skills required: Map reading, basic computer use, mathematics, drawing to scale, and clear writing are the skills needed to comply with these rules. While it may be helpful or efficient, hiring a consulting

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

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

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

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

**Tuesday, July 27, 2004 6:00 p.m.**

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

Room C103  
UW–Waukesha  
1500 University Drive  
Waukesha

LRC203  
Nicolet Area Tech. College  
Lake Julia Campus  
Highway G South  
Rhinelander

**Wednesday, July 28, 2004 at 6:00 p.m.**

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

Old Library OL1132  
UW–Eau Claire  
105 Garfield Avenue  
Eau Claire

Room 218  
UW–Wausau  
518 South 7<sup>th</sup> Avenue  
Wausau

**Thursday, July 29, 2004 6:00 p.m.**

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

Boardroom A & B  
WI. Indianhead Tech College  
Shell Lake Campus  
505 Pine Ridge Drive  
Shell Lake

Wing Communications Room 102  
UW–La Crosse

1725 State St.  
La Crosse

**Tuesday, August 3, 2004 at 6:00 p.m.**

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

Room 332, Pyle Center  
UW–Madison  
702 Langdon Street  
Madison

Room 137, Mary Ann Cofrin Hall  
UW–Green Bay  
2420 Nicolet Drive  
Green Bay

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

#### **Fiscal Impact – Ch. NR 1**

It is assumed the fiscal impact of the rule would be related to the waters designation section. The fiscal impact could range from large to negligible, depending on the effort undertaken to inventory and survey Wisconsin waters to determine their designation under the rule. Under any scenario, mandatory costs will include those for operating processes to incorporate inventoried waters into designations and for maintaining the consolidated searchable waters listing on the Department's web site. The costs of water survey work could range from no more than the baseline inventories of waters that the Department routinely conducts to a one–time and ongoing survey effort to ensure that unsurveyed waters are studied and given the protection potentially provided by the law.

This fiscal estimate assumes that no additional resources will be available for the water survey effort, and the fiscal worksheet includes only the mandatory costs described above, related to water designations and water listings on the DNR web site. These costs are \$29,100 annually and 0.60 FTE.

The fiscal impact of a significant survey effort is estimated to be an ongoing cost of \$247,900 and 5 FTE, and a one–time cost of \$1,976,900 and 34 FTE.

#### **Fiscal Impact – Chs. NR 300 and 310**

The fiscal impact of this rule is estimated to be a revenue reduction of \$12,200/year. This reflects the assumption that the Department will not be able to meet the new completion deadlines for 2% of the individual permits. This proposed rule, reflecting the statutory change, would require the Department to make a final determination on individual permits within 105–150 calendar days (was generally 120–180 days), or risk loss of the permit fee. Most of these permits include a \$300 or \$500 fee, and it is assumed the revenue would be forfeited in 2% of the cases.

Other proposed rules which relate to specific permitting activities include the fiscal impact of the new fees that are

included in this proposed rule amendment, and those impacts are not repeated in this fiscal note. Overall, the full implementation of Act 118 and its related rules is not expected to have a major impact on DNR water permit revenues.

#### **Fiscal Impact – Ch. NR 323**

There will be a revenue impact, consisting of an increase in revenue of about \$500 annually. This revenue is from general permit fees. Prior to Act 118, all placements of fish and wildlife habitat structures were exempt from permit fees. There will be a reduction in work related to review of permits, reflecting a large number of projects that will be exempt from permits, and will require less staff review. The staff savings is estimated at 169 hours annually, or 0.09 FTE, resulting in a cost reduction of about \$3,500 in salary and fringe benefits.

In 2003 there were 94 applications for placement of fish and wildlife habitat structures. It is assumed that 80% of the estimated fish and wildlife structure activities will qualify for an exemption and not require a permit. It is assumed the remaining 20% will require a general permit, and of these, 50%, or 9 placements, will need to pay a general permit fee of \$50. The remaining activities requiring a general permit will be exempt from a fee because they will be done in cooperation with DNR.

#### **Fiscal Impact – Ch. NR 325**

It is estimated there will be an increase in revenue of about \$2,500 annually, reflecting permit fees paid for boathouse repair projects. There is expected to be an increase in staff hours, reflecting new workload related to commercial boathouse permit projects. This increase is about 120 hours, or 0.05 FTE, costing about \$2,500 annually in salary and fringe benefits.

In 2003 there were no commercial boathouse repair permits issued, and 26 permits issued for noncommercial boathouse repair. Fee revenue in 2003 was \$1,300. It is assumed there will be 5 commercial boathouse repair projects annually and that a fee of \$500 will be charged for each project. The total revenue for commercial projects would be \$2,500 annually. It is assumed there will be no change in the number of noncommercial boathouse projects or in the fee revenue related to those projects.

#### **Fiscal Impact – Ch. NR 329**

There will be a revenue impact, consisting of a decrease in revenue of about \$10,800 annually. This revenue is from permit fees. Prior to Act 118, all placements of miscellaneous structures, other than state or federal projects, required a permit fee. There will be a reduction in work related to review of permits, reflecting some projects that will be exempt from permits, and some general permits, that will require less staff review. The staff savings is estimated at 356 hours annually, or 0.20 FTE, resulting in a cost reduction of about \$7400 in salary and fringe benefits.

In 2003 there were 295 applications for placement of miscellaneous structures. It is assumed that 29% of the estimated miscellaneous structures will qualify for an exemption and not require a permit. It is assumed that 51% will require a general permit and will need to pay a fee of \$50. Another 20% will be individual permits with fees of \$300.

Written comments on the proposed rules may be submitted to Ms. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than August 9, 2004. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate is available from Ms. Lund.



**Notice of Hearings**  
**Natural Resources**  
**(Environmental Protection—General, Chs. NR**  
**100—)**  
**[CR 04–060]**

NOTICE IS HEREBY GIVEN that pursuant to s. 23.22 (2) (c), Stats., interpreting s. 23.22 (2) (c), Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 198, Wis. Adm. Code, relating to aquatic invasive species control grants. Section 23.22 (2) (c), Stats., directs the Department to promulgate rules for a 50% cost share program for assisting units of local government in controlling aquatic invasive species and allocates \$500,000 annually for this purpose. To implement this program, the Department has drafted ch. NR 198 titled Aquatic Invasive Species Control Grants. The proposed rule implements a three-tiered strategy of:

1. Education, planning and prevention.
2. Early detection and rapid response to pioneer infestations.
3. Control of establishes infestations.

The administrative procedures are modeled after ch. NR 190 on lake management planning grants and ch. NR 191 on lake protection and classification grants. All waters of the state, including lakes, wetlands, streams and the Great Lakes are eligible for projects sponsored by units of local government, including lake districts and tribes. The rule specifies eligible activities and costs, requirements for applications and projects, funding limits and priorities and other procedural requirements.

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

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

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

**Thursday, August 12, 2004 at 9:00 a.m.**

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

Room 227, Pyle Center  
 UW–Madison  
 702 Langdon Street  
 Madison

Large Conference Room  
 DNR Region Hdqrs.  
 810 W. Maple St.  
 Spooner

Room 218, Rothwell Student Center  
 UW–Superior  
 1500 Catlin Avenue

Superior

Room 3, DNR Region Headquarters  
 107 Sutliff Avenue  
 Rhinelander

**5:00 p.m.**

Room 227, Pyle Center  
 UW–Madison  
 702 Langdon Street  
 Madison

OL 1132, Old Library  
 UW–Eau Claire  
 105 Garfield Avenue  
 Eau Claire

G146, Fox Valley Tech College  
 1825 Bluemound Drive  
 Appleton

C103, UW–Waukesha  
 1500 University Drive  
 Waukesha

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Carroll Schaal at (608) 261–6423 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Impact**

2003 Wisconsin Act 33 provides \$500,000 from the appropriation under s. 20.370 (6) (ar) for funding these projects. This is expected to generate an increase in the number of applications department staff must process by 20 to 40 per year. No funding was provided for positions and existing staff will absorb the added workload.

Written comments on the proposed rules may be submitted to Mr. Carroll Schaal, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than August 31, 2004. Written comments will have the same weight and effect as oral statements presented at the public hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Schaal.

**Notice of Hearings**  
**Natural Resources**  
**(Environmental Protection—Water Supply, Chs.**  
**NR 800—)**  
**[CR 04–061]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 280.11 and 281.17 (8), Stats., interpreting ss. 280.11 and 281.17 (8), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 809, Wis. Adm. Code, relating to reporting of analytical data to the department and the procedure for returning to compliance following an MCL violation of the nitrate, nitrite or combined nitrate and nitrite standards. Chapter NR 809 indicates that the department may specify the format for reporting analytical results to the department. The department intends to clarify that laboratories must submit analytical data used to satisfy

requirements of the Safe Drinking Water Act to the department electronically. This revision will apply to all Safe Drinking Water Act (SDWA) certified laboratories that submit analytical data to the department.

Chapter NR 809 specifies procedures for determining compliance with the maximum contaminant level (MCL) for nitrate, nitrite or combined nitrate and nitrite. The department intends to codify specific procedures for returning to compliance following an MCL violation of these contaminants. The revision will apply to all public drinking water systems in the state.

These changes will affect all public drinking water systems in the state and laboratories that contract with public water systems to perform Safe Drinking Water Act required analyses. The proposed changes should clarify and codify return to compliance procedures already in use and changes to reporting procedures should simplify data management, increase data accuracy and speed up responses to public health threats discovered through monitoring.

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

a. Types of small businesses affected: Laboratories that submit drinking water analytical results to the Department.

b. Description of reporting and bookkeeping procedures required: The Department intends to allow several formats for laboratories to electronically submit drinking water analytical results to the Department. Formats may include XML files, tab delimited text files and web based data entry. Under very limited circumstances, the Department may allow laboratories to submit results to the Department on paper forms or in some other format.

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

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

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

**Tuesday, July 13, 2004 at 2:00 p.m.**

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

Room 227, Pyle Center  
UW–Madison  
702 Langdon Street  
Madison

Room 98, State Office Building  
819 N. 6<sup>th</sup> Street  
Milwaukee

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

Room 3, DNR Region Headquarters

107 Sutliff Avenue  
Rhinelander

**Wednesday, July 14, 2004 at 10:00 a.m.**

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

Room 227, Pyle Center  
UW–Madison  
702 Langdon Street  
Madison

Room 98, State Office Building  
819 N. 6<sup>th</sup> Street  
Milwaukee

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

Room B29, State Office Building  
3550 Mormon Coulee Road  
La Crosse

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Don Swailes at (608) 266–7093 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Estimate**

The department assumes the long–term effect of receiving the requirement electronically will be a reduction of the .5 FTE in the Bureau of Drinking and Groundwater that currently performs the related data entry. The result of this revision will be a reduction of .5 FTE and the associated \$33,000 in funding.

Written comments on the proposed rule may be submitted to Mr. Dan Swailes, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 no later than August 16, 2004. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Swailes.

### **Notice of Hearing Transportation [CR 04–057]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 84.106, 85.16 and 227.11, Stats., and interpreting s. 84.106, Stats., the Department of Transportation will hold a public hearing in **Room 901** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **27<sup>th</sup> day of July, 2004, at 9:00 AM**, to consider the amendment of ch. Trans 201 and the creation of ch. Trans 202, Wisconsin Administrative Code, relating to the Wisconsin scenic byways program.

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

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

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

Statutory authority: ss. 84.106, 85.16 and 227.11, Stats.,  
Statutes interpreted: s. 84.106, Stats.

In 1999 Wisconsin Act 9, the Wisconsin Legislature created § 84.106, Stats., mandating that the Department of Transportation develop, implement and administer a state scenic byways program. This statute also directed the Department to promulgate rules for the program consistent with 23 U.S.C. 162 and regulations established under that section. The purpose of this rule making is to adopt rules to create a Wisconsin scenic byways program consistent with the regulations of the Federal Highway Administration (FHWA) for the national scenic byways program published in the Federal Register on May 18, 1995. This rule making will create ch. Trans 202 to implement a Wisconsin scenic byways program. A Scenic Byways Advisory Committee consisting of a representative from the Department of Tourism, Department of Commerce, Department of Natural Resources, Wisconsin State Historical Society, four at-large members appointed by the Secretary of the Department of Transportation and the chairperson of the senate and assembly standing committees having jurisdiction over transportation matters is created to review applications for designation of Wisconsin scenic byways. The nomination procedure must be initiated by at least one local government sponsor. The Scenic Byway Advisory Committee will make recommendations to the Secretary of the Department of Transportation who has the authority to make designation decisions. In Wisconsin, state scenic byways must be state trunk highways other than interstate highways and must have exceptional scenic qualities. The nomination process may involve two stages. In the first stage of the process, an application is reviewed to see if the proposed route has a reasonable potential for designation as a state scenic byway. The second stage of the process will require the development by the local government sponsors of a corridor management plan. The Department of Transportation will monitor the implementation of such plans on designated scenic byways. The proposed rule also creates a new section in ch. Trans 201 to provide for the control of new outdoor advertising signs along state trunk highways designated as state scenic byways.

#### **Federal Comparison**

The Intermodal Surface Transportation Efficiency Act 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, mandated the establishment of a national scenic byways program. Section 1047 of the ISTEA set up an advisory committee to assist the U.S. Secretary of Transportation in establishing a national program. The committee was composed of 17 members including a designee of the Administrator of the FHWA, appointees of U.S. Forest Service, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Travel and Tourism Administration of the Department of Commerce, and individuals representing the interests of recreational users of scenic byways, conservationists, the tourism industry, historic preservationists, highway users, state and local highway transportation officials, the motoring public, scenic preservationists, the outdoor advertising industry, and the planning professions. Following the report of the committee, the FHWA adopted an interim policy for the National Scenic Byways Program which was published in the Federal Register on May 18, 1995. (Vol. 60, No. 96, p. 26759) No federal rules have been adopted and the program is administered in accordance with the interim policy.

The policy sets forth criteria for the designation of National Scenic Byways or All-American Roads based on their scenic, historic, recreational, cultural, archeological and/or natural intrinsic qualities. To be designated as a National Scenic Byway, a road or highway must significantly meet at least one of the six intrinsic qualities listed above. To be designated as an All-American Road, the road or highway must meet the criteria for at least two of the six intrinsic qualities. To be designated, the road or highway must safely and conveniently accommodate two-wheel drive automobiles, conventional tour buses and, where feasible, bicycle and pedestrian travel. Designations are made by the U.S. Secretary of Transportation after consultation with the Department of the Interior, Agriculture and Commerce. A panel of six to eight experts designated by the FHWA may assist in the review of highways nominated for designation as National Scenic Byways or All-American Roads.

The policy provides that any highway submitted for designation by state or federal agencies should first be designated as a State Scenic Byway. All nominations for National Scenic Byways or All-American Roads must be submitted by the state agency responsible for administering the state's scenic byway program activities. A corridor management plan must be submitted with each nomination. A corridor management plan is a written document that specifies the actions, procedures, controls, operational practices and administrative strategies to maintain the scenic, historic, recreational, cultural, archeological and natural qualities of the nominated scenic byway. The plan is intended to provide an effective management strategy to balance conservation and enhancement of the byway's intrinsic qualities as well as promotion of tourism and economic development.

Under the federal program states may apply for discretionary grants for the purpose of planning, designing and developing state scenic byways programs, including the development of corridor management plans; developing state scenic byways to make them eligible for designation as National Scenic Byways or All-American Roads; and enhancing or improving designated National Scenic Byways or All-American Roads. All grant applications must be submitted to the FHWA by the state highway agency.

The FHWA regulations also provide that if a state has a state scenic byway program, the state must control outdoor advertising as provided in 23 U.S.C. 131(s) along any highway on the interstate or primary highway system that is designated as a scenic byway under the state's program. The states must apply the same controls to any National Scenic Byway and All-American Road whether or not they are designated as state scenic byways.

The proposed rule is consistent with and follows the FHWA interim policy on the national scenic byway program quite closely. This includes the use of an advisory body to evaluate and make recommendations regarding designation of routes to be added to the program and a two tier nomination process. The rule adopts the definition of intrinsic qualities used by the FHWA policy as criteria for evaluation of potential scenic byways and makes provision for corridor management plans. The rule making also provides for the control of outdoor advertising consistent with the FHWA regulations which require that if a state has a state scenic byway program, the state may not allow the erection of new signs not in conformance with 23 U.S.C. 131(c) along any highway on the interstate or Federal-aid primary system which is designated as a state or national scenic byway or All-American Road.



## State Comparison

The states of Iowa, Illinois, Michigan and Minnesota all have established state scenic byways programs as follows:

**Michigan:** The Michigan byways program is called Michigan Heritage Routes and is mandated by state statute. (MCL 247.951 to 247.958) Heritage routes are limited to state trunk highways. Criteria for selection of heritage routes and procedures for designation were approved by the Legislature but are not promulgated as administrative rules. The program policy identifies three types of heritage routes: historic, scenic or cultural. Nominations for designation are made to the Department of Transportation by local government sponsors. The program encourages local governments and stakeholders to engage in planning for adjacent land uses consistent with the intent of the designation including outdoor advertising signs along scenic heritage routes. The Heritage Route Program dates from June 22, 1993.

**Minnesota:** The state scenic byways program is managed by the Minnesota Scenic Byways Commission. The Commission was created by a memorandum of understanding between the Department of Transportation, the Department of Natural Resources, Minnesota Historical Society, and the Office of Tourism of the Department of Trade and Economic Development. The MOU became effective June 12, 1992. The Commission is responsible for final designation of routes with the Department of Transportation taking the lead role. Nominations originate locally and were open yearly for the first three years and once every five years thereafter. All categories of public roads are eligible for nomination and local authorities having jurisdiction over the routes must approve designation. The program is organized on the basis of thirteen "recreational landscape" regions identified by the Department of Natural Resources. Outstanding scenic quality with natural or cultural resources representative of each region is the primary criteria for designation. The jurisdictions through which the designated routes pass must have ordinances to control outdoor advertising consistent with 23 U.S.C.131(s). The Minnesota Department of Transportation also enforces the provisions of 23 U.S.C. 131(s).

**Illinois:** The Illinois scenic byways program is mandated by statute. The program consists of a process for the Illinois Department of Transportation to nominate to the U.S. Department of Transportation routes for designation as National Scenic Byways or All-American Roads. (225 ILCS 440, sec. 14.02) To be nominated, the highways or roads must possess any of the six intrinsic qualities specified by the FHWA; must accommodate 2-wheel drive vehicles and, where feasible, bicycle and pedestrian traffic; have a corridor management plan meeting federal requirements and developed with community input; business and property owners must receive notice from the appropriate local unit of government that a nomination is pending and must have the opportunity to comment; and must not contain sections that traverse business areas. On highways that have received designation as a National Scenic Byway or All-American Road and which are interstate or primary highways, the statute prohibits the erection of new outdoor advertising signs except for those signs permitted by federal law in 23 U.S.C. 131(s). (225 ILCS 440, sec. 5) The statutes creating the Illinois byways program were effective August 2, 1996.

**Iowa:** The scenic byways program is mandated by statute. (Ch. 306D of the Iowa Statutes) The Iowa Department of Transportation has adopted rules to implement its program. The rules create a scenic byway advisory council comprised of representatives from the Department of Transportation, the Department of Economic Development, the Department of

Cultural Affairs, and the Department of Natural Resources. The council selects the routes to be designated after the Iowa Department of Transportation inventories and evaluates applications for designation. There is a two-year cycle for nominations with specific deadlines for key steps in the evaluation process. Primary roads, secondary roads and city streets are eligible for designation as scenic byways and each city and county, through which a route passes, must approve the scenic byway designation. The designation is based on the scenic qualities of the proposed routes. (Ch. 132 of the Iowa Administrative Code) The Iowa legislature also directed the Iowa Department of Transportation to adopt rules to control outdoor advertising along scenic byways in order to comply with federal requirements for implementation of a scenic byways program. (95 Acts, ch. 135, § 4; 306D.4 of the Iowa statutes) In 761-Ch. 117.3 of the Iowa Administrative Code, the rule provides that no new off-premise advertising device may be erected along an interstate, freeway-primary or primary highway that has been designated as a scenic byway if the advertising device will be visible from the highway.

## Advisory Group and Summary

The Secretary of the Department of Transportation appointed a sixteen (16) member advisory group to recommend procedures and criteria for a Wisconsin scenic byways program. The members of the advisory group were: Rep. Sheryl Albers (Joint Committee on Finance); Sen. Roger Breske (Senate Committee on Transportation); Gary Brunner (Department of Transportation); Mary Jo Carson (Department of Commerce); Dennis Fay (Department of Tourism); Richard Dexter (State Historical Society); Kelly Haverkamp (Wisconsin Rural Partners); Martin Holden (Bay Lake Regional Planning Commission); Tom Howells (Wisconsin Motor Carriers Association); Rob Kennedy (Citizens for a Better Environment); Lisie Kitchel (Department of Natural Resources); Larry MacDonald (Mayor, City of Bayfield); Phil Scherer (Transportation Development Association of Wisconsin); Tom Solheim (Rustic Roads Board); Ernie Stetenfeld (AAA of Wisconsin); and Rep. Jeff Stone (Assembly Committee on Transportation). The advisory group unanimously endorsed the following program structure.

A scenic byway should be a state trunk highway; should be at least 30 miles long; should exclude interstate and Corridor 2020 backbone routes; should not be scheduled for or have anticipated improvement projects; should have scenic qualities as its primary characteristic and have local government sponsors to demonstrate local support. A two-step application process was recommended with an initial screening followed by a more formal application. The review of applications should be performed by an advisory body consisting of representatives from the Department of Tourism, Department of Commerce, Department of Natural Resources and the State Historical Society. The advisory group should make recommendations to the Secretary of the Department of Transportation who makes the final decision on designation. The advisory group will also include the chairpersons of the Senate and Assembly standing committees having jurisdiction over transportation matters and two at-large members appointed by the Secretary of the Department of Transportation. Designation as a scenic byway should not inhibit or prevent safety or capacity improvements, stop private development from occurring, invoke or trigger smart growth legislation or requirements, nor should scenic byways be considered rustic roads.

This rule making implements the recommendations of the advisory group.

## Initial Regulatory Flexibility Analysis

The provisions of this proposed rule creating a process for the designation of state trunk highways as scenic byways have

no direct affect on small businesses. It is expected that designation of a highway segment as a scenic byway will increase tourism to the area which may have an indirect positive effect on local small businesses especially those that provide goods and services to tourists such as restaurants, hotels and motels, gift shops, and similar businesses.

**Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The designation of a segment of a state trunk highway as a state scenic byway may make a county or municipality eligible to apply for and receive grants of federal funds for enhancement projects related to the scenic byway. The Department estimates that there will be no impact on state or private liabilities or revenues. Administration of the

program by the Department will be absorbed by existing staff and resources.

**Submission of Comments and Contact Person**

The public record on this proposed rule making will be held open until close of business **August 9, 2004**, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Jane Carrola, Department of Transportation, Division of Transportation Investment Management, Bureau of Planning, Room 901, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Ms. Carrola by phone at (608) 266-0649.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

---

---

## Submittal of proposed rules to the legislature

---

---

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

### **Insurance**

**(CR 04–032)**

Chapter Ins 17, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2004.

### **Natural Resources**

**(CR 04–011)**

Chs. NR 10 and 11, relating to hunting and trapping regulation changes.

### **Natural Resources**

**(CR 04–012)**

Ch. NR 20, relating to fishing on the inland, outlying and boundary waters of Wisconsin.

### **Natural Resources**

**(CR 04–014)**

Ch. NR 50, relating to snowmobile trail grant program.

### **Natural Resources**

**(CR 04–015)**

Ch. NR 168, relating to administration of the brownfield site assessment grant program.

### **Public Defender**

**(CR 04–038)**

Chapter PD 6, relating to the repayment of cost of legal representation and clarifying the case types of petitions for supervised release and conditional release.

### **Transportation**

**(CR 04–034)**

Chapter Trans 1, relating to the elderly and disabled transportation assistance to counties.

### **Transportation**

**(CR 04–042)**

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

### **Workforce Development**

**(CR 04–036)**

Chapter DWD 272, relating to increasing Wisconsin's Minimum Wages.

---

---

## 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.*

### **Chiropractic Examining Board (CR 03-082)**

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

Effective 8-1-04.

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

An order affecting ch. PI 27, relating to commencement of a school term.

Effective 8-1-04.

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

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

Effective 9-1-04.



---



---

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

---



---

*The following administrative rule orders have been adopted and published in the **June 30, 2004**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

### **Commerce (CR 03-075)**

An order affecting ch. Comm 5, relating to licenses, certifications and registrations. Effective 8-1-04 and 2-1-05.

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

The Statutes authorize the Department to administer the issuance of numerous credentials as part of the Department's responsibility for protecting the safety and health of frequenters and occupants in public buildings, places of employment and one- and 2-family dwellings. The proposed revisions in the credential rules are minimum requirements to meet the directives of the Statutes, and any less stringent requirements would be contrary to the Statutory objectives which are the basis for the rules.

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

No comments were received.

### **Financial Institutions – Banking (CR 04-001)**

An order affecting ch. DFI-Bkg 17, relating to the process for the organization of interim banks. Effective 7-1-04.

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

The proposed rule will not have an effect on small business.

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

No comments were received.

### **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.

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

The proposed rule will not have an effect on small business.

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

No comments were received.

### **Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 03-058)**

An order affecting chs. MPSW 10 and 13, relating to the National Counselor Mental Health Certification Examination. Effective 7-1-04.

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

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

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

No comments were received.

### **Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 03-090)**

An order affecting chs. MPSW 3, 11 and 16, relating to the determination of the equivalency of a foreign degree to a degree from an institution accredited in the United States, and to require some candidates to demonstrate English proficiency. Effective 7-1-04.

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

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

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

No comments were received.

### **Natural Resources (CR 02-097)**

An order affecting the ch. NR 400 series, relating to the control of hazardous air contaminants. Effective 7-1-04.

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

While an analysis of the proposed rule initiated by WMC indicated a potential of high costs associated with the proposed revisions, a more focused analysis on small businesses conducted by the Department of Commerce indicates that for typical small manufacturers in Wisconsin the administrative costs associated with adding substances to ch. NR 445 was relatively small. The Department of Commerce survey indicates that most small manufacturers would need to spend less than \$2000 in one-time administrative costs. Elements of the rule that limit the impact on small businesses include establishing an "incidental emitters" category and limiting the compliance requirements

to certain processes and chemicals of special concern, limited applicability tables and establishing bounds on the scope of the search and inquiry process.

**Summary of Comments by Legislative Review Committees**

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On October 3, 2003, the committees detailed concerns on the proposed rule and asked for modifications. The modifications made by the Natural Resources Board related to the process for determining the need to regulate additional contaminants, the regulation of diesel generators and the applicability of ch. NR 445 emission limits to agricultural facilities and livestock operations.

**Natural Resources  
(CR 02-144)**

An order affecting ch. NR 25, relating to commercial fishing in Lake Michigan. Effective 7-1-04.

**Summary of Final Regulatory Flexibility Analysis**

Although small numbers of smelt are taken using other gear, almost all of the commercial smelt harvest is taken by trawl by the five commercial license holders with trawling privileges. As smelt abundance has declined, so has the total annual commercial smelt harvest from Wisconsin waters of Lake Michigan from 1,835,387 pounds in 1990 to 294,832 pounds in 2002. The summer harvest from Green Bay declined from over 1,000,000 pounds in 1988 to 291 pounds in 2002. The reduction in the allowable commercial harvest from 351,993 pounds to 25,000 pounds for Green Bay waters will not have a significant fiscal impact on the trawlers due the small harvest now being taken.

**Summary of Comments by Legislative Review Committees**

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. The Assembly Committee on Natural Resources objected to the Department's original proposal to close the commercial smelt harvest in Green Bay until July 1, 2008 or July 1, 2007. The rule was modified to allow a catch quota of 25,000 pounds.

**Natural Resources  
(CR 03-107)**

An order affecting ch. NR 20, relating to sport fishing for yellow perch in Green Bay and its major tributaries and all other tributary streams, rivers and ditches to Green Bay and commercial fishing for yellow perch in Green Bay. Effective 7-1-04.

**Summary of Final Regulatory Flexibility Analysis**

No additional compliance or reporting requirements will be imposed as a result of these rule changes; the regulations will stay as they currently exist for two additional years.

**Summary of Comments by Legislative Review Committees**

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. No comments were received.

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

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

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Veterans Affairs  
(CR 04-003)**

An order affecting ch. VA 2, relating to the recovery of erroneous payments made under the tuition and fee reimbursement, part-time study, and retraining grant programs. Effective 7-1-04.

**Summary of Final Regulatory Flexibility Analysis**

This rule is not expected to have any adverse impact on small businesses. The rule impacts individuals who receive veterans benefits.

**Summary of Comments by Legislative Review Committees**

No comments were received.

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

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

**Summary of Final Regulatory Flexibility Analysis**

A final regulatory flexibility analysis is not required because the rule will not have a significant economic impact on a substantial number of small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

---



---

## Sections affected by rule revisions and corrections

---



---

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

### Revisions

#### Commerce

##### **Ch. Comm 5**

- S. Comm 5.004
- S. Comm 5.01 (4)
- S. Comm 5.02 (1) (a) and Table
- S. Comm 5.06 (2) and Table
- S. Comm 5.07 (2) (c)
- S. Comm 5.08 (1) (b) and (e)
- S. Comm 5.20 (2) (c) and (6) (c)
- S. Comm 5.30
- S. Comm 5.31 (4)
- S. Comm 5.32
- S. Comm 5.33 (7) (b)
- S. Comm 5.34 (3) (a)
- S. Comm 5.35 (5) (a)
- S. Comm 5.36 (4) (b)
- S. Comm 5.41 (3)
- S. Comm 5.42 (4) and (5)
- S. Comm 5.43 (5) and (6)
- S. Comm 5.44 (6) (b)
- S. Comm 5.51 (5)
- S. Comm 5.61 (3), (4), (6) (b)
- S. Comm 5.62 (1), (5) (b), (7) (b)
- S. Comm 5.625
- S. Comm 5.63 (1) (a), (b), (3), (4), (6) (b)
- S. Comm 5.64 (6) (c)
- S. Comm 5.66 (1), (3), (4), (6) (b)
- S. Comm 5.67 (6) (b)
- S. Comm 5.70 (4) and (5)
- S. Comm 5.71 (6) and (7)
- S. Comm 5.72 (3)
- S. Comm 5.90 (1) (b) and (4)
- S. Comm 5.91 (3) (a), (6) (c), (d)
- S. Comm 5.92 (3) and (6)
- S. Comm 5.94 (3)
- S. Comm 5.99 (3) (intro.)

#### Financial Institutions – Banking

##### **Ch. DFI–Bkg 17 (Entire Chapter)**

#### Kickapoo Reserve Management Board

##### **Ch. KB 1**

- S. KB 1.08 (3)

#### Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

##### **Ch. MPSW 3**

- S. MPSW 3.01 (2)
- S. MPSW 3.05 (2)
- S. MPSW 3.07 (2)
- S. MPSW 3.09 (2)

##### **Ch. MPSW 10**

- S. MPSW 10.01 (1m) and (3m)

##### **Ch. MPSW 11**

- S. MPSW 11.01 (1) (b)

##### **Ch. MPSW 13**

- S. MPSW 13.01

##### **Ch. MPSW 16**

- S. MPSW 16.01 (1) (a)

#### Natural Resources

##### **Ch. NR 20**

- S. NR 20.20 (73) (j)

##### **Ch. NR 25**

- S. NR 25.06 (2) (b) and (c)

##### **Ch. NR 400**

- S. NR 400.02 (95) and (162) (wm)

##### **Ch. NR 406**

- S. NR 406.04 (2) (f), (3) (a), (c) and (e), and (4) (a)

##### **Ch. NR 407**

- S. NR 407.03 (1) (sm) and (2) (d)
- S. NR 407.05 (4) (c), Tables 2 and 3
- S. NR 407.09 (1) (c)
- S. NR 407.14 (1) and (1m) (e)

##### **Ch. NR 410**

- S. NR 410.03 (2) (g)
- S. NR 410.04 (2) (b)

##### **Ch. NR 419**

- S. NR 419.07 (4) (b), (6) (a), and (7) (b)

##### **Ch. NR 422**

- S. NR 422.083 (1) (a), (b), and (4) (a)

##### **Ch. NR 423**

- S. NR 423.035 (1)
- S. NR 423.04

##### **Ch. NR 438**

- S. NR 438.03 (1) (a), (am), (b), Tables 1 and 2

**Ch. NR 439**

S. NR 439.03 (4) (a)

**Ch. NR 445**

S. NR 445.01 (1) (a) and (b) and (2)

S. NR 445.02

S. NR 445.03

S. NR 445.04 (1) and (a), (2), (3) (a) and (b), (4) (a), (4r) (a), (5) (a) and (b), and (6) (a), (7)

S. NR 445.05 (1) (a), (4) (a), (6) (g), (7), (8)

SS. NR 445.06 to 445.16

**Ch. NR 446**

S. NR 446.02 (intro.)

**Ch. NR 447**

S. NR 447.02 (intro.) and (4)

**Ch. NR 448**

S. NR 448.02 (intro.), (1), (1m)

**Ch. NR 449**

S. NR 449.02 (intro.)

**Ch. NR 468**

S. NR 468.20 (1) (b)

**Ch. NR 484**

S. NR 484.04 (23)

S. NR 484.05 (1)

S. NR 484.11 (2) (b) and (c)

**Pharmacy Examining Board****Ch. Phar 2**

S. Phar 2.03 (4)

**Public Instruction****Ch. PI 3 (Entire Chapter)****Veterans Affairs****Ch. VA 2**

S. VA 2.05

**Workforce Development****Ch. DWD 80**

S. DWD 80.02 (2) (b), (g), (h), (2m), (3m)

S. DWD 80.52

S. DWD 80.62 (7) (a)

S. DWD 80.65

S. DWD 80.72 (3) (a)

S. DWD 80.73 (3) (a)

**Editorial corrections**

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

**Financial Institutions – Banking****Ch. DFI – Bkg 10**

S. DFI – Bkg 10.03

S. DFI – Bkg 10.06

**Ch. DFI – Bkg 40**

S. DFI – Bkg 43.04 (5)

**Ch. DFI – Bkg 76**

SS. DFI – Bkg 76.06 and 76.07

S. DFI – Bkg 76.13 (1)

**Ch. DFI – Bkg 77**

S. DFI – Bkg 77.01

**Natural Resources****Ch. NR 406**

S. NR 406.04 (7)

**Ch. NR 423**

S. NR 423.035 (9) (a)

S. NR 423.05 (3)

**Public Instruction****Ch. PI 1**

S. PI 1.01 (2) (b)

**Ch. PI 8**

S. PI 8.01 (2) (a)

**Ch. PI 19**

S. PI 19.02 (6)

**Ch. PI 32**

S. PI 32.03 (3) (b)

**Ch. PI 34**

S. PI 34.01 (62)

**Ch. PI 37**

S. PI 37.02 (2)

S. PI 37.04 (1) (a) and (2)

**Ch. PI 40**

S. PI 40.04 (4) (a)



---



---

## Sections affected by revisor's corrections not published

---



---

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

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

Location of invalid cross-reference	Invalid cross-reference	Correction
Comm 96.03 (1) (b)	227.114 (1) (a)	227.114 (1)
NR 142.02 (1) and (2) (b)	281.17 (1)	Delete reference
NR 142.03 (3) (b) 1.	281.17 (1)	Delete reference
NR 142.03 (3) (c) 2..	281.17 (1) or (8)	281.17 (8)
NR 142.06 (1) (intro.)	281.17 (1)	Delete reference
NR 425.03 (7) (c) and (7m) (c)	NR 423.04	Delete reference

---

---

## Executive orders

---

---

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

**Executive Order 53.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff on Memorial Day.

**Executive Order 54.** Relating to a proclamation declaring a State of Emergency.

**Executive Order 55.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for the late Ronald Reagan, Former President of the United States.

**Executive Order 56.** Relating to state actions supporting the Cleaner Air Faster Campaign.

---

---

## Public notices

---

---

### Department of Health and Family Services (Medical Assistance Reimbursement of Hospitals)

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health and Family Services administers this program that is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, that provide the methods and standards for paying for hospital outpatient and inpatient services.

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make changes to the provisions contained in the inpatient plan effective July 1, 2004 to implement provisions of 2003 Wisconsin Act 33, the 2003–2005 state budget act, and maintain compliance with federal payment limits, and for administrative efficiencies.

#### Outpatient Hospital Services

Proposed changes in the state plan for reimbursement for outpatient services may include:

Adjustment to methodology for reimbursement of border status hospitals to reimburse them with the same percent of charges as in-state outpatient hospitals were paid for the previous state fiscal year. This changes total outpatient payments by an estimated \$2,000,000 all funds, composed of \$1,167,451 Fed and \$832,549 general purpose revenue (GPR).

#### Inpatient Hospital Services

Proposed changes in the state plan for reimbursement for inpatient services may include:

1. Elimination of the recognition of loss on fixed assets for cost reporting, as Medicare no longer recognizes this type of loss.
2. Raising the dollar amount for the cutoff between major and minor border status hospitals.
3. Modification of the interim payment rates for critical access hospitals in order to more accurately reflect final costs.
4. Increasing the target funding for the general assistance disproportionate share allowance.
5. Removing provision that guarantees a critical access hospital will keep full DRG payments if DRG payment is greater than their cost.

Implementation of the above changes to the State Plan for inpatient services is expected to increase payments by an estimated \$5,139,400 all funds (\$3,000,000 Fed, \$2,139,400 GPR) for state fiscal year 2004–2005.

#### Copies of Proposed Changes and Proposed Payment Rates

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Hospitals, Physicians and Clinics Section  
Division of Health Care Financing  
P.O. Box 309  
Madison, WI 53701–0309  
Fax: (608) 266–1096

#### Written Comments

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Financing  
Room 350, State Office Building  
One West Wilson Street  
Madison, WI

**The State of Wisconsin  
Department of Administration  
Bureau of Document Services  
Document Sales and Distribution Section  
P.O. Box 7840  
Madison, Wisconsin 53707-7840**

**First Class**

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

**First Class Mail**

*Wisconsin  
Administrative  
Register*

**Dated Material. Please Do Not Delay!**