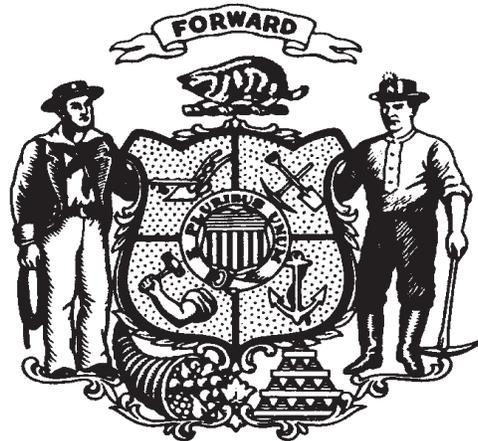


# Wisconsin Administrative Register

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## Emergency rules now in effect

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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](http://www.legis.state.wi.us/rsb/code).*

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### 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

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### 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

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## 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

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## Employment Relations Commission

Rules adopted amending **ss. ERC 1.06 (1) to (3), 10.21 (1) to (5) and 20.21 (1) to (4)**, relating to increased filing fees.

#### Finding of emergency

The Employment Relations Commission 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 the facts constituting the emergency is as follows:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. Effective July 26, 2003, 2003 Wisconsin Act 33 reduced the Employment Relations Commission's annual budget by \$400,000 in General Program Revenue (GPR) and eliminated 4.0 GPR supported positions. These reductions lowered the Employment Relations Commission's annual base GPR funding level and the number of GPR supported positions by more than 16%.

Act 33 also abolished the Personnel Commission and transferred certain of the Personnel Commission's dispute resolution responsibilities to the Employment Relations Commission.

3. 2003 Wisconsin Act 33 increased the Employment Relations Commission's Program Revenue (PR) funding and positions by \$237,800 and 2.0 PR positions respectively. The revenue to support these increases will be provided by increasing existing filing fees for certain dispute resolution services.

4. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 2.0 PR positions, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

The emergency rules increase existing filing fees for Commission dispute resolution services in amounts necessary to fund 2.0 Program Revenue positions as authorized by 2003 Wisconsin Act 33.

Sections 111.09, 111.71, 111.94, 227.11 and 227.24., Stats., authorize promulgation of these emergency rules.

**Publication Date:** August 25, 2003  
**Effective Date:** September 15, 2003  
**Expiration Date:** January 22, 2004

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## 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

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## 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

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### 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

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### Health and Family Services (4) (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  
**Extension Through:** September 30, 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

4. Rules were adopted revising **ch. HFS 144**, relating to immunization of students.

#### 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 Department has a rulemaking order (CR03-033) containing a variety of relatively minor changes to over a dozen chapters of administrative rules administered by the Department. The Department had anticipated that CR03-033 would be in effect on or before September 1, 2003. One of the proposed changes in CR03-033 is a provision that changes school immunization standards. Clearinghouse Rule 03-033 has been delayed for reasons unrelated to the provisions in this order. Consequently, the identical provisions in CR03-033 will not be in effect on September 1, 2003. For reasons stated subsequently in this analysis, unless these changes to the minimum immunization requirements in chapter HFS 144, Immunization of Students, are in effect September 1, 2003, needless confusion and unintended effects will result.

In 2002, the Department's Wisconsin Immunization Program requested minor language changes to chapter HFS 144 as part of a planned "omnibus" rulemaking order containing a variety of proposed relatively minor changes. The HFS 144 proposed rule changes affect time sensitive vaccine requirements and were made so the Department's immunization requirements adhere to new vaccine recommendations made by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP.) For example, the current requirement for Measles-Mumps-Rubella vaccine (MMR) is two doses with the first dose received on or after the first birthday. New ACIP recommendations allow a 4-day grace period so children receiving doses four days before their first birthday would be compliant. The current requirements in chapter HFS 144 do not accept as valid a dose of MMR that was given even one day prior to the first birthday. Similar time sensitive changes impact the vaccine requirement for a dose of DTaP vaccine after the fourth birthday and a dose of Hib vaccine after the first birthday.

These changes need to be in place before the start of the new 2003-04 school year. Although the changes are minor in nature, they have a significant effect on the law's enforcement at the day care and school level. Again, using MMR as an

example, without the change, the school will count the child that received the MMR one day before the first birthday as non-compliant. Non-compliance can, pursuant to s. 252.04 (5), Stats., result in exclusion from school or, pursuant to s. 252.04 (6), Stats., the name of the non-complaint student being turned over to the local district attorney's office for possible court action against the parents. Therefore, the child will either need to be re-immunized or the parent will need to sign a waiver, pursuant to s. 252.04 (3), Stats. The re-immunization requirement puts the school at odds with the health care provider that is currently acting in accordance with the revised ACIP recommendations. The signing of a waiver is not a desirable option as the school reporting process to the Department counts that child as waiving all vaccine requirements and will yield misleading information as to the Immunization Law compliance level of Wisconsin day care and student populations. The Department's Immunization Program sends Immunization Law packets to the schools in mid-August. These packets include the information the schools need for enforcement of the law when school starts in September. It is imperative that the Department have the rule changes in place before the start of the school year and include the information in the school packets. Therefore, the Department is issuing this emergency order to allow school districts and health professionals to act in a timely manner.

**Publication Date:** August 15, 2003  
**Effective Date:** August 15, 2003  
**Expiration Date:** January 12, 2004  
**Hearing Date:** September 12, 2003

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#### Insurance (2)

1. 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

2. 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 (2)**  
**(Fish, Game, etc., Chs. NR 1–)**

1. 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

2. Rules were adopted revising **ch. NR 10**, relating to the 2003 migratory game bird season.

**Finding of emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds.

The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Publication Date:** August 29, 2003  
**Effective Date:** August 29, 2003  
**Expiration Date:** January 26, 2004

**Workforce Development**  
**(Civil Rights, Chs. DWD 210—)**

Rules adopted repealing **chs. PC 1, 2, 4, 5 and 7** and revising **chs. DWD 218 and 225** and creating **ch. DWD 224**, relating to the transfer of personnel commission responsibilities to the equal rights division.

**Finding of emergency**

The Department of Workforce Development 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 facts constituting the emergency is:

2003 Wisconsin Act 33 transfers the responsibility for processing certain employment-related complaints against state respondents from the Personnel Commission (PC) to the Equal Rights Division (ERD) effective upon publication of 2003 Wisconsin Act 33. The ERD needs rules governing the procedures for processing these complaints effective immediately to ensure that service is not seriously delayed by this administrative change. The PC expects to transfer approximately 200 pending cases to ERD immediately.

2003 Wisconsin Act 33 transfers responsibility from the PC to ERD for 9 different types of employment-related complaints against state respondents. The ERD has had responsibility for processing complaints against nonstate respondents for 8 of the 9 types of complaints. This order makes minor amendments to existing rules to include state respondents and creates a new rule chapter on whistleblower protection for state employees, which is the one issue that ERD has not previously handled because the law does not apply to nonstate respondents. The newly-created whistleblower rules are similar to the existing fair employment rules.

A nonstatutory provision of 2003 Wisconsin Act 33 transfers existing PC rules to ERD. This order repeals those rules. Adopting the PC rules would result in different procedures for cases against state respondents and nonstate respondents for no logical reason. The dual system would be difficult to administer and confusing to complainants, many of whom are pro se. Even if ERD adopted the PC rules, an emergency rule would be necessary to remove confusing irrelevant and obsolete information.

This order repeals the PC rules and revises ERD rules by emergency rule to ensure that a clear, logical, and fair process is in place for handling the newly-transferred responsibilities for protecting Wisconsin's workforce from discrimination and retaliation.

**Publication Date:** August 5, 2003  
**Effective Date:** August 5, 2003  
**Expiration Date:** January 2, 2004

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## Scope statements

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### Agriculture, Trade and Consumer Protection

#### Subject

Chemical and Container Collection Program.

#### Policy analysis

*Objective of the rule.* Update and clarify current rules to consolidate Wisconsin's urban and rural "Clean Sweep" programs. DATCP currently operates the rural "Clean Sweep" program. The biennial budget act (2003 Wis. Act 33) transferred the state's urban "Clean Sweep" program from the Department of Natural Resources to DATCP.

#### Preliminary policy analysis

Since 1990, DATCP has operated the rural "Clean Sweep" program, which has collected over 2 million pounds of waste pesticides and other farm chemicals. Under this program, DATCP can distribute a total of up to \$560,000 each year for rural "Clean Sweep" grants to counties. Most of the collections have been single-day events. In recent years, several counties have chosen to work together to set up regional multi-day events. Since 1998, DATCP has provided grants to counties and regional planning commission to operate year-long collections at permanent hazardous waste collection sites. Counties can accept waste agrichemicals from farmers. They can also accept waste agrichemicals from commercial firms, such as agrichemical dealers and golf courses, that share in the disposal costs.

The biennial budget act (2003 Wis. Act 33) transferred the state's urban "Clean Sweep" program from the Department of Natural Resources to DATCP. Under the urban "Clean Sweep" program, DATCP can distribute a total of up to \$150,000 each year to counties and municipalities for collection of household hazardous wastes. DATCP plans to consolidate this urban "Clean Sweep" program with its rural "Clean Sweep" program.

DATCP has adopted rules under ch. ATCP 34, Wis. Adm. Code, to operate its rural "Clean Sweep" program. DATCP proposes to revise its current rules to:

- Address urban "Clean Sweep" programs.
- Clarify grant application procedures, grant approval procedures, contract arrangements, reporting requirements, reimbursement procedures, selection of hazardous waste handlers, and other operating procedures for the rural and urban "Clean Sweep" programs.
- Make other changes, as necessary, to consolidate and implement the "Clean Sweep" programs.

#### Policy alternatives

No change. If DATCP takes no action, current rules will remain in effect. There will be no rules for the urban "Clean Sweep" program, and rules for the rural "Clean Sweep" program will be outdated. This will cause confusion, and inhibit effective administration of the "Clean Sweep" programs.

#### Statutory authority

DATCP proposes to revise chapter ATCP 34, Wis. Adm. Code, under authority of ss. 93.07 and 93.55, Stats.

#### Staff time required

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

### Agriculture, Trade and Consumer Protection

#### Subject

Agricultural Chemical Cleanup Program; Fees and Reimbursements.

#### Policy analysis

*Objective of the rule.* Adjust fees and reimbursement rates under the Agricultural Chemical Cleanup Program. The rules will incorporate statutory changes made by 2003 Wis. Act 33 (biennial budget act).

#### Preliminary policy analysis

The Agricultural Chemical Cleanup Program (ACCP) reimburses persons for costs that they incur to clean up certain fertilizer and pesticide spills. The program reimburses a specified share of eligible costs. The Legislature, in 2001 Act 16 and 2003 Wisconsin Act 33, changed applicable cost eligibility and reimbursement rate provisions. This rule will incorporate those statutory changes.

DATCP makes reimbursement payments from the Agricultural Chemical Cleanup Fund. The fund is financed by fertilizer and pesticide license and tonnage fee surcharges. DATCP establishes surcharge amounts by rule, subject to statutory limits. DATCP projects that the fund will be in deficit by July 1, 2004. 2003 Wisconsin Act 33 allows DATCP to increase fertilizer surcharges. This rule may increase current fertilizer surcharges (subject to the new statutory limit), to help forestall the projected fund deficit.

#### Policy alternatives

- No change. If DATCP does not update its rules, the rules will not conform to current statutes. If DATCP does not increase fertilizer surcharges, the Agricultural Chemical Cleanup fund will likely be in deficit by July 1, 2004. That will prevent or delay reimbursement of agricultural chemical cleanup costs, and inhibit timely cleanup of fertilizer and pesticide spills.

#### Statutory authority

DATCP proposes to revise chapters ATCP 35 and 40, Wis. Adm. Code, under authority of ss. 93.07 and 94.73, Stats.

#### Staff time required

DATCP estimates that it will use approximately 0.1 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. Some of these actions may be completed in concert with other rulemaking actions already underway in these programs. DATCP will use existing staff to develop this rule.

## Insurance

### Subject

*Objective of the rule.* The purpose of these changes is to ensure that requirements and remedies specified in this rule are as broad as the enabling statutes allow. The current rule does not list all permissible sanctions that the statutes allow for discovery misconduct and other situations. Also, there may be other changes such as specifically allowing summary judgement and other kinds of motions.

### Policy analysis

Chapter Ins 5 attempted to set forth procedures for administrative hearings held by OCI. Specific standards and time periods were stated. Some sanctions specifically allowed by the enabling statutes were not specifically described in the rule thus leading to questions of whether these sanctions could be utilized. This rule will clearly allow OCI to use all remedies and motions available when there is misconduct by one side or the other.

### Statutory authority

Section 227.45, 227.46, 785.06, 804.12 and 885.12, Stats.

### Staff time required

100 hours.

## Kickapoo Reserve Management Board

### Subject

Ch. KB 1 – relating to Kickapoo Valley Reserve management.

### Policy analysis

*Objectives of the rule.* The objective of the rule is to amend Ch. KB 1 to give the Board specific authority to post areas of the Reserve off limits for hunting for safety particularly in proximity to the visitor center and maintenance buildings.

### Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of policy alternatives.

Current rules governing the use and management of the Reserve give the Board general authority to close areas and structures on Reserve land by posted notice. (See s. KB 1.03 (1) (b).) Current authority therefore appears to exist to post areas of and buildings on the reserve closed to hunting.

The proposal to give the Board specific authority to post areas of the Reserve off limits for hunting is made to remove any doubt concerning adequate notice and ability to enforce violations of Board posting of off limits for hunting.

The policy alternative is to rely on existing authority.

### Statutory authority

The statutory authority for the rule is s. 41.41 (7) (k), Stats.

### Staff time required

The Board estimates that it will take approximately 10 hours of staff time to develop the rule.

## Natural Resources

### Subject

Section NR 6.08 pertaining to sound level limits and testing procedures.

## Policy analysis

The rules revisions are being proposed in order to provide a field–friendly test procedure (stationary test) for testing snowmobile noise emissions on consumer machines. The test procedures that are outlined in the proposed rule have been adopted by the Society of Automotive Engineers for law enforcement as a means to identify loud and obnoxious snowmobiles in the field. The proposed rule changes will also provide a definition for excessive or unusual noise that is referenced in statute and of which is undefined.

Current statutes require snowmobiles to meet certain noise levels. For snowmobiles that are manufactured and sold or offered for sale in Wisconsin, the noise limit has been set at 78 decibels since 1975. For snowmobiles that are operated by the consumer in Wisconsin, noise emissions are limited to excessive or unusual levels.

Snowmobile manufacturers measure noise levels emitted from snowmobiles using a standard that is approved by the Society of Automotive Engineers. This standard is detailed in existing Code and is titled J–192. Recent and minor changes to this standard also need to be reflected in Code as detailed in the Rule Summary below. Overall, the manufactures' method to measure sound emissions is not changing and will remain as the procedure used by the department to monitor manufacturer compliance. A second procedure (stationary test) has also been approved by the Society of Automotive Engineers and is proposed for use by the department to monitor compliance for consumer operated snowmobiles. This stationary test and its adoption into code are the main reasons for this proposal.

### Statutory authority

Section 227.11 (2) (a).

### Staff time required

Approximately 45 hours will be needed by the Department.

## Optometry Examining Board

### Subject

Revisions to continuing education and examination requirements and to the rules of unprofessional conduct that relate to the performance of minimum eye examinations by optometrists.

*Objective of the rule.* Clarify and update administrative rules. Recommended changes relate to:

[1] revisions to the examination and continuing education requirements for optometrists;

[2] revisions to unprofessional conduct rules that relate to the performance of the minimum eye examination, and

[3] clarity, grammar, punctuation, and use of plain language.

### Policy analysis

Existing policies are contained in Chapters OPT 1–7 Wis. Admin. Code. The proposal would do the following:

revise: [1] definitions; [2] examination and continuing education requirements; [3] rules of unprofessional conduct; [4] chapters OPT 1–7, Code to make minor, technical and grammatical changes.

### Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 449.01 (1), 449.04, 449.07, 449.08, and 449.18 (7) Stats.

### Staff time required

80 hours.

## Transportation

### Subject

Chapter Trans 113 establishes the Department's administrative interpretation of s. 343.305 (7) and (8), Stats., relating to arrest for operating with a prohibited alcohol concentration, administrative suspension of operating privilege and reviews.

The Department proposes amending ch. Trans 113 to update the existing regulations and modify regulations in order to improve efficiencies in the agency's handling of administrative review requests. For example, the Department expects the following particular items to be addressed in this rule making:

- Update references to specific chemical testing equipment that is no longer in use.
- Consider increasing the period of time after issuing a citation a law enforcement officer has to forward arrest information to the Department.
- Consider permitting the electronic transfer of completed reports or forms or information to the Department from law enforcement agencies, the State Hygiene Lab or private attorneys.
- Insure all procedures comply with the requirements of the Federal Driver Privacy Protection Act.
- Revise procedures related to dismissal of hearings for nonappearance. Clarify that when a person fails to appear for an administrative review hearing, that the hearing will be dismissed for failure to appear and no hearing will be conducted. As a result, the defendant has no right to judicial review, except to challenge the Department's action to dismiss the administrative review request.
- Consider allowing a person or the person's attorney to request the Department review the written records of the arrest without a full evidentiary hearing, and providing clear authority for the Department to issue a decision in such a case.
- Establish procedures by which the Department may conduct administrative review hearings by telephone conference call.

### Policy analysis

The current rule refers to chemical testing equipment, the Intoxilyzer 5000, which is no longer in use in Wisconsin. Since the type of testing equipment may continue to change, the rule will no longer refer to a specific type of equipment. The rule will continue to require the submission of reports verifying the accuracy and integrity of results from chemical testing equipment.

Law enforcement officers are expected to provide detailed narrative reports of arrests for Operating While Intoxicated. These reports are forwarded to the Department along with other reports and forms to initiate the administrative suspension process. They are required to be filed within five days after the date of the notice of the intent to suspend. These narrative arrest reports are an essential part of the administrative review proceeding. The same narrative reports may be forwarded to the district attorney for use in court hearings. In some agencies, a separate work unit types the narrative reports of officers and higher–level staff review those reports.

Procedurally, once an officer issues a citation to a driver, he or she must promptly forward copies of the citations and reports related to the arrest to the Department, so that the agency has the records in time to conduct a hearing and issue a decision before the 30–day deadline of s. 343.305(8)(b)1.,

Stats. Under existing administrative rules, officers have 5 days to file such reports with the Department.

At the time the existing rule making was adopted, most chemical tests were performed with breath alcohol analysis devices. Those instruments provided immediate evidence of intoxication to the arresting officer. Thus, the test results were available at the time of arrest. Consequently, 5 days was sufficient time for the officer to submit the test results to DMV. This rule making will consider extending that time to accommodate the longer turn–around time required to obtain blood sample test results from the State Hygiene Lab. For example, the Department might extend that deadline to 10 days from the date of arrest, consistent with the amount of time a defendant has to request a hearing. Alternatively, the Department may permit reporting of test results over a longer period of time by the State Hygiene Lab.

Existing s. Trans 113.03 (3) requires officers to file reports at the nearest division of motor vehicles headquarters or, if the offense occurred in Milwaukee, Waukesha or Dane county, to DMV's district one motor vehicle headquarters. To facilitate the efficient processing of this paperwork, the Department is exploring the centralizing the paperwork handling process. The Department expects to propose changing the requirement so that officers are required to file as directed by the agency.

Law enforcement agencies across the state are beginning to use computer software that allows officers to issue citations from computers and printers in vehicles. The data from these citations is electronically transferred to their agency record management systems and the courts, and is further transferred from the courts to the Division of Motor Vehicles. Other states have also developed computer applications for law enforcement to produce forms related to administrative suspension process and to transfer data from those forms electronically. The Department will develop language for the administrative rule that allows the electronic transfer of data from forms, reports and tests for use in the administrative review process. The language on electronic transfer will cover electronic transfer of data and electronic transfer of images, for example, the use of fax machines for submitting requests for administrative suspension reviews.

Blood samples obtained from accused drunk drivers are evaluated by the State Hygiene Lab and the results of the tests are reported back to the arresting agency, which then forwards that information to the Department. This rule making will consider whether it would be more efficient to have the Hygiene Lab electronically report that data directly to the Department.

Existing s. Trans 113.04 (5) provides that an administrative suspension "shall take effect" when a person fails to appear for a hearing. In this rule making, the Department proposes to clarify that if the person does not appear, the Department will not hold an administrative review hearing, and the request for review will be dismissed.

The Department, however, wishes to affirm in the rule that the person may request a review of written materials instead of appearing for a review, and the person may request a review by telephone instead of appearing for the review. The person, or an attorney acting on the person's behalf, may make these requests.

Section 343.305 (8) (b) 1., Stats., requires the Department to hold administrative review hearings "in the county in which the offense allegedly occurred or at the nearest office of the Department if the offense allegedly occurred in a county in which the Department does not maintain an office." This requirement can be extremely cumbersome for the Department, the defendant and defendant's counsel, and

particularly cumbersome when the defendant does not reside in Wisconsin. The Department proposes to permit the conduct of hearings by telephone conference call upon request by the defendant. Appropriate procedures would also be proposed to clarify the manner in which such hearings would be conducted. For example, such a rule would likely clarify that if a person requests a hearing be conducted by telephone conference call, then any witness subpoenaed to testify at that hearing would be permitted to appear by telephone, that parties be required to exchange and number exhibits before the hearing, or that all parties or the hearing examiner may object to a telephone hearing.

Section 343.305 (8) (c) 1., Stats., requires the local prosecutor to represent the Department in any court proceedings appealing an administrative review determination. The Department will consider providing general direction to its counsel in such hearings on common litigation issues. The alternative to adopting such general guidelines is to provide direction to prosecutors on an inconsistent and piecemeal basis.

**Statutory authority**

Section 85.16 (1), Stats.

**Staff time required**

35 hours.

## Transportation

**Subject**

*Objective of the rule.* This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding 1 highway segment to the network. The actual segment being proposed to add to the network is:

CTH “B” from USH 10 to IH 39 (Portage County).

**Policy analysis**

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a request from H. O. Wolding Truck Transportation, in Amherst, WI, to add this highway segment.

**Statutory authority**

Section 348.07 (4), Stats.

**Staff time required**

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

## Veterans Affairs

**Subject**

Amendment of Section VA 1.08 of the Wisconsin Administrative Code – Relating to the recovery of state veterans benefits erroneously made to an ineligible recipient.

*Objective of the rule.* The proposed rule would identify the criteria and procedure that the department would use to recover erroneous payments.

**Policy analysis**

The department currently has the authority to suspend future veterans benefits for individuals who fraudulently receive benefits. However, under current provisions, there is no procedure to recover payments erroneously made, other than requesting that the benefit be voluntarily repaid. The department intends to develop criteria and procedures under which erroneous payments may be recovered. Possible methods of recovery could be offsetting or suspending future benefits, depending upon the circumstances.

**Statutory authority**

Section 45.35 (3).

**Staff time required**

Approximately 5 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

## Workforce Development

**Subject**

Chapter DWD 59, Child care local pass-through program.

**Policy analysis**

The child care local pass-through program awards federal child care funds to local governments and tribes that supply the required matching funds and meet other eligibility criteria for receiving the grants. 2003 Wisconsin Act 33 cut funding to the pass-through program by 86%. The reduced funding necessitates an increase in the match rate required of local governments and tribes and a change in the procedure for awarding the grants.

Budget documents prepared by the Legislative Fiscal Bureau indicate that the allocation of federal child care funds chosen by the legislature requires a 52% match rate from local governments and tribes that receive grants under the pass-through program. The rule currently sets the match rate at a minimum of the federal medical assistance percentage rate, which is approximately 42% for Wisconsin this year.

The current procedure for awarding grants provides for 2 grant cycles wherein current grantees receive up to 75% of the funds under a noncompetitive process, and then compete, along with any eligible jurisdiction in the state, for the remaining 25% as initial grantees. This 2-step procedure was developed when funding for the program was \$14 to 17 million. With the funding reduced to \$2.4 million, a 2-step procedure is cumbersome and inefficient. The department proposes to focus the dramatically reduced funding on localities and tribes with a proven track record by allowing all funds to be awarded to continuing grantees for the next 2 grant cycles. Current grantees have shown an interest in the program, have the match on hand, and have the demand of grant-funded activities. No initial grants would be awarded if there is insufficient funding to provide continuing grants of at least 50% of the eligible grantees' initial grant levels from the previous 2 grant cycles. There are currently 64 grantees representing approximately 130 local jurisdictions in over 60 counties.

**Statutory authority**

Sections 49.137 (4m) and 227.11, Stats.

**Staff time required**

75 hours.

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## Submittal of rules to legislative council clearinghouse

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

### **Health and Family Services**

#### **Rule Submittal Date**

On August 25, 2003, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. HFS 15, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded

(ICF-MR).

#### **Agency Procedure for Promulgation**

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

#### **Contact**

Lyle Updike, 264-6726

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## Rule–making notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection [CR 03 – 076]

(Reprinted from 8/31/03 Register)

Rule related to the use of atrazine pesticides. The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed amendment to ch. ATCP 30, Wis. Adm. Code, relating to the use of atrazine pesticides. The hearings will be held at the times and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until October 3, 2003, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224–4502. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by September 5, 2003, by writing to Bruce Rheineck, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4502. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

The hearings are scheduled on:

#### **Tuesday, September 16, 2003,**

Afternoon session: 3:00 p.m. until 5:00 p.m.

Evening session: 6:30 p.m. until 8:00 p.m.

Waushara County Court House

209 S. Ste Marie St.

Room 1: Demo Room

Wautoma, WI 54982

Handicapped accessible

#### **Wednesday, September 17, 2003**

Afternoon session: 3:00 p.m. until 5:00 p.m.

Evening session: 6:30 p.m. until 8:00 p.m.

Best Western

3900 Milton Avenue

Banquette Room 1

Janesville, WI 53546

Handicapped accessible

#### **Thursday, September 18, 2003**

Afternoon session: 3:00 p.m. until 5:00 p.m.

Evening session: 6:30 p.m. until 8:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive

First Floor Board Room

Madison, WI 53718

Handicapped accessible

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

Statutory authority: ss. 93.07 (1), 94.69 (1), 160.19 (2), and 160.21 (1), Stats.

Statutes interpreted: ss. 94.69, 160.19 (2) and 160.21 (1), Stats.

In order to protect Wisconsin groundwater, current rules under ch. ATCP 30, Wis. Adm. Code, restrict the statewide rate at which atrazine pesticides may be applied. Current rules also prohibit the use of atrazine in areas where groundwater contamination levels attain or exceed state enforcement standards. This rule expands an existing prohibition area based on new groundwater test data, and extends the time period of atrazine application to April 1 – July 31.

##### **Atrazine Prohibition Areas**

Current rules prohibit the use of atrazine where atrazine contamination of groundwater equals or exceeds the current groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 102 designated areas, including major prohibition areas in the lower Wisconsin river valley and much of Dane and Columbia counties.

This rule enlarges one current prohibition area and expands the time of atrazine application to April 1 through July 31 from the current April 15 through July 31 application time period. This rule will increase the statewide acreage of atrazine prohibition areas by 3200 acres and expands the application time to provide two additional weeks of potential atrazine use. This rule includes maps describing the revised prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface which complies with s. ATCP 29.45, Wis. Adm. Code.

##### **Fiscal Estimate**

The rule will be administered by the Agricultural Resource Management (ARM) Division of the Department of Agriculture, Trade and Consumer Protection (DATCP). The following estimate is based on enlarging 1 existing prohibition area (PA), and expanding the time period for atrazine application.

Administration and enforcement of the proposed rule changes will involve new costs for DATCP. Specialist and field investigator staff time will be needed for inspections and enforcement in the expanded PA and in educating and enforcing the new application time period (0.25 FTE, costing approximately \$10,000). Enforcement activities will be conducted in conjunction with current compliance inspections, but at increased levels to ensure compliance with the additional PA. Compliance activities will be especially important in the first few years as growers, commercial applicators, dealers, and agricultural consultants in the state require education to comply with the new regulations.

Soil sampling conducted in the expanded PA to determine compliance with the rules will require an estimated \$750 in analytical services. In addition, a public information effort will be needed to achieve a high degree of voluntary compliance with the rule. Direct costs to create and distribute the informational materials will be \$5,000.

Total Annual Costs: \$15,750

DATCP anticipates no additional costs for other state agencies. Water sampling programs within the Department of Natural Resources and local health agencies may receive short–term increased interest by individuals requesting samples.

The rule does not mandate that local government resources be expended on sample collection, rule administration or enforcement. The rule is not expected to have any fiscal impact on local units of government. County agricultural agents will likely receive requests for information on provisions of the rule and on weed control strategies because of reduced reliance on atrazine. This responsibility will probably be incorporated into current extension programs with no net fiscal impact.

### Initial Regulatory Flexibility Analysis

**Businesses Affected:** The changes to ch. ATCP 30 Appendix A, Wis. Adm. Code, will affect small businesses in Wisconsin. The greatest small business impact of the changes will be on users of atrazine — farmers who grow corn. The proposed prohibition area contains approximately 3,200 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 800 acres of corn will be affected. Between 2 and 4 producers would be affected, depending on their corn acreage and their reliance on atrazine products. These producers are small businesses, as defined by s. 227.114 (1) (a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in additional or replacement business.

Specific economic impacts of alternative pest control techniques are discussed in the environmental impact statement for this rule.

**Reporting, Recordkeeping and Other Procedures Required for Compliance:** The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routine, documentation must be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current rule.

All users of atrazine, including farmers, will need to maintain specific records for each application. This procedure is already required under the current rule.

Atrazine cannot be used in certain areas of Wisconsin where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10, Wis. Adm. Code.

**Professional Skills Required to Comply:** The proposed changes affect how much atrazine can be applied and on which fields. Because overall use of atrazine will be reduced in Wisconsin, alternative weed control techniques may be needed in some situations. These techniques may include different crop rotations, reduced atrazine rates, either alone or in combination with other herbicides, or combinations of herbicides and mechanical weed control measures.

While alternative weed control techniques are available, adoption of these techniques on individual farms will, in some cases, require assistance. In the past, this type of assistance has been provided by University of Wisconsin Extension personnel and farm chemical dealers. In recent years, many farmers have been using crop consultants to scout fields, identify specific pest problems and recommend control measures. DATCP anticipates these three information sources will continue to be used as the primary source of

information, both on whether atrazine can be used and which alternatives are likely to work for each situation.

### Draft Environmental Impact Statement

DATCP has prepared a draft environmental impact statement (EIS) for the proposed 2004 amendment to rules on the use of pesticides containing atrazine. Copies are available from DATCP on request and will be available at the public hearings. Comments on the EIS should be directed to the Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI, 53708 in care of Jeff Postle. Phone 608/224–4503. Written comments on the EIS will be accepted until October 3, 2003.

### Notice of Hearing

#### Ethics Board [CR 03 – 061]

NOTICE IS HEREBY GIVEN that pursuant to s. 13.685 (4), Stats., and interpreting ss. 13.67 and 13.68 (1) (bn), Stats., the State of Wisconsin Ethics Board will hold a public hearing at the Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin, on **Thursday, September 25, 2003**, commencing at 10:00 a.m. to consider a proposed rule relating to the identification of a topic of a lobbying communication under s. 13.67, Stats. The public is invited to attend the hearing and make comments on the proposed rule. You do not need to attend the public hearing to officially comment on the proposed rule. You can submit written comments to the Board. Following the public hearing, the hearing record will remain open through September 26, 2003 for written comments. Send comments to:

Jonathan Becker  
Wisconsin Ethics Board  
44 East Mifflin St., Suite 600  
Madison, WI 53703

An interpreter for the hearing impaired will be available on request for this hearing. Please make a request by September 18, 2003, either by writing to the above address or by calling (608) 266–8123.

#### Analysis Prepared by the Ethics Board

Statutory authority: s. 13.685 (4), Stats.

Statutes interpreted: ss. 13.67 and 13.68 (1) (bn), Stats.

The Ethics Board administers Wisconsin's Lobbying Law, Ch. 13, subch. III, Stats. Under s. 13.67, stats., a lobbying principal must identify (and others may identify) to the Ethics Board the proposed administrative rule number in connection with which the principal has made or intends to make a lobbying communication.

In addition, a lobbying principal must identify (and others may identify) to the Ethics Board a topic of a lobbying communication that is not a legislative proposal or proposed administrative rule that has been numbered or a budget bill subject. Section 13.67, Stats. The statute requires that a principal describe each topic with reasonable specificity, sufficient to identify the subject matter of the lobbying communication and whether the communication is an attempt to influence legislative or administrative action, or both. Section 13.685 (4), Stats., requires that the Ethics Board, by rule, define what constitutes a topic.

The proposed rule amends s. Eth 1.03 as it relates to the type of information that a lobbying principal must provide to satisfy the statutory identification requirement with respect to administrative action, pursuant to ss. 13.67 and 13.68 (1) (bn), Stats. The proposed rule also creates Eth 1.04 to specify how a principal must report a proposed administrative rule

number. In each instance, if the lobbying communication relates to the subject of a scope statement published in the Wisconsin Administrative Register, the principal must identify the scope statement summary, together with the date of the register and page number on which the scope statement appears.

Proposed rule:

SECTION 1. Eth1.03 is amended to read:

1.3. Topic of a lobbying communication. A person reports a topic as provided by s. 13.67, Stats., if the person provides the board with all of the following information:

(1) A succinct written statement sufficient to put the reader on notice of the communication's subject matter; ~~and~~

(2) Whether the communication is an attempt to influence legislative or administrative action, or both.

(3) With respect to an attempt to influence administrative action, if the lobbying communication relates to the subject of a scope statement published in the Wisconsin Administrative Register, the scope statement summary, together with the date of the register and page number on which the scope statement appears.

SECTION 2. Eth1.04 is created to read:

1.4. Proposed administrative rule number. A person reports a proposed administrative rule number as provided by s. 13.67, Stats., if the person provides the board any of the following:

(1) The related scope statement summary published in the Wisconsin Administrative Register, together with the date of the register and page number on which the scope statement appears.

(2) The clearinghouse rule number.

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

Pursuant to s. 227.114, Stats., the rule is not expected to negatively impact on small businesses.

#### **Fiscal Estimate**

The Ethics Board anticipates no fiscal effect.

#### **Contact Person**

Jonathan Becker, Wisconsin Ethics Board, 44 East Mifflin St., Suite 601, Madison, WI 53703, Tel.: (608) 266–8123.

## **Notice of Proposed Rule**

### **Regulation and Licensing**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) and 458.24, Stats., and interpreting ss. 458.24 and 458.26 (3) (b), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Regulation and Licensing will adopt the following rules as proposed in this notice, without public hearing unless, within 30 days after publication of this notice, on **September 15, 2003**, the Department of Regulation and Licensing is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

### **Analysis prepared by the Department of Regulation and Licensing.**

Statutes authorizing promulgation: ss. 227.11 (2) and 458.24, Stats.

Statutes interpreted: ss. 458.24 and 458.26 (3) (b), Stats.

In this proposed rule-making order the Department of Regulation and Licensing proposes to repeal and recreate ch. RL 87, Appendix I, which contains the 2003 edition of the USPAP and recreate it to incorporate by reference the 2004 edition of USPAP.

As required under s. 227.21, Wis. Stats., the department has obtained the consent of the attorney general and revisor of statutes to the incorporation of the 2004 edition of USPAP into the rules by reference.

#### **TEXT OF RULE**

SECTION 1. Chapter RL 87, Appendix I, is repealed and recreated to read:

#### **APPENDIX I**

#### **UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE**

The 2004 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) is hereby incorporated by reference into this Appendix. The 2004 edition of USPAP is effective January 1, 2004 to December 31, 2004.

After January 1, 2004, copies of the 2004 edition of USPAP may be purchased from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005–3517, (202) 347–7722. After January 1, 2004, copies of the 2004 edition of USPAP may also be obtained, at no charge, from the Appraisal Foundation's website at <http://www.appraisalfoundation.org>.

Note: As required under s. 227.21, Wis. Stats., the attorney general and revisor of statutes have consented to the incorporation by reference of the 2004 edition of the Uniform Standards of Professional Appraisal Practice. After January 1, 2004, copies of the 2004 edition of the USPAP will be on file in the offices of the department, the secretary of state and the revisor of statutes.

#### **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 53708–8935, (608) 266–0495.

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## Submittal of proposed rules to the legislature

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

**Natural Resources  
(CR 02–145)**

Ch. NR 520, relating to adjusting solid waste licensing and plan review fees.

**Natural Resources  
(CR 03–029)**

Chs. NR 12 and 19, relating to wildlife rehabilitation licenses.

**Natural Resources  
(CR 03–035)**

Ch. NR 45, relating to use regulations on department properties.

**Natural Resources  
(CR 03–044)**

Ch. NR 64, relating to reimbursement of eligible expenses on all–terrain vehicles trails.

**Natural Resources  
(CR 03–051)**

Ch. NR 10, relating to 2003 migratory game bird season.

**Tax Appeals Commission  
(CR 03–040)**

Ch. TA 1, relating to petitions for review.

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## Rule orders filed with the revisor of statutes bureau

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*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 02-048)**

An order creating ch. NR 336, relating to the small and abandoned dam removal grant program.  
Effective 12-1-03.

**Natural Resources  
(CR 03-018)**

An order affecting chs. NR 10, 12 and 19, relating to agricultural damage, hunting and trapping regulation changes.  
Effective 11-1-03.

**Natural Resources  
(CR 03-027)**

An order affecting chs. NR 162 and 165, relating to clean water fund program financial assistance.  
Effective 12-1-03.

**Natural Resources  
(CR 03-030)**

An order affecting chs. NR 16 and 19, relating to captive wildlife and frogs.  
Effective 11-1-03.

**Natural Resources  
(CR 03-031)**

An order affecting ch. NR 17, relating to dog training, dog trials and dog clubs.  
Effective 11-1-03.

**Natural Resources  
(CR 03-034)**

An order affecting ch. NR 46, relating to the administration of the Forest Crop Land and the Managed Forest Law.  
Effective 11-1-03.

**Public Instruction  
(CR 03-006)**

An order affecting ch. PI 7, relating to pupil transportation.  
Effective 11-1-03.

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