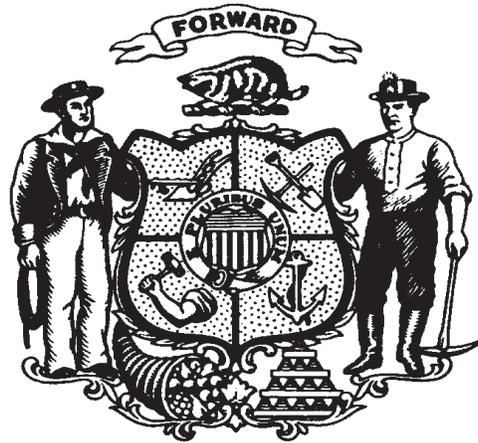


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Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule–making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, 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 and Consumer Protection (2)

1. Rules adopted creating s. ATCP 11.72 (15), (16), (17) and (18), relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any mammal known to have been in contact with a prairie dog since April 1, 2003.

Finding of emergency

(1) During May and June 2003, at least 12 people in Wisconsin have developed illnesses within one to two weeks after the people have had contact with prairie dogs. Symptoms of the human illness include fever, cough, rash and swollen lymph nodes. Several of these people have needed to be hospitalized.

(2) Preliminary laboratory results indicate that the cause of the human illness is an orthopox virus that could be transmitted by prairie dogs. Some of the pet prairie dogs have exhibited signs of illness. There have been reports of other mammals that have come in contact with prairie dogs also exhibiting signs of illness.

(3) It is necessary to reduce the opportunities for human interaction with prairie dogs or other mammals that have been in contact with prairie dogs in order to protect the health, safety and welfare of Wisconsin residents. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection is adopting this emergency rule to protect the health, safety and welfare of the public.

Publication Date: June 12, 2003
Effective Date: June 12, 2003
Expiration Date: November 9, 2003
Hearing Date: July 15, 2003

2. Rules adopted revising s. ATCP 11.72 (15), (16), (17) and (18), relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any rodent from Africa.

Finding of emergency

1. As a result of the outbreak of an orthopox virus later identified as monkey pox in Wisconsin, the department adopted an emergency rule in early June, 2003.

2. Since the June, 2003 emergency rule was adopted, there has been additional information learned about the origins of the infected animals and the actual form of orthopox virus responsible for the symptoms. As a result of this new information, the department has been able to refine its identification of animals that should be subject to the prohibitions previously imposed.

3. After the department adopted the emergency rule (albeit before the rule was published) the CDC and FDA adopted their joint order that indicates the animals of concern are prairie dogs and African rodents.

4. The CDC and FDA joint order confirms the threat to humans from exposure to prairie dogs and African rodents.

5. This amended emergency rule provides consistency between the CDC and FDA joint order and Wisconsin's emergency rule.

6. The Wisconsin Department of Agriculture, Trade and Consumer Protection seeks to provide the greatest protection for Wisconsin citizens while creating the least acceptable disruption to their lives and businesses. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection adopts an amended emergency rule to protect the health, safety and welfare of the public.

Publication Date: July 24, 2003
Effective Date: July 24, 2003
Expiration Date: November 9, 2003
Hearing Date: September 3, 2003
 [See Notice this Register]

Chiropractic Examining Board

Rules adopted revising ch. Chir 2, relating to passing and retaking the practical examination.

Finding of emergency

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule–making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the

National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform to the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order.

Publication Date: June 28, 2003
Effective Date: June 28, 2003
Expiration Date: November 25, 2003

Commerce

(Financial Resources for Bus. and Communities, Chs. Comm 105–128)

Rules were adopted revising **ch. Comm 108**, relating to the use of rapid response funds in economically depressed areas of Wisconsin to preserve economic development.

Finding of emergency

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

Analysis of Rules

Statutory Authority: ss. 560.02 (4) and 560.04, Stats.

Statute Interpreted: s. 560.04, Stats.

Pursuant to s. 560.04, Stats., the Department of Commerce (Commerce), as a part of its comprehensive duties involving community development and economic development, administers federal funds in the form of grants to eligible communities related to economic development. Under current rules, the maximum amount of funds that may be awarded to a community is \$1 million per calendar year and the maximum amount that a business may borrow from a local government under the economic development program is also \$1 million during any 5–year period. The timing and dollar limitations specified in the rules are barriers to providing a comprehensive and rapid response to changing economic conditions in a community.

Given the uncertainty inherent in today's marketplace, Commerce would like to maximize the use of federal community development block grant funds to positively

impact local economies. Under the rules, as currently structured, Commerce's ability to respond rapidly to actual or potential plant closings or relocations in a specific geographical region is limited. The following emergency rule will allow Commerce to respond more rapidly to changing economic conditions.

This rule provides Commerce, working collaboratively with local communities, the ability to quickly respond to changing economic conditions due to potential plant closings, business relocations, layoffs, and other economic factors that could negatively affect the economic conditions in the community and state.

Publication Date: March 22, 2003
Effective Date: March 22, 2003
Expiration Date: August 19, 2003
Hearing Date: June 16, 2003
Extension Through: October 17, 2003

Financial Institutions – Securities

Rules adopted revising **ch. DFI–Sec 4**, relating to conforming Wisconsin's Securities Law rules concerning broker–dealer books and records to federally–mandated standards under the Securities Exchange Act.

Finding of emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

Congress in its passage of the National Securities Markets Improvement Act ("NSMIA") in 1996 prohibited state securities regulators from establishing or enforcing under their state securities laws or rules, record–keeping requirements for securities broker–dealers that are inconsistent with, or not required by, the U.S. Securities and Exchange Commission ("SEC").

Following passage of NSMIA, the SEC commenced a rule–making process that spanned a several–year period (including a 1998 reproposal of the entirety of the proposed rules for a new public comment period), culminating in adoption in late 2001 of an extensive series of broker–dealer books and records rules for effectiveness commencing May 2, 2003. The SEC's revised books and records rules cover a comprehensive series of areas, including: (1) customer account records; (2) order ticket information; (3) customer complaints; (4) mandated reports and audits; (5) compliance manuals; (6) records maintenance, retention, production and access; and (7) records required to be maintained at a firm's home office and at "local" offices.

Because of the preemptive effects of federal law under NSMIA, all of the existing provisions of the Wisconsin administrative rules in Chapter SEC 4 under the Wisconsin Securities Law dealing with broker–dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective today, May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules need to be revised appropriately.

Consequently, it is necessary to immediately revise and amend Wisconsin's broker–dealer books and records rules to conform to the federal rules that now have become effective,

and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. A subcommittee of the North American Securities Administrators Association (“NASAA”), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC’s books and record-keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation-by-reference-of-the-federal-rule treatment as set forth in this Order Adopting Emergency Rules.

Accordingly, the emergency rules do the following:

(1) Under Section 1, the entirety of the existing Wisconsin general books and records requirement for licensed broker-dealers as set forth in rules DFI–Sec 4.03 (1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the SEC contained in sections 17a–3 and 4 under the Securities Exchange Act. New sub. (1) requires a firm to retain the books and records cross-referenced in federal SEC rules 17a–3 and 4, and new sub. (2) incorporates by reference the records preservation and retention requirements in federal SEC rule 17a–4. New subsections (3) and (4) replace the current Wisconsin rules in DFI–Sec 4.03 (3) and (4) [that prescribe branch office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker-dealer offices triggering the definition of “branch office” under current rule DFI–Sec 1.02 (7) (a), are the same records prescribed under the new federal provisions in new federal Rule 17a–3, and must be held for the retention periods specified in new federal Rule 17a–4.

(2) Section 2 repeals current Wisconsin rule DFI–Sec 4.03 (6) [which permitted broker-dealers to utilize alternative records to satisfy the principal office and branch office records required in existing rules DFI–Sec 4.03 (1) and (3)], because under NSMIA, states no longer have the authority to permit alternative forms of broker-dealer records different from the records prescribed by federal law.

(3) Section 3 is a renumbering of current rule DFI–Sec 4.03 (7) to reflect the repeal of DFI–Sec 4.03 (6) in Section 2 above.

(4) Under Section 4, the existing Wisconsin Rule of Conduct provision in DFI–Sec 4.05 (5) [requiring broker-dealers to provide customers with prescribed new account information and subsequent amendments to such information] is amended to both substitute a cross-reference to the new federal provision on that subject in SEC rule 17a–3(a)(17) under the Securities Exchange Act of 1934, and to repeal language in the Wisconsin rule inconsistent with federal provisions.

Publication Date: May 7, 2003
Effective Date: May 7, 2003
Expiration Date: October 4, 2003
Hearing Date: August 11, 2003

Health and Family Services
(Management, Technology, Chs. HFS 1—)

Rules adopted revising **ch. HFS 15**, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF–MR).

Exemption from finding of emergency

The legislature by section 9124 (3) (b) of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Health and Family Services

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin Statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF–MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF–MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF–MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long-term care facilities must pay a monetary assessment to the Department by:

- eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by Medicare under 42 USC 1395 to 1395ccc; and

- eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF–MRs, from \$100 per bed to \$435 per bed in fiscal year 2003–04 and \$445 per bed in fiscal year 2004–05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003–04, \$13.8 million in fiscal year 2004–05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home’s licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, by this order, the Department is modifying chapter HFS 15 accordingly.

The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: July 28, 2003
Effective Date: July 28, 2003
Expiration Date: December 25, 2003

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

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.

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:

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child–bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child–bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: January 31, 2003
Effective Date: January 31, 2003*
Expiration Date: June 30, 2003
Hearing Dates: April 25 & 28, 2003

* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003

Health and Family Services (3)
(Health, Chs. HFS 110—)

1. Rules adopted amending **chs. HFS 110 to 113**, relating to licensing of EMT's and certification of first responders, incorporating responding to acts of terrorism as a training component.

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:

2001 Wisconsin Act 109 amended s. 146.50 (6) (a) 2., (b) 2. and (8) (b) 3. by adding the requirement that as of January 1, 2003, to receive an initial or renewed EMS license or first responder certification, the applicant must have received training in response to acts of terrorism. Section 146.50 (6) (b) 2. of the statutes specifically directs the Department, in conjunction with the technical college system board, to promulgate rules specifying training, education, or examination requirements for training in response to acts of terrorism. The training must be completed by all persons desiring to receive an initial or renewed license or certification after January 1, 2003. To enforce and administer this statutory requirement, the Department must revise the administrative rules associated with the licensing of Emergency Medical Technicians (EMTs) – Basic and EMTs–Basic IV (found in ch. HFS 110), EMTs– Intermediate (found in ch. HFS 111), EMTs – Paramedic (found in ch. HFS 112) and First Responders (found in ch. HFS 113.)

The required rule changes will remove any question of whether the department had the authority to require persons to receive training for acts of terrorism. Such training is needed to promote the public's health and safety and due to the statutory effective date of January 1, 2003, the department is promulgating these rule changes through an emergency order. The department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: December 31, 2002
Effective Date: December 31, 2002
Expiration Date: May 30, 2003
Hearing Date: February 17, 2003
Extension Through: September 26, 2003

2. Rules adopted revising **ch. HFS 124**, relating to critical access hospitals.

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 federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost–based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of ch. HFS 124 governs the Department's designation and regulation of CAHs. Designation as a CAH and receipt of cost–based reimbursement promotes the hospital's continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary's Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost–based reimbursement. The closure of St. Mary's would reduce Douglas County residents' accessibility to acute care. Moreover, the loss of the facility would have a significant detrimental effect on the county because St. Mary's annual payroll is between \$7–8 million and it employs the equivalent of about 160 persons full–time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the

hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in ch. HFS 124 preclude St. Mary's from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary's Hospital meets "necessary provider" status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, through this rulemaking order, the Department is modifying provisions in subchapter VI of ch. HFS 124 to permit St. Mary's Hospital to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital.

Publication Date: March 21, 2003
Effective Date: March 21, 2003
Expiration Date: August 18, 2003
Hearing Date: June 20, 2003

3. Rules adopted revising **ch. HFS 119**, relating to operation of the health insurance risk–sharing plan.

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co–equal twenty percent amounts.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty–nine percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 10.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 18.5%. Rate increases for individual policyholders within Plan 1 range from 5.4% to 20.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. Plan 1 rate increases reflect general and industry–wide premium increases and take into account the increase in costs associated with Plan 1 claims.

A second type of medical coverage provided by HIRSP is for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Eleven percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 15.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 23.8%. Rate increases for individual policyholders within Plan 2 range from 9.9% to 26.5%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 rate increases reflect general and industry–wide cost increases and take into account the increase in costs associated with Plan 2 claims.

Plan 2 premiums are also set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

The Department through this order amends ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (2) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also increasing total HIRSP insurer assessments and reducing provider payment rates, in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2002. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2003. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$35,444,109. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$39,170,353. On April 9, 2003, the HIRSP Board of Governors approved the calendar year 2002 reconciliation process. On May 19, 2003 the Board approved the HIRSP budget for the plan year July 1, 2003 through June 30, 2004.

The department's authority to amend these rules is found in s. 149.143 (2) (a) 2., 3., 4., and (3), Stats., and s. 227.11 (2) Stats. The rule interprets ss. 149.142, 149.143, 149.146, and 149.165, Stats.

Publication Date: June 24, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003
Hearing Date: July 15, 2003

Higher Educational Aids Board

Rules adopted amending **s. HEA 5.05 (2)**, relating to the eligibility of those on active duty military service.

Finding of emergency

The Wisconsin Higher Educational Aids Board finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

The 1989 Wisconsin Act 31 created s. 39.435 which provides for Talent Incentive Program Grants to Wisconsin residents who meet criteria established by the statute and administrative code. The Wisconsin Higher Educational Aids Board (HEAB) administers this program under s. 39.435 and under ch. HEA 5. According to the administrative rules, a student must be continuously enrolled from semester to semester and year to year to continue to receive this grant after their initial year. Under current rules, exceptions to this requirement may only be made for medical reasons.

Recently, students who have returned from active duty military service and resumed enrollment at a college or university have begun to request exceptions to the continuous enrollment requirement. This situation is not addressed in the current administrative rules, because the break in these students' enrollment was not due to medical reasons.

Unless the Board changes its rules, participating students who have been called up to active duty military service will permanently lose their eligibility in this program. Because this grant targets the most financially–needy and educationally–disadvantaged students, the loss of eligibility will cause a hardship to those students who rely most heavily on financial assistance.

The emergency rule procedure is being used to ensure that students who have returned from active duty military service and resumed enrollment during the current academic year, 2002–2003, will not permanently lose their eligibility in this program.

Publication Date: April 4, 2003
Effective Date: April 4, 2003
Expiration Date: September 1, 2003
Hearing Date: April 25, 2003

Insurance (2)

- Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2003 and relating to establishing a rate of compensation for fund peer review council members and consultants.

Finding of emergency

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

Actuarial and accounting data necessary to establish PCF fees is first available in January of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2003.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 03–039, will be filed with the secretary of state in time to take effect October 1, 2003. Because the fund fee provisions of this rule first apply on July 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 14, 2003.

Publication Date: June 11, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003

- Rules adopted creating **s. Ins 8.49**, relating to Small Employer Uniform Employee Application.

Finding of emergency

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

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a

Division of Centers Medicare & Medicaid Services charged with enforcement of the privacy portions of HIPAA, it is not possible to complete the permanent rule process in time to meet the statutory requirement.

The commissioner intends to file the permanent rule corresponding to this emergency rule, clearinghouse No. 03–055, with the secretary of state within the next 150 days. Because the uniform application form is required to be available by August 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Wis. Stat., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule.

Publication Date: August 1, 2003
Effective Date: August 1, 2003
Expiration Date: December 29, 2003

Natural Resources (3) (Fish, Game, etc., Chs. NR 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, it 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 30, 2003 (part)
September 1, 2003 (part)

- 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
Hearing Date: January 16, 2003
Extension Through: September 27, 2003

- Rules adopted revising **ss. NR 10.07 (2), 12.06 and 19.60**, 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. This rule is needed to reduce the deer herd in the CWD eradication zone further than accomplished through the hunting seasons to help prevent the spread of CWD.

Initial Applicability. This emergency rule repeals and recreates portions of the original CWD emergency rule order

(WM–32–02 (E)) which was adopted by the Natural Resources Board in June 2002. The effective period of this emergency rule will coincide with the effective period of the original CWD emergency rule order which has been extended by the Legislative Joint Committee on the Review of Administrative Rules until April 1, 2003, pursuant to 2001 Wisconsin Act 108.

Publication Date: January 11, 2003
Effective Date: January 11, 2003
Expiration Date: April 1, 2003
Hearing Date: February 11, 2003
Extension Through: April 30, 2003 (part)
September 1, 2003 (part)

Scope statements

Commerce

Subject

Private Sewage System Replacement or Rehabilitation Grant Program. *Objective of the rule.* The objectives of this rule revision is to update the provisions of the Department's administrative rules relating to Private Sewage System Replacement and Rehabilitation. The update will primarily incorporate any Statutory changes since the current rule became effective February 1999, create language for an available loan program, and update terminology.

Policy analysis

Existing policies. The current rule has been in effect since February 1, 1999 and due to the application and funding cycle provided in s. Comm 87.02, this rule pertained to the February 1, 2000 application and funding cycle.

The current rule was adopted and effective prior to a major revision of ch. Comm 83, Private Onsite Wastewater Treatment Systems, in which several newly-recognized system types became codified, thus creating on-going staff time allocated to communication and interpretation. Section 145.245 (11) (e), Stats., allows for a portion of the fund to be allocated for experimental systems; however, the current rule does not include a pre-approval process.

The current rule does not acknowledge maintenance and monitoring work conducted by POWTS maintainers. Also, the current rule does not reflect loan provisions under s. 145.245 (12m), Stats.

New policies. The revised rule would: incorporate terminology, definitions and other changes in chs. Comm 81 and 83 and any Statutory changes since the current rule became effective in February 1999; create a specific process for allocations for experimental systems; acknowledge the work that POWTS maintainers can perform relative to the maintenance provisions of the program; and may include other improvements based on additional input from program participants.

Policy alternatives. Continue current policy. The alternative of not revising the code will result in rules being inconsistent with other department rules, specifically chs. Comm 81 and 83.

Promulgate rule revisions as stated herein. This grant program is an important component in protecting the state's groundwater resource with 68 governmental units (counties) participating. The funding appropriation is generally fully expended each year of allocation. The participants in this program deserve rules that are up-to-date and respond to the costs of system rehabilitation and replacement.

Statutory authority

Section 145.245, Stats. provides the Department authority to implement and administer a financial assistance program to replace or rehabilitate failing private sewage systems.

Staff time required

The department estimates the amount of time it will take staff to develop this rule will be 460 hours. This time includes research, meeting with an advisory council, drafting of the rule and related documents, and processing the rule through public hearings and legislative review. The department will

assign current staff to develop the rule. There are no other resources necessary to develop this rule.

Commerce

Subject

Rental Unit Energy Efficiency. Objective of the rule. The objectives of this rule, to be incorporated into one or more rule packages, are to: Conform with s. 101.122 (2) (e) which requires the department to review this chapter at least once every 5 years; the last revision occurred in 1999. Revise the rule to recognize process efficiencies undertaken within the program, and review definitions and requirements for clarity and appropriateness and revise the rule where necessary.

Policy analysis

Section 101.122, Stats., requires the department to promulgate rules that provide minimum energy efficiency standards for rental units. The review will look at new energy conservation technologies and whether the rules should require the use of these new technologies. A new policy will be examined that would permit the satisfaction of existing stipulations to be achieved by meeting the current standards instead of the old standard under which the stipulation was issued.

Statutory authority

Section 101.122, Stats.

Staff time required

The department estimates the amount of time it will take staff to develop this rule will be 200 hours. This time includes research, meeting with an advisory council, drafting of the rule and related documents, and processing the rule through public hearings and legislative review. The department will assign existing staff to develop the rule. There are no other resources necessary to develop this rule.

Health and Family Services

Subject

To amend ch. HFS 15, Assessment for Occupied Beds in Nursing Homes and Intermediate Care Facilities for the Mentally Retarded, in response to changes 2003 Wisconsin Act 33 made to s. 50.14 of the Wisconsin statutes.

Policy analysis

2003 Wisconsin Act 33 modified s. 50.14 of the Wisconsin statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF-MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in s. 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF-MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long–term care facilities must pay a monetary assessment to the Department by:

a. eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc; and

b. eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF–MRs, from \$100 per bed to \$435 per bed in fiscal year 2003–04 and \$445 per bed in fiscal year 2004–05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003–04, \$13.8 million in fiscal year 2004–05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home's licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

Given these statutory changes, the Department is proposing to modify ch. HFS 15 accordingly. The Department has issued an emergency rule, currently in effect, that contains identical changes to HFS 15.

Statutory authority

Section 50.14 (5) (b), Stats.

Staff time required

10 hours.

Health and Family Services

Subject

The Department proposes to amend ch. HFS 138, relating to administration of a program that provides health insurance premium subsidies to eligible persons.

Policy analysis

Sections 252.16 and 252.17, Stats., direct the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, must take an unpaid leave from their jobs or are unable to continue working or must reduce their hours of work. The Department has been operating this program since November 1990 under ch. HFS 138 administrative rules.

1999 Wisconsin Act 103 modified section 252.17 in several respects. First, it increased the family income eligibility limits under section 252.17 (3) (b), Stats., from 200% to a maximum of 300% of the federal poverty line. Second, it created a new section 252.17 (4) (d), Stats., that specifies that the Department will pay a portion of the health insurance premium for individuals whose family income is between 200% and 300% of the federal poverty line. It further specifies that the Department will establish the schedule for payment in administrative rule. Finally, Act 103 created a new section 252.17 (6) (c), Stats., that directs the Department

to establish, in rule, the premium contribution schedule for individuals who have a family income that exceeds 200% but does not exceed 300% of the federal poverty line. It further directs the Department to take into consideration both income level and family size in establishing the schedule.

The Department's modifications to ch. HFS 138 will address the changes 1999 Wisconsin Act 103 made to section 252.17, Stats.

Statutory authority

Sections 252.16 (6) and 252.17 (6), Stats.

Staff time required

The Department estimates that it will take about 10 hours to draft these rules.

Natural Resources

Subject

Waiver of the slow–no–wake speed restriction on Elkhorn Lake

Policy analysis

The City of Elkhorn has petitioned the Department to waive the slow–no–wake speed restriction that is imposed by s. 30.635 Wis. Stats. for Elkhorn Lake. Elkhorn Lake is a manmade lake that is surrounded by City of Elkhorn property. The city has issued permits to the Lauderdale Lakes Aqua Skiers to use the lake for water ski shows and practicing. Section 30.635 allows the Department to adopt rules to waive or modify the slow–no–wake speed restriction for individual lakes. S. NR 5.20 Admin. Code allows a municipality to petition the Department to waive the slow–no–wake restriction for a particular lake and sets the procedure for the Department to follow.

Statutory authority

Section. 30.635, Stats.

Staff time required

Approximately 15 hours will be needed by Department staff.

Natural Resources

Subject

Changes to chs. NR 405, 406 and 408, Wis. Adm. Code, pertaining to implementing the new source review program revisions promulgated by USEPA in December 2002. These revisions alter the applicability of the regulations in such a way that the New Source Review (NSR) program will likely no longer regulate many projects that were covered by the old rule.

Policy analysis

The new NSR regulations are very controversial. Thirteen states, including Wisconsin, have filed lawsuits challenging EPA's decision to revise the NSR program. The petitions are based on the states' claims that the revised regulations will result in emission increases that will have a variety of negative impacts, such as making the achievement of air quality standards for ozone more difficult. Nine states have filed motions to intervene in the lawsuit in support of EPA's regulatory changes. These lawsuits are still pending in Federal court. Additionally, Massachusetts has decided to return the Federal Program to USEPA and to only operate a State Program under the pre–December 2002, rules.

Under the new regulations, the Department has 3 years (until January 2, 2006) for final action to determine what

features of the new NSR regulations should be implemented into Wisconsin rules. Since Wisconsin has incorporated the federal NSR permitting requirements into our administrative rules, we will have to respond to these new federal regulations in one of three ways:

1) Do not adjust our rules to reflect any of the federal changes.

2) Incorporate portions of the new federal regulations into state administrative rules.

3) Incorporate all of the new federal regulations into state administrative rules.

To this end, we will be seeking input from internal and external stakeholders, other state permitting authorities, EPA, and national air quality regulatory organizations (STAPPA/ALAPCO, ECOS, etc.) to determine how to implement these changes in the best interest of the citizens of Wisconsin. The Department realizes that there were many features of the previous NSR regulations that were in need of improvement. The January 2, 2006 deadline represents an excellent opportunity to develop a consensus on new source review changes amongst the wide variety of stakeholders that have an interest in this matter.

EPA expects that most of the states with NSR programs approved by EPA, such as Wisconsin, will update their programs within 3 years of the new Federal regulations taking effect. Section NR 1.52, Wis. Adm. Code, sets forth the procedures for making such changes to State regulations in these instances. The timeline for making changes in Wisconsin differs from the process in States with delegated programs (such as those in Michigan, Minnesota and Illinois). In delegated states, their programs have had to conform to the federal NSR regulations as soon as they become effective, in this case by March 3, 2003.

EPA has also proposed additional revisions be made to the NSR regulations in regard to routine maintenance, repair and replacement (RMRR). The deadline for submitting comments on these proposed changes was May 3, 2003. The NSR program currently exempts RMRR activities that occur at facilities from new source review. However, the way this exclusion is implemented by EPA can be highly subjective. Therefore, EPA has proposed a more defined method for addressing whether a project would fit into this exclusion. This proposal seeks to establish a “safe harbor” under which a facility could physically change its equipment as long as the cost of doing so falls within the “safe harbor” amounts. These changes are also expected to be controversial when they are promulgated by USEPA. Promulgation of the RMRR rules is presently expected by December 2003.

Schedule

To update Wisconsin’s NSR rules as soon as practicable in response to the NSR regulation changes made by USEPA in December 2002, the Department will be convening an Advisory Committee to assure that all of the varying perspectives on this complicated topic can be finally aired. Board adoption of the rule package containing Wisconsin’s revised NSR rules is anticipated in May 2004 with a hearing authorization request anticipated in December 2003.

Please contact Jay Hochmuth at 608–267–9521 or Lloyd Eagan at 608–266–0603, if you have any questions.

Statutory authority

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

Staff time required

2700 hours.

Natural Resources

Subject

The proposed rule would establish minimum qualification for metallic mining and prospecting permit applicants and operators.

Policy analysis

A statutory directive to adopt minimum qualifications for mining and prospecting permit applicants and operators has been present in the statutes for nearly 30 years. The mining rules, for the most part, were drafted in the early 1980s through a consensus process that involved a diverse group of participants. For unknown reasons, the rules did not directly and thoroughly address the requirement to establish minimum qualifications. The omission and hence the need for additional rule-making was recently brought to the Department’s attention through a Notice of Intent to File a Citizen Suit submitted by a coalition of environmental and tribal interests.

The proposed rule will have direct application to the proposed Crandon Mine project and will likely be extremely controversial. At some point in the regulatory process, the applicant will need to demonstrate compliance with the minimum qualifications. The rule will be of interest to legislators and a number of environmental, tribal and business groups. We expect that there will be a wide range of viewpoints as to the nature and scope of the minimum qualifications.

As required by statute, the rules must be developed in consultation with the Metallic Mining Council, a nine-member advisory body. The Council has not met for a number of years and the terms of all of its members have expired. The Council will need to be re-formed.

Statutory authority

Sections 293.13 (1) (b) and 227.11, Wis. Stats.

Staff time required

Approximately 250 hours of staff time will be required to complete the rule.

Natural Resources

Subject

Approval of an amendment to the Willow Flowage Scenic Waters Area Master Plan to open up approximately 1.7 additional miles of the “Iron Gate Road” on the Willow Flowage property to licensed highway vehicular access during the nine day November deer gun season.

Policy analysis

A number of hunters have asked that the master plan be amended to allow more vehicle access during the gun deer season. Some others are opposed to the change citing that the area was established to provide opportunities for non-motorized recreation, including hunting, and that an increase in access will reduce those opportunities.

The current property master plan states, “The recreation management objective for the area is to emphasize opportunities for non-motorized, dispersed recreational activities in a large, forested setting offering solitude and a sense of remoteness”. The plan further states:

“1. Motorized public access to the area shall be limited. Except for the Iron Gate Road and the designated snowmobile and ATV trails access shall be only by foot from the flowage shore or public roads along the edge of the property.

2. The Iron Gate Road from Highway Y to the (relocated) second gate, about 2.3 miles, is open seasonally for public highway licensed vehicles.”

Statutory authority

Sections 23.09 (2), 27.01 (2) (j), 227.11 (2) (a), Stats.

Staff time required

Approximately 75 hours will be needed by the Department.

Natural Resources**Subject**

Revision of ch. NR 714, Public Notification and Participation.

Policy analysis

Chapter NR 714, Wis. Admin. Code, governs information provided to the public regarding environmental contamination. The rule was initially developed to help DNR obtain federal grants for our leaking underground storage tank cleanup program. The rule currently contains significant detail for those tank sites, with other lesser provisions for other contaminated sites.

In March of 2001 the Department held public hearings on proposed revisions to ch. NR 714 to address comments that we received during promulgation of ch. NR 746, “Risk screening and closure criteria for petroleum product contaminated sites”. Those comments indicated that the Department should create a uniform requirement that neighbors are quickly informed of the results of environmental sampling that is conducted on their property by the person who is responsible for the contamination, if contamination has crossed the boundary line onto their property. However, during public hearings for those proposed changes we received other comments indicating that the Department should provide more uniformity in public information requirements between leaking underground storage tank sites and other types of contaminated sites. At that time we decided to revise the entire rule.

The revisions that we are proposing at this time would address all of the public comments that we have received to date, and also clarify and streamline the entire rule. These revisions would include conditions where those who are responsible for contaminated sites of concern would be required to provide general information to the community and to local officials about the progress of their investigation and environmental cleanup.

Statutory authority

Sections 227.11, 289.06, 292.11, 292.15, 292.31 and 292.41, Stats.

Staff time required

Approximately 150 hours will be needed.

Transportation**Subject**

Objective of the rule. This proposed rule making amending ch. Trans 300, relating to school bus equipment standards, will address the installation, operation and specifications for

retractable school bus crossing gates which will be required on all school buses effective May 1, 2004 as provided by 2001 Wis. Act 58. The Department is also taking this opportunity to clarify minor points of confusion and to update the rule to include approved changes in equipment manufacturing standards, practices and technology.

Currently, ch. Trans 300.81 (6) states that a safety control arm is an authorized optional piece of equipment for use on school buses. 2001 Wis. Act 58 requires a crossing gate, also known as a safety control arm, to be mandatory equipment for all school buses effective May 1, 2004. The Department is to establish standards for the equipment. The Department will also include clarification on the required visibility of front license plates as well as updates in equipment technology such as the use of light emitting diodes.

Statutory authority

Sections 110.06 (2) and 347.445, Stats.

Staff time required

It is estimated that approximately 80 hours will be spent in the development of the rule.

Workforce Development**Subject**

Transfer of Personnel Commission responsibilities to the Equal Rights Division and other revisions to civil rights rules.

Policy analysis

2003 Wisconsin Act 33 abolishes the Personnel Commission and transfers the responsibility for processing certain employment–related complaints against state respondents to the Equal Rights Division (ERD). A nonstatutory provision of 2003 Wisconsin Act 33 transfers to ERD the Personnel Commission rules relating to the responsibilities transferred to the ERD.

The department will be repealing the transferred Personnel Commission rules and amending existing ERD rules to include complaints filed against state respondents. A new rule governing complaints filed under the whistleblower law will be created with procedures similar to the fair employment rules, except that appeal of ERD decisions on whistleblower cases will be directly to circuit court instead of the Labor and Industry Review Commission.

In addition to the above changes that are in effect by emergency rule, the permanent rule will include miscellaneous revisions and clean–up of the fair employment, fair housing, public accommodations, and family and medical leave rules.

Statutory authority

Section 111.375 (1) and 230.89 (1), Stats., as affected by 2003 Wisconsin Act 33; s. 230.45 (1e) (d), as created by 2003 Wisconsin Act 33; and ss. 103.005 (1), 106.50 (1s), 106.52 (2), and 227.11, Stats.

Staff Time Required

100 hours.

Submittal of rules to legislative council clearinghouse

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

Financial Institutions – Securities

Rule Submittal Date

On July 7, 2003, the Department of Financial Institutions submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. DFI–Sec 4, relating to books and recordkeeping rules/fiscal estimate relating to proposed rules.

Agency Procedure for Promulgation

The Division of Securities will hold a public hearing on August 11, 2003, on these proposed rules.

Contact

If you have any questions during the review period please call Randall Schumann, 266–3414.

Financial Institutions – Securities

Rule Submittal Date

On July 7, 2003, the Department of Financial Institutions submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting chs. DFI–Sec 2 and 8, relating to division of securities 2003 annual rules revision.

Agency Procedure for Promulgation

The Division of Securities will hold a public hearing on August 11, 2003, on these proposed rules.

Contact

If you have any questions during the review period please call Randall Schumann, 266–3414.

Rule–making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on the emergency rule. The department will hold one hearing at the time and place shown below. The department invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until September 10, 2003, for additional written comments.

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by August 25, 2003, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4883. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Date, Time and Location

Wednesday, September 3, 2003, at 1:30 p.m.

WI Department of Agriculture, Trade & Consumer Protection
4th Floor, Room 411

2811 Agriculture Drive

Madison, WI 53718

Handicapped accessible

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

Statutory Authority: s. 93.07 (1), Stats.

Statute Interpreted: s. 93.07 (10), Stats.

On June 12, 2003, the Department of Agriculture, Trade and Consumer Protection published an emergency rule related to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any mammal known to have been in contact with a prairie dogs since April 1, 2003 in response to an outbreak of monkey pox in Wisconsin. This emergency rule was signed on June 9, 2003.

On June 11, 2003, the United States Center for Disease Control and Prevention (CDC) and the United States Food and Drug Administration (FDA) of the Department of Health and Human Services issued a joint order relating to prairie dogs and certain rodents because of the outbreak of monkey pox. This order was both less restrictive and more restrictive than Wisconsin's emergency rule. This amendment of the emergency rule more closely harmonizes Wisconsin's emergency rule with the federal joint order.

Rule Content and Changes

The emergency rule that was published on June 12, 2003, prohibited the following:

- Importing into Wisconsin any prairie dog or any mammal known to have had contact with prairie dogs since April 1, 2003.
- Selling or offering to sell any prairie dog or any mammal known to have had contact with prairie dogs since April 1, 2003.
- Allowing any prairie dog or any mammal known to have had contact with prairie dogs since April 1, 2003, to have contact with any member of the public.

- Releasing any prairie dog or any mammal known to have had contact with prairie dogs since April 1, 2003, to the wild.

This amended emergency rule prohibits the following:

- Importing into Wisconsin any prairie dog or any African rodent.
 - Selling or offering to sell or otherwise distribute any prairie dog or any African rodent.
 - Allowing any prairie dog or African rodent to have contact with any member of the public.
 - Releasing any prairie dog or African rodent to the wild.
- African rodent includes the following:
- Tree squirrels
 - Rope squirrels
 - Dormices
 - Gambian giant pouched rats
 - Brush–tailed porcupines
 - Striped mice.

These changes make the emergency rule both more restrictive and less restrictive than the rule that was published June 12, 2003. The emergency rule is less restrictive because it applies only to prairie dogs and African rodents rather than all mammals known to have had contact with prairie dogs. It is more restrictive because it prohibits importing or selling etc. all prairie dogs and African rodents without reference to the April 1, 2003 date and regardless of whether they have been known to have had contact with a prairie dog. This change is made to provide consistency with the joint order issued by CDC and FDA, thereby making it easier for Wisconsin citizens to comply with both the joint order and Wisconsin's emergency rule.

Effective Date and Expiration of This Rule

This amended emergency rule was effective on July 24, 2003. It will remain in effect through November 9, 2003, the date on which the June 12, 2003 emergency rule would have expired. If the department believes this amended emergency rule should be extended beyond November 9, 2003, the department may seek authority from the legislature to extend the rule.

Fiscal Estimate

Rule Amendment

The emergency rule is being amended to be consistent with the Federal order that was published on June 11, 2003. The original emergency restricts the importation, sale, public contact, or release of prairie dog and all mammals that have had contact with a prairie dog since April 1, 2003. This amendment removes any date of contact or acquisition reference and prohibits the importation, sale, public contact, or release into the wild of any prairie dog or African rodent period.

Additional Fiscal Impact

The amendment will have no additional fiscal implications on the department.

Fiscal Impact original Emergency Rule

Costs and staffing needed to enforce this emergency rule can be temporarily absorbed. The Division has canceled and rescheduled routine program activities to accommodate the manpower demands of conducting interviews, attempting to

locate all exposed mammals, and examining and potentially euthanizing mammals that have come into contact with prairie dogs. Staff will continue to be reallocated from existing duties as dictated by the Department's emergency response plan.

Four veterinarians are involved in containing this disease on a daily basis at an average daily cost of \$432.00. Average salary of the veterinarians involved is \$260 per day (32.50 per

hour x 8 hrs), associated fringe cost is \$107.00 (13.38 *8), and supplies cost of \$65. (meals, travel, one overnight per week and supplies). Costs are anticipated to continue for 30 days for a cost of \$12,960 for the emergency response.

Many routine programs have suffered significant and potentially critical delays already due to CWD and exotic newcastle disease outbreaks.

Submittal of proposed rules to the legislature

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

Athletic Trainers Affiliated Credentialing Board**(CR 02–152)**

Chs. AT 1, 3 and 4, relating to consulting physicians and changing “athletic trainer” with “licensee.”

Commerce**(CR 03–046)**

Ch. Comm 108, relating to the use of rapid response funds to preserve economic development in Wisconsin.

Dentistry Examining Board**(CR 02–138)**

Ch. DE 6, relating to dental specialties.

Emergency Management**(CR 02–106)**

Chs. WEM 4 and 6, relating to response and reimbursement procedures for regional and local emergency response teams.

Health and Family Services**(CR 03–048)**

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

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.

**Natural Resources
(CR 02–064)**

An order affecting ch. NR 447, relating to citation authority for asbestos program violations.
Effective 10–1–03.

**Natural Resources
(CR 02–143)**

An order affecting ch. NR 25, relating to commercial fishing in Lake Michigan.
Effective 10–1–03.

**Natural Resources
(CR 02–146)**

An order affecting chs. NR 400, 409, 410, 415, 419, 420, 422, 423, 431, 439, 447, 448, 449 and 484, relating to clarification of compliance language for air management regulations..
Effective 11–1–03.

**Natural Resources
(CR 02–147)**

An order affecting ch. NR 809, relating to Safe Drinking

Water requirements for public water systems.
Effective 10–1–03.

**Natural Resources
(CR 03–013)**

An order affecting chs. NR 190 and 192, relating to lake management planning grants.
Effective 10–1–03.

**Natural Resources
(CR 03–014)**

An order affecting chs. NR 19 to 23 and 26, relating to fishing on the inland and outlying waters of Wisconsin.
Part effective 12–1–03.
Part effective 3/1/04.
Part effective 4/1/04.

**Natural Resources
(CR 03–016)**

An order affecting chs. NR 10, 12 and 45, relating to the control and management of chronic wasting disease.
Effective 9–1–03.

Public notices

Health and Family Services

(Food Stamp Program Reimbursement for Processing Food Stamp Debit Cards)

The Department of Health and Family Services will discontinue payment of an \$.08 transaction fee to retailers grocers effective September 1, 2003. The retailer fee is estimated to cost \$532,400 (AF) in FY 03, growing due to caseloads to \$651,500 in FY04 and \$770,300 in FY05. These fees are eligible for 50% federal funding participation.

The transaction fee was established on August 31, 1999 by rule (DWD 14.10) and implemented at the time of statewide conversion from paper food stamp coupons to an electronic benefit transfer system for food stamp benefits. At that time, the food stamp program was administered by the Department of Workforce Development (DWD). Following the transfer of the program to DHFS in July 2002, DWD 14 was reissued as HFS 252.

In what is now HFS 252.10 (2), the Department is required to conduct a study to determine actual costs and then use these study results and other relevant factors to determine if the transaction fee should continue to be paid and if so in what amount. The Department is required to continue to pay the fee at the established rate until publication of the decision in the Administrative Register. The study results were presented to DWD on 5/30/02.

The study documented that retailer costs averaged \$0.773 prior to EBT with paper coupons and average \$0.218 per transaction after implementation of EBT. Based on the findings of this study, and the cost to the state, the Department will discontinue the transaction fee payment.

Nationally, only seven states including Wisconsin have chosen to pay transaction fees to retailers that use their own point-of-sale terminals to process EBT transactions. Of those states, at \$0.08, Wisconsin pays the highest transaction fee. Fees paid by the other six states range from \$0.014 to \$0.04.

According to a national study done by the Food Marketing Institute, EBT transactions are the least costly form of payment on a per transaction basis except for cash.

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