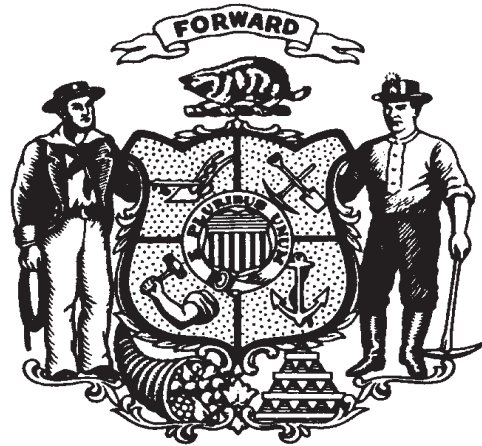


Wisconsin Administrative Register

No. 577



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New material

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Instructions for inserting new material in the Wisconsin Administrative Code

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* Code removed pursuant to s. 13.93 (2m) (b) 16., Stats

** Code renumbered to ch. HFS 199 under s. 13.93 (2m) (b) 1., Stats.

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Emergency rules now in effect

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

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

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

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

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

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

Chiropractic Examining Board

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

Finding of emergency

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

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir

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

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

Publication Date: June 28, 2003
Effective Date: June 28, 2003
Expiration Date: November 25, 2003
Hearing Date: October 16, 2003
Extension Through: January 23, 2004

Employment Relations Commission

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

Finding of emergency

The Employment Relations Commission finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

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

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

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

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

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

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

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

Publication Date: August 25, 2003
Effective Date: September 15, 2003
Expiration Date: February 12, 2004
Hearing Date: November 20, 2003

Game

Rules adopting repealing **s. Game 23.02 (2)** of the Wisconsin Administrative Code, relating to the computation of purses.

Finding of emergency

The Wisconsin Department of Administration finds that an emergency exists and that a rule is necessary in order to repeal an existing rule for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Section Game 23.02 (2) was created in the Department's rulemaking order (03-070). The Department is repealing this section due to the unforeseen hardship that it has created on the Wisconsin racetracks. This financial hardship presents itself in multiple ways. The racetracks rely on an outside vendor to compute the purses earned by all individuals. The vendor produces a similar system for most greyhound racetracks in the country. The purses are generated by the amount of money wagered on all races over a period of time. The current system does not provide for bonus purses to be paid out based upon the residency of certain owners. The current system would have to be reprogrammed at a significant cost to the racetracks. Although the bonus purses could be calculated and paid without a computer, it would create excessive clerical work that would also be costly to the racetracks.

Additionally, Geneva Lakes Greyhound Track committed to paying a minimum payout of purses to the greyhound and kennel owners that race in Delavan. Geneva Lakes Greyhound Track will supplement out of their own money any purse amount that does not exceed the minimum payout. As a result of paying the bonus purse to Wisconsin owned greyhounds, the variance between the actual purse and the minimum purse is increased and the financial liability to the racetrack is increased. Since this supplement is voluntary, the racetrack has indicated that it will probably have to cease the supplemental purses to the participants. This would result in reduced payments to the vast majority of the kennel owners and greyhound owners participating at the racetrack.

In creating this rule, the Department did not intend to create the disadvantages caused by this rule.

Publication Date: January 8, 2004
Effective Date: January 8, 2004
Expiration Date: June 6, 2004

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

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Health and Family Services

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

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

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

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

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

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

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

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003-04, \$13.8 million

in fiscal year 2004–05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

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

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

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

Publication Date: July 28, 2003
Effective Date: July 28, 2003
Expiration Date: December 25, 2003
Hearing Date: October 15, 2003
Extension Through: February 22, 2004

implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

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

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

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

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

Finding of emergency

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

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

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be

Insurance

The office of the commissioner of insurance adopts an order to create **s. Ins 8.49**, Wis. Adm. Code, relating to Small Employer Uniform Group Health Application.

Finding of emergency

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

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a Division of Centers Medicare & Medicaid Services charged with enforcement of the privacy portions of HIPAA, it is not possible to complete the permanent rule process in time to meet the statutory requirement.

The first emergency rule was submitted and published on July 31, 2003, to meet the statutorily imposed deadline. However, subsequent to submission of the permanent rule by the Office, the legislative committees having jurisdiction over the rule requested the Office to modify the permanent rule. The notice requesting modification was received by the Office on December 18, 2003, less than 30 days from the date the emergency rule was set to expire.

Since it will not be possible to have the permanent rule finalized by December 29, 2003, and JCRAR was unable to grant an extension on the emergency rule, this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Stats., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule. A

hearing on this emergency rule will be noticed and held within 45 days in accordance with ch. 227, Stats.

Publication Date: January 7, 2004
Effective Date: January 7, 2004
Expiration Date: June 5, 2004

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

Rules were adopted revising **ch. NR 10**, relating to Chronic Wasting Disease (CWD) in Wisconsin.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date: September 11, 2003
Effective Date: September 11, 2003
Expiration Date: February 8, 2004
Hearing Date: October 13, 2003

Public Instruction

Rules were adopted revising **ch. PI 5**, relating to high school equivalency diplomas and certificates of general educational development.

Finding of emergency

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

1. The GED Testing Service modified the GED test content and the standard score scale used to determine passing scores dramatically from the previous test series causing an inconsistency with the current scoring requirements under ch. PI 5. The emergency rule reflects the current national GED test score of not less than 410 on each of the five tests, with an average of 450 on the five tests in the battery.

2. 2003 Wisconsin Act 33, the 2003–2005 biennial budget, eliminated general purpose revenue (GPR) used to support GED program administration and created a provision allowing the state superintendent to promulgate rules establishing fees for issuing a GED certificate or HSED. Act 33 presumed that GED program costs previously funded by GPR would be paid for by revenue fees generated as of January 1, 2004.

The department is issuing this emergency rule in order to ensure compliance with the more rigorous score standards and to ensure adequate funding for the program.

A corresponding permanent rule, Clearinghouse Rule 03–102, was developed with public hearings held on December 11 and 15, 2003. The department has had the benefit of reviewing public comments and the Clearinghouse Report prior to issuing this emergency rule.

Publication Date: January 2, 2004
Effective Date: January 2, 2004
Expiration Date: May 31, 2004
Hearing Date: February 13, 2004
[See Notice this Register]

Revenue

Rule adopted revising **s. Tax 18.07**, relating to the 2004 assessment of agricultural land.

Finding of emergency

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

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

For reasons of data availability, there is a three–year lag in determining the 5–year average. Thus, the 2003 use value is based on the 5–year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5–year average interest rate for the 1998–2002 period. The 2004 use value is to be based on the 5–year average corn price, cost and yield for the 1997–2001 period, and the capitalization rate is to be based on the 1999–2003 period.

The data for the 1997–2001 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1997–2001 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2004.

Publication Date: October 3, 2003
Effective Date: October 3, 2003
Expiration Date: March 1, 2004
Hearing Date: December 16, 2003

Workforce Development (Workforce Solutions, Chs. DWD 11–59)

Rules adopted revising **ch. DWD 59**, relating to the child care local pass–through program.

Finding of emergency

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

2003 Wisconsin Act 33 allocated federal child care funds in a manner that assumes an increase in the match rate paid by local governments and tribes receiving grants under the child care local pass-through program. Budget documents prepared by the Legislative Fiscal Bureau specify that the budget option chosen requires that local governments and tribes contribute matching funds at a rate of 52% in 2003–2004, and slightly higher in 2004–2005. Chapter DWD 59 currently requires a minimum match rate of the state's federal medical assistance percentage rate, which is approximately 42%. The match rate for the pass-through program must be increased immediately so Wisconsin does not lose valuable federal child care dollars. These dollars help preserve the welfare of the state by ensuring that low-income families have access to quality affordable child care.

2003 Wisconsin Act 33 also reduced funding to the child care local pass-through program by 86%. Chapter DWD 59 requires a 2-step grant process wherein current grantees receive up to 75% of the funds under a noncompetitive process for 2 years following the receipt of the initial grant, and can apply, along with any eligible jurisdiction in the state, for the remaining 25% as initial grantees. The dramatically reduced funding for the pass-through program renders the current Chapter DWD 59 requirement to fund continuing grants while reserving funds for a new statewide request for proposals unwieldy, wasteful, and obsolescent. If the current process remains in place, it would not only waste state and local staff resources on extremely low-value administrative processes, it would waste public funds at a time when they are in short supply. This could further undermine state and local efforts to ensure a reasonable supply of reliable and quality child care for families who depend on this service in order to work. This emergency rule allows all available dollars to be used for continuing grants if there is insufficient funding to provide continuing grants of at least 50% of the eligible grantees' initial grant levels from the previous 2 grant cycles.

These changes are ordered as an emergency rule so they are effective before the new grant cycle begins on October 1, 2003. Delaying the next grant cycle until the permanent rule is effective is not a viable option because local governments need to know whether they will receive continued funding or will be forced to dismantle ongoing programs and lay-off staff when the current grant cycle ends on September 30. Also, federal law requires that the federal funds be matched and spent within the federal fiscal year of October 1 to September 30.

Publication Date: October 7, 2003
Effective Date: October 7, 2003
Expiration Date: March 5, 2004
Hearing Date: November 12, 2003

**Workforce Development
(Civil Rights, Chs. DWD 218–225)**

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

Finding of emergency

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

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

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

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

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

Publication Date: August 5, 2003
Effective Date: August 5, 2003
Expiration Date: January 2, 2004
Hearing Date: October 27, 2003
Extension Through: March 1, 2004

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

Rules adopted amending **ss. DWD 290.155 (1), 293.02 (1), and 293.02 (2)**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Finding of emergency

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

The Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and

performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the last adjustment.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the

construction industry. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

Publication Date: December 18, 2003
Effective Date: January 1, 2004
Expiration Date: May 30, 2004
Hearing Date: February 19, 2004
[See Notice this Register]

Scope statements

Commerce

Subject

Boilers and Pressure Vessels. *Objective of the rule.* The objective of the rule is to update ch. Comm 41, boiler and pressure vessel code, and to consider revisions in ch. Comm 5 relating to requirements for certified boiler–pressure vessel inspectors and in ch. Comm 2 relating to fees for the boiler/pressure vessel program.

Policy analysis

Since 1957 the state boiler and pressure vessel code has adopted by reference the boiler and pressure vessel code published by the American Society of Mechanical Engineers (ASME). Currently, the 1998 edition of the ASME code is adopted in ch. Comm 41. This rule project will consider updating the state code to the 2004 edition of the ASME code. Other standards currently adopted in ch. Comm 41 will also be reviewed for updating. This rule project will also consider making adjustments to inspection thresholds and adding new rules for the inspection of steam traction engines.

Chapter Comm 5 contains the Department’s requirements relating to licenses, certifications and registrations, including the certification of persons who inspect boilers and pressure vessels. This rule project will consider changes in the requirements for renewal of the boiler–pressure vessel inspector certification.

Chapter Comm 2 establishes fees for the services provided by the Department. This rule project will consider addressing administrative and enforcement issues relating to how the fees are charged and collected for the boiler/pressure vessel program services.

The alternative of not updating ch. Comm 41 would result in the state code not being up–to–date with current nationally recognized standards for the design, installation, operation and repair of boilers and pressure vessels.

Statutory authority

The statutory authority for the rule is contained in ss. 101.12 (3) (c), 101.17 and 101.19 (1) (b), Stats.

Staff time required

The Department estimates that it will take approximately 400 hours to develop this rule. This time includes meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Elections Board

Subject

Section Elections Board 1.28. Scope of regulated activity; election of candidates. Relating to defining the term “political purpose”.

Policy analysis

Objective of the rule. To amend the Elections Board’s existing rule to more clearly define that activity which is

subject to regulation by chapter 11 of the Wisconsin Statutes to reach pre–election activity in which clearly identified candidates are discussed.

Under the existing statute, (s. 11.01 (16), Stats.) and rule, (s. EIBd 1.28), individuals and organizations that do not spend money to expressly advocate the election or defeat of a clearly identified candidate, or a vote “Yes” or vote “No” at a referendum, are not subject to campaign finance regulation under ch. 11 of the Wisconsin Statutes. The term “expressly advocate” has been limited to so–called “magic words” or their verbal equivalents. The Wisconsin Supreme Court, in *WMC v. State Elections Board*, 227 Wis.2d 650 (1999), has opined that if the Elections Board wishes to adopt a more inclusive interpretation of the term “express advocacy,” it must do so by way of a rule. The United States Supreme Court, in *McConnell et al. v. FEC et al.*, (No.02–1674), in a December 10, 2003 opinion, has said that Congress and state legislatures may regulate political speech that is not limited to “express advocacy.”

The new rule will more clearly specify which communications, that go beyond express advocacy, are subject to regulation and which are not.

Statutory authority

s. 5.05 (1) (f) and s. 227.11 (2) (a), Stats

Staff time required

50 hours of staff time.

Gaming

Subject

The Department of Administration proposes to repeal s. Game 23.02 (2), relating to purses paid to greyhound owners in Wisconsin.

Policy analysis

Section Game 23.02 (2) was created in the Department’s rulemaking order (03–070). The Department proposes the repeal of this section due to the unforeseen hardship that it has created on the Wisconsin racetracks. This financial hardship presents itself in multiple ways. The racetracks rely on an outside vendor to compute the purses earned by all individuals. The vendor produces a similar system for most greyhound racetracks in the country. The purses are generated by the amount of money wagered on all races over a period of time. The current system does not provide for bonus purses to be paid out based upon the residency of certain owners. The current system would have to be reprogrammed at a significant cost to the racetracks. Although the bonus purses could be calculated and paid without a computer, it would create excessive clerical work that would also be costly to the racetracks.

Additionally, Geneva Lakes Greyhound Track committed to paying a minimum payout of purses to the greyhound and kennel owners that race in Delavan. Geneva Lakes Greyhound Track will supplement out of their own money any purse amount that does not exceed the minimum payout. As a result of paying the bonus purse to Wisconsin owned greyhounds, the variance between the actual purse and the minimum purse is increased and the financial liability to the

racetrack is increased. Since this supplement is voluntary, the racetrack has indicated that it will probably have to cease the supplemental purses to the participants. This would result in reduced payments to the vast majority of the kennel owners and greyhound owners participating at the racetrack.

Statutory authority

Sections 16.004 (1), 227.11 (2) (a), 562.02 (1) (a), and 562.065, Stats.

Staff time required

Approximately 20 hours of department staff time will be needed to promulgate the rule.

Natural Resources

Subject

Proposed revision of chapter NR 219, Wis. Adm. Code pertaining to the updating of ch. NR 219 reflects the current laboratory analytical methodologies. These methodologies have been updated in federal rule. The following Federal Registers contained these updates: 04/15/1998, 09/21/1998, 12/30/1999, 01/16/2001, 8/31/2001, 10/23/2002, 10/29/2002, 07/21/2003, and 09/19/2003.

Policy analysis

The majority of this proposal reflects no change in existing policy. The addition of required extraction clean-up procedures does reflect a change in policy. Currently, clean-up procedures are optional steps in the methodology for determining PCBs in sludge. Most laboratories do not use all of the clean-up procedures necessary to enable proper chromatography of sludge samples. This proposal requires that all or some of these steps be used for proper quantitative results of PCBs present in sludge.

Statutory authority

Federal Clean Water Action title 40 part 136. Sections 227.11 (2) (a), 281.19 (1), 283.31, 283.55 (1), and 299.15, Stats.

Staff time required

Approximately 40 hours will be needed by department staff to develop the proposed revisions.

Natural Resources

Subject

Chapter NR 20 pertaining to sport fishing for yellow perch in Lake Michigan.

Policy analysis

In 2002 the Natural Resources Board adopted NRB Order FH-04-02, changing the closed season for sport fishing for yellow perch in Lake Michigan. The Department had recommended the change in order to provide additional protection to spawning female yellow perch each spring.

Recently the Department received a petition asking for the closed season to be reduced. The Department's obligations regarding petitions are described in s 227.12 Stats. Although we may not be obligated to bring this issue to your attention in the form of a rule proposal, we are doing so in order to allow you to consider the issue. We will draft a rule under which the closed season would be reduced. Department staff will compile relevant information for your review. We do not recommend adoption of the proposed rule or approval of public hearings.

Statutory authority

ss. 29014 (1), 29.041 and 227.11 (2) (a), Stats.

Staff time required

Approximately 20 hours will be needed.

Natural Resources

Subject

Creation of NR 341 – Grading on the Banks of Navigable Waterways.

Revision of NR 216 – Storm Water Discharge Permits.

Policy analysis

Individuals or businesses who want to do earth-moving, grading or excavating generally need to obtain a number of permits from various regulatory agencies. These include 1) a DNR stormwater permit for construction sites with one or more acres of land disturbance, 2) a DNR grading permit for projects greater than 10,000 square feet on the banks of a navigable waterway, and 3) a county permit for excavating or land disturbance in the shoreland zone. For some projects, two or all three of these permits are required, each with its own purpose, procedures and timelines.

The Department proposes to consolidate the NR 216 stormwater construction site permit and 30.19, Stats. grading permit requirements, and to allow for additional consolidation with counties issuing NR 115 shoreland excavating permits. The 30.19 grading permit process will be simplified through adoption of a new rule adding definitions (including "bank"), scientific criteria (e.g., when are various public rights are likely to be affected) and updated procedures. For example, chapter 30 authorization might be accomplished through the NR 216 process for smaller projects with limited change in site topography or buffer areas. NR216 will be revised to allow for consolidated permitting procedures. NR 115 will be modified through its ongoing revision process, to allow counties to let the Department's consolidated permit serve as the county's authorization.

Consolidating the NR 115, NR 216 and 30.19 permits will reduce current duplication of effort in administering separate permit programs with some common purposes but very different procedures, fees and timelines. Changes will benefit the agency and the external customers by providing parameters that protect the water resource, can be consistently administered, and simplify the permit process. **The expected outcome of this effort is a single application and single permit for grading authorities of the Department. The new rule standards in NR341 can be used for automatic general permits for designated site and project features, if appropriate legislation passes.**

This approach is directly in line with the current agency and governor's strategy to improve regulatory processes without reducing environmental protection. The Legislature has also expressed interest in this issue in recent years, and streamlined permitting is the subject of pending legislation. Groups impacted will include waterfront property owners and developers, citizens who use public waters, and environmental advocacy organizations.

Statutory authority

Sections 30.19, 281.31, 283.33, 283.35 and 283.37, Stats.

Staff time required

Department staff will need approximately 500 hours for this rule revision, not including time and travel for proposed public hearings. The goal is to submit an initial rule package to the Natural Resources Board in July 2004.

Natural Resources

Subject

NR 500 series dealing with landfill design, operational and financial assurance standards for solid waste facilities.

Policy analysis

The proposed rule revisions would extend the maximum length of landfill leachate collection pipes beyond the current limit of 1200 feet. In code revisions completed in 1996, the length of landfill leachate collection pipes was limited to 1200 feet to help ensure the ability to clean the pipes over the long term. This is a controversial code provision since it indirectly limits the size of landfills. During the associated technical advisory committee meetings held in the early to mid-90s, the department agreed to re-evaluate this code criterion at a later date. Beginning in early 2003, the Waste Management Program held several meetings with a group of interested stakeholders. At the conclusion of this step, the Waste Management Program indicated that it would be willing to consider code revisions to increase the 1200 foot limit, provided several related concerns were addressed simultaneously. These related concerns involve landfill design, operation and financial assurance and would help mitigate the risk associated with longer leachate pipes and larger landfills. Groups that will be impacted or interested in this issue include all owners of active landfills, consultants, and environmental groups. These groups will all be represented in the stakeholder process we plan to use in developing the draft rule.

Statutory authority

ss. 289.05 (1) and (3), Stats.

Staff time required

Approximately 250 hours will be needed.

Natural Resources

Subject

Administrative rule changes relating to the management of Chronic Wasting Disease (CWD) in Wisconsin.

Policy analysis

The department will be presenting a rule package pertaining to the eradication and control of CWD in Wisconsin. This rule may include modifications to the deer hunting seasons, management zones and other deer hunting related regulations such as baiting and feeding. This rule is necessary to update rules that were approved by the NRB last year, in order to adapt and modify CWD management strategies based on testing results and hunter success.

Proposed changes will not deviate significantly from the previous CWD rule order. The modifications proposed will be consistent with the Board's policy of aggressive measures to control the spread of the disease, prevent no areas of disease establishment and to eradicate the disease in areas of known infection.

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 404 hours will be needed by the department.

Transportation

Subject

Objective of the rule. This rule making will amend ch. Trans 1, relating to the elderly and disabled transportation assistance to counties, by capping the amount counties can keep in trust funds, updating language regarding the role of district offices in the program, updating reporting requirements, and allowing counties more flexibility in meeting trip purpose priorities.

Policy analysis

Currently, the rule allows a county to establish a trust fund and deposit all or part of its allocation in this fund. Trust funds can only be used for the purchase or maintenance of transportation equipment, or to make grants to other local governments and private nonprofit organizations which provide specialized transportation services for purchase or maintenance of transportation equipment. When the rules regarding establishment of the trust fund were developed, counties were not eligible applicants for the Federal Elderly and Disabled Transportation Program authorized under 49 U.S.C. 5310/Capital Assistance Program for Specialized Transportation authorized under Wisconsin Statute section 85.22. (This program provides grants to cover 80% of the cost of vehicles with the grantee paying the remaining 20%.) In the past, trust funds provided a means for counties to save significant amounts of money for the purchase of vehicles. Counties are now eligible applicants for the Section 5310/85.22 program and can also contract with successful 5310 grantees in their county. The need to save large amounts of program dollars for vehicles no longer exists. Currently, a few counties have amassed considerable amounts of money in their trust funds.

Over the years, due to increasing workloads, district involvement in this program has decreased to its current front door role. The districts provide basic information about the program and then refer individuals to the program manager at the central office. The proposed changes update ch. Trans 1 to reflect current business practice.

The current rule prescribes ways a county can meet trip purpose requirements. Increasing flexibility in how counties administer trip purpose requirement allows them to meet their individual needs. In addition, this greater flexibility may result in innovative ways of providing and funding services at the local level.

The current rule requires that all passenger revenue received in a given year be applied to transportation expenses incurred in that same year. This is difficult to apply in reality as expenditures may not come in for several months after the end of the calendar year. The proposed changes keep the intent of the original law – applying revenues back to the transportation program, but doesn't define a timeframe.

The policy alternatives are to give counties more flexibility in the use of trust funds and in developing innovative means of providing service or to maintain the existing system. Providing more flexibility to counties and limiting the amount that can be held in trust should result in higher levels of service to Wisconsin's elderly and disabled population without increasing the amount of money allocated under this program.

Statutory authority

Section 85.21, Stats.

Staff time required

Approximately 80 hours.

Workforce Development

Subject

Chapter DWD 272, Minimum wages.

Description of Policy Issues

Pursuant to ss. 103.005 (5) (a) and 104.04, Stats., DWD is creating a Minimum Wage Advisory Council to collect, review, and analyze data relating to the issue of the State of Wisconsin's minimum wage rates; determine the adequacy of the current minimum wage rates set by the department; and make a recommendation to the department on potential adjustments to the minimum wage rates for the next three years.

The charge to the council, in accordance with Wisconsin statutes and administrative rules, is to do the following by April 2, 2004:

- Determine whether Wisconsin's current minimum wage is sufficient to enable minimum wage earners to maintain an adequate standard of living, pursuant to s. 104.04, Stats.
- If the council believes the minimum wage is not sufficient for a worker to maintain an adequate standard of living, the council shall develop a recommendation for adjusting the minimum wage to enable a worker to maintain an adequate standard of living, pursuant to s. 104.05, Stats.

- The council shall review s. 104.04, Stats., and Chapter DWD 272 to determine if any changes need to be made to these rules and recommend those changes to the department.

- The council shall study the various minimum wage sub-categories currently in ch. DWD 272, make a recommendation as to whether to maintain those sub-categories, and, if so, recommend how any minimum wage adjustments should affect the rates currently in place in those sub-categories.

The council recommendations should consider, but not necessarily be limited to, the following issues, in accordance with s. DWD 272.001 (2):

- What level of wages would be necessary for an individual working 40 hours a week *"to maintain himself or herself living independently in minimum comfort, decency, physical and moral well being."*

- The effect of minimum wage adjustments *"on job creation, retention and expansion as well as the availability of entry level jobs"* within the Wisconsin economy.

- The effect of a minimum wage adjustment *"on regional economic conditions within the state."*

Statutory Authority

Sections 103.005 (1), 104.04, 104.045, 104.07, and 227.11, Stats.

Staff Time Required

300 hours.

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On January 13, 2004, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. ATCP 10, 12, 42, 50, 60, 74, 80, 92 and 140, relating to minor remedial drafting changes to various department rules.

Agency Procedure for Promulgation

The department will hold public hearings on this rule on March 3, 2004.

Contact

Karen Schultz
608 224-5023

Financial Institutions – Banking

Rule Submittal Date

On January 12, 2004, the Department of Financial Institutions, Division of Banking submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. DFI-Bkg 17, relating to the process for the organization of interim banks.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 12, 2004, at 1:30 a.m. in the 5th Floor Conference Room, 345 W. Washington Avenue in the city of Madison, Wisconsin.

Contact

Mark Schlei
Deputy General Counsel
608 267-1705

Pharmacy Examining Board

Rule Submittal Date

On January 14, 2004, the Pharmacy Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Phar 2, relating to the practical examination, NAPLEX and the multi-state pharmacy jurisprudence examination.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 11, 2004, at 9:30 a.m. in Room 291, 1400 East Washington Avenue, Madison, WI 53702.

Contact

Pamela Haack
Paralegal
Office of Administrative Rules
608 266-0495

Regulation and Licensing

Rule Submittal Date

On January 15, 2004, the Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to applications, examinations, appraisal experience and continuing education (Real Estate Appraisers Board).

Agency Procedure for Promulgation

A public hearing is required and will be held on February 11, 2004, at 9:30 a.m. in Room 180, 1400 East Washington Avenue, Madison, WI 53702.

Contact

Pamela Haack
Paralegal
Office of Administrative Rules
608 266-0495

Transportation

Rule Submittal Date

On January 14, 2004, the Department of Transportation, submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Trans 152, relating to Wisconsin interstate fuel tax and international registration program.

Agency Procedure for Promulgation

A public hearing is required and is scheduled to be held in **Room 421** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **13th day of February, 2004**, at 10:00 AM.

The Division of Motor Vehicles, Bureau of Vehicle Services is responsible for promulgation of the proposed rule.

Contact

Julie A. Johnson
Paralegal
608 266-8810

Veterans Affairs**Rule Submittal Date**

On January 13, 2004, the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse creating s. VA 1.20 of the Wisconsin Administrative Code. The proposed rule relates to the recovery of erroneous payments made under the tuition and fee reimbursement, part-time study, and retraining grant programs.

Analysis

Under current law, at s. 45.35 (17), Stats., the Wisconsin Department of Veterans Affairs has the authority to recover and suspend all state veterans' benefits whenever an applicant willfully provides false or fraudulent information on an application for the purpose of receiving benefits. However, there is no clear authority to recover benefits that may have been erroneously paid for reasons other than the willful attempt to fraudulently procure benefits. The creation of VA 1.20 will enable the Department to seek recovery from a benefit recipient who improperly receives an educational grant for other reasons.

Agency Procedure for Promulgation

A public hearing is required. The Office of the Secretary is primarily responsible for preparing the rule.

Contact

John Rosinski
Chief Legal Counsel
Telephone (608) 266-7916

Workforce Development**Rule Submittal Date**

On January 15, 2004, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: Sections 66.093 (5), 103.49 (3g), 779.14 (1s), 227.11, Stats.

The proposed rules affect ss. 290.155 (1), 293.02 (1), and 293.02 (2), relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 19, 2004. The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

Contact

Elaine Pridgen
Telephone (608) 267-9403
email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 04-005]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules that make minor remedial drafting changes to a number of department rules. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the proposed rules. Following the public hearing, the hearing record will remain open until March 10 2004, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-5023. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **February 15, 2004** by writing to Karen Schultz, Office of Legal Counsel, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5023. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

One hearing is scheduled:

Wednesday, March 3, 2004, 1:00 p.m. until 3:00 p.m.

Wisconsin Department of Agriculture, Trade and Consumer Protection

Board Room

2811 Agriculture Drive

Madison, WI 53704

Handicapped accessible

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

Statutory Authority: ss. 93.07 (1), 92.05 (3) (c), 92.14 (8), 93.50 (2) (f), 94.72 (13) (a), 95.197 (2), 95.71 (8), 97.09 (4), 97.20 (4), 97.22 (8), 97.41 (2) and (5), 98.03 (2) and 98.18 (2), Stats.

Statutes Interpreted: ss. 92.05, 92.14, 94.72, 95.197, 95.71, 97.20, 97.22, 97.41, 98.03, 98.18 and 93.50, Stats.

This rule makes minor technical changes to a number of rules administered by the department of agriculture, trade and consumer protection ("DATCP"). This rule does all of the following:

- Changes current DATCP procedures for reimbursing Johne's disease testing costs. This technical change will make it easier for farmers to obtain reimbursement of testing costs.

- Updates technical standards that are incorporated by reference in current feed rules (ch. ATCP 42, Wis. Adm. Code). The updates refer to the latest edition (2004) of the official publication of the Association of American Feed Control Officials. Pursuant to s. 227.21, Stats., DATCP will request permission from the Attorney General and the

Revisor of Statutes to incorporate the updated technical standards by reference.

- Changes current dairy plant rules (ch. ATCP 80, Wis. Adm. Code) to reflect the fact that DATCP, rather than the Department of Health and Family Services (DHFS), is now responsible for all of the following:

- Certifying dairy laboratories, and approving analysts to perform drug residue tests on milk. See ch. ATCP 77, Wis. Adm. Code. The Legislature transferred this function from DHFS to DATCP (1995 Wis. Act. 27).

- Performing grade A milk certification audits for purposes of grade A interstate milk shipments. The Legislature transferred this function from DHFS to DATCP (2003 Wis. Act 33).

- Changes current dairy farm and dairy plant rules (chs. ATCP 60 and 80, Wis. Adm. Code) to make the rules consistent with current federal standards. This includes minor technical changes related to thermometers, pasteurization procedures, and multi-use plastic retail containers. This rule also updates technical standards incorporated by reference in the dairy plant rules (ATCP 80 Appendix A). The updates refer to the latest editions of 3-A Sanitary Standards and Accepted Practices published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc. and the United States Food and Drug Administration. Pursuant to s. 227.21, Stats., DATCP will request permission from the Attorney General and the Revisor of Statutes to incorporate the updated technical standards by reference.

- Updates technical standards that are incorporated by reference in current weights and measures rules (ch. ATCP 92, Wis. Adm. Code). The updates refer to the latest editions (2004) of current weights and measures handbooks published by the National Institute of Standards and Technology. Pursuant to s. 227.21, Stats., DATCP will request permission from the Attorney General and the Revisor of Statutes to incorporate the updated technical standards by reference.

- Repeals and recreates current farm mediation and arbitration rules (ch. ATCP 162, Wis. Adm. Code). The farm mediation and arbitration board, which was attached to DATCP for administrative purposes, originally adopted the current rules to govern the farm mediation and arbitration program under s. 93.50, Stats. However, the legislature subsequently abolished the farm mediation and arbitration board, transferred the program to DATCP, and expanded the scope of the program. This rule repeals the current rules and recreates them as DATCP rules. This rule also makes minor modifications to the current rules, to reflect statutory changes in the program and to reflect current policies and practices.

- Corrects typographical errors and cross-references, and makes other non-substantive drafting and organizational changes to current rules.

Fiscal Estimate

This rule makes minor technical changes to a number of existing rules. This rule will have no fiscal effect on the department or local units of government.

Initial Regulatory Flexibility Analysis

This rule will have no impact on small business.

Notice of Hearing
Financial Institutions – Banking
[CR 04–001]

NOTICE IS HEREBY GIVEN That pursuant to ss. 221.0704 and 227.11 (2), Stats., and interpreting s. 221.0704, Stats., the Department of Financial Institutions, Division of Banking, will hold a public hearing at the Department of Financial Institutions, Division of Banking, 5th Floor Conference Room, 345 W. Washington Avenue in the city of Madison, Wisconsin, on the **12th day of February, 2004**, at 1:30 p.m. to consider the creation of a rule relating to the process for the organization of interim banks.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

An order to create ch. DFI—Bkg 17, relating to the process for the organization of interim banks in accordance with ch. 221, Stats. Statutory authority: ss. 221.0704 and 227.11 (2), Stats. Statutes interpreted: s. 221.0704, Stats. Summary: The purpose of the rule is to set forth the process for the organization of interim banks under ch. 221, Stats. The rule establishes documentation to be submitted to and issued by the division, and requirements regarding dissenters rights, capital structure and shareholders notices. Agency person to be contacted if there are substantive questions on the rule: Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707–7876, tel. (608) 266–0451. Agency person responsible for the agency’s internal processing of the rule: Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708–8861, tel. (608) 267–1705.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses.

Fiscal Estimate

There is no state fiscal effect, and there are no local government costs. No funding sources or ch. 20 appropriations are affected. There are no long–range fiscal implications.

Contact Person

For a copy of the proposed rule and fiscal estimate, or to submit written comments regarding the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708–8861, tel. (608) 267–1705. Written comments must be submitted prior to the public hearing. A copy of the proposed rule may also be obtained at the Department of Financial Institutions’ website, www.wdfi.org.

Notice of Hearing
Pharmacy Examining Board
[CR 04–002]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3), Stats., and interpreting ss. 450.03 (2) and 450.04 (3), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Phar 2.03 (4), relating to the practical examination, NAPLEX and the multi–state pharmacy jurisprudence examination.

Hearing Date, Time and Location

Date: February 11, 2004
Time: 9:30 A.M.
Location: 1400 East Washington Avenue
 Room 291
 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 February 20, 2004 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 450.02 (2m) (d), Stats.

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

Current s. Phar 2.03 (4) allows an applicant to be admitted to the practical examination, NAPLEX examination or multi–state pharmacy jurisprudence examination if the applicant is within 360 credit hours of completing an internship in the practice of pharmacy (for applicants certified by the foreign pharmacy graduate examination committee) or 60 days before graduation from a school or college of pharmacy approved by the board. In certain instances with other state pharmacy examining board, this rule may penalize applicants who wish to later transfer scores.

This modification will not allow an applicant to be admitted to the practical examination, NAPLEX examination or multi–state pharmacy jurisprudence examination prior to completing an internship in the practice of pharmacy, and either obtaining certification by the foreign pharmacy graduate examination committee where necessary or graduate from a school or college of pharmacy approved by the board.

Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs for staff to print and distribute the rule change.

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 Public Instruction

NOTICE IS HEREBY GIVEN that pursuant to ss. 115.28 (7), (7m), (15) and (17), 118.19 (11), 121.02 (1) (a), and 227.11 (2) (a), Stats., and interpreting ss. 115.28 (7), 118.19 and 118.192, Stats., the Department of Public Instruction will hold a public hearing as follows to consider emergency rules amending ch. PI 5, relating to high school equivalency diplomas and certificates of general educational development.

The hearing will be held as follows:

Date, Time and Location

February 13, 2004 @ 3:00 – 4:00 p.m.

Room 041

GEF 3 Building

125 South Webster St.

Madison

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Robert Enghagen, HSED/GED Administrator, (608) 267-2275 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule and fiscal estimate are available at <http://www.dpi.state.wi.us/dpi/dfm/pb/gedfees.html> and <http://www.dpi.state.wi.us/dpi/dfm/pb/gedfiscal.html> respectively. A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson

Administrative Rules and Federal Grants Coordinator

Department of Public Instruction

125 South Webster Street

P.O. Box 7841

Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than February 13, 2003, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

Section 115.29 (4), Stats., allows the state superintendent to establish the standards by which high school graduation equivalency is determined. The state superintendent issues a general educational development (GED) certificate and a high school equivalency diploma (HSED). To receive either the GED certificate or HSED, candidates must pass the GED test battery. The passing test scores are determined by the state superintendent and established in rule under ch. PI 5. The proposed rules modify Chapter PI 5 to reflect national GED test score changes made to the program and state fee charges allowed under the program. These modifications resulted from the following:

The 2002 Series GED Test content and the standard score scale used to determine passing scores changed dramatically from the 1988 series. Previously, the GED test scale ranged from a minimum of 20 to a maximum of 80 with a passing score set at 40 and an average of 45 on the five tests (reading, writing, mathematics, science and social studies) in the

battery. The 2002 Series GED test scale ranges from a minimum of 200 to a maximum of 800. The proposed rule requires a passing standard score be not less than 410 on each of the five tests, with an average of 450 on the five tests in the battery. The 410 minimum score represents a 6% increase in performance expectations on the mathematics test, a 2% increase in performance expectations on the reading test, and a 3% increase in performance expectations on the science test.

2003 Wisconsin Act 33, the 2003–2005 biennial budget, allows the state superintendent to promulgate rules establishing fees for issuing a GED certificate or HSED. The rules may provide exemptions from the fees based on financial need. The fee will be charged to an individual applying for a GED certificate or HSED on or after January 1, 2004. GED/HSED fees were not charged in the past but are now allowed and necessary because the Act eliminated general purpose revenue (GPR) used to support GED program administration. Administration funds are necessary to operate the GED program and include approving test accommodations; opening, monitoring and closing test centers; reviewing and approving alternative curriculum; reviewing and approving credential awards; and issuing GED/HSED credentials.

Fiscal Estimate

GED FEE:

The rules allow a high school graduation equivalency declaration or a general educational development certificate (HSED/GED) credentialing fee to be charged to individuals. 2003 Wisconsin Act 33 authorized the department to charge fees for issuing a HSED/GED, creating a program revenue appropriation to fund the program. In FY04 (1/1/04–6/30/04), the department expects to incur GED administration costs of \$61,800. In FY05 (7/1/04–6/30/05), the department expects to incur GED administration costs of \$123,500.

Fees were not charged in the past but are now allowed and necessary to replace the loss of state GPR administration funds which were used, in part, to support program staff and fees charged by the GED Testing Service (GEDTS). Further, if fees are not charged, the department would have insufficient funds to provide for approving of test accommodations; opening, monitoring and closing test centers; reviewing and approving alternative curriculum; reviewing and approving of credential awards; and issuing HSED/GED credentials.

With some exceptions, the department proposes to charge \$15 to issue a credential to anyone applying for a HSED/GED on or after January 1, 2004. A reduced fee of \$5 will be charged to adults in corrections. Exemptions from fees are allowed for all of the following:

Persons 65 and older

Juveniles in corrections.

Pupils served under s. 118.15 (1) (b) to (d), Stats.

Pupils enrolled in approved GED Testing Service Option Programs.

In FY04 (1/1/04–6/30/04), the department anticipates generating a total income of \$62,660 (half the income expected in FY05). In FY 05 (7/1/04–6/30/05), the department anticipates generating a total income of \$125,320 using the following assumptions based on previous years' data:

6,918 applicants will be charged \$15 for a credential
6,918 X \$15 = \$103,770

1,135 applicants will be eligible for a reduced fee of \$5
1,135 X \$5 = 5,675

1,000 applicants will request a duplicate credential/transcript
1,000 X \$15 = 15,000

35 applicants will request emergency credentials
 35 X \$25 = 875
 125,320
 =====

GED TEST SCORE:

The GED passing test score is set at the standard established by the GEDTS (410 minimum with an average of 450). If Wisconsin sets a higher score, the GED Testing Service requires the department to conduct a statewide norming study. If such a study is conducted, the anticipated minimum cost to the department is \$33,500 based on the following information:

In 1993, the department conducted a statewide norming study sampling 40 schools at a cost of \$12,715.

In 2004, the department must sample 80 schools (required by the GEDTS). It is assumed that because the number of participating schools has doubled the cost to conduct the study will double from the 1993 amount. In addition, if substitutes have to be hired for the 80 participating schools, another \$8,000 should be added (80 schools X \$100 per substitutes).

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearing Regulation and Licensing [CR 04-007]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 458.03 (1), 458.03 (1) (b) and 458.085 (2) and (3), Stats., and interpreting ss. 458.06 (2) (d), 458.08 (2) (d), 458.09, 458.10 and 458.13, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order of the Department of Regulation and Licensing to renumber RL 81.01; to renumber and amend RL 81.01 (1); to amend RL 82.01 (1), 83.01 (2) and 85.01 (1); and to create RL 81.01, 82.01 (4), (5) and (6), relating to applications, examinations, appraisal experience and continuing education (Real Estate Appraisers Board).

Hearing Date, Time and Location

Date: **February 11, 2004**
 Time: 9:30 A.M.
 Location: 1400 East Washington Avenue
 Room 180
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by February 20, 2004 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 227.11 (2), 440.03 (1), 458.03 (1) (b) and 458.085 (2) and (3), Stats.

Statutes interpreted: ss. 458.06 (2) (d), 458.08 (2) (d), 458.09, 458.10 and 458.13, Stats.

In this proposed rule-making order, the Department of Regulation and Licensing amends, renumbers, and creates several provisions contained in chs. RL 81, 82, 83 and 85, rules of the Real Estate Appraisers Board.

Section RL 81.01 is renumbered to s. RL 81.02 and as renumbered, s. RL 81.02 (1) is amended as clean up change that has no substantive alterations.

Section RL 81.01 is created as a prerequisite to submit an application for a licensed or certified real estate appraiser credential. Currently, an applicant can file an application at any time and then the application will "sit" idly until the person, if they even do so at all, complete the necessary experience and education work. Under this new section, the individual must complete the education hours first before completing an application.

Section RL 82.01 includes the word "state" to clarify that it is issued by the state of Wisconsin.

Section RL 82.01 (4), (5) and (6) are created to comply with the Appraiser Qualification Board's (AQB) Real Property Appraiser Qualification Criteria, Section IV of its most recent exposure draft.

Section RL 83.01 (2) changes the minimum number of hours of an applicant seeking licensure as an appraiser to 2,000 hours of experience obtained over a period of not less than 12 months. This change reflects the requirements currently imposed by the AQB. The Appraisal Subcommittee of the Federal Institutions Examination Council is authorized to monitor the requirements established by states for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions. The Appraisal Subcommittee is required to maintain a national registry of state certified and licensed appraisers who are eligible to perform appraisals in federally related transactions. One of the new requirements for placement on the roster is that an individual must be a state licensed or certified appraiser with credentials based on the minimum licensing or certification criteria issued by the AQB. An appraiser is not deemed to have credentials based on AQB standards if the state licensing and/or certification requirements did not conform to the AQB criteria at the time the appraiser obtained the license or certification.

Section RL 85.01 is being amend so that the credential holder, when taking their 7-hour uniform standards of professional appraisal practice course (USPAP) for continuing education, no longer is required to take the USPAP examination. This reflects the AQB's most recent exposure draft.

Fiscal Estimate

This rule amendment requires candidates for Licensed Real Property Appraiser to gain 2,000 hours of qualifying appraisal experience over not less than 12 months in order to be eligible for licensure. The present requirement is for 500 hours of such experience.

Wisconsin licensed appraisers who did not meet the AQB experience requirement when they were licensed may be negatively impacted until their licenses are renewed with a certification that they now meet the experience requirement. The Department of Regulation and Licensing (DRL) does not have data to estimate how many such appraisers may need to be relicensed.

Reporting licensed appraisers to the national registry as they meet the AQB requirements will require DRL to modify IT data systems applications to reflect the increased experience requirements and to enable regular posting of AQB qualified appraisers to the national registry. This will

require one-time IT programming of 80 hours at a value of programmer time of \$35 per hour, including salary and fringe at 38.92% of salary. The value of the programming time is \$2,800. In addition, DRL will incur one-time costs of \$500 to print and distribute the rule change.

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 Transportation [CR 04-004]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.10, 341.405 (1) and 341.45 (5), Stats., and interpreting ss. 341.405 and 341.45, Stats., the Department of Transportation will hold a public hearing in **Room 421** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **13th day of February, 2004, at 10:00 AM**, to consider the amendment of ch. Trans 152, Wisconsin Administrative Code, relating to Wisconsin interstate fuel tax and international registration program.

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

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Tim Galbraith, Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 151, P. O. Box 7955, Madison, WI 53707-7955.

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 227.10, 341.405 (1) and 341.45 (5), Stats.

Statutes Interpreted: ss. 341.405 and 341.45, Stats.

General Summary of Proposed Rule

This rule making amends ch. Trans 152, relating to Wisconsin Interstate Fuel Tax and International Registration Plan programs. The rule making clarifies Department policies regarding application requirements, business location, collections, and overdue billings. The rule making also reflects a statutory change in 1999 Wis. Act 145 that transfers appeals of certain determinations of the Department of Transportation from the Division of Hearings and Appeals to the Tax Appeals Commission.

The rule making clarifies terms of application requirements, including "established place of business," "reporting period," and "license." The rule codifies

Department policy that an IRP, IFTA, or SSRS applicant's established place of business is in Wisconsin, and the documentation required to support the application. The rule also clarifies that the licensee is responsible to account for IFTA decals, and the penalty for failure to account.

The rule clarifies the Department's policy, including penalties and fees, when customers do not submit IFTA or IRP payments, or both, to the Department by the due date.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Initial Regulatory Flexibility Analysis

The Department anticipates that this rule making will have no direct adverse effect on small businesses. This rule making establishes no additional compliance, bookkeeping, or reporting requirements for small businesses.

Copies of Rule and Contact Person

Copies of the proposed rule may be obtained upon request, without cost, by writing to Tim Galbraith, Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 151, P. O. Box 7955, Madison, WI 53707-7955, or by calling (608) 261-2573. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

Notice of Hearing Workforce Development (Public Works Construction) [CR 04-006]

NOTICE IS HEREBY GIVEN that pursuant to sections 66.0903 (5), 103.49 (3g), 779.14 (1s), and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of rules relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Hearing Information

Thursday, February 19, 2004

1:30 p.m.

GEF 1 Building, Room B103

201 E. Washington Avenue

Madison

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903 (5), 103.49 (3g), 779.14 (1s), and 227.11, Stats.

Statutes interpreted: Sections 66.0903 (5), 103.49 (3g), and 779.14, Stats.

Adjustment of thresholds for application of prevailing wage rates. The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under current law, the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$37,000, and do not apply to any multi-trade public works project for which the estimated cost is below \$180,000.

Pursuant to ss. 66.0903 (5) and 103.49 (3g), Stats., and s. DWD 290.15, the department is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication. This rule adjusts the thresholds from \$37,000 to \$38,000 for single-trade projects and from \$180,000 to \$186,000 for multi-trade projects based on a 3.33% increase in the construction cost index between December 2002 and December 2003.

Adjustment of thresholds for payment and performance assurance requirements. Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14 (1s), Stats., requires the department to adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the

adjustment would not be less than 5%. The last adjustment was effective in January 2002 based on figures from December 2001. The thresholds are adjusted to reflect a 6.13% increase in the construction cost index from December 2001 to December 2003. These adjustments are also based on changes in the construction cost index as published in the *Engineering News-Record* and are rounded to the nearest thousand.

Initial Regulatory Flexibility Analysis

The proposed rules do not affect small business as defined in s. 227.14, Stats.

Fiscal Impact

The proposed rules provide that a state agency or local governmental unit contracting for the construction of a single-trade public works project that costs more than \$37,000 but less than \$38,000 or a multi-trade project that costs more than \$180,000 but less than \$186,000 will not be covered by the prevailing wage requirement.

Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>. A paper copy may be obtained at no charge by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than February 20, 2004, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

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

Accounting Examining Board
(CR 03–071)

Chs. Accy 1, 4, 5, 7, 8, and 9, relating to definitions, deleting antiquated provisions related to public accountants, and changes to the requirements for individual and firm certified public accountant licenses.

Agriculture, Trade and Consumer Protection
(CR 03–076)

Ch. ATCP 30, relating to atrazine use restrictions.

Pharmacy Examining Board
(CR 03–096)

Ch. Phar 6, relating to the professional service area requirements where the pharmacist is absent.

Revenue
(CR 03–104)

Ch. Tax 18, relating to agricultural land property tax assessments.

Transportation
(CR 03–116)

Ch. Trans 300, relating to school bus equipment standards.

Transportation
(CR 03–117)

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

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.

Financial Institutions – Credit Unions (CR 02–133)

An order affecting ch. DFI–CU 73, relating to annual audits and verification of accounts by state–chartered credit unions.

Effective 3–1–04.

Health and Family Services (CR 03–080)

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

Effective 3–1–04.

Natural Resources (CR 03–037)

An order affecting chs. NR 460, 465, 468, and 484, relating to national emission standards for hazardous air pollutants for facilities that apply surface coatings to large appliances.

Effective 4–1–04.

Natural Resources (CR 03–050)

An order affecting chs. NR 104 to 106, and 210, relating to the regulation of discharges of ammonia to surface waters of the state and relating to other minor corrections to errors

Effective 4–1–04.

Natural Resources (CR 03–063)

An order affecting s. NR 140.10 Table 1, relating to groundwater quality standards.

Effective 3–1–04.

Natural Resources (CR 03–067)

An order affecting ch. NR 809, relating to arsenic in public water systems.

Effective 4–1–04.

Transportation (CR 03–093)

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

Effective 3–1–04.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **January 31, 2004**, 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.

Commerce (CR 02-129)

An order affecting chs. Comm 2, 81 to 85 and 91, relating to fee schedule; definitions and standards; design, construction, installation, supervision and inspection of plumbing; private onsite wastewater treatment systems; plumbing products; soil and site evaluations; and sanitation. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

Section 145.02, Stats., authorizes the Department to promulgate rules safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing, including private onsite wastewater treatment systems. The proposed rules of Clearinghouse Rule No. 02-129 are minimum requirements to meet the directives of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

Summary of Comments by Legislative Review Committees

No comments were received.

Controlled Substances Board (CR 03-056)

An order affecting ch. CSB 2, relating to rescheduling buprenorphine from a schedule V controlled substance to a schedule III controlled substance under federal law. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

This rule will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

Controlled Substances Board (CR 03-057)

An order affecting ch. CSB 2, relating to the scheduling of a schedule III controlled substance under federal law. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

This rule will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

Employee Trust Funds (CR 03-062)

An order affecting ch. ETF 20, relating to the annuity dividend effective date. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services (CR 03-010)

An order affecting ch. HFS 39, relating to voluntarily relinquishing custody of a newborn who is 72 hours old or younger. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

The order will not have a significant economic impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Hearing and Speech Examining Board (CR 03-025)

An order affecting chs. HAS 1 to 6, relating to definitions, grounds for discipline and minor and technical changes. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

This rule 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 by Legislative Review Committees

No comments were received.

Medical Examining Board (CR 03-072)

An order affecting ch. Med 1, relating to accepting examinations from the Medical Council of Canada. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

This rule 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 by Legislative Review Committees

No comments were received.

**Public Instruction
(CR 03-073)**

An order affecting ch. PI 8, relating to audits of the school district standards. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

These rules do not impact small businesses, as defined in ch. 227, Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**Public Service Commission
(CR 03-003)**

An order affecting chs. PSC 113 and 119, relating to interconnection of distributed generation to electric distribution systems. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

The proposed rules concern interconnection of customer

owned generators less than 15 MW to the electric system and should have no impact on small business.

Summary of Comments by Legislative Review Committees

No comments were received.

**Regulation and Licensing
(CR 03-084)**

An order affecting ch. RL 87, Appendix I, which contains the 2003 edition of the USPAP and incorporate by reference the 2004 edition of USPAP. Effective 2-1-04.

Summary of Final Regulatory Flexibility Analysis

This rule 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 by Legislative Review Committees

No comments were received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **January 2004**, 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

Commerce

Ch. Comm 2

- S. Comm 2.645
- S. Comm 2.65 Table 2.65
- S. Comm 2.66 (1) (a)
- S. Comm 2.675

Ch. Comm 81

- S. Comm 81.01 (2m) and (168m)

Ch. Comm 82

- S. Comm 82.01
- S. Comm 82.20 (1) (intro.) and (c), and (13) (e)
- S. Comm 82.32 (3) (intro.)
- S. Comm 82.33 (9) (c), (d), (k), and Table 82.33-3
- S. Comm 82.34 (4) (a) and (5) (b)
- S. Comm 82.38 Table 82.38-1
- S. Comm 82.40 (4) (c)

Ch. Comm 83

- S. Comm 83.01
- S. Comm 83.03 (2) (b) and (5)
- S. Comm 83.04 (2) and (3), Tables 83.04-1 and 83.04-2
- S. Comm 83.21 (2) (c), (3) (b) and (c)
- S. Comm 83.22 Table 83.22-3, (2) (b), (4) (a) and (e)
- S. Comm 83.23 (3) (a) and (b)
- S. Comm 83.25 (2) (a)
- S. Comm 83.29 (1) (a)
- S. Comm 83.32 (1) (e) and (f), (3) (a) and (b)
- S. Comm 83.43 (2), (6) (intro.) and Table 83.43-1
- S. Comm 83.44 (3) (b), (4) (c), (5) (a), and Tables 83.44-2 and 83.44-3
- S. Comm 83.52 (3)
- S. Comm 83.54 (1) (e), (2) (c), (d) and (4) (d)
- S. Comm 83.55 (1), (2), (5)
- S. Comm 83.61 (4)

Ch. Comm 84

- S. Comm 84.20 (5) (h)
- S. Comm 84.25 (7), (11)
- S. Comm 84.30 (2) (j), (4) (d), (e) and (i)

Ch. Comm 85

- S. Comm 85.30 (2) (b), (3) (a)
- S. Comm 85.40 (3) (a)
- S. Comm 85.60 (1), (2) (c), (3) (b), (h), (i), (4) (a), (c), (d), (e) and (f) and (5)

Ch. Comm 91

- S. Comm 91.04

Controlled Substances Board

Ch. CSB 2

- SS. CSB 2.29 and 2.30

Employee Trust Funds

Ch. ETF 20

- S. ETF 20.25 (1) (a) and (2)

Health and Family Services

Ch. HFS 39

Ch. HFS 199

- S. HFS 199.04 (1) (d)
- S. HFS 199.07 (1) (a)

Hearing and Speech Examining Board

Ch. HAS 6

- S. HAS 6.02 (4g) and (5g)
- S. HAS 6.14 (1) (a), (b), (2) (a), (3) (a)
- S. HAS 6.18 (1) (h), (2) (d), (e) and (f)

Medical Examining Board

Ch. Med 1

- S. Med 1.06 (3) (f)

Public Instruction

Ch. PI 8

- S. PI 8.02 (1)

Public Service Commission

Ch. PSC 113

- S. PSC 113.0207
- S. PSC 113.0208

Ch. PSC 119

Tobacco Control Board

Ch. TCB 1*

- S. TCB 1.04 (1) (d)
- S. TCB 1.07 (1) (a)

*renumbered Ch. HFS 199

Editorial corrections

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

Administration**Ch. Adm 10**

S. Adm 10.03 (3) and (5)
S. Adm 10.05 (2)

Ch. Adm 14

S. Adm 14.03

Chs. Adm 15 to 19*

* renumbered to Chs. Comm 150–154

Commerce**Ch. Comm 82**

S. Comm 82.40 (8) (b)

Ch. Comm 85

S. Comm 85.60 (3) (a) and (h)

Chs. Comm 150–154**Employee Trust Funds****Ch. ETF 11**

S. ETF 11.03 (1m) and (7) (c)
S. ETF 11.105 (2)
S. ETF 11.16 (3) (b)

Ch. ETF 20

S. ETF 20.12 (2) (a) and (b)
S. ETF 20.14 (intro.) and (3)
S. ETF 20.16 (1) and (2)
S. ETF 20.19 (2) (e), (f), (h) and (i)

Ch. ETF 52

S. ETF 52.14 (2) and (3)
S. ETF 52.22 (2) (a) and (b)

Financial Institutions–Securities**Ch. DFI–Sec 7**

S. DFI–Sec 7.01 (1) (c), (3) (c), and (d)

Tobacco Control Board**Ch. TCB 1**

S. TCB 1.06 (1) (c)

Transportation**Ch. Trans 233**

S. Trans 233.01
S. Trans 233.012

Errata

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

Employee Trust Funds**Ch. ETF 52**

S. ETF 52.07 (3) (c)

Transportation**Ch. Trans 233**

S. Trans 233.03 (3)

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
Comm 20.06 (1) (c) 2.	101.651 (2m) (a) or (b)	101.651 (2m) (a)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 35. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Major Christopher J. Splinter of the United States Army who lost his life during Operation Iraqi Freedom.