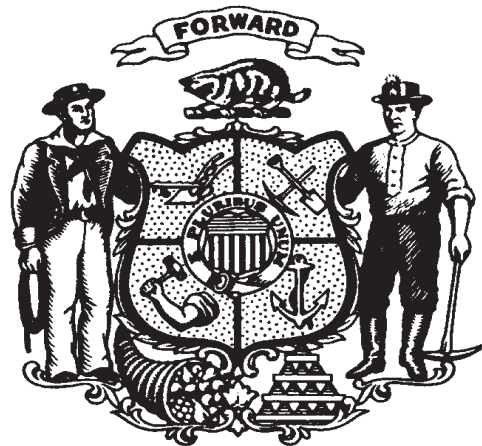


Wisconsin Administrative Register

No. 569



Publication Date: May 31, 2003

Effective Date: June 1, 2003



Revisor of Statutes Bureau
Suite 800, 131 West Wilson Street
Madison, Wisconsin 53703-3233

The 2001 – 02 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2001 – 02 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u>	Hard Cover <u>Without Postage</u>	Soft Cover <u>With Postage</u>	Soft Cover <u>Without Postage</u>
\$151.00	\$144.00	\$126.00	\$120.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

WisLaw[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, WI 53707–7840

Table of contents

Emergency rules now in effect.**Pages 4 to 9**

Commerce:

Financial Resources for Businesses & Communities, Chs. Comm 105–128

Rules relating to the use of rapid response funds in economically depressed areas of Wisconsin.

Employee Trust Funds:

Rules relating to the date as of which annual post–retirement annuity adjustments will occur.

Financial Institutions – Securities:

Rules revising **ch. DFI–Sec 4** relating to conforming Wisconsin’s rules concerning broker–dealer books and records to federally–mandated standards.
[First Appearance].

Health and Family Services:

Medical Assistance, Chs. HFS 100—

Rules relating to the Medicaid Family Planning Demonstration Project.

Health, Chs. HFS 110—

Rules relating to licensing of EMTs and certification of first responders, incorporating responding to acts of terrorism as a training component.

Rules relating to certification for the identification, removal and reduction of lead–based paint hazards.

Rules relating to critical access hospitals.

Higher Educational Aids Board:

Rules relating to the Talent Incentive Program Grant.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to the control and management of chronic wasting disease.

Rules relating to the closure of carp fishing on Cedar Lake and connected waters in Polk and St. Croix counties.

Rules relating to captive wildlife.

Rules relating to the control and management of chronic wasting disease.

Nursing:

Rules relating to malpractice insurance coverage for nurse–midwives.

Scope statements.**Pages 10 to 14**

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors:

Rules relating to sanctions for cheating on examinations for land surveyors.

Rules relating to changing the “principles and practice examination” to the jurisprudence examination.

Chiropractic Examining Board:

Rules relating to removing inconsistencies, correcting oversights and conforming rules to current practices.

Elections Board:

Rules relating to funding Elections Board implementation of the federal Help America Vote Act.

Financial Institutions – Securities:	<p>Rules relating to Wisconsin’s requirements concerning broker–dealer books and records.</p> <p>Rules relating to the Wisconsin Uniform Securities Law.</p>
Health and Family Services:	<p>Rules relating to the Wisconsin Health Insurance Risk–Sharing Plan (HIRSP).</p> <p>Rules relating to the certification of programs and requirements for training and testing of nurse assistants, home health aides, and hospice aides.</p>
Natural Resources:	<p>Rules relating to the forest protection area of Jackson County.</p>
Transportation:	<p>Rules relating to motor carrier safety and hazardous material transportation safety.</p> <p>Rules relating to intrastate motor carrier safety regulations.</p>
Submittal of rules to the legislative council clearinghouse.	Page 15
Commerce:	<p>Rules relating to ch. Comm 18, elevators, escalators and lift devices.</p> <p>Rules relating to ch. Comm 108, use of rapid response funds in economically depressed areas of Wisconsin to preserve economic development.</p>
Veterans Affairs:	<p>Relating to s. VA 13.05 (intro.) and (1), imposition of rental charges at regional housing sites under the Veteran Assistance Program.</p>
Rule–making notices.	Pages 16 to 22
Commerce:	<p>Hearing to consider revisions to ch. Comm 18, relating to elevators, escalators, and lift devices.</p> <p>Hearing to consider revisions to ch. Comm 108, relating to the use of rapid response funds in economically depressed areas to preserve economic development.</p>
Natural Resources:	<p>Hearings to consider revisions to ch. NR 19, relating to wildlife rehabilitation licenses and activities.</p> <p>Hearings to consider revisions to ch. NR 45, relating to use regulations on department properties.</p> <p>Hearing to consider revisions to ch. NR 64, relating to reimbursement of eligible expenses on all–terrain vehicle trails.</p> <p>Hearings to consider revisions to ch. NR 216, relating to storm water discharge permits.</p> <p>Hearing to consider revisions to chs. NR 204, 214, 219, and 518, relating to land application of materials containing PCBs.</p>
Revenue:	<p>Proposed revision to ch. Tax 12, relating to notice of assessment and tax exemption for solar and wind energy systems.</p>

Submittal of proposed rules to the legislature.

Page 23

Agriculture, Trade and Consumer Protection:

(CR 02-141) – Ch. ATCP 92

Commerce:

(CR 03-012) – Ch. Comm 45

Rule orders filed with the revisor of statutes bureau.

Page 24

Natural Resources:

(CR 03-015) – Chs. NR 10 and 15

Transportation:

(CR 02-153) – Ch. Trans 114

Rules published with this register and final regulatory flexibility analyses.

Pages 25 to 29

Agriculture, Trade and Consumer Protection:

(CR 02-054) – Chs. ATCP 10 and 11

(CR 02-078) – Chs. ATCP 10, 11 and 12

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors:

(CR 02-111) – Ch. A-E 3

Barbering and Cosmetology:

(CR 02-058) – Chs. BC 1 to 4 and 10

Commerce:

(CR 02-077) – Chs. Comm 20 to 25

(CR 02-127) – Ch. Comm 34

Natural Resources:

(CR 02-061) – Ch. NR 109

(CR 02-098) – Chs. NR 50 and 64

(CR 02-114) – Ch. NR 169

(CR 02-122) – Ch. NR 191

Pharmacy Examining Board:

(CR 02-140) – Ch. Phar 2

(CR 02-150) – Ch. Phar 2

(CR 03-005) – Ch. Phar 2

Transportation:

(CR 03-004) – Ch. Trans 403

Workforce Development:

(CR 03-008) – Ch. DWD 290

Sections affected by rule revisions and corrections.

Pages 30 to 31

Sections affected by revisor’s corrections not published.

Page 32

Executive orders.

Page 33

Public notice.

Pages 34 to 37

Elections Board:

State Plan for Help America Vote Act of 2002

Health and Family Services:

Medical Assistance Reimbursement of Nursing Homes

Medical Assistance Reimbursement for Intermittent Skilled Nursing Services

Notice of suspension of an administrative rule.

Page 38

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.

Commerce

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

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

Finding of emergency

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

Analysis of Rules

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

Statute Interpreted: s. 560.04, Stats.

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

Given the uncertainty inherent in today's marketplace, Commerce would like to maximize the use of federal

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

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

Publication Date: March 22, 2003

Effective Date: March 22, 2003

Expiration Date: August 19, 2003

Employee Trust Funds

Rules adopted amending **s. ETF 20.25 (1) (a) and (2)** regarding the date as of which annual post-retirement annuity adjustments under ss. 40.27 (2) and 40.28 (2), Stats., will occur.

Finding of emergency

The Department of Employee Trust Funds, Employee Trust Fund Board, Teachers Retirement Board and Wisconsin Retirement Board find that an emergency exists and that an administrative rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Without emergency rule-making it will not be possible to avoid short-term harm to individual WRS annuitants who will already bear the effects of the market downturn though a zero percent fixed annuity dividend and a double-digit negative variable change.

The first annuity dividends actually affected by the 2002 rule-making (CR #02-049) are the dividends otherwise payable on March 1, 2003. Projections indicate that the fixed division dividend will likely be 0%, largely because of the effect of three years of market declines. The annual change to variable division annuities, which is more volatile because it reflects only the past year's market performance, will be negative and in the range of -26% to -30%. This means that the portion of an annuitant's annuity payable from the fixed division will not increase during 2003, while, if the annuitant receives a portion of his or her annuity from the variable annuity division, that portion of the annuity will be markedly reduced. Annuitants are concerned about the short-term effect of cuts to their annuities being made effective a month earlier this year than was the case in previous years.

The change from April 1 to March 1 was initiated with the best of intentions, primarily to get the additional money from dividend increases into the hands of annuitants as quickly as possible. In retrospect, the timing is unfortunate. When drafting of the rule began in early 2002, the year-end market earnings were unknown and a third consecutive year of market losses could not be predicted. The continued deterioration of investment returns in the latter part of 2002 has magnified the adverse, short-term effect of this change in the timing of dividends; that is, the size of the negative variable adjustment is larger.

Publication Date: February 27, 2003
Effective Date: February 28, 2003
Expiration Date: July 28, 2003

Financial Institutions – Securities

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

Finding of emergency

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

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

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

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

Consequently, it is necessary to immediately revise and amend Wisconsin’s broker–dealer books and records rules to conform to the federal rules that now have become effective, and to remove inconsistent requirements contained in the existing Wisconsin books and record–keeping rules. A subcommittee of the North American Securities Administrators Association (“NASAA”), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC’s books and record–keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation–by–reference–of–the–federal–rule treatment as set forth in this Order Adopting Emergency Rules.

Accordingly, the emergency rules do the following:

(1) Under Section 1, the entirety of the existing Wisconsin general books and records requirement for licensed broker–dealers as set forth in rules DFI–Sec 4.03 (1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and

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

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

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

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

Publication Date: May 7, 2003
Effective Date: May 7, 2003
Expiration Date: October 4, 2003

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

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

Finding of emergency

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

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

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program

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

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

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

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

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

Finding of emergency

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

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

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

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

Publication Date: December 31, 2002
Effective Date: December 31, 2002
Expiration Date: May 30, 2003
Hearing Date: February 17, 2003

2. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Finding of emergency

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

The presence of lead in paint and soil is believed to contribute to the level of lead found in the blood of persons, particularly children, living in the area. The federal Environmental Protection Agency (EPA) maintains regulations intended to reduce environmental lead hazards principally by:

- Specifying the thresholds for an environment to be considered as presenting a lead-based paint hazard; and
- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

The federal government may authorize a state to administer its own lead training and certification program if the state has regulations governing certification of persons for the identification, removal and reduction of lead-based paint hazards that are as protective as those specified in the EPA regulations.

In Wisconsin, the Department of Health and Family Services administers the lead training and certification program. The Department has established administrative rules under ch. HFS 163 to guide its administration of the program. In 2000, the Department began work to extensively revise ch. HFS 163 to implement 1999 Wisconsin Act 113, which established a program for registering lead-free and lead-safe properties. The proposed rule was released for public review and comment on December 12, 2000. On January 5, 2001, in volume 66, number 4 of the Federal Register (66 FR 1206-1239), the EPA published regulations that established standards for lead-based paint hazards under 40 CFR Part 745, Subparts D and L, and required states with authorized lead training and certification programs under 40 CFR Part 745, Subpart Q, to implement the regulations by February 5, 2003. Because the proposed rule had already been released for public review and comment and the EPA standards for lead-based paint hazards would affect the lead-safe property standards under ch. HFS 163, the Department decided to educate the public about the new EPA standards for lead-based paint hazards before revising the rule to reflect the new EPA standards. If Wisconsin is to continue administering its program of training and certification of persons performing lead abatement and lead investigation activities (in lieu of a program operated by the EPA), the Department must revise ch. HFS 163 by February 3, 2003 to comply with those most recent and final federal regulations at 40 CFR Part 745, Subparts D, L and Q.

If the Department does not make these changes to ch. HFS 163, Wisconsin could lose some or all of its Federal lead grant funding and EPA's authorization for the Department's lead program. Since the federal regulation provides the first measurable definition of a lead-based paint hazard, the

Department needs to adopt this definition in order to protect the state's citizens.

The most significant modification to the rules pertains to the permissible level of residual lead dust in window troughs. The current lead-safe property standards expressed under s. HFS 163.42 allow a higher level of lead dust in window troughs than is permissible in corresponding EPA regulations and also do not require properties to be free of soil-lead hazards. Making the changes to s. HFS 163.42 through this order will mean that persons removing lead-based paint hazards may need to clean window troughs more thoroughly to reduce the dust-lead levels and also may need to cover bare soil. Most lead investigation professionals in Wisconsin already perform lead investigation work in conformance with the more stringent lead levels specified in EPA's regulations to ensure a more protective environment for residents, especially when conducting clearance following abatement activities. Conformance with the more stringent EPA regulations is also currently required when lead hazard reduction work is performed using federal funds. Since most lead investigation professionals already use the more protective EPA standards, the rule changes should have little effect on persons conducting lead investigation or abatement activities.

Among the changes the Department is making through this order, the most significant are the following:

1. Prior to this order, s. HFS 163.14 (5) (c) 8. required that, following lead abatement, a window well or trough may contain no more than 800 micrograms of lead dust per square foot. The revised EPA regulations specify a maximum level of 400 micrograms per square foot. To comply with federal regulations, the Department is reducing the permissible threshold to 400 micrograms per square foot.

2. Prior to this order, s. HFS 163.15 (2) specified that a lead hazard is present in soil when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million. The EPA revised regulations state that a lead hazard is present in soil when bare soil in a play area contains total lead content equal to or exceeding 400 parts per million or when bare soil in the rest of the yard contains an average of 1,200 parts per million of lead. To comply with the federal regulations, the Department is reducing the permissible threshold to that specified by the EPA.

3. The Department is adding standards, as s. HFS 163.15 (3), for determining when a lead-based paint hazard exists.

4. The Department is modifying s. HFS 163.42 (1) (b) and (c) to require that all exterior painted components, regardless of their height above the ground, be free of deteriorated paint unless the paint is proved to be lead-free.

5. The Department is revising its standards for lead-safe property under s. HFS 163.42 (1) (f) and (j) to reflect these lower levels for lead in dust and soil.

6. Finally, the Department is revising s. HFS 163.42 (1) (j) to require that there be no soil-lead hazard on registered lead-safe property.

Publication Date: January 3, 2003

Effective Date: January 3, 2003

Expiration Date: June 2, 2003

Hearing Date: April 2, 2003

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

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the

immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

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

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

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

Publication Date: March 21, 2003

Effective Date: March 21, 2003

Expiration Date: August 18, 2003

Hearing Date: June 20, 2003

Higher Educational Aids Board

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

Finding of emergency

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

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

Recently, students who have returned from active duty military service and resumed enrollment at a college or university have begun to request exceptions to the continuous

enrollment requirement. This situation is not addressed in the current administrative rules, because the break in these students' enrollment was not due to medical reasons.

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

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

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

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

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

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule-making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses.

Publication Date: July 3, 2002
Effective Date: July 3, 2002
Expiration Date: November 30, 2002
Hearing Date: August 12, 2002
Extension Through: April 30, 2003 (part)
September 1, 2003 (part)

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

Finding of emergency

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

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

Publication Date: October 3, 2002
Effective Date: October 3, 2002
Expiration Date: March 2, 2003
Hearing Date: November 11, 2002
Extension Through: June 29, 2003

- Rules adopted revising **chs. NR 16 and 19** and creating **ch. NR 14**, relating to captive wildlife.

Finding of emergency

2001 Wis. Act 56 was not enacted until April of 2002. It required standards for captive animals held under licenses issued under ch. 169, Stats., to be in place by January 1, 2003, the effective date of the change from licensing under ch. 29, Stats., to ch. 169, Stats. As the use of the permanent rule process would not allow these standards to be in place by January 1, 2003, the Department had no choice but to use the emergency rule procedures. Failure to have standards in place would result in the lack of humane care standards for wild animals held in captivity and the lack of pen standards necessary to prevent the interactions between captive and wild animals.

Publication Date: December 20, 2002
Effective Date: January 1, 2003
Expiration Date: May 31, 2003
Hearing Date: January 16, 2003

- Rules adopted revising **ss. NR 10.07 (2), 12.06 and 19.60**, relating to the control and management of chronic wasting disease.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule-making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. This rule is needed to reduce the deer herd in the CWD eradication zone further than accomplished through the hunting seasons to help prevent the spread of CWD.

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

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

Nursing

Rules adopted creating **s. N 4.10**, relating to malpractice insurance coverage for nurse-midwives.

Exemption from finding of emergency

Under Section 13 of 2001 Wisconsin Act 52, the Board of Nursing is directed to use the procedure under s. 227.24,

Stats., in promulgating the rules required under s. 441.15 (5) (b) of the statutes. Under that procedure, the Board of Nursing may promulgate this rule for the period before permanent rules become effective. The Board of Nursing need not provide evidence of the necessity of preservation of the public peace, health, safety, or welfare in promulgating this rule.

Analysis prepared by the Department of Regulation

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 441.15 (2) (c), 441.15 (3) (a) 3. and 411.15 (5), as created by 2001 Wisconsin Act 52, and s. 441.15 (3) (bm), as amended by 2001 Wisconsin Act 52.

Statutes interpreted: s. 441.15 (2) (c), 441.15 (3) (a) 3., 441.15 (3) (bm) and 441.15 (5) (b), Stats.

2001 Wisconsin Act 52 makes a number of changes to the

provisions affecting nurse–midwives, including that licensed nurse–midwives carry malpractice insurance in an amount determined by rules to be promulgated by the Board of Nursing. This rule establishes those requirements relating to malpractice coverage for nurse–midwives.

Using the procedure under s. 227.24, Stats., the Board of Nursing will promulgate the rules as created by 2001 Wisconsin Act 52, for the period before permanent rules become effective.

Publication Date: November 5, 2002
Effective Date: November 5, 2002
Expiration Date: April 4, 2003
Hearing Date: March 7, 2003
Extension Through: June 2, 2003

Scope statements

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Subject

Sanctions for cheating on examinations for land surveyors.

Objective of the Rule. The proposed rule will increase the penalties for cheating on examinations.

Policy analysis

The proposed rules will authorize the board to prohibit examinees from writing for as many as the next six scheduled examinations after the examination during which the cheating occurred. The number of examinations the examinee would be prohibited from writing would be determined by the board and based upon the seriousness of the cheating offense.

Statutory authority

Section 15.08 (5) (b) and 227.11 (2), Stats.

Staff time required

25 hours.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Subject

Changing the “principles and practice examination” to the jurisprudence examination.

Objective of the Rule. To change the name of the examination that relates to temporary permits for land surveyors.

Policy analysis

In Clearinghouse Rule 02–090 the examination was stated as being “principles and practice examination.” It should be the “jurisprudence examination.” This amendment will correct the name.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 443.06 (3), Stats.

Staff time required

5 hours.

Chiropractic Examining Board

Subject

Minor changes to all rules. *Objective of the Rule.* To remove inconsistencies, correct oversights and conform rules to current practices.

Policy analysis

No new policies are contemplated at this time. The board wishes to undertake a review of all its rules in order to identify inconsistencies, omissions, and language that does not reflect current practices or processes in the department. It is possible that the review will identify the need to change existing policies or incorporate new policies into the rules, and a decision will have to be made as to whether the effects are significant enough to initiate a separate rule promulgating process.

Statutory authority

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

Staff time required

a. 25 hours of legal counsel time conferring with board members to identify the changes, and 10 hours of legal counsel time drafting and redrafting the changes.

b. 20 hours of one board member’s time to identify the changes, plus 4 hours x 6 board members = 24 board member hours spent discussing and redrafting the changes, for a total of 44 board member hours.

c. 40 hours of paralegal’s time preparing scope statement, rules at different stages of promulgation, notice of submittal, clearinghouse letter, hearing notice, review for small business impact, preparing report to the legislature, summarizing hearing testimony and written comments, proofreading drafts of rules for publication in the code.

Elections Board

Subject

Create s. ElBd 6.06, regarding funding Elections Board implementation of the federal Help America Vote Act.

Policy analysis

Under the federal Help America Vote Act of 2002, this state is eligible to receive federal financial assistance for the purchase of voting equipment, compliance with federal requirements for the conduct of federal elections and other election administration costs, implementation of a state-wide voter registration system, construction of barrier-free polling places, and training of election officials to enable greater participation of individuals with disabilities in federal elections. To be eligible for most of this federal assistance, this state must make expenditures from state moneys equal to at least 5% of the amount spent by this state for the same purposes for which federal assistance is received.

The Wisconsin Legislature requires the Elections Board to adopt an administrative rule to specify the amount to be allocated for each specific purpose from the Help America Vote Election Fund before spending any money from the fund for that fiscal year. The Board proposes to adopt rules specifying amounts and purposes for fiscal years 2003, 2004 and 2005.

Statutory authority

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

Staff time required

10 hours for each rule.

Financial Institutions – Securities

Subject

Rules to conform Wisconsin’s existing Securities Law rules requirements concerning broker-dealer books and records to new, federally-mandated standards under the federal Securities Exchange Act.

Policy analysis

Objective of the rules. To adopt permanent rules to be in effect upon expiration of identical emergency rules issued by the Division on May 2, 2003 to conform Wisconsin’s Securities Law rules requirements concerning broker-dealer books and records to federally-mandated standards adopted by the U.S. Securities and Exchange Commission

("Commission") under the federal Securities Exchange Act that became effective on May 2, 2003.

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

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

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

Consequently, it is necessary to adopt permanent rules to revise and amend Wisconsin's broker-dealer books and records rules to conform to the federal rules that now have become effective, and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. A subcommittee of the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the Commission's books and record-keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation-by-reference-of-the-federal-rules treatment as was set forth in the Order Adopting Emergency Rules, and which treatment also will be used to adopt the rules in permanent form.

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

(1) The entirety of the existing Wisconsin general books and records requirement for licensed broker-dealers as set forth in rules s. DFI-Sec 4.03 (1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), will be repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the Commission contained in sections 17a-3 and 4 under the Securities Exchange Act. A new sub. (1) will require a firm to retain the books and records cross-referenced in federal SEC rules 17a-3 and 4, and a new sub. (2) will incorporate by reference the records preservation and retention requirements in federal rule 17a-4. New subsections (3) and (4) will replace the current Wisconsin rules in s. DFI-Sec 4.03 (3) and (4) [that prescribe branch

office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker-dealer offices triggering the definition of "branch office" under current rule s. DFI-Sec 1.02 (7) (a), are the same records prescribed under the new federal provisions in new federal Rule 17a-3, and must be held for the retention periods specified in new federal Rule 17a-4.

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

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

Statutory authority

Sections 551.33(1), and 551.63(1) & (2), Stats.

Staff time required

Estimated time to be spent by state employees to develop the rule—10 hours. [The form and content of the rules already have been developed in connection with the already-completed emergency rule adoption process.] No other resources are necessary.

Financial Institutions – Securities

Subject

Annual rule revision process for the Rules of the Division of Securities, Department of Financial Institutions, relating to the Wisconsin Uniform Securities Law.

Policy analysis

Objective of the rules. The Division's annual rule revision process is conducted for the following purposes in 2003:

(1) Amending several of the existing Administrative Procedure-contested case rules in Chapter DFI-Sec 8, Rules of the Division of Securities dealing with effectuating service and providing notice of administrative orders on named parties, as well as appearances at administrative proceedings by representatives of named parties.

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

Existing and new policies contained in the proposed rules include:

1. Existing rules relating to appearances at administrative proceedings by representatives of named parties need to be amended to reflect a recent Wisconsin court determination that precludes persons not licensed as attorneys in Wisconsin from representing named parties in contested case administrative proceedings before Wisconsin state agencies.

2. Existing rules relating to effectuating service of summarily-issued Division administrative orders on named parties needs to be amended to provide that if a named party is a corporation, service via certified mail can be accomplished either by sending to the corporation directly at

its last known address, or by sending to the corporation's registered agent at its last known address, or by doing both.

3. Existing rules relating to effecting service by the Division of administrative orders on named parties needs to be amended to provide that if the named party is represented by legal counsel, service can be accomplished by serving legal counsel representing the named party.

Statutory authority

Section 551.63 (1) and (2), Stats.

Staff time required

Estimated time to be spent by state employees to develop the rules—2 hours. No other resources are necessary.

Health and Family Services

Subject

The Department proposes to develop a rulemaking order that modifies ch. HFS 119 regarding the Wisconsin Health Insurance Risk-Sharing Plan (HIRSP). Modifications to ch. HFS 119 need to reflect the annual actuarial update of HIRSP policyholder health insurance premiums, insurer assessments and provider payment rates for the period beginning July 1, 2003.

Policy analysis

The Department has a longstanding HIRSP for medically at-risk citizens. The Department has amended ch. HFS 119 each and every state fiscal year since 1998. This proposed rulemaking order involves the HIRSP update for the state fiscal year beginning July 1, 2003. The rule changes affect policyholder premiums, insurance assessments and provider assessments. The rule changes must be updated in accordance with current HIRSP costs and funding requirements, statutory requirements, the Governor's recommended 2003-05 budget, generally accepted actuarial principles, and actions taken by the HIRSP Board of Governors at its April 9, 2003, meeting.

The effect of the amended rule will be to ensure Department coverage of ongoing HIRSP costs for state fiscal year 2004. Without this annual update, HIRSP program costs will soon exceed HIRSP program revenues.

Statutory authority

Sections 149.143 (2) (a) 2., 3., and 4., and (3) and 227.11 (2) Stats. The rule interprets ss. 149.14 (8), 149.142, 149.143, 149.16 (3) (b), and 149.17 (4), Stats.

Staff time required

The estimated DHCF staff time and other resources needed to develop and promulgate these rules will be about 120 hours. Included in this estimate is the time required to make actuarial calculations, rule drafting and promulgation.

Health and Family Services

Subject

The Department proposes to revise ch. HFS 129, relating to the certification of programs and requirements for training and testing of nurse assistants, home health aides, and hospice aides.

Policy analysis

The Department proposes to revise ch. HFS 129 for several reasons:

1. To reflect the Department's decision to standardize the administration and operation of nurse aide competency evaluation statewide by contracting for this service.

Federal regulations set forth under CFR 483.152 and 483.154 authorize states to choose to offer a nurse aide training and competency evaluation program, or to review, and approve or disapprove program applications upon request. For the past 11 years, the Department has been reviewing, and approving or disapproving nurse aide training and competency evaluation programs based on standards in s. HFS 129.08. Anyone who meets those standards may conduct a testing program. However, the Department believes that specifying standards for competency evaluation programs cannot assure the maintenance of neutral and objective facility-sponsored instructional and competency evaluation tests that are free from possible inherent conflicts of interest posed by the need to meet facility staffing requirements. Therefore, the Department wants to modify ch. HFS 129 to reflect the Department's contracting out responsibility for such competency testing.

2. To improve the accuracy and integrity of the nurse aide registry.

Under s. 146.40 (4g), Stats., and s. HFS 129.10, the Department is required to maintain a list, known as a "registry," of all persons deemed qualified to work in Wisconsin as a nurse aide. Aside from committing an offense that would bar a person from remaining on the list, there are currently no provisions for removing a person's name from list, even though the person may no longer be available or interested in serving as a nurse aide. The Department believes that the list of qualified nurse aides, currently numbering over 156,000, contains many persons who no longer are available or interested in working as a nurse aide. Therefore, the Department will propose to modify s. HFS 129.10 to require nurse aides to periodically update their registration information and, in the process, allow the Department to maintain a more accurate list of nurse aides. Periodic updating will also provide the Department the opportunity to verify the information provided by nurse aides.

3. To clarify who is eligible to work as a nurse aide under specific circumstances.

The Department proposes to modify s. HFS 129.10 to clarify who may be included on the registry and who is eligible to work as a nurse aide and, specifically, a medication aide. The Department will also clarify the circumstances under which a person not currently included on the registry may work in a health care facility.

4. To make ch. HFS 129 more consistent with current federal regulations governing nurse aides.

The Department will propose revising aspects of ch. HFS 129 to reflect federal requirements established since ch. HFS 129 was originally promulgated over 10 years ago. Specifically, the Department will propose to incorporate federal requirements relating to:

- Withdrawal of Department approval of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program if the entity providing the program refuses to permit unannounced visits by the State.

- Nurse aide training needing to be performed by or under the general supervision of a RN who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long term care facility services.

- The inability of a facility to charge fees for training and competency testing to a person who is employed by or has received an offer of employment from a health care facility. In addition, in the case of a person becoming employed by federally certified nursing home within 12 months after completing a training and testing program, the requirement

for the Department to reimburse the person for the costs of such training and testing.

- Requiring that the skills demonstration part of the evaluation be performed in a facility or laboratory setting comparable to the setting in which the person will function as a nurse aide and be administered and evaluated by a RN with at least 1 year's experience in providing care for the elderly or the chronically ill of any age.

- Requiring a competency testing program to use a systems that prevent disclosure of both the pool of questions and the individual competency evaluations.

- Requiring that the skills demonstrated must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides.

- Establishing what happens if a person does not complete the evaluation satisfactorily, and impose a maximum number of three times that person may attempt to complete the evaluation successfully.

5. To expand the mechanisms available to the Department for enforcing compliance of testing and evaluation programs.

Existing enforcement options in s. HFS 129.05 (2) (c) are limited to suspension or revocation of certification or imposing a plan of correction. Although these are valuable enforcement tools, they do not give the Department the flexibility it needs to tailor its response to the severity of non-compliance with this chapter. The Department will propose to revise ch. HFS 129 to include additional enforcement options such as requiring a training or competency program whose approval has been revoked to remain ineligible to submit a new nurse aide training or testing program application for a period of up to one year, issuing a statement of deficiency and placing conditions on certification. The Department also will propose additional enforcement penalties for instructors and examiners who fail to follow program requirements.

Statutory authority

The Department's authority to promulgate rules is under sections 146.40 (3) and (5) and 227.11 (2) (a), Stats.

Staff time required

The Department estimates that it will take approximately 50 hours to draft the rulemaking order.

Natural Resources

Subject

Section NR 30.01 (1) (h) pertaining to the forest protection area of Jackson County.

Policy analysis

Throughout Wisconsin there are three types of forest fire protection designated for lands lying outside the limits of incorporated cities or villages. Where it has been determined by the Department there is a need for the Department to provide organized forest fire protection, there is established either an **Intensive** or **Extensive** forest fire protection area. On all other lands outside the limits of incorporated cities or villages a **Cooperative** forest fire protection designation is applied. ss 26.13 (1) Stats provides the chairperson of the town board will be the person responsible for providing forest fire prevention, detection, and suppression in the township. ss 26.13 (2) Stats places the responsibility for paying for all costs for this protection on the township. It also provides a mechanism for the township to levy a tax to pay these expenses. ss 26.13 (3) Stats gives the township the authority to regulate all burning within the township through a burning

permit system. ss26.11 (6) Stats provides a mechanism for the Department to assist a township in Cooperative protection after they have expended an amount specified. It also provides a mechanism for the Department to cover its costs.

The Township of Irving in Jackson County has petitioned to have parts of its lands removed from the Department's organized forest fire protection area.

Approval of this request from the Township of Irving would result in the relegation of responsibility to local authority. The citizens and landowners of the Township of Irving should be given a chance to clearly understand the totality of these changes. The Department is requesting a public hearing be held in the Township of Irving to offer such an opportunity.

Statutory authority

Sections 26.12 (1), Stats and NR 30.01.

Staff time required

Approximately 22 hours will be needed by the Department.

Transportation

Subject

Objective of the rule. This rule making will amend chs. Trans 325 and 326, relating to motor carrier safety and hazardous material transportation safety, to bring them into conformance with changes to the Federal Motor Carrier Safety Regulations and Hazardous Material regulations which will go into effect on January 4, 2004. Amendment of these rules will assure State Patrol inspectors and troopers are enforcing the most recent Safety regulations for Interstate Carriers and Hazardous Material (HM) regulations for both interstate and intrastate HM carriers.

1. Trans 325 (Motor Carrier Safety Regulations) – interstate. Amend the rule to include all changes in effect as of January 4, 2004. Changes have been made to the Federal Motor Carrier Safety regulations Title 49, Parts 390 through 397, regulating interstate operations. Amendment to this rule will bring state regulations in compliance with current interstate regulations.

2. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) for interstate and intrastate operations. Amend the rule to include all changes which have been made to Federal Motor Carrier Safety regulations 49 CFR Parts 107, 171, 172, 173, 177, 178, and 180 and in effect as of January 4, 2004. Amendment to this rule will bring state regulations, interstate and intrastate regulations into compliance with current federal regulations.

Policy analysis

TRANS 325

The Department annually updates ch. Trans 325 to keep current with the most recent changes and revisions to the Federal Motor Carrier Safety regulations. The revisions allow state inspectors and troopers to enforce the most current safety regulations already in effect for interstate motor carriers. The rule will continue to reference the use of the most recent North American Standard Out-of-Service criteria for placing vehicles and drivers out of service.

TRANS 326

The Department annually updates ch. Trans 326 to keep current with the most recent changes and updates to the federal hazardous material regulations. The revisions will allow state inspectors to enforce the most current hazardous material (HM) regulations already in effect for interstate and intrastate carriers. The rule will continue to reference the use of the most recent North American Standard Out-of-Service criteria vehicles and drivers out of service.

Statutory authority

Trans 325 – s. 110.075 and ch. 194, Stats.

Trans 326 – ss. 110.07, 194.38, 194.43 and 346.45 (4), Stats.

Staff time required

It is estimated that state employees will spend 100 hours on the rule making process, including research, committee meetings, drafting and conducting public hearings.

Transportation**Subject**

Objective of the rule. This rule making will amend ch. Trans 327, relating to intrastate motor carrier safety regulations to bring them into conformity with the most recent changes to the Federal Motor Carrier Safety Regulations which will go into effect on January 4, 2004.

Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most recent Federal Motor

Carrier Safety regulations for intrastate carriers.

This proposed rule will keep the Department in compliance to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

Policy analysis

The Department annually updates Trans 327 to keep current with the most recent changes to the Federal Motor Carrier Safety Regulations, 49 CFR parts 40, 382, 390, 391, 392, 393, 395, 396, and 397.

The rule will continue to reference the use of the most recent North American Standard Out-of-Service criteria for placing vehicles and drivers out-of-service.

Statutory authority

ss. 110.07, 110.075, 194.38 and 194.43, Stats.

Staff time required

It is estimated that state employees will spend 100 hours on the rule making process, including research, committee meetings, drafting and conducting public hearings.

Submittal of rules to legislative council clearinghouse

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

Commerce

Rule Submittal Date

On May 12, 2003, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. Comm 18 of the Wisconsin Administrative Code. The proposed rule relates to elevators, escalators and lift devices.

Agency Procedure for Promulgation

A public hearing is required.

Contact

Diane Meredith
(608) 266-8982

Commerce

Rule Submittal Date

On May 14, 2003, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. Comm 108 of the Wisconsin Administrative Code. The proposed rule relates to the use of rapid response funds in economically depressed areas of Wisconsin to preserve economic development.

Agency Procedure for Promulgation

A public hearing is required.

Contact

Todd Kearney
(608) 266-6675

Veterans Affairs

Rule Submittal Date

On May 7, 2003, the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending s. VA 13.05 (intro.) and 13.05 (1) of the Wisconsin Administrative Code. The proposed rule relates to the imposition of rental charges at regional housing sites under the veteran assistance program.

Analysis

The amendment of s. VA 13.05 (intro.) and 13.05 (1) will enable the Department to assess rental charges of up to 30 per cent of a resident's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments. The assessment may be made against the first check received by a resident but will be limited to those unfunded operational costs incurred by the housing site during the period of time the resident actually resided at the site.

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

Rule-making notices

Notice of Hearing

Commerce (Elevators, Ch. Comm 18)

[CR 03-047]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and (15), 101.12, 101.13, 101.132, and 101.17, Stats., the Department of Commerce will hold public hearings on proposed rules relating to elevators, escalators, and lift devices.

The public hearing will be held as follows:

Wednesday, July 9, 2003 at 10:00 a.m.

Conference Room #125

Department of Revenue Building

2135 Rimrock Road

Madison, WI

Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1) and (15), 101.12, 101.13, 101.132, and 101.17, Stats.

Statutes Interpreted: ss. 101.02 (1) and (15), 101.12, 101.13, 101.132, and 101.17, Stats.

Overview

Under the statutes cited, the Department protects public health, safety, and welfare by promulgating fire prevention and construction requirements for public buildings and places of employment, including commercial buildings and structures and multifamily dwellings. The Department is also responsible for creating design and construction requirements for mechanical devices, such as elevators, escalators and platform lifts, to ensure the safety of employees and frequenters in public buildings and places of employment who use these devices.

Currently, the Department adopts by reference the 1996 edition of the ASME A17.1- Safety Code for Elevators and Escalators, which included requirements for platform lifts and stairway chairlifts. In 1999, the ASME A18.1-Safety Standard for Platform Lifts and Stairway Chairlifts was developed as a separate document from the ASME A17.1 standard. The ASME A17.1-2000 edition and the ASME A18.1a-2001 edition are proposed to be adopted by reference in chapter Comm 18. Both of the national standards have been substantially revised and renumbered, which will necessitate chapter Comm 18 being completely rewritten and renumbered for consistency with the adopted standards.

Major Changes

The following are the major items contained in the revised chapter Comm 18, which incorporates by reference the ASME A17.1 and ASME A18.1a national standards:

1. Renumber chapter Comm 18 to correspond with the adopted standards numbering system. For example Comm 18.1708 relates to ASME A17.1 chapter 8, and Comm 18.1802 relates to ASME A18.1a chapter 2.

2. Add an application requirement that specifies which parts of the code apply to both new and existing installations. This requirement is consistent with ASME A17.1 section 1.1.3 and is being included as a Wisconsin based requirement

in the administration and enforcement section of the code for clarity and consistency. [Comm 18.1003 (1) (b) 3.]

3. Include the same definition of "alteration" as used in the ASME A17.1 in Comm 18 for consistency. [Comm 18.1004 (1)]

4. Require owners to provide maintenance logs to inspectors upon request. [Comm 18.1008 (3)]

5. Add a statement to the requirements for incorporation by reference of ASME A17.1 and ASME A18.1a that indicates any internal cross-references within the adopted codes to another requirement that has been modified by chapter Comm 18, the modification will apply unless specifically stated otherwise. This will eliminate the need to repeat a modification that applies to more than one type of elevator, or platform lift. [Comm 18. Comm 18.1005 (1) and (2)]

6. Require that information layout plans also provide information as specified in the ASME A17.1 and ASME A18.1a standard. [Comm 18.1013]

7. Reformat the plan review requirements for alterations to elevators and other mechanical lifting devices to a tabular format. The tables are organized to indicate when plans and applications are required or when only applications are required. Changes include requirements for platform lift alterations. [Comm 18.1013 (2) and Tables Comm 18.1013-1 to 18.1013-7]

8. Clarify that an application submittal is required when the repair of speed governors or valves includes breaking the seal. [Comm 18.1013 (2) (b) and Table Comm 18.1013-4]

9. Require the refuge space on top of hydraulic elevators to be identified the same as specified for electric elevators. [Comm 18.1703 (1)]

10. Modify the requirements in ASME A17.1 section 8.6.5.8 that requires elevators with hydraulic cylinders installed below ground to be replaced or provided with safeties conforming to ASME A17.1 section 3.17.1. Currently, there are no known safeties that would comply with the requirements so the replacement of existing single bottom hydraulic cylinders would be required. The Department has modified the requirements in ASME A17.1 section 8.6.5.8 to apply to hydraulic elevators installed prior to January 1, 1975 and that have below ground cylinders, and to require these elevators to have an annual pressure test as specified in ASME A17.1 sections 8.11.3.2.1 and 8.11.3.2.2. If the pressure test, or the record of oil usage specified in ASME A17.1 section 8.6.5.7 indicates there is an unexplained loss of oil, the hydraulic cylinder will need to be replaced. [Comm 18.1708 (1) and ASME A17.1 sections 8.11.3.2.1 and 8.11.3.2.2]

11. Include the ASME A18.1a section 1.1.1 requirement that prohibits a full passenger enclosure for platform lifts. [Comm 18.1802 (1) (e) and (2) (b) 1.]

12. Prohibit vertical platform lifts where runway enclosures are not provided. Vertical platform lifts without runway enclosures would not comply with the protruding object requirements in IBC chapter 10 for elements located on an accessible route. [Comm 18.1802 (3)]

13. Require differences in elevation between the platform lift and the floor to be overcome with ramps complying with the building code. [Comm 18.1802 (4)]

14. Increase the maximum travel distance of a platform lift from 12 feet to 14 feet. [Comm 18.1802 (7) (d)]

15. Include accessibility control requirements for platform lifts, which were previously found in chapter Comm 18. [Comm 18.1802 (8) (a)]

16. Require that a means be provided to permit authorized personnel from a position outside of the vertical platform runway enclosure to raise or lower the platform manually in the event of a power failure, unless standby power is provided. [Comm 18.1802 (8) (d)]

17. Permit inclined platform lifts that have restraining arms and that also fold up against a wall to be used as part of an accessible route in existing construction. These types of lifts would only be permitted under certain conditions in new construction as specified in s. Comm 62.1109 (7), and must not infringe into the minimum means of egress width required for the building occupants as specified in IBC chapter 10. These units will permit a minimum load capacity of 450 pounds, as opposed to the 750 pound minimum currently in the code. In the past, people with disabilities who use larger motorized chairs felt an increase in capacity was necessary. However, national codes and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) permit these units with the minimum capacity of 450 pounds. The unit is restricted to travel between 2 consecutive floors and have a maximum of 3 stops, and a sign is required to specify the maximum weight capacity of the lift. [Comm 18.1803]

18. Add a requirement specifying that stairway chairlifts may not be used as an accessible route in public buildings and places of employment, since these units do not provide accessibility for people who use mobility aids, such as wheelchairs. Stairway chairlifts serve only a small number of people with disabilities and may not be considered where an accessible route is required. [Comm 18.1804 (1)]

19. Eliminate the Wisconsin-based requirement that vertical platform lifts may penetrate a floor, since the ASME A18.1a standard now permits vertical platform lifts to penetrate a floor. [ASME A18.1a section 2.1]

Council Members and Representation

The proposed rules were developed with the assistance of the Elevator Advisory Council. The members of that citizen advisory council are as follows:

Name	Representing
Don Annen	WI State Fire Chiefs Association, Inc.
Warren Bauer	American Institute of Architects—WI Society
David Koch	National Assn. of Elevator Contractors
Bruce Lammi	WI Society of Professional Engineers
Steve Lex	WI State AFL—CIO
Jeff Lund	Waupaca Elevator Company
William Page	Accessibility Equip. Manufacturers Assn.
David Rakowski	Otis Elevator Company
John Zaleski	National Elevator Industry, Inc.

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until July 25, 2003, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Diane Meredith, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email dmeredith@commerce.state.wi.us.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audiotape format will, to the fullest extent possible, be made available upon request by a person with a disability.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at:

www.commerce.state.wi.us/SB/SB-HomePage.html. Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, Email rward@commerce.state.wi.us, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

All small businesses that have elevators, escalators, or lift devices will be affected by these rules.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

Owners of buildings with elevators, escalators, or lift devices will be required to keep a log of the maintenance performed on their equipment, and to make this log available to inspectors.

Owners of hydraulic elevators installed prior to January 1, 1975 and that have below ground cylinders will be required to perform an annual pressure test or a static test to determine if there is an unexplained loss of oil. The average cost to perform these tests is \$500 per elevator. If the tests show an unexplained loss of oil, the hydraulic cylinders will need to be replaced.

3. Types of professional skills necessary for compliance with the rules.

None known.

Fiscal Estimate

Note: The estimated cost to perform annual pressure test is \$500 per elevator. There are approximately 1750 hydraulic elevators that were installed in Wisconsin and that have below ground cylinders, and of this total, approximately 100 are installed in state owned facilities. It is estimated that, annually, the cost for the Department of Administration to have these tests performed on hydraulic elevators located in state-owned facilities will be \$50,000. Local government units will also be impacted, however it is impossible to determine the number of affected hydraulic elevators that are installed in local government buildings throughout the state and the extent of the fiscal impact.

Notice of Hearing

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

[CR 03–046]

NOTICE IS HEREBY GIVEN that pursuant to ss. 560.02 (4) and 560.04, Stats., the Department of Commerce will hold public hearings on proposed rules relating to the use of rapid response funds in economically depressed areas to preserve economic development.

Hearing Information

Date, Time and Location:

June 16, 2003 10:00 a.m.

Conference Room 3B

201 West Washington Ave.

Madison, Wisconsin

Analysis Prepared by the Department of Commerce

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

Statutes Interpreted: s. 560.04, Stats.

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

Given the uncertainty inherent in today's marketplace, Commerce would like to maximize the use of federal community development block grant funds to positively impact local economies. Under the rules, as currently structured, Commerce's ability to respond rapidly to actual or potential plant closings or relocations in a specific geographical region is limited. The following rule will allow Commerce to respond more rapidly to changing economic conditions.

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

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until June 22, 2003, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Richard Meyer, Department of Commerce, Code Development, P.O. Box 2689, Madison, WI 53701–2689.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape

format will, to the fullest extent possible, be made available upon request by a person with a disability.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Small businesses are positively impacted by this rule as local communities will more effectively be able to respond to changing economic conditions due to potential plant closings, business relocations, layoffs, and other economic factors that could negatively affect the economic conditions in the community.

Small businesses could be a direct recipient of the award from the local community or an indirect economic benefactor due to the prevention of business closing in the area.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No special reporting, bookkeeping and other procedures are required for compliance with the rules.

3. Types of professional skills necessary for compliance with the rules.

No special professional skills are necessary for compliance with the rules.

Fiscal estimate

This rule involves federal funds and does not impact state funds. Existing agency staff will administer the provisions of this rule.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Division of Economic Development web site at:

www.commerce.state.wi.us/ED/ED–Org.html

Paper copies may be obtained without cost from Richard Meyer, Department of Commerce, Code Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, Email rmeyer@commerce.state.wi.us, telephone (608) 266–3080. Copies will also be available at the public hearings.

Contact Person

Todd Kearney, Acting Division Administrator
608–266–6675

Notice of Hearings

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

[CR 03–029]

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 169.02, 169.24 (3) and 169.36, Stats., interpreting ss. 169.02 (3), 169.04 (2) (a) 1., 169.05 (1), 169.06 (1) (a), 169.07 (1) (a), 169.085, 169.11 (3) (b) 2., 169.24 and 169.36, Stats., the Department of Natural Resources will hold public hearings on the renumbering of the current subch. II of ch. NR 19 and the creation of a new subch. II of ch. NR 19, Wis. Adm. Code, relating to wildlife rehabilitation licenses and activities. As of January 1, 2003, wildlife rehabilitators and

other holders of captive wildlife were subject to regulation under ch. 169, Stats. This includes new licenses and requirements of operation. This rule implements those license requirements of operation.

Specifically, this rule establishes the qualifications required to obtain a rehabilitation license, the types of activities authorized by a rehabilitation license and the standards, limitations and requirements for rehabilitation licenses. To create room in ch. NR 19 for the rehabilitation rules, the Wildlife Damage subchapter is being moved to ch. NR 12.

These rules define the purpose of the subchapter, create definitions, outline general rehabilitation guidelines, create standards for obtaining either a basic or advanced license, application requirements, examination standards, facility inspection guidelines and authorities, facility housing standards, care and treatment standards, infectious disease reporting requirements, record keeping and reporting requirements and establishes the requirements and duties of advanced sponsors and the rehabilitation advisory committee.

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

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

Hearing Information

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

Tuesday, June 17, 2003 at 6:00 p.m.

Council Chambers, Wausau City Hall
407 Grant Street
Wausau

Thursday, June 19, 2003 at 1:00 p.m.

Room 511, GEF #2
101 South Webster Street
Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kurt Thiede at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Contact Person

Written comments on the proposed rules may be submitted to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than June 30, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WM-08-03] and fiscal estimate may be obtained from Mr. Thiede.

Notice of Hearings Natural Resources (Fish, Game, etc., Chs. NR 1—) [CR 03-035]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (intro.), 23.11 (1), 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats., interpreting ss. 23.09 (2) (intro.), 23.28 (3), 27.01 (2) (I) and (j) and 28.04 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 45, Wis. Adm. Code, relating to use regulations on Department properties. Fee increases are being proposed for items such as trail passes, group camping, and electrical services for campgrounds. An increase in the number of Type "A" campgrounds is also being proposed, which would result in increased fees. A new rule has been proposed that stipulates that additional fees for water view campsites may be charged.

A rule is being proposed to prohibit commercial filming, commercial photography or provision of services for a fee in state parks, state recreation areas or southern forests that involves the provider's physical presence unless first authorized by contractual agreement or a department commercial use permit. The rule prohibiting the transplanting, relocation, stocking or release of any plant or animal within the boundaries of any state natural area would now apply to all state properties. Oakfield Ledge will be closed between the hours of 8:00 p.m. and 6:00 a.m. The language of several existing rules has been modified for clarification purposes.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Small businesses conducting business of department lands, such as commercial photographers, ski schools, climbing schools, horse trip guides and scuba diving schools.

b. Description of reporting and bookkeeping procedures required: Application for a permit and payment of a \$30 annual commercial use permit.

c. Description of professional skills required: No new skills.

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

Hearing Information

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

Monday, June 16, 2003 at 1:30 p.m.

Room 027, GEF #2
101 South Webster
Madison, WI

Tuesday, June 17, 2003 at 4:00 p.m.

Council Chambers, Wausau City Hall
407 Grant St.

Wausau, WI

Video conference participation at:

Wednesday, June 18, 2003 at 10:00 a.m.

Room 618, State Office Building

200 N. Jefferson St., Green Bay

Conference Room, DNR Region Hdqrs., 810 W. Maple St., Spooner

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kate Fitzgerald at (608) 267-2764 with specific information on your request at least 10 days before the date of the scheduled hearing.

Contact Person

Written comments on the proposed rule may be submitted to Ms. Kate Fitzgerald, Bureau of Facilities and Lands, P.O. Box 7921, Madison, WI 53707 no later than June 27, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [LF-19-03] and fiscal estimate may be obtained from Ms. Fitzgerald.

Notice of Hearing

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

[CR 03-044]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.33 (9) and 227.11 (2) (a), Stats., interpreting s. 23.33 (9), Stats., the Department of Natural Resources will hold a public hearing on amendments to s. NR 64.14 (2), Wis. Adm. Code, relating to reimbursement of eligible expenses on all-terrain vehicle trails. The proposed rule reflects the increased costs to sponsors for the maintenance of all-terrain vehicle trails. The maximum summer reimbursement rate increases from \$220 per mile to \$450 per mile and the maximum winter reimbursement rate increases from \$80 per mile to \$100 per mile.

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

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

Hearing Information

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

Wednesday, June 11, 2003 at 1:00 p.m.

Council Chambers, Wausau City Hall

407 Grant St.

Wausau

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable

accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Larry Freidig at (608) 266-5897 with specific information on your request at least 10 days before the date of the scheduled hearing.

Contact Person

Written comments on the proposed rule may be submitted to Larry Freidig, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707 no later than June 13, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [CF-23-03] and fiscal estimate may be obtained from Mr. Freidig.

Notice of Hearings

Natural Resources (Environ. Protection-WPDES, Chs. NR 200—)

[CR 03-028]

NOTICE IS HEREBY GIVEN that pursuant to ss. 283.33 (8) and (9) and 227.11 (2) (a), Stats., interpreting s. 283.33, Stats., the Department of Natural Resources will hold a public hearing on the repeal and recreation of ch. NR 216, Wis. Adm. Code, relating to storm water discharge permits. Chapter NR 216 is being repealed and recreated in response to U.S. EPA's Phase II storm water regulations (64 FR 68722, December 8, 1999) and amendments to s. 283.33, Stats., contained in 2001 Wisconsin Act 16, which require changes to the Department's storm water discharge permit program in order to comply with the revised federal storm water regulations.

Chapter NR 216 establishes criteria defining those storm water discharges needing WPDES storm water discharge permits, as required by s. 283.33, Stats. The goal of this chapter is to eliminate to the maximum extent practicable the discharge of pollutants carried by storm water runoff into waters of the state from certain industrial facilities, construction sites and municipal storm water runoff.

Changes to ch. NR 216 include lowering the construction permit threshold to one acre of land disturbance from 5 acres and establishing associated permit requirements, defining which municipalities must apply for storm water permits and identifying other municipal discharges that may require permit coverage, establishing new application and permit criteria for municipal storm water discharge permits, and revising the applicability criteria and an exemption for certain industrial facilities to require permit coverage where previously exempted.

These revisions will significantly increase the number of municipal separate storm sewer systems and construction sites that must have permit coverage and will also require many industrial facilities to certify that they do not discharge contaminated storm water. The storm water permit fee system is also revised to provide appropriate funding to administer the program.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Construction site operators and certain industrial facilities.

b. Description of reporting and bookkeeping procedures required: For the construction site operators, the same procedures apply as required for construction sites of 5 or more acres. Industrial facilities affected shall certify once every 5 years that they have no contaminated storm water (previously no reporting was required).

c. Description of professional skills required: Smaller construction sites will require the same skills used with 5-acre construction sites. No new skills are required for industrial facilities.

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

Hearing Information

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

Monday, July 21, 2003 at 1:00 p.m.

Room M30A, Chippewa Valley Tech. College
620 W. Clairemont Ave.
Eau Claire

Tuesday, July 22, 2003 at 1:00 p.m.

Room D101, North Central Vocational Tech
1000 W. Campus Drive
Wausau

Thursday, July 24, 2003 at 1:00 p.m.

Room 027, GEF #2
101 South Webster Street
Madison

Tuesday, July 29, 2003 at 1:00 p.m.

C-Auditorium, Milwaukee Area Tech. College
1015 N. Sixth St.
Milwaukee

Thursday, July 31, 2003 at 1:00 p.m.

Room 203, Green Bay City Hall
100 N. Jefferson St.
Green Bay

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Carol Holden at (608) 266-0140 with specific information on your request at least 10 days before the date of the scheduled hearing.

Contact Person

Written comments on the proposed rule may be submitted to Carol Holden, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than August 8, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WT-14-03] and fiscal estimate may be obtained from Ms. Holden.

Notice of Hearing

Natural Resources

(Environ. Protection-WPDES, Chs. NR 200—)
(Environ. Protection-Solid Waste, Chs. NR 500—)

[CR 03-036]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 281.19 (1), 283.31, 289.05 (1), 289.06 (1), 292.11 and 299.15, Stats., interpreting chs. 160, 281, 293, 289, 292 and 299, Stats., the Department of Natural Resources will hold a

public hearing on the repeal and recreation of s. NR 219.04 Table EM and the creation of ss. NR 204.07 (9), 214.18 (8) and 518.075, Wis. Adm. Code, relating to land application of materials containing PCBs. The proposed rules establish maximum annual application rates, requirements for PCB testing and pollution prevention requirements. The rules will apply to industrial and municipal sludges as well as solid wastes that are spread on the land. The proposed rules contain a re-opener clause stating that once U.S. EPA has adopted its sludge regulations for dioxin and dioxin-like compounds, the rule provisions will be examined to determine whether they should be amended.

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

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

Hearing Information

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

Tuesday, June 17, 2003 at 9:00 a.m.

Video conference participation at:

Room 021, GEF #2, 101 South Webster St., Madison

Room 618, State Office Building, 200 N. Jefferson St., Green Bay

Room 139, State Office Building, 718 W. Clairemont Ave., Eau Claire

Conference Room, DOT District 8, 1701 N. 4th St., Superior
Room 127, DOT Offices, State Office Building, 141 NW Barstow, Waukesha

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kevin Kessler at (608) 266-5207 with specific information on your request at least 10 days before the date of the scheduled hearing.

Contact Person

Written comments on the proposed rule may be submitted to Mr. Kevin Kessler, Division of Air and Waste, AM/7, P.O. Box 7921, Madison, WI 53707 no later than June 30, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WA-22-03] and fiscal estimate may be obtained from Mr. Kessler.

Notice of Proposed Rule

Revenue

[CR 03-032]

NOTICE IS HEREBY GIVEN That pursuant to ss. 77.61 (9) and 227.11 (2), Stats., and interpreting s. 70.11 (21), 76.025 (1) and 77.54 (26), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on June 1, 2003, it is petitioned for

a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

All changes recommended by the Wisconsin Legislative Council Rules Clearinghouse have been incorporated in the final draft of rule 03-032.

Analysis Prepared by Department of Revenue

Statutory authority: s. 70.11, 70.365, 70.111 (18) and 227.11 (2). Stats.

Statutes interpreted: s. 70.365, 70.47 (7) (a), Stats.

The Notice of Assessment is sent by municipal assessors to inform taxpayers of change in real property assessment. The procedure for sending the Notice and the means by which it is prescribed is governed by s. 70.365, Stats.

The administration of the property tax exemption for solar and wind energy systems as defined in the statute is guided by s. 70.11 and 70.111 (18), Stats.

1997 Wisconsin Act 237 amended s. 70.365, Stats. to require the assessor to send a Notice of Assessment for any change in assessment of real property; under prior law a Notice was only sent for assessment increases of \$300 or more. 1997 Wisconsin Act 237 also amended s. 70.365, Stats. to require the Notice to include the time and place of the meeting of the local board of review or board of assessors in addition to the date. The proposed rule updates Tax 12.075 to reflect those changes in the law. Section Tax 12.075 (1) (j) and (k) would require, specifically, the assessor's and clerk's name and telephone number to be included in the Notice. Since Tax 12.075 (3) permits the use of alternate forms containing the same information as the prescribed form, the proposed rule repeals the prescriptions under s. Tax 12.075 (2) (a) (b) (c) which are unnecessary.

The impetus for the repeal and recreation of s. Tax 12.50 is to eliminate contradiction between the rule and the law. Removal of Note 1, (2), (3), (3)(a), and Note 2 reflects the repeal of s. 101.57 (4), Stats., by 1983 Wis. Act 27, and the repeal of s. 16.957 (4), Stats., by 1985 Wis. Act 120. 1997 Wisconsin Act 237 amended s. 70.11, Stats., to require a property owner to file claim of property exemption on or before March 1. This filing deadline is required for all exempt property as outlined in s. 70.11, Stats., and Tax 12.50 (3) (b) is being removed as it is redundant. 1995 Wisconsin Act 27 repealed the sunset date, December 31, 1995, of the property tax exemption for solar and wind energy systems in s. 70.111 (18), Stats. The proposed rule removes s. Tax 12.50 (4) to reflect the repeal of the sunset date.

Section 1. Tax 12.075(title), (1)(b), (c) are amended to read: Tax 12.075(title)

Tax 12.075 Notice of increased changed assessment on tax-able real property (s. 70.365, Stats.).

(1)(b) The amount of the increased changed assessment ~~of the amount of~~ to include the previous year's assessment and ~~the amount of~~ the current year's assessment.

(c) Date, time and place of the meeting of the local board of review.

Section 2. Tax 12.075(1)(j) and (k) are created to read:

Tax 12.075(1)(j) Name and telephone number of the clerk of the board of review.(k) Name and telephone number of the assessor.

Section 3. Tax 12.075(2) is amended to read:

(2) **PRESCRIBED FORM.** The department form of this notice shall be pre-scribed by the department as follows: prescribe this form containing the information in subsection (1).

Section 4. Tax 12.075(2)(a),(b), and (c) are repealed.

Section 5. Tax 12.075(3) and (4) are amended to read:

Tax 12.075 (3) **OTHER FORMS.** Any form containing the same information as ~~any of the prescribed forms~~ form is acceptable.

(4) **APPLICABILITY.** Subsections (1), (2), and (3) shall apply to all notices of increased changed assessment mailed after December 31, ~~1979~~ 2002.

Section 6. Tax 12.50 is repealed and recreated to read:

Tax 12.50 Exempt solar and wind energy systems. The general property tax exemption applies whether the solar and wind energy systems are deemed personal property or are so affixed to the realty as to be classified as real estate.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

No state or local government fiscal impact anticipated.

Contact Person

Please contact Erika Esser at (608) 266-8182 or esser@dor.state.wi.us if you have any questions regarding this proposed rule order.

Notice of Hearing

Veterans Affairs

[CR 03-045]

Notice is hereby given that the Department of Veterans Affairs will hold a public hearing on the **20th day of June, 2003**, at 9:30 a.m., at the Wisconsin Veterans Home, Marden Center, in the city of King, Wisconsin.

Analysis Prepared by the Department of Veterans Affairs

Statutory authority: Section 45.357 (2), Stats.

Statute interpreted: Section 45.357 (2), Stats.

The Department proposes to amend s. VA 13.05. The proposed amendment will enable the Department to assess rental charges of up to 30% of a resident's monthly income, less certain allowable deductions. The assessment will be limited to those months that the resident actually lived at the regional housing site.

Initial Regulatory Flexibility Analysis

This rule is not expected to any adverse impact upon small businesses.

Fiscal Estimate

The proposed amendment will have no state fiscal effect.

Contact Person

John Rosinski

Wisconsin Department of Veterans Affairs

PO Box 7843

Madison, WI 53707-7843

(608) 266-7916

Submittal of proposed rules to the legislature

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

**Agriculture, Trade and Consumer Protection
(CR 02–141)**

Ch. ATCP 92, relating to weights and measures.

**Commerce
(CR 03–012)**

Ch. Comm 45, relating to mechanical refrigeration.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Natural Resources**(CR 03-015)**

An order affecting chs. NR 10 and 15, relating to hunting and trapping regulations.
Effective 7-1-03.

Transportation**(CR 02-153)**

An order affecting ch. Trans 114, relating to uniform traffic citation.
Effective 7-1-03.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the **May 31, 2003**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

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

Agriculture, Trade and Consumer Protection (CR 02-054)

An order affecting chs. ATCP 10 and 11, relating to animal diseases, animal imports and livestock markets. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

The rule modifies current animal health rules, including rules related to animal disease, animal movement and livestock markets. This rule updates a number of current rules. Among other things, this rule:

- Modifies current disease testing and reporting requirements to reflect the fact that DATCP no longer operates Wisconsin's animal health laboratories (the labs are currently operated by the University of Wisconsin).
- Makes technical changes to the definition of herd, making it consistent in all chapters.
- Modifies current import testing requirements for fish, eliminating a whirling testing requirement for salmonid *eggs* (because no reliable test exists). The testing requirement still applies to live fish.
- Updates bovine tuberculosis import requirements to reflect new federal terminology (no substantive change).
- Makes technical changes to current testing requirements for equine infectious anemia (EIA).
- Modifies current rules related to cervids (including deer and elk):
 - Modifies pre-import brucellosis testing requirements to make them consistent with federal *Uniform Methods and Rules*.
 - Modifies pre-import tuberculosis testing requirements to create an exemption for cervids originating from certified tuberculosis-free herds.
 - Modifies current TB testing requirements for *intrastate* movement of captive deer. This rule extends the current testing requirement to white-tail deer (current rules exempt white-tails).
 - Requires veterinarians and diagnostic laboratories to report any findings of chronic wasting disease within one day.
 - Modifies current testing, identification and classification procedures under voluntary programs to certify poultry flocks free of pullorum-typhoid and mycoplasma-gallisepticum.
 - Modifies current rules related to poultry quarantines. Under this rule, a permit must accompany quarantined birds moved to slaughter. This rule repeals current requirements for quarantine release (2 negative flock tests at least 21 days apart). Instead, the quarantine order will spell out quarantine release terms, based on surrounding circumstances.
 - Changes current poultry disease reporting requirements, consistent with the national poultry improvement plan:

- Under current rules, a veterinarian who diagnoses pullorum in poultry must report it to DATCP within 10 days. This rule shortens the reporting deadline from 10 days to one day.

- This rule adds a reporting requirement for mycoplasma meleagridis. A veterinarian who diagnoses this disease must report it to DATCP within one day.

- Modifies current rabies vaccination requirements for imported dogs and cats, based on recent statutory changes. Under this rule, if an imported dog or cat has never been vaccinated, or is due for re-vaccination, it must be vaccinated by a licensed veterinarian within 30 days after it enters the state or before it reaches 5 months of age, whichever is later.

This rule will have a slight impact on small business. This rule eliminates some unnecessary burdens by making Wisconsin rules more consistent with federal rules. In some cases, this rule imposes slight additional record keeping and reporting requirements on veterinarians, but these requirements are necessary to protect Wisconsin livestock.

This rule creates more consistency between state and federal requirements. It improves regulations to protect the Wisconsin livestock industry from disease. It eliminates some unnecessary requirements, and streamlines disease control programs where possible.

This rule will not, by itself, have a major impact on small business. For the most part, this rule merely implements requirements already mandated by state and federal law.

Summary of Comments of Legislative Standing Committees

On January 6, 2003, this agency transmitted the above rule for legislative committee review. On January 15, 2003, the rule was referred to the Assembly Committee on Agriculture for review. The Assembly Committee on Agriculture did not take any action on the rule during its review period.

On January 10, 2003, the rule was referred to the Senate Committee on Agriculture, Financial Institutions and Insurance. The Senate Committee on Agriculture, Financial Institutions and Insurance did not take any action during its review period.

Agriculture, Trade and Consumer Protection (CR 02-078)

An order affecting chs. ATCP 10, 11 and 12, relating to farm raised deer and chronic wasting disease. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis Rule Description

This rule affects farm-raised deer keepers. It includes general registration requirements and provisions related

specifically to chronic wasting disease. This rule does the following:

- Includes white-tail deer farmers in the registration requirements that already exist for farm-raised deer keepers. This implements the new captive wildlife law (2001 Act 56) which will be effective January 1, 2003.
- Changes requirements for persons keeping 2 or more farm-raised deer herds.
- Increases recordkeeping requirements for farm-raised deer keepers.
- Prohibits farm-raised deer keepers from accepting into his herd, on a permanent or temporary basis, any cervid from a wild herd.
- Imposes import restrictions specifically related to reducing the likelihood that chronic wasting disease will be imported to a farm-raised deer herd.
- Imposes restrictions on movement of farm-raised deer within Wisconsin. Requires participation in CWD herd monitoring program before any live cervid can be moved off farm-raised deer premises in Wisconsin.
- Requires CWD testing of every farm-raised deer over the age of 16 months that dies or is taken to slaughter.
- Requires official identification on all farm-raised deer before the deer or deer carcass leaves the registered premises.
- Requires that a farm-raised deer herd be either an accredited tuberculosis free herd or a tuberculosis qualified herd before any live farm-raised deer is allowed to leave the farm-raised deer premises.

Small Businesses Affected by this Rule

Currently there are approximately 985 persons who are either registered as farm-raised deer keepers or licensed by DNR as game farms. After January 1, 2003, all of these people will be required to register with DATCP as farm-raised deer keepers. Most of these people qualify as a small business and will be affected by this rule.

Effects on Small Business

This rule will have a substantial impact on registered farm-raised deer keepers. It increases costs by requiring the farm-raised deer keeper to have CWD testing done on any cervid over 16 months of age that dies on the registered premises. It also requires CWD testing of any cervid over 16 months of age that is shipped directly to slaughter. All costs of testing are the responsibility of the farm-raised deer keeper. It is not clear how much the testing will cost, but it is estimated it could cost as much as \$100 per test.

If the farm-raised deer keeper plans to move any live animal off the registered premises, the herd will have to be enrolled in the CWD herd monitoring program. The farm-raised deer keeper whose herd is enrolled in the CWD herd monitoring program under this rule will incur additional costs. Every cervid in the herd must be identified with official individual identification before it reaches 1 year of age, or before it leaves the premises whichever occurs first and any carcass that leaves the herd premises must bear official identification. If the herd owner applies the identification herself or himself, it could be done for \$1.00 or less per animal. If a veterinarian is used to apply the identification, the costs could be substantially more. As part of the CWD herd monitoring program, the herd owner will have to maintain more detailed records and file an annual census with the department. Under this rule, the requirement that cervids moving off registered premises must originate from a herd that is enrolled in the CWD monitoring program is effective immediately. The requirement is gradually increased so that effective in 2008, the herd of origin must have been in the herd

monitoring program for 5 years prior to movement of animals from the herd.

Under current rules, a farm-raised deer may not be removed from the herd premises unless a certified veterinarian completes a certificate of veterinary inspection and the cervid has tested negative for tuberculosis. This rule prohibits moving any farm-raised deer of the herd premises unless the herd of origin is either an accredited tuberculosis free herd or a tuberculosis qualified herd. If the herd of origin is a tuberculosis qualified herd, the herd or the individual animal must have been tested for tuberculosis within 90 days prior to the movement. To be a tuberculosis qualified herd, the herd must undergo a whole herd tuberculosis test every 12 months. After three successive negative whole herd tests, the herd will qualify to become an accredited tuberculosis free herd. To maintain the accredited tuberculosis free herd status, the herd must undergo a whole herd tuberculosis test once each 24 months. Each tuberculosis test costs approximately \$8 – \$10, and if the deer must be anesthetized that cost would be additional. The increased cost to individual deer farmers depends on the number of deer in the herd. This increased cost will only apply to deer farmers who do not currently have whole herd tuberculosis tests performed and will be moving live deer from the herd.

In addition to the costs to obtain a certificate of veterinary inspection and to complete the tuberculosis tests, many keepers of farm-raised deer will find that efficiency in completing the tuberculosis tests requires the keeper to purchase new animal handling equipment that will permit testing of the deer without anesthetization. The rule does not require installation of animal handling equipment, only completion of the test. We estimate this type of animal handling equipment could cost about \$3000 – 5000.

Under this rule a farm-raised deer keeper may register more than one herd at a location if the fences and facilities are adequate to maintain a “medically significant separation” between the herds. One instance where this would be necessary is if the farm-raised deer keeper maintains a breeding herd that he wants to ship live animals out of, and a hunting herd at the same location. If the keeper ships live animals out of the breeding herd, he or she must either enroll all the animals in both herds in the herd monitoring program, including applying official individual identification to all the animals and maintaining an accurate census, or maintain and register two separate herds. If the keeper maintains two separate herds at one location, he or she will incur the additional registration fee and an inspection fee of \$150 per inspection for a DATCP employee to inspect the premises to assure that the fences and/or facilities are adequate to maintain a “medically significant separation.”

Under this rule, cervids may not be imported into Wisconsin unless they originated from a herd that has been under surveillance or monitored for CWD for a period of 5 years. A herd that is under surveillance for CWD is being watched by an accredited veterinarian to determine whether animals in the herd show clinical signs of CWD. A herd that is being monitored for CWD is being watched for clinical signs of CWD and animals that die are being tested for CWD. In addition, the herd owner identifies each animal, maintains in depth records of each animal and makes those records available to the animal health officials in the state of origin. This rule immediately requires that any cervid being imported originate from a herd that has been under surveillance for 5 years. The rule gradually phases in a change from 5 years of surveillance to 5 years as a monitored herd. This requirement reduces the number of potential sources for a farm-raised deer farmer to purchase animals for addition to the herd. Because

the number of sources is reduced, the price of the cervids may increase. It is not possible to determine how much of a price increase might occur.

Steps to Assist Small Business

For purposes of controlling this disease threat, it is essential that cervids be identified with official individual identification and records maintained of their movements. Prior to this rule, official individual identification generally required a veterinarian to insert an official eartag in the ear of the animal. This could become very costly and caused extreme stress for some of the animals. This rule recognizes a new form of official individual identification called a "chronic wasting disease registration tag." The herd owner will register with DATCP and receive a premises ID. The herd owner then is allowed to contact an approved manufacturer to obtain eartags that will include both the premises ID and an individual ID number that the owner will assign to each individual animal. The owner will be able to apply these tags to the cervids and will probably be able to do so at a cost of less than \$1.00 per animal.

The department would like to require that any cervid moving interstate or within Wisconsin originate from a herd that has been participating in a CWD monitoring program for at least 5 years. However, the department recognizes that imposing such a restriction at this time would be onerous. Therefore, the department is phasing in the restriction to allow people to get enrolled in the program and meet shipment requirements as the requirements increase. By 2008, the requirements for 5 years of participation in the herd monitoring program will be fully implemented.

During public hearings on this rule, several deer farmers requested that the department permit a person who is assembling a new herd to assume the CWD herd monitoring history of the herd from which the animals are obtained, thereby allowing the new herd to fulfill the requirement of 5 years participation in the herd monitoring program sooner. This rule allows a new herd to assume the CWD herd monitoring history of the herd of origin. This will allow the owner of the new herd to move live animals from the herd sooner than would otherwise be allowed.

Conclusion

This rule will have a significant impact on farm-raised deer keepers throughout Wisconsin. It may be costly for farm-raised deer keepers to comply with the requirements of the rule. However, the alternative may be the total failure of the industry. If Chronic Wasting Disease becomes established in the farm-raised deer industry in Wisconsin, we will see significant loss of animals due to the disease, a complete closing of markets for live animals from Wisconsin and we may see a significant reduction in the number of hunters willing to pay for a hunt in Wisconsin. In addition, we would likely see a significant call from politicians and the public for the elimination of legal deer farms in the state. The provisions of this rule are designed to minimize the risk that chronic wasting disease will be introduced to Wisconsin deer farms, and if it is discovered in a deer farm, they should help confine and potentially eliminate the disease from the farmed population. Ultimately, if the industry is to survive, these provisions need to be adopted.

Summary of Comments of Legislative Standing Committees

On January 8, 2003, this agency transmitted the above rule for legislative committee review. On January 22, 2003, the rule was referred to the Assembly Committee on Natural Resources for review. On January 27, 2003, this rule was withdrawn from the Committee on Natural Resources and

referred to the Committee on Agriculture pursuant to Assembly Rule 13(2)(b). At the request of Representative Hines, a member of the Committee on Agriculture, the department made a minor revision to the rule and advised the President of the Senate, Alan Lasee, and the Speaker of the Assembly, John Gard, of the change made and the reason for the change on February 13, 2003. The Assembly Committee on Agriculture did not take any action during its review period.

On January 10, 2003, the rule was referred to the Senate Committee on Agriculture, Financial Institutions and Insurance. On February 6, 2003, the Senate Committee on Agriculture, Financial Institutions and Insurance scheduled a public hearing for March 4, 2003. The Senate Committee on Agriculture, Financial Institutions and Insurance held the public hearing on March 4, 2003. Pursuant to s. 227.19(4)(b), Stats., the committee review period expired on March 8, 2003. The Senate Committee on Agriculture, Financial Institutions and Insurance did not take further action during its review period.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (CR 02-111)

An order affecting ch. A-E 3, relating to architectural interns. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

Barbering and Cosmetology (CR 02-058)

An order affecting chs. BC 1 to 4, and 10, relating to cutting, disinfectants, disinfection, massaging, delegated medical procedures, body piercing, tattooing, tanning booths, managers, relocation of establishments, sterilization and forfeitures. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

Commerce (CR 02-077)

An order affecting chs. Comm 20-25, relating to the Uniform Dwelling Code. Effective 8-1-03.

Summary of Final Regulatory Flexibility Analysis

The Uniform Dwelling Code, per statute, applies uniformly throughout the state, regardless of the size of the business involved. The Uniform Dwelling Code Council, whose membership is determined per statute, has a majority of the members representing small businesses. The rules contained herein represent the consensus of that Council.

Comments received at public hearings consist of opinions on the best way to provide safe, economical and

energy efficient housing in the state. These comments are reviewed with the Uniform Dwelling Code Council, whose membership has a majority representing small businesses. Those that achieve consensus through the Council are included in the proposed rules.

There are no substantial reporting requirements contained in these rules.

There are no substantial measures or investments required of small businesses contained in these rules.

Summary of Comments of Legislative Standing Committees

The Assembly Committee on Housing requested that the Department make a germane modification to remove the proposed requirement for a 4-inch spindle spacing for stairways and elevated areas. That modification was duly submitted and accepted.

Commerce (CR 02-127)

An order affecting ch. Comm 34, relating to amusement rides. Effective 6-1-03 and 6-1-06.

Summary of Final Regulatory Flexibility Analysis

Sections 101.02 (15) (h) to (j), 101.12 (1) (e), 101.17 and 101.19 (1) (b), Stats., authorize the Department to promulgate rules prescribing minimum installation, operation and inspection standards for amusement rides utilized at public buildings and places of employment. The proposed rules of Clearinghouse Rule No. 02-127 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 of Legislative Standing Committees

No comments received.

Natural Resources (CR 02-061)

An order creating ch. NR 109, relating to aquatic plant management. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed rule affects aquatic nursery growers. The department has worked with the Aquatic Alliance and aquatic nursery growers as well as with the Department of Agriculture, Trade and Consumer Protection to reduce the impact on licensed nursery growers. These amendments related to the permit applications and the distribution of required information. The permits to licensed nursery growers will be for a 3-year term for harvesting from a public lake or 5 years for harvesting from a private lake bed.

Summary of Comments of Legislative Standing Committees

The rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On March 5, 2003, the Assembly Committee on Natural Resources held a public hearing and requested modifications. On March 13, 2003, the Senate Committee on Environment and Natural Resources held a public hearing and requested modifications. The Natural Resources Board adopted modifications that defined beneficial water use activities, clarified the application requirements for analysis of alternative methods and listed

considerations for when to require aquatic plant management plans. The modifications were accepted by the Committees.

Natural Resources (CR 02-098)

An order to affecting chs. NR 50 and 64, relating to ATV, snowmobile and water safety patrols. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

This rule will affect units of government and will not directly impact small businesses.

Summary of Comments of Legislative Standing Committees

The rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. The Assembly Committee on Natural Resources held a public hearing on March 5, 2003. No modifications to the rule were requested.

Natural Resources (CR 02-114)

An order affecting ch. NR 169, relating to the reimbursement of response action costs for response actions taken at eligible dry cleaning facilities. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

The Department anticipates that this rule will provide economic relief to small dry cleaning businesses because eligible costs that they now would incur cleaning up environmental contamination may be eligible for reimbursement from this fund when monies are available.

Summary of Comments of Legislative Standing Committees

The proposed rule was reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On April 2, 2003, the Assembly Committee on Natural Resources held a public hearing. No modifications were requested as a result of this hearing.

Natural Resources (CR 02-122)

An order affecting ch. NR 191, relating to lake protection and classification grants. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed rules do not regulate small businesses; therefore, a final regulatory flexibility analysis was not required.

Summary of Comments of Legislative Standing Committees

The proposed rule was reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On April 2, 2003, the Assembly Committee on Natural Resources held a public hearing. No modifications were requested as a result of this hearing.

Pharmacy Examining Board (CR 02-140)

An order affecting ch. Phar 2, relating to filing completed applications for examinations. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

**Pharmacy Examining Board
(CR 02-150)**

An order affecting ch. Phar 2, relating to notarized photographs. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

**Pharmacy Examining Board
(CR 03-005)**

An order affecting ch. Phar 2, relating to admission requirements for all required professional examinations. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments of Legislative Standing Committees

No comments received.

**Transportation
(CR 03-004)**

An order affecting ch. Trans 403, relating to the Loan Repayment Incentive Grant Program. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

The rule will have no adverse impact on small businesses.

Summary of Comments of Legislative Standing Committees

No comments received.

**Workforce Development
(CR 03-008)**

An order affecting ch. DWD 290, relating to the annual adjustment of thresholds for application of the prevailing wage rates. Effective 6-1-03.

Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis is not required because the rule will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments of Legislative Standing Committees

No comments received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **May 2003**, 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

Agriculture, Trade and Consumer Protection:

Ch. ATCP 10

- S. ATCP 10.01 (1) (a) and (b), (9m) (a) and (b), (14m) (a) and (b), (15) (a) and (b), (15r), (20q), (22m), (31), (45) (he), (j), (k) and (L), (69m) (a) and (b), (69r) and (a) and (b)
- S. ATCP 10.03 (1)
- S. ATCP 10.11 (3)
- S. ATCP 10.31 (3)
- S. ATCP 10.35 (3)
- S. ATCP 10.40 (1) (c)
- s. ATCP 10.41 (1) (a) (intro.), (2) and (3)
- S. ATCP 10.50 (1) (a), (2) (b) and (h)
- S. ATCP 10.60 to 10.94

Ch. ATCP 11

- S. ATCP 11.01 (1) (a) and (b), (12m) (a) and (b), (17m) (a) and (b), (18) (a) and (b), (24q), (29m), (37), (42), (44), (45), (70m), (54j), (80g), (80m) (a) and (b) and (80r) (a) and (b)
- S. ATCP 11.02 (4) (f)
- S. ATCP 11.11 (5) (a), (b) and (c)
- S. ATCP 11.20 (7)
- S. ATCP 11.23 (2) (a) and (d)
- S. ATCP 11.52
- S. ATCP 11.545 (1) and (3)
- S. ATCP 11.55 (1) (c) to (i), (2) (a) and (4)
- S. ATCP 11.56 (1), (2) (f) and (g)
- S. ATCP 11.58 (2) (c), (6) (a), (12) (a) and (15) (b)
- S. ATCP 11.59 (2) (b)
- S. ATCP 11.60 (2)
- S. ATCP 11.62 (4) (a) and (6) (a)

Ch. ATCP 12

- S. ATCP 12.01 (2m), (5) (a), (8w), (14), (16) and (17) (intro.) and (20) (j), (k) and (L)
- S. ATCP 12.03 (5) (a)

Architects, Professional Engineers, Designers and Land Surveyors:

Ch. A-E 3

- S. A-E 3.03 (5)

Barbering and Cosmetology:

Ch. BC 1

- S. BC 1.01 (intro.), (3k), (3q), (6), (6h), (6r), (9), (10m), (11m), (14m) and (17)

Ch. BC 2

- S. BC 2.025
- S. BC 2.03 (8) and (9)
- S. BC 2.06 (5)
- S. BC 2.07 (1g)

Ch. BC 3

- S. BC 3.02 (1) (intro.) and (2) (b)
- S. BC 3.04 (1)
- S. BC 3.06 (2)

Ch. BC 4

- S. BC 4.01 (2) to (7)
- S. BC 4.02
- S. BC 4.03 (1) and (2)
- S. BC 4.04 (1)
- S. BC 4.07 (3) to (5)
- S. BC 4.08 (1)
- S. BC 4.09 (1), (3), (3m) and (4)
- S. BC 4.10

Ch. BC 10 (Entire chapter)

Commerce:

Ch. Comm 20

- S. Comm 20.05 (5)
- S. Comm 20.07 (10t), (29) and (35)
- S. Comm 20.24 (1), (2), (4) to (17)

Ch. Comm 21

- S. Comm 21.02 (1) (intro.) and (d)
- S. Comm 21.03 (1) (a), (e) to (h), (5) (a) and (10) (b)
- S. Comm 21.04 (2) (b), (e), (f), (3) (a) to (c) and (4) (c)
- S. Comm 21.05 (1) (a) and (5) (b)
- S. Comm 21.08 (1) (a), (2) (a) to (c)
- S. Comm 21.085 (1) (b)
- S. Comm 21.10 (4) (a)
- S. Comm 21.12
- S. Comm 21.125 (4)
- S. Comm 21.18 (1) (c) to (e), (4) (intro.) and (b)
- S. Comm 21.203 (2)
- S. Comm 21.205
- S. Comm 21.22 (5) (b), (6),
- S. Comm 21.24 (3)
- S. Comm 21.25 (3) (c)
- S. Comm 21.26 (7) (a)
- S. Comm 21.27 (3) (b)
- S. Comm 21.28 (1) (a) and (6)
- S. Comm 21.30 (7)(b) and (d)

Ch. Comm 22

- S. Comm 22.02 (3)
- S. Comm 22.03
- S. Comm 22.06 (14), (15) and (31)
- S. Comm 22.07
- S. Comm 22.20
- S. Comm 22.21 (1) and (3)
- S. Comm 22.22 (6)
- S. Comm 22.23
- S. Comm 22.24
- S. Comm 22.30 (2)

S. Comm 22.31 (3)
 S. Comm 22.335
 S. Comm 22.34 (2)
 S. Comm 22.35 (2), (4), (6) and (7) (b)

Ch. Comm 23

S. Comm 23.14 (2) (a)
 S. Comm 23.16 (1)

Ch. Comm 34

S. Comm 34.001
 S. Comm 34.002 (1)
 S. Comm 34.003
 S. Comm 34.01 (1), (2), (3), (5), (9), (11), (12), (14)
 and (15) (intro.)
 S. Comm 34.04 (1), (4) and (6)
 S. Comm 34.05 (4) (c)
 S. Comm 34.08 (2)
 S. Comm 34.10
 S. Comm 34.11
 S. Comm 34.16 (2)
 S. Comm 34.17
 S. Comm 34.18 (2) (d)
 S. Comm 34.19
 S. Comm 34.23 (1), (2) (a), (b) and (4)
 S. Comm 34.24 (1), (3) (a), (4) (e), (5) (b), (7) (b) and
 (c)
 S. Comm 34.25 (1) and (4)
 S. Comm 34.26 (2) (b) and (3)
 S. Comm 34.27
 S. Comm 34.285 (1)
 S. Comm 34.29 (1) and (2)
 S. Comm 34.30
 S. Comm 34.31 (4)
 S. Comm 34.32 (1) (a)
 S. Comm 34.33
 S. Comm 34.34 (1), (1m) and (2) (a)
 S. Comm 34.37

S. Comm 34.38 (1) and (3)
 S. Comm 34.41
 S. Comm 34.43
 S. Comm 34.45 (4) (f)
 S. Comm 34.50
 S. Comm 34.55 (2)
 S. Comm 34.56 (5)

Natural Resources:**Ch. NR 50**

S. NR 50.12 (3) (a), (d) and (e)
 S. NR 50.13 (1m) (a) (intro.), (b) and (4) (d) (intro.)

Ch. NR 64

S. NR 64.15 (2), (3) (a), (d) (intro.), (e) and (g)

Ch. NR 109 (Entire chapter)**Ch. NR 169** (Entire chapter)**Ch. NR 191** (Entire chapter)**Pharmacy Examining Board:****Ch. Phar 2**

S. Phar 2.02 (1) (intro.) and (c)
 S. Phar 2.03 (4)

Transportation:**Ch. Trans 403**

S. Trans 403.01
 S. Trans 403.02 (2), (3) and (4m)
 SS. Trans 403.03 to 403.05

Workforce Development:**Ch. DWD 290**

S. DWD 290.155 (1)

Editorial corrections

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

Agriculture, Trade and Consumer Protection:**Ch. ATCP 10**

S. ATCP 10.31 (8) (a)

Corrections:**Ch. DOC 303**

S. DOC 303.13
 S. DOC 303.14
 S. DOC 303.15 (1) (a) and (b)

Natural Resources:**Ch. NR 50**

S. NR 50.21 (3) (c)

Transportation:**Ch. Trans 327**

S. Trans 327.07
 S. Trans 327.09 (2) (intro.), (3) and (13) (a)

Errata

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

Educational Approval Board

Ch. EAB 4 (correct publication dateline)

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
ATCP 1.03 (1) (a) 12.	ATCP 10.705	ATCP 10.92

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 9. 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 Fire Chief Edward Weber of the Elkhart Lake Fire Department.

Executive Order 10. 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 Firefighter Carl Mack of the New Chester Fire Department.

Executive Order 11. 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 Peace Officers who have given their lives in the line of duty.

Executive Order 12. 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 Peace Officers who have given their lives in the line of duty.

Executive Order 13. Relating to a special election for the twenty-first assembly district and the seventy-first assembly district.

Executive Order 14. 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 EMT Merlin Casey of the Mount Horeb Emergency Medical Service.

Public notice

Elections Board

Pursuant to 42 USC 15406, notice is given that the State Elections Board has made available a preliminary version of the State Plan for public comment. A copy of the preliminary plan and the Help America Vote Act of 2002 can be obtained at the State Elections Board website:
<http://elections.state.wi.us>.

A copy of the preliminary plan may also be obtained by contacting the State Elections Board.

Written comments may be submitted to the State Elections Board at:

Wisconsin State Elections Board
132 East Wilson Street, Suite 200
PO Box 2973
Madison, WI 53701-2973
608-266-8005
608-267-0500
seb@seb.state.wi.us

Date, Time and Place of Hearings

Wednesday, May 21, 2003 at 9:30 a.m.

Brookfield Public Safety Building
Municipal Courtroom
2100 North Calhoun Road
Brookfield, Wisconsin

Wednesday, June 4, 2003 at 1:00 p.m.

State Capitol Building
Room 225 NW
Madison, Wisconsin

Monday, June 9, 2003 at 1:00 p.m.

Eau Claire County Courthouse
County Boardroom, Room 2560
721 Oxford Avenue
Eau Claire, Wisconsin

The hearing sites are accessible to persons with disabilities.

The State Plan is required as a condition for the receipt of federal funds under the Help America Vote Act of 2002 (HAVA). P.L. 107-252. HAVA was enacted by Congress to make sweeping reforms in the way elections are conducted. The Act addresses improvements to voting systems and voter access. It includes requirements for a centralized voter registration database, privacy and independence in the voting process, access for people with disabilities and voter outreach.

The State Elections Board will take public comments into account when preparing the State Plan to be filed with the federal Election Assistance Commission. The deadline for submitting written comments on the preliminary State Plan is June 20, 2003.

Health and Family Services

(Medical Assistance Reimbursement of Nursing Homes)

State of Wisconsin Medicaid Nursing Facility Payment Plan: FY03-04

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Center for Medicare/Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 2003.

The proposed changes would update the payment system and make various payment-related policy changes. Some of the changes are necessary to implement various budget policies contained in the Wisconsin 2003–2005 Biennial Budget. Some of the changes are technical in nature, while others clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$81,070,040 all funds, (\$47,357,473 FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2003–2005 Biennial Budget Bill and to disburse the \$81,070,040 allotted in the bill to a rate increase of approximately 7.9%. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.600, 5.700, 5.800 and 5.900, changes in the occupancy percentage used to establish the minimum occupancy standard in Sections 3.030, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000.

2. Change references to previous years for descriptive reasons will be done where necessary.

3. Update the labor regions listed in Section 5.410.

4. Modify the minimum occupancy factor in Section 3.030.

5. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303 and 1.314 to reflect the 2003–2004 period.

6. Change the phasedown method in Section 4.520 for new agreements or extensions of current agreements after July 1, 2003.

7. Establish an incentive for phasing out entire facilities in Section 4.580.

8. Increase the Exceptional Medicaid/Medicare Utilization Incentive in Section 2.710.

9. Clarify the annual bed bank loss language in Section 3.060.

10. Modify the incentive ratio in Sections 3.220, 3.251, 3.310 and 3.600.

11. Modify the targets in the property allowance in Section 3.532.

12. Modify Section 3.775, which deals with non-state operated government-owned facilities, to accommodate changes in cost finding and rate setting methods. Payment would be distributed primarily based on the amount Medicare would pay for comparable services at each facility less the Medicaid payment to that facility.

13. Revise the inflation percentages for property tax and municipal fees in Section 5.710.

14. Increase the base allowance for the Exceptional Medicaid/Medicare Utilization incentive in Section 5.920.

15. Redefine the cost-based direct care cost center in Sections 2.100 and 3.100 to include only RN, LPN, certified nurse assistants' costs and the resident living staff costs. Certified nurse assistants in the 90-day training period and single task workers would also be included.

16. Create a new component in direct care for ward clerks, over-the-counter drugs and the special services on schedule 21 & 24. This would be a level of care/case mix-adjusted payment component adjusted by the labor factors in Section 5.410 with an incentive.

17. Modify Section 3.90 to allow the payment to the Veteran's Home at King to equal what that home could receive at the maximum of its Medicare Upper Limit.

18. Delete the energy & renovation private room incentives in Section 2.700.

19. Create a quality-of-care incentive in Section 2.700.

20. Change bed-hold provisions in Sections 1.500, 1.307 and 3.020.

21. Create a payment supplement in section 3.100 for specialized rehabilitative services for residents with mental illness.

22. Amend section 3.900 to allow state-operated facilities to receive incentives in section 3.650.

Copies of the Proposed Changes:

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing

PO Box 309

Madison, WI 53701–0309

Attention: Nursing Home Medicaid Payment Plan

or by faxing your request to James Cobb at 608–264–7720.

The available proposed changes may be reviewed at the main office at any county department of social services or human services.

Written Comments/Meetings:

Written comments on the proposed changes may be sent to the Division of Health Care Financing, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may, also, be made in the proposed changes based on comments received at these forums.

Health and Family Services**(Medical Assistance Reimbursement for Intermittent Skilled Nursing Services Provided by Nurses in Independent Practice)**

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The Department currently reimburses nurses in independent practice for intermittent skilled nursing services at a "visit" rate. Intermittent skilled nursing is for Medicaid recipients who need fewer than eight hours of nursing in a day.

The change would affect only those services provided by nurses in independent practice in those limited situations when they provide intermittent skilled nursing services. Nurses in independent practice may only provide intermittent skilled nursing services if no home health agency is available to provide and coordinate those services. This proposed change does not affect intermittent skilled nursing services provided by home health agencies.

The proposed minimum reimbursement for each intermittent skilled nursing service period would be for one hour of service based on the independent nurse provider rate. The rate is essentially the hourly rate nurses in independent practice receive for private duty nursing, skilled nursing service for those recipients who require eight or more hours of skilled nursing per day.

Reasons for the proposed change

The Department is proposing to modify its methods for calculating reimbursement rates for the following reasons.

Currently, the few nurses in independent practice who have provided these services have been paid a "per visit" rate that was developed specifically for home health agency services. The rate developed and established to reimburse home health agencies for comprehensive services including coordinating, training, and supervising services is inappropriate for the limited services nurses in independent practice are licensed to provide. The current maximum reimbursement rate for a skilled nursing visit is \$84.28.

Nurses in independent practice providing intermittent skilled nursing services is an exception that has been requested only on rare occasions.

Fiscal impact of the proposed change

Projected total annual savings would be between \$59,690 general purpose revenue (GPR) and \$83,830 federal match (FED); and \$71,463 GPR and \$100,364 FED, based on the 2002 utilization of intermittent skilled nursing services by the recipients continuing to be served in 2003. The high savings figure represents utilization of LPN-only services and the low figure represents RN-only services.

Proposed Change

The proposed change is to reimburse nurses in independent practice for intermittent skilled nursing services at an hourly rate rather than at the current "visit" rate. The reimbursement will be commensurate with the level of services they are authorized to provide. The change is to become effective August 1, 2003.

Copies of the Proposed Change:

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail

Marge Hannon Pifer

Bureau of Fee-for-Service Health Care Benefits

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701-0309

Phone

Marge Hannon Pifer

(608) 266-1940

FAX

(608) 266-1096

Attention: Marge Hannon Pifer

E-Mail

pifermh@dhfs.state.wi.us

A copy of the proposed change are also available for review at the main office of any county department of social services or human services.

Written Comments:

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Department. The FAX number is 608-266-1096. The e-mail address is pifermh@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

Notice of suspension of an administrative rule

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 30, 2003 and adopted the following motion:

The Joint Committee for the Review of Administrative Rules, pursuant to s. 227.19 (4) (d) 1. to 3., Stats., suspends the Emergency Rule revision to chs. HFS 101 to 107, relating to the family planning demonstration project that went into effect on January 31, 2003.

Motion Carried: 6 Ayes, 4 Noes

**The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840**

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

*Wisconsin
Administrative
Register*

Dated Material. Please Do Not Delay!