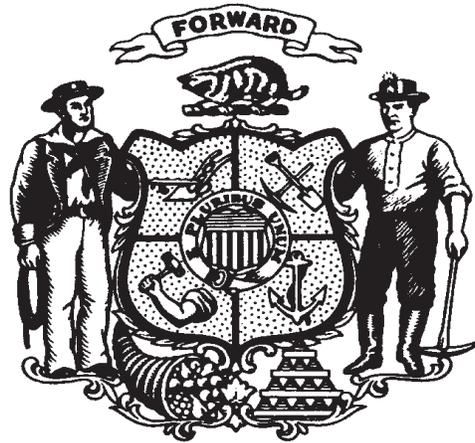


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Emergency rules now in effect

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

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

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

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

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

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

Agriculture, Trade & Consumer Protection (2)

1. Rules adopted revising **chs. ATCP 10 and 11** relating to chronic wasting disease in cervids.

Finding of emergency

(1) Chronic wasting disease is a contagious disease known to affect several species of the cervid family, including elk, white-tailed deer, black-tailed deer, red deer and mule deer. The disease is always fatal. At the present time, there is no scientific evidence to suggest that chronic wasting disease is transmitted to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

(2) The cause of chronic wasting disease is not fully understood. The disease appears to be related to aberrant protein molecules called prions. By an unknown mechanism, prions apparently cause other protein molecules in the cervid brain to take aberrant forms. The disease causes microscopic vacuoles (holes) in the brain. Diseased cervids become emaciated, display abnormal behavior patterns, and experience loss of bodily functions.

(3) Science does not understand how chronic wasting disease is spread. It is thought that infected cervids can transmit the disease to other cervids, either directly or by contaminating their environment. It appears that cervid-to-cervid contact facilitates the spread of the disease.

(4) On February 27, 2002, the national veterinary services laboratory informed Wisconsin that it had confirmed chronic wasting disease for the first time in this state. The laboratory

confirmed the disease in test samples collected from 3 free-ranging white-tailed deer killed by hunters during the November 2001 gun deer season. The Wisconsin Department of Natural Resources (DNR) collected these samples as part of a statewide disease surveillance program. With the voluntary cooperation of hunters, DNR collected test samples from deer killed and registered by hunters at selected hunting registration sites around the state. DNR collected a total of 345 samples statewide, including 82 samples at the Mt. Horeb registration station. The 3 deer that tested positive for chronic wasting disease were all registered at the Mt. Horeb station. The 3 deer were shot in close proximity to each other in Vermont Township in Dane County. We do not know how the 3 deer were exposed to chronic wasting disease, nor do we know the extent of infection in the free-ranging herd.

(5) We do not know whether any captive cervids in Wisconsin are infected with chronic wasting disease (there are no findings to date). If captive cervids are infected, the close proximity of cervids within a captive herd may facilitate the spread of disease within the herd. The movement of infected cervids between herds may spread the disease to other herds. Contact between free-ranging and captive cervids may also spread the disease.

(6) Persons importing captive cervids to Wisconsin must obtain an import permit from the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Importers must identify the herd of origin and the herd of destination. A veterinarian must certify that the cervids appear to be in good health, and that they have been tested for tuberculosis and brucellosis. There is no chronic wasting disease testing requirement, because there is no way to test live cervids for the disease.

(7) Since 1995, a total of 2,604 captive cervids have been legally imported into Wisconsin. This includes 2,020 elk, 191 whitetail deer, 12 mule deer and 387 other cervids. Chronic wasting disease has been found in free-ranging herds or in some captive herds in Colorado, Nebraska, Oklahoma, Kansas, Montana, South Dakota, and Wyoming. Since 1995, a total of 410 captive cervids have been legally imported to Wisconsin from these states. Most other states lack active chronic wasting disease surveillance programs, so the full extent of the disease is not known with certainty.

(8) DATCP currently registers captive cervid herds, other than white-tail deer herds. DNR currently licenses captive white-tail deer herds. Since 1998, DATCP has sponsored a voluntary program to monitor for chronic wasting disease among the captive herds that it registers. Approximately 50 herd owners currently participate in this program.

(9) Since chronic wasting disease was confirmed in this state, there has been widespread public concern about the disease. The public has expressed concern about the health of free-ranging deer and elk, and about potential threats to humans, livestock and deer-related businesses. Hunters and consumers have expressed food safety concerns. There is currently no scientific evidence to suggest that chronic wasting disease is transmissible to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

(10) In order to protect the public peace, health, safety and welfare, it is necessary to take immediate steps to prevent and control the spread of chronic wasting disease in this state. Among other things, it is necessary to impose further controls on the import and movement of captive cervids and to

implement a mandatory monitoring program. DATCP may adopt rules to implement these measures.

(11) Normal rulemaking procedures require up to a year or more to complete. A temporary emergency rule is needed to protect the public peace, health, safety and welfare, pending the adoption of longer-term rules. This emergency rule will implement essential prevention and control measures on an immediate, interim basis.

Publication Date: April 9, 2002
Effective Date: April 9, 2002
Expiration Date: September 6, 2002
Hearing Date: May 22, 2002
Extension Through: May 31, 2003

2. Rules adopted revising **ch. ATCP 96** relating to milk producer security.

Finding of emergency

(1) The Legislature, in 2001 Wis. Act 16, repealed and recreated Wisconsin's agricultural producer security program. The new program is codified in ch. 126, Stats. (the "new law"). The new law takes effect, for milk contractors, on May 1, 2002. The new law is intended to protect milk producers against catastrophic financial defaults by milk contractors.

(2) The new law applies to milk contractors, including dairy plant operators, producer agents and other milk handlers, who procure producer milk in this state. Under the new law, milk contractors must be licensed by the Wisconsin department of agriculture, trade and consumer protection (DATCP). Milk contractors must pay license fees and do one or more of the following:

(a) Contribute to Wisconsin's agricultural producer security fund, to help secure milk payments to milk producers.

(b) File security with DATCP.

(c) File financial statements with DATCP, showing that the contractor meets minimum financial standards specified in ch. 126, Stats.

(3) The new law regulates producer agents (who market milk and collect payment for milk producers, without taking title to the milk), but treats them differently than other milk contractors. Producer agents may have lower fund participation requirements, and may file smaller amounts of security, than other milk contractors. The program may provide correspondingly less compensation to producers if a producer agent defaults.

(4) It is important to clarify the following matters before the new law takes effect for milk contractors on May 1, 2002:

(a) The treatment of dairy plant operators who provide custom processing services to milk producers, without marketing or taking title to milk or dairy products.

(b) The treatment of producer agents. Under s. 126.51, Stats., DATCP must adopt rules for milk contractors who wish to qualify as producer agents under the new law.

(c) The treatment of persons who market only processed dairy products for milk producers, without procuring, marketing or processing raw producer milk.

(d) The method by which milk contractors calculate and report milk payment obligations, for the purpose of calculating fund assessments and security requirements under the new law.

(5) Under s. 126.81 (4), Stats., DATCP may require milk contractors to disclose their security and fund contribution status to milk producers. It is important for milk contractors to begin making these disclosures soon after the new law takes effect, so that producers can evaluate the financial risk

associated with milk procurement contracts. Disclosures are important, because not all milk contractors are required to participate in the agricultural security fund or file security with DATCP.

(6) It is not possible, by normal rulemaking procedures, to adopt these essential clarifications and disclosure requirements by May 1, 2002. DATCP must, therefore, adopt them by emergency rule. This emergency rule is needed to implement the new law, to protect the financial security of milk producers, to preserve fair competition in the dairy industry, and to avoid unnecessary confusion and expense for dairy businesses.

Publication Date: April 29, 2002
Effective Date: April 29, 2002
Expiration Date: September 26, 2002
Hearing Date: May 16, 2002
Extension Through: January 23, 2003

Commerce

(Financial Assistance to Businesses and Communities, Chs. Comm 105 to 128)

The Wisconsin Department of Commerce proposes an order to create **ch. Comm 118** relating to the Agricultural Development Zone Program.

Finding of emergency

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

Facts constituting the emergency are as follows:

1. In accordance with s. 560.798 (5), Stats., the Department of Commerce has the responsibility to promulgate rules for the operation of an agricultural development zone to provide for the attraction, promotion, retention, and expansion of agricultural businesses in the state.

2. Section 560.798 (3), Stats., makes available certain tax benefits for certified business within an agricultural development zone; tax credits first apply to tax years beginning on or after January 1, 2003.

3. Commerce, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to attract, promote retain, and expand Wisconsin agricultural businesses. For example, over the past 50 years, Wisconsin has experienced an average of six dairy farms leaving production each day.

4. In the year 2001, state milk production declined by more than one billion pounds, resulting in a near 5% decline in milk production.

5. Western states have increased their cheese production, while Wisconsin experiences declining milk production and dairy processing activities; this program would immediately assist Wisconsin in regaining its prominence in dairy and dairy processing production.

6. The creation of this program combined with other economic development programs in the state is expected to increase the competitiveness of the Wisconsin dairy industry.

This emergency rule is being created in order that the process of designating an agricultural development zone be commenced as soon as possible and that such eligible businesses may become certified and participate in the tax benefits through the Agricultural Development Zone Program.

Publication Date: August 13, 2002
Effective Date: August 13, 2002
Expiration Date: January 10, 2003
Hearing Date: October 16, 2002

Corrections

Rules adopted amending **ch. DOC 316**, relating to medical, dental and nursing copayment charges.

Exemption from finding of emergency

The department of corrections adopts this emergency rule pursuant to the statutory requirements of 2001 Wis. Act 109. The Act provides, in relevant part:

“Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate the rules that are required under section 302.386 (4) (a) of the statutes relating to the deductible, coinsurance, copayment, or similar charge that must be imposed under section 302.386 (3) (b) of the statutes.”

and,

“Notwithstanding section 302.386 (3) (b) of the statutes, the rules shall require the department to require that, subject to the exception and waiver provisions under section 302.386 (3) (c) of the statutes, each person to whom section 302.386 (1) of the statutes applies pay a deductible, coinsurance, copayment, or similar charge of at least \$7.50 for each request that the person makes for medical or dental services.”

Currently, the department’s administrative rules provide for a \$2.50 copayment under such circumstances as described above. This emergency rule raises the copayment to \$7.50 as directed by 2001 Wis. Act 109.

In addition, pursuant to 2001 Wis. Act 109 the department makes no finding of emergency in promulgating this rule. 2001 Wis. Act 109 expressly exempts the department from the statutory requirements to do so.

Publication Date: September 3, 2002
Effective Date: September 3, 2002
Expiration Date: January 31, 2003
Hearing Date: November 18, 2002

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

Rules adopted creating **ch. HFS 109**, relating to SeniorCare.

Finding of emergency

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

The high cost of prescription drugs in Wisconsin and nationwide are especially burdensome on the elderly, many of whom live on a fixed income. Through 2001 Act 16, Wisconsin has addressed the problem those increasingly high costs pose to the elderly by creating section 49.688 of the statutes. Section 49.688 directs the Department to develop and administer the program of prescription drug benefits for the elderly that has come to be known as “SeniorCare.” The statute also directs the Department to develop administrative

rules for implementing SeniorCare, which the Department has done by creating a new chapter of administrative rules, HFS 109. The rules address a variety of issues associated with operating the program in accordance with section 49.688, Stats., including specifying:

- what prescription drugs are covered;
- who is eligible for benefits and services;
- how the Department determines household income for the program’s eligibility determination;
- how the Department monitors compliance by pharmacists and pharmacies; and
- mechanisms for preventing fraud and abuse.

The Department drafted these rules to parallel the prescription drug provisions of the existing Medicaid rules in chs. HFS 101 to 108. The Department developed the program’s administrative elements in consultation with an advisory committee composed of representatives of physicians, counties, seniors and pharmacies.

While the Department is currently in the process of promulgating ch. HFS 109 as permanent rules, s. 49.688 (5) (a) and (7) (a), Stats., mandate the initiation of some SeniorCare program elements beginning on September 1, 2002. To meet this deadline, the Department is issuing ch. HFS 109 as emergency rules to preserve the public welfare.

Publication Date: September 1, 2002
Effective Date: September 1, 2002
Expiration Date: January 29, 2003
Hearing Date: October 10, 2002

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

Rules adopted creating **s. HFS 115.04 (9) to (13)**, relating to screening newborn infants for congenital disorders.

Finding of emergency

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

The early identification of particular congenital and metabolic disorders that are harmful or fatal to persons with the disorders is critical to mitigating the negative effects of such disorders. Therefore, Wisconsin Statute 253.13 requires that every infant born be subjected to blood tests for congenital and metabolic disorders, as specified in administrative rules promulgated by the Department. Parents, however, may refuse to have their infants screened for religious reasons. The Department has issued ch. HFS 115, Screening of Newborns for Congenital and Metabolic Disorders, to administer this statutory requirement. Currently, s. HFS 115.04 lists eight congenital and metabolic disorders for which the state hygiene laboratory must test newborn blood samples.

In determining whether to add or delete disorders from the list under s. HFS 115.04, s. HFS 115.06 directs the Department to seek the advice of persons who have expertise and experience with congenital and metabolic disorders. For this purpose, the Department established the Wisconsin Newborn Screening Umbrella Advisory Group. Section HFS 115.06 also lists six criteria on which the Department must base its decision to add to or delete disorders from s. HFS 115.04. These criteria are:

1. Characteristics of the specific disorder, including disease incidence, morbidity and mortality.

2. The availability of effective therapy and potential for successful treatment.

3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.

4. The availability of mechanisms for determining the effectiveness of test procedures.

5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.

6. The expected benefits to children and society in relation to the risks and costs associated with testing for the specific condition.

In consideration of these criteria, the Wisconsin Newborn Screening Umbrella Advisory Group recently recommended that the Department add five aminoacidopathies, i.e., amino acid-related disorders, to the eight disorders currently screened for and listed in s. HFS 115.04. These disorders are:

- Maple Syrup Urine Disease;
- Homocystinuria;
- Tyrosinemia;
- Citrullinemia; and
- Argininosuccinic Acidemia.

Persons with these disorders can experience serious medical consequences such as failure-to-thrive, developmental delays, seizures, mental retardation and death.

The additional costs associated with these five additional screening tests is less than a dollar per baby screened because the amino acids in the blood sample are measured simultaneously with the acylcarnitines for Fatty Acid Oxidation and Organic Acidemias. In the absence of this screening, the Department estimates the annual Wisconsin costs for these disorders to be \$144,909. The Department also estimates the annual Wisconsin costs of this screening to be \$29,134. Therefore, the cost benefit from these five screening tests is \$115,775.

The Advisory Group also recommended that the Department immediately begin screening newborns for these additional disorders. Before this testing can begin, the Department must change its rules to add the five new disorders to the existing list under s. HFS 115.04. Permanent rules require six or more months to take effect. Collectively, these disorders occur, on average, once in every 30,000 births. Given an annual birthrate of about 68,000 in Wisconsin, delaying the effective date of these rules by six or more months may result in one to three persons being born with one of these five disorders and that fact escaping detection. To eliminate this possibility and ensure that newborn testing begins as soon as possible, the Department has chosen to promulgate this rule change on an emergency basis while the Department promulgates a permanent rule.

While the Department is currently in the process of promulgating these amendments to the permanent rules, the Department must implement these changes immediately to preserve the public health. Therefore, the Department is issuing these identical amendments as an emergency order.

Publication Date: October 12, 2002
Effective Date: October 12, 2002
Expiration Date: March 11, 2003
Hearing Date: December 17, 2002

Natural Resources (4) (Fish, Game, etc., Chs. NR 1-)

1. Rules adopted revising **chs. NR 10 and 45**, relating to the control and management of chronic wasting disease.

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 poses 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.

Publication Date: July 3, 2002
Effective Date: July 3, 2002
Expiration Date: November 30, 2002
Hearing Date: August 12, 2002
Extension Through: April 1, 2003

2. Rules adopted repealing and recreating **s. NR 20.20 (49) (d) and (61) (c)**, relating to the closure of carp fishing on Cedar Lake and connected waters in Polk and St. Croix counties.

Finding of emergency

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

Spring viremia of carp virus is of international animal health concern. The virus effects fishes in the minnow family in nature. Minnows are extremely important forage fish for many important sport fishes in Wisconsin and are also important to the bait and aquaculture industries. Assuring the health of minnow populations and preventing the spread to other waters is important in preserving the welfare of Wisconsin citizens by protecting popular and economically valuable sport and bait fisheries. Little is currently known about the extent of the virus and until we can increase our knowledge, this closure will limit the potential spread from transport of fish and/or their parts and fluids.

Publication Date: October 3, 2002
Effective Date: October 3, 2002
Expiration Date: March 2, 2003
Hearing Date: November 11, 2002

3. Rules adopted amending **s. NR 25.06 (1) (a) 1. to 3.**, relating to commercial fishing in Lake Superior.

Finding of emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands. These amendments incorporate the results of a new population estimate that was not available previously. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at

the earliest possible date. Failure of the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: November 1, 2002
Effective Date: November 1, 2002
Expiration Date: March 31, 2003
Hearing Date: December 13, 2002

4. Rules adopted revising **chs. NR 16 and 19** and creating **ch. NR 14**, relating to captive wildlife.

Finding of emergency

2001 Wis. Act 56 was not enacted until April of 2002. It required standards for captive animals held under licenses issued under ch. 169, Stats., to be in place by January 1, 2003, the effective date of the change from licensing under ch. 29, Stats., to ch. 169, Stats. As the use of the permanent rule process would not allow these standards to be in place by January 1, 2003, the Department had no choice but to use the emergency rule procedures. Failure to have standards in place would result in the lack of humane care standards for wild animals held in captivity and the lack of pen standards necessary to prevent the interactions between captive and wild animals.

Publication Date: December 20, 2002
Effective Date: January 1, 2003
Expiration Date: May 31, 2003

Nursing

Rules adopted creating **s. N 4.10**, relating to malpractice insurance coverage for nurse–midwives.

Exemption from finding of emergency

Under Section 13 of 2001 Wisconsin Act 52, the Board of Nursing is directed to use the procedure under s. 227.24, Stats., in promulgating the rules required under s. 441.15 (5) (b) of the statutes. Under that procedure, the Board of Nursing may promulgate this rule for the period before permanent rules become effective. The Board of Nursing need not provide evidence of the necessity of preservation of the public peace, health, safety, or welfare in promulgating this rule.

Analysis prepared by the Department of Regulation

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 441.15 (2) (c), 441.15 (3) (a) 3. and 441.15 (5), as created by 2001 Wisconsin Act 52, and s. 441.15 (3) (bm), as amended by 2001 Wisconsin Act 52.

Statutes interpreted: s. 441.15 (2) (c), 441.15 (3) (a) 3., 441.15 (3) (bm) and 441.15 (5) (b), Stats.

2001 Wisconsin Act 52 makes a number of changes to the provisions affecting nurse–midwives, including that licensed nurse–midwives carry malpractice insurance in an amount determined by rules to be promulgated by the Board of Nursing. This rule establishes those requirements relating to malpractice coverage for nurse–midwives.

Using the procedure under s. 227.24, Stats., the Board of Nursing will promulgate the rules as created by 2001 Wisconsin Act 52, for the period before permanent rules become effective.

Publication Date: November 5, 2002

Effective Date: November 5, 2002

Expiration Date: April 4, 2003

State Treasurer

Rules adopted creating **ch. Treas 1** relating to the Wisconsin College Savings Program Board.

Exemption from finding of emergency

Section 15 (1), 2001 Wis. Act 7 provides an exemption from a finding of emergency for the adoption of ch. Treas 1.

Analysis prepared by the Office of the State Treasurer

Statutory authority: Section 14.64 (2) (e), Stats., and section 15, 2001 Wis. Act 7.

Statutes interpreted: s. 14.64 *et seq.*, Stats.

The Wisconsin College Savings Program Board establishes a rule for the operation of the College Savings Program. The rule is designed to grant flexibility to program participants wherever possible, while enabling the State and its private–sector partners to administer the program in a manner that protects the program’s financial integrity and viability. Maintaining eligibility as a “qualified tuition program” pursuant to section 529 of the Internal Revenue Code [26 USC 529] is another primary objective. “529” programs are eligible for a number of federal tax benefits that are attractive to families saving for future college costs. Significant features of the rule are addressed below:

Sections Treas 1.03, 1.04 and 1.05 describe who may open an account and how to open an account. Section Treas 1.06 discusses designating a successor owner and describes how to change ownership of an account. Sections Treas 1.07 and 1.08 define the account beneficiary and how to change the beneficiary on an account.

Section Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to “rollover” an account balance to another section 529 program. IRS requirements relating to investment direction are also detailed.

Sections Treas 1.11, 1.12 and 1.13 describe account withdrawals, distributions and refunds. Special circumstances are also provided for in these sections, such as the death or disability of the beneficiary or receipt of a scholarship by a beneficiary. Section Treas 1.14 sets forth conditions under which the Board may terminate an owner’s account. Sections Treas 1.15 and 1.16 address related fees and penalties.

Publication Date: January 7, 2002

Effective Date: January 7, 2002

Expiration Date: See Section 15, 2001 Wis. Act 7

Hearing Date: March 5, 2002

Veterans Affairs

Rules adopted amending **s. VA 12.02 (7) and (16)**, relating to the maximum loan amount under the personal loan program.

Finding of Emergency

The 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 facts constituting the emergency is as follows:

The Department administers a personal loan program that may be used by veterans and their dependents for various statutory purposes. The purposes include debt consolidation, payment of delinquent child support, education expenses, and medical and funeral expenses, and the purchase of a mobile home or business property. The current maximum loan amount, set by the Department at sec. VA 12.02 (7), Wis. Adm. Code, is \$10,000. The permissible statutory maximum loan amount may be \$15,000, as set by the Department by administrative rule.

The Department proposes to raise the amount to the statutory maximum for several compelling reasons. Raising the maximum loan amount will help stimulate the economy by providing additional resources for veterans and their families. Due to the state of the economy, veterans and their

families have a significant need for financial assistance in the form of below market interest rate loans. Additionally, the personal loan program is the primary source of revenue for the veterans trust fund. Immediate infusion of additional assets in the form of personal loans will provide significant financial support for the trust fund. It is expected that increasing the maximum loan amount will result in approximately \$4,000,000 of new loan assets over the 8-month period in which it would take to promulgate this rule change using the regular promulgation procedure.

Publication Date: August 5, 2002

Effective Date: August 5, 2002

Expiration Date: January 2, 2003

Hearing Date: December 6, 2002

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Pesticide Product Restrictions; Atrazine Pesticides. *Objective of the rule.* Regulate the use of atrazine pesticides to protect groundwater and assure compliance with Wisconsin's Groundwater Law. Update current rule to reflect new groundwater-sampling results related to atrazine obtained during the past year. Review the restrictions on the timing of atrazine applications. Renumber and reorganize current rule, as necessary.

Policy Analysis

Under the Wisconsin Groundwater Law, ch. 160, Stats., the department must regulate the use of pesticides to assure compliance with groundwater standards established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 mg/liter for atrazine and its chlorinated metabolites.

Under s. 160.25, Stats., the department must prohibit pesticide uses that result in groundwater contamination levels that violate the DNR enforcement standard. The department must prohibit pesticide use in the area where the groundwater contamination has occurred unless the department determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Currently under ch. ATCP 30 the use of atrazine is prohibited in 102 designated areas (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices including the timing of applications on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the next year, the department may identify additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with the Groundwater Law, the department must take further action to prohibit or regulate atrazine use in the areas where these wells are located. The department proposes to amend ch. ATCP 30 to add or repeal prohibition areas or take other appropriate regulatory action in response to any new groundwater findings. The department also plans to review the statewide restriction on the timing of atrazine product applications. Current rules limit the application of atrazine products to the time period between April 15 and July 31 of each year.

Policy alternatives

No Change. If the department takes no action on this proposed rulemaking, the existing ch. ATCP 30 Pesticide Product Restrictions promulgated in June, 2002 will apply. However, the department would take no new regulatory action in response to new groundwater findings obtained this year. This would not adequately protect groundwater in the newly discovered contaminated areas, nor would it meet the department's obligations under the Groundwater Law.

Conversely, the department would be unable to repeal the current restrictions on atrazine use where indicated by groundwater findings.

Statutory authority

The department proposes to revise ch. ATCP 30, Wis. Adm. Code, under authority of ss. 93.07, 94.69, and 160.19 through 160.25, Stats.

Staff time required

The department estimates that it will use approximately 0.6 FTE staff to develop this rule. This includes investigation; drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. The department will use existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

Subject

Fertilizer Bulk Storage. *Objective of the rule.* Update ch. ATCP 32 fertilizer bulk storage rule to prevent fertilizer spills and reflect changing fertilizer bulk storage practices. Reorganize and clarify ch. ATCP 32 to make it easier for persons storing bulk fertilizer to understand and comply with the applicable requirements.

Policy analysis

The ch. ATCP 32 fertilizer bulk storage rule took effect in January, 1986. The department proposes to update the rule to address changes in the bulk storage industry and to strengthen existing provisions of the rule that protect the environment and waters of the state from harm due to contamination by fertilizer. Some current rule provisions are no longer needed and could be eliminated. The department may also renumber or reorganize the rules, as necessary.

The department is also proposing to update a number of closely related rules, including ch. ATCP 33 (Pesticide Bulk Storage) and ch. ATCP 35 (Agricultural Chemical Cleanup Program). The department has prepared separate scope statements for the other rules.

Policy alternatives

Do nothing. By failing to strengthen the rules requiring environmental protection, the department will continue to lack the legal redress to ensure that bulk storage facility operators take the necessary action to limit or eliminate contamination due to fertilizer.

Statutory authority

The department proposes to modify the current ch. ATCP 32 fertilizer bulk storage rules under authority of s. 94.645 (3), Stats.

Staff time required

The department estimates that it will use approximately 0.2 FTE staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussion, and communicating with affected persons and groups. The department will assign existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

Subject

Pesticide Bulk Storage. *Objective of the rule.* Update ch. ATCP 33 pesticide bulk storage rule to prevent pesticide spills and reflect changing pesticide bulk storage practices. Reorganize and clarify ch. ATCP 33 to make it easier for persons storing bulk pesticide to understand and comply with the applicable requirements.

Policy analysis

The ch. ATCP 33 pesticide bulk storage rule took effect in January, 1986. The department proposes to update the rule to address a minor number of changes in the bulk storage industry and to strengthen existing provisions of the rule that protect the environment and waters of the state from harm due to contamination by pesticides. Some current rule provisions are no longer needed and could be eliminated. The department may also renumber or reorganize the rules, as necessary.

The department is also proposing to update a number of closely related rules, including, ch. ATCP 32 (Fertilizer Bulk Storage) and ch. ATCP 35 (Agricultural Chemical Cleanup Program). The department has prepared separate scope statements for the other rules.

Policy alternatives

Do nothing. By failing to strengthen the rules requiring environmental protection, the department will continue to lack the legal redress to ensure that bulk storage facility operators take the necessary action to limit or eliminate contamination due to pesticides.

Statutory authority

The department proposes to modify the current ch. ATCP 33 pesticide bulk storage rules under authority of s. 94.645 (3), Stats.

Staff time required

The department estimates that it will use approximately 0.2 FTE staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussion, and communicating with affected persons and groups. The department will assign existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

Subject

The Agricultural Chemical Cleanup Program. *Objective of the rule.* Revise current ch. ATCP 35 to protect groundwater and improve the agricultural chemical cleanup reimbursement program.

Policy analysis

Ch. ATCP 35 provides rule requirements for the agricultural chemical cleanup program under s. 94.73, Stats. Under the cleanup program, the department may order responsible persons to clean up agricultural chemical spills that may harm the environment. Persons who clean up agricultural chemical spills may qualify for state reimbursement of a portion of the cleanup costs, subject to rules specified in ch. ATCP 35.

Ch. ATCP 35 has been in effect since September, 1994. Some of the rule's current cost control provisions appear to be confusing, or are inadequate to ensure that responsible persons will initiate effective clean up efforts. By modifying

the cleanup rules, the department hopes to increase participation in the program and reduce cleanup delays.

The department is also proposing to update a number of closely related rules, including ch. ATCP 32 (Fertilizer Bulk Storage) and ch. ATCP 33 (Pesticide Bulk Storage). The department has prepared separate scope statements for the other rules.

Policy alternatives

Do nothing. This would result in continued delay of certain cleanups. It would also impose unnecessary financial burdens on persons who wish to clean up contaminated sites.

Statutory authority

The department proposes to modify ch ATCP 35, Wis. Adm. Code under authority of ss. 93.07 and 94.73 (11), Stats.

Staff time required

The department estimates that it will use approximately 0.2 FTE staff time to develop these rule changes. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussion, and communicating with affected persons and groups. The department will assign existing staff to develop this rule.

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

Subject

Review of national examination results for professional engineers. *Objective of the Rule.* To eliminate the option included in s. A-E 4.08 (7) for examinees to request a review of their national examination results.

Policy analysis

The proposed rule modification will modify Wisconsin policy and practice to be consistent with the majority of other states in the country. This will eliminate the current reciprocal problems Wisconsin candidates experience when attempting to relicense in another state. Additionally, the proposed change will result in a more secure environment for national examination materials.

Statutory authority

Section 15.08 (5) (b), 227.11 (2), 440.07 (3) and 443.09 (6), Stats.

Staff time required

100 hours.

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

Subject

Sanctions for cheating on examinations for professional engineers.

Objective of the Rule. The proposed rule will increase the penalties for cheating on examinations.

Policy analysis

The proposed rules will authorize the board to prohibit examinees from writing for as many as the next six scheduled examinations after the examination during which the cheating occurred. The number of examinations the examinee would be prohibited from writing would be determined by the board and based upon the seriousness of the cheating offense.

Statutory authority

Section 15.08 (5) (b), 227.11 (2) and 443.09, Stats.

Staff time required

100 hours.

Natural Resources**Subject**

Chapter NR 20 pertaining to fishing regulations on inland waters, particularly the proposed bass regulation change for the Lower Wisconsin River.

Policy analysis

A proposal to increase the minimum length limit from 14" to 18" for bass on the Lower Wisconsin River (LWR) downstream from the Prairie du Sac dam was presented and voted upon at the 2002 Spring Fish and Game Hearings. The proposal was supported statewide and in the South Central Region by the popular vote. However, the lower 4 counties that border the LWR (Iowa, Richland, Grant, Crawford) opposed the proposed change. The Bureau of Fisheries Management and Habitat Protection (FH) supported the proposal and recommended adoption at the May NRB meeting. The Wisconsin Conservation Congress opposed the proposal and recommended that the NRB not adopt the rule at the May NRB. The Board directed the Department to work out a compromise with the public and come back to the Board.

A public meeting has been scheduled for December 10 in Dodgeville to gather public input into alternative regulations for bass on the LWR. A revised proposal will likely be developed with input from that meeting and submitted to the FH Bureau.

These proposed fishing regulation changes would affect and be of interest to most anglers in the state, and could be of interest to those in the tourism industry involved in fishing.

Statutory authority

Sections 29.014, 29.041, and 227.11, Stats.

Staff time required

Approximately 100 hours will be needed by the Department.

Natural Resources**Subject**

Chapters NR 20 pertaining to fishing regulations on inland waters and NR 22 pertaining to fishing regulations on Wisconsin-Iowa boundary waters.

Policy analysis

The Department is beginning the administrative process of developing fishing regulation changes that we anticipate recommending for the 2003 Spring Fish and Wildlife Rules Hearings.

A variety of fishing regulation changes have been proposed by Fisheries and Law Enforcement staff and approved through joint review, which are being developed for inclusion in the 2003 Spring Hearings. At this time, we anticipate recommending the following proposals which are of statewide interest: modifying of fishing seasons to end on a Sunday rather than a specified date, increasing the minimum length limit to 50" for muskellunge on several lakes in Oneida and Vilas counties, modifying the hook and line sturgeon fishing regulations by naming waters open to hook and line sturgeon fishing with any water not named having no open season, closure of shovelnose sturgeon fishing on the Lower

Chippewa and Red Cedar Rivers, modifications to the upriver lakes lake sturgeon spearing season, reduction of daily bag limit for walleye and sauger to 6 in total for the Mississippi River WI-IA boundary waters, establishment of a 20-27" protected slot for walleye in Pool 12 Mississippi River WI-IA boundary waters, creation of season fishing refuges in the tailwaters below locks 10 and 11, creation of a permitting system for public tagging of fish. We anticipate 12 local questions and 1 advisory question.

These proposed fishing regulation changes would affect and be of interest to most anglers in the state, and could be of interest to those in the tourism industry involved in fishing.

Statutory authority

Sections. 29.014, 29.041, and 227.11, Stats.

Staff time required

Approximately 220 hours will be needed by the Department.

Natural Resources**Subject**

No rule making is being proposed. This scope statement concerns an annual laboratory certification fee adjustment as authorized under s. NR 149.05 (1) (b), Wis. Admin. Code, as well as presentation of the Department's Registered Laboratory of the Year Awards.

Policy analysis

The Laboratory Certification Program is seeking the Natural Resources Board's approval of the proposed FY 2004 laboratory certification fee adjustment, pursuant to s. NR 149.05, Wis. Adm. Code. The Program is funded by the annual fees charged to all certified and registered laboratories. Annual fees are determined using the formula promulgated in s. NR 149.05 (1) (b).

The Program certifies and registers approximately 475 laboratories. All will be affected by the proposed fee adjustment. Laboratories are billed each year in May. The fee adjustment approval and laboratory billing process has progressed smoothly in past years, and no significant changes or problems are anticipated for FY 2004.

Per s. NR 149.05 (1) (b), the Program will present the proposed fee adjustment proposal to the Laboratory Certification Standards Review Council for review prior to seeking Board approval. The Council is created under s. 15.107 (12), Stats., and is charged with review of the Program and its policies. Council members are appointed by the Department of Administration, and represent a cross-section of Program stakeholders. The Council's comments regarding the Program's fee adjustment proposal will be summarized and addressed in the Green Sheet background memo. The Council has historically supported Program fee adjustments, and their support for the FY 2004 proposal is anticipated as well.

This Scope Statement also includes presentation of the 2003 Registered Laboratory of the Year Awards, which recognize outstanding registered laboratories for their commitment to producing quality data.

Statutory authority

Section 299.11 (9), Stats.

Staff time required

The Department will spend approximately 100 hours developing these materials.

Natural Resources

Subject

Creation of ch. NR 460 Appendix NNNN and ch. NR 465 Subchapter III to incorporate the national emission standard for hazardous air pollutants (NESHAP) into the Wisconsin Administrative Code for the Surface Coating of Large Appliances category. Amendments to ch. NR 465 to implement a rules organization plan using subchapters for individual NESHAP.

Policy analysis

This NESHAP establishes maximum achievable control technology (MACT) requirements and became effective on July 23, 2002 when it was published by the US EPA. This standard applies statewide and affects those facilities that are involved in the surface coating of large appliances and that are major sources of federal hazardous air pollutant emissions.

Section 285.27 (2), Stats. requires that the Department promulgate NESHAP by rule. Since initial estimates indicate this standard affects 10 or more facilities, promulgation into state rule is consistent with the MACT Streamlining Policy adopted by the Natural Resources Board. While some changes to the federal rule language and organization may be necessary to accommodate state administrative rule procedures, no substantive changes will be proposed and the state rule will be essentially equivalent to the NESHAP.

Statutory authority

Sections 285.11 (1), 285.27 (2) and 227.11 (2) (a), Stats.

Staff time required

The Department will need approximately 400 hours of total staff time.

Pharmacy Examining Board

Subject

Modify Wis. Admin. Code s. Phar 2.03 (4) to allow an applicant to be admitted to the practical examination under the same parameters as admission to the NAPLEX and multi-state pharmacy jurisprudence examinations.

Objective of the rule. To make admission requirements for all required professional examinations consistent to simplify and streamline the application process.

Policy analysis

Current Wis. Admin. Code s. Phar 2.03 (4) prohibits an applicant from being admitted to the practical examination prior to completion of the applicant's internship in the practice of pharmacy. Admission to the NAPLEX and multi-state pharmacy jurisprudence examination is permitted if the applicant has obtained certification by the foreign pharmacy graduate examination committee and being within 360 credit hours of completing an internship in the practice of pharmacy or 60 days before graduation from a school or college of pharmacy approved by the board. The different requirement for admission to the practical examination potentially penalize applicants who are otherwise professionally prepared to take the practical examination under the same requirements for the other two required professional examinations.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 450.03 (2) and 450.04 (3), Stats.

Staff time required

It is estimated that 100 hours will be needed to amend the rules.

The proposed rules will have no affect on the budget, staff or uniform policies or procedures of the Department of Regulation and Licensing.

Revenue

Subject

Administrative Rule Tax 12.075, relating to the Notice of Assessment.

Administrative Rule Tax 12.50, relating to exempt solar and wind energy systems.

Objective of the Rule. The objective of modifying Tax 12.075 is to update the rule governing the format of the Notice of Assessment. This is caused by revisions to s. 70.365, Stats., required by the passage of 1997 Wisconsin Act 237. In addition, the department will be able to simplify the process in prescribing such form with the proposed changes to subs. (2) and (3)

The objective of the revisions to Administrative Rule 12.50 is to update the rule concerning the validation of solar energy and wind energy systems exemption claims, outlined in Wisconsin Statutes 70.11 and 70.111 (18). This is caused by the passage of 1995 Wisconsin Act 27, and 1997 Wisconsin Act 237.

Policy analysis

Rule 12.075 should reflect changes to Wisconsin Statute 70.365. Wisconsin Act 237 of 1997, s. 279bs, states that the assessor shall notify the taxpayer via Notice of Assessment if there is *any* change of the assessment, while previously it was only required if the change was \$300 or higher. The Notice shall also contain the *time, date and place* of the board of review or of the board of assessors. The proposed changes in subsections (2) and (3) will give the department authority to prescribe the Notice of Assessment in a single format, which will contain the information required in subs. (1). Tax 12.075 (4) should be changed to reflect the revisions in subs. (1), (2), and (3). Modification of Administrative Tax 12.075 will eliminate the contradictions between the rule and the law, which will otherwise exist, and it will simplify administration of the law.

Tax 12.50 (3)(b) should reflect changes to Wisconsin Statute 70.11, due to 1997 Wisconsin Act 237, s. 278t, which states that a claim for exemption shall be submitted to the assessor no later than March 1, while the Tax 12.50 (3)(b) currently indicates an April 1 deadline. Modification of this rule will eliminate contradiction between the rule and Wisconsin Statute 70.11.

Tax 12.50 (4) should be removed to reflect changes to Wisconsin Statute 70.111 (18). The 1995 Wisconsin Act 27, s. 3348n, removes the exemption sunset date of December 31, 1995. Deletion of Tax 12.50 (4) will provide consistency with Wisconsin Statutes.

Statutory authority

Section 227.11 (2), Wis. Stats.

Staff time required

The Department estimates it will take approximately 80 hours to develop these rule orders.

Transportation**Subject**

Objective of the rule. This rule making will amend ch. Trans 403, relating to the Loan Repayment Incentive Grant Program, to conform to the statutory changes of s. 85.107, amended by 2001 Wis. Act 16 (the 2001–03 biennial budget act). The changes will allow the Department to recruit and select from an expanded class of recipients for program inclusion under any underutilized classification, not just the Civil Engineering classification.

Policy analysis

Section 85.107, Stats., relating to the Scholarship and Loan Payment Incentive Grant Program, allows for the assistance in improving the representation of targeted group members within job classifications in which targeted group members are underutilized in the Department.

Ch. Trans 403 currently exists to allow for Minority Civil Engineering recipients to participate in the Loan Repayment Incentive Grant Program. Bringing the rule into compliance with s. 85.107, Stats., will allow the Department to expand the recruitment search for program inclusion to place individuals in any underutilized position in the Department.

Statutory authority

Section 85.107, Stats.

Staff time required

Approximately 20 hours.

Workforce Development**Subject**

Annual adjustment of thresholds for application of prevailing wage rates.

Objective of the rule. When a state agency or local governmental unit constructs a public works project, it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Sections 66.0903 (5) and 103.49, Stats., set initial estimated project cost thresholds for application of prevailing wage rates and requires that DWD adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the threshold adjustment is based on changes in the construction cost index published in the Engineering News–Record, a construction trade publication.

Policy analysis

The current threshold for application of the prevailing wage for a single–trade public works project is \$36,000 and the current threshold for a multi–trade public works project is \$175,000. The proposed thresholds are \$37,000 for a single–trade public works project and \$180,000 for a multi–trade public works project based on a 2.7% increase in the construction cost index for calendar year 2002.

Statutory authority

Sections. 66.0903 (5) and 103.49 (3g), Stats.

Staff time required

Less than 20 hours.

Submittal of rules to legislative council clearinghouse

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

Accounting Examining Board

Rule Submittal Date

On December 13, 2002, the Accounting Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 442.04 (5), Stats.

The proposed rule-making order relates to a new computer-based examination.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 17, 2003, at 9:30 a.m. in Room 180, 1400 East Washington Avenue, Madison, WI 53702.

Contact Person

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266-0495

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On December 3, 2002, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.15, Stats.

The proposed rule-making order relates to weights and measures.

Agency Procedure for Promulgation

The department will hold public hearings on January 14, 16 and 22, 2002.

Contact Person

Tom Stoebig
(608) 224-4944

Dentistry Examining Board

Rule Submittal Date

On December 2, 2002, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 447.04 (1) (a) 6. and (2) (a) 6., Stats.

The proposed rule-making order relates to dental specialties.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 8, 2003, at 9:00 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Person

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495.

Dentistry Examining Board

Rule Submittal Date

On December 2, 2002, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 447.04 (1) (c) 2., Stats., as created by 2001 Wisconsin Act 16 and amended by 2001 Wisconsin Act 109.

The proposed rule-making order relates to faculty licenses.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 8, 2003 at 9:00 a.m. in Room 179A at 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Person

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495.

Higher Educational Aids Board

Rule Submittal Date

On December 5, 2002, the Higher Educational Aids Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rule relates to the Talent Incentive Program Grant (TIP).

Agency Procedure for Promulgation

A public hearing will be scheduled at a later date.

Contact Person

Jim Buske
(608) 267-9865

Natural Resources

Rule Submittal Date

Notice is hereby given that on December 5, 2002, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. NR 25.

Analysis

The subject matter of the proposed rule relates to commercial trawling for smelt in Green Bay.

Agency Procedure for Promulgation

Public hearings are scheduled for January 16, 21 and 22, 2003.

Contact Person

Bill Horns

Bureau of Fisheries Management and Habitat Protection
(608) 261-6423

Natural Resources

Rule Submittal Date

Notice is hereby given that on December 5, 2002, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. NR 25.

Analysis

The subject matter of the proposed rule relates to commercial trap netting for whitefish in Lake Michigan.

Agency Procedure for Promulgation

Public hearings are scheduled for January 16, 21 and 22, 2003.

Contact Person

Bill Horns
Bureau of Fisheries Management and Habitat Protection
(608) 261-6423

Natural Resources

Rule Submittal Date

Notice is hereby given that on November 6, 2002, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting chs. NR 140 and 811.

Analysis

The subject matter of the proposed rule relates to groundwater quality standards and the development of an aquifer storage recovery well or the operation of an ASR system by a municipal water utility.

Agency Procedure for Promulgation

Public hearings are scheduled for December 13, 16 and 17, 2002.

Contact Person

William Phelps
Bureau of Drinking Water and Groundwater
(608) 267-7619

Natural Resources

Rule Submittal Date

Notice is hereby given that on December 5, 2002, the Department of Natural Resources submitted to the

Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting chs. NR 400, 409, 410, 415, 419, 420, 422, 423, 431, 439, 447, 448, 449 and 484.

Analysis

The subject matter of the proposed rule relates to clarification of compliance language for air management regulations.

Agency Procedure for Promulgation

A public hearing is scheduled for February 2003

Contact Person

Joe Brehm
Bureau of Air Management
(608) 267-7541

Natural Resources

Rule Submittal Date

Notice is hereby given that on December 5, 2002, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. NR 520.

Analysis

The subject matter of the proposed rule relates to adjusting solid waste licensing and plan review fees.

Agency Procedure for Promulgation

Public hearings are scheduled for January 21 and 22, 2003.

Contact Person

Colleen Hellenbrand
Bureau of Waste Management
(608) 267-7519

Natural Resources

Rule Submittal Date

Notice is hereby given that on December 5, 2002, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. NR 809.

Analysis

The subject matter of the proposed rule relates to safe drinking water requirements for public water systems.

Agency Procedure for Promulgation

A public hearing is scheduled for January 22, 2003.

Contact Person

Carol McCurry
Bureau of Drinking Water and Groundwater
(608) 267-2449

Rule-making notices

Notice of Hearing

Accounting Examining Board

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Accounting Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 442.04 (5), Stats., and interpreting s. 442.04 (5), Stats., the Accounting Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. Accy 3.11 (1); to amend s. Accy 3.03 (1); and to repeal and recreate ss. Accy 3.06 and 3.07, relating to a new computer-based examination.

Hearing Date, Time and Location

Date: **January 17, 2003**
 Time: 9:30 a.m.
 Location: 1400 East Washington Avenue
 Room 180
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by January 31, 2003 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 442.04 (5), Stats.

Statutes interpreted: s. 442.04 (5), Stats.

In this proposed rule-making order the Accounting Examining Board amends its rules for implementation of a new computer-based examination. This examination is expected to be offered exclusively on computer beginning in early 2004. It will completely replace the paper-and-pencil version of the examination. The new examination has four sections: Regulation, Financial Accounting and Reporting, Auditing and Attestation, and business Environment and Concepts. Each section of the computer-based examination will be approximately as long as the current examination.

The four sections of the current examination are Accounting and Reporting, Financial Accounting and Reporting, Auditing, and Business Law and Professional Responsibilities.

Section 1 amends the passing grade on each section of the examination from 75 or higher to a passing grade established by the board.

Section 2 repeals and recreates the examination procedures. Eligibility to sit for the examination will continue to be determined by the jurisdiction where the certified public accountant credential is sought. Eligible examination candidates will be able to schedule directly with the company administering the examination. Examinations will be offered at sites in Madison and Milwaukee and candidates will also be permitted to take the examination at sites in other states. The examination will be given over a two-month period in each calendar quarter. It will not be given during the final month of each quarter, in order to prepare new examination material

for the next quarter. Candidates will not be allowed to retake a failed section within the quarter it was last taken. However, candidates will be allowed to take as many sections of the examination as they desire during any one quarter.

Section 3 repeals and recreates the transition rules to allow a transition period to complete any remaining sections of the certified public accountant examination. Candidates who have received conditional credit for sections of the paper examination will be allowed to take the remaining corresponding sections of the computer-based examination in order to complete the examination. These proposed rules allow candidates to sit for each section separately and to take each section in any order. All sections must be completed within an 18-month period, which begins on the date that the first section is taken. Credit for any section passed outside the 18-month period shall expire and that section shall be retaken.

Section 4 repeals the provision for applicants for the certified public accountant examination to request a review of their examination papers from the American institute of certified public accountants advisory grading service.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 02-141]

(Reprinted From Mid-December 2002 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rule changes to ch. ATCP 92, Wis. Adm. Code. The hearings will be held at the times and places shown below. The public is invited to attend and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **February 21, 2003** for submittal of additional written comments. Please submit written comments to the attention of Judy Cardin, Regulation & Safety Section, Division of Trade and Consumer Protection, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911.

A copy of the proposed rule may be obtained free of charge by contacting the Department of Agriculture, Trade and Consumer Protection at the address above or by calling

608–224–4944. Copies will also be available at the public hearings.

Access for those with physical disabilities is available at all hearing locations. An interpreter for the hearing impaired will be available on request for the hearings. Please make reservations for a hearing interpreter at least ten days prior to the hearing date by writing to Kelly Smithback, Division of Trade and Consumer Protection, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708 or by contacting the message relay system (TDD) at 224–5058.

Hearing Information:

Eau Claire area

Tuesday, January 14, beginning at 12:30 p.m.
DATCP Regional Office, Main Conference Rm
3610 Oakwood Hills Parkway
Eau Claire, WI 54701

Madison area

Thursday, January 16, beginning at 10:00 a.m.
Prairie Oak State Office Building, DATCP Board Room
2811 Agriculture Drive
Madison, WI 53708

Green Bay area

Tuesday, January 22, beginning at 1:00 p.m.
DATCP Regional Office, Conference Rm 152–A
200 N Jefferson St, Suite 146–A
Green Bay, WI 54301

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

Statutory Authority: ss. 93.07 (1), 93.15 (1), 98.03 (2), 98.16 (3), 98.18 (1h), (2) and (3), and 100.20 (2), Stats.

Statutes Interpreted: ss. 93.15, 98.02 to 98.05, 98.16, 98.18 and 100.20, Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's weights and measures program, to ensure that commercial weights and measures are accurate. DATCP also supervises municipal weights and measures inspection programs. DATCP licenses vehicle scale operators and weights and measures service companies. DATCP has adopted rules, under ch. ATCP 92, Wis. Adm. Code, related to commercial weighing and measuring devices.

This rule modifies current weights and measures rules, and creates new requirements. Among other things, this rule does the following:

- Establishes uniform weights and measures inspection procedures, to promote uniform statewide application of weights and measures laws. The uniform procedures apply to state and municipal weights and measures programs. The uniform procedures are based on standards developed by the National Institute of Standards and Technology (NIST).

- Requires state inspectors, municipal inspectors and private service companies to use testing equipment and weight standards that comply with NIST specifications, tolerances and regulations.

- Requires municipal inspectors to attend training on NIST procedures and related subjects.

- Clarifies licensing requirements for private weights and measures service companies, and increases annual license fees.

- Increases annual license fees for vehicle scale operators.

- Establishes a technician certification program for technicians employed by private weights and measures service companies. Technicians must pass an open-book examination developed by the Central Weights and Measures Association. There is an examination fee of \$25.

State and Municipal Programs

DATCP enforces state weights and measures laws. Under s. 98.04, Stats., municipalities with a population of more than 5,000 must establish their own programs or contract with DATCP for weights and measures services. Currently, 18 municipalities have their own programs.

This rule establishes minimum standards for state and municipal weights and measures programs, in order to ensure reasonable statewide uniformity. This rule includes the following new requirements:

- **Uniform Inspection Procedures.** Under this rule, state and municipal programs must inspect packaged commodities, liquid measuring devices, scales, pricing systems, timing devices and linear measuring devices. (Currently, some municipal programs do not perform some of these inspections.) State and municipal inspectors must follow uniform testing and sampling procedures spelled out in state law and applicable NIST handbooks.

- **Inspection Equipment.** This rule requires inspectors to use test equipment and weight standards that meet NIST requirements. DATCP or a NIST-certified laboratory must test and certify test equipment and weight standards at least once every 2 years. DATCP may set a different testing interval for specialized equipment or weight standards.

- **Training Requirement.** Under this rule, state and municipal inspectors must participate in DATCP-sponsored training to stay current with changing weights and measures standards and procedures.

- **Sealing Procedure.** This rule clarifies the procedure for "sealing" a weighing or measuring device after the device is inspected.

- **Reporting Requirements.** This rule clarifies current municipal reporting requirements. Municipalities are currently required to submit annual reports to DATCP. DATCP uses these reports to help identify weights and measures compliance problems, priorities and program needs.

Weights and Measures Service Companies

DATCP currently licenses weights and measures service companies under s. 98.18, Stats. This rule increases license fees and establishes minimum licensing standards.

• License Required

This rule clarifies that a weights and measures service company must hold a DATCP license to install, service, test or calibrate commercial weighing or measuring devices.

A service company must apply for a license and pay required fees, according to this rule. DATCP may deny, suspend or revoke a license for reasons specified in this rule.

• License Fee

Under current law, weights and measures service companies pay the following annual license fees:

- \$100 for companies that service only their own commercial weighing and measuring devices.

- \$200 for companies that service weighing and measuring devices "for hire." A "for hire" company must also pay a supplementary license fee of \$50 for each additional business location, if the company operates from more than one location.

This rule increases license fees for service companies. This rule establishes an annual fee of \$250 for every company. A "for hire" service company must pay a supplementary fee of \$75 for each additional business location, if the company operates from more than one location.

• Technician Certification

This rule creates a certification program for weights and measures service technicians. A weights and measures service company is responsible for having its technicians

certified. Under this rule, a technician may not do any of the following unless the technician is certified:

- Restore to service a weighing or measuring device rejected by a state or municipal inspector.
- Place a new commercial weighing or measuring device in service.
- Verify the accuracy of a commercial weighing or measuring device.

A technician must be certified in one or more appropriate categories, based on the types of devices that the technician services. The Central Weights and Measures Association (CWMA) has developed certification exams that test a person's working knowledge of NIST standards and procedures (NIST Handbook 44) in various categories. Six midwestern states have adopted the CWMA technician certification program. Technicians who successfully complete the exam are recognized as "certified technicians" in participating states.

This rule requires certified technicians to pass the CWMA technician certification exam (or another exam approved by DATCP) in each applicable category once every 5 years. There is a \$25 exam fee. The Wisconsin Department of Employment Relations, City and County Testing Unit, will administer the exam for DATCP. Exams are administered at locations statewide.

• Equipment Testing Procedures

Under this rule, weights and measures service companies must follow NIST testing procedures when they test weighing and measuring devices. Service companies must affix security seals to devices placed in service. Security seals must identify the name of the service company and technician that serviced the device.

This rule requires service companies to use testing equipment and standards that meet NIST requirements. Equipment and standards must be tested and certified at least once every 2 years by DATCP's metrology laboratory, or by a NIST-certified laboratory.

• Recordkeeping and Reporting.

Under this rule, a weights and measures service company must prepare a written report whenever the company installs, services, tests or calibrates a weighing or measuring device. The technician who does the work must prepare and sign the report. The report must include relevant information required by this rule.

Within 7 business days after it completes the work, the service company must give a copy of the report to the owner or operator of the device. If the service company restores a "rejected" device to service, the service company must also give a copy to DATCP or to the municipality that rejected the device. The service company must keep a copy of the report for at least 3 years.

• **Prohibited Practices.** No person who sells, installs, services, tests or calibrates a weighing or measuring device may do any of the following:

- Cause the device to be incorrect.
- Misrepresent that the device is correct.
- Misrepresent, directly or by implication, that the person has determined whether the device is correct.
- Fail to comply with this chapter or ch. 98, Stats.
- Remove any reject tag or mark applied by a state or municipal inspector unless the person first does one of the following:

- * Adjusts the device to make it correct.
- * Obtains express authorization from DATCP or, if the reject tag or mark was applied by a municipal inspector, from that municipality.

Vehicle Scales

DATCP currently licenses vehicle scale operators under s. 98.16, Stats. The current license fee is \$60 per year per vehicle scale. This rule increases the license fee to \$100 per year per vehicle scale.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and the revisor of statutes to incorporate the following standards by reference in this rule:

- The national institute of standards and technology handbook 44 (specifications, tolerances, and other technical requirements for weighing and measuring devices), 2003 edition.
- The national institute of standards and technology handbook 133 (checking the net contents of packaged goods), 2003 edition.
- Section 7 "test procedures" from the chapter titled "examination procedure for price verification," national institute of standards and technology handbook 130 (uniform laws and regulation in the areas of legal metrology and engine fuel quality), 2003 edition.

Copies of these standards are on file with DATCP, the secretary of state and the revisor of statutes.

Fiscal Estimate

Weights and measures service companies and vehicle scale operators are licensed and regulated by DATCP under Chapter 98 of the Statutes. Current law authorizes the department to adjust license fees by rule.

Currently, the department licenses an estimated 2011 vehicle scales and 208 service companies. These license fees generate an estimated \$160,000 annually for DATCP's weights and measures inspection program. The proposed fee increases for vehicle scales and service companies are expected to generate an additional \$97,000.

This rule also includes a requirement for certification of service company technicians, consistent with a voluntary service company technician testing program developed by the Central Weights and Measures Association. The rule imposes a \$25 processing for testing and certification, and requires recertification of technicians every five years. DATCP has identified approximately 1,164 technicians employed by service companies. An estimated 800 technicians are likely to participate in the service company technician testing and certification program. The processing fee will generate about \$20,000 during each five-year interval, and cover costs associated with administration and grading of the tests.

Initial Regulatory Flexibility Analysis

This rule will affect vehicle scale operators and weights and measures service companies, many of which are small businesses. The proposed fee increases for vehicle scale operators and private and "for hire" service companies are needed to ensure accurate weights and measures in this state. Testing and record keeping requirements in the rule are consistent with NIST standards and surrounding states, and considered as good business practices within the industry. The rule does not present an unreasonable burden to affected businesses.

Notice of Hearing

Natural Resources (Fish, Game, etc.)

NOTICE IS HEREBY GIVEN that pursuant to ss. 90.21 (6), 169.11 (1) (a), 169.15 (5), 169.18 (5), 169.19 (6), 169.20 (4), 169.21 (3), 169.23 (3), 169.25 (6), 169.26 (4), 169.27 (4), 169.39 (2) and (3), 227.11 (2) (a) and 227.24, Stats., interpreting ss. 90.21 (2) and (5), 169.11 (1), 169.12 (1) and (4), 169.14 (2), 169.15 (4), 169.18 (2) and (3), 169.19 (2) and

(3), 169.20 (1), (2) and (3), 169.21 (1) and (2), 169.23 (2), 169.25 (1), (2), (3), (4) and (5), 169.26 (1), (2) and (3), 169.27 (1), (2) and (3) and 169.31 (1) (a), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-03-03(E) relating to captive wildlife. This emergency order will take effect on January 1, 2003.

2001 Wisconsin Act 56 enacted on April 3, 2003 removed Wisconsin's captive wildlife laws from ch. 29, Stats., and created ch. 169, Stats. As of January 1, 2003, the effective date of most of the provisions of ch. 169, Stats., game farms, fur farms and other holders of live captive wildlife will be subject to regulation under ch. 169, Stats. This will include two new license requirements and requirements of operation. While Wis. Act 56 provides for a transfer of ch. 29, Stats., licenses to ch. 169, Stats., licenses, it does not automatically transfer the rules for captive animals held under ch. 29, Stats., to rules applicable to captive animals held under ch. 169, Stats. This rule will create ch. NR 14 which will incorporate by reference most of the rules that were applicable to captive animals under ch. 29, Stats., and make it clear that those standards are now applicable to captive animals held under ch. 169, Stats.

In some areas the rule creates new standards. Section NR 14.01, while incorporating many of the deer farm fence standards from ch. NR 16, increases the required height of new fences from 8 feet to 10 feet. It also phases in a requirement that deer farms be double fenced unless the deer farm is enrolled in the chronic wasting disease herd monitoring or herd surveillance program. While the deadlines for the double fence regulations will likely not occur until after the expiration of this rule, they are included in order to put the public on notice of the requirements that will be proposed in the permanent rule proposal that will follow this emergency rule. A second area of change is in the fur farm rules where acreage requirements for new fur farms and tagging requirements for otter are created.

The rule creates a definition of sporting club for purposes of this fee waiver allowed for such groups. The rule also creates standards for the issuance of licenses for dog training clubs. This license did not exist previously and allows members of a dog training club to dog train on club premises under the authority of the club license. Without standards, it would be difficult if not impossible to implement this program.

Finally, the rule changes the license needed for commercial operations dealing in reptiles and amphibians from a commercial permit under ch. NR 19 to a captive wild animal license under ch. 169, Stats. This change is required by Wis. Act 56.

Hearing Information

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

Thursday, January 16, 2003 at 1:00 p.m.

Room 027, 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 Sue Solin at (608) 266-8204 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

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

Contact Information

Written comments on the emergency rule may be submitted to Ms. Sarah Hurley, Deputy Administrator, Division of Lands, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707 no later than January 31, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing.

A copy of the emergency rule may be obtained from the Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707.

Notice of Hearings

Natural Resources (Fish, Game, etc.) [CR 02-144]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.041, 29.014 (1), 29.519 (1) (b) and 227.11 (2) (a), Stats., interpreting ss. 29.041, 29.014 (1) and 29.519 (1) (b), Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 25.05 and 25.06, Wis. Adm. Code, relating to smelt trawling in Green Bay. In the last decade smelt abundance has declined almost 95% in Lake Michigan. The proposed rule shortens the summer trawling season in Green Bay by approximately 6 weeks. The current season runs from June 15 to September 30; the proposed rule sets the season from July 1 to September 1. The total allowable smelt harvest from Green Bay is reduced from 351,993 pounds to 100,000 pounds.

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

- Types of small businesses affected: Commercial fishers of smelt in Green Bay.
- Description of reporting and bookkeeping procedures required: No new procedures.
- Description of professional skills required: No new skills.

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

Hearing Information

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

January 16, 2003 Room 310, Green Bay City Hall,
Thursday 100 N. Jefferson St., Green Bay
at 7:00 p.m.

January 21, 2003 Multi-purpose Room
Tuesday Lakeshore Tech. College
at 7:00 p.m. 1290 North Ave., Cleveland

January 22, 2003 "C" Auditorium, Milwaukee MATC
Wednesday 1036 North 8th Street, Milwaukee

at 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 Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no state fiscal effect.

Contact Information

Written comments on the proposed rule may be submitted to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than January 31, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH-12-03] and fiscal estimate may be obtained from Mr. Horns.

Notice of Hearings

Natural Resources (Fish, Game, etc.) [CR 02-143]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.041, 29.014 (1), 29.519 (1) (b) and 227.11 (2) (a), Stats., interpreting ss. 29.041, 29.014 (1) and 29.519 (1) (b), Stats., the Department of Natural Resources will hold public hearings on revisions to s. NR 25.09, Wis. Adm. Code, relating to commercial netting of whitefish in Lake Michigan. Under current rules, commercial whitefish trap nets must be removed from waters of Lake Michigan south of Kewaunee from June 28 through Labor Day. The proposed rule opens most the of the area of Lake Michigan south of Kewaunee to commercial trap netting during summer, while also defining an area between Manitowoc and Two Rivers where summer trap netting would continue to be banned. In addition, it reduces the number of trap nets from 12 to 6 that may be used by any individual license holder in Lake Michigan south of Kewaunee and establishes new net marking requirements.

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

- a. Types of small businesses affected: Commercial fishers of whitefish.
- b. Description of reporting and bookkeeping procedures required: No new procedures.
- c. Description of professional skills required: No new skills.

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

Hearing Information

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

January 16, 2003 Room 310, Green Bay City Hall

Thursday 100 N. Jefferson St., Green Bay
at 7:00 p.m.

January 21, 2003 Multi-purpose Room
Tuesday Lakeshore Tech. College
at 7:00 p.m. 1290 North Ave., Cleveland

January 22, 2003 "C" Auditorium, Milwaukee MATC
Wednesday 1036 North 8th Street, Milwaukee
at 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 Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no state fiscal effect.

Contact Information

Written comments on the proposed rule may be submitted to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than January 31, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH-46-02] and fiscal estimate may be obtained from Mr. Horns.

Notice of Hearings

Natural Resources (Environmental Protection-Solid Waste Management) [CR 02-145]

NOTICE IS HEREBY GIVEN that pursuant to ss. 289.61 and 227.11 (2) (a), Stats., interpreting s. 289.61, Stats., the Department of Natural Resources will hold public hearings on revisions to NR 520.04 and 520.13 Tables 2 and 3, Wis. Adm. Code, relating to adjusting solid waste licensing and plan review fees. As a result of a projected deficit in the solid waste program revenue account, the Department is proposing a 10% increase in plan review fees and annual license fees for landfills, other solid waste facilities and solid waste collection and transportation services. The new fee schedule would take effect on July 1, 2004.

The Department is also proposing to revise the amount of the landfill license fee surcharge. Currently the surcharge is set at 9 cents per ton of solid waste landfilled during each quarterly reporting period. This fee initially went into effect at 10 cents per ton in July 1996 subject to a sunset in December 1997. The fee became permanent at 9 cents per ton in October, 1997.

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. In general, these revisions will affect municipalities and larger businesses.

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

Hearing Information

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

January 21, 2003 CS Conference Rm, 3rd floor GEF #3
Tuesday 125 S. Webster St.
at 1:00 p.m. Madison

January 22, 2003 Schmeekle Reserve, UW–Stevens Pt
Wednesday 2419 North Point Dr.
10:00 a.m. Stevens Point

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 Colleen Hellenbrand at (608) 267-7515 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

Over the past 5 years, the amount of waste disposed of in landfills on which environmental fees are assessed has averaged just under 9 million tons/year. While no clear trends have been observed during this period, we believe that ongoing waste reduction, recycling, and reuse may result in lower landfilled tonnages in come years.

Assuming annual landfilled tonnages between 8.6 and 9.0 million tons for the foreseeable future, the amount of revenue generated by the increases in the landfill license fee surcharge will range from approximately \$258,000 and \$270,000 in FY 03–04, \$30,000 and \$450,000 in FY 04–05, and \$516,000 and \$540,000 in FY 05–06 and subsequent years. We also estimate that the increases in plan review and license fees will generate approximately \$128,850/year beginning in FY 04–05. The fee increases would affect both private and publicly owned facilities.

Currently there are 18 county–owned landfills and 5 owned by cities. Based on calendar year 2001 data, county landfills took in an average of 53,400 tons on which environmental fees were assessed. For city–owned landfills, the average was 32,500 tons. Therefore, the average county–owned landfill would pay an additional landfill license fee surcharge of approximately \$1,600 in FY 03–04 up to \$3,200 in FY 05–06. The average city–owned landfill would pay from \$975 in FY 03–04 up to \$1,950 in FY 05–06. With respect to plan review and license fees, we estimate that public owners will pay approximately one–fourth of the \$128,850/year increase. Total annual impact = \$65,900 to \$99,700.

Contact Information

Written comments on the proposed rule may be submitted to Ms. Colleen Hellenbrand, Bureau of Waste Management, P.O. Box 7921, Madison, WI 53707 no later than January 29, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed [WA–45–02] rule and its fiscal estimate may be obtained from Ms. Hellenbrand.

Notice of Hearing

Natural Resources

(Environmental Protection–Water Supply)

[CR 02–147]

NOTICE IS HEREBY GIVEN that pursuant to ss. 280.11, 281.17 (8) and 227.11 (2) (a), Stats., interpreting ss. 280.11 and 281.17 (8), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 809, Wis. Adm. Code, relating to safe drinking water requirements for public water systems. The Interim Enhanced Surface Water Treatment Rule (IESWTR) and Disinfectants/Disinfection By–products Rule (D/DBPR) have been promulgated by the U. S. Environmental Protection as mandated by the 1996 amendments to the Safe Drinking Water Act. As the primacy

agent for U.S. EPA in Wisconsin, the Department must adopt and implement regulations at least as stringent as those promulgated by U.S. EPA. The proposed rule revisions are a direct result of that requirement. Also included in the proposed rule are minor corrections to ch. NR 809 that address cross–reference changes, typographical errors and omissions.

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

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

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

January 22, 2003 Video conference participation will
Wednesday be available at:
10:00 a.m. Room 021, GEF #2 Building
101 S. Webster St., Madison
Room 542, State Office Building
819 N. 6th St., Milwaukee
Room 220 Main Building
UW–Marathon Co., 518 S. 7th Ave.,
Wausau

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 Carol McCurry at (608) 267–2449 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

Neither the department no local governments should experience cost increases as a result of these proposed revisions.

Contact Information

Written comments on the proposed rule may be submitted to Ms. Carol McCurry, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 no later than February 3, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [DG–13–03] and fiscal estimate may be obtained from Ms. McCurry.

Notice of Hearing

Pharmacy Examining Board

[CR 02–140]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3), Stats., and interpreting ss. 450.03 (2) and 450.04 (3), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Phar 2.02 (1) (intro.), relating to filing completed applications for examinations.

Hearing Information

Date: **January 14, 2003**
Time: 9:30 a.m.
Location: 1400 East Washington Avenue
Room 179A

Madison, Wisconsin

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by January 31, 2003 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 and 450.02 (3), Stats.

Statutes interpreted: ss. 450.03 (2) and 450.04 (3), Stats.

Current s. Phar 2.02 (1) (intro.) requires that a completed application be on file at least 45 days prior to taking any required examinations for licensure. It has come to the board's attention that students graduating from pharmacy schools in the spring semester have difficulty assembling or having submitted required proofs in a timely manner from their respective schools. Such delays may result in a student not being able to take the first available examination following graduation. To remedy this problem, the board will

amend s. Phar 2.02 (1) (intro.) to change the application cut-off to 30 days. Such a change will not materially affect the board's or the department's ability to process applications but will increase the ability for newly graduated students to file completed applications in a timely manner.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Contact Information

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

Rule orders filed with the revisor of statutes bureau

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

**Marriage and Family Therapy, Professional Counseling
and Social Workers**

(CR 01-152)

An order affecting ch. MPSW 1, relating to a rules committee.

Effective 2-1-03.

Natural Resources

(CR 02-016)

An order affecting ch. NR 20, relating to trout fishing on the inland waters of Wisconsin.

Effective 2-1-03.

Natural Resources

(CR 02-089)

An order affecting ch. NR 10, relating to small game and expanded spring turkey hunting in state parks.

Effective 2-1-03.

Treasurer

(CR 02-009)

An order creating Treas 1, relating to the college savings program.

Effective 2-1-03.

Workforce Development

(CR 02-104)

An order affecting chs. DWD 12, 17 and 23, relating to the Wisconsin Works.

Effective 2-1-03.

Workforce Development

(CR 02-050)

An order affecting ch. DWD 56, relating to the administration of child care funds.

Effective 2-1-03.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **December 31, 2002**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Accounting Examining Board (CR 01-047)

An order affecting ch. Accy 5, relating to experience in public practice. Effective 1-1-03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

Accounting Examining Board (CR 02-052)

An order affecting ch. Accy 1, relating to the definition of "ownership interest" for the purpose of determining eligibility of firms for a license as a certified public accounting firm. Effective 1-1-03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

Agriculture, Trade and Consumer Protection (CR 01-124)

An order affecting ch. ATCP 80, relating to dairy plants and dairy laboratories. Effective 1-1-03.

Summary of Final Regulatory Flexibility Analysis

This rule updates current dairy plant rules (ATCP 69 and 80, Wis. Adm. Code). The rule incorporates new food safety standards for dairy plants, and accommodates recent changes in dairy plant operations. The rule applies to grade A and grade B dairy plants. It incorporates current grade A dairy plant standards under the Interstate Pasteurized Milk Ordinance (PMO). Revisions in ch. ATCP 69 establish alternative training options for persons who wish to be licensed as cheesemakers.

In July, 2001, the U. S. Food and Drug Administration (FDA) issued a new directive requiring states to approve laboratory analysts who conduct drug residue screening tests. Analysts must be approved or dairy plants may no longer be able to ship milk in interstate commerce. The revisions to ch. ATCP 77, Wis. Adm. Code, require DATCP to approve

laboratories to conduct drug residue screening tests on milk samples. An approved laboratory must employ DATCP-approved analysts to conduct the tests. DATCP must perform an on-site evaluation of every laboratory and analyst that conducts "visual read" screening tests without the aid of a mechanical reader. The laboratory must pay specified fees necessary to recover DATCP costs.

Small Businesses Affected by this Rule

This rule affects dairy plants, which are businesses that process or manufacture dairy products from raw milk shipped to the dairy plant by milk producers. This includes approximately 450 dairy plants in this state that are licensed and inspected by the department. The rule also affects approximately 85 drug residue screening laboratories. Many of these businesses are "small businesses" as defined in s. 227.114 (1) (a), Stats.

Effects on Small Business

The dairy plant rule changes affect dairy plant operators, some of whom are small businesses. For the most part, these rules will help small businesses by modernizing current regulations to accommodate changing industry practices. This rule merely implements changes in the interstate Pasteurized Milk Ordinance and redrafts existing requirements for dairy plants so they will be easier to read and understand. This rule will not, by itself, have a major impact on small business.

Changes in the laboratory certification rule require DATCP approval of laboratory analysts performing screening tests for drug residues in milk. DATCP will conduct on-site competency evaluations of analysts performing "visual read" tests. DATCP will charge fees to authorized laboratories to cover the cost of the new program. This will impose some additional costs on laboratories, but will help Wisconsin's dairy industry by facilitating sales of Wisconsin dairy products in interstate commerce. This rule update is necessary to ensure compliance with federal requirements. The Department reduced approval fees for certain small laboratories to minimize the fiscal impact on such businesses.

Conclusion

This rule will not, by itself, have a major impact on small business. For the most part, this rule merely implements changes in the interstate Pasteurized Milk Ordinance and a FDA mandate to approve drug residue screening laboratories. A dairy plant operator or laboratory operator will not need additional professional services to comply with this rule.

Summary of Comments of Legislative Standing Committees

On October 30, 2001, DATCP transmitted the above rule for legislative committee review. The committee took no action on this rule during the review period. The rule was assigned to the Senate Committee on Labor and Agriculture and to the Assembly Committee on Agriculture.

- The Senate committee took no action on this rule during the review period.
- The Assembly committee took no action on this rule during the review period.

Agriculture, Trade and Consumer Protection (CR 01–125)

An order affecting ch. ATCP 60, relating to dairy farms. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

This rule updates food safety requirements, and accommodates recent changes in dairy farm operations. It also clarifies the responsibilities of dairy plant operators with respect to dairy farms. This rule applies to grade A and grade B dairy farms. Grade A dairy farm rules must be consistent with federal requirements under the interstate Pasteurized Milk Ordinance (PMO). This rule:

- Requires out-of-state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results. Most out-of-state dairy plant operators already do this voluntarily.

- Authorizes milk producers to ship milk to 2 or more dairy plant operators. *Each operator* must comply with testing, reporting and other requirements related to milk shipped to that operator. *One of the operators* must take responsibility for producer licensing functions. That operator must pay the producer's license, grade A permit and re-inspection fees, and must perform initial dairy farm inspections and biennial water supply tests required for licensing purposes. Operators must report producer transfers. An operator who merely "custom processes" dairy products for producers, without marketing or taking title to those dairy products, is exempt from certain requirements.

- Authorizes milk producers (such as grazers) to discontinue milk shipments temporarily, without jeopardizing their license or permit status.

- Extends current rules to cover farms producing milk from sheep (current rules apply to cows and goats).

- Modifies current hot water capacity requirements for dairy farms.

- Authorizes the use of re-circulated water in plate coolers, subject to conditions specified in this rule.

- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.

- Clarifies milk testing and reporting requirements.

- Requires dairy plant operators to respond immediately if a bacteria test on a producer's milk shows more than 750,000 bacteria per ml. (the current "immediate response" level is 1,000,000 per ml.)

- Requires dairy plant operators to report milk quality test reports in electronic form, beginning one year after the effective date of this rule. Many operators currently submit hard copy written reports. The electronic reporting requirement does not apply to drug residue test reports.

- Requires a dairy plant operator to recover, from producers who contaminate milk with drug residues, the full amount of the operator's loss related to that milk. Under current rules, an operator must test bulk loads of milk, reject contaminated loads, and recover at least part of the loss from offending producers. This rule requires the operator to recover the full value of each rejected load (not just part), plus any additional transportation, testing and disposal costs incurred because of the contamination.

- Tightens the current test standard for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.

- Requires milk laboratories and laboratory analysts to be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.

- Codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.

- Updates current sanitation requirements for dairy farms.

- Updates current DATCP administrative procedures.

- Make drafting and organizational changes to clarify and modernize current rules.

Small Businesses Affected by this Rule

This rule affects milk producers or dairy farms, which are businesses that produce raw milk for processing into dairy products. This includes approximately 18,000 dairy farms in this state that are licensed and inspected by the department. Many of these businesses are "small businesses" as defined in s. 227.114 (1) (a), Stats.

Effects on Small Business

This rule will not, by itself, have a major impact on small business. This rule merely implements changes in the interstate Pasteurized Milk Ordinance and redrafts existing requirements for dairy farms so they will be easier to read and understand.

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. Some large producers concurrently ship milk to 2 or more dairy plant operators. This rule allows a producer to ship to 2 or more dairy plant operators if all the following apply:

- Each operator tests milk shipments shipped to that operator, and reports test results. The operator must also comply with other requirements related to those shipments.

- One of the operators files license and permit applications for the milk producer, and pays producer license and reinspection fees. Under this rule, as under current rules, the operator must charge producer reinspection fees back to the producer.

Current dairy farm rules apply to cattle and goats. This rule extends current rules to include sheep.

This rule authorizes producers to milk directly to a bulk transport container under certain conditions, but does not add any significant new requirements. A dairy farmer or milk producer need not hire additional professional services to comply with this rule. Dairy farms can implement this rule with existing personnel.

Steps to Assist Small Business

The department will provide training to Wisconsin dairy plant field representatives to help them implement the requirements contained in this rule on the dairy farms that ship milk to their dairy plant. This rule primarily clarifies current requirements, so they will be easier to read and understand.

Conclusion

This rule will not, by itself, have a major impact on small business. For the most part, this rule merely implements changes in the interstate Pasteurized Milk Ordinance. A milk producer will not need additional professional services to comply with this rule.

Summary of Comments of Legislative Standing Committees

On October 30, 2001, DATCP transmitted the above rule for legislative committee review. The committee took no action on this rule during the review period. The rule was assigned to the Senate Committee on Labor and Agriculture and to the Assembly Committee on Agriculture.

– The Senate committee took no action on this rule during the review period.

– The Assembly committee took no action on this rule during the review period.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (CR 02–090)

An order affecting ch. A–E 6, relating to land surveyor temporary permits. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

Financial Institutions–Securities (CR 02–102)

An order affecting ch. DFI–Sec 3, 4, 5 and 9, relating to securities broker–dealer, agent, investment adviser and investment adviser representative license–filing procedures, license period provisions, and securities registration disclosure requirements. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

No final regulatory flexibility analysis is included on the basis that the Division of Securities has determined, after complying with s. 227.016 (1) to (5), Stats., that the rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments of Legislative Standing Committees

No comments received.

Hearings and Appeals (CR 02–024)

An order affecting ch. HA 1, relating to the procedure and practice of conducting administrative hearings. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

The rules will not directly affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats. They apply to the Division, to those requesting contested case hearings with the departments of Health and Family Services, Transportation, Natural Resources, and such other departments with which the Division contracts to provide hearings.

Summary of Comments of Legislative Standing Committees

No comments received.

Insurance (CR 02–051)

An order affecting ch. Ins 3, relating to transitional treatment. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

The legislative standing committees had no comments on this rule.

Natural Resources (CR 02–045)

An order affecting ch. NR 324, relating to the regulation of fishing rafts on the Wolf river and its tributaries. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

The rule changes will not have a significant impact on a substantial number of small businesses and, therefore, a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources. On October 9, 2002, the Assembly Committee on Natural Resources held a public hearing. There were no requests for modifications as a result of this hearing.

Natural Resources (CR 02–075)

An order affecting ch. NR 10, relating to the 2002 migratory game bird season. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

The proposed rules do not regulate small business; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources. There were no comments.

Occupational Therapy Affiliated Credentialing Board (CR 02–026)

An order creating chs. OT 1 to 5, relating to the licensure and regulation of occupational therapists. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

Public Defender (CR 02–110)

An order affecting ch. PD 1, relating to provisional appointment of private attorneys seeking certification for appellate appointments. Effective 1–1–03.

Summary of Final Regulatory Flexibility Analysis

Proposed rules relate to private attorney certification and do not have an economic impact on small business.

Summary of Comments of Legislative Standing Committees

No comments received.

**Public Instruction
(CR 02-032)**

An order creating ch. PI 28, relating to providing access to the 4th, 8th and 10th grade Knowledge and Concepts Examinations and the High School Graduation Test. Effective 1-1-03.

Summary of Final Regulatory Flexibility Analysis

Proposed rules do not impact small businesses.

Summary of Comments of Legislative Standing Committees

No comments received.

**Public Service Commission
(CR 02-027)**

An order affecting ch. PSC 113, relating to the service rules for electrical utilities. Effective 1-1-03.

Summary of Final Regulatory Flexibility Analysis

In s. PSC 113.0403 (4) (b), Wis. Adm. Code, there is an

increase in the written notice required to be provided to the commercial customer prior to disconnection. Section PSC 113.0609 (1), Wis. Adm. Code, would allow municipal utilities to provide customer satisfaction surveys on an as needed basis rather than annually. Section PSC 113.0803 (1) Wis. Adm. Code, would add residential care apartment complexes or similar facilities to the type of unit excluded from requiring a separate electric meter for each dwelling unit. Otherwise the proposed rules will have no effect on small business.

Summary of Comments of Legislative Standing Committees

No comments received.

**Transportation
(CR 02-081)**

An order affecting ch. Trans 401, relating to construction site erosion control and storm water management procedures for department actions. Effective 1-1-03.

Summary of Final Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Summary of Comments of Legislative Standing Committees

No comments received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **December 2002**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Accounting Examining Board:

Ch. Accy 1

S. Accy 1.408

Ch. Accy 5

S. Accy 5.04

Agriculture, Trade and Consumer Protection:

Ch. ATCP 60

S. ATCP 60.01 (1), (1g), (4), (7), (9b), (10), (15) (b) 8., (19) to (22), (24) (28) and (29) (b)

S. ATCP 60.02 (5), (6) to (9)

S. ATCP 60.03 (4), (5), (6)

S. ATCP 60.04 (3)

S. ATCP 60.05 (2)

S. ATCP 60.06 (2), (3), (5) and (9) (a)

S. ATCP 60.07 (1), (2) (d) and (f)

S. ATCP 60.08 (5) and (6)

S. ATCP 60.09 (1) and (4)

S. ATCP 60.11 (1), (2) (c), (3) and (4)

S. ATCP 60.12 (1), (2), (6) and (7)

S. ATCP 60.13 (1) and (2)

S. ATCP 60.14 (2) to (4) and (6)

S. ATCP 60.15 (2) and (4).

S. ATCP 60.17

S. ATCP 60.18

S. ATCP 60.19 (1) (b), (5), (7), (8) (b), (10) (a) to (d) and (11)

S. ATCP 60.20

S. ATCP 60.22 (1) and (2)

S. ATCP 60.24 (2) and (3)

S. ATCP 60.245

S. ATCP 60.25 (1), (2) (intro.), (a), (c) and (d)

S. ATCP 60.26

S. ATCP 60.27 (1), (4), (6) (a) and (b)

S. ATCP 60.275 (1) (a) (intro.) and (b) to (d), (2) (a), (b) and (3)

S. ATCP 60.28 (1) and (2)

S. ATCP 60.29 (intro.), (1) and (3)

S. ATCP 60.30 (1) and (2)

S. ATCP 60.31 (1) (intro.) and (2) to (4)

Ch. ATCP 69

S. ATCP 69.02 (1), (5)

Ch. ATCP 77

S. ATCP 77.01 (1m), (4m), (17)

S. ATCP 77.03 (2) (b) and (c)

S. ATCP 77.06 (1) (a) to (c), (e) and (2)

S. ATCP 77.22 (1)

S. ATCP 77.23

Ch. ATCP 80

S. ATCP 80.01 (1g), (10), (11) and (34)

S. ATCP 80.08 (7), (8) (d), (f) and (8m)

S. ATCP 80.10 (1) (d)

S. ATCP 80.12 (1) (g), (7) (b)

S. ATCP 80.14 (3) (a) and (c)

S. ATCP 80.18 (1) (c)

S. ATCP 80.20 (1) and (3)

S. ATCP 80.22 (2) (d), (5) (a) and (d)

S. ATCP 80.24 (3) (a), (b), (d) and (4)

S. ATCP 80.26 (2) (a)

S. ATCP 80.28 (1) (c)

S. ATCP 80.32 (1) (b), (2) (a) and (6)

S. ATCP 80.34 (2) (c), (5) (d), (6) (c), (7) (c) and (8)

S. ATCP 80.36 (3)

S. ATCP 80.40

S. ATCP 80.41

S. ATCP 80.44 (1), (2) and (2m)

S. ATCP 80.46

S. ATCP 80.48

S. ATCP 80.49

S. ATCP 80.50

S. ATCP 80.52 (2), (6) (a) to (c)

S. ATCP 80.54 (1) (g), (L) and (m)

S. ATCP 80.62 (1) (b)

Architects, Engineers, Desingers and Surveyors:

Ch. A-E 6

S. A-E 6.07

Financial Institutions-Securities:

Ch. DFI-Sec 3

S. DFI-Sec 3.03 (4) (h) and (o) to (p)

Ch. DFI-Sec 4

S. DFI-Sec 4.04 (3) to (9)

S. DFI-Sec 4.05 (6) to (12)

S. DFI-Sec 4.06 (1) (d)

S. DFI-Sec 4.07 (2)

S. DFI-Sec 4.085

S. DFI-Sec 4.10 (1) (d)

Ch. DFI-Sec 5

S. DFI-Sec 5.01 (1) (a), (b), (2) (a), (c), (d) and (e)

S. DFI-Sec 5.04 (7) and (8)

S. DFI-Sec 5.05 (14)

S. DFI-Sec 5.07

S. DFI-Sec 5.08 (2)

S. DFI-Sec 5.10

S. DFI-Sec 5.11 (3)

S. DFI-Sec 5.12 (4)

Ch. DFI-Sec 9

S. DFI-Sec 9.01 (1) (b)

Hearings and Appeals:**Ch. HA 1** (Entire chapter)**Insurance:****Ch. Ins 3**

S. Ins 3.37 (3) (intro.), (b), (d), (e) and (g)

Natural Resources:**Ch. NR 10**

S. NR 10.01 (1) (b), (d), (dm), (g), (u) and (v)

Ch. NR 324

S. NR 324.03

S. NR 324.05

S. NR 324.10 (3) and (4)

S. NR 324.13

Occupational Therapists:**Ch. OT 1 to 5** (Entire chapters)**Public Defender:****Ch. PD 1**

S. PD 1.04 (5) (bc), (d) and (e)

Public Instruction:**Ch. PI 28** (Entire chapter)**Public Service Commission:****Ch. PSC 113**

S. PSC 113.0402 (3) (b)

S. PSC 113.0403 (4) (b)

S. PSC 113.0602 (8)

S. PSC 113.0607 (2) (a) and (b)

S. PSC 113.0609 (1) (intro.)

S. PSC 113.0701 (1), (2), (4), (6), (7) and (8)

S. PSC 113.0803 (1)

S. PSC 113.0811 (4)

S. PSC 113.0912 (1) (intro.) and (a)

S. PSC 113.0913 (1) (intro.) and (a)

S. PSC 113.0914 (1) (intro.) and (a)

Transportation:**Ch. Trans 401**

S. Trans 401.01 to 401.03

S. Trans 401.04 (1), (3), (5), (7) to (9), (11), (13m) to (19), (21), (23) to (27), (29), (31), (32), (35), (35d), (35g), (35m) and (36)

S. Trans 401.05 (1), (2) (intro.) and (5)

S. Trans 401.06

S. Trans 401.07 (intro.) to (2) (intro.), (c), (f), (g), (i), (j), (3) (b) and (c)

S. Trans 401.08

S. Trans 401.09

S. Trans 401.10 (intro.) to (4) (intro.), (ag) to (d), and (4m) to (6)

S. Trans 401.105 (1m)

S. Trans 401.106 to 401.12

Editorial corrections

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

Agriculture, Trade & Consumer Protection:**Ch. ATCP 80**

S. ATCP 80.58 (1) (a) and (2) (a)

S. Ins 3.39 (2) (a), (4), (7) (b) and (c), (13) and (33)

S. Ins 3.67 (1) (e)

Insurance:**Ch. Ins 3**

S. Ins 3.32 (5)

Public Service Commission:**Ch. PSC 113**

S. PSC 113.0203 (intro.) and (2))

S. PSC 113.0204 (2)

S. PSC 113.1003 (13)

Public notice

Agriculture, Trade and Consumer Protection

Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under s. 779.41 (1), Stats., mechanics or repair businesses who transport, repair or perform any work on personal property at the request of the owner have a statutory lien on the property for the just and reasonable charges associated with the work, and may retain possession of the property until the charges are paid.

Generally, a mechanic's lien under s. 779.41, Stats., has priority over any previously recorded security interest in the personal property but only for the appropriate charges at the specified dollar amounts below.

Under s. 779.41 (1m), Stats., the Department is required to annually publish adjusted dollar amounts for charges on repairs to personal property subject to mechanic's liens. The adjustments are based on the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

The Department has determined that current dollar amounts specified under s. 779.41 (1), (1) (a), (1) (b), and (1) (c) shall be increased by 1.6%, according to the prior year annual change in the consumer price index. Thus, the dollar amounts for charges under the mechanic's lien law are adjusted as follows:

Under s. 779.41 (1), mechanic's liens generally, \$1,725.

Under s. 779.41 (1) (a), mechanic's liens on a trailer or semi-trailer designed for use with a road tractor, \$5,165.

Under s. 779.41 (1) (b), mechanic's liens on road machinery, including mobile cranes, trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment, \$8,610.

Under s. 779.41 (1) (c) 1. to 4., Stats., mechanic's liens on vehicles:

1. More than 10,000 and less than 20,000 pounds, \$3,445.
2. 20,000 pounds or more, but less than 40,000 pounds, \$6,800.
3. 40,000 pounds or more, but less than 60,000 pounds, \$10,340.
4. 60,000 pounds or more, \$13,375.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2003 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

Contact Information:

Paul Dingee, Section Chief
Trade Practices Bureau
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4925

Health and Family Services

Medical Assistance Reimbursement for Services Provided by Local Governmental Units, including Counties, Municipalities, Cooperative Educational Service Agencies and School Districts

Notice is hereby given that the Department of Health and Family Services intends to change its methods and standards for setting payment rates for services provided by local governmental units including counties, municipalities, Cooperative Educational Service Agencies (CESAs) and school districts to individuals eligible for Medicaid under the authority of Title XIX of the federal Social Security Act. The Wisconsin Department Health and Family Services administers the joint federal-state Medicaid program for the state of Wisconsin. This notice is intended to satisfy the requirements of 42 CFR 447.205.

The State of Wisconsin currently provides reimbursement for certain services provided by local governmental units to individuals eligible for Medicaid. Examples of the services provided by these entities include outpatient mental

health services, alcohol and other drug abuse treatment, psychiatric services, personal care services, and case management services. The department makes payments to local governmental units for the specific services they provide to eligible Medicaid recipients in accordance with an established fee schedule. In addition, local governmental units currently may apply for additional funding from the department for any operating deficits incurred in providing these services to eligible Medicaid recipients. For purposes of determining the amount of any additional funding for incurred deficits, the department has established an audit and reconciliation process. Through this process the amount of the local government's payments eligible for federal matching funds is identified and the federal share of this amount is paid up to specified limits.

The department intends to change its methods and standards for setting payments by increasing the rates paid for certain services provided by local governmental units and by eliminating additional payments to these units for deficits incurred in delivering the services.

The department believes that by increasing the payment rates for services provided and by eliminating the deficit funding process, the goals of the program will be better met and administrative efficiency will be improved.

The department intends to establish the new rate amounts for the services by applying appropriate inflation factors to historical payment rates or by setting rates based on current prevailing charges. Any increase resulting from this change will not result in rates that exceed the maximum amounts permissible under federal regulations. The increased rate amounts will be in effect for services provided on or after January 1, 2003.

The estimated increase in aggregate expenditures for these rate increases is \$ 12.9 million for fiscal year 2003 and \$47.4 million on an annual basis thereafter.

Written comments:

Written comments on the proposed change may be sent within 30 days of publication of this notice to:

Department of Health and Family Services

Attention: Wisconsin Medicaid Program

P.O. Box 309

Madison, Wisconsin 53701-0309

Or by faxing to 608-266-1096

The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in room 355 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received.

Health and Family Services

Medical Assistance Reimbursement for Home and Community-Based Waiver Services

The state of Wisconsin provides payment for home and community-based waiver services provided to certain persons eligible for Medicaid benefits under the authority of Title XIX of the federal Social Security Act. Home and community-based waiver services are provided under section 1915 (c) waivers of certain otherwise-applicable Medicaid state plan requirements. The department currently operates several home and community-based waiver programs that provide services to different eligible populations. Among the programs currently in operation are the Community Options Program (COP-W) and the Community Integration Program II (CIP II), which provide services to elderly persons and persons with physical disabilities, and the Community Integration Program I (CIP IA & IB), which provides services to persons with developmental disabilities.

Under these waiver programs, services are provided to individuals who would otherwise require institutionalization in a nursing home or an intermediate care facility for the mentally retarded (ICF/MR). To receive a waiver from the federal government, the department must demonstrate that expenditures for home and community-based services under this waiver will not exceed expenditures that would otherwise have been made to provide the services in institutional settings. The department has consistently met this requirement and has provided the federal government with documentation of the reduced cost of waiver program services through the federal waiver approval and waiver renewal processes.

Under the home and community-based waiver programs, services are provided by a Medicaid-certified unit of county government, either through county employees or contractors. For these waiver programs the state makes payments to the counties, which may vary depending upon the particular service needs of the individual. In addition, the counties provide local funding for services provided under these programs.

The department is providing notice that it intends to revise the method by which payments are made to counties for services provided to non-elderly individuals with physical or developmental disabilities under the home and community-based waiver programs (CIP I, CIP II and COP-W) by making the system prospective. The department believes that implementing a prospective payment system for these services will better meet the goals of the program and will improve administrative efficiency.

Based on the information currently available, the estimated annual increase in aggregate Medicaid expenditures related to this change is \$75 million. The payments made to counties under this revised system will continue to comply with the conditions and limitations specified under the waiver and under federal regulations.

Written comments:

Written comments on the proposed change may be sent within 30 days of publication of this notice to:

Department of Health and Family Services
Attention: Home and Community-Based Waiver Program
P.O. Box 309
Madison, Wisconsin 53701-0309
Or by faxing to 608-266-1096

The comments will be available for public review between the hours of 7:45 AM and 4:30 PM daily in room 355 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received.

Health and Family Services

Medical Assistance Reimbursement for Certain Dental Services

Notice is hereby given that the Department of Health and Family Services intends to revise its methods and standards for the payment of certain dental services provided to individuals eligible for Medicaid under the authority of Title XIX of the federal Social Security Act. The Wisconsin Department of Health and Family Services administers the joint federal-state Medicaid program for the state of Wisconsin. This notice is intended to satisfy the requirements of 42 CFR 447.205.

Currently the department pays for all covered dental services provided to eligible Medicaid recipients in accordance with an established fee schedule, regardless of where those services are provided. Dentists enrolled in the Medicaid program who are affiliated with a dental school within the state provide a significant amount of dental services to Wisconsin's Medicaid population and may incur additional costs in the training and supervision of dental students. For this reason, the department intends to pay for dental services provided by dentists affiliated with dental schools within the state at a higher Medicaid rate than dental services provided by other dentists. The department believes that these fee increases will help assure continued access to dental services provided by dentists affiliated with dental schools within the state to the state's Medicaid population.

The estimated increase in aggregate Medicaid expenditures related to this change is \$ 2.8 million for fiscal year 2003.

Written comments:

Written comments on the proposed change may be sent within 30 days of publication of this notice to:

Department of Health and Family Services
Attention: Wisconsin Medicaid Program
P.O. Box 309
Madison, Wisconsin 53701-0309
Or by faxing to 608-266-1096

The comments will be available for public review between the hours of 7:45 AM and 4:30 PM daily in room 355 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received.

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