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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.

Commerce

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

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

Finding of Emergency

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

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

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

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

4. The department, being the agency with primary authority for economic development in the state, recognizes that there is a verified need to assist the development of high growth early stage technology businesses. Wisconsin has historically ranked low in the development of new start-ups and in the attraction of risk capital.

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

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

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

Publication Date: December 2, 2004

Effective Date: December 2, 2004

Expiration Date: May 1, 2005

Hearing Date: January 12, 2005

Elections Board

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

Finding of Emergency

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

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

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, EIBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under

circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

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

Insurance

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

Finding of Emergency

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

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

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

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

1. Rules adopted creating **ss. NR 1.05, 1.06 and 1.07**, relating to Natural Resources Board policies on protection and management of public waters.

Finding of emergency

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

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

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of

construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

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

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

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

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

Finding of emergency

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

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

Publication Date: February 2, 2005
Effective Date: February 2, 2005
Expiration Date: July 2, 2005
Hearing Date: February 23, 2005

Natural Resources (7) (Environmental Protection – Water Regulation, Chs. NR 300—)

1. Rules adopted revising **ch. NR 320**, relating to the regulation of bridges and culverts in or over navigable waterways.

Finding of emergency

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

Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

- Rules adopted revising **ch. NR 328**, relating to shore erosion control of inland lakes and impoundments.

Finding of emergency

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

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

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

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

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

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

4. Rules adopted revising **ch. NR 329**, relating to miscellaneous structures in navigable waterways.

Finding of emergency

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

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

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

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

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

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

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

5. Rules adopted revising **ch. NR 340**, and creating **ch. NR 343**, relating to regulation of construction, dredging, and enlargement of an artificial water body.

Finding of emergency

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

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

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

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

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

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

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

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

- 6. Rules adopted revising **ch. NR 345**, relating to dredging in navigable waterways.

Finding of emergency

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

Public Instruction

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

Finding of emergency

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

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

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

Regulation and Licensing

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

Exemption from finding of emergency

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

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

Analysis prepared by the Department of Regulation and Licensing

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

Statutes interpreted: Chapter 440, Subchapter XII.

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

In this order adopting emergency rules the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. These rules are as a result of 2003 Wisconsin Act 150 which enacted the Uniform Athlete Agents Act. Chapters RL 150 to 154 establish requirements

and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for temporary and permanent registration, renewal requirements, and prohibited conduct for athlete agents.

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

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

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

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

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

Publication Date: October 5, 2004
Effective Date: October 5, 2004
Expiration Date: March 4, 2005
Hearing Date: November 12, 2004
Extension Through: May 2, 2005

Revenue

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

Finding of emergency

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

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

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

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

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

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

Transportation (3)

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Transportation

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

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

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Transportation

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

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

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

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

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

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

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

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

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

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

1. Allows physician to certify driver is following treatment plan for cerebrovascular function, without such certification of the patient.

2. Shortens from 12 to 6 months the period during which a school bus driver must be free of any cerebrovascular incident.

3. Eliminates the 12 month period during which school bus driver must be free of destructive behavior or suicidal tendencies, instead making eligible a driver who is free of such behaviors or tendencies at the time of application.

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

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

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

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

Finding of emergency

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

Publication Date: February 1, 2005
Effective Date: February 1, 2005
Expiration Date: July 1, 2005
Hearing Date: March 1, 2005

Veterans Affairs

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

Finding of emergency

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

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

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

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

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

Workforce Development (Labor Standards, Chs. DWD 270–279)

Rules adopted revising ss. **DWD 274.015 and 274.03** and creating s. **DWD 274.035**, relating to overtime pay for employees performing companionship services.

Finding of emergency

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

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person's life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place

of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of “place of employment” and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the “department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates.” Under s. DWD 274.03, “each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week.” Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. “Companionship services” is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term “companionship services” does not

include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

Publication Date: March 1, 2004
Effective Date: March 1, 2004*
Expiration Date: July 29, 2004

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

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

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

Finding of emergency

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

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

Publication Date: December 20, 2004
Effective Date: January 1, 2005
Expiration Date: May 30, 2005
Hearing Date: February 14, 2005

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Animal by-products (includes rules related to renderers, animal food processors, grease processors and carcass collectors).

Administrative code reference: Chapter ATCP 57, Wis. Adm. Code (existing rule). This rule may also make minor changes to related rules, include chs. ATCP 10–12 (animal health), ATCP 55 (meat and meat food products) and ATCP 42 (animal feed).

Objective of the rule. This rule will update and reorganize current rules related to entities that collect and process animal carcasses, or process animal by-products for feed or other non-food use. Among other things, this rule may:

- Update and clarify current license requirements related to renderers, animal food processors, grease processors and carcass collectors. This rule will not increase license fees.
- Clarify and strengthen current rules to prevent non-food materials from entering the human food chain.
- Incorporate federal prohibitions against the sale or use of ruminant feed made from mammalian carcasses and carcass materials. This prohibition is designed to prevent BSE (“mad cow disease”) and related diseases in ruminant animals. This rule may incorporate updated or expanded federal restrictions as necessary to remain consistent with federal law.
- Clarify current rule provisions related to the collection, transportation, processing and handling of inedible carcasses and carcass materials, and the sale and labeling of processed products. Clear rules and accountability will facilitate compliance.
- Make technical changes as needed.

Preliminary policy analysis

Wisconsin has a large rendering and animal food processing industry. This industry collects and processes animal carcasses, carcass materials and meat by-products (mainly from Wisconsin’s large livestock and meat processing industries), and produces useful non-food products such as grease, tallow, blood meal, bone meal and animal feed.

DATCP currently regulates rendering plants, animal food processors, grease processors and carcass collectors under s. 95.72, Stats., and ch. ATCP 57, Wis. Adm. Code. DATCP regulation is aimed at protecting public health and safety, preventing inedible by-products from entering the human food chain, promoting animal health, and ensuring the safety and proper labeling of animal feed.

With the advent of BSE and other new disease threats, there has been increased focus on the rendering and animal food processing industries. Federal regulations, enforced by DATCP under contract with federal agencies, prohibit the use of mammalian carcasses and carcass materials as feed for ruminant animals (to protect against BSE and related diseases). Renderers and animal food processors have also cooperated in state-federal BSE testing of dead or slaughtered animals.

Wisconsin has been a leader in food safety and animal disease control, but continued progress will require a clear and up-to-date regulatory framework. Current DATCP rules related to rendering plants, animal food processors, grease processors and carcass collectors were first adopted in 1975, and have not been updated since 1983. DATCP proposes to reorganize and update the current rules, incorporate recent law changes, incorporate applicable federal requirements, and make current rules more clear. DATCP also proposes to clarify the connections between this program and other regulatory programs, including food safety, meat inspection, animal health, commercial feed, captive wildlife, and livestock premises registration.

For the most part, this rule will merely restate current law and policy in a clearer, more organized way. New animal feed restrictions, if any, will be consistent with state and federal mandates. Clear rules will promote efficiency, accountability and sound administration, and will strengthen animal health and food safety protection.

Related federal law and program

ATCP cooperates with the United States Food and Drug Administration (FDA) in the regulation of commercial feed. DATCP cooperates with the United States Department of Agriculture (USDA) in the administration of meat inspection and animal health laws. Recently, DATCP has helped FDA implement ruminant feed restrictions to prevent the outbreak of BSE and related diseases. DATCP has also worked with USDA to conduct BSE testing at meat establishments, rendering plants and animal food processing plants.

Entities affected

The rule will primarily affect renderers, animal food processors, grease processors and carcass collectors. For the most part, this rule will merely codify current law and policy.

Policy alternatives

If DATCP takes no action, current rules will remain in effect. Current rules lack clarity, and are not fully consistent with other state and federal laws. This may frustrate effective public administration and private compliance. Current rules do not provide an adequate framework for the regulation of these key industries, which have an important bearing on animal disease control and public health.

Statutory alternatives

None at this time.

Staff time required

DATCP estimates that it will use approximately 0.50 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. The department may also need additional personnel to administer the programs.

DATCP Board authorization

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative

Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

Controlled Substances Board

Subject

Classify as a schedule I controlled substance under state law alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), which have been classified as schedule I controlled substances under federal law.

Objective of the rule. By final rule of the Drug Enforcement Administration (DEA), adopted effective October 3, 2004, alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) were classified as schedule I controlled substances under the federal Controlled Substances Act (CSA). Neither AMT nor 5-MeO-DIPT have been so scheduled under the Wisconsin Controlled Substances Act in Chapter 961, Wis. Stats. The objective of the rule is to bring the treatment of these drugs into conformity with that at the federal level.

Policy analysis

Drugs that are classified as "controlled substances" under federal and state laws are subject to higher civil and criminal penalties for their illicit possession, distribution and use. Health care providers are also subject to greater record keeping requirements respecting their obtaining, prescribing and dispensing of such drugs. This is due to the fact that certain drugs have a greater likelihood of abuse, addiction and adverse consequences to patient health if utilized inappropriately, than do other drugs. The National Forensic Laboratory Information System (NFLIS) registered 10 cases of AMT and 12 cases of 5-MeO-DIPT. The Drug Enforcement Agency (DEA) asserts that AMT shares pharmacological effects of amphetamine and LSD and that 5-MeO-DIPT copies the effects of MDMA, both Schedule I hallucinogens. Three deaths have been associated with its consumption. The DEA administers the Controlled Substances Act. This forms the basis for the DEA action. The policy alternative to not scheduling the indicated substances concurrent with federal scheduling will be that state prosecutions will not be available. Generally, state prosecutions at the local level rather than federal prosecutions, are more likely to occur where smaller amounts of a scheduled substance are involved.

Entities affected by rule

Enforcement agencies; the Department of Justice, District Attorney offices.

Comparison with federal requirements

21 CFR § 1308.11 has been amended as follows:

(d) ***

(15) Alpha-methyltryptamine (other name: AMT) –7432

(19) 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT) – 7439

Statutory authority

Sections 961.11 and 961.14, Wis. Stats.

Staff time required

It is estimated that 100 hours will be needed to promulgate the rule.

Health and Family Services

Subject

The Department of Health and Family Services proposes to amend ch. HFS 124, rules relating to hospitals.

Policy analysis

The Department proposes to generally update ch. HFS 124 to eliminate overly prescriptive regulations; clarify the Department's enforcement authority; and align ch. HFS 124 with Medicare by requiring compliance with federal minimum standards of operation, maintenance and patient care. The proposed changes do not compromise the hospital consumer's care and safety.

Section 50.36 (1), Stats., gives the Department authority to establish and enforce rules and standards for hospitals for the construction, maintenance, and operation of the hospitals deemed necessary to provide safe and adequate care and treatment of patients and to protect the health and safety of both patients and employees. These rules and standards are promulgated in ch. HFS 124, the state regulations relating to hospitals.

Through this rulemaking initiative, the Department proposes to clarify rule provisions relating to its enforcement authority because the existing enforcement language is subject to multiple interpretations and is a source of confusion to health care providers and the public. Current language in ch. HFS 124 authorizes the Department to withhold, suspend, or revoke the certificate of approval for failure to comply with a requirement of the chapter. The Department is seeking language to require hospitals to submit a plan of correction for violations of the rule. Requiring submission of a plan of correction reflects current Department practice, and is a reasonable and effective means of achieving correction.

Federal requirements addressing standards of operation, maintenance, and patient care are more current than the comparable state regulations in ch. HFS 124. Therefore, the Department is proposing to adopt the applicable federal standards. Current ch. HFS 124 language details how a hospital's governing body must organize itself, details the qualifications of nursing staff, and prescribes requirements for staff orientation and training. Concerns have been expressed that the current state code limits the ability to implement new or innovative approaches to ensure quality patient care. The Department's intent is to streamline ch. HFS 124 to allow for more efficient and effective regulation of hospitals.

Statutory authority

Sections 50.36 (1), (2) (b) and (c), and 227.11 (2), Stats.

Staff time required

The Department estimates that it will take approximately 640 hours of staff time to promulgate the proposed changes to ch. HFS 124.

Entities affected by rule

The entities affected by these proposed rules are hospitals.

Comparison with federal requirements

Federal conditions of participation in Medicare that apply specifically to hospitals are in 42 CFR Part 482. These

regulations establish conditions and standards for the operation of hospitals that provide in-house acute care services to patients. State and federal requirements for hospitals both address facility management, medical staff, provision of health care services, and physical environment requirements. State requirements augment more general federal regulations by providing specificity in certain areas.

Insurance

Subject

Objective of the rule. The proposed rule is intended to adopt the NAIC Property and Casualty Actuarial Opinion Model Law.

Policy analysis

OCI s. Ins 50.30, Wis. Adm. Code, currently requires property and casualty insurers to file an actuarial opinion with their annual financial statements. Under current law OCI may also ask an insurer to file the supporting actuarial report and workpapers. This proposed rule will require domestic property and casualty insurers to file a supporting actuarial opinion summary, require licensed non-domestic property and casualty insurers to file a summary on request (current law), and require a licensed property and casualty insurer to prepare an actuarial report and workpapers supporting the actuarial opinion, and to produce those items to OCI on request.

Statutory authority

The statutory authority for this rule is ss. 601.42 and 601.465 and ch. 618, Stats.

Staff time required

200 hours and no other resources are necessary

Comparison with federal requirements

None.

Entities affected by rule

The proposed rule, unless exemptions are adopted, will apply to all licensed property and casualty insurers.

Natural Resources

Subject

Chapter NR 10 pertaining to seasons and daily bag limits for migratory game bird hunting.

Policy analysis

This rule order will establish the 2005 migratory bird hunting seasons. In late July Department staff attend the Mississippi Flyway Council (MFC) Technical and Council meetings. At this meeting staff will be provided status information and the proposed framework alternative from the U.S. Fish and Wildlife Service (FWS). Staff then work with the other states in our Flyway to discuss and develop proposals and recommendations that are voted upon by the MFC. Proposals that are passed at the MFC meeting are forwarded to the FWS for consideration by the Service Regulations Committee (SRC) in late July. Department staff contact the FWS following the SRC meeting to obtain the latest season recommendations.

Once the FWS's final framework is available, Department staff can summarize waterfowl status and regulation information for Wisconsin citizens. This information is presented to the Migratory Committee of the Conservation Congress on and a public meeting (Post-Flyway Meeting) of interest groups and individuals. Staff receive input at these meetings regarding citizen suggestions for the development of Wisconsin's waterfowl seasons given the federal framework. The following week, public hearings are held around the state to solicit additional input to the state regulatory process. The Department then promulgates a permanent and emergency rule simultaneously in order for the season to start the waterfowl seasons in late September.

Statutory authority

Section 29.014, Stats.

Staff time required

Approximately 399 hours will be needed by the department to develop the rule prior to and following the hearings.

Entities affected by rule

These rules will impact migratory game bird hunters and those who enjoy viewing waterfowl in the state of Wisconsin.

Comparison with federal requirements

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the FWS regulations process. As part of the Federal rule process, the FWS proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest-management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while FWS believes that the NAWMP's population goals would tend to exert a conservative influence on overall duck harvest-management, other factors, such as habitat, also need to be considered. The Regular Canada goose season is based on the allowable Mississippi Valley Population (MVP) harvest which will be determined based on the spring breeding population goal for that population and the spring population estimate obtained from an aerial survey of the MVP breeding range. All the proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the Fish and Wildlife Service in 50 CFR 20.

Natural Resources

Subject

The Bureau of Wildlife Management recommends promulgating administrative rules that affect ch. NR 16 relating to the possession, sale, transport, propagation, taking, transfer, exhibition, rehabilitation, stocking, import and release of species designated as harmful wild animals.

Policy analysis

Under ch. 169.11, Stats., the department was required by rule to identify the bear family (*ursidea*) and cougars as harmful wild animals. Under this designation, no person may possess, take, propagate, sell purchase, transfer, exhibit, or rehabilitate one of these species without department authorization. Additionally, no person may introduce, stock, or release, or import into the state a harmful wild animal unless specifically authorized by the department. Certain

exemptions for public zoos and aquariums exist under statute. Finally, additional record keeping requirements, are required for these species.

The Department has determined that mute swans, non-domesticated hogs of the family *suidae* (wild hogs), the family *tayassuidae* (peccaries and javelinas), and wolves and wolf-dog hybrids should be designated as harmful wild animals and rules related to their possession, sale, transport, propagation, taking, transfer, exhibition, rehabilitation, stocking, import and release may be included in this rule order.

Additionally, As required by ch. 169, Stats., consultation with the Dept. of Ag. Trade and Consumer Protection and the Dept. of Health and Family Services, will occur and additional species may be included in the rule.

Statutory authority

Under ch. 169.11, Stats.

Staff time required

367 hours.

Entities affected by rule

Current captive wild animal licensees, captive wild animal owners, and animal welfare groups.

Comparison with federal requirements

Currently, the status of mute swans is being review by the U.S. Fish and Wildlife Service (USFWS). As of the development of this scoping statement the USFWS does not treat mute swans as a Federally unprotected species at this time. Therefore, mute swans are still considered protected under the Federal Migratory Bird Treaty Act. A preliminary list of unprotected, non-native birds was published in early 2005 in the federal register, which does include mute swans on this list. However, this modification must undergo an official comment period, during which legal challenges may be filed. The USFWS will publish a final list of unprotected, non-native birds as soon as February 2005. Publication of this final list would signal the official change of mute swans to being unprotected by the Migratory Bird Treaty Act. Currently, under ch. 169, Stats., the department has the authority to regulate Migratory birds held in captivity, however, should mute swans become unprotected, the only way to regulate mute swans held in captivity would be to give them harmful wild animal status.

In April 2003, the USFWS divided the gray wolf range into three areas and reclassified the Eastern and Western populations as threatened instead of endangered. The Eastern segment covers the area from the Dakotas east to Maine, and includes Wisconsin. However in early February 2005, a U.S. District Judge in Oregon ruled that the Bush administration violated the Endangered Species Act when it relaxed protections on many of the nation's gray wolves. Specifically, that the U.S. government acted improperly by combining areas where wolves were doing well, such as Montana, with places where their numbers had not recovered. Regardless of this decision, the regulation of wolves held in captivity still resides with the state. However, the department will keep abreast of the court decision and status of the gray wolf as rules are promulgated.

Feral hogs, also known as wild boars, are considered a threat to native ecosystems and in some states are disease threats to domestic swine herds. Pseudorabies and swine brucellosis are among several livestock diseases for which the USDA Animal and Plant Health Inspection Service (APHIS) has established national eradication programs with a goal of elimination of the diseases from all livestock in the United

States. Unfortunately, one of the most serious setbacks to achieving this goal is the widespread and growing occurrence of feral swine populations across the country. Feral swine can harbor and transmit these diseases, and in some areas may serve as the most important wildlife host. A state's USDA status, in terms of being considered brucellosis-free, may depend on whether disease is found in the wild hog population. However, state's are responsible for the management of these species in wild and in captivity and in the case of Wisconsin feral hogs are deemed unprotected animals in the wild, and for the purposes of the proposed rules would be considered harmful if held in captivity. Neither of these classifications would conflict with Federal regulations.

Natural Resources

Subject

Objective of the rule. The objective the rule is to establish formulae-driven commercial harvest limits for yellow perch from Lake Michigan and Green Bay. Such limits would allow harvest limits to rise and fall as objective indices of fish abundance rise and fall. This will 1) remove the need for controversial and divisive rule-making to increase or cut harvest limits, 2) produce timely reductions in harvests when fish populations decline, and 3) will allow rapid increases in harvests when fish populations recover.

Policy analysis

The proposed rule is a change from current practice in which harvest limits are made on a case-by-case basis as fish populations increase or decline, but would not represent a change in policy. Section NR 1.04 (Great Lakes fisheries management) states, "Management measures may include but are not limited to seasons, bag and harvest limits, limitations on the type and amount of fishing gear, limitations as to participation in the fisheries and allocations of allowable harvest among various users and the establishment of restricted areas."

Statutory authority

Sections 29.014, 29.014 (1), 29.519 (1), and 227.11 (2) (a), Stats.

Staff time required

The Lake Michigan Fisheries Team will develop the rule. The Great Lakes Fisheries Specialist, working with a DNR attorney will develop options for consideration by the LMF.

It is estimated that the Great Lakes Fisheries Specialist will devote 40 hours to rule development, the DNR attorney will devote five hours the problem, and the LMFT will devote six hours of meeting time to the issue.

Entities affected by rule

The rule will affect commercial fishers directly and sport fishers indirectly.

Comparison with federal requirements

None applicable.

Natural Resources

Subject

Objective of the rule. The development and adoption of an updated stationary source nitrogen oxide (NOx) control program to meet Clean Air Act requirements and demonstrate attainment by 2010 of the 8-hour ozone air quality standard.

New regulatory requirements are anticipated to be incorporated into ch. NR 428, Wis. Adm. Code “Control of Nitrogen Compound Emissions” and ch. NR 406, Wis. Adm. Code “Construction Permits”.

Policy analysis

In June of 2004 the US EPA designated ten Wisconsin counties non-attainment for the 8-hour ozone ambient air quality standard. The counties of Kenosha, Racine, Milwaukee, Waukesha, Washington, Ozaukee, and Sheboygan are designated “Moderate” non-attainment areas for the 8-hr ozone standard. The remaining counties of Manitowoc, Kewaunee, and Door are designated “Basic” non-attainment areas.

The designation triggered Clean Air Act requirements for adopting rules that reduce nitrogen oxide emissions sufficiently to demonstrate attainment of the standard by 2010. A minimum requirement is the adoption of reasonably available control measures (RACM) for stationary sources in all non-attainment counties as expeditiously as possible per section 172(c) of the CAA. An overlapping requirement in “moderate” counties is adoption of reasonably available control technology (RACT) for major NOx sources. It is anticipated the RACM and RACT requirements will be equivalent for many emission units. The level of control represented by RACM and RACT is yet to be determined by the department based on an evaluation of available controls and information from potentially affected sources.

The demonstration of attainment may require more stringent controls than the minimum RACM and RACT requirements and/or include additional source categories. The additional reduction may address sources outside of the non-attainment counties but which influence the air quality in non-attainment areas. The extent of NOx control for sources and source categories is related to technical control feasibility and cost considerations in addition to projected non-attainment area air quality impacts. The overall control achievable and implemented by the stationary source program will also be balanced against NOx reductions in other emitting sector categories (mobile, area, etc.) and potentially from sources of volatile organic compounds (VOCs). Additional factors in setting the reduction targets may relate to visibility (regional haze) improvement planning needs, Industrial Boiler MACT, state and federal mercury regulation, federal requirements promulgated during rule development, and regional Governors agreements addressing regional emission reductions.

Statutory authority

Sections 172 (c) (1) and (6) and 182 (a) (2) (A) and (b) (2) and (f) [42 USC 7502 (c) (1) and (6) and 7511a (a) (2) (A) and (b) (2) and (f)]; and 285.11 (6) and 285.14 Wis. Stats.

Staff time required

The department estimates approximately 1,500 hours will be required to develop a NOx RACT program and rules.

Comparison with federal requirements

The “NOx SIP” call, developed in 1998, provides the most recent indication of the minimum level of control expected by a Wisconsin stationary source NOx control program. The SIP call applies to twenty-one eastern states (excluding Wisconsin) to address regional NOx transport affecting 1-hour ozone attainment.

A major component of the NOx SIP call is a 70 to 80% emission reduction for the electric utility sector characterized by USEPA as “highly-cost effective”. In comparison, the minimum RACT control required for the Wisconsin control

program is defined by the CAA as reasonably available and cost-effective. This definition leads to an expectation that RACT controls would have an allowable cost greater than the highly cost-effective NOx SIP call control levels. Therefore, electric utility control levels for RACT in the Wisconsin NOx control program are expected to be equivalent to or greater than NOx SIP control levels.

The NOx SIP call also addressed NOx control for large sources. EPA assumed reductions of 60% for large industrial boilers, 90% for stationary internal combustion engines, and 30% for cement kilns. This range of emission reductions provides a minimum expectation for larger non-utility source RACT level of control.

Entities affected by rule

Any facility operating a combustion process such as electric generation, industrial steam generation, process heating, internal combustion engines, and incineration is potentially affected by a NOx control program. The minimum RACT requirement applies to all facilities with the potential to emit greater than 100 tons per year of nitrogen oxides. A facility emitting above this threshold is considered a major source with reductions applying to its NOx emission units and processes. As a result, RACT will apply to numerous sources and include a wide range of emission unit types and sizes. The broader RACM requirement is not limited to a major source and may extend to smaller sources or individual units as compared to the RACT requirement.

Natural Resources

Subject

Objective of the rule. Volatile organic compounds (VOC) are those organic compounds, which contribute to ozone formation through atmospheric photochemical reactions. It has been EPA’s policy that organic compounds with a negligible level of reactivity need not be regulated to reduce ozone. The EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The Department’s definition of “volatile organic compounds” has been identical with the federal definition. On November 29, 2004, EPA revised the definition of VOC by identifying additional compounds to be excluded from the definition of VOC. The Department is proposing to revise the definition of VOC in ch. NR 400 to be consistent with the federal regulation. The compounds proposed to be excluded from the VOC definition are listed in the attached Rule Agenda / Board Action Checklist.

In addition the Department is proposing to revise the VOC emission control requirements for yeast manufacturing in s. 424.05. The change is intended to address an inconsistency with requirements in the national emission standards for hazardous air pollutants (NESHAP) for yeast manufacturing promulgated by EPA on May 21, 2001. The proposed revision addresses the provision in the NESHAP that 98%, rather than 100%, of the fermentation batches need to meet the existing VOC emission limits.

Policy analysis

The proposed revisions do not include any changes in policy. However the revision of the VOC definition introduces a new type of compound, an organic compound which is not considered a VOC for purposes of VOC emission limitations or VOC content requirements, but it is a VOC for purposes of recordkeeping, emission reporting, and inventory requirements.

Statutory authority

The proposed revisions are based on 40 CFR 51.100(s) and 40 CFR Part 63, Subpart CCCC Table 1; and s. 285.11(6), Wis. Stats.

Staff time required

The estimated time needed to develop the proposed rule is approximately 330 hours.

Comparison with federal requirements

Under s. NR 400.02 (162), Wis. Adm. Code, VOC is defined as any organic compound, which participates in atmospheric photochemical reactions excluding specific organic compounds listed in s. NR 400.02 (162). The listed compounds have been the same as those listed in a corresponding federal regulation at 40 CFR 51.100(s). On November 29, 2004 EPA revised the regulation and added some compounds to the list of compounds excluded from the definition of VOC. To incorporate the federal revision into the state regulation the Department is proposing to revise the VOC definition in ch. NR 400.

As indicated above, the NESHAP for yeast manufacturing facilities establishes that 98% of fermentation batches are required to meet the established VOC concentration limits. Compliance with these limits is based on a 12-month rolling average. The Department proposes to incorporate these same provisions into the state regulation for VOC emission limits for yeast manufacturing in s. NR 424.05.

Entities affected by rule

The proposed revision to the VOC definition in ch. NR 400 affects compounds, which have potential for use as refrigerants, fire suppressant, aerosol propellants, blowing agent for manufacturing of foamed plastic, and solvents. In addition some of these compounds may be used as an alternative to ozone depleting substances such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). Industries using or manufacturing these compounds will be affected by the rule. Others who may be interested in the rule include public health agencies, environmental organizations and the general public. There is only one yeast manufacturer in Wisconsin who will be directly affected by the revision to s. NR 424.05.

Transportation**Subject**

Objective of the rule. As authorized by s. 85.13, Stats., ch. Trans 128 establishes policies and procedures regarding operation of the Traffic Violation and Registration Program (TVRP). This program permits local units of government to collect unpaid parking tickets by suspending the registration (license plate) for any vehicle which was ticketed for a parking violation if the ticket is not paid. Unlike traffic citations, parking tickets are issued to vehicles because the driver is usually not present at the time the citation is issued. Accordingly, the collection activities of the local unit of government are directed at the vehicle registrant.

Like parking tickets, vehicle drivers are usually not present when a vehicle is towed. 2003 Wis. Act 201 allows local units of government to collect unpaid towing and storage charges associated with nonmoving traffic violations under the TVRP program. This rule making proposes to update ch. Trans 128 to reflect this statutory change.

Policy analysis

Under 2003 Wis. Act 201, towing and storage charges are treated exactly like nonmoving traffic violations. This rule making implements this new statutory requirement.

Comparison with federal requirements

No federal regulation applies to this case.

Entities affected by rule

Any parking authority that participates in the TVRP program is affected, insofar as the authority notifies DOT of unpaid towing and storage charges associated with nonmoving traffic violations. Unpaid towing and storage charges are handled exactly like unpaid nonmoving traffic violations under 2003 Wis. Act 201.

Statutory authority

ss. 85.13, 227.11, 345.28 and 345.47(1)(d), Stats.

Staff time required

40 hours.

Submittal of rules to legislative council clearinghouse

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

Dietitians Affiliated Credentialing Board

Rule Submittal Date

On March 10, 2005, the Dietitians Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.085 (5) (b) and 227.11 (2), Stats.

The proposed rule-making order relates to filing applications for temporary certificates and examinations.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 12, 2005 at 9:30 a.m. in Room 294B, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Person

Pamela Haack, Paralegal, Office of Legal Counsel, (608) 266-0495.

Email: Pamela.haack@drl.state.wi.us

Insurance

Rule Submittal Date

On March 14, 2005, the Office of the Commissioner of Insurance submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

These changes will affect s. Ins 3.09 (19), Wis. Adm. Code, relating to mortgage guaranty insurance.

Agency Procedure for Promulgation

A public hearing will be held on April 18, 2005.

Contact Person

A copy of the proposed rule may be obtained from the web site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Fred Nepple (608) 266-7726 or e-mail at Fred.Nepple@oci.state.wi.us in the OCI Legal Unit.

Natural Resources

Rule Submittal Date

On March 9, 2005, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to landfilling of solid waste.

Agency Procedure for Promulgation

Public hearings will be held April 12 and 14, 2005.

Contact Person

Jack Connelly

Bureau of Waste Management

(608) 267-7574

Pharmacy Examining Board

Rule Submittal Date

On March 10, 2005, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (b), (d) and (e), Stats.

The proposed rule-making order relates to an emergency relocation of a pharmacy.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 13, 2005, at 9:15 a.m. in Room 294B, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Person

Pamela Haack, Paralegal, Office of Legal Counsel, (608) 266-0495.

Pamela.haack@drl.state.wi.us

Transportation

Rule Submittal Date

On March 1, 2005, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule affects ch. Trans 28 of the Wisconsin Administrative Code and relates to expanding eligibility for harbor assistance program grants to private owners of harbor facilities.

Agency Procedure for Promulgation

A public hearing is required and hearings are scheduled for April 6 and 7, 2005. The Department's Division of Transportation Infrastructure Development, Bureau of Harbors and Rails is primarily responsible for preparing the rule.

Contact Information

Julie A. Johnson, Paralegal

608-266-8810

Rule-making notices

Notice of Hearing

Dietitians Affiliated Credentialing Board

[CR 05-021]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dietitians Affiliated Credentialing Board in ss. 15.085 (5) (b) and 227.11 (2), Stats., and interpreting ss. 448.80 and 448.84, Stats., the Dietitians Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order of the Dietitians Affiliated Credentialing Board to amend ss. DI 2.04 (1) (c) and 3.01 (1), relating to filing applications for temporary certificates and examinations.

Hearing Date, Time and Location

Date: April 12, 2005
Time: 9:30 A.M.
Location: 1400 East Washington Avenue
 Room 294B
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, Room 171, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by April 22, 2005 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted: Sections 448.80 and 448.84, Stats.

Statutory authority: Sections 15.085 (5) (b) and 227.11 (2), Stats.

Explanation of agency authority: Currently, s. DI 2.04 (1) (c) requires that a candidate for licensure apply to take the American Dietetic Association examination at least 120 days prior to the examination being offered. Similarly, s. DI 3.01 (1) requires applicants to file their applications for licensure at least 120 days prior to the next examination being offered by the American Dietetic Association. Because the American Dietetic Association's examination is now computer assisted, candidates may schedule those examinations at their convenience, thereby eliminating the necessity to schedule at least 120 days in advance. Eliminating the 120 day advance filing requirement will therefore provide greater flexibility to those candidates applying for licensure and simplify the credentialing process.

Related statute or rule: There are no related statutes or rules other than those listed above.

Plain language analysis: In this proposed rule-making order the Dietitians Affiliated Credentialing Board is

amending language relating to filing applications for examinations and temporary certificates. Since the American Dietetic Association's pre-licensing procedures are now computer assisted, an applicant may now schedule the examination at his or her convenience. Therefore, there is no reason to require the 120 day wait.

SECTION 1 amends the examination provisions to allow applicants to obtain a temporary certificate and submit application to take the examination as soon as possible, without a 120 day wait.

SECTION 2 amends the application submission process allowing the applicant to take the examination as soon as possible, without a 120 day wait.

Summary of, and comparison with, existing or proposed federal regulation

There is no existing federal regulation.

Comparison with rules in adjacent states

A search of rules adopted in Michigan, Minnesota, Iowa, Illinois and Indiana indicates that none of these states have time requirements for submission of applications. There are no federal regulations concerned with time requirements for submission of applications for dietitian credentials in the states.

Summary of factual data and analytical methodologies: The board is responding to communication from the Commission on Dietetic Registration indicating that the 120 day period is no longer needed to prepare for candidates to take the examination. The rule change is a response to this improvement in their processes.

Anticipated costs incurred by private sector: The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate

The proposed rules will have no impact on the department's funds.

Effect on small business: Pursuant to s. 227.114 (1) (a), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Review Coordinator may be contacted by email at chris.klein@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708. Telephone: (608) 266-0495. Email address: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to Pamela Haack at the addresses listed above. Comments must be received on or before April 22, 2005, to be included in the record of rule-making proceedings.

Notice of Hearing

Insurance

[CR 05–023]

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 3.09 (19), Wis. Adm. Code, relating to mortgage guaranty insurance.

Hearing Information

Date: **Monday, April 18, 2005**

Time: 10:00 a.m., or as soon thereafter as the matter may be reached.

Place: OCI, Room 223
125 South Webster St 2nd Floor
Madison, WI

Written comments or comments submitted through the Wisconsin Administrative Rule website at: <https://adminrules.wisconsin.gov> on the proposed rule will be considered. The deadline for submitting comments is 4:00 p.m. on the 7th day after the date for the hearing stated in this Notice of Hearing.

Written comments should be sent to:

Fred Nepple
Legal Unit – OCI Rule Comment for Rule Ins 3.09 (19)
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707–7873

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

Statutes interpreted

Sections 600.01, 601.42, 611.19 (1), 611.24, 618.21, 623.02, 623.03, 623.04, 623.11, 627.05, 628.34 (12), and ch. 617 Stats.

Statutory authority

Sections 601.41 (3), 601.42, 611.19 (1), 618.21, 623.02, 623.04, 623.11, 627.05, 628.34 (12), and ch. 617, Stats.

Explanation of the OCI's authority to promulgate the proposed rule under these statutes:

The proposed rule modifies the current restriction on issuance of mortgage guaranty insurance to or for the benefit of affiliates, and is authorized as governing an unfair trade practice under s. 628.34 (12), Wis. Stats., and as addressing financial risk to the insurer governed by statutes allowing the commissioner to establish standards and reporting requirements, including ss. under 601.42, 611.19 (1), 618.21, 623.02, 623.04, 623.11, 627.05, and for affiliate transactions under ch. 617, Stats.

Related Statutes or rules

None

The plain language analysis and summary of the proposed rule

Under current rules a mortgage guaranty insurer may not directly or indirectly issue coverage for mortgages originated by an affiliate, unless the insurer is no more than 50% owned or controlled by the affiliate. The proposed rule would permit the insurer to issue coverage for mortgages originated by the affiliate but only subject to the same underwriting standards as are applied to non-affiliates. The proposed rule requires

the insurer to annually file an officer's certification of compliance.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule

None

Comparison of similar rules in adjacent states as found by OCI

Iowa: None

Illinois: Section 50 ILAC 202.60 (e) of Illinois insurance regulations prohibits a mortgage insurer from covering loans originated by a lender if the lender or its affiliate owns an equity interest in the mortgage insurer.

Minnesota: None

Michigan: None

A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule

The proposed rule is based on the experience of the Office regulating and examining mortgage guaranty insurers, and the expertise of the financial analysts and examiners responsible for their regulation, including the application of the existing exception in s. Ins 3.09 (19) (c), Wis. Adm. Code.

Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

The Office reviewed the annual financial reports of licensed mortgage guaranty insurers. There are no such insurers that are small businesses.

If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:

There is no significant fiscal effect on the private sector. The proposed rule will establish an exception from an existing prohibition. The limited reporting requirement included will not impose any significant cost beyond the existing reporting requirements.

A description of the Effect on Small Business:

This rule will have no effect on small businesses.

Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the WEB sites at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2nd Floor

Madison WI 53702

Mail: PO Box 7873, Madison WI 53707–7873

Place where comments are to be submitted and deadline for submission

The deadline for submitting comments is 4:00 p.m. on the 7th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Fred Nepple

Legal Unit – OCI Rule Comment for Rule Ins 3.09 (19)

Office of the Commissioner of Insurance

PO Box 7873
Madison WI 53707-7873

Street address:

Fred Nepple
Legal Unit – OCI Rule Comment for Rule Ins 3.09 (19)
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53702
WEB Site: <http://oci.wi.gov/ocirules.htm>

Summary of Proposed Rule and Fiscal Estimate

For a summary of the rule see the analysis contained in the attached proposed rulemaking order. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

OCI Small Business Regulatory Coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266- 7843 or at email address Eileen.Mallow@oci.state.wi.us

Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, OCI, at: Inger.Williams@OCI.State.WI.US, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

Notice of Hearings

Natural Resources

[CR 05-020]

NOTICE IS HEREBY GIVEN that pursuant to ss. 289.05, 289.06 and 289.07, Stats., interpreting ss. 289.21, 289.24, 289.29 to 289.32, 289.42, 289.43, 289.45 and 289.61, Stats., the Department of Natural Resources will hold public hearings on revisions to the Wisconsin Administrative Code NR 500 series relating to landfilling of solid waste. The proposed revisions to the NR 500 series will streamline existing codes to make the preparation, submittal and review of documents related to solid waste management more efficient. The majority of the proposed rule revisions address streamlining changes. Additional code changes are included to a) correct errors in the code, b) clarify the procedure when an exemption is needed for a private well located within 1200 feet of a landfill and when a variance is needed under ch. NR 812 for the private well, c) add requirements for geosynthetic clay liners (GCLs) that are currently in standards approvals, and d) make changes to the medical waste rules to clarify how the rules apply to different wastes and generators.

The proposed revisions expand the type of facilities that can apply for an expedited plan modification, broaden the self-implementing approvals for lower-risk non-landfill facilities and increase the flexibility for department staff reviewing landfill feasibility reports. In addition, under the proposed rule, the Department will no longer be involved in providing or approving training programs or in regular review

of continuing education hours related to operator certification. The Department has added requirements that will affect landfill owners intended to assure the quality of soil from multiple non-landfill related construction projects being used for landfill construction. Requirements for GCL membranes that will also affect landfill owners have been added to the code to reflect what is currently required in conditions of approvals. The Department has also proposed changes to allow either the landfill owner or the private well owner to apply for a variance for a well to be constructed within 1200 feet of a landfill. Changes within the medical waste rule will allow blood collection vehicles to haul infectious waste without having to be licensed as infectious waste transporters, similar to the exemption that already exists for ambulances and first responders. In addition, other changes specify that if there are conflicts between DNR rules and US DOT rules, the US DOT rules pre-empt ours.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a significant economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at: SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

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

Tuesday, **April 12, 2005** at 10:00 a.m.
Schmeekle Reserve, UW-Stevens Point
2419 North Point Drive
Stevens Point

Thursday, **April 14, 2005** at 10:00 a.m.
Room 511, GEF #2
101 South Webster Street
Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jack Connelly at (608) 267-7574 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There will be no increased costs to the department to fill the requirements of these rule changes. The department currently performs all of the associated work related to expedited plans, feasibility studies, locational exemptions and inspections. These rule changes will have a fee added for these efforts.

It is assumed the total increased revenues to the state will be \$146,000 annually.

Local Fiscal Estimate

It is assumed the increased costs to local publicly owned facilities will be \$54,000 annually.

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Jack Connelly, Bureau of Waste Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 25, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Connelly.

Notice of Hearing Pharmacy Examining Board [CR 05-022]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (b), (d) and (e), Wis. Stats., and interpreting s. 450.02 (3) (b), (d) and (e), Wis. Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to create Phar 6.09, relating to an emergency relocation of a pharmacy.

Hearing Date, Time and Location

Date: April 13, 2005
Time: 9:15 A.M.
Location: 1400 East Washington Avenue
Room 294B
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, Room 171, P.O. Box 8935, Madison, Wisconsin 53708. Comments must be received by April 23, 2005 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statute interpreted: Section 450.02 (3) (b), (d) and (e), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (b), (d) and (e), Stats.

Explanation of agency authority: The Wisconsin Pharmacy Examining Board is granted the authority to protect the public health, safety and welfare by establishing security standards for pharmacists, enforcing chapters 450 and 961, Stats., and establishing minimum standards for the practice of pharmacy.

Related statute or rule: Chapter Phar 6 (Pharmacy licenses and equipment).

Plain language analysis

The purpose of this proposed rule-making order is to ensure safe access to, and safe dispensing of, secured pharmaceuticals where a natural disaster or one created by human beings has disrupted the conditions upon which the pharmacy license was originally granted by the Pharmacy

Examining Board. In order to allow for the continued operation of pharmacies affected by disasters, the board herein creates a mechanism to allow for the continuation of practice. The board or a person designated by the board would be empowered to grant a variance to a licensed pharmacy when the pharmacy makes a request for variance. There is a 90 day limit on the variance term which may be extended if the pharmacy makes a request.

SECTION 1 specifies the duties of the requesting pharmacy and the board when a natural disaster or one created by human beings disrupts the operation of a licensed pharmacy. The pharmacy must make a request for a variance specific to the need to continue practice under circumstances that may not meet the conditions upon which original licensure was granted, yet maintains protection of public health and safety. The board may act directly on such a request or refer the request to a designee of the board who will decide whether and on what conditions to grant the variance. In this proposed rule-making order the board limits the duration of variances granted to 90 days. If a request for extension is made by the pharmacy, the board or its designee may increase the term of the variance.

Summary of, and comparison with, existing or proposed federal regulation

None.

Comparison with rules in adjacent states

Michigan – None.

Minnesota – None.

Iowa – None.

Illinois

Section 1330.110 Granting Variances

a) The Director may grant variances from these rules in individual cases where he/she finds that:

1) The provision from which the variance is granted is not statutorily mandated;

2) No party will be injured by the granting of the variance; and

3) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

b) The Director shall notify the State Board of Pharmacy of the granting of such variance, and the reasons therefor, at the next meeting of the Board.

Indiana

856 IAC 1-7-3 Relocation of pharmacy

Authority: IC 25-26-13-4

Affected: IC 25-26-13-4; IC 25-26-13-11; IC 25-26-13-18

Sec. 3. To be eligible for relocation of a pharmacy an applicant must show to the satisfaction of the board that the requirements for the eligibility for a pharmacy permit as set out in IC 25-26-13-18 will be met. Prior to relocating a pharmacy the proprietor shall file an application, on a form prescribed and furnished by the board, setting out all information so requested on such form. Prior to moving a pharmacy, after receipt of board approval, the permit holder shall submit the premises to a qualifying inspection by a representative of the board. (*Indiana Board of Pharmacy; Reg 7, Sec 3; filed Jun 18, 1962, 10:00 am: Rules and Regs. 1963, p. 121; filed Dec 3, 1985, 3:02 pm: 9 IR 770; readopted filed Sep 14, 2001, 3:04 p.m.: 25 IR 532; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

Rule 36. Temporary Variances

856 IAC 1-36-1 Exceptions

Authority: IC 25-26-13-4

Affected: IC 25-26-13

Sec. 1. A person subject to the regulations of the board may request that the board grant a temporary variance from any rule adopted by the board, except rules concerning examinations, experience hours, and requirements for licensure. (*Indiana Board of Pharmacy; 856 IAC 1-36-1; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4534; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

856 IAC 1-36-2 Submission of a request for temporary variance

Authority: IC 25-26-13-4

Affected: IC 25-26-13

Sec. 2. A request for a temporary variance must be submitted to the board in writing. Each request must contain the following information:

(1) The name, address, and license or permit number of the applicant.

(2) The name of the responsible pharmacist and the specific location at which activities will be conducted under the temporary variance.

(3) The citation to the specific rule from which the applicant seeks a temporary variance.

(4) A detailed explanation of the purpose of the temporary variance.

(5) An assessment of the impact on the public if the variance is granted.

(6) A statement of the conditions which would cause the applicant to apply for renewal of the temporary variance.

(7) The beginning, midpoint, and ending dates of the proposed demonstration project.

(*Indiana Board of Pharmacy; 856 IAC 1-36-2; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4534; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

856 IAC 1-36-3 Positive impact on delivery of pharmaceutical care

Authority: IC 25-26-13-4

Affected: IC 25-26-13

Sec. 3. Temporary variances shall only be granted for demonstration projects which are expected to have a positive impact on the delivery of pharmaceutical care. Justification for that expectation shall be fully explained. The board shall not grant any temporary variance which threatens public health, safety, or welfare. (*Indiana Board of Pharmacy; 856 IAC 1-36-3; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4535; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

856 IAC 1-36-4 Period of time

Authority: IC 25-26-13-4

Affected: IC 25-26-13

Sec. 4. The board shall grant a temporary variance for a period of no more than six (6) months. Any person who receives a temporary variance shall submit to the board a written report of the effects of the demonstration project at the midpoint and at the conclusion of the temporary variance. (*Indiana Board of Pharmacy; 856 IAC 1-36-4; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4535; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

856 IAC 1-36-5 Renewal

Authority: IC 25-26-13-4

Affected: IC 25-26-13

Sec. 5. A temporary variance may be renewed by the Indiana board of pharmacy (board) for an additional six (6)

months. A temporary variance shall not be renewed more than five (5) times. Requests for renewal of a variance shall be submitted in writing to the board not less than thirty (30) days prior to the expiration of the variance and shall contain at least the information required by section 2 of this rule. (*Indiana Board of Pharmacy; 856 IAC 1-36-5; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4535; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1340*)

856 IAC 1-36-6 Revocation

Authority: IC 25-26-13-4

Affected: IC 25-26-13

Sec. 6. The board may revoke any temporary variance for cause, including, but not limited to, a finding that the temporary variance poses or may pose a threat to public health, safety, or welfare. The person requesting the temporary variance has the obligation to report any such potential threat to the board immediately upon the discovery of such potential threat, or as soon as possible after such discovery. (*Indiana Board of Pharmacy; 856 IAC 1-36-6; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4535; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

856 IAC 1-36-7 Public notice

Authority: IC 25-26-13-4

Affected: IC 25-26-13

Sec. 7. The board shall give public notice of requests for temporary variances at not less than two (2) consecutive regular meetings before voting to grant or deny a request for a temporary variance. (*Indiana Board of Pharmacy; 856 IAC 1-36-7; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4535; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

856 IAC 1-36-8 Justification of denial

Authority: IC 25-26-13-4

Affected: IC 25-26-13

Sec. 8. The board shall set forth in writing its reasons for granting or denying a temporary variance. (*Indiana Board of Pharmacy; 856 IAC 1-36-8; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4535; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

856 IAC 1-36-9 Copies of requests

Authority: IC 25-26-13-4

Affected: IC 25-26-13-5

Sec. 9. The executive director shall retain copies of all requests for temporary variances and the board's reasons for granting or denying requests as part of the record of its proceedings maintained under IC 25-26-13-5. (*Indiana Board of Pharmacy; 856 IAC 1-36-9; filed Jul 23, 1998, 4:43 p.m.: 21 IR 4535; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330*)

Summary of factual data and analytical methodologies

The Pharmacy Examining Board chose a regulatory approach that aims to achieve balance in maintaining licensure standards without eliminating access to pharmacy services at a time when those services may be needed. Board members have been asked by other members of the profession about how operations might continue when a pharmacy is damaged or operations are thwarted because of disasters, like a fire or tornado damage. The statutes and rules were analyzed to determine if the variance provisions currently provided would be sufficient to address disasters. The conclusion of the board was that a variance for disaster situations should be explicitly recognized in the rules.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate

The proposed rule will have no impact on the department's funds.

Effect on small business

Pursuant to s. 227.114 (1) (a), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Review Coordinator may be contacted by email at chris.klein@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708-8935. Phone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the addresses listed above. Comments must be received on or before April 25, 2005 to be included in the record of rule-making proceedings.

Notice of Hearing Transportation [CR 05-024]

NOTICE IS HEREBY GIVEN that pursuant to s. 341.255, Stats., and interpreting s. 341.255 (3), Stats., the Department of Transportation will hold a public hearing in **Room 144-B** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **13th day of April, 2005 at 1:30 PM**, to consider the amendment of ch. Trans 196, Wisconsin Administrative Code, relating to the convenience fee for telephone vehicle registration renewal.

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

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 85.16, 227.11 (2) (a), 341.255 and 342.14 (7), Stats.

Statutes Interpreted: ss. 341.255 and 342.14 (7), Stats.

Plain Language Analysis: S. Trans 196.04 (1) (d) establishes the convenience fee for telephone vehicle registration renewal. DOT now offers internet renewal as well as telephone registration renewal service, and this proposed rule is amended to reflect this service option. In addition, DOT has entered into a new vendor contract for this service. Under the contract terms, DOT's per-transaction cost may vary on a yearly basis. The proposed rule is amended to clarify that DOT will charge the customer a transaction fee that approximates DOT's cost to provide that transaction, and that the DOT will determine the per-transaction fee on a yearly basis. DOT will publish the current fee on DOT's web site and IVR message, instead of needing to undertake continual rule making to change the fee on a yearly basis.

Section Trans 196.04 (1) (a), (b) and (c) establish the fee for special handling of vehicle title and registration transactions. The proposed rule increases the fee from \$4 to \$5 for title and title/registration transactions, and from \$2 to \$3 for registration-only transactions. This fee equals the fee a person pays for in-person counter service at DMV customer

service centers. This rule making is required by s. 341.255, Stats.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: No federal rules govern or apply to this rule making. Service delivery methods and fees are solely a state determination.

Comparison with Rules in Adjacent States:

Michigan: Michigan allows on-line and telephone registration renewal.

Minnesota: Minnesota requires a \$3.00 handling fee for on-line renewal using credit card. In addition, Minnesota requires a \$4.50 service fee for renewal transactions, and a \$7.00 service fee for all other vehicle transactions.

Illinois: Illinois requires a \$1.75 convenience fee for on-line renewal.

Iowa: Iowa requires a convenience fee when renewing on-line. In addition, Iowa title and registration transactions by county treasurers may involve a service fee.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: The Department of Transportation has entered into a new contract with a vendor to provide the telephone and internet renewal service. The contract provides a methodology for payment to the vendor that requires DOT to revise its method of establishing the customer convenience fee. Since the process to amend a rule is time-consuming, the DOT has chosen the approach of publishing the fee on its internet web site and on the IVR message, rather than by administrative rule change. DOT continues to determine a transaction fee that approximates DOT's cost to provide that transaction. DOT will determine the per-transaction fee on a yearly basis. In determining the fee per transaction for the current year, the Department will review the total cost of the service, the number of transactions and other material factors from the previous year.

Approximately 90,500 vehicle registration transactions used the fast service option in FY 2004. Fast-service transactions represent only about 4% of all title/registration work that DMV processes. However, a fast service transaction requires DMV staff to stop working on regular mailed-in applications and immediately process the fast-service transaction. This represents attention that is equivalent to immediate in-person service that a person receives at a DMV customer service center. The fast-service transaction fee has not been increased in over 20 years, while the in-person counter service fee has been increased. An increase of \$1 in the fast service fee would generate \$90,500 increased revenue annually to the Transportation Fund, and would equal the counter service fee for in-person transactions.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The Department of Transportation anticipates that this rule making will have no direct adverse effect on small businesses. This rule making establishes no additional compliance, bookkeeping, or reporting requirements for small businesses. You may contact the Department's small business regulatory coordinator by phone at (608) 267-3703, or via e-mail at the following website:

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

Fiscal Effect and Anticipated Costs Incurred by Private Sector: The Department of Transportation estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or

federally-recognized tribes or bands. The Department estimates there will be a \$90,500 increase in revenue to the Transportation Fund annually, as a result of increasing fast service fees. No added costs will be incurred by the private sector to comply with this rule. Fast service is an optional service similar to in-person service, and use of fast service is voluntary similar to in-person service. Fast service is not required of any customer. The proposed rule establishes no additional compliance, bookkeeping, or reporting requirements of any customer.

Place Where Comments are to be Submitted and Deadline for Submission: The public record on this proposed rule making will be held open until close of business

the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson P. Frazier, Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 253 Hill Farms, P.O. Box 7911, Madison WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857.

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

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 04–103)

Chapters ATCP 10–12, 17, 55 and 60, relating to livestock premises registration.

Commerce

(CR 04–134)

Chapter Comm 5, relating to manufactured home dealer and salesperson licenses.

Financial Institutions –Banking

(CR 05–012)

Chapters DFI–Bkg 40 to 45, relating to definitions, applicability requirements, registrations, annual audits and reports, trust accounts, ethical and competent practice, education, examination, brokerage agreements and consumer disclosures.

Employment Relations – Merit, Recruitment and Selection

(CR 04–138)

Chapters ER–MRS 1, 8, 12, 14, 15, 16, 17, 22, 24, 27, 32 and 34, relating to the Entry Professional Program, submission of notices and requests to the administrator, promotional appointments and pay, involuntary transfers, periods of eligibility for reinstatement, the definition of “state property”, acting assignments and obsolete references, correct cross–references, clarifying language and other minor, technical changes.

Employment Relations

(CR 04–139)

Chapters ER 1, 3, 4, 10, 18, 29, 34 and 44, relating to the Compensation Plan, day care providers, the Entry Professional Program, paid leave to vote, continuous service, reinstatement, sick leave credit restoration, annual leave schedules, annual leave options, personal holidays, catastrophic leave, paid leave for bone marrow or organ donation, project compensation, hiring above the minimum and supervisor training.

Pharmacy Examining Board

(CR 05–001)

Chapter Phar 6, relating to variance alternatives of alarm systems.

Public Instruction

(CR 04–129)

Chapter PI 24, relating to the SAGE program.

Transportation

(CR 05–006)

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

Veterans Affairs

(CR 05–002)

Chapter VA 13, relating to the veterans assistance program.

Veterans Affairs

(CR 05–008)

Chapters VA 4 and 12, relating to the home improvement loan program and the personal loan program.

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.

**Commerce
(CR 04-130)**

An order affecting ch. Comm 113, relating to allocation of volume cap on tax-exempt private activity bonds.
Effective 5-1-05.

**Natural Resources
(CR 04-060)**

An order affecting ch. NR 198, relating to grants for the control of aquatic invasive species.
Effective 5-1-05.

**Natural Resources
(CR 04-091)**

An order affecting ch. NR 10, relating to deer management unit population goals and boundaries.
Effective 5-1-05.

**Natural Resources
(CR 04-092)**

An order affecting chs. NR 1 and 45, relating to use of department properties.
Effective 5-1-05 and 8-1-05.

**Revenue
(CR 04-083)**

An order affecting ch. Tax 61, relating to improvements to the language of and including changes to the Retailer Performance Program (RPP).
Effective 5-1-05 and 7-2-05.

**Transportation
(CR 04-132)**

An order affecting ch. Trans 129, relating to motorcycle licensing and courses.
Effective 5-1-05.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **March 31, 2005**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Agriculture, Trade and Consumer Protection (CR 04-094)

An order affecting ch. ATCP 30, relating to pesticide product restrictions. Effective 4-1-05.

Summary of Final Regulatory Flexibility Analysis

The changes to ch. ATCP 30 Appendix A will affect small businesses in Wisconsin. 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. The greatest small business impact of the changes will be on users of atrazine — farmers who grow corn. The proposed prohibition area contains approximately 1,280 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 320 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 and the impacts are not further discussed in this document.

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 would need to 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 atrazine rule.

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

Summary of Comments by Legislative Review Committees

On January 5, 2005, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform and to the Assembly Committee on Agriculture. Neither the Assembly Committee on Agriculture nor the Senate Committee on Agriculture,

Environmental Resources and Campaign Finance Reform took any action on the rule during their review period.

Financial Institutions—Banking (CR 04-098)

An order affecting ch. DFI-Bkg 74, relating to authorizations to consolidate accounts. Effective 4-1-05.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Revenue (CR 04-115)

An order affecting ch. Tax 2, relating to the dairy investment credit. Effective 4-1-05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Revenue (CR 04-116)

An order affecting ch. Tax 3, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces. Effective 4-1-05.

Summary of Final Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 04-099)**

An order affecting ch. Trans 102, relating to the issuance of driver licenses and identification cards. Effective 4-1-05.

Summary of Final Regulatory Flexibility Analysis

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

**Summary of Comments by Legislative Review
Committees**

No comments were received.

**Veterans Affairs
(CR 04-126)**

An order affecting ch. VA 14, relating to the determination of interment fees and assessments at the state veterans cemeteries. Effective 4-1-05.

Summary of Final Regulatory Flexibility Analysis

Rules do not have an adverse impact on small businesses.

**Summary of Comments by Legislative Review
Committees**

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **March 2005**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Department of Financial Institutions – Division of Banking

Ch. DFI-Bkg 74

S. DFI-Bkg 74.09 (5)

Revenue

Ch. Tax 2

S. Tax 2.99

Ch. Tax 3

S. Tax 3.04

Transportation

Ch. Trans 102

S. Trans 102.14 (1) and (1m)

Veterans Affairs

Ch. VA 14

S. VA 14.02 (1) (a), (b), (c), (2)

Editorial corrections

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

Financial Institutions–Banking

Ch. DFI-Bkg 74

S. DFI-Bkg 74.08 (4) (c)

S. DFI-Bkg 74.09 (2)

Natural Resources

Ch. NR 103

S. NR 103.04 (1) and (6)

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