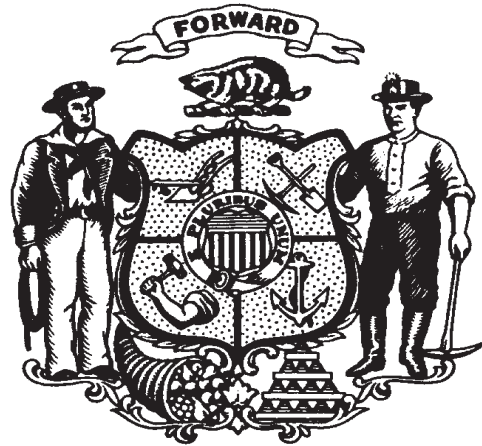


Wisconsin Administrative Register

No. 562



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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.

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, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

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

Agriculture, Trade & Consumer Protection (2)

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

Finding of emergency

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

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

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

(4) On February 27, 2002, the national veterinary services laboratory informed Wisconsin that it had confirmed chronic wasting disease for the first time in this state. The laboratory confirmed the disease in test samples collected from 3 free-ranging white-tailed deer killed by hunters during the November 2001 gun deer season. The Wisconsin Department of Natural Resources (DNR) collected these samples as part

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

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

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

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

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

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

(10) In order to protect the public peace, health, safety and welfare, it is necessary to take immediate steps to prevent and control the spread of chronic wasting disease in this state. Among other things, it is necessary to impose further controls on the import and movement of captive cervids and to implement a mandatory monitoring program. DATCP may adopt rules to implement these measures.

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

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

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

Finding of emergency

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

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

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

(b) File security with DATCP.

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

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

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

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

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

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

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

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

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

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

Publication Date: April 29, 2002
Effective Date: April 29, 2002
Expiration Date: September 26, 2002
Hearing Date: May 16, 2002
Extension Through: November 24, 2002

Commerce

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

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

Finding of emergency

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

Facts constituting the emergency are as follows:

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

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

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

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

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

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

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

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

Corrections (2)

1. Rules adopted revising **ch. DOC 328**, relating to adult field supervision.

Finding of emergency

The department of corrections finds that an emergency exists and that rules are necessary for preservation of the public peace, safety and welfare. A statement of the facts constituting the emergency is: Pursuant to s. 304.074 (2) Stats., the department has authority to collect "at least \$1 per day, if appropriate" from offenders on supervision. However, the current proposed budget reform bill, Assembly Bill 1, directs the department to amend supervision fees and provides, in relevant part, the following:

"...the department of corrections shall promulgate the rules that are required under s. 304.074 (5) of the statutes and that set rates under s. 304.074 (2) of the statutes. The rules shall take effect on July 1, 2002."

"...the rules shall require the department to have a goal of receiving at least \$2 per day, if appropriate, from each person who is on probation, parole, or extended supervision and who is not under administrative supervision, as defined in s. 304.74 (1) (a) of the statutes, or minimum supervision, as defined in s. 304.74 (1) (b) of the statutes."

While the language and potential requirements of Assembly Bill 1 doubles the amount the department may collect in supervision fees, the current Administrative Code limits the department's efforts to do so. The current ch. DOC 328 establishes a set fee schedule with a maximum collection of \$45 per month.

As proposed, the budget reform bill requires the department to rely upon the collection of an increased amount of supervision fees. If the department remained without administrative rule authority to collect the increased fees on July 1st, the department, and clearly the public, would be significantly impacted by the loss of revenue. The proposed budget has anticipated and relied upon such increase in establishing budgetary guidelines for the department of corrections.

This situation requires the department to effect an emergency rule rather than complying with the notice, hearing, legislative review and publication requirements of the statutes. Complying with the standard promulgation procedures for a permanent rule could easily delay the department's ability to collect the necessary fees by seven months to one year. This delay would have a substantial impact on the department because more than 85% of the department's supplies and services budget will be funded by program revenue generated from supervision fees collected in the next fiscal year. This revenue provides for a variety of essential departmental functions, including rent for approximately 114 probation and parole offices, vehicles that enable probation and parole agents to conduct home visits on offenders, extradition of absconders, and computers that enable agents to conduct such critical functions as pre-sentence investigation reports. If the department were somehow hindered in the attempt to perform these functions it would obviously affect the department's ability to adequately supervise offenders and ultimately result in a

breakdown in the department's ability to help protect the public.

This order:

- Raises the department's supervision fee goal to at least \$2 per day, if appropriate, from all offenders under supervision by the department.
- Eliminates the distinction between offenders supervised by the department on administrative and minimum supervision and offenders who are deemed medium, maximum and high risk as it relates to supervision fees. All offenders under supervision by the department will pay, based on their ability, according to one supervision-fee scale.

Publication Date: July 2, 2002
Effective Date: July 2, 2002
Expiration Date: November 28, 2002
Hearing Dates: July 29 & 30, 2002

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

Exemption from finding of emergency

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

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

and,

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

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

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

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

[See Notice this Register]

Elections Board

Rules adopted amending **s. EIBd 6.05** relating to filing campaign reports by electronic transmission.

Finding of emergency

The Elections Board finds that an emergency exists in the implementation of the requirement of s. 11.21 (16), Stats., that each registrant for whom the board serves as filing officer and who or which accepts contributions in a total amount or value of \$20,000 or more during a campaign period, shall file each required campaign finance report in an electronic format, and finds that the attached rule is necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

With the close of the legislature's 2001–02 biennial session, it is now apparent that the Board will not receive an additional appropriation to develop a software program that enables registrants to file reports that integrates with the agency's information management system. Implementing an alternate means to permit registrants to comply with s. 11.21 (16), Stats., is necessary for use of campaign finance reports filed in 2002 and thereafter. Filings in electronic format will improve the welfare of Wisconsin's citizens by making campaign finance information more readily available to citizens, candidates, journalists and advocacy groups. Filing reports electronically is the only viable means of ensuring that the public has the information necessary to participate in the selection of our governmental leaders.

Publication Date: June 1, 2002
Effective Date: June 1, 2002
Expiration Date: October 29, 2002

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

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

Finding of emergency

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

The high cost of prescription drugs in Wisconsin and nationwide are especially burdensome on the elderly, many of whom live on a fixed income. Through 2001 Act 16, Wisconsin has addressed the problem those increasingly high costs pose to the elderly by creating section 49.688 of the statutes. Section 49.688 directs the Department to develop and administer the program of prescription drug benefits for the elderly that has come to be known as "SeniorCare." The statute also directs the Department to develop administrative rules for implementing SeniorCare, which the Department has done by creating a new chapter of administrative rules, HFS 109. The rules address a variety of issues associated with operating the program in accordance with section 49.688, Stats., including specifying:

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

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

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

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

Health and Family Services (2) (Health, Chs. HFS 110—)

1. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk-Sharing Plan.

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. Department staff consulted with the Health Insurance Risk-Sharing Plan (HIRSP) Board of Governors on April 17, 2002 on the rules, as required by s. 149.20, Stats.

Analysis prepared by the Department of Health and Family Services

Statutory authority: ss. 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Stats.

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty-eight percent of the 13,645 HIRSP policies in effect in March 2002, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 25.4%. This produces policyholder premiums that are equivalent to 150% of the industry standard, the minimum allowed by statute. Rate increases for specific policyholders range from 19.2% to 27.8%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. These rate increases reflect general and industry-wide premium increases and take into account the increase in costs associated with Plan 1 claims. For example, recent annual industry standard premium rates have increased by approximately 35%. HIRSP costs have risen by a smaller amount, hence the smaller rate increases for HIRSP, relative to the industry standard. According to state law, HIRSP premiums must fund 60% of plan costs and cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market.

A second type of medical coverage provided by HIRSP is for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Twelve percent of the 13,645 HIRSP policies in effect in March 2002, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 30.8%. Rate increases for specific policyholders range from 23.3% to 33.5%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect general and industry-wide cost increases and adjust premiums to a level in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

The Department through this rulemaking order proposes to amend ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in

s. 149.143 (2) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this rulemaking order is also increasing total HIRSP insurer assessments and reducing provider payment rates, in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2001. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2002. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$24,750,178. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$26,003,305. On April 17, 2002, the HIRSP Board of Governors approved the calendar year 2001 reconciliation process. The Board also approved the HIRSP budget for the plan year July 1, 2002 through June 30, 2003.

Publication Date: June 17, 2002
Effective Date: July 1, 2002
Expiration Date: November 28, 2002
Hearing Date: July 15, 2002

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

Finding of emergency

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

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

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

1. Characteristics of the specific disorder, including disease incidence, morbidity and mortality.
2. The availability of effective therapy and potential for successful treatment.

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

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

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

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

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

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

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

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

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

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

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

Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2002 and relating to the Wisconsin health care insurance plan's primary limits.

Finding of emergency

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

Actuarial and accounting data necessary to establish PCF fees is first available in January of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2002.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 02-035, will be filed with the secretary of state in time to take effect September 1, 2002. Because the fund fee provisions of this rule first apply on July 1, 2002, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 3, 2002.

Publication Date: June 20, 2002
Effective Date: July 1, 2002
Expiration Date: November 28, 2002

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

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

Finding of emergency

Sections 1 and 2. Defines an archery hunt as it relates to the special chronic wasting disease (CWD) control and management hunts.

Section 3. Defines CWD.

Section 4. Defines the CWD eradication zone.

Section 5. Defines the CWD intensive harvest zone.

Section 6. Defines the CWD management zone.

Section 7. Defines adequate public notice and information as it relates to defining a new CWD eradication zone.

Section 8. Defines a section of land.

Section 9. Defines a shotgun hunt as it relates to the special CWD control and management hunts.

Section 10. Modifies those deer management units participating in the regular deer gun season framework.

Sections 11 and 12. Modifies those state park properties that have a more restrictive deer season harvest limit and season framework.

Section 13. Defines all of the metro deer management units as Zone "M" and eliminates deer management unit 76M from the list of metro units which have a standard deer season framework and harvest limits.

Section 14. Updates exceptions to the regular deer archery season.

Section 15. Updates exceptions to the muzzleloader season.

Section 16. Creates the Special CWD management control hunt earn-a-buck seasons and framework for the gun and archery hunts in the deer management units, portions of deer management units and state parks that are included in the CWD management and intensive harvest zones.

Sections 17 and 18. Exempts units that are participating in the special CWD herd reduction hunts from the one-day youth antlerless deer hunt and the special herd control hunts.

Section 19. Authorizes the use of aircraft by the department to harvest, spot, rally and drive deer to help with the depopulation of deer within the eradication zone after all other control measures have been considered and also authorizes the use of buckshot from or with the aid of aircraft.

Sections 20 and 21. Prohibits the use of bait statewide for hunting and provides exceptions to allow baiting for bear hunting by imposing bait site, permit and date restrictions, and also allows the use of liquid scents for deer hunting.

Section 22. Requires participants in the CWD herd reduction hunts to comply with blaze orange clothing requirements.

Section 23. Modifies the overwinter populations for the deer management units that are included in the CWD management zones and identifies 5 new units that are created as the result of splitting the units when defining the boundaries of the CWD zones.

Section 24. Creates special CWD deer permits that authorize the harvesting of deer within the CWD management zones and creates a permit that will be issued to hunters to replace their carcass tag should they shoot a deer that appears to be diseased while hunting and defines the conditions for their use.

Section 25. Develops transportation and sampling guidelines for deer harvested within and outside of the CWD management zones.

Section 26. Develops registration guidelines for deer harvested within the CWD management zones.

Section 27. Updates state park properties that may conduct firearm, muzzleloader and late bow seasons.

Section 28. Establishes deer seasons and weapon restrictions for specific state park properties.

Section 29. Creates a map that identifies the CWD management zone and the CWD intensive harvest zone.

Section 30. Provides the department with the authority to utilize additional measures when necessary, within their legislative authority, to control the spread of CWD in the state.

Section 31 and 32. Authorizes the shooting of deer in waterfowl closed areas that are located within the CWD management zones.

Section 33 and 34. Identifies deer within the CWD eradication zone as causing a nuisances and authorizes the department to issue permits to landowners and their permittees to harvest deer during periods defined by the department throughout the year and defines the parameters of their issuance and guidelines for their use.

Section 35. Defines bird feeding devices and structures.

Section 36. Defines small mammals.

Section 37. Prohibits feeding of wildlife and outlines exceptions for birds and small mammals.

Section 38. Creates a free state park hunting access permit that is required to hunt in the state parks participating in the special CWD control hunts.

Publication Date: July 3, 2002
Effective Date: July 3, 2002
Expiration Date: November 30, 2002
Hearing Date: August 12, 2002

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

Finding of emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt

case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent negotiated amendments to the agreement between the State and the Red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. Failure of the State to do so will not only deprive state fishers of increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: July 8, 2002
Effective Date: July 8, 2002
Expiration Date: December 5, 2002
Hearing Date: August 19, 2002

3. Rules adopted revising **ch. NR 10**, relating to the 2002 migratory game bird season.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 30, 2002
Effective Date: August 30, 2002
Expiration Date: January 27, 2003
Hearing Date: September 26, 2002

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

Finding of emergency

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

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

Publication Date: October 3, 2002
Effective Date: October 3, 2002
Expiration Date: March 2, 2003
Hearing Date: November 11, 2002
[See Notice This Register]

Natural Resources (2)

(Environmental Protection – General Chs. NR 100—)

1. Rules adopted creating **ch. NR 109**, relating to aquatic plant management.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Many lake communities traditionally manage aquatic plants on the waters of the state to allow navigation and other beneficial recreational water use activities and to control invasive aquatic species. Without aquatic plant management, many bodies of water would be inaccessible due to excessive growth of invasive aquatic plants like Eurasian water milfoil and purple loosestrife and native aquatic plant communities would be threatened. 2001 WI Act 16 included new statutory language, s. 23.24, Stats., for the protection of native aquatic plant communities and control of invasive plant species. The new law prohibits a person from managing aquatic plants without a valid aquatic plant management permit issued under this chapter. This order is designed to allow beneficial aquatic plant management activities to continue on waters of state through the 2002 open-water, growing season. Normal rule-making procedures will not allow the establishment of these rules for the 2002 open-water, aquatic plant-growing season. Failure to create NR 109 will result in unnecessary threats to valued native aquatic plant communities by invasive species and loss of navigation and beneficial recreational activities on Wisconsin lakes, rivers and wetlands.

Publication Date: May 10, 2002
Effective Date: May 10, 2002
Expiration Date: October 7, 2002
Hearing Dates: July 22, 23, 24 & 25, 2002

2. Rules adopted creating **ch. NR 173**, relating to the administration of the brownfield green space and public facilities grant program.

Finding of emergency

This rule is being promulgated as an emergency rule in accordance with s. 227.24, Stats. This rule sets forth the procedures required to award grants that will be used to remediate environmental contamination in order to protect public health and restore the environment. It is necessary to follow the emergency rule procedures because if the standard procedures were followed the rule would not take effect in time to have the money awarded and encumbered within the 2003 fiscal year. As a result, the appropriation would lapse and funding would not be available to fund the environmental remediation of properties around the state.

Publication Date: August 29, 2002
Effective Date: August 29, 2002
Expiration Date: January 26, 2003
Hearing Date: October 11, 2002

Public Instruction

Rules were adopted repealing **chs. PI 13 and 16** and creating **ch. PI 13** relating to limited-English proficient pupils.

Finding of emergency

The Department of Public Instruction finds that 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:

- School boards and charter schools will be administering the 4th, 8th, and 10th grade Wisconsin Knowledge and Concept Examinations (WKCE) under s. 118.30, Stats., in November 2002. In order for school boards to make a determination as to whether a limited-English proficient pupil should take a WKCE test or take an alternate assessment, rules need to be in place as soon as possible.

- The U. S. Department of Education has required the assessment procedures of LEP pupils be in place prior to administration of these tests. If the assessment/testing procedures are not in place by November 2002, Wisconsin could lose more than \$130 million in federal Title I funds.

Publication Date: October 1, 2002
Effective Date: October 1, 2002
Expiration Date: February 28, 2003

State Treasurer

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

Exemption from finding of emergency

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

Analysis prepared by the Office of the State Treasurer

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

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

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

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

Section Treas 1.09 details how to make contributions to an account, including minimum and maximum contribution limits, and how to "roll over" an account balance to another

section 529 program. IRS requirements relating to investment direction are also detailed.

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

Publication Date: January 7, 2002
Effective Date: January 7, 2002
Expiration Date: See Section 15, 2001 Wis. Act 7
Hearing Date: March 5, 2002

Veterans Affairs

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

Finding of Emergency

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

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

The Department proposes to raise the amount to the statutory maximum for several compelling reasons. Raising the maximum loan amount will help stimulate the economy by providing additional resources for veterans and their families. Due to the state of the economy, veterans and their families have a significant need for financial assistance in the form of below market interest rate loans. Additionally, the personal loan program is the primary source of revenue for the veterans trust fund. Immediate infusion of additional assets in the form of personal loans will provide significant financial support for the trust fund. It is expected that increasing the maximum loan amount will result in approximately \$4,000,000 of new loan assets over the 8-month period in which it would take to promulgate this rule change using the regular promulgation procedure.

Publication Date: August 5, 2002
Effective Date: August 5, 2002
Expiration Date: January 2, 2003

Workforce Development

(Unemployment Insurance, Chs. DWD 100-150)

Rules adopted amending **s. DWD 129.01 (1)**, relating to extension of the time period allowed for filing an initial claim for unemployment insurance benefits.

Exemption from finding of emergency

Pursuant to 2001 Wis. Act 35, s. 72 (2) (b), the Department is not required to provide evidence that promulgating this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for this rule.

Analysis Prepared by the Department of Workforce Development

Statutory authority: s. 108.08 (1), Stats. and 2001 Wis. Act 35, s. 72 (2) (b).

Statute interpreted: s. 108.08 (1), Stats.

Pursuant to s. 108.08 (1), Stats., a claimant must give notice to the department with respect to a week of unemployment "within such time and in such manner as the department may by rule prescribe" in order to receive benefits for that particular week.

Under the current s. DWD 129.01 (1), a claimant must file his or her initial claim for benefits no later than the close of the week in which the claimant intends the claim to start. For example, a claimant who files two weeks late cannot obtain unemployment benefits retroactively unless the department waives the time limit under the exceptional circumstances provision in s. DWD 129.01 (4). This emergency rule extends the time period for filing an initial claim by seven days beyond the end of the week for which the claimant expects to get the benefits.

Increasing the time frame within which a claimant may file a timely initial unemployment insurance benefit claim would reduce disparate treatment of claimants in like situations by removing the subjectivity of finding "exceptional circumstances" before allowing late claims and ease an increasing workload for the unemployment insurance division. The institution of this change would eliminate approximately 67% of untimely filing issues. This would translate into savings of 5 to 6 full-time employees (FTEs). These positions would then be able to turn attention and time to resolving other eligibility issues at a time when the unemployment insurance division is currently experiencing a sharp increase in workload and anticipates continued increase over the next three years.

The telephone initial claims system allows the department to be more lenient in proscribing filing deadlines due to its expanded accessibility and speed in identifying and resolving eligibility issues. Programming changes to the telephone initial claims system are estimated to require 50 hours at approximately \$50 to \$60 per hour for a total of \$2500 to \$3000.

Publication Date: April 14, 2002

Effective Date: April 14, 2002

Expiration Date: See 2001 Wis. Act 35, Section 72 (2) (b)

Hearing Dates: July 15, 16 & 17, 2002

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Retail Food Establishments.

Policy Analysis

Preliminary Objectives:

- Work with the Department of Health and Family Services (DHFS) to update the state's retail food code. DATCP and DHFS have adopted a common retail food code under chs. ATCP 75 and HFS 196, Wis. Adm. Code. ATCP 75 covers retail food establishments such as grocery stores, supermarkets and convenience stores. HFS 196 regulates food service establishments (restaurants). Both rules are based on the federal Model Food Code published by the U.S. Food and Drug Administration (FDA).

- Incorporate updates from the 2001 federal Model Food Code into the state retail food code.

- Clarify licensing requirements for retail food businesses.

- Make technical changes and practical improvements, as necessary.

- Maintain consistency between DATCP and DHFS rules, and improve consistency where possible.

Preliminary Policy Analysis:

DATCP and DHFS adopted uniform retail food rules, based on the federal Model Food Code, effective February 2001. This has helped to eliminate conflicting regulatory requirements, especially for businesses that combine grocery and restaurant operations. It has reduced confusion for business owners, and has eliminated duplicative licensing and inspection.

Minor rule revisions are needed to incorporate changes in the federal Model Food Code, and to make the rules as clear and practical as possible. DATCP and DHFS plan to collaborate on the proposed changes, with input from affected businesses.

Policy Alternatives:

- Do nothing. If DATCP does nothing, Wisconsin's retail food code will be out of step with the current federal Model Food Code. The code will not be as clear, or as practical, as it could be. Wisconsin's retail food industry may be put at a competitive disadvantage, and may incur unnecessary costs. Food code provisions may no longer be based on the latest science, and there may be less effective and efficient protection for food consumers.

DATCP proposes to revise ch. ATCP 75, Wis. Adm. Code, under authority of ss. 93.07(1), 97.30(5) and 227.14(1s), Stats.

DATCP estimates that it will use approximately 0.5 FTE staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will assign existing staff to develop this rule.

Athletic Trainers Affiliated Credentialing Board

Subject

To modify s. AT 3.02 to clarify that the requirement for meeting continuing education requirements as a precondition for renewal does not apply to an application for renewal of a license that expires on the first renewal date after the date on which the board initially granted the license.

Objective of the rule. Currently, s. AT 3.02 does not explicitly provide that meeting continuing education requirements as a precondition for renewal does not apply to an application for renewal of a license that expires on the first renewal date after the date on which the board initially granted the license. Because of the license renewal cycle (July 1 of each even-numbered year) and the fact that licensees may be granted a license at any time prior to a renewal date certain licensees do not have a full two-years prior to the first renewal date to satisfy continuing education requirements. Modification of the rule will place all renewals by licensees subject to a full two year opportunity to meet required continuing education requirements.

Policy Analysis

Modifying s. AT 3.02 will assist first time renewal licensees by not requiring them to meet continuing education requirements on a potentially truncated schedule as a precondition for renewal.

Statutory authority

Statutory authority: Sections 227.11 (2) and 448.954 and 448.955, Stats.

Staff time required

100 hours.

Health and Family Services

Subject

The Department proposes to amend ch. HFS 115, rules relating to the screening of newborn infants for congenital disorders. The objective of the proposed rulemaking is to add five metabolic disorders to the list of eight disorders in s. HFS 115.04 for which newborns are currently tested.

Policy Analysis

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

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

1. Characteristics of the specific disorder, including disease incidence, morbidity and mortality.
2. The availability of effective therapy and potential for successful treatment.
3. Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost.
4. The availability of mechanisms for determining the effectiveness of test procedures.
5. Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs.
6. The expected benefits to children and society in relation to the risks and costs associated with testing for the specific condition.

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

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

Collectively, these disorders occur, on average, once in every 30,000 births. Persons with these disorders can experience serious medical consequences such as failure-to-thrive, developmental delays, seizures, mental retardation and death.

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

The Advisory Group also recommended that the Department immediately begin screening newborns for these additional disorders. Before this testing can begin, the Department must change its rules to add the five new disorders to the existing list under s. HFS 115.04. Therefore, on October 11, 2002, the Department issued emergency rules adding these five disorders to the list, effective October 12, 2002. The proposed permanent rules would replace the emergency rules, which will expire in 2003.

Statutory authority

Sections 253.13 (1) and 227.11 (2) (a), Stats.

Staff time required

The Department estimates less than five hours of development time will be needed.

Marriage and Family Therapy, Professional Counseling & Social Worker Examining Board

Subject

Objective of the Rule. To permit the Social Worker Section to accept from applicants for social worker certification a foreign degree determined by a national accrediting organization to be equivalent to a degree from an accredited school.

Policy Analysis

Under current requirements, applicants for social worker certification must have earned a social work degree from a school accredited by the Council on Social Work Education. Applicants otherwise qualified are prevented from obtaining Wisconsin certification if they obtained a degree in another country. The Council on Social Work Education has a process for determining equivalency of degrees and in fairness to graduates of foreign schools, the Social Worker Section wishes to rely on that process for accepting equivalent degrees.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), and 457.02 (5m), Stats.

Staff time required

150 hours.

Marriage and Family Therapy, Professional Counseling & Social Worker Examining Board

Subject

Objective of the Rule. To establish criteria for licensees of the board to treat alcohol or substance dependency or abuse as a specialty.

Policy Analysis

Section 457.02 (5m), Stats., authorizes the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board to promulgate rules establishing educational and supervised training requirements to permit its credential-holders to treat alcohol or substance dependency or abuse as a specialty. The proposed rules will implement the legislative intent of 2001 Wisconsin Act 80. Without newly-promulgated rules, the only alternative for the board's credential-holders will be to obtain certification from the Wisconsin Certification Board.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), and 457.02 (5m), Stats.

Staff time required

150 hours.

Marriage and Family Therapy, Professional Counseling & Social Worker Examining Board

Subject

Objective of the Rule. To require that applicants for licensure as a Professional Counselor pass the National Counselor Mental Health Certification Examination (NCMHCE).

Policy Analysis

Under new law effective November 1, 2002, Licensed Professional Counselors may practice psychotherapy independently. In order to ensure that LPCs are qualified to practice psychotherapy independently, the Professional Counselor Section wishes to require all new applicants for licensure to pass the national clinical exam, the NCMHCE. Without this change, there will be less certainty that Professional Counselors are qualified to practice psychotherapy, and requiring passage of the NCMHCE will ensure greater protection of the public.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), and 457.03 (1), Stats.

Staff time required

150 hours

Natural Resources**Subject**

Section NR 25.09, pertaining to commercial trap netting in Lake Michigan and s. NR 25.06, pertaining to commercial harvest limits for smelt in Lake Michigan.

Policy Analysis

Trap Netting. Commercial trap netters fishing in Lake Michigan are required to remove trap nets from the area south of Algoma during the period starting June 28 and ending on Labor Day each year. The purpose of this requirement is to minimize physical interference between commercial nets and sport trollers. In waters open to trap net fishing north of Algoma, trap nets may remain in the water all year (although they are typically removed by October 26, the start of the whitefish closed season). Commercial fishers in the area south of Algoma have repeatedly requested that the trap netting season be extended. Some sport fishers in the Sheboygan area, including the Sheboygan Area Great Lakes Sport Fishermen, have supported this request. Others, especially in the Manitowoc–Two Rivers area have vigorously opposed it. Opposition to any change is based primarily on concern for the safety of sport trollers who might be at risk if their gear became entangled with a trap net. Department staff have attempted to find a generally acceptable compromise, but without success. Now the Department is proposing a compromise solution to the controversy. It would open the trap netting season during the summer in all areas south of Algoma, with exception of the area between Manitowoc and Two Rivers. In addition: a) it would limit the number of trap nets that could be set by each commercial fishing license holder, and b) it would establish additional net–marking requirements to help sport trollers avoid the trap nets. This will be controversial.

Smelt Harvest Limits. Participants in the 2002 Conservation Congress spring hearings voted overwhelmingly in favor of closing commercial trawling in Green Bay. We asked our citizen advisory group, the Lake Michigan Fisheries Forum, to discuss the issue and advise the Department. Following initial discussions there, it appears that a compromise recommendation might be developed by the Forum. The Department would like to hold open the option of advancing a compromise recommendation regarding smelt, in combination with the trap net rule change summarized above. This will also be controversial.

Statutory authority

Sections 29.041, 29.014 (1), 29.519 (1) (b) and 227.11 (2) (a), Stats.

Staff time required

Approximately 15 hours will be needed by the Department.

Natural Resources**Subject**

Revision to Chapter NR 45 which contains the administrative rules for the use of Department properties. Department staff review Chapter NR 45 every two years and suggest revisions designed to ensure the health and safety of people using Department properties, and propose use regulations necessary for the protection of natural resources on the properties.

Policy Analysis

Many of the proposed changes are for the purpose of clarifying existing rules or increasing consistency between properties. There is also a rule being proposed to protect cultural resources (no sledding, skiing, snowboarding on the Indian Mounds at Aztalan) and a proposed requirement for dog sledders to obtain permits. Fee increases are being proposed for items such as trail passes, group camping and electrical services at campgrounds. An increase in the number of Type “A” campgrounds is being proposed which would result in increased fees. It has been over 10 years since the last camping fee increase. The increases are needed to help offset the continued rising cost of providing quality services and to offset the GPR reductions that all bureaus and agencies are facing. Local market conditions in the public and private sector indicate that such an increase is supportable.

Statutory authority

Statutory Authority:ss. 23.09 (2), 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats.

Staff time required

Approximately 110 hours will be needed by the Department.

Natural Resources**Subject**

Creation of a permanent rule to eradicate, manage and control Chronic Wasting Disease (CWD) in Wisconsin,

Policy Analysis

In February 2002, the department was informed three deer samples that were collected in Western Dane County during the 2001 November gun season tested positive for CWD. Since this discovery, intensive sampling and special landowner hunts have resulted in the discovery of a total of 31 CWD positive deer in the CWD surveillance area (Eradication Zone). Significant public involvement, discussion with national experts, other states and staff recommendations led to the development of the original CWD Emergency Rule which will expire on September 1, 2003. Since CWD is a disease that the state of Wisconsin will be dealing with for many years, the need for permanent rules to help control and eradicate this disease will be required. This rule package is the department’s recommendation to deal with CWD in the state and request the Board approve the package for public comment.

The permanent rule would replace the measures that were approved by the Natural Resources Board in June 2002 as part

of the CWD Emergency Rule Package. Components of the permanent rule vary only slightly from the emergency rule and include provisions for the department to establish special deer hunting zones, reduce the deer herd through aggressive hunting seasons, landowner permits and department authorities. Also included are provisions for registration of deer, restrictions on deer baiting and wildlife feeding.

Groups likely impacted will be landowners in close proximity to CWD positive cases, deer hunters, meat processors and other businesses.

Statutory authority

Sections 29.014, 29.063, 29.307, 29.335 and 167.31, Stats.

Staff time required

Approximately 246 hours will be needed by the Department.

Natural Resources

Subject

Revisions to chs. NR 419, 422, 431, 439, 445, 447, 448, 449 and 484, Wis. Adm. Code, to clarify compliance related rule provisions.

Policy Analysis

The changes are necessitated by changes in federal reference test methods, updates of provisions incorporated by reference, errors in the current chapters and clarification language for existing rules which are not clear.

Statutory authority

Section 285.11 (6), Stats.

Staff time required

Approximately 115 hours will be needed by the Department.

Psychology Examining Board

Subject

Objective of the Rule. To establish rules under which licensees of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board may engage in psychometric testing.

Policy Analysis

2001 Wisconsin Act 80 authorized the Psychology Examining Board and the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board to promulgate rules under which licensees of the latter board may engage in psychometric testing. Non-promulgation will bar licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors from performing psychometric testing.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 457.033, Stats.

Staff time required

150 hours.

Submittal of rules to legislative council clearinghouse

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

Corrections

Rule Submittal Date

On October 4, 2002, the Department of Corrections submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.15, Stats.

The proposed rule-making order relates to medical, dental and nursing copayment charge.

Agency Procedure for Promulgation

Public hearings will be held November 18, 2002.

Contact Person

Julie Kane
(608) 240-5015

Bureau of Fisheries Management and Habitat Protection

(608) 261-6423

Psychology Examining Board

Rule Submittal Date

On October 9, 2002, the Psychology Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 455.08, Wis. Stats.

The proposed rule-making order relates to examinations, supervised experience, qualifications and responsibilities of supervisors, licensure by comity, reciprocity, holders of the certificate of professional qualification and senior psychologists, continuing education, renewal and professional conduct.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 13, 2002, at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Person

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

Employee Trust Funds

Rule Submittal Date

Notice is hereby given that on Thursday, October 10, 2002, the Department of Employee Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ss. ETF 10.30, 10.31, 10.32, 10.33 and 10.34.

Analysis

The subject matter of the proposed rule relates to participation in the variable division of the trust fund.

Agency Procedure for Promulgation

A public hearing is scheduled for Tuesday, November 19, 2002 at 1:00 p.m. in room GA, at the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

Contact Person

If you have any questions, you may contact Shelly Schueller, Office of the Secretary, at (608) 266-6611.

Natural Resources

Rule Submittal Date

Notice is hereby given that on October 4, 2002, the Department of Natural Resources submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order affecting ch. NR 191.

Analysis

The subject matter of the proposed rule relates to lake protection and classification grants.

Agency Procedure for Promulgation

Public hearings are scheduled for November 14, 19 and 20, 2002.

Contact Person

Carroll Schaal

Regulation and Licensing

Rule Submittal Date

On October 8, 2002, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 440.03 (14) (am), Stats., as created by 2001 Wisconsin Act 80 and s. 440.03 (14) (d), Stats., as amended by 2001 Wisconsin Act 80.

The proposed rule-making order relates to changes to music, art and dance therapists who practice psychotherapy.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 12, 2002 at 10:00 a.m. in Room 180., 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Person

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

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 02-121]

(reprinted from Mid-October Wis. Adm. Register)

Rule Related to Plant Inspection and Pest Control.

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to repeal s. ATCP 21.05 (3) (c); to renumber s. ATCP 21.01 (10) to (15); to repeal and recreate s. ATCP 21.05 (3) (a) and (b) and to create s. ATCP 21.01 (9) and (10) and s. ATCP 21.16; relating to plant pests and certification and service fees. The department will hold two hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until December 2, 2002, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4574. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by October 22, 2002, by contacting Paula Noel, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4574 or email paula.noel@datcp.state.wi.us. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Date, Time and Location

Tuesday, October 29, 2002, 1:00 p.m. until 3:00 p.m.
WI Dept. of Agriculture, Trade & Consumer Protection
Room 266

2811 Agriculture Drive
Madison, WI 53718
Handicapped accessible

Wednesday, October 30, 2002, 1:00 p.m. until 3:00 p.m.
WI Dept. of Natural Resources Service Center
5301 Rib Mountain Road
Wausau, WI 54401
Handicapped accessible

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

Statutory authority: ss. 93.07 (1) and (12), 94.01 and 94.76, Stats.

Statutes interpreted: ss. 93.06 (1m) and (1p), 93.07 (12) and (13), 94.01, 94.11, 94.50 and 94.76, Stats.

This rule modifies fees for plant inspection and certification services. It also establishes import controls on hemlock plants and plant products, to prevent the introduction of a serious hemlock pest in this state.

Fees for Plant Inspection and Certification

The Wisconsin department of agriculture, trade and consumer protection (DATCP) inspects plants, plant products and bees (apiaries) at the request of persons who wish to export those products. DATCP provides this inspection service, for a fee, under ch. 94, Stats. Based on its inspection,

DATCP certifies that the plants, plant products or bees are apparently free of harmful diseases and pests. DATCP establishes inspection and certification fees by rule. This rule modifies DATCP's current fee formula. This rule will increase fees for some requesters, and reduce fees for others.

Under the current fee formula, DATCP charges for mileage (32.5¢ per mile), food and lodging costs, plus \$20 per hour for staff time. There is a minimum fee of \$20 per inspection. Because most inspectors are based in Madison, charges increase with distance from Madison. DATCP also charges a fee of \$15 per certificate issued. Current fees do not cover indirect costs related to general pest surveys, trapping and testing, although those activities provide important information for the certification process.

This rule establishes a new "flat" fee of \$50 for each inspection certificate that it issues. There will be no other charge for inspection, travel, food or lodging costs (except for field inspections of crops). The flat fee will cover these costs, as well as a portion of DATCP's indirect costs for pest surveys, pest trapping and laboratory analysis. The flat fee is expected to generate approximately \$30,000 in additional revenues for the program as a whole.

This rule establishes a lower fee of \$15 for certificates that merely certify the identity or origin of plants or plant materials, without certifying that they are disease-free or pest-free. This rule maintains the current fee of \$15 for ginseng shipment certificates issued under s. 94.50 (3), Stats.

The following table shows the current and proposed fees.

Activity or Certificate	Current Fee	Proposed Fee
Requested inspections of plants, plant products, bee colonies and related materials.	\$20/hour for inspection and travel time plus vehicle mileage, meal and lodging expenses. Minimum charge is \$20.	No separate fee, except for field inspections of crops (see below). Aggregate costs are covered by certificate charges (see below).
Field inspection of crops such as corn, sunflowers, soybeans, onions, potatoes, snap beans and turf.	\$1.50 per acre (minimum \$50), plus mileage, food and lodging expenses.	\$1.50 per acre (minimum \$50) plus mileage, food and lodging expenses.
Certification that materials are disease-free or pest-free (phytosanitary certificate, plant health certificate or apiary inspection certificate).	\$15 per certificate.	\$50 per certificate.
Ginseng shipment certificate.	\$15 per certificate.	\$15 per certificate.

Hemlock Woolly Adelgid; Import Controls

DATCP regulates the movement of plant pests under s. 94.01(1), Stats. Currently, the states of Alaska, California, Oregon and Washington, and portions of 13 other states, are infested with hemlock woolly adelgid. Hemlock woolly adelgid is a serious pest that kills native and ornamental hemlock trees, an important Wisconsin resource. This rule prohibits imports of the following items from infested areas identified in the rule:

- Hemlock seedlings or nursery stock.
- Hemlock logs or lumber with bark.
- Uncomposted hemlock chips with bark.
- Uncomposted hemlock bark.

This prohibition does not apply if any of the following apply:

- A pest control official in the state of origin inspects the imported items and certifies any of the following in a phytosanitary certificate that accompanies the import shipment:
 - That the items originate from non-infested premises and have not been exposed to hemlock woolly adelgid.
 - That the items were found, at the time of inspection, to be free of hemlock woolly adelgid.
 - That the items have been effectively treated to destroy hemlock woolly adelgid. The phytosanitary certificate shall specify the pesticide or other treatment used.
 - That the items are produced, processed, stored, handled or used under conditions, described in the phytosanitary certificate, that effectively preclude the transmission of hemlock woolly adelgid.
- The items are imported under a written agreement between the importer and DATCP. DATCP may cancel the agreement at any time. The agreement must specify import terms and conditions including:
 - The name and address of the importer and import recipient.
 - The proposed source and destination of each import shipment.
 - The proposed import dates or time period.
 - The items to be imported in each proposed shipment.
 - The proposed size and frequency of import shipments.
 - The proposed method of import.
 - Required import conditions that will, in the department's opinion, effectively prevent the spread of hemlock woolly adelgid.

These import controls imposed by the rule would have some costs in terms of notifying affected industries but could be absorbed by existing staff. The department will present information through development of written material, press releases, and cooperative efforts with affected industries. Ongoing duties would be to monitor industry compliance with the rule. Industry compliance is already monitored for other sections of ATCP 21 and this new section would be a small addition.

Fiscal Estimate

The changes in the inspection and certification service fees would increase revenues to a program revenue account. Existing fees do not cover actual expenses of the program. The new fee structure will allow the department to recover the cost of administering the phytosanitary program.

Initial Regulatory Flexibility Analysis

Fees for Plant Inspection and Certification & Hemlock Woolly Adelgid; Import Controls

This rule repeals and recreates Wisconsin's current Inspection and Certification rules. This rule creates a fee of \$50.00 per certificate, which will include mileage, meals, lodging and staff time for inspection and travel. The current fee for certification is \$15.00 for a certificate, plus mileage (.325 cents/mile), meals, lodging and staff time (\$20.00/hour, with a \$20.00 minimum) for inspection and travel.

This rule also creates import controls for hemlock woolly adelgid, a serious pest of hemlock trees in the eastern US. This insect has been intercepted on nursery stock in other states and can possibly be spread by logs, mulch or bark chips of hemlock trees.

Small Businesses Affected by this Rule

A "small business," as defined in s. 227.114 (1) (a), Stats., means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than twenty-five full-time employees or which has gross annual sales of less than \$2,500,000.

Small nurseries and sole proprietors shipping interstate or internationally are the small businesses that will be affected by this rule.

Effects on Small Business

This rule may have some impact on nurseries in Wisconsin that purchase hemlock nursery stock from states infested with hemlock woolly adelgid, because costs incurred by nurseries in other states to meet our requirements may be passed along to the receiving nurseries in Wisconsin. There would be no extra skills required since nurseries deal with similar certificates for other plant pests.

The fee increase for certificates (\$15 to \$50) may decrease the number of certificates issued by a small amount. Some businesses, mostly larger enterprises, request certificates as a sort of insurance policy; the country to which they are exporting doesn't require a certificate but having one expedites the importation of the commodity. Many of the companies will pass the increased cost onto their customers.

Small businesses may see more efficient turnaround time in receiving their certificates since no calculations will need to be made by the department concerning mileage, meals, hours and lodging. Small nursery businesses receiving plant health certificates may reconsider their current practice of requesting the certificate if they don't ship nursery stock interstate because of the increase in the fee.

Notice of Hearing

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors [CR 02-111]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 443.03, Stats., the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors will hold a public hearing at the time and place indicated below to consider an order to create s. A-E 3.03 (5), relating to architectural interns.

Hearing Date, Time and Location

Date: **November 13, 2002**
 Time: 10:00 a.m.
 Location: 1400 East Washington Avenue
 Room 180
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by November 20, 2002 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

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

Statute interpreted: s. 443.03, Stats.

The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors proposes to create s. A–E 3.03 (5) to permit the use of an architect–related title prior to formal licensure. This rule will allow a person in the process of acquiring supervised experience as an architect to use the title “architectural intern.” The proposed rule will not modify the registration requirements for architects, but will permit use of the term “architectural intern” while a potential licensee is in the process of gaining the required experience.

TEXT OF RULE

SECTION 1. A–E 3.03 (5) is created to read:

A–E 3.03 (5) An individual acquiring supervised experience in architectural work under this section for the purpose of satisfying the requirements of s. 443.03 (1) (b), Stats., may use the title “architectural intern.”

Copies of Rule and Contact Person

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

Notice of Hearings

Corrections [CR 02–123]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 302.386 (3) and (4), Stats., the department of corrections proposes the following rules relating to medical, dental and nursing copayment charge:

Hearing Information

On the following dates, public hearings will be held relating to the permanent proposed rule CR02–123, relating to medical, dental and nursing copayment charge as well as the emergency rule ch. DOC 316 effective September 3, 2002.

Date & Time	Location
November 18, 2002 Monday 11:00 a.m. – 1:00 p.m.	Wood County Courthouse 400 Market Street Room 210B (Second Floor) Wisconsin Rapids, Wisconsin
November 18, 2002 Monday 11:00 a.m. – 1:00 p.m.	State Office Building 141 N.W. Barstow Street Room 137 A Waukesha, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

Pursuant to 2001 Wisconsin Act 109, the department is required to increase the copayment charge for medical, dental or nursing services provided to inmates and juveniles. The Act provides, in relevant part, the following:

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

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

Currently, the department’s emergency rule, effective September 3, 2002 pursuant to legislative requirement, provides for a \$7.50 copayment, increased from the previous amount of \$2.50, under such circumstances as described above. This proposed rule, among other minor changes, makes the \$7.50 copayment permanent.

This rule:

- Makes permanent the medical, dental and nursing copayment charge to \$7.50 as required by 2001 Wisconsin Act 109 and consistent with the department’s current emergency rule.

- Eliminates the requirement that an inmate must “earn wages” before becoming responsible for the \$7.50 copayment, in regard to inmates who are not housed in a secured correctional facility (juvenile facility). This change is made as a result of prior legislation that removed the “earns wages” requirement from statute. See section 302.386 (3) Stats.

- Establishes criteria to exempt persons in a juvenile correctional facility who do not earn wages. The current rule effectively exempts juveniles from the copayment because they do not “earn wages” as required by the rule. However, since “earn wages” has been removed in this rule proposal, the department has created a specific exemption for persons in juvenile correctional facilities. Section 302.386(3)(c) grants the department authority to except or waive liability “under criteria that the department shall establish by rule.”

- Exempts liability for medical, dental or nursing services provided as a result of an injury sustained through an institution work assignment.

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

The Department of Corrections (DOC) under s. 302.386 (3) (b) is required to receive a minimum medical copayment of \$2.50 from any inmate requesting medical services or dental services. It should be noted the Department cannot deny medical services to any resident that requests services based on their lack of ability to pay. 2001 Wisconsin Act 109 required DOC to promulgate an emergency rule that required the Department to collect a minimum medical copayment of \$7.50 from every inmate that requests medical services. The Department is now requesting that the provisions included in the emergency rule be made permanent.

In FY01, DOC received 47,000 request from inmates for services and collected \$117,500 in revenue. 2001 Wisconsin Act 109 is estimating \$235,000 in additional revenue will be collected in medical copayments in FY03, or a total of \$352,500 on an annual basis. (A full copy of the fiscal estimate may be obtained through the contact person listed below.)

Contact Person

Julie Kane (608) 240–5015

Office of Legal Counsel

P.O. Box 7925

Madison, Wisconsin 53707–7925

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non–English, large print or taped

version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments

Written comments on the proposed rules received at the above address no later than November 25th, 2002, will be given the same consideration as testimony presented at the hearing.

Notice of Hearing Employee Trust Funds [CR 02-126]

In accord with the provisions of s 227.16 (1), Stats., the Wisconsin Department of Employee Trust Funds will hold a public hearing to review this proposed rule on participation in the variable division of the trust fund. The proposed rule repeals and recreates s ETF 10.30, and repeals ss. ETF 10.31, 10.32, 10.33 and 10.34 Wis. Adm. Code.

Hearing Date, Time and Location

Tuesday, November 19, 2002

1:00 p.m.

Room GA

801 West Badger Road

Madison, Wisconsin.

The public record on this proposed rule making will be held open until 4:30 p.m. on Thursday, November 21, 2002 to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Shelly Schueller, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931.

Analysis Prepared by the Wisconsin Department of Employee Trust Funds

The Department of Employee Trust Funds is required by Wis. Stats. s. 227.10 (1) to promulgate as a rule each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. 1999 Wisconsin Act 11 amended Wis. Stats. s. 40.04 (7) (a) to permit all participating employees on or after January 1, 2001 to elect to have 50% of their future required and additional contributions deposited in the Variable Division of the Trust Fund. 1999 Wisconsin Act 11 also permits former Variable Division Trust Fund participants who completely cancelled their original variable participation before December 31, 1999 to re-elect to participate in the Variable Division of the Trust Fund.

The proposed rule repeals and recreates Wisconsin Administrative Code s. ETF 10.30, and repeals Wisconsin Administrative Code ss. 10.31, 10.32, 10.33, and 10.34. This will consolidate all administrative rules regarding participation in the Variable Division of the Trust Fund in one administrative code, streamlining the administrative code and providing for efficient administration of the Variable Division of the Trust Fund. It will further clarify the effective dates of a participant's election to participate in and to cancel participation in the Variable Division of the Trust Fund, how interest will be credited on late reported variable contributions to participants' accounts, and the effect of variable cancellations on individuals with multiple Wisconsin Retirement System accounts.

Authority for Rule

Authority for Rule: Sections 40.03 (1) (m), (2) (i), (7) (d), and (8) (d), 227.10 and 227.11 (2) (a), Stats.

Statutes Interpreted: Section 40.04 (7) (a), Stats.

Initial Fiscal Estimate

The proposed rule has no fiscal impact on county, city, village, town, school district, technical college district or sewerage district fiscal liabilities and revenues. This rule has no anticipated state fiscal effect during the current biennium and no future effect on state funds, which do not include the Public Employee Trust Funds.

The Department of Employee Trust Funds anticipates some cost to the Public Employee Trust Funds in administering this rule. These costs include one-time costs for programming computer systems to handle the new variable program, and on-going costs to process variable election forms and provide participants with information.

Initial Regulatory Flexibility Analysis

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Copies of Rule and Contact Persons

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, WI 53707, telephone (608) 266-1071. For questions about this rule making, please contact:

Shelly Schueller

Employee Benefits Policy Analyst

(608) 266-6611 or,

shelly.schueller@etf.state.wi.us.

Notice of Hearing

Natural Resources (Fish, Game, etc.)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 29.014, 29.041 (1) and 227.24, Stats., interpreting s. 29.041 (1), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-43-02(E) relating to the closure of carp fishing on Cedar lake and connected waters in Polk and St. Croix counties. The emergency order took effect on October 3, 2002. Spring viremia of carp virus is of international animal health concern. The virus affects fishes in the minnow family in nature. Minnows are extremely important forage fish for many important sport fishes in Wisconsin and are also important to the bait and aquaculture industries. Assuring the health of minnow populations and preventing the spread to other waters is important in preserving the welfare of Wisconsin citizens by protecting popular and economically valuable sport and bait fisheries. Little is currently known about the extent of the virus and until we can increase our knowledge, this closure will limit the potential spread from transport of fish and/or their parts and fluids.

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

November 11, 2002

Monday at 1:00 p.m.

Room 027, GEF #2

101 South Webster St.

Madison, WI

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 Pat Schmalz at (608) 266-8170 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There will be no fiscal impact.

Copies of Rule and Contact Persons

Written comments on the emergency rule may be submitted to Mr. Pat Schmalz, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than November 14, 2002. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [FH-43-02(E)] may be obtained from Mr. Schmalz.

Notice of Hearings

**Natural Resources
(Environmental Protection – General)
[CR 02-122]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 281.69 and 227.11 (2) (a), Stats., interpreting s. 281.69, Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of ch. NR 191, Wis. Adm. Code, relating to lake protection and classification grants. Changes contained in the biennial budget bill expanded the list of eligible lake grant activities to include shoreline restoration and a special class of wetland restoration grants that provide 100% state funding up to \$10,000 if the project is identified in a comprehensive land use plan. In addition to rules for these new grants, the code has been restructured into five subchapters. The revisions to rule include:

General Provisions

1. Changes in statutes allow the department to set the minimum and maximum dues levels for qualified lake associations to be eligible sponsors. A range of \$5 to \$50 dollars is proposed. Previously it was set at \$10 to \$25 by statute which precluded some organizations from eligibility.
2. Expands and clarifies the items required for a grant application and the priorities used to rank grant projects.
3. Requires that permits needed for all projects be obtained or applied for on or before the application deadline.
4. The value of donated, unskilled labor is changed from the federal minimum wage to a flat rate of \$8 per hour.

Land Acquisition

1. Several changes were made for consistency with the department's Stewardship Program including the elimination of legal costs as a grant eligible expense, clarifying the terms of grant contracts, adding definitions and policies specific to easements.
2. Clarifies that to be eligible, all conservation easements must be permanent.

Wetland and Shoreline Restoration

1. Creates new rules per changes in statutes for Wetland Restoration Incentive Grants that are 100% state funded up to \$10,000 if the project is identified in a comprehensive land use plan.
2. Wetland restoration projects at 75% state funding are retained but capped at \$100,000 per grant.
3. Creates new rules per changes in statutes for shoreline restoration grants. These rules are modeled after similar activities allowed under ch. NR 120 Priority Watershed and Priority Lake Program. A significant difference is that restored properties must be permanently deed restricted and a one time incentive payment of \$250 is allowed to encourage participation. All shoreline restoration grants are capped at \$100,000 per grant.

Lake Classification and Local Ordinance Development

Creates new rules to allow grants for implementing county lake classification programs and expands the discussion of all eligible projects.

Implementation of Lake Management Plans

1. Creates standards for approving lake management plan recommendations.
2. Clarifies the procedure for plan and application submittal and approval by the department.
3. Requires all funded management practices be maintained and operated for a minimum of 25 years. This will be established by contract and recorded with the deed for the property.

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

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

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

November 14, 2002

Thursday at 7:00 p.m.
Waukesha DNR Office
407 Pilot Court, Suite 100
Waukesha

November 19, 2002

Tuesday at 7:00 p.m.
Law Enforcement Room
Washburn Co. Courthouse
10 West 4th Avenue
Shell Lake

November 20, 2002

Wednesday at 7:00 p.m.
Maple Room
Wausau City Hall
407 Grant Street
Wausau

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Mr. Carroll Schaal at (608) 261-6423 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal impact to the State. While the proposed rule will mean more activities are available for grants to sponsors and the local share may be easier to raise for some projects, the appropriated amount statewide will not increase.

While we expect that participation may increase, at this time it is not possible for the department to estimate the impact on the lake grant program.

Copies of Rule and Contact Persons

Written comments on the proposed rule may be submitted to Mr. Carroll Schaal, Bureau of Fisheries Management and

Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than December 4, 2002. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH-42-02] and fiscal estimate may be obtained from Mr. Schaal.

Notice of Hearing

Psychology Examining Board

[CR 02-124]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 455.08, and interpreting ch. 455, Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise chs. Psy 1 to 5, relating to examinations, supervised experience, qualifications and responsibilities of supervisors, licensure by comity, reciprocity, holders of the certificate of professional qualification and senior psychologists, continuing education, renewal and professional conduct.

Hearing Date, Time and Location

Date: **November 13, 2002**
 Time: 9:30 a.m.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by November 29, 2002, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 455.08, Stats.

Statutes interpreted: ch. 455, Stats.

In this proposed rule-making order the Psychology Examining Board makes minor revisions to existing rules to remove inconsistencies and correct oversights, as follows:

Section 1.– include students in the definition of clients in a teaching setting.

Section 2. – eliminate a confusing reference to the requirements for licensure by comity.

Section 3. – clarify the examination that can be challenged.
 Section 4. – repeal a Note.

Section 5. – emphasize the training aspect of supervised experience; remove the requirement that pre-doctoral training be appropriate to the intended area of practice; repeal requirements for post-graduate supervised experience; add a requirement that post-doctoral training be appropriate to the intended area of practice; prevent one person from supervising both pre- and post-doctoral experience; eliminate an obsolete reference to “license-eligible” psychologists; add the ability of a supervisor to intervene; correct a grammar inconsistency; provide a more appropriate location for an explanatory note; and define additional supervisory responsibilities.

Section 6. – eliminate a confusing reference to the requirements for licensure by comity; add a requirement that applicants for licensure by reciprocity must satisfy a continuing education requirement; add a requirement that applicants who hold a certificate of professional qualification (CPQ) must satisfy a continuing education requirement; and add a requirement that applicants who are senior psychologists must satisfy a continuing education requirement.

Section 7. – correct a grammar inconsistency and provide a more appropriate location for an explanatory note.

Section 8. – eliminate a confusing reference to the requirements for licensure by comity; add a requirement that applicants for licensure by reciprocity must satisfy a continuing education requirement; add a requirement that applicants who hold a certificate of professional qualification (CPQ) must satisfy a continuing education requirement; and add a requirement that applicants who are senior psychologists must satisfy a continuing education requirement.

Section 9. – eliminate a meaningless word.

Section 10. – change the word “grade” to “score.”

Section 11. – clarify the examination that can be challenged.

Section 12. – clarify that certificates of attendance for continuing education are required only upon request. to clarify that continuing education programs must be relevant. to restrict certain types of continuing education courses.

Section 13. – grant continuing education credit for teaching and for publications.

Section 14. – clarify that certificates of attendance for continuing education are required only on request. to eliminate an obsolete reference to self-developed programs and to add a limit on continuing education credit for publications.

Section 15. – impose a continuing education requirement upon reinstatement and to remove an unnecessary phrase.

Section 16. – replace the word “patient” with “client.”

Section 17. – acknowledge an additional legal limit on confidentiality.

Section 18. – require licensees to cooperate with the board. to clarify actions to be taken upon termination of practice.

Section 19. – add a recordkeeping requirement.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearing
Regulation and Licensing
[CR 02-125]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.03 (14) (am), Stats., as created by 2001 Wisconsin Act 80, and s. 440.03 (14) (d), Stats., as amended by 2001 Wisconsin Act 80, and interpreting s. 440.03 (14) (am) and (d), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to revise chs. RL 140 to 142, relating to music, art and dance therapists who practice psychotherapy.

Hearing Date, Time and Location

Date: **November 12, 2002**
Time: 10:00 a.m.
Location: 1400 East Washington Avenue
Room 180
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by November 29, 2002 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: s. 227.11 (2), Stats., and s. 440.03 (14) (am), Stats., as created by 2001 Wisconsin Act 80 and s. 440.03 (14) (d), Stats., as amended by 2001 Wisconsin Act 80.

Statute interpreted: Section 440.03 (14) (am) and (d), Stats.

This proposed rule-making order implements the statutory changes made as a result of 2001 Wisconsin Act 80, relating to the Department of Regulation and Licensing. The rule changes are as follows:

- s. 1: changes a chapter title.
- s. 2: adds a reference to a new authorizing statute and the new statutory requirement for licensure of practitioners of psychotherapy.

s. 3: creates a definition of "license to practice psychotherapy".

s. 4: creates a reference to a definition of "psychotherapy".

s. 5: changes the wording of the section requiring information from applicants regarding arrests and convictions.

s. 6: makes minor wording changes and clarifies that a registered music, art or dance therapist who obtains a license to practice psychotherapy need pay only one fee.

s. 7: creates application requirements for a license to practice psychotherapy.

s. 8: creates the procedure for renewal of a license to practice psychotherapy.

s. 9: creates the procedure to issuance of a license to practice psychotherapy by reciprocity.

s. 10: creates grandfathering provisions.

s. 11: makes a minor wording change and removes an unnecessary phrase.

s. 12: makes minor wording changes.

s. 13: adds a new basis for unprofessional conduct, i.e. practicing without a license.

s. 14: creates a requirement to report any loss of national accreditation.

s. 15: creates a requirement to carry professional liability insurance.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

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.

Corrections (CR 02-093)

An order affecting ch. DOC 328, relating to adult field supervision.
Effective 12-1-02.

Health and Family Services (CR 99-009)

An order affecting ch. HFS 77, relating to criteria and procedures for reimbursement of communication access services for persons who are deaf or hard of hearing.
Effective 12-1-02.

Natural Resources (CR 00-161)

An order affecting ch. NR 809, relating to lead and copper monitoring and treatment requirements.
Effective 12-1-02.

Natural Resources (CR 02-013)

An order affecting ch. NR 811, relating to the development of an aquifer storage recovery well or the operation of an ASR system by a municipal water utility.
Effective 12-1-02.

Natural Resources (CR 02-044)

An order affecting ch. NR 6, relating to snowmobile rail crossings.
Effective 12-1-02.

Natural Resources (CR 02-063)

An order creating ch. NR 173, relating to the brownfield green space and public facilities grant program.
Effective 12-1-02.

Natural Resources (CR 02-074)

An order affecting ch. NR 47, relating to the Wisconsin Forest Landowner Grant Program.
Effective 12-1-02.

Natural Resources (CR 02-075)

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

Natural Resources (CR 02-076)

An order affecting ch. NR 428, relating to emissions averaging provisions and categorical emission limits while controlling nitrogen oxides (NO_x).
Effective 12-1-02.

Regulation and Licensing (CR 02-067)

An order affecting chs. RL 81, 84, and 85, relating to real estate appraisers.
Effective 12-1-02.

Social Workers, Marriage & Family Therapists & Professional Counselors (CR 02-105)

An order affecting chs. SFC 1 to 20, relating to practitioners of psychotherapy.
Effective 11-1-02.

Transportation (CR 02-085)

An order affecting ch. Trans 130, relating to disabled parking placards.
Effective 12-1-02.

Veterans Affairs (CR 02-091)

An order creating ch. VA 16, relating to grants to counties that are not served by transportation services provided by the Wisconsin Department of Disabled American Veterans.
Effective 12-1-02.

Workforce Development (CR 02-087)

An order affecting ch. DWD 295, relating to the apprenticeship probationary period.
Effective 12-1-02.

Workforce Development (CR 02-088)

An order affecting ch. DWD 129, relating to an extension of the time period allowed for filing an initial claim for unemployment insurance benefits.
Effective 12-1-02.

Workforce Development (CR 02-094)

An order affecting ch. DWD 80, relating to worker's compensation procedures.
Effective 12-1-02.

Rules published with this register and final regulatory flexibility analyses

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

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

Accounting Examining Board (CR 01-133)

An order affecting ch. Accy 1, relating to auditing standards, standards for accounting and review services, and standards for attestation engagements. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

Agriculture, Trade and Consumer Protection (CR 01-076)

An order affecting ch. ATPC 21, relating to plant inspection and pest control programs. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

This rule modifies ch. ATPC 21 and s. ATPC 29.56, Wis. Adm. Code, related to plant inspection and pest control programs. This rule eliminates Japanese beetle import restrictions. It also makes technical updates and corrections to current rules. The rule updates scientific names of honeybee pests and inserts a previously omitted statutory reference.

Removal of the Japanese beetle import restrictions allows for unrestricted movement of plants, soil and other materials that may harbor Japanese beetles. Japanese beetles have infested Wisconsin despite the import regulations. The continued regulation of imported items will not deter the natural spread of Japanese beetle in Wisconsin. Continued import restrictions will serve little purpose other than to encumber interstate commerce.

Many nursery growers are classified as small businesses. They import and export plants, soil and other materials that may transport Japanese beetles. The current rule places the expense of inspection and certification on out-of-state small businesses. The removal of this rule will reduce the cost to these small businesses.

Repeal of this rule will allow for compliance with the U. S. Harmonization Plan on Japanese Beetle Regulations, published by the National Plant Board. The plan suggests uniform state regulatory standards for Japanese beetle, and considers regulation of shipments from infested to non-infested states. Wisconsin is already listed in the U. S. Harmonization Plan as infested. Therefore, certification recommendations in the plan apply to Wisconsin nurseries.

The plan's certification protocol allows a variety of approved treatments to control Japanese beetle and growing practices that exclude Japanese beetle. The National Plant

Board developed this plan in cooperation with the regulated industry. The goals are to reasonably mitigate pest risk to an acceptable level for the effective interstate movement of nursery stock.

The repeal of the current rule is in agreement with the U.S. Harmonization Plan, and allows for the uninhibited movement of regulated items into Wisconsin. The removal of the import restrictions may expand available sources of currently restricted items. It will also reduce the expense of small businesses that import plants, soil and other materials from infested states into Wisconsin.

DATCP already inspects and certifies Wisconsin nurseries for export of regulated items, because Wisconsin is infested with Japanese beetles. DATCP will continue to provide export certification services to persons who wish to export regulated materials from Wisconsin to non-infested states. These rule changes will reduce the cost to nurseries in infested state importing into Wisconsin, and increase available sources of nursery stock, soil and other materials to Wisconsin nurseries.

Summary of Comments of Legislative Standing Committees

On May 24, 2002, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Labor and Agriculture, and the Assembly Committee on Agriculture.

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

Commerce (CR 02-042)

An order affecting chs. Comm 2, relating to fee schedule and Comm 8, relating to mines, pits and quarries. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

The Statutes require the Department to charge fees to cover the costs of the Department's services that are provided in the administration and enforcement of the Department's various programs. The proposed revisions in the Department's mine safety program revenue fees are necessary to meet the directives of the Statutes, and any less stringent requirements would be contrary to the Statutory objectives which are the basis for the rules. The revisions have been developed in order to create a more equitable fee-for-service mechanism for those persons receiving the Department's mine safety training.

Small businesses generally supported the proposed rules, and offered to work with the Department to improve the mine safety program.

Summary of Comments of Legislative Standing Committees

No comments received.

Controlled Substances Board (CR 02-025)

An order affecting ch. CSB 2, relating to classifying dichloralphenazone as a schedule IV controlled substance. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

Financial Institutions—Corporate and Consumer Services (CR 02-068)

An order affecting ch. DFI-CCS 10, relating to certain fees regarding partnerships, corporations, limited liability companies and cooperatives. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

Pursuant to s. 227.19 (3m), a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

No comments received.

Health and Family Services (CR 02-070)

An order affecting chs. HFS 152, 153 and 154, relating to reimbursement for treatment of persons with chronic renal disease, hemophilia or cystic fibrosis. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

The proposed WCDP rule changes affect the program's enrollees, the Department of Health and Family Services and the Department's fiscal agent. The proposed changes do not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Summary of Comments of Legislative Standing Committees

No comments received.

Insurance (CR 02-043)

An order affecting ch. Ins 8, relating to publication of health insurance rates for small employers. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

The legislative standing committees had no comments on this rule.

Natural Resources (CR 02-012)

An order affecting ch. NR 484, relating to the establishment and operation of a voluntary multi-pollutant emission reduction registry. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

Since the proposed rule is voluntary and does not require anyone to do anything, it will not have any significant economic impact on small business. Small businesses could benefit from the registry rule if they improve energy efficiency to produce emission reductions, thereby saving money and improving their profitability and competitiveness. The emission reductions could be registered and possibly sold. They could also benefit if they are hired by a larger business to do plantings for a carbon sequestration project or to collect mercury-containing products. Small consulting firms may be hired by larger companies to help them manage emissions and emission reductions.

Summary of Comments of Legislative Standing Committees

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

Natural Resources (CR 02-019)

An order affecting chs. NR 106, 211, and 219, relating to regulatory mercury in wastewater discharge permits. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

The rule should have only minor impacts on small businesses. The rule affects industrial, as well as municipal facilities, some of whom are probably classified as small businesses. However, water quality standards for permitting procedures for mercury have already been promulgated in chs. NR 105 and 106. Lacking this proposed rule, a permittee is still required under those existing rules to demonstrate that it can meet water quality standards.

Summary of Comments of Legislative Standing Committees

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

Natural Resources (CR 02-047)

An order affecting ch. NR 46, relating to the administration of the Forest Crop Law and the Managed Forest Law. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

Landowners cutting timber from Forest Crop and Managed Forest Law lands will pay severance and yield taxes based on the revised stumpage values. The forest products industries own approximately 40% of the forest tax law acreage and, therefore, will be affected as landowners. Small private forest landowners and forest industries enrolled under the Forest Crop Law and Managed Forest Law are required by statute to pay 10% and 5% respectively of the stumpage value adopted in the zone for the species and wood product volume cut from their land.

Summary of Comments of Legislative Standing Committees

The proposed rules were reviewed by the Assembly Committee on Rural Affairs and Forestry and the Senate

Committee on Environmental Resources. There were no comments.

**Revenue
(CR 02-033)**

An order affecting ch. Tax 2, relating to corporation returns, claims for refund and other amended returns and petitions for redetermination. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

**Social Workers, Marriage & Family Therapists &
Professional Counselors
(CR 02-105)**

An order affecting chs. SFC 1 to 20, relating to practitioners of psychotherapy. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

**Transportation
(CR 02-079)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways. Effective 11-1-02.

Summary of Final Regulatory Flexibility Analysis

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

Summary of Comments of Legislative Standing Committees

No comments received.

Sections affected by rule revisions and corrections

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

Revisions

Accounting Examining Board:

Ch. Accy 1

S. Accy 1.205

Agriculture, Trade & Consumer Protection

Ch. ATCP 21

S. ATCP 21.02 (2), (15) and (9)

S. ATCP 21.11

Ch. ATCP 29

S. ATCP 29.56 (1) (e) 4.

Commerce:

Ch. Comm 2

S. Comm 2.17 (2) Table and (5)

Ch. Comm 8

S. Comm 8.13 (4)

Controlled Substances Board

Ch. CSB 2

S. CSB 2.28

Financial Institutions:

Ch. DFI-CCS 10 – entire chapter

Health and Family Services:

Ch. HFS 152

S. HFS 152.065 (6)

Ch. HFS 153

S. HFS 153.07 (4)

Ch. HFS 154

S. HFS 154.07 (4)

Insurance:

Ch. Ins 8

S. Ins 8.52 (4)

Marriage & Family Therapy, Professional Counseling and Social Worker:

Chs. MPSW 1 – 20 – entire chapters

Natural Resources:

Ch. NR 46

S. NR 46.30 (2) (a) to (c)

Ch. NR 106

S. NR 106.04 (5)

S. NR 106.145

Ch. NR 211

S. NR 211.41

Ch. NR 219

S. NR 219.04

Ch. NR 437 – entire chapter

Ch. NR 484

S. NR 484.05 (1), (8), (8g), (8r), (14) to (16)

S. NR 484.06 (intro.), (4), (6) & (7)

S. NR 484.11 (11)

Revenue:

Ch. Tax 1

S. Tax 1.14

Ch. Tax 2

S. Tax 2.03 (1) (j) to (x), (4)

S. Tax 2.12 (1) (3) (a), (b), (c), (e), (2), (4) (b), (5) and (6) (b) to (d)

Ch. Tax 3

S. Tax 3.91

Social Workers, etc. :

Ch. SFC 1 to 20 – entire chapters

Transportation:

Ch. Trans 276

S. Trans 276.07 (5) to (7), (21) and (24)

Editorial corrections

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

Adolescent Pregnancy Prevention & Pregnancy Services Board:

Ch. App 1

App 1.03 (2) & (4)

Insurance:

Ch. Ins 8

Ins 8.11 (1)

Ins 8.40

Ins 8.42 (4) (a), (7) (c) & (13)

Ins 8.48

Ins. 8.59 (4)

Ins 8.60 (1) (a), (d) & (e)

Ins 8.61 (2) & (6)

Ins 8.68 (3)

Ins 8.72 (3) & (6)

Natural Resources:

Ch. NR 106

NR 106.01

Ch. NR 219

NR 219.02

Errata

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

Commerce:

Ch. Comm 43

Comm 43.46 (correct note)

Natural Resources:

Ch. NR 116

NR 116.21 (4) (dropped copy)

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
NR 492.01 (1) and (2)	285.55 to 285.87	285.60 to 285.87

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 57. Relating to an amendment of Executive Order No. 52 regarding the Dane County Regional Planning Commission.

Executive Order 58. Relating to the designation of the commercial revitalization agency for allocating commercial revitalization deductions in Milwaukee's renewal community.

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