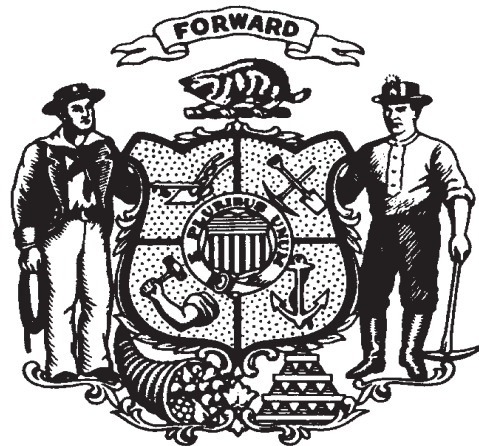


Wisconsin Administrative Register

No. 590



Publication Date: February 14, 2005

Effective Date: February 15, 2005



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

The 2003 – 04 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2003 – 04 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> \$152.00	Hard Cover <u>Without Postage</u> \$146.00	Soft Cover <u>With Postage</u> \$130.00	Soft Cover <u>Without Postage</u> \$124.00
--	---	--	---

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[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] 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*[®] 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*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] 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 15**

Commerce:

Financial Assistance for Businesses and Communities, Chs. Comm 105—

Rules relating to technology commercialization programs.

Elections Board:

Rules creating **s. EIBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee. **[First Appearance]**

Insurance:

Rules relating to vehicle protection plans.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

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

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

Rules revising **s. NR 20.33 (5) (c)**, relating to the closure of sturgeon spearing on the Lake Winnebago system. **[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 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 procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Public Instruction:

Rules relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Rules relating to the payment of state aid under the student achievement guarantee in education (SAGE) program.

Regulation and Licensing:

Rules relating to criminal background investigations of applicants.

	Rules relating to the licensure and regulation of athlete agents.
Revenue:	Rules relating to the dairy investment credit.
	Rules relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.
	Rules relating to assessment of agricultural land.
Transportation:	Rules relating to creation of a school bus oxidation catalyst grant program in certain counties.
	Rules relating to medical standards for driver licensing and general standards to school bus endorsements.
	Rules creating ss. Trans 254.12 (6) and 255.12 (17) , relating to the issuance of single and multiple trip oversize and overweight permits. [First Appearance]
Veterans Affairs:	Rules relating to the veterans assistance program.
Workforce Development:	<u>Labor Standards, Chs. DWD 270–279</u> Rules relating to overtime pay for employees performing companionship services.
	<u>Public Works Construction, Chs. DWD 290–294</u> Rules adopted revising ch. DWD 290, relating to adjustment of prevailing wage thresholds.
Scope statements.	Pages 16 to 17
Employee Trust Funds:	Rules relating to determining the beneficiary entitled to receive payment of Wisconsin Retirement System death benefits.
	Rules relating to the status of a non–annuitant Wisconsin Retirement System participant at death, for purposes of determining the applicable death benefit.
Submittal of rules to legislative council clearinghouse.	Pages 18 to 19
Agriculture, Trade and Consumer Protection:	Rules affecting ch. ATCP 50, relating to nutrient management revisions.
	Rules affecting ch. ATCP 51, relating to livestock facility siting.
Commerce:	Rules affecting ch. Comm 5, relating to welder, electrician and plumber credentials.
Commerce:	Rules affecting ch. Comm 16, relating to electrical construction.
Financial Institutions—Banking:	Rules affecting chs. DFI–Bkg 40 to 45, relating to definitions, applicability requirements, registrations, annual audits and reports, trust accounts, ethical and competent practice, education, examination, brokerage agreements and consumer disclosures.
Natural Resources:	Rules affecting ch. NR 12, subchapter III, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to livestock.

	Rules affecting ch. NR 12, subchapter III, relating to the payment program for damage caused by endangered and threatened species of wildlife and gray wolves to dogs and pets.
Transportation:	Rules affecting chs. Trans 254 and 255, relating to standards and procedures for the issuance of single and multiple trip oversize and overweight permits.
Veterans Affairs:	Rules affecting chs. VA 4 and 12, relating to the loan programs.
Rule-making notices.	Pages 20 to 40
Agriculture, Trade and Consumer Protection:	Hearings to consider rules affecting ch. ATCP 50, relating to nutrient management. Hearings to consider rules affecting ch. ATCP 51, relating to livestock facility siting.
Commerce:	<u>Credentials, etc., Ch. Comm 5</u> Hearing to consider rules affecting ch. Comm 5, relating to welder, electrician and plumber credentials. <u>Electrical Code, Ch. Comm 16</u> Hearing to consider rules affecting ch. Comm 16, relating to electrical construction.
Employment Relations:	Hearing to consider rules relating to references to the Compensation Plan, day care providers, the Entry Professional Program, paid leave to vote, continuous service, reinstatement, sick leave credit restoration, annual leave schedules, annual leave options, personal holidays, catastrophic leave, paid leave for bone marrow or organ donation, project compensation, hiring above the minimum and supervisor training.
Employment Relations—Merit Recruitment and Selection:	Hearing to consider rules relating to the Entry Professional Program, submission of notices and requests to the administrator, promotional appointments and pay, involuntary transfers, periods of eligibility for reinstatement, the definition of “state property”, acting assignments and other minor, technical changes.
Financial Institutions—Banking:	Hearing to consider rules affecting chs. DFI-Bkg 40 to 45, relating to definitions, applicability requirements, registrations, annual audits and reports, trust accounts, ethical and competent practice, education, examination, brokerage agreements and consumer disclosures.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Hearing to consider rules affecting ch. NR 20, relating to the closure of sturgeon spearing on the Lake Winnebago system. <u>Environmental Protection—Air Pollution Control, Chs. NR 400—</u> Hearing to consider rules affecting chs. NR 400, 406, 407 and 410, relating to implementing general and registration air permit programs.

Transportation: Hearing to consider rules affecting chs. Trans 254 and 255, relating to the standards and procedures for the issuance of single and multiple trip oversize and overweight permits.

Submittal of proposed rules to the legislature. Page 41

Commerce: CR 04-130 – Ch. Comm 113

Regulation and Licensing: CR 04-110 – Chs. RL 150 to 154

CR 04-120 – Ch. RL 87

Transportation: CR 04-132 – Ch. Trans 129

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.

Commerce

(Financial Assistance for Businesses & Communities, Chs. Comm 105—)

Rules were adopted creating **ch. Comm 129**, relating to technology commercialization programs.

Finding of Emergency

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

1. In accordance with sections 560.205 (3) and 560.275 (7), Stats., the department has the responsibility to promulgate rules to administer an Early Stage Business Investment Program and a Technology Commercialization Grant and Loan Program.

2. Section 560.205 (1) and (2), Stats., makes available certain tax benefits for investors in early stage businesses for tax years beginning after December 31, 2004.

3. Section 560.275 (2), Stats., makes available grant and loan program funds appropriated as of July 1, 2004.

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has

historically ranked low in the development of new start-ups and in the attraction of risk capital.

5. The department recognizes that promulgating this emergency rule will alleviate the need for investors to defer investments into qualified new businesses while they wait for the promulgation of the permanent rule. Such a circumstance would effectively halt new investment into early stage high tech companies in Wisconsin, a result that would be contrary to the intent of the legislation.

6. In addition, the department recognizes that without promulgating this emergency rule, the department would likely be unable to fully utilize the funds made available to benefit early stage businesses.

7. Finally, the department recognizes that without promulgating this emergency rule, Wisconsin's early stage businesses would be unable to compete fairly to attract much-needed risk capital and federal research dollars to Wisconsin.

Publication Date:	December 2, 2004
Effective Date:	December 2, 2004
Expiration Date:	May 1, 2005
Hearing Date:	January 12, 2005

Elections Board

Rules adopted creating **s. EIBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee's account to the candidate's state campaign committee account and finds that the attached rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi-Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s.532(3) and 532(4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39,

Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

Publication Date: February 3, 2005
Effective Date: February 3, 2005
Expiration Date: July 3, 2005

Insurance

Rules were adopted creating **ch. Ins 14**, Wis. Adm. Code, relating to vehicle protection plans.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The statute requiring these changes is effective on December 1, 2004. The length of the rulemaking process has not permitted OCI to finish promulgating the rule. This emergency implementation will allow vehicle protection businesses to start getting registered and selling their products. Many of these products are promoted as safety related such as glass etching, the "club," vehicle entry warning sirens and others. Consumer would then be able obtain the promoted safety benefits of these products as soon as the legislature permitted them.

Publication Date: December 10, 2004
Effective Date: December 10, 2004
Expiration Date: May 9, 2005

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

1. 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
Hearing Date: August 25 and 26, 2004
Extension Through: March 6, 2005

2. Rules adopted creating **ss. NR 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: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

3. Rules were adopted revising **s. NR 20.33 (5) (c)**, relating to the closure of sturgeon spearing on the Lake Winnebago system.

Finding of emergency

The Department of Natural Resources find that an emergency exists and the foregoing rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

During the 2004 sturgeon spearing on Lake Winnebago, spearers harvested a record 1,303 sturgeon on opening day, exceeding the season harvest cap for adult female sturgeon. The spearing season lasted only two days and resulted in an overall harvest of 1,854 sturgeon. The total harvest included 822 males, 348 juvenile females, and 684 adult females, 509 of which came on opening day, exceeding the harvest cap of 425. Population reduction due to overharvest of lake sturgeon could take years to reverse given the life history of lake sturgeon.

Publication Date: February 2, 2005
Effective Date: February 2, 2005
Expiration Date: July 2, 2005
Hearing Date: February 23, 2005
 [See Notice This Register]

Natural Resources (7)

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

1. 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: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

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

Finding of emergency

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

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

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

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

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

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

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

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

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

- 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: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

- 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: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

5. 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: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

6. 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: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

7. Rules adopted creating **ch. NR 310**, relating to procedures for exemptions, general permits and individual permits for activities in navigable waterways.

Finding of emergency

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

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

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

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

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

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

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
Extension Through: March 21, 2005

Public Instruction (2)

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

Finding of emergency

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

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

Publication Date: June 30, 2004
Effective Date: June 30, 2004
Expiration Date: November 27, 2004
Hearing Date: September 13, 2004
Extension Through: March 26, 2005

2. Rules adopted repealing **s. PI 24.02 (3)** and repealing and recreating **subchapter II of chapter PI 24**, relating to the payment of state aid under the student achievement guarantee in education (SAGE) program.

Finding of emergency

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

Section 118.43 (6m), Stats., requires the department to promulgate rules to implement and administer the payment of state aid under s. 118.43 (6), Stats. Because the next deadline for pupil reporting requirements occurs in January 2005, the rule must take effect as soon as possible to give eligible schools enough notice to meet such requirements.

Publication Date: December 20, 2004
Effective Date: December 20, 2004
Expiration Date: May 19, 2005

Regulation and Licensing (2)

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Regulation and Licensing

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

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

practice of conducting criminal background investigations of applicants and credential holders.

Publication Date: July 3, 2004
Effective Date: July 3, 2004
Expiration Date: November 30, 2004
Hearing Date: October 1, 2004
Extension Through: March 29, 2005

2. Rules adopted creating **ch. RL 150 to 154**, relating to the licensure and regulation of athlete agents.

Exemption from finding of emergency

SECTION 4. Nonstatutory provisions of 2003 Wisconsin Act 150 states in part:

(2) The department of regulation and licensing may, using the procedure under section 227.24 of the statutes, promulgate the rules under section 440.9935 of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide findings of emergency for rules promulgated under this subsection.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: s. 227.11 (2), Stats., and ss. 440.99, 440.991, 440.915, 440.992, 440.9925, 440.993, 440.9935, 440.994, 440.9945, 440.995, 440.9955, 440.996, 440.9975, 440.998 and 440.999, Stats., as created by 2003 Wisconsin Act 150.

Statutes interpreted: Chapter 440, Subchapter XII.

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 150. This Act grants the Department of Regulation and Licensing the authority to create rules relating to the licensure and regulation of athlete agents.

In this order adopting emergency rules the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. These rules are as a result of 2003 Wisconsin Act 150 which enacted the Uniform Athlete Agents Act. Chapters RL 150 to 154 establish requirements and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for temporary and permanent registration, renewal requirements, and prohibited conduct for athlete agents.

SECTION 1 creates Chapter RL 150 which sets forth the statutory authority and the definitions for the proposed rules.

SECTION 2 creates Chapter RL 151 which sets forth the application process and requirements for an initial certificate of registration, including the application process for a temporary certificate of registration.

SECTION 3 creates Chapter RL 152 which sets forth the application process and requirements for renewal of a certificate of registration.

SECTION 4 creates Chapter RL 153 which outlines the standards of practice which apply to a credential holder.

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

Publication Date: October 5, 2004
Effective Date: October 5, 2004
Expiration Date: March 4, 2005
Hearing Date: November 12, 2004

Revenue (3)

1. Rules adopted creating **s. Tax 2.99**, relating to the dairy investment credit.

Finding of emergency

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

The emergency rule is to clarify the following terms as they apply to the dairy investment credit:

- “amount the claimant paid in the taxable year,”
- “dairy farm modernization or expansion,”
- “milk production,” and
- “used exclusively related to dairy animals.”

It is necessary to promulgate this rule order to remove the threat of inappropriate credit claims and the revenue loss to the state as a result of clarification of the above terms being absent in the statutes.

Publication Date: September 17, 2004
Effective Date: September 17, 2004
Expiration Date: February 14, 2005
Hearing Date: December 28, 2004
Extension Through: April 14, 2005

2. Rules adopted creating **s. Tax 3.04**, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.

Finding of emergency

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

Section 71.05 (6) (b) 34, Stats., provides that a subtraction from income may be claimed for “any amount of basic, special, and incentive pay received from the federal government by a person who is a member of a reserve component of the U.S. armed forces, after being called into active federal service under the provisions of 10 USC 12302 (a) or 10 USC 12304, or into special state service authorized by the federal department of defense under 32 USC 502 (f), that is paid to the person for a period of time during which the person is on active duty.”

Included under 32 USC 502 (f) are persons who are serving on active duty or full-time duty in the active guard reserve (AGR) program. Discussion between the departments of revenue and military affairs and legislative personnel revealed that it was not intended that these persons benefit from the subtraction provided for in s. 71.05 (6) (b) 34, Stats.

It is necessary to promulgate this rule order to remove the threat of inappropriate subtractions from income and the

revenue loss to the state as a result of information contained in the statutes that implies persons who are serving on active duty or full–time duty in the active guard reserve program are eligible to claim the subtraction from income for military pay received by members of a reserve component of the armed forces.

Publication Date: September 17, 2004
Effective Date: September 17, 2004
Expiration Date: February 14, 2005
Hearing Date: December 28, 2004
Extension Through: April 14, 2005

3. Rules adopted revising **s. Tax 18.07**, relating to the assessment of agricultural land.

Finding of emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5–year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium–sized, 1–year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three–year lag in determining the 5–year average. Thus, the 2003 use value is based on the 5–year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5–year average interest rate for the 1998–2002 period. The 2005 use value is to be based on the 5–year average corn price, cost and yield for the 1998–2002 period, and the capitalization rate is to be based on the 2000–2004 period.

The data for the 1998–2002 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1998–2002 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2005.

Publication Date: December 29, 2004
Effective Date: December 29, 2004
Expiration Date: May 28, 2005

Transportation (3)

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Transportation

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

Publication Date: September 1, 2004
Effective Date: September 1, 2004
Expiration Date: See Section 2r 2003 Wis. Act 220
Hearing Date: September 14, 2004

2. Rules adopted revising **ch. Trans 112**, relating to medical standards for driver licensing and general standards to school bus endorsements.

Exemption from finding of emergency

The Legislature, by Section 30 of 2003 Wis. Act 280, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Transportation

Under current law, a person may not operate a school bus without a school bus endorsement issued by the Department of Transportation (DOT). DOT may issue a school bus endorsement to a person’s valid motor vehicle operator’s license if the person meets certain qualifications, including being free of conviction for certain crimes. A school bus endorsement is valid for the eight–year duration of the person’s operator’s license. Under certain circumstances, DOT must cancel the operator’s license of a person to whom a school bus endorsement has been issued.

2003 Wisconsin Act 280 modified the existing criminal history requirements, and imposed additional requirements for the initial issuance or renewal of a school bus endorsement. That act prohibits DOT from issuing or renewing a school bus endorsement to an applicant if the applicant has been convicted of or adjudicated delinquent for any specified disqualifying crime or offense within a prior minimum specified time. These disqualifying crimes and offenses and minimum time periods for disqualification include those specified under current statutes, including various crimes against children. The act also authorizes DOT to specify by rule additional disqualifying crimes and offenses and the time period during which the disqualification applies.

Prior to Act 280, persons were not eligible for a school bus endorsement if he or she has been convicted of listed offenses (including a felony or an “offense against public morals”) within the past five years, if the circumstances of the offense are “substantially related” to the circumstances of operating a school bus, or was convicted of specified offenses (including OWI and operating with a suspended or revoked license) within the past two years, regardless of whether the circumstances of the offense are “substantially related” to the circumstances of operating a school bus. Thus, Act 280 lengthened the periods of disqualification for some offenses, and listed some offenses that arguably are not “substantially related” to the circumstances of operating a school bus.

This rule establishes three periods of disqualification from eligibility for a school bus driver endorsement for conviction of listed felonies and misdemeanors. A lifetime disqualification is imposed on any person convicted of violent crimes resulting in death or serious physical injury to another, of sex offenses involving children and other vulnerable persons, or of other crimes involving predation or victimization of children or other vulnerable persons. A five-year disqualification is imposed on any person convicted of other crimes against life and bodily security, of other crimes against children, of crimes involving use of a motor vehicle, including operating while intoxicated (OWI), of possession of illegal weapons or of similar offenses likely to result in serious injury to others. A two-year disqualification is imposed on any person convicted of negligent operation of a motor vehicle, of obstructing emergency and rescue personnel or of other crimes.

Many of the listed offenses comprise felonies and misdemeanors. Under the rule, if a person provides evidence to the Department that his or her conviction of a listed offense is a misdemeanor conviction, the disqualification period is shortened to the next shorter disqualification period. However, there is no reduced disqualification period for misdemeanor sexual assault convictions, and the minimum period of disqualification for any listed offense (whether felony or misdemeanor) is two years.

The rule requires the Department to conduct a criminal history record search of every applicant for initial issuance or renewal to determine whether the person is convicted of disqualifying offenses. Although a school bus endorsement is renewed every eight years, DOT must conduct a criminal history search four years after the person obtains a school bus endorsement and, if appropriate, cancel the endorsement.

The rule also requires any person applying for initial issuance or renewal of a school bus endorsement to certify whether he or she has been convicted of any disqualifying offense, and allows the department to disqualify the person for the appropriate period based on that certification.

The rule requires any person who has resided in another state within the previous two years to notify the department of those other states, and requires the department to make a good faith effort to obtain the criminal history records from those other states, including submitting the persons fingerprints to the Department of Justice for a nationwide criminal history search.

The rule allows DOT to require every applicant for initial issuance or renewal of a school bus endorsement to provide two sets of fingerprints, and to pay fees for the two criminal history records searches that will be completed at initial issuance or renewal, and four years after the person obtains the school bus endorsement.

This rule also makes minor changes to medical standards for school bus drivers not required under 2003 Wis. Act 280, including the following:

1. Allows physician to certify driver is following treatment plan for cerebrovascular function, without such certification of the patient.
2. Shortens from 12 to 6 months the period during which a school bus driver must be free of any cerebrovascular incident.
3. Eliminates the 12 month period during which school bus driver must be free of destructive behavior or suicidal tendencies, instead making eligible a driver who is free of such behaviors or tendencies at the time of application.

4. Provides that a license restriction imposed on a physician's recommendation may be lifted only by the physician that recommended the restriction or by the Department following its evaluation of the person's ability to drive.

5. Provides that a person who does not meet minimum waiting periods following certain medical disqualifications cannot request a medical review board assessment of those disqualifications, because those waiting periods cannot be waived.

Publication Date: November 4, 2004
Effective Date: November 4, 2004
Expiration Date: See 2003 Wis. Act 280
Hearing Date: November 15, 2004

3. Rules adopted creating **ss. Trans 254.12 (6) and 255.12 (17)**, relating to the issuance of single and multiple trip oversize and overweight permits.

Finding of emergency

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public safety and welfare. Although the Department will pursue promulgation of this rule through normal procedure, the Department finds an emergency exists for the following reasons: (1) current administrative rules have size limitations that prevent the use of the Milwaukee Expressway for vehicles or load or dimensions greater than 11 feet in width, 13½ feet in height, or 100 feet in length on the Milwaukee Freeway; (2) structural beams and girders that exceed the above transport limits are currently being manufactured for the initial stages of construction of the Marquette Interchange Reconstruction project; and (3) these steel and concrete bridge components must be delivered to the construction site beginning in February 2005 to keep the project on time and on-budget. Routing these oversized loads on the Milwaukee surface street system may not be possible due to the load lengths and the turning radiuses required. If the street geometry does allow the movement, these street systems may not be designed to carry the weight of such loads. Doing so will result in unsafe and possible permanent damage to the surface street system. Without this rule amendment, the other alternative is to reduce the size of these structural members (beams and girders) to meet these existing size limitations which will significantly increase the total projects costs and the time required to complete the project because of the necessary redesign.

Publication Date: February 1, 2005
Effective Date: February 1, 2005
Expiration Date: July 1, 2005
Hearing Date: March 1, 2005
[See Notice This Register]

Veterans Affairs

Rules adopted creating **ss. VA 13.02 (2) (e), 13.04 (3), and 13.06**, relating to the veterans assistance program.

Finding of emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the finding of emergency is:

The department operates two community–based residential care facilities and a residential care apartment complex facility in Union Grove. As a condition of admission and continued residency at the facilities a veteran must be able to pay the full cost of his or her care from income and other resources.

Care rates at the facilities were raised across–the–board in October 2004. Several current residents do not now have sufficient income or other resources to fully pay their cost of care. Furthermore, several recent applicants with limited income and resources have been denied admission because they fall just short of meeting their care costs. Both groups of veterans do not have adequate housing available for their needs, other than residency at the Union Grove facilities.

In light of these circumstances, the department determines that the health and safety of the current and prospective residents is threatened unless adequate funding is made available. Enactment of the emergency will permit the department to provide the subsidy necessary to address these concerns.

Publication Date: January 3, 2005
Effective Date: January 3, 2005
Expiration Date: June 1, 2005
Hearing Date: February 16, 2005

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.

Workforce Development

(Public Works Construction, Chs. DWD 290–294)

A rule was adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

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:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the

time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

Publication Date: December 20, 2004

Effective Date: January 1, 2005

Expiration Date: May 30, 2005

Hearing Date: February 14, 2005

Scope statements

Employee Trust Funds

Subject

The proposed rule concerns some effects of a waiver, or partial waiver, of Wisconsin Retirement System benefits under s. 40.08 (3) and the waiver of death benefits by a beneficiary under s. 40.74 (2). The rule also codifies interpretations related to determining the beneficiary entitled to receive payment of Wisconsin Retirement System death benefits.

Policy analysis

The proposed rule will establish, codify or clarify with respect to annuity benefits from the Wisconsin Retirement System that:

- The annuity effective date for an annuity affected by a waiver remains the effective date determined from the date the application was received, not the effective date of the waiver. This will permit benefits to be effective at the earliest possible date and establish a date necessary for calculating annuity benefits.

- Similarly, the annuity effective date for calculating the present value of an annuity for a lump sum payment under Wis. Stats. s. 40.25 (1), when the participant's eligibility depends on a waiver of benefits, remains the effective date determined from the date the application was received, not the effective date of the waiver.

- A person may waive a portion of a WRS annuity benefit in order to qualify for a lump sum payment under Wis. Stats. s. 40.25 (1). This codifies a policy adopted in 1998, reversing an earlier interpretation that a person could not use a partial waiver of benefits to qualify for a lump sum payment.

With respect to death benefits payable from the Wisconsin Retirement System, the rule will establish, codify or clarify that:

- Wis. Stats. ss. 40.08 (3) and 40.74 (1) will be read together to permit a beneficiary of a WRS death benefit to waive part of a death benefit. This codifies current Department policy and practice. Codification of this liberal interpretation of the waiver statutes will help prevent confusion for persons considering waiver in the future. In past years, the Department had allowed waiver only if the entire death benefit was waived.

- Waivers may be filed by potential beneficiaries for the purpose of extinguishing any possible claim the person might have. This will permit a person to file a waiver even before the Department has determined that the person qualifies as a beneficiary. By statute, waivers are not effective until the first day of the second month after receipt. Consequently, there is a 29 to 62 day delay before a waiver received by the Department becomes effective and irrevocable. If waivers by secondary and successive beneficiaries could only be accepted after waivers by primary beneficiaries had become effective, the result would be a series of delays. The rule will facilitate and expedite the ultimate purpose and effect of the waivers.

To illustrate this last objective, consider the example of a WRS participant who filed a beneficiary designation 40 years ago naming her mother as primary beneficiary and a brother

as her secondary beneficiary, in the event the mother predeceases the participant. The participant married, but never filed a beneficiary designation naming the spouse as her beneficiary. She dies and is survived by the mother, brother and her spouse. The spouse can only become her beneficiary if there are no surviving designated beneficiaries, or if the mother and brother both waive the death benefit. The mother and brother are willing to waive. Under the proposed rule, DETF could accept waivers from the brother and mother in any order. The brother's waiver could be filed and become effective, extinguishing the brother's potential beneficiary interest, even before a waiver from the mother was received.

Finally, with respect to clarifying who may become a beneficiary, the proposed rule will establish and clarify that:

- A person who waives a WRS benefit payable because of the death of another person will be treated as if that person waiving had failed to survive the decedent. If a potential beneficiary files a beneficiary designation applicable to a death benefit payable to that person, then waives the benefits, the beneficiary designation is void and does not control the payment of any benefit.

- A person who intentionally kills the decedent may not receive any benefit payment resulting from the death.

Statutory authority

Sections 40.03 (2) (i), 227.11 (2) (a), Stats.

Staff time required

The Department estimates that state employees will spend 20 hours to develop this rule.

Entities affected by rule

The proposed rule affects participants in the Wisconsin Retirement System and their beneficiaries or potential beneficiaries.

Comparison with federal requirements

No existing or proposed federal regulations directly address the waiver provisions applicable to the Wisconsin Retirement System. The federal tax code indirectly affects the proposed rule's treatment of beneficiaries who waive death benefits. If a beneficiary could waive receipt of benefits, but still control to whom the benefits would be paid, the IRS would treat this as constructive receipt with tax consequences and requiring Departmental reporting and tax withholding. The proposed rule is therefore intended to prevent constructive receipt.

Employee Trust Funds

Subject

The proposed rule will concern the status of a non-annuitant Wisconsin Retirement System participant at death, for purposes of determining the applicable death benefit.

Policy analysis

The purpose of this rule is to codify an interpretation of Wis. Stats. s. 40.71 (1) (b) and eliminate a potential misunderstanding. The clarified interpretation will better

effectuate the purpose of the statute and also reflect the Department's general policies of treating participants in the Wisconsin Retirement System impartially and of administering benefits in accord with the statutory eligibility criteria.

This rule applies to death benefits payable because of the death of a person who was not an annuitant of the Wisconsin Retirement System. The rule will codify that a person's actual status on the date of the person's death determines whether the death benefits payable from the Wisconsin Retirement System are those for an active employee or a former employee. If the person's employment was terminated prior to the date of death, then the benefits payable will be those appropriate for a former employee. The date the employer's report is received by the Department will not dictate the benefits due.

Section 40.71 (1) (b), Stats., is one of several statutes that determines whether deceased participant is treated as an active employee, a former employee or an annuitant for purposes of paying the applicable death benefits from the Wisconsin Retirement System. This particular provision states that, "If the date of death is less than one year after the last day for which earnings were paid, a participant is deemed a participating employee on leave of absence, notwithstanding the fact that no formal leave of absence is in effect, if the participating employer for which the participant last performed services as a participating employee has not filed notice of the termination of employment prior to the employee's death." The purpose of the statute is clearly to treat a decedent whose employment had not been formally terminated as a person on leave of absence, for up to a year. Participating employees on leave of absence continue to be participating employees, as provided by Wis. Stat. § 40.02 (46).

It has come to the Department's attention that a misreading of the last clause of the statute is possible. The last clause might be read to imply that if an employer terminated an employee, but did not report the termination to the DETF until after the employee died, then the death benefits would be determined as if the decedent was "deemed" to be an active employee at the time of death. This potential misunderstanding was not critical when the death benefits payable as the result of the death of most active employees were identical to the death benefits payable upon the death of a former employee who had remained a participant in the Wisconsin Retirement System.

However, beginning in 2001 as a result of implementing 1999 Wis. Act 11, there was an expansion of the scope of the special death benefit under s. 40.73 (1) (c) that applied to the death of active employees over minimum retirement age. The same legislation also created a new death benefit payable upon the death of an active employee, regardless of age, which effectively doubled the death benefit formerly payable. As a result, it is now much more critical to accurately determine whether a decedent was actively employed, or not, at the time of death. A clear interpretation of the last clause of s. 40.71 (1) (b) has become absolutely necessary for the Department to calculate and pay the correct death benefits.

The Department has considered and rejects the alternative interpretation of the statute that would permit an employer to delay reporting a termination and thereby possibly increase

the benefits payable if the former employee should die. The Department has a duty to administer benefits in accord with the laws governing the Wisconsin Retirement System. These laws include requirements for employers to make accurate, regular and timely reports to the Department concerning covered employees. The alternative interpretation would conflict with those duties by appearing to permit a delay in reporting terminations of employment. Any effort to administer such an interpretation would also likely give rise to differing treatment of similarly situated former employees. The Department has a duty to treat participants impartially within the laws governing the retirement system.

The interpretation to be promulgated by this rule will do nothing to change the one-year presumption that an deceased employee who was not terminated prior to death was an employee at death, even if no formal leave of absence had been granted. For example, some years ago, an employee disappeared. The employer waited about a week, then sent out a termination notice for failing to work. The employee's body was discovered and it was established that the employee had died before the employer terminated his employment. The Department paid out the death benefits appropriate to the death of an active employee. Retroactive terminations are generally prohibited. Until the employer acted to terminate the employment, the missing employee was treated as being on an informal leave of absence and therefore still an active employee.

The rule will not affect death benefits already paid by the Department of Employee Trust Funds. The rule will apply prospectively to persons who are either terminated from employment, or who die, after the effective date of the rule.

Statutory authority

Sections 40.03 (2) (i) and 227.11 (2) (a), Stats.

Staff time required

The Department estimates that state employees will spend 12 hours to develop this rule.

Entities affected by rule

The entities affected by this rule proposal are: the Department of Employee Trust Funds; the Public Employee Trust Fund, from which Wisconsin Retirement System benefits are paid; participants in the Wisconsin Retirement System, all of whom have an interest in the proper administration of benefits; participating employers; living former employees of participating employers whose termination has not yet been reported to the Department; and, the beneficiaries of deceased participants in the Wisconsin Retirement System who died sometime after their employment had ended and before taking a pension.

Comparison with federal requirements

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

The proposed rule concerns some effects of a waiver, or partial waiver, of Wisconsin Retirement System benefits under s. 40.08 (3) and the waiver of death benefits by a beneficiary under s. 40.74 (2). The rule also codifies interpretations related to determining the beneficiary entitled to receive payment of Wisconsin Retirement System death benefits.

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On January 31, 2005, the Wisconsin Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. ATPC 50 of the Wisconsin Administrative Code and relates to nutrient management revisions.

Agency Procedure for Promulgation

A public hearing is required and hearings are scheduled for March 14, 15, 17, 22, 23 and 24, 2005. The Department's Agricultural Resource Development Division is primarily responsible for preparing the rule.

Contact Information

Sue Porter
608–224–4605

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On January 31, 2005, the Wisconsin Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. ATPC 51 of the Wisconsin Administrative Code and relates to livestock facility siting.

Agency Procedure for Promulgation

A public hearing is required and hearings are scheduled for March 14, 15, 27, 22, 23 and 24, 2005. The Department's Agricultural Resource Development Division is primarily responsible for preparing the rule.

Contact Information

Richard Castelnuovo
608–224–4608

Commerce

Rule Submittal Date

On January 28, 2005, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. Comm 5 of the Wisconsin Administrative Code and relates to welder, electrician and plumber credentials.

Agency Procedure for Promulgation

A public hearing is required and scheduled for February 28, 2005. The Division of Safety and Buildings is primarily responsible for preparing the rule.

Contact Information

Jim Quast, Program Manager
608/266–9292
email: jquast@commerce.state.wi.us

Commerce

Rule Submittal Date

On January 26, 2005, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. Comm 16 of the Wisconsin Administrative Code and relates to electrical construction.

Agency Procedure for Promulgation

A public hearing is required and scheduled for February 28, 2005. The Division of Safety and Buildings is primarily responsible for preparing the rule.

Contact Information

Joe Hertel, Program Manager
608/266–5649
email: jhertel@commerce.state.wi.us

Financial Institutions—Banking

Rule Submittal Date

On January 28, 2005, the Department of Financial Institutions–Banking submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects chs. DFI–Bkg 40 to 43 and creating chs. DFI–Bkg 44 to 45. The rule relates to definitions, applicability requirements, registrations, annual audits and reports, trust accounts, ethical and competent practice, education, examination, brokerage agreements and consumer disclosures.

Agency Procedure for Promulgation

A hearing on the proposed rule is required and scheduled for February 28, 2005. The organizational unit responsible for the promulgation of the rule is the division of banking.

Contact Information

Mark Schlei
608/267–1705

Natural Resources

Rule Submittal Date

On January 13, 2005 the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. NR 12, subchapter III of the Wisconsin Administrative Code and relates to the program for damage caused by endangered and threatened species of wildlife and gray wolves to livestock.

Agency Procedure for Promulgation

Public hearings are scheduled for February 15, 16 and 17, 2005. The Bureau of Endangered Resources is primarily responsible for preparing the rule.

Contact Information

Randy Jurewicz
608-267-7507

Natural Resources

Rule Submittal Date

On January 13, 2005 the Wisconsin Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. NR 12, subchapter III of the Wisconsin Administrative Code and relates to the program for damage caused by endangered and threatened species of wildlife and gray wolves to dogs and pets.

Agency Procedure for Promulgation

Public hearings are scheduled for February 15, 16 and 17, 2005. The Bureau of Endangered Resources is primarily responsible for preparing the rule.

Contact Information

Randy Jurewicz
608-267-7507

Transportation

Rule Submittal Date

On January 19, 2005 the Wisconsin Department of

Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects chs. Trans 254 and 255 of the Wisconsin Administrative Code and relates to standards and procedures for the issuance of single and multiple trip oversize and overweight permits.

Agency Procedure for Promulgation

A public hearing is required and scheduled for March 1, 2005. The Division of Transportation Infrastructure Development, and Division of Motor Vehicles is primarily responsible for preparing the rule.

Contact Information

Julie A. Johnson
Paralegal
Telephone (608) 266-8810

Veterans Affairs

Rule Submittal Date

On January 18, 2005 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting chs. VA 4 and 12, of the Wisconsin Administrative Code, relating to the loan programs.

Subject Matter

The rule changes will accomplish several purposes. The application procedures and the interest rate and maximum loan amount adjustment authority are updated to implement the additional flexibility authorized in 2003 Wis Act 83. Additionally, underwriting criteria for guarantors are modified to assure more secure loans.

There is no current or pending federal regulation that addresses this initiative. There are no similar rules in adjacent states. This rule has no regulatory aspect to it, has no effect upon small businesses, nor any significant impact upon the private sector.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for February 16, 2005. The Office of the Secretary is primarily responsible for preparing the rule.

Contact Information

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

Rule–making notices

Notice of Hearings Agriculture, Trade and Consumer Protection [CR 05–013]

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule relating to nutrient management on farms (ATCP 50). The department will hold the hearings at the times and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. The department will manage oral testimony to ensure that everyone has an opportunity to speak. These hearings will be held in conjunction with hearings on a rule related to livestock facility siting (ATCP 51). DATCP has issued a separate hearing notice related to the livestock facility siting rule.

Following the public hearing, the hearing record will remain open until April 7, 2005, for additional written comments. Written comments should be sent to the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management attention Sue Porter, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708. Written comments can be submitted via email to sue.porter@datcp.state.wi.us.

You may obtain a free copy of the proposed rule and supporting documents such as the environmental assessment, by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4605 or emailing sue.porter@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to:

http://www.datcp.state.wi.us/arm/regulation/proposed_rules.html

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **February 28, 2005**, by writing to Sue Porter, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4605. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearings with location information:

Date: **Monday, March 14, 2005**
Location: Fort Community Credit Union
100 N. Main St.
Jefferson, WI 53549
Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Tuesday, March 15, 2005**
Location: Heidel House
643 Illinois Ave
Green Lake, WI 54941
Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Thursday, March 17, 2005**
Location: Ramada White House
1450 Veterans Drive
Richland Center, WI 53581
Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Tuesday, March 22, 2005**
Location: UW–Manitowoc Center
705 Viebahn St.
Manitowoc, WI 54220
Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Wednesday, March 23, 2005**
Location: Northcentral Technical College
1000 W. Campus Dr.
Wausau, WI 54401
Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Thursday, March 24, 2005**
Location: Chippewa Valley Technical College
620 W. Clairemont Ave.
Eau Claire, WI 54701
Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates plant nutrients to maintain and improve water quality. DATCP proposes to amend the current nutrient management rules for farms. Current rules are based on nitrogen, not phosphorus. This rule would incorporate updated federal standards based on nitrogen *and* phosphorus. Phosphorus is a key nonpoint source pollutant, and phosphorus levels in soil are increasing due to excessive phosphorus applications.

Current nutrient management rules apply to all farms, not just livestock operations. Current rules are scheduled to take effect in 2005 in some watersheds, and 2008 elsewhere. However, enforcement of current rules is contingent on cost–sharing (per current state law), so the availability of cost–share funding will limit actual implementation.

By adding a phosphorus standard to current nutrient management rules, this rule will increase compliance costs for farmers. This rule will have the greatest impact on livestock operators, who may incur additional costs related to the disposal of manure (which provides more phosphorus than nitrogen, compared to crop needs). However, this rule does not change current rule effective dates or cost–sharing requirements.

Statutory authority: ss. 93.07 (1), 92.05 (3) (k) and 281.16 (3) (b), Stats.

Statutes interpreted: ss. 92.05 (3) (k) and 281.16 (3) (b), Stats.

DATCP has general authority to adopt rules interpreting statutes under its jurisdiction (see s. 93.07 (1), Stats.). DATCP is specifically authorized to adopt farm conservation

standards, including standards for nutrient management on farms (see ss. 92.05 (3) (k) and 281.16 (3) (b), Stats.).

Background

Under current DATCP rules (ch. ATCP 50, Wis. Adm. Code), all farmers who apply manure or commercial fertilizer to cropland (not just livestock operators) must have nutrient management plans. This requirement takes effect on January 1, 2005 in certain watersheds and January 1, 2008 elsewhere. Under current rules, enforcement of nutrient management requirements is contingent on cost–sharing.

Under current DATCP nutrient management rules, a nutrient management plan must comply with all of the following requirements:

- It must be prepared or approved by a qualified nutrient management planner. A farmer may prepare his or her own plan if the farmer has completed a DATCP–approved training course within the preceding 4 years, or is otherwise qualified under current rules.
- It must identify the lands on which the operator will apply manure and other nutrients.
- It must be based on soil tests that determine the nutrient needs of the affected cropland. A soil test laboratory, certified by DATCP, must conduct the soil tests.
- It may not call for nutrient applications in excess of amounts needed to achieve crop fertility levels recommended by the University of Wisconsin (there are limited exceptions).
- It must comply with nutrient management standards published by the Natural Resource Conservation Service of the United States Department of Agriculture (“NRCS”).

Rule Content

This rule modifies current DATCP nutrient management rules as follows:

Updated Federal Standard

Current DATCP rules incorporate an outdated version (March, 1999) of the NRCS nutrient management standard. This rule incorporates an updated NRCS standard. A nutrient management plan (if required) must adhere to the following provisions in the new standard (many, but not all, of these provisions already apply under the current standard):

- The nutrient management plan must consider all primary nutrients – nitrogen, phosphorus, and potassium. The older NRCS standard focused on nitrogen rather than phosphorus and potassium. Phosphorus is a key nonpoint pollutant, and has been applied in excessive amounts (as reflected in rising average soil–test phosphorus levels in Wisconsin). The new standard will limit excessive phosphorus applications.
- Nutrient applications may not exceed the amounts needed to achieve soil fertility levels recommended by the University of Wisconsin for crops in the farmer’s rotation (there are some exceptions). These recommendations are designed to achieve optimal economic returns for farmers. Phosphorus and potassium needs are generally determined over a crop rotation, so that some buildup of these nutrients is permitted in anticipation of future crop needs during the rotation.
- The nutrient management plan must consider all nutrient sources, including existing nutrients in the soil, manure applications, fertilizer applications, and nitrogen from legumes. The plan must account for relevant limitations on nutrient applications — for example, on frozen land, near water bodies, or on highly eroding fields (see below).
- Nutrient calculations must take into account the amount and timing of nutrient applications from all sources.
- Soil tests must be used to determine existing soil fertility levels (soil tests must be not more than 4 years old).

- Nutrient management plans must be updated annually (to account for relevant changes in cropping patterns, land base, nutrient applications, soil test results, etc.). Each annual update must document and consider relevant cropping patterns and nutrient applications from the preceding year.

- Manure nutrient content may be determined by laboratory analysis or from standard “book values” specified in the NRCS standard. Labs performing manure analyses must meet standards specified in the rule.

- Nutrients may not run off the field during application.
- Nutrients may not be spread in certain areas, including the following:

- Fields eroding in excess of “T–value” levels (the standard specifies acceptable methods for calculating erosion rates).

- Surface water areas, or areas of established concentrated flow.

- Permanent non–harvested vegetative buffers or wetlands.

- Areas within 50 feet of drinking water wells.

- Areas within 200 feet up–slope of direct conduits to groundwater (such as wells, sinkholes, fractured bedrock, tile inlets or mine openings), unless the nutrients are effectively incorporated within 72 hours.

- Nutrients may not be applied to frozen or snow–covered land within 1,000 feet of a navigable lake or within 300 feet of a navigable stream.

- Liquid manure may not be applied to frozen or snow–covered land at a rate of more than 7,000 gallons per acre.

- Manure may not be applied to frozen or snow–covered land at a rate that provides more phosphorus than will be used by crops in the next growing season.

- Manure may not be applied to frozen or snow–covered land that has a slope greater than 9% (12% if contour–cropped).

- Commercial fertilizer may not be applied to frozen or snow–covered land, except on pasture or surfaces planted in winter grains.

- At least one of the following practices must be used when applying nutrients to unfrozen surfaces within 1,000 feet of a navigable lake or within 300 feet of a navigable stream:

- Install or maintain permanent vegetative buffers.

- Maintain 30% crop residue or vegetative cover on the soil surface after application.

- Incorporate nutrients within 72 hours, leaving adequate residue so that erosion does not exceed “T–value.”

- Establish cover crops promptly following application.

- Liquid manure applications (less than 12% solids) to unfrozen land within 1,000 feet of a navigable lake or 300 feet of a navigable stream may not exceed rates specified in the rule.

- In order to minimize nitrogen loss to groundwater in certain sensitive areas, most crop nitrogen must be applied to those areas after the crop is established in the spring. This applies to areas with coarse soils, areas with less than 20 inches to bedrock or 12 inches to water table, and areas within 1000 feet of a municipal well.

- In order to minimize phosphorus losses to surface water, a farmer must use one of the following strategies (and establish perennial vegetative cover where there are recurring gullies):

- Maintain a phosphorus index, calculated according to the Wisconsin phosphorus index model, at or below a level of 6. Stop phosphorus applications to fields that exceed that index

level, unless UW recommendations call for additional phosphorus applications (based on soil tests and crop needs).

– Regulate phosphorus applications based on soil tests. Forego or limit phosphorus applications as necessary, based on soil test levels and phosphorus removal by relevant crops (the standard specifies application limits based on soil test levels).

Excess Nutrient Applications

Under current DATCP rules, a nutrient management plan may not recommend nutrient applications that exceed the amounts needed to achieve fertility levels recommended by the university of Wisconsin for relevant crops. However the current rules allow certain exceptions.

One current exception allows for excess soil nutrient values caused by manure applications in prior years. This rule limits that exception, so that it only applies to manure applications in the year immediately preceding implementation of the nutrient management plan.

The current rules also permit excess nutrient applications for the following reasons:

- The farmer applies only organic nutrients (such as manure).
- Excess nutrients from organic nutrient applications will be used later in the planned crop rotation.
- Fields with corn following corn receive conservation tillage with greater than 50% residue after planting.
- Starter fertilizer is properly applied to row crops.
- The crop is irrigated.

This rule eliminates these exceptions, because these conditions are more precisely addressed in the (updated) NRCS technical guide nutrient management standard 590 (incorporated in this rule). This rule, like the current rules, permits excess nutrient applications based on special agronomic conditions documented by the nutrient management planner.

Cost–Sharing and Initial Applicability Not Affected

This rule does not change the previously–established effective dates for DATCP nutrient management rules (2005 in some watersheds, and 2008 elsewhere), nor does it change current cost–sharing requirements (enforcement of nutrient management standards is normally contingent on cost–sharing). Those effective dates and cost–sharing provisions still apply under this rule.

Environmental Impact

This rule will protect the environment by preventing excess nutrient applications that can result in nonpoint source pollution of surface water and groundwater. Nonpoint source pollution from farms has a major impact on surface water and groundwater quality.

Fiscal Impact

This rule will not have a major fiscal impact on DATCP or local units of government. This rule will change applicable standards for nutrient management plans, but will not increase the number of nutrient management plans required. Enforcement of this rule is generally contingent on cost–sharing. DATCP estimates that approximately \$25 million in *additional* cost–share funding would be needed each year in order to fully implement this rule within 10 years. This rule does not mandate additional state or local review of nutrient management plans (beyond what already exists). County conservation staff currently review and monitor nutrient management plans as necessary, on farms that are required to have those plans.

DATCP and county land conservation staff will need to become familiar with the new standards. Staff will need to provide information and education about the new standards, and respond to questions from farmers and others. DATCP will undertake these new responsibilities with existing staff. DATCP estimates that counties will likewise be able to implement the revised standards with existing staff. A complete fiscal estimate may be obtained by calling (608) 224–4605 or emailing sue.porter@datcp.state.wi.us.

Business Impact

This rule will have a substantial impact on agricultural producers and other businesses.

Agricultural Producers

To the extent that it is implemented, this rule will increase costs for livestock operators and crop producers who are required to implement nutrient management plans. However, rule implementation is contingent on cost–sharing. Actual implementation will depend on the availability of cost–share funds. Without cost–sharing, most agricultural producers will not be obligated to comply.

This rule will not increase the number of nutrient management plans required, but will affect the content of the plans. It will also affect the farming practices needed to comply. This rule will have the greatest impact on livestock operations. It will have less impact on non–livestock crop producers. For livestock operations, the impact is primarily related to new phosphorus management requirements (current standards are based primarily on nitrogen, not phosphorus).

Manure generally provides higher amounts of phosphorus than nitrogen, compared to typical crop needs. So, livestock operators may need more acreage for manure disposal, to avoid excessive phosphorus applications. Costs will vary widely by livestock species, size of livestock operation, geographic location, cropping patterns, current nutrient content of soil, and availability of acreage for manure disposal. Non–livestock crop producers will be less affected, and may actually reduce their fertilizer costs by avoiding excessive phosphorus applications.

DATCP has estimated the costs to implement the new phosphorus standard, *assuming that the standard is fully implemented* (this will require cost–share funding that is not currently available). The estimate represents the annual incremental cost, over and above the cost to implement the *existing* (nitrogen–based) standard. DATCP estimates the statewide incremental cost, by livestock sector, as follows (estimation method described in attached *business impact assessment*):

Dairy:	\$1.5 million
Beef:	\$1.5 million
Swine:	\$0.5 million
Poultry:	\$2.8 million

Actual costs to the industry will be much less, because compliance is contingent on cost–sharing and cost–share funds are limited. Many farmers may never be required to comply. Cost–share payments will offset part of the cost for many who comply.

Under current rules, a cost–share offer must cover 70% of the cost to conduct soil tests and prepare a nutrient management plan (90% if there is financial hardship), or \$7 per cropland acre, whichever amount is greater (the farmer chooses). The percentage rate applies only to costs of writing a nutrient management plan and performing soil tests (not manure hauling, etc.). The flat–rate payment (\$7 per acre) applies regardless of actual costs.

Cost–share payments (whether flat–rate or percentage) are limited to 4 years. After that, the farmer assumes the full cost

of compliance. Once a farmer achieves compliance, the farmer must maintain compliance regardless of cost-sharing. If a farmer falls out of compliance, the farmer is not eligible for cost-sharing to regain compliance.

In cost-share transactions to date, nearly all farmers have chosen the flat-rate (\$7 per acre) payment. If farmers need additional acres to landspread manure (as many will under a phosphorus standard), the total cost-share payment will increase accordingly (even if the rate per acre does not change). The limited availability of state cost-share funds will limit actual enforcement of nutrient management requirements. Available funds will be allocated among fewer operations.

Some livestock operators must comply with nutrient management requirements *under other applicable law*, regardless of cost-sharing (and regardless of whether DATCP nutrient management rules would otherwise apply prior to 2008). These include:

- Operators who need a point source pollution discharge permit under NR 243 (mainly operations over 1,000 animal units).
- Operators who need a permit, under a local manure storage ordinance, for a voluntarily constructed manure storage facility (see current ATCP 50.54 (2) (b)).
- Operators who need a local permit for a new or expanded livestock facility with 500 or more “animal units,” according to DATCP’s *proposed* livestock facility siting rule (not this rule).

For more information contact DATCP small business regulatory coordinator Dennis Fay at (608) 224-5031 or email at dennis.fay@datcp.state.wi.us.

Federal Regulations

The federal government does not regulate nutrient management on farms except that, under the federal Clean Water Act, certain concentrated animal feeding operations are subject to federal regulation as water pollution “point sources.” DNR regulates these operations by permit, under authority delegated from the United States Environmental Protection Agency (EPA).

NRCS is proposing updated nutrient management standards based on phosphorus as well as nitrogen. NRCS does not enforce its standards as mandatory standards, except for operations that receive cost-share funding from NRCS. However, DNR and DATCP have incorporated these federal standards in state nutrient management rules. DATCP is proposing to incorporate updated NRCS standards in this rule.

Adjacent State Regulations

Surrounding states regulate nutrient management in a variety of different ways. Most of the states regulate phosphorus, as well as nitrogen. A description of other state programs is found in the plain language *analysis* that accompanies this rule.

Businesses Affected

Those effected are small businesses, as defined by s. 227.114 (1) (a), Stats.

This rule will have a substantial impact on agricultural producers as discussed above in the Business Impact section. In addition, this rule may increase farmer demand for services provided by the following businesses:

- Nutrient management planners.
- Soil and manure testing laboratories.
- Manure haulers.

- Construction contractors and conservation planners (practices to reduce soil erosion).

This rule will likely reduce sales of commercial phosphorus fertilizers, but may increase sales of commercial nitrogen fertilizer to meet crop needs (where manure applications are curtailed because of phosphorus constraints).

Reporting, Recordkeeping and Other Procedures Required for Compliance

Reporting and recordkeeping requirements of the NRCS nutrient management standard are stated above in the Rule Content section. Current DATCP rules incorporate an outdated version (March, 1999) of the NRCS nutrient management standard. This rule incorporates an updated NRCS standard. A nutrient management plan (if required) must adhere to the following provisions in the new standard (many, but not all, of these provisions already apply under the current standard).

The updated NRCS standard requires field features to be identified on maps or aerial photos in the plan. These features include field boundary, soil type, field identification, areas prohibited from receiving nutrients such as surface water, grassed waterways, sinkholes, land where vegetation is not removed, areas within 50 feet of a potable drinking well, and fields eroding at a rate exceeding tolerable soil loss (T). Other field features to be identified on maps are areas restricted from receiving winter nutrient applications. These areas are slopes greater than 12% and slopes greater than 9% that are not contoured, surface water quality management areas (land within 1,000 feet of lakes and ponds or within 300 feet of perennial streams), and areas within 200 feet upslope of direct conduits to groundwater.

All farmers required to have a nutrient management plan, will need to maintain planned and applied records for each field’s nutrient application rates, timing, and methods of all forms of N, P, and K listed in the plan and consistent with UW Publication A 2809, *Soil Test Recommendations for Field, Vegetable and Fruit Crops*, and the 590 standard. This procedure is already required under the current rule.

A single phosphorus assessment of either the Phosphorus Index or soil test phosphorus management strategy must be uniformly applied to all fields within a tract.

Professional Skills Required to Comply

The proposed changes affect how nutrients, particularly phosphorus can be applied to fields. This rule may require moving manure to fields testing lower in phosphorus. However, phosphorus applications can still occur on fields testing excessively high for phosphorus if they are 25% less than the crop rotation’s phosphorus removal over a 4 year period. Because nutrient management planning involves crop rotations, crop nutrient removal, and the predicted soil erosion levels of these crop rotations, nutrient management planners need an understanding of conservation planning and soil fertility management.

While anyone can develop nutrient management plans if they are knowledgeable, adoption of nutrient management planning on individual farms will in some cases require assistance. Training for producers, agronomists, and conservation staff has been provided by University of Wisconsin Extension personnel and agency staff in the past. In recent years, many farmers have been using crop consultants to plan and recommend nutrient applications. The department anticipates these information sources will continue to be used as the primary sources of information for crop producers.

Notice of Hearings
Agriculture, Trade and Consumer Protection
[CR 05–014]

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) announces that it will hold public hearings on a proposed rule (ATCP 51) to implement Wisconsin’s Livestock Facility Siting Law (s. 93.90, Stats.). DATCP will hold the hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on this proposed rule. DATCP will manage oral testimony to ensure that everyone has an opportunity to speak.

DATCP will hold these hearings in conjunction with hearings on another rule (ATCP 50), relating to nutrient management. This livestock siting rule (ATCP 51) incorporates the same nutrient management standards proposed in that other rule. DATCP has issued a separate notice of hearing on the nutrient management rule.

Following the public hearing, the hearing record will remain open until April 7, 2005, for additional written comments. Written comments should be sent to the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management attention Dilip Patel, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708. Written comments can be submitted via email to Dilip.Patel@datcp.state.wi.us.

You may obtain a free copy of the proposed rule, and supporting documents such as the environmental assessment, by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4608 or 224–4610 or emailing Dilip.Patel@datcp.state.wi.us or Richard.Castelnuovo@datcp.state.wi.us. Copies will also be available at the hearings. To view this proposed rule online, go to:

http://www.datcp.state.wi.us/core/environment/land-water/siting_rule.html

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **February 28, 2005**, by writing to Dilip Patel, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4610. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearings with location information:

Date: **Monday, March 14, 2005**
 Location: Fort Community Credit Union
 100 N. Main St.
 Jefferson, WI 53549
 Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Tuesday, March 15, 2005**
 Location: Heidel House Resort
 643 Illinois Avenue
 Green Lake, WI 54941
 Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Thursday, March 17, 2005**
 Location: Ramada White House
 1450 Veterans Dr.
 Hwy 14 East & Veterans Dr.
 Richland Center, 53581
 Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Tuesday, March 22, 2005**
 Location: UW Manitowoc Center
 705 Viebahn Street
 Manitowoc, WI 54220
 Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Wednesday, March 23, 2005**
 Location: Northcentral Technical College
 1000 W. Campus Drive
 Wausau, WI 54401
 Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

Date: **Thursday, March 24, 2005**
 Location: Chippewa Valley Technical College
 620 West Clairemont Avenue
 Eau Claire, WI 54701
 Times: 12:30–4:30 p.m. and 5:30 p.m. to 9:30 p.m.

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

Wisconsin’s Livestock Facility Siting Law (s. 93.90, Stats.) is designed to facilitate the siting of new and expanded livestock facilities in Wisconsin. The law establishes a general statewide framework for local approval of new or expanded livestock facilities. The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes this rule to implement the Livestock Facility Siting Law.

Statutory Authority: ss. 93.07 (1), 92.05 (3) (k), 93.90 (2) and 281.16 (3) (b), Stats.

Statutes interpreted: ss. 92.05 (3) (k), 93.90 and 281.16 (3) (b), Stats.

Summary of Rule Contents

Livestock Facilities Covered by This Rule

This rule applies *only* to new or expanded livestock facilities that require local approval, and *only* if those facilities will have 500 or more “animal units” (or will exceed a lower threshold incorporated in a local zoning ordinance prior to July 19, 2003). DATCP estimates that this rule will apply to approximately 50–70 local siting applications each year.

This rule applies *only* to facilities that keep *cattle, swine, poultry, sheep or goats*. This rule does *not* apply to facilities that keep only horses, farm–raised deer, fish, captive game birds, ratites (such as ostriches or emus), camelids (such as llamas or alpacas) or mink.

Application for Local Approval

To obtain local approval, a livestock operator must complete the *application form* and *worksheets* attached to this rule. The *application form* and *worksheets* elicit key information to show compliance with the siting standards in this rule.

If an application contains the information required by this rule, the local government *must approve* the proposed livestock facility unless the local government finds, based on

other clear and convincing evidence in the local record, that the facility fails to meet the siting standards in this rule. By spelling out clear application requirements and approval standards, this rule adds certainty to the application and decision-making process.

An application for local approval must include all of the following:

- Applicant information.
- A *description of the proposed livestock facility*, including the types of livestock and the number of “animal units” for which the applicant seeks approval. The applicant must calculate animal units according to an *animal units worksheet (worksheet 1)*. The application must show the *maximum* number of “animal units” the applicant proposes to keep on at least 90 days during any 12-month period. If the local government approves the proposed livestock facility, this is the number of “animal units” approved (the operator may not exceed this number without further approval).
- An *area map*. The area map must show a 2-mile radius around the proposed facility (with topographic lines at 10-foot elevation intervals). The map must show relevant features, including current and proposed livestock structures.
- A *site map*. The site map must show a 1,000 foot radius around the proposed facility (with topographic lines at 2-foot elevation intervals for the area within 300 feet of livestock structures). The map must show relevant features, including current and proposed livestock structures. The applicant must certify that livestock structures will comply with applicable property line and water quality setbacks in this rule.

- The following *worksheets*:
 - Animal units (worksheet 1).
 - Odor management (worksheet 2).
 - Waste and nutrient management (worksheet 3).
 - Waste storage facilities (worksheet 4).
 - Runoff management (worksheet 5).
 - Mortality management (worksheet 6).

An applicant who holds a WPDES permit from DNR for the *same proposed livestock facility* (and the same or greater number of animal units) is not required to submit worksheets 3, 4 and 5, but must submit worksheets 1, 2 and 6.

The application form includes a *notice of other laws* that may apply to livestock operations. The notice makes the applicant aware of these laws. But except as specifically provided in this rule, the listed laws are *not* used as standards for local siting decisions (other compliance and enforcement mechanisms apply).

A local government may not alter the application form (except for limited purposes specified in this rule). A local government may charge a reasonable application fee, not to exceed \$500, to offset its costs to review and process the application. A local government may *not* charge any other fee, or require the applicant to post any bond or security with the local government.

Property Line Setbacks

New livestock structures, and livestock structures enlarged by more than 20%, must comply with property line setbacks under this rule. The following setbacks apply, unless a local ordinance specifies shorter setbacks:

- The structures must be located at least 100 feet from property lines and roads.
- The structures must be located at least 200 feet from property lines other than roads, and 150 feet from roads, if the livestock facility will have 1,000 or more animal units.

Water Quality Setbacks

This rule does not create new water quality setbacks, but requires compliance with applicable shoreland zoning ordinances, floodplain zoning ordinances and well code.

Odor Management; Livestock Structures

The following livestock facilities must have a positive “adjusted odor index,” calculated according to the *odor management worksheet (worksheet 2)*:

- A *new* livestock facility with more than 500 “animal units.”
- An *expanded* livestock facility with more than 1,000 “animal units.”

The “adjusted odor index” indicates the likelihood of objectionable odors from livestock structures, based on:

- The type of livestock, and the nature, size and location of livestock structures.
- Distances from *high odor* livestock structures (such as waste storage facilities) to non-consenting neighbors.
- Odor management and good neighbor practices the applicant will implement.

An applicant can improve the “odor index” score by implementing *odor management* practices (to reduce odors) and *good neighbor* practices (which do not reduce odor but may reduce conflicts with neighbors). A local government may also grant some discretionary credit, if it wishes to do so.

Odor Management; Land Application of Stored, Untreated Liquid Manure

A livestock operator must use at least one of the following practices when applying *untreated liquid manure that has been stored for at least 7 days*:

- Inject the manure directly into the soil.
- Incorporate the manure into the soil within 48 hours (or as soon as weather permits).
- Cover the manure with vegetative residue within 48 hours (or as soon as weather permits).
- Apply the manure at least 500 feet from the nearest “non-affiliated residence” and from the nearest “high public use area” (distances do not apply if owner consents in advance to manure application).
- Apply the manure during only 2 weeks of the year (at least 500 feet from the nearest “high public use area.”)

• Comply with an odor management plan approved by the local government (operator proposes plan). A plan might include, for example, advance notice to neighbors or avoiding applications at sensitive times.

• Comply with less restrictive manure application odor setbacks enacted by local ordinance.

This rule does *not* regulate application of fresh manure (stored less than 7 days), solid or heavily bedded manure, or manure that is effectively treated to reduce odor (such as by anaerobic digestion or substantial dilution).

Waste and Nutrient Management

A livestock operator must manage manure and other waste responsibly, according to standards in this rule. A *waste and nutrient management worksheet (worksheet 3)* must accompany every application for local approval. The completed *worksheet* must include all of the following:

- The types and amounts of manure and other waste that the livestock facility will generate.
- Waste storage methods, duration and capacity.
- Final waste disposition (by landspreading or other means).
- Acreage available for landspreading (include map).

- A *nutrient management checklist*, signed by a qualified nutrient management planner. This checklist is *not* required for a livestock facility with fewer than 500 “animal units” if the operator meets a minimum ratio of land to “animal units.”

Waste Storage Facilities

Waste storage facilities must meet standards in this rule, to provide reasonable assurance against leakage or structural failure. A *waste storage facility worksheet (worksheet 4)*, signed by a registered professional engineer or certified agricultural engineering practitioner, must accompany an application for local approval.

- New or substantially altered waste storage facilities lots must meet current NRCS construction standards.
- Existing waste storage facilities need not meet current construction standards, but must meet standards to assure against leakage and structural failure.
- Existing facilities waste storage facilities lots must meet be closed according to current NRCS standards.

Runoff Management

To qualify for local approval, a livestock facility must comply with standards to prevent polluted runoff. A *runoff management worksheet (worksheet 5)* must accompany the application for local approval. A registered professional engineer or certified agricultural engineering practitioner must sign the *worksheet*.

- New or substantially altered animal lots must meet current NRCS construction standards.
- Existing animal lots need not meet current construction standards, but must meet basic phosphorus runoff standards.
- Feed storage must be managed to prevent significant discharge of leachate or polluted runoff. Special requirements apply to storage of high moisture feed (65% or higher moisture content).
- Runoff from a livestock facility must be diverted from contact with animal lots, manure storage facilities, feed storage areas and manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream.
- A livestock facility must be designed, constructed and maintained to prevent overflow of manure storage facilities.
- A livestock facility may not have any unconfined manure piles within 1,000 feet of a navigable lake or within 300 feet of a navigable stream.
- A livestock facility may not have unrestricted livestock access to waters of the state, if that access will prevent adequate vegetative cover on banks adjoining the water.
- If the construction of a new or expanded livestock facility will disturb more than one acre of land, the operator must have a construction site erosion control plan (per current DNR rules).

Mortality Management

A *mortality management worksheet (worksheet 6)* must accompany an application for local approval. The *worksheet* must describe the operator’s plan for disposing of livestock that die at the livestock facility. This rule does not regulate the method of disposal (other laws may apply).

Local Decision

A local government must grant or deny an application within 90 days after it receives a complete application. If the application complies with this rule, the local government *must approve* the application unless the local government finds, based on other clear and convincing evidence documented in the local record, that the proposed livestock facility fails to

meet the standards in this rule. The local government must issue its decision in writing. The decision must be based on written findings of fact included in the decision. The findings must be supported by evidence in the record. The local government must keep a decision-making record.

Under the Livestock Facility Siting Law, an “aggrieved person” may appeal a local decision to the state Livestock Facility Siting Review Board. The Board will review the local decision based on the local record (the Board will not hold a new hearing or collect additional evidence).

Environmental Impact

This rule will protect the environment by establishing clear environmental protection standards for new and expanded livestock facilities that require local approval. It will protect neighboring land uses by establishing reasonable odor management standards and property line setbacks. It will protect surface water and groundwater quality by incorporating existing water quality setbacks, and by establishing reasonable standards related to waste management, waste storage, nutrient management and runoff control. This proposed rule will ensure that applicants for local approval are aware of other environmental laws that may apply, even though those laws are not incorporated as standards for local approval. A complete environmental assessment is available from DATCP.

Fiscal Impact

This proposed rule will have a significant fiscal impact on DATCP and local units of government. DATCP will incur an estimated additional cost of \$155,000 annually to administer the Livestock Facility Siting Review Board and carry out other duties. Local governments that require local approval may incur a cost of \$600 to \$1,500 per approval. Local governments may charge an application fee of up to \$500 to offset costs to review and process an application. If there are 50–70 local approvals per year, aggregate local costs for all local governments may range from \$5,000 to \$70,000 annually. This cost will be offset by savings related to more orderly, less contentious, approval proceedings. A complete fiscal estimate is available from DATCP.

Business Impact

This rule will have a significant impact on livestock businesses in this state. This rule will facilitate the orderly growth and modernization of Wisconsin’s critical livestock industry by providing a clearer, more uniform, more objective and more predictable local approval process.

This rule directly affects only a small number of livestock operators – those who voluntarily choose to build new or expanded livestock facilities in jurisdictions that require local approval. The affected facilities will typically have over 500 “animal units” (some smaller facilities may be affected, in local jurisdictions that had lower permit thresholds prior to July 19, 2003).

DATCP estimates that this rule will directly affect only about 50–70 livestock facilities per year. But the rule will have a significant impact in those cases. It will also have a long-term, indirect impact on the growth and development of the state’s livestock industry as a whole. The rule will facilitate more orderly planning, more appropriate siting choices, more predictability for livestock operators and their lenders, and more efficient and environmentally sustainable industry development.

Prior to the Livestock Facility Siting Law, some individual livestock operators spent hundreds of thousands of dollars on *unsuccessful applications* for local siting approval. When local approval was denied, the operators lost income opportunities. Other operators, though ultimately successful,

incurred extraordinary (and often unnecessary) costs and delays.

Contentious local proceedings have exacted a heavy emotional toll on livestock operators and their families, and harmed community relations. The unpredictability of local approval has discouraged lending and capital investment.

New and expanding operations will need to comply with regulations spelled out in this rule. This may add costs for some new or expanding operations, but will also save costs related to local siting disputes and litigation. Operators will be able to evaluate compliance needs before applying for local approval, and will be able to plan their investments accordingly.

DATCP has developed *preliminary cost estimates* for livestock facilities directly affected by this rule. DATCP estimates the following average cost (or savings) range per siting, by livestock facility size category:

Under 500 “animal units:” (\$15,500 savings) to \$18,500

500 to 1,000 “animal units:” (\$46,150 savings) to \$48,200

Over 1,000 “animal units:” (\$163,590 savings) to \$159,000

Based on reports of livestock siting disputes prior to the Livestock Facility Siting Law, DATCP believes that the *net costs* of this rule may actually be much lower, and that savings may actually be much higher. Net costs may also be offset, in some cases, by government cost-sharing grants. An applicant for local approval is not ordinarily entitled to cost-sharing for conservation practices needed to comply with this rule. *However a political subdivision may provide cost-sharing if it wishes.*

This rule affects local approval of livestock facilities that will have 500 or more “animal units” (or that will exceed a lower threshold established by local zoning ordinance prior to July 19, 2003). Many of these operators are “small businesses” as defined in s. 227.114 (1), Stats.

This rule will have a significant economic impact on affected small businesses, and is therefore subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats. That provision automatically delays a rule’s applicability to small businesses by 2 months, compared to the effective date for other businesses. A complete business impact analysis, including a small business analysis (“initial regulatory flexibility analysis”), is available from DATCP.

Federal Regulations

This proposed rule addresses local regulation of livestock facility siting. There are no federal regulations that address this topic directly. But the following federal programs have an impact on livestock facilities in this state: Federal Clean Water Act, Federal Clean Air Act, NRCS nutrient management standards, federal conservation incentives.

Regulation in Surrounding States

Among states bordering Wisconsin, there is an apparent trend toward state regulation that pre-empts or standardizes local regulation. State standards can address important concerns such as runoff control and odor management, while providing a more uniform and predictable regulatory environment for farm businesses. Illinois, Michigan and Iowa have established state frameworks for approval of new and expanded livestock facilities, while Minnesota is re-evaluating the state’s role in siting decisions.

Notice of Hearing Commerce (Credentials, etc., Ch. Comm 5) [CR 05-011]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and (15) (h) to (j), and 145.14, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 5, relating to welder, electrician and plumber credentials.

The public hearing will be held as follows:

Monday, **February 28, 2005** at 1:00 p.m.

Room 3B, Thompson Commerce Center

201 West Washington Avenue

Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **March 11, 2005**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Ronald Acker, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at racker@commerce.state.wi.us.

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

Analysis of Proposed Rules

Statutory authority: Sections 101.02 (1) and (15) (h) to (j), and 145.14, Stats.

Statutes interpreted: Sections 101.02 (1) and (15) (h) to (j), and 145.14, Stats.

General Summary

Chapter Comm 5 of the Wisconsin Administrative Code contains the Department’s rules for the issuance and renewal of numerous credentials which businesses and individuals are either mandated or permitted to obtain. These credentials are licenses, certifications and registrations that relate to activities associated with the construction and inspection of buildings and structures or specific components and elements that serve buildings and structures.

The proposed rules consist of revisions in chapter Comm 5 in order to address some administrative inconsistencies and oversights that have occurred since the last major update of chapter Comm 5. The time period during which a certified welder may perform the welding procedures for which the welder is certified is being increased from 3 years to 4 years. Likewise, the time period for maintaining the records of those individuals who passed a structural welding test is being increased from 4 years to 5 years. The proposal deletes the rule relating to advertising as certified electrical contractors or electricians. The proposed rules also include a requirement for certain master plumbers—restricted appliance to complete an educational course on multi-purpose piping systems that they are allowed to install.

Federal Comparison

The proposed rules address administrative issues unique to the department's rules. There are no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

State Comparison

The proposed rules address administrative issues unique to the department's rules. There are no similar rules in the states of Illinois, Iowa, Michigan and Minnesota.

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

Environmental Assessment

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 affect any businesses that employ certified structural welders or conduct structural welding tests. The rules will also affect any businesses that employ licensed master plumbers-restricted appliance who initially obtained their licenses prior to January 1, 2002.

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

The rules require the records of those individuals who passed a structural welding qualifying test to be kept for 5 years instead of 4 years.

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

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

4. Rules have a significant economic impact on small businesses.

No

Fiscal Effect

The Safety and Buildings Division is responsible for administering and enforcing rules relating to protecting public safety and health in public buildings, places of employment and one- and 2-family dwellings. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing those rules. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

The proposed rules will not have a significant fiscal effect on the private sector.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be

contacted at telephone (608) 267-0297, or Email at cdunn@commerce.state.wi.us.

Notice of Hearing Commerce (Electrical, Ch. Comm 16) [CR 05-010]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 101.63 (1), 101.73 (1) and 101.82, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapter Comm 16, relating to electrical construction.

The public hearing will be held as follows:

Date & Time: Monday, **February 28, 2005** at 10:00 a.m.

Location: Room 3B, Thompson Commerce Center
201 West Washington Avenue
Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **March 11, 2005**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Ronald Acker, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at racker@commerce.state.wi.us.

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

Analysis of Proposed Rules

Statutory Authority: Sections 101.02 (1), 101.63 (1), 101.73 (1) and 101.82, Stats.

Statutes Interpreted: Sections 101.63(1), 101.73(1), 101.82 and 101.865, Stats.

General Summary

Chapter Comm 16, Electrical Code, establishes safety and health requirements for the installation of electrical wiring, communication systems and electrical equipment in places of employment, public buildings, dwellings and other premises such as carnivals, parking lots, mines, trenches, manufactured homes and recreational vehicles. The chapter incorporates by reference the National Fire Protection Association (NFPA) standard NFPA 70 - National Electrical Code (NEC). In addition, the chapter includes amendments that clarify or supplement the electrical standards contained in the NEC. Chapter Comm 16 also establishes rules for the electrical inspection of farms, public buildings and places of employment.

The proposed rules consist of an update of chapter Comm 16, including the incorporation by reference of the 2005 edition of the NEC. The proposed rules do not contain any revisions to the current rules for the electrical inspection of farms, public buildings and places of employment. The majority of the proposed changes are administrative in nature and involve numbering and code location.

Detailed Summary

The following is a summary of the major changes in the proposed rules. [The numbers in brackets indicate where the rule change can be found in the rule draft.]

1. Deleting several Wisconsin amendments to the NEC as a result of changes in the 2005 edition of the NEC. For example, because of changes in NEC 210.52 (E) of the 2005 NEC relating to the location of dwelling unit outdoor outlets, section Comm 16.22 is being deleted.

2. Deleting the NEC requirement for concealing nonmetallic sheathed cables in non-dwellings of Type III, IV or V construction within walls, floors or ceilings that provide a 15-minute finish rating. [Comm 16.327]

3. Adding 2 new rules to clarify the placement of a generator used as an emergency or legally required power source relative to the utility transformer. [Comm 16.45 (2) and 16.48]

Federal Comparison

There are several existing federal regulations that relate to the installation of electrical wiring and equipment. Some of these regulations require compliance with various editions of the National Electrical Code (NEC). An Internet-based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to the activities to be regulated by the rule.

Title 7 CFR Part 1755 – Telecommunications Standards and Specifications for Materials, Equipment and Construction. This regulation in the Department of Agriculture applies to telecommunication wiring and equipment, and requires compliance with the 1993 NEC.

Title 24 CFR Part 3280 – Manufactured Home Construction and Safety Standards. This regulation in the Department of Housing and Urban Development covers electrical systems in manufactured homes, and requires compliance with the 1993 NEC.

Title 29 CFR Part 1910 – Occupational Safety and Health Standards. Subpart S of this regulation in the Department of Labor contains detailed electrical safety requirements that are necessary for the practical safeguarding of employees in their workplaces.

Title 29 CFR Part 1926 – Safety and Health Regulations for Construction. Subpart K of this regulation in the Department of Labor contains detailed electrical safety requirements that are necessary for the practical safeguarding of employees involved in construction work.

Title 30 CFR Part 57 – Safety and Health Standards — Underground Metal and Nonmetal Mines. Subpart K of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground metal and nonmetal mines.

Title 30 CFR Part 75 – Mandatory Safety and Health Standards — Underground Coal Mines. Subpart F of this regulation in the Department of Labor contains specific electrical safety requirements for the protection of employees working in underground coal mines.

An Internet-based search of the 2003, 2004 and 2005 issues of the *Federal Register* found the following proposed regulations relating to the installation of electrical wiring and equipment.

April 5, 2004 Register, 29 CFR Part 1910. The Occupational Safety and Health Administration in the Department of Labor proposed to revise the general industry electrical installation standard found in Subpart S of 29 CFR Part 1910. The requirements in the revised standard draw heavily from the 2002 edition of the NEC.

June 25, 2004 Register, 30 CFR Part 75. The Mine Safety and Health Administration in the Department of Labor proposed to allow the use of low- and medium-voltage

diesel-powered electrical generators as an alternative means of powering electrical equipment.

July 16, 2004 Register, 30 CFR Part 75. The Mine Safety and Health Administration in the Department of Labor proposed to establish new electrical safety standards for the installation, use and maintenance of high-voltage continuous mining machines used in underground coal mines.

December 1, 2004 Register, 24 CFR Part 3280. The Department of Housing and Urban Development proposed amendments to the Construction and Safety Standards for manufactured homes by adopting recommendations made to HUD by the Manufactured Housing Consensus Committee. The electrical systems amendments are consistent with the 1996 NEC.

State Comparison

An Internet-based search of adjacent states' rules found the following regulations that include requirements relating to electrical construction.

- Illinois does not administer a state electrical code.
- The Iowa Department of Public Safety administers the Iowa Building Code, which adopts the 1996 edition of the National Electrical Code with no amendments.
- The Michigan Department of Labor and Economic Growth administers the Michigan Construction Code, which adopts the 2002 edition of the National Electrical Code with amendments.
- The Minnesota Department of Administration, Building Codes and Standards Division, administers the Minnesota State Building Code, which adopts the 2002 edition of the National Electrical Code with no amendments.

Advisory Council

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

Name	Representing
Shannon Clark	WI Electric Cooperative Assn.
Mark Cook	WI Public Service Commission
Terry Fameree	International Assn. of Electrical Inspectors
Robert A. Fass	Wisconsin Utilities Association
David Hansen	Dept. of Agriculture, Trade & Consumer Protection
Ronald L. Jahnke	NECA, Wisconsin Chapter
Ronald Janikowski	International Assn. of Electrical Inspectors
Norbert Jarzynski	Wisconsin State AFL–CIO
Charles L. Johansen	Wisconsin Builders Association
Richard Lynes	Assoc. Builders & Contractors of WI
Ronald E. Maassen	NECA, Milwaukee Chapter

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

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.

Any business involved with the installation of electrical wiring, communication systems or electrical equipment will be affected by the rules.

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

There are no reporting, bookkeeping or other procedures required for compliance with the rules.

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

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

4. Rules have a significant economic impact on small businesses.

No.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing chapter Comm 16. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing chapter Comm 16. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Local municipalities may voluntarily enforce chapter Comm 16, and they have the authority to offset any costs by charging appropriate fees.

The proposed rules will not have a significant fiscal effect on the private sector.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or Email at cdunn@commerce.state.wi.us.

Notice of Hearing

Office of State Employment Relations

[CR 04–139]

NOTICE IS HEREBY GIVEN that pursuant to ss. 230.04 (5), Stats., and interpreting s. 230.04 (1), Stats., the Office of State Employment Relations will hold a Public Hearing at the time and place shown below to consider the creation of permanent rules relating to references to the Compensation Plan, day care providers, the Entry Professional Program, paid leave to vote, continuous service, reinstatement, sick leave credit restoration, annual leave schedules, annual leave options, personal holidays, catastrophic leave, paid leave for bone marrow or organ donation, project compensation, hiring above the minimum and supervisor training.

Date: **March 2, 2005**

Time: 10:30 A.M. to 11:30 A.M.

Location: Room 4B, 4th Floor

Office of State Employment Relations
101 East Wilson Street

Madison, WI 53703

The hearing will be held jointly with a hearing by the Division of Merit Recruitment and Selection in the Office of State Employment Relations, which has separate rule-making authority and is simultaneously promulgating rules. Please see the separate hearing notice for an analysis of the proposed rule order of the Division of Merit Recruitment and Selection.

The hearing site is accessible to persons with disabilities. If you need an interpreter, materials in alternate format or other accommodations for this meeting, please inform the contact person listed at the end of this notice before the hearing.

Written comments on the rules may be sent to the contact person by 12:00 P.M. noon on March 4, 2005. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

A copy of the rule is available from the contact person listed at the end of this notice, or by going to "Announcements" at <http://oser.state.wi.us>.

Analysis Prepared by Office of State Employment Relations

Statutory and Agency Authority

Section 230.04, Stats., charges the Director of the Office of State Employment Relations with effective administration of ch. 230, Stats., and the promulgation of rules related to the performance of the Director's duties.

Section 230.046 (2), Stats., requires appointing authorities to ensure that each classified service supervisor completes a supervisory development program.

Section 230.35 (2r) (b), Stats., allows the Director of the Office of State Employment Relations to establish, by rule, a catastrophic leave program.

Statutes Interpreted:

s. 6.76, relating to paid leave to vote

s. 230.046, relating to training

s. 230.35 (1m), relating to annual leave and continuous service

s. 230.35 (1p), relating to annual leave options

s. 230.35 (2d), relating to bone marrow and organ donation

s. 230.35 (2r), relating to a catastrophic leave program

s. 230.35 (4) (e), relating to paid leave to vote

There are no related statutes or rules other than those listed above.

Plain Language Analysis of the Rules

Chapter ER 1

The Compensation Plan is referred to in the rules without definition. Therefore, s. ER 1.02 (5m) should be created to provide that definition.

Chapter ER 3

Compensation administration provisions for nonrepresented employees are now provided in the Compensation Plan. Therefore, the related reference in s. ER 3.03 (4) should include the Compensation Plan.

Chapter ER 4

Sec. 230.048, Stats., has been repealed. OSER no longer is authorized to have a program for grants to day care providers and an appropriation is no longer provided. Therefore, ch. ER 4 no longer is necessary.

Chapter ER 8

The use of the Entry Professional Program has been reduced significantly, diminishing the need to provide

separate information on it for the annual affirmative action report. Therefore, s. ER 8.03 no longer is necessary.

Chapter ER 10

In accordance with s. 230.35 (4e), Stats., employees **shall** be given paid leave to vote if the only time they can vote is during work hours. Section ER 10.02 (4) says that LTEs can only be paid for hours worked. Changes to s. ER 10.02 (4) are necessary to make it consistent with the statute.

Chapter ER 18

Effective July 5, 1998, reinstatement eligibility and other eligibility historically tied to reinstatement, was increased from 3 years to 5 years. Because more than five years have passed, a distinction between 3–year eligibility and 5–year eligibility is no longer necessary. Changes to all provisions noting the distinction should now be made to simplify the eligibility to be 5 years in all cases. Therefore, changes to s. ER 18.02 (2) regarding continuous service and s. ER 18.03 (5) regarding sick leave credit continuation are necessary.

2003 Wisconsin Act 22 changed s. 230.35 (1m), Stats., to allow employees with FLSA exempt status to receive the accelerated annual leave schedule previously only granted to career executives, attorneys, and certain unclassified positions. Changes to s. ER 18.02 (3) are necessary to make it consistent with the statute.

The change created by Wisconsin Act 22 also expanded the group of employees whose continuous service is considered uninterrupted under s. 230.35 (1m) (f), Stats., to include those with FLSA exempt status. Changes to s. ER 18.02 (2) (b) 6., will provide language consistent with the statute.

2003 Wisconsin Act 117 changed s. 230.35 (1p), Stats., to increase the option to bank annual leave hours from 80 hours to 120 hours for those employees at the 216–hour annual leave rate. Changes to s. ER 18.02 (5) are necessary to make it consistent with the statute.

Section ER 18.02 (5) also requires proration of annual leave options for nonrepresented employees who have worked less than 2088 hours in a calendar year no matter how eligibility is acquired. Collective bargaining agreements do not have any requirement to prorate for working less than 2088 hours if the eligibility is based on accumulation of 520 hours of sick leave, and there is no apparent justification for treating nonrepresented employees differently. Removal of the proration requirement for annual leave options if the eligibility of a nonrepresented employee is based on accumulated sick leave will provide parity and uniformity, and simplify administration of the annual leave option process.

2003 Wisconsin Act 117 also changed s. 230.35 (4) (d), Stats., to provide employees with an additional personal holiday in recognition of Veterans Day. Changes to s. ER 18.04 (4) (d) are necessary to make it consistent with the statute.

In accordance with s. 230.35 (4e), Stats., employees **shall** be given paid leave to vote if the only time they can vote is during work hours. Section ER 18.11 says employees **may** be given paid leave. Changes to s. ER 18.11 are necessary to make it consistent with the statute.

Changes in s. 230.35 (2r), Stats., removed statutory restrictions that allowed only classified employees to participate in a catastrophic leave program established in the rules of the Director of the Office of State Employment Relations. This was done to allow certain unclassified employees to participate. Section ER 18.15 governs catastrophic leave participation and rules, but currently applies only to classified employees. Therefore, changes to s. ER 18.15 are necessary. Note: Some unclassified

employees are excluded because they are covered under unique pay and benefit provisions. For instance, elected officials are not eligible for leave donated under the catastrophic leave provisions, and therefore, cannot donate or receive such leave.

Chapter ER 18 does not make any reference to the bone marrow or organ donation benefits added to s. 230.35, Stats., by 1999 Wisconsin Act 125. Therefore, an addition to ch. ER 18 is necessary.

Chapter ER 29

Except for s. ER 29.05, all compensation administration provisions for nonrepresented employees are now provided in the Compensation Plan. Therefore, creation of s. ER 29.02 is necessary to indicate when reference to the Compensation Plan is appropriate.

The language describing the 6–month pay increase for project appointees in s. ER 29.03 (2m) is no longer applicable, and therefore, should be deleted. Section E., 3.01 of the 2003–2005 Compensation Plan states that projects are not eligible for a 6–month pay increase.

The language describing the pay for various appointments in s. ER 29.03 does not include any provision for use of Hiring Above the Minimum for current classified employees. Pay on appointment flexibility has been provided for broadband pay schedules and should also be provided for non–broadband schedules. Due to the labor market, many employees new to state service are being hired at pay rates higher than those being paid to current employees. Changes to s. ER 29.03 are necessary to allow current employees with the same skills and experience to be paid the same as a new employee would be paid upon an original appointment.

Effective July 5, 1998, reinstatement eligibility and other eligibility historically tied to reinstatement, was increased from 3 years to 5 years. Because more than five years have passed, a distinction between 3–year eligibility and 5–year eligibility is no longer necessary. Changes to all provisions noting the distinction should now be made to simplify the eligibility to be 5 years in all cases. Therefore, changes to s. ER 29.03 (6) regarding reinstatement are necessary.

The language describing pay on reinstatement in s. ER 29.03 (6) states that “last rate received” is “the highest base pay rate received in any position in which the employee held permanent status.” The intent of this language was to include only previously held positions, not the employee’s current position. Changes to s. ER 29.03 (6) are necessary to more clearly state that intent.

Chapter ER 34

Compensation administration provisions for project employees are now provided in the Compensation Plan. Therefore, related references in ER 34.05 should be to, or include, the Compensation Plan.

Chapter ER 44

Section 230.046, Stats., has been amended so that agencies no longer need to get OSER approval to offer their own basic supervision courses, to waive the basic supervision requirements, and for an agency’s training tracking system. Sections ER 44.03 (1) and (2) and 44.07 (2) reflect prior law and are inconsistent with current law. Therefore, changes to those sections of ch. ER 44 are necessary to make them consistent with the statute.

Comparison with Rules of Adjacent States

Rule changes that are for clarification only are not reflected in the comparison.

Chapter ER 3

Where are pay provisions included for non–union employees – in your rules or a compensation plan?

IL: Pay provisions for nonunion employees are within our Pay Plan.

IA: Our administrative rules

MI: Pay provisions for non–represented employees are included in civil service rules and in the civil service compensation plan.

MN: Compensation Plan for unrepresented employees
Chapter ER 4

Does any agency have the authority to provide grants to day care providers. If yes, are specific funds appropriated for these grants?

IL: No

IA: Unknown

MI: No

MN: Agencies do not have such authority.

Chapter ER 8

If you have a special hiring program targeted at entry professional positions, is there a reporting requirement to the Legislature on the activities and results of such a program? If yes, what is required to be reported.

IL: No

IA: No

MI: No

MN: We have no such program.

Chapter ER 10

Do your statutes require that state employees be granted paid leave to vote if the only time they can vote is during work hours? If so, are any employees excluded from the provision?

IL: No

IA: Yes, called voting leave; and No, all employees are included.

MI: There is no provision for paid time off specifically for voting purposes.

MN: Statute permits employees to be absent from work (paid) during the forenoon of an election day to vote. "Election" means a regularly scheduled state primary or general election, an election to fill a vacancy in the office of United States senator or United States representative, or an election to fill a vacancy in the office of state senator or state representative.

Chapter ER 18

Do you provide different vacation schedules based on the type of position. If yes, what are they?

IL: No

IA: No

MI: No, vacation schedules and policies do not vary by the types of positions.

MN: Vacation schedules for managers are different than all other bargaining units.

What are your rules regarding the restoration of seniority for employees who leave and later return to state service?

IL: Seniority is only restored when a laid off employee is rehired within two years.

IA: Prior service credit is provided for all service in a permanent position.

MI: Only for purposes of annual leave accrual (vacation time) and longevity pay, employees who separate from state service and later return are eligible to have prior service hours added back in after they complete 5 years of continuous service. For purposes of employment preference, an

employee who separates for reason other than leave of absence or layoff, loses all continuous service hours.

MN: Seniority is forfeited when an employee separates from state service. Time on the layoff list or an approved leave of absence is not considered a separation.

What are your rules regarding allowing employees to convert vacation into sabbatical or termination leave?

IL: Not allowed to convert.

IA: We have no such rules. All vacation is paid off at termination.

MI: All annual leave (vacation time) unused at the time of separation is paid at the employee's last rate of pay. These pay off amounts are subject to the maximum accrual caps which are based on years of service.

MN: Employees eligible to use vacation are compensated in cash for their unused vacation at the time they terminate service. Sabbatical leaves are not dependent upon vacation leave.

If vacation can be converted to sabbatical or termination leave, are there any rules regarding pro–ration of the amount that can be converted?

IL: Not applicable

IA: Not applicable

MI: Employees are subject to maximum annual leave accrual caps based on years of service. The payoff amounts cannot exceed these accrual cap amounts.

MN: Liquidation of vacation on separation is limited to 275 hours.

Do you consider Veterans Day a legal holiday, or a personal holiday to be used anytime in recognition of Veterans Day?

IL: Legal

IA: Veterans day is a legal state holiday.

MI: Veteran's Day is a legal holiday, observed on November 11.

MN: It is a legal holiday, but with the agreement of the Local Union, a substitute day may be observed for Veterans Day.

Do your statutes require that state employees be granted paid leave to vote if the only time they can vote is during work hours? If so, are any employees excluded from the provision?

IL: No

IA: Yes, called voting leave; and No, all employees are included.

MI: There is no provision for paid time off specifically for voting purposes.

MN: Statute permits employees to be absent from work (paid) during the forenoon of an election day to vote. "Election" means a regularly scheduled state primary or general election, an election to fill a vacancy in the office of United States senator or United States representative, or an election to fill a vacancy in the office of state senator or state representative.

Do you have a catastrophic leave program? If yes, are there any types of positions excluded from the program? Note: For these questions a catastrophic leave program would be any program allowing employees to donate leave to another employee (who has run out of leave) for an illness or injury that incapacitates the employee or an immediate relative requiring the employee to be absent from work for an extended period of time.

IL: No

IA: No

MI: Yes, we have an annual leave donation policy and an annual leave "bank" that are available to assist "employees

facing financial hardship due to serious injury or prolonged illness of the employee or the employee's dependent spouse, child, or parent." In order to receive a leave transfer an employee must have completed the initial probationary period and have exhausted all leave credits.

MN: Yes, we have a vacation donation program. Employees may apply for the program if they have been employed by the state for at least six consecutive months, are eligible to accrue and use vacation (or personal days) or sick leave, are eligible for full or partial Employer Insurance contribution, have exhausted all forms of paid leave, and obtain medical documentation which verifies that a life threatening illness/injury necessitates absence from work for a minimum of six weeks.

Do you provide paid leave for bone marrow or organ donation?

IL: Yes. An employee may receive up to 6 weeks.

IA: We have no specific rule/policy on this subject. Determination would be considered within the context of our regular sick leave rules.

MI: There is no provision for paid time off specifically for bone marrow or organ donation. Sick Leave would have to be used for these situations.

MN: Yes, up to 40 hours.

Chapter ER 29

Where are pay provisions included for non–union employees – in your rules or a compensation plan?

IL: Pay provisions for nonunion employees are within our Pay Plan.

IA: Our administrative rules

MI: Pay provisions for non–represented employees are included in civil service rules and in the civil service compensation plan.

MN: Compensation Plan for unrepresented employees.

Do you provide 6–month pay increases to any type of state employees?

IL: No

IA: Upon completion of the probationary period, promotion or reclassification to a higher pay grade.

MI: Yes, many of our pay ranges have 6 month steps.

MN: Some bargaining unit agreements allow these for employees at certain steps within their salary range.

Can new employees be hired above the minimum? Is this extended to movements of current employees (i.e., can the criteria used for setting pay of a new employee be used when a current employee is moving to a new position)?

IL: Yes

IA: Yes, however, movements for current employees is up to the discretion of the agency.

MI: Yes, new employees can be hired above the minimum without any special approval if the agency can document the accepted rational (difficulty recruiting for the position, employee making more outside state service and higher rate is necessary to attract, special education/experience well beyond minimum qualifications needed, or previous state employee with pertinent experience). The same criteria can not be applied when moving current employees to new positions. Specific formulas and policies must be applied.

MN: Yes, new hires can be hired above minimum. Pay upon movement to a new position is dependent upon language in the bargaining unit contract.

Chapter ER 34

Where are pay provisions included for non–union employees – in your rules or a compensation plan?

IL: Pay provisions for nonunion employees are within our Pay Plan.

IA: Our administrative rules

MI: Pay provisions for non–represented employees are included in civil service rules and in the civil service compensation plan.

MN: Compensation Plan for unrepresented employees

Chapter ER 44

Does your state have basic supervisory training? Are agencies authorized to offer their own supervisory training? If yes, does the agency's training have to be approved by any centralized human resources office?

IL: No, yes, and no, respectively.

IA: Yes, courses included in the basic supervisory certificate program are:

Achieving Communication Effectiveness; Customer service; Ethics in the Workplace; Human Relations Skills; Discipline, Grievances, & the Contracts; Family Medical Leave Act; EEO/AA: Making the Most of Your Workforce; From Interview to Hire; Investigating Employee Misconduct; Performance Evaluation; Preventing Sexual Harassment for Supervisors; and What is the ADA? Agencies can provide their own supervisory training without approval by HRE, however they typically focus their training on department specific issues.

MI: Yes, yes and no, respectively.

MN: We offer required supervisory training to all new supervisors through the state's Training and Development Resource Center. Agencies may offer additional training if they choose which does not have to be approved by the centralized human resources office.

There are no existing or proposed federal regulations that are intended to address the activities to be regulated by the proposed rules.

No factual data or analytical methodologies were necessary for the rule changes involved herein.

The proposed rule changes affect only persons employed by or who seek employment with the State of Wisconsin. The rule changes will not affect small business.

There will be no anticipated costs that would be incurred by the private sector.

Fiscal Estimate

The fiscal impact of changes in ss. ER 18.02 (5), ER 18.11, ER 18.15, and ER 29.03 (1) is indeterminable.

There is no fiscal impact caused by the other changes in this rule order or the changes are required by statute for which any fiscal report should have already been considered.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business; therefore, an initial regulatory flexibility analysis is not required.

Contact Person

David Vergeront
Office of State Employment Relations
101 East Wilson Street
Madison, WI 53703
608–266–0047
David.Vergeront@oser.state.wi.us

Notice of Hearing

Employment Relations – Merit Recruitment and Selection

[CR 04–138]

NOTICE IS HEREBY GIVEN that pursuant to ss. 230.05 (5), Stats., and interpreting s. 230.05 (1), Stats., the Division of Merit Recruitment and Selection in the Office of State Employment Relations will hold a Public Hearing at the time and place shown below to consider the creation of permanent rules relating to the Entry Professional Program, submission of notices and requests to the administrator, promotional appointments and pay, involuntary transfers, periods of eligibility for reinstatement, the definition of “state property”, acting assignments and obsolete references, correct cross-references, clarifying language and other minor, technical changes.

Date: **Wednesday March 2, 2005**
 Time: 10:30 A.M. to 11:30 A.M.
 Location: Conference Room 4B
 Administration Building, 4th Floor
 101 E. Wilson Street
 Madison, WI

The hearing will be held jointly with a hearing by the Office of State Employment Relations, which is simultaneously promulgating rules. Please see the separate hearing notice for an analysis of the proposed rule order of the Office of State Employment Relations.

The hearing site is accessible to persons with disabilities. If you need an interpreter, materials in alternate format or other accommodations for this meeting, please inform the contact person listed at the end of this notice before the hearing.

Written comments on the rules may be sent to the contact person by 12:00 P.M. noon on March 4, 2005. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

A copy of the rule is available from the contact person listed at the end of this notice, or by going to “Announcements” at <http://oser.state.wi.us>.

Analysis Prepared by Division of Merit Recruitment and Selection

Statutory Authority: Section 230.05 (5), Stats., grants the Administrator of the Division of Merit Recruitment and Selection general authority to promulgate rules on provisions for which the administrator has statutory responsibility.

Section 230.25 (3) (a), Stats., as amended by 1997 Wisconsin Act 307, provides that the reinstatement eligibility period for state employees is five years.

Section 19.45 (11) (a), Wis. Stats., requires the Administrator to promulgate rules to implement a code of ethics for certain classified and unclassified state employees.

Statutes Interpreted:

- 19.45 (11) (a), relating to a code of ethics
- 230.06 (1) (d) and (e), relating to information provided by agencies to the Administrator
- 230.15 (3) and 230.29, relating to transfers
- 230.19, relating to promotion
- 230.22, relating to an entry professional program
- 230.25 (1), relating to certification
- 230.25 (1n) (a), relating to expanded certification
- 230.25 (3) (a), relating to reinstatement

- 230.34 (1) (a), relating to demotions
- 230.34 (2), relating to layoffs
- There are no related statutes or rules other than those listed above.

Plain Language Analysis of the Rules

Ch. ER–MRS 1

A definition of “compensation plan” is created.

Ch. ER–MRS 8

Classifications previously in the Entry Professional Program have been eliminated from it except at an agency’s specific request. The program’s value as an alternative recruitment and selection program was also diminished when the statutes were changed in 1998 to permit flexible certification for all positions. Thus, the need to provide separate information on the program for the annual affirmative action report no longer exists. The reporting requirement is repealed.

Ch. ER–MRS 12

Certification requests are submitted in a variety of forms, both on paper and electronically. This amendment removes references to “a prescribed form”, permitting submission of requests in paper or electronic format.

Chs. ER–MRS 12, 22 and 27 relating to references to “handicap” and “handicapped”.

This amendment changes the term “handicap” or “handicapped” to “disability” or “individual with a disability”, respectively, in various provisions. These changes are being made to conform with preferred terminology and to be consistent with other references in chapters 111 and 230, Wisconsin Statutes, and the Administrative Code.

Ch. ER–MRS 14

Under certain conditions, an appointment from a register must be considered a promotion even though the appointee has reinstatement eligibility to the position being filled. The appointing authority should have the discretion to treat the appointment as a promotion.

Also see explanation under “Chs. 14, 15, 16, 17 and 22, relating to references to the Compensation Plan.”

Chs. 14, 15, 16, 17 and 22 relating to references to the Compensation Plan.

Determining the rate of pay on promotion needs to include references to the Compensation Plan. Therefore, related references to s. ER 29.03 in chs. ER–MRS 14, 15, 16, 17 and 22 are amended to include the Plan.

Ch. ER–MRS 15

A change is necessary to clarify that involuntary transfers are permitted within an employing unit and between employing units of the same agency. This change would clarify that voluntary and involuntary transfers are treated the same.

Also see explanation under “Chs. 14, 15, 16, 17 and 22, relating to references to the Compensation Plan.”

Chs. ER–MRS 16, 22 and 34, relating to references to reinstatement eligibility.

Sections 230.25 (3) (a), 230.31 (1) (intro) and (a), 230.33 (1) and 230.40 (3), Stats., were amended by 1997 Wisconsin Act 307 to increase the reinstatement eligibility period for state employees from 3 years to 5 years, effective July 5, 1998. Because more than 5 years have elapsed, a distinction between the “old” 3-year eligibility and the “new” 5-year eligibility is no longer necessary. Removal of all provisions noting the distinction is made to improve the readability of the provisions.

Also see explanation under “Chs. 14, 15, 16, 17 and 22, relating to references to the Compensation Plan.”

Ch. ER-MRS 17

The language is modified to eliminate various requirements that agencies submit copies of transactions to the administrator, specifically when the appointing authority notifies the employee of a demotion or when the employee accepts a demotion within an agency or between agencies. The process will be better served by the appointing authority placing a copy of these transactions in the employee's personnel file.

Also see explanation under "Chs. 14, 15, 16, 17 and 22, relating to references to the Compensation Plan."

Ch. ER-MRS 22

The language is amended to eliminate two incorrect references and to clarify application of the rules in certain situations.

Also see explanation under "Chs. 14, 15, 16, 17 and 22, relating to references to the Compensation Plan."

Also see the explanation under "Chs. ER-MRS 16, 22 and 34, relating to references to reinstatement eligibility".

Also see explanation under "Chs. 12, 22 and 27, relating to references to "handicap" and "handicapped".

Ch. ER-MRS 24

The definition of "state property" is updated to clearly include information technology and telecommunications resources.

Ch. ER-MRS 27

Also see explanation under "Chs. 12, 22 and 27, relating to references to "handicap" and "handicapped".

Ch. ER-MRS 32

The language is modified to eliminate the requirement that the appointing authority submit a copy of the acting assignment notice to the administrator. The process will be better served by the appointing authority placing a copy in the employee's personnel file.

Ch. ER-MRS 34

See the explanation under "Chs. ER-MRS 16, 22 and 34, relating to references to reinstatement eligibility".

Comparison of changes to rules in adjacent states.

This section represents a comparison of the rules involved herein that exist in adjacent states. Rule changes that are for clarification only are not reflected.

Ch. ER-MRS 8

1. If you have a special hiring program targeted at entry professional positions, is there a reporting requirement to the Legislature on the activities and results of such a program? If yes, what is required to be reported?

Illinois: No

Iowa: No

Michigan: No

Minnesota: We have no such program.

Ch. ER-MRS 12

2. Do your rules allow agencies to submit requests to fill a position by electronic form?

Illinois: Yes

Iowa: Yes

Michigan: State of Michigan has decentralized hiring; Civil Service does not need to approve the filling of positions, however, a current hiring freeze necessitates approval from Budget to fill positions. That form is available online.

Minnesota: Yes, all requests are submitted this way.

Ch. ER-MRS 14

4. If an employee is appointed to a higher classification, and the employee has reinstatement eligibility to that position, is it considered a promotion, or does the appointing authority have discretion to consider it a promotion?

Illinois: Promotion

Iowa: No

Michigan: No. They would have to reinstate the employee using the recall list

Minnesota: It is considered a promotion if the higher class is at least two steps higher than the current one.

Chs. 14, 15, 16, 17 and 22 relating to references to the Compensation Plan.

5. Where are pay provisions included for non-union employees – in your rules or a compensation plan?

Illinois: Pay provisions for nonunion employees are within our Pay Plan.

Iowa: Our administrative rules

Michigan: Pay provisions for non-represented employees are included in civil service rules and in the civil service compensation plan. A coordinated compensation panel sends a "recommended coordinated compensation plan for all nonexclusively represented classified employees to the civil service commission" each year for approval. Further details can be found in Regulation 6.06, http://www.michigan.gov/mdcs/1,1607,7-147-6877_9788-20144--,00.html

Minnesota: Compensation Plan for unrepresented employees

Ch. ER-MRS 15

6. Can employees be involuntarily transferred within an employing unit of any agency or between employing units within an agency?

Illinois: No

Iowa: Yes, we call this a "reassignment".

Michigan: Yes. We refer to this as a lateral job change.

Minnesota: Employees can be reassigned as outlined in our bargaining agreements.

Ch. ER-MRS 17

7. Is an agency required to submit a notice to the central HR office of an involuntary or voluntary demotion?

Illinois: Yes

Iowa: No, however, the payroll processing document would need to indicate the reason for the demotion.

Michigan: No

Minnesota: We have an HRIS database, in which all such transactions are recorded.

Ch. ER-MRS 24

8. Does your ethics code for civil service employees prohibit the use of IT and telecommunications for personal gain?

Illinois: Yes

Iowa: No, this would be accomplished through agency work rule policies.

Michigan: Such use is prohibited by the State's Information Technology Resources Acceptable Use policy. Details can be found at the following link: http://www.michigan.gov/documents/Policy_1460_00_722_04_7.pdf

Minnesota: The law says: An employee shall not use or allow the use of state time, supplies or state-owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

Ch. ER–MRS 32

9. Is an agency required to submit a notice to the central HR office of an acting assignment?

Illinois: No

Iowa: No, this would only be required if the agency wanted to compensate the employee for such an assignment

Michigan: No

Minnesota: Work out of class assignments are recorded in our HRIS database.

There are no existing or proposed federal regulations that are intended to address the activities to be regulated by the proposed rules.

No factual data or analytical methodologies were necessary for the rule changes involved herein.

The proposed rule changes affect persons employed by or who seek employment with the State of Wisconsin. The rule changes will not affect small business. There will be no anticipated costs that would be incurred by the private sector.

Fiscal Estimate

The elimination of reporting requirements for the Entry Professional Program and the submission of notices by appointing authorities may result in a minimal workload reduction for staff of the agencies and the Office of State Employment Relations. However, the amounts are indeterminate.

There is no fiscal impact from the other changes in this rule order.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business; therefore, an initial regulatory flexibility analysis is not required.

Contact Person

Bob Van Hoesen
Office of State Employment Relations
101 East Wilson Street
Madison, WI 53703
608–267–1003

Notice of Hearing Financial Institutions – Banking [CR 05–012]

NOTICE IS HEREBY GIVEN That pursuant to ss. 224.72 (7p) (a) to (c), 224.72 (8), 224.73 (3), 224.79 (1) and (2), and 227.11 (2), Stats., and interpreting ss. 224.72 (3) (b), 224.72 (7) (d) 1. and 2., 224.72 (7p) (a) to (c), and 224.79 (1) and (2)., Stats., the Department of Financial Institutions, Division of Banking will hold a public hearing at the Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, 5th Floor in the city of Madison, Wisconsin, on the **28th day of February, 2005**, at 1:30 p.m. to consider a rule to affect chs. DFI–Bkg 40 to 43 and create chs. DFI–Bkg 44 and 45, relating to definitions, applicability requirements, registrations, annual audits and reports, trust accounts, ethical and competent practice, education, examination, brokerage agreements and consumer disclosures.

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

Statute(s) interpreted: ss. Sections 224.72 (3) (b), 224.72 (7) (d) 1. and 2., 224.72 (7p) (a) to (c), and 224.79 (1) and (2)., Stats.

Statutory authority: ss. Sections 224.72 (7p) (a) to (c), 224.72 (8), 224.73 (3), 224.79 (1) and (2), and 227.11 (2), Stats.

Explanation of agency authority: Pursuant to subch. II, ch. 224, the department regulates mortgage bankers, mortgage brokers and loan originators.

Summary of proposed rule: Chapters DFI–Bkg 40 to 43 have been affected by various acts since 1991; however, with the exception of the promulgation of ch. DFI–Bkg 41 regarding fees and registration pursuant to 1997 Act 45, these chapters have not been updated to reflect either these acts or current industry practices. Most recently, 2003 Act 260 required that the division establish by rule standards, for approval by the loan originator council, regarding examinations in the law of mortgage banking and mortgage brokering, and regarding a curricula of education and hours for the same. 2003 Act 260 also required the division to prescribe the form and content of mortgage brokerage agreements and consumer disclosure statements. This rule updates administrative code provisions regarding definitions, applicability requirements, registrations, annual audits and reports, trust accounts, and ethical and competent practice; sets forth standards regarding education and examination; and sets forth the form and content of brokerage agreements and consumer disclosures. The standards in this rule have been approved by the loan originator council.

Summary of and preliminary comparison with existing or proposed federal regulation: None.

Comparison with rules in adjacent states: Illinois, Iowa, Michigan and Minnesota all regulate mortgage banking to a comparable degree in statute and rule. This includes regulating in some form mortgage brokerage agreements and consumer disclosure agreements. However, only Illinois requires some form of education and competency examination.

Summary of factual data and analytical methodologies: The department reviewed comparable statutes and regulations, industry practices, and education courses offered by industry associations. The standards set forth in the rule were also reviewed and approved by the loan originator council.

Analysis and supporting documentation used to determine effect on small business: The rule does not have a significant economic impact on small business. First, the rule consists primarily streamlining out–dated text. Second, the Wisconsin Senate (by voice vote) and Wisconsin Assembly (97 ayes, 2 noes) in 2003 Act 260 mandated competency examinations, continuing education, brokerage agreements and disclosure statements for the mortgage banking industry, and directed that the department establish certain standards and forms as part of these mandates. The proposed rule imposes no mandates and solely establishes these standards and forms and, therefore, is not the cause for any significant economic impact on small business that may result from the act.

Fiscal Estimate

The fees established in this rule are set at a level that will approximate the costs of contract services to meet the requirements included in the 2003 Act 260. There is no increase to the loan originator license fee. This rule increases revenues to the Department to approximate the cost of administering a nationwide competency examination and continuing education program for mortgage loan originators and solicitors included in the legislation. The estimated total annual revenue increase is \$846,250. The rule establishes a competency examination fee at \$150. Other fees established in the rule cover the cost of approving continuing education providers (\$100 for two years) and continuing education courses (\$150 for two years) to ensure they meet criteria

established in the rule and by the Loan Originator Council. The rule also increases the cost for employment transfers from \$20 to \$40.

Contact Person

A copy of the proposed rule and fiscal estimate may be obtained at no charge from Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institutions' website, www.wdfi.org.

Written comments regarding the proposed rule may be submitted to Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, or via the department's website contact page, e-mail the secretary. Written comments must be received by the conclusion of the hearing.

Notice of Hearing Natural Resources (Fish, Game, etc.)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 29.014 (1), 227.11 (2) and 227.24 (1) (a), Stats., interpreting s. 29.014 (1), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-67-04(E) pertaining to the closure of sturgeon spearing on the Lake Winnebago system. This emergency order was published on January 27, 2005 and the corrected version was republished on February 2, 2005. The repeal and recreation of s. NR 20.33 (5) (c) allows the Department to close the sturgeon spearing season on the Lake Winnebago system at the end of the day that 100% of the total allowable harvest is reached.

Notice is hereby further given that the hearing will be held on:

Wednesday, **February 23, 2005** at 6:00 p.m.
Darboy Club
N9695 County Trunk N (corner of N and KK)
Appleton

NOTICE IS HEREBY FURTHER GIVEN THAT following the public hearing on the emergency rule a public informational meeting will be held to discuss options for future seasons. It is anticipated the public information meeting will start at approximately 7:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Karl Scheidegger at (608) 267-9426 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Impact

The proposed rule has no fiscal impact.

The emergency rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Karl Scheidegger, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until March 4, 2005. Written comments whether submitted electronically or by U.S. mail will have

the same weight and effect as oral statements presented at the public hearing. A personal copy of the emergency rule and fiscal estimate may be obtained from Mr. Scheidegger.

Notice of Hearing Natural Resources (Environmental Protection-Air Pollution Control) [CR 04-107]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1) and (6), 285.60 (2g), (3) and (6) and 285.69 (1), Stats., interpreting ss. 285.11 (6), 285.60 (2g) and (3), 285.61 and 285.62, Stats., the Department of Natural Resources will hold an additional public hearing on revisions to chs. NR 400, 406, 407 and 410, Wis. Adm. Code, relating to implementing general and registration air permit programs required by 2003 Wisconsin Act 118. The State Implementation Plan developed under s. 285.11 (6), Stats., will also be revised. The proposed rule revision establishes criteria and procedures for the issuance of general and registration air permits. These rules are intended to provide industry and the Department with a streamlined approach to permitting low emitting sources or categories of similar sources. Sources that are eligible for and which choose to take advantage of a general or registration permit would complete a simplified permit application form. General and registration permits would already have been completed by the Department for the targeted sources or source categories using permit language that is standard for the sources to be covered by the permit. This process will provide greater certainty, flexibility and timeliness to the permitting process.

The proposed rule establishes the general framework for these permits by setting implementation criteria. Specific permit conditions will be developed during permit preparation for sources that could be regulated by registration or general permits. Sources which may be eligible for registration or general permits are those that have actual emissions significantly lower than federal major source thresholds, nonmetallic mineral processing plants, asphalt plants, small natural gas fired generators, digestors, small heating units, printing presses and hospital sterilization equipment.

Also included in this proposed rule is a minor change to clarify the permit exemption criteria for grain processing and grain storage facilities. This clarification is necessary to ensure that column dryers and rack dryers are included in the exemption criteria, as was intended in the original rule development. Included in this package as well are minor technical changes to provide correct references to the recently updated ch. NR 445 which were inadvertently omitted in the processing of that rule package.

NOTICE IS HEREBY FURTHER GIVEN that the proposed rule revisions make several changes to the original version of the rule that went to public hearing in 2004. These changes were made to provide greater clarity to the rule and to further streamline the permitting program for these sources. Changes made to the rule include:

- Expansion of the categories of sources eligible for registration construction permits to include major sources making changes or modifications that result in low emission increases;
- Exemption from construction permits for certain changes and modifications made under a general operation or registration operation permit; and
- Clarification of the eligibility criteria for the general and registration permit programs.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule

will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:

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

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

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

Thursday, **March 3, 2005** at 1:00 p.m.

Room 511, GEF #2

101 South Webster Street

Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bob Eckdale at (608) 266–2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The use of general and registration permits will result in reduced programmatic costs in the long run. While the Department will spend resources similar to that of a standard permit review to prepare a general permit or a registration permit, the resulting product will be used to regulate several similar sources resulting in lower costs associated with review of permit applications.

It is anticipated that approximately 50 registration permits and 50 general permits will be issued for new construction annually. Under proposed fees for these projects, the department would see \$155,000 in additional revenue. If these projects were required to undergo the traditional permit route, the Department would garner approximately \$500,000 in permit fees for these projects. Although the registration and general permit programs will result in less administrative burden for regulated facilities, the department will incur the costs of implementing the program and developing permits for use under these programs. Thus, these programs are not expected to change the department's need for permitting resources.

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Caroline Garber, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until March 4, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the proposed rule and fiscal estimate may be obtained by writing Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 by calling (608) 266–7718 or by fax at (608) 267–0560.

Notice of Hearing Transportation [CR 05–009]

NOTICE IS HEREBY GIVEN that pursuant to ss. 348.26 (2) and 348.27 (2), Stats., and interpreting ss. 59.84 and 84.295 (8), Stats., the Department of Transportation will hold a public hearing on the **1st day of March, 2005**, at the Hill Farms State Transportation Building, **Room 144–B**, 4802 Sheboygan Avenue, Madison, WI, at **1:00 PM**, to consider the emergency rule and proposed permanent rule amendment of chs. Trans 254 and 255, Wisconsin Administrative Code, relating to the standards and procedures for the issuance of single and multiple trip oversize and overweight permits.

Parking for persons with disabilities and an accessible entrance are available.

A copy of the emergency rule may be obtained upon request from Mark Woltmann, Wisconsin Department of Transportation, Division of Transportation Infrastructure Development, Room 451, P. O. Box 7965, Madison, WI 53707–7965, or by calling (608) 266–1744.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 348.26 (2) and 348.27 (2), Stats.

Statutes Interpreted: ss. 59.84 and 84.295 (8), Stats.

Plain Language Analysis: Chapters Trans 254 and 255 establish the standards and procedures for the issuance of single and multiple trip oversize and overweight permits. Both chapters have route limitations that prohibit the permitting of oversized vehicles on portions of the Milwaukee County expressway system. Specifically, vehicles or loads or dimensions greater than 11 feet in width, 13½ feet in height, or 100 feet in length are prevented from using the Milwaukee Expressway. These limitations have severe consequences for the timely and cost effective reconstruction of the Marquette Interchange.

Completing the construction of this project on time and on–budget requires the transporting of steel and concrete bridge components larger than these dimensions to the construction site. Structural members are currently being manufactured for the initial stages of construction of the Marquette Interchange Reconstruction project. These beams and girders exceed the transport limits detailed above and cannot be reduced in size. The steel and concrete bridge components must be delivered to the construction site beginning in February 2005.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: 23 CFR parts 657 and 658 regulate the length, width and weight limitations of trucks. Part 657 prescribes requirements for administering a program of vehicle size and weight enforcement on Federal–aid highways, including the required annual certification by the State. It supports the development and operation by each State of an enforcement process that identifies vehicles of excessive size and weight and provides a systematic approach to eliminate violations and thus improve conditions. Part 658 identifies a National Network of highways available to vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA) as amended, and to prescribe national policies that govern truck and bus size and weight. FHWA policy is to provide a safe and efficient National Network of highways that can safely and efficiently accommodate the large vehicles authorized by the STAA. This network includes the Milwaukee Expressway as well as the Interstate System and other qualifying Federal–aid Primary System Highways.

Comparison with Rules in Adjacent States

The rule making will have no effect on Interstate operation because it is exclusive to the greater Milwaukee area. The Federal government regulates the size and weight of commercial vehicles on the Interstate Highway system. State governments regulate the size and weight of commercial vehicles on state routes in addition to enforcing the Federal size and weight rules.

Michigan

Pursuant to Act 300 of the Public Acts of 1949, the Michigan Vehicle Code (MVC), transport permits are required for vehicles and loads that exceed the maximum legal limits established in the MVC. Transport permits are only issued for vehicles and loads that cannot reasonably be reduced in size or transported by other means. There are two different types of permits available to individuals or companies to transport their vehicles/loads on Michigan state trunk lines: (1) single trip permits and (2) extended permits. Single trip permits may be issued for a five–day period if so requested. A single trip permit is valid for one trip only, but may be issued to include a return move. Extended permits may be issued on an annual basis and are issued on the vehicle/load being transported, there are various categories of permits including: construction, miscellaneous, agricultural, pipe and pole, and modular or mobile home. Each permit includes appropriate conditions and restrictions based on the size and or weight of the movement.

It is the purpose of the Michigan Department of Transportation to issue special permits for the movement of necessary overweight and oversize vehicles or loads consistent with the following obligations: (a) protection of the motoring public from potential traffic hazards; (b) protection of highway surfaces, structures, and private property; and, (c) provisions for a normal flow of traffic with a minimum of interference. Maximum vehicle dimensions are 13 feet, 6 inches in height and 8 feet in width or 8 feet, 6 inches in width on designated highways. The maximum lengths vary by type of vehicle.

Minnesota

The Department of Transportation's Office of Freight and Commercial Vehicle Operations (OFCVO) is responsible for implementing, administering and enforcing Minnesota laws and federal regulations governing carriers transporting oversized and overweight loads. Permits regulate the movement of vehicles upon State Trunk Highways with or without load, that exceed maximum legal size for vehicle width, height, length, weight, or number of vehicles in combination.

Maximum vehicle dimensions are 13 feet, 6 inches in height and 8 feet 6 inches in width (excluding rear view mirrors or temporary load securement devices that may extend an additional 3 inches on each side of the vehicle or load). The maximum lengths vary by type of vehicle and range between 40 to 75 feet. Anything over these legal dimensions requires a permit to travel on a state highway. The Overdimension Transportation Permit is issued by OFCVO and it must be carried in the vehicle during transport.

Single trip permits allow one move within a 5–day period. A Job permit allows multiple moves over the same route by the same vehicle or combination within a two–month period. Annual oversize permits allow multiple moves over various routes by the same vehicle or combination within a specified time frame that varies from 2 to 12 months depending on the type of annual.

Illinois

Oversize and Overweight (OS/OW) permitting is administered in Illinois by the Department of Transportation,

Permits Unit. Oversize and Overweight permits allow the operation of vehicles or loads in Illinois that exceed the legal maximum dimensions and weights. Maximum legal dimensions are 13 feet, 6 inches in height and 8 feet, 6 inches in width on Class I and II highways or 8 feet on Class III, other state highways, and local roads and streets. Legal length dimensions vary by vehicle type and class of highway.

The permitting process is intended to provide for highway safety. There are Single Use Permits (5 days), Round Trip Permits (10 days), Quarterly and Yearly Permits, Repeated Moves of Like Objects Permits, Highway Crossing Permits, and Grain Permits.

The Department of Transportation is authorized by the Illinois Size and Weight Law (625 ILCS5/Chapter 15) to issue special permits. These special permits allow the operation of vehicles or loads that exceed legal maximum dimensions and weights. These permits are valid only for those highways under Department jurisdiction.

Iowa

The maximum legal dimensions allowed on Iowa roadways is 8 feet in width and 13 feet, 6 inches in height or 14 feet in height for auto transporters. The length limits vary by vehicle type and range between 40 feet and 75 feet.

Vehicles and/or loads that are indivisible (ones that cannot be broken down) and exceed the above legal dimensions or weights can be moved with an oversize permit. Single trip, multi–trip, annual, annual oversize/overweight, or all–systems permits are available. Oversize loads can be moved from 30 minutes before sunrise until 30 minutes after sunset unless qualified for continuous movement. Oversize loads requiring law enforcement escort are required to provide at least one week notice prior to the intended travel date if they choose to utilize the escort service of the Office of Motor Vehicle Enforcement.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen

Without this rule amendment, the alternatives are either to: (a) transport these oversize loads on the city surface street system which will have greater safety impacts and increase potential damage to local roadways not designed to carry these types of loads; or (b) redesign the project to reduce the size of the structural members (beams and girders) to meet these size limitations which will significantly increase the project costs and the time required to complete the project.

The rule modifications give the Department authority to allow dimensions of a vehicle or load to exceed 11 feet in width, 13½ feet in height, or 100 feet in length on the entire Milwaukee Freeway under extraordinary circumstance when, in the opinion of the Department, public health and welfare is better served, and to impose additional conditions to promote the safe operations of the vehicle and load when necessary. The Department already exercises this same authority on the remainder of the state trunk highway system.

Before any oversize or overweight vehicle can travel legally on Wisconsin highways, its operator must first obtain a state permit from the Department of Transportation. To issue this permit, the Department must evaluate the proposed route for potential hazards such as roads that area too narrow, bridges without adequate vertical clearance, areas that are congested, and roadbeds that are unstable during spring thaw. The Department must also ensure that heavy loads can travel safely without damaging the state's bridges.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses

The rule is expected to have no significant effect on small business practices or net worth of small businesses. These

existing Milwaukee Freeway route restrictions would either create added safety and infrastructure concerns because these oversized loads would be shifted to secondary roads or local streets not engineered to handle this type of load or it would require more trucks and truck drivers to move a greater number of smaller sized structural components. This shift, in turn, would increase traffic congestion and its related safety problems that result in increased delivery times and costs to local area businesses. You may contact the Department's small business regulatory coordinator by phone at (608) 267-3703, or via e-mail at the following website:

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

Fiscal Effect and Anticipated Costs Incurred by Private Sector

See previous section. Routing oversized loads on the Milwaukee surface street system may not be practical due to the load lengths and the turning radiuses required. If the street geometry does allow the movement, these street systems may

not be designed to carry the weight of such loads. Doing so will result in unsafe conditions and possible permanent damage to surface street system. By eliminating these route restrictions for highway construction and repair work, a net benefit to the private sector should be realized through improved traffic operations and less traffic congestion during the construction or repair and once the roadway work is completed.

Copies of Emergency Rule

Requests for copies of the emergency rule should be submitted to Mark Woltmann, Department of Transportation, Division of Infrastructure Development, Room 451, P.O. Box 7965, Madison, Wisconsin 53707-7965. You may also contact Mr. Woltmann by phone at (608) 266-1744.

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

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

Submittal of proposed rules to the legislature

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

Commerce

(CR 04-130)

Chapter Comm 113, relating to volume cap allocation council.

Regulation and Licensing

(CR 04-120)

Chapter RL 87, Appendix I, relating to the 2005 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

Regulation and Licensing

(CR 04-110)

Chapters RL 150 to 154, relating to the licensure and regulation of athlete agents.

Transportation

(CR 04-132)

Chapter Trans 129, relating to motorcycle licensing and courses.

**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!