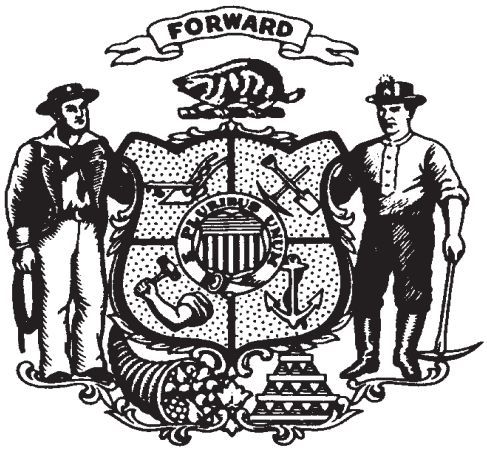
Wisconsin Administrative Register

No. 577



Publication Date: January 14, 2004
Effective Date: January 15, 2004

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	Hard Cover	Soft Cover	Soft Cover
With Postage	Without Postage	With Postage	Without Postage
$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

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

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

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

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

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

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

Chiropractic Examining Board

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

Finding of emergency

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

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

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

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

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

Employment Relations Commission

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

Finding of emergency

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

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

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

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

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

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

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

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

Publication Date:	**August 25, 2003**
Effective Date:	**September 15, 2003**
Expiration Date:	**January 22, 2004**
Hearing Date:	**November 20, 2003**

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

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Health and Family Services

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

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

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

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

− eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc; and

− eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

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

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

4. It establishes the requirement that amounts collected in excess of $14.3 million in fiscal year 2003−04, $13.8 million in fiscal year 2004−05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

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

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

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

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

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

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

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

Finding of emergency

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

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

Public Instruction

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

Finding of emergency

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

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

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

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

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

Publication Date: **January 2, 2004**
Effective Date: **January 2, 2004**
Expiration Date: **May 31, 2004**

Revenue

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

2003 Wisconsin Act 33 allocated federal child care funds in a manner that assumes an increase in the match rate paid by

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

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

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

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

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

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

Finding of emergency

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

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

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

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

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

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

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

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

Finding of emergency

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

The Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the last adjustment.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule−making process. The thresholds are based on national construction cost statistics and are unlikely to be

changed by the permanent rule−making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

Publication Date: **December 18, 2003**
Effective Date: **January 1, 2004**
Expiration Date: **May 30, 2004**

Scope statements

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) gives notice, pursuant to s. 227.135, Stats., that it proposes to modify an administrative rule as follows:

Subject

Agricultural Producer Security Program; Contractor Assessments and Related Issues.

Administrative code reference

Chapters ATCP 99, 100, and 101, Wis. Adm. Code (Existing). DATCP may reorganize portions of these rules.

Preliminary objectives

Allow for partial refund of annual contractor assessments that are drastically inflated by a *temporary* change in financial condition caused by a merger or acquisition. Clarify other technical issues related to the agricultural producer security program.

Preliminary policy analysis

DATCP currently administers an agricultural producer security program under ch. 126, Stats. ("producer security law"). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors (grain dealers, grain warehouse keepers, milk contractors and vegetable contractors) who procure agricultural commodities from producers.

Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. A contractor's annual fund assessment is based on the contractor's size, financial condition and risk practices.

Financial condition is determined on the basis of an annual financial statement filed by the contractor. Other things being equal, contractors with weaker financial statements pay higher annual fund assessments. Fund assessments are calculated according to a formula spelled out in the producer security law. However, DATCP may modify fund assessments by rule.

In some cases, a merger or acquisition may temporarily affect a contractor's financial statement. This temporary change may in some cases cause a disproportionate increase in annual fund assessments (based on the current statutory assessment formula).

DATCP proposes to do the following by rule:

- Authorize a partial refund of a contractor's annual fund assessment, if the contractor's assessment is drastically inflated because of a temporary change in financial condition caused by a merger or acquisition.
- Make other changes to clarify and update current rules, as necessary.

Policy alternatives

If DATCP takes no action, the current statutory assessment formula will remain in effect. Under that formula, fund assessments may be unduly affected by legitimate mergers and acquisitions. That may have an undue impact on business decisions, and may impose unnecessary costs on affected contractors.

Statutory authority

DATCP proposes to revise chapters ATCP 99, 100 and 101, Wis. Adm. Code, under authority of ss. 93.07 and 126.81, Stats.

Staff time required

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

Submittal of rules to legislative council clearinghouse

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

Educational Approval Board

Rule Submittal Date

On December 19, 2003, the Educational Approval Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. EAB 3 and 4, relating to the creation of a student protection fee.

Agency Procedure for Promulgation

A public hearing will be held on February 10, 2004.

Contact

David C. Dies
267−7733

Rule−making notices

Notice of Hearings
Agriculture, Trade and Consumer Protection
[CR 03− 121]
(Reprinted from 12/31/03 Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule related to captive wildlife and animal health. The department will hold three hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until **February 13, 2004**, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224−4883. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by **January 20, 2004,** by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708−8911, telephone (608) 224−4883. Alternatively, you may contact the Department TDD at (608) 224−5058. Handicap access is available at the hearings.

Hearings are scheduled:

Thursday, January 29, 2004, 5:00 p.m. until 7:00 p.m.
WDATCP Regional Office
3610 Oakwood Hills Parkway
Eau Claire, WI 54701−7754
Handicapped accessible

Tuesday, February 3, 2004, 5:00 p.m. until 7:00 p.m.
Agriculture, Trade and Consumer Protection
Second Floor Conference Room 266
2811 Agriculture Drive
Madison, WI 53718
Handicapped accessible

Thursday, February 5, 2004, 2:00 p.m. until 4:00 p.m.
Green Bay State Office Building
200 North Jefferson Street
Room152−B
Green Bay, WI 54301
Handicapped accessible

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

Statutory Authority: ss. 93.07 (1), 93.07 (10) and (10m), 95.20, 95.22 (2), 95.45 (4) (c) and (5), 95.55 (5) (a) and (6), 95.57, 100.20 (2) and 169.01 (7), Stats.

Statutes Interpreted: ss. 93.06 (1m) and (1p), 93.07 (10), 93.07 (10m), 95.22, 95.45, 95.55, 95.57, 100.20 and 169.01 (7), Stats.

This rule does all the following:

• Implements Wisconsin's Captive Wildlife Law (2001 Wis. Act 56), which took effect on January 1, 2003.

• Modifies related animal health rules administered by the Department of Agriculture, Trade and Consumer Protection (DATCP).

• Coordinates animal disease control activities of DATCP and the Department of Natural Resources (DNR).

Background

The Captive Wildlife Law (2001 Wis. Act 56) strengthens and clarifies DNR regulation of captive wildlife operations. It also harmonizes DNR regulations with general animal health laws administered by DATCP. DNR's authority under the Captive Wildlife Law does not extend to "domestic animals" identified by DATCP rule.

DATCP administers Wisconsin animal health and disease control laws under chs. 93 and 95, Stats. DATCP also administers food safety laws under ch. 97, Stats., including dairy farm license requirements under s. 97.22. DATCP regulates to protect the health of humans, domestic animals and wild animals. DATCP currently does the following things, among others:

• Regulates animal imports and movement. DATCP may regulate animal imports and movement by rule, or by serving quarantine orders on the owners or custodians of affected animals. The Captive Wildlife Law clarifies that DATCP may regulate animal imports and movement to protect the health of humans, domestic animals or wild animals (not just domestic livestock).

• Licenses and inspects animal operations. DATCP licenses animal markets, animal dealers, animal truckers, dairy farms (food safety), fish farms and deer farms. Under the Captive Wildlife Law:

• DATCP now registers all deer farms, including approximately 600 captive white−tail herds previously licensed by DNR. Captive white−tail deer, like other captive deer and elk, are now classified as "farm−raised deer." DATCP is responsible for regulating deer farms. But DNR retains its authority to prescribe and enforce fencing requirements for captive white−tail deer herds.

• DATCP now licenses all animal dealers (not just livestock dealers), all animal markets (not just livestock markets) and all animal truckers (not just livestock truckers). Licensing is required for entities that handle livestock *or wild animals.*

• DATCP may regulate operators of game−bird farms.

• DATCP may regulate deer hunting preserves. Only deer farms registered by DATCP may operate hunting preserves. Hunting preserves must cover at least 80 acres.

• Performs animal health inspections and tests. DATCP may inspect and test animals, including but not limited to domestic livestock. This authority pre−dates the Captive Wildlife Law, and is not altered by that law.

• Examines animal health documentation. DATCP is Wisconsin's central clearinghouse for all interstate health certificates (certificates of veterinary inspection). DATCP rules require health certificates for animal imports and, in some cases, for movement of animals within Wisconsin. DATCP may require certificates for captive wild animals as

well as domestic animals. Veterinarians issuing health certificates must file copies with DATCP. Under the Captive Wildlife Law, DNR may also require health certificates for wild animal imports. But the veterinarians who issue those certificates must file copies with DATCP (not DNR). DATCP then provides copies to DNR.

• Receives disease reports. Veterinarians and diagnostic laboratories that find evidence of certain animal diseases must report those findings to DATCP. DATCP rules currently specify the diseases that are reportable. DNR may ask DATCP to add wildlife diseases to the reportable disease list. Under the Captive Wildlife Law, DATCP will continue to receive all domestic and wild animal disease reports (veterinarians need not file duplicate reports with DNR). But DATCP must notify DNR of disease reports that may affect wild animals. DNR must notify DATCP whenever DNR finds evidence of a reportable disease.

• Condemns diseased animals. DATCP may condemn exposed or infected animals (including captive wild animals, as well as domestic animals) to control the spread of diseases. The Captive Wildlife Law clarifies that DATCP may condemn animals to control diseases that affect domestic animals, wild animals or humans (not just diseases affecting domestic animals). A separate legislative enactment (2001 Act 108) authorizes DATCP to order the killing of farm−raised deer for chronic wasting disease testing, if DATCP has reason to believe that the deer have been exposed to the disease (there is no valid live test at this time).

• Pays indemnities for condemned livestock. DATCP is currently authorized to pay indemnities for condemned livestock. The Captive Wildlife Law does not change this indemnity authority (which is generally limited to livestock or food animals, including farm−raised deer). But by expanding the current definition of "farm−raised deer" to include captive white−tails, it permits indemnity payments for condemned captive white−tails. A separate legislative enactment (2001 Act 108) also authorizes DATCP to pay indemnities for captive deer killed for chronic wasting disease testing.

Rule Contents

Official Individual Identification

Under current rules, certain animals must be identified with *official individual identification*. Official individual identification is often required for health certificates, disease testing and animal movement. Current rules specify acceptable forms of official individual identification. This rule authorizes the following *additional* forms:

• A microchip containing a unique individual identification number (the animal custodian must have a microchip reader).

• A livestock premises identification issued by DATCP, provided that the animal also bears a unique individual identification number assigned by the premises owner.

Health Certificates; Identification of Animals

Under current rules, a health certificate (certificate of veterinary inspection) is often required for the import or movement of animals. The veterinarian who issues the health certificate must identify the animals covered by the certificate. If a veterinarian issues a health certificate for bovine animals, swine, equine animals, sheep at least 6 months old, goats, ratites or cervids, the veterinarian must identify the animals by means of their *official individual identification numbers* (see above).

Under this rule, health certificates for alpacas, llamas and sheep under 6 months old must also include official individual identification numbers. Health certificates for other animals do not require official individual identification, but must identify the shipment source, the shipment destination, and the number and types of animals included in the shipment.

Disease Reporting

DATCP rules currently list a number of serious "reportable" diseases. Under current rules, a veterinarian or diagnostic laboratory that finds evidence of a "reportable" disease must report that disease to DATCP. This rule also requires government agencies, such as DNR, to report. Under this rule, DATCP must notify DNR if DATCP finds that a reported disease may threaten wildlife in this state, or may threaten fish in waters of the state.

Domestic Animals

DNR's authority to regulate captive wildlife does not ordinarily extend to "domestic animals" that DATCP identifies by rule. This rule defines "domestic animal" to include all of the following:

• Livestock (farm animals including bovine animals, sheep, goats, swine, farm−raised deer and equine animals).

• Farm−raised game birds, except birds that have been released to the wild.

• Farm−raised fish, except fish that have been released to waters of the state.

• Foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit or caracul that are raised in captivity.

• Animal species (including pet species) that have been domesticated by humans.

• Pet birds.

Releasing Diseased Wild Animals

Under the Captive Wildlife Law, no person may release a temporarily possessed wild animal that has been infected with or exposed to a contagious or infectious disease unless a veterinarian first certifies to DATCP that the animal is free of the disease. This rule prohibits any person from releasing *any* captive wild animal that has been infected with or exposed to a contagious or infectious disease unless a veterinarian first certifies to DATCP that the animal is free of the disease.

Poultry and Farm−Raised Game Birds

• Under current DATCP rules, no poultry or poultry eggs may be sold or used for breeding or hatching purposes unless they meet certain requirements (among other things, the flock of origin must be classified as "U.S. pullorum−typhoid clean" under the National Poultry Improvement Plan). This rule applies the same requirements to farm−raised game birds and their eggs.

• Current rules spell out DATCP test procedures for determining the disease status of a poultry flock. This rule applies the same procedures to farm−raised game bird flocks.

• Under current DATCP rules, persons who keep or test poultry must report to DATCP whenever they find evidence of pullorum, fowl typhoid or other serotypes of Salmonella. This rule extends the same reporting requirement to persons who keep or test farm−raised game birds. DATCP may investigate the report.

• Under current rules, DATCP must quarantine every poultry flock that is classified as a reactor flock, infected flock or suspect flock under the National Poultry Improvement Plan. This rule extends the same quarantine requirement to flocks of farm−raised game birds.

• Current DATCP rules restrict the commingling of poultry species. This rule expands the restrictions to include farm−raised game birds.

• Under current DATCP rules, imported poultry and eggs must originate from flocks that are classified as "U.S. pullorum−typhoid clean." This rule applies the same requirement to farm−raised game birds and their eggs.

• Under current DATCP rules, imported poultry and hatching eggs must originate from flocks that comply with the National Poultry Improvement Plan (there is an exemption for poultry imported directly to slaughter). This rule applies the same requirements to farm−raised game birds and eggs.

• Under current DATCP rules, poultry exhibited at fairs and public exhibitions must originate from flocks that are "U.S. pullorum−typhoid clean," or must test negative for pullorum−typhoid. This rule applies the same requirements to farm−raised game birds and swap meets.

National Poultry Improvement Plan; Flock Enrollment

This rule establishes standards for enrolling flocks of poultry and farm−raised game birds in the National Poultry Improvement Plan. Enrollment is voluntary, but rules limit the sale and movement of birds from flocks that are not enrolled. Enrollment facilitates sales and movement within the state, and between states.

Under this rule, a flock owner may annually enroll a flock in the National Poultry Improvement Plan. Enrollment expires on June 30 of each year. The flock owner must complete an annual enrollment application that includes all the following:

• Proof that the flock has been tested for salmonella pullorum−typhoid, according to test standards set forth in the National Poultry Improvement Plan. DATCP will request permission from the Attorney General and the Revisor of Statutes to incorporate these test standards by reference in this rule.

• An annual enrollment fee. A flock owner must pay the following applicable fee:

− Fanciers. $20 if the flock consists solely of specialty breeds other than meat−type or egg−type birds, and are raised primarily for show or exhibition.

− Non−Breeders; No Game Birds. $20 if the flock owner does not handle farm−raised game birds, does not hatch or collect eggs, and buys all poultry stock from National Poultry Improvement Plan sources.

− Non−Breeders With Game Birds. $30 if the flock owner handles farm−raised game birds (with or without poultry), does not hatch or collect eggs, and buys all stock from National Poultry Improvement Plan sources.

− Breeders (With or Without Game Birds). The following applicable fee for a breeder flock (poultry or farm−raised game birds):

* *$40 fee* for 1 to 1,000 breeders.

* *$50 fee* for 1,001 to 5,000 breeders.

* *$100 fee* for 5,001 to 10,000 breeders.

* *$200 fee* for more than 10,000 breeders.

Deer Farm Registration Certificate

Under current law, a deer farm operator must hold an annual deer farm registration certificate from DATCP. Under this rule, a deer farm operator must obtain a separate certificate from DATCP to operate a hunting preserve at the registered premises (see below). This rule also clarifies that a registered deer farm operator may not operate as an animal dealer without an animal dealer license.

Deer Farms; Chronic Wasting Disease Testing

This rule clarifies current chronic wasting disease testing requirements for farm−raised deer. Under this rule, a deer farm operator must have a chronic wasting disease test performed on each of the following farm−raised deer that is at least 16 months old:

• A farm−raised deer that dies or is killed while kept by that person.

• A farm−raised deer that the person ships to slaughter.

Under current rules and this rule, the person who collects a test sample for a required chronic wasting disease test must be a certified veterinarian, a DATCP or federal employee, or a person that DATCP pre−approves in writing. The person must also complete training approved by DATCP. The person must collect the sample from the brain of the dead animal, according to standard veterinary procedures, and must submit the sample to a testing laboratory approved by DATCP and the United States department of agriculture (USDA−APHIS).

The person must normally collect the test sample before any part of the farm−raised deer carcass leaves the premises where the farm−raised deer died, or was killed or slaughtered. But a deer farm operator may separate the head from the carcass, and may ship the head to the person who collects the test sample from the brain, if the deer farm operator first identifies both the head and the carcass with official individual identification or a "dead tag" (see below).

Farm−Raised Deer; Carcass Identification

Under this rule, no person may remove any farm−raised deer carcass from a deer farm unless that carcass is identified with official individual identification, or with a "dead tag" issued by DATCP. A registered deer farm operator may purchase "dead tags" from DATCP at cost.

Under this rule, no *part* of a carcass may leave the premises unless *every* part of the carcass bears official individual identification or a dead tag, and the farm−raised deer keeper records and correlates all of the official individual identification and dead tag numbers assigned to that animal.

Deer Farm Records

This rule expands current record keeping requirements for deer farm operators. Under this rule:

• A deer farm operator must keep the following records related to each live farm−raised deer that leaves the herd other than for slaughter, or that enters the herd from another herd:

− The official individual identification of the farm−raised deer.

− The species, age and sex of the farm−raised deer.

− The date on which the farm−raised deer entered or left the herd.

− The name and address of the person from whom the person received, or to whom the person shipped, the farm−raised deer. The record shall also identify the person who had custody of the farm−raised deer during shipment.

− The address of the herd from which the farm−raised deer originated, or to which it was shipped.

− A copy of any certificate of veterinary inspection that accompanied the farm−raised deer.

• A deer farm operator must keep the following records related to each farm−raised deer that the operator ships live to slaughter:

− The official individual identification of the farm−raised deer.

− The species, age and sex of the farm−raised deer.

− The date on which the operator shipped the farm−raised deer to slaughter.

− The name and address of the slaughter facility.

− The name and address of the person who transported the farm−raised deer to slaughter.

− A copy of the slaughter movement document required under current rules (form VS−127 or equivalent).

− Chronic wasting disease test results if required (testing is currently required, unless the animal is less than 16 months old).

• A deer farm operator must keep the following records related to every farm−raised deer that dies, or is killed or slaughtered, on the deer farm premises:

− The species, age and sex of the farm−raised deer.

− Any identification attached to the farm−raised deer.

− The date on which the farm−raised deer died or was killed. If the farm−raised deer was found dead on the premises, the operator must record the date on which the farm−raised deer was found dead.

− The disposition of the carcass, regardless of whether the carcass leaves the premises. If the carcass leaves the herd premises, the operator must record the official individual identification or "dead tag" number, the disposition date, and the name and address of the carcass recipient.

− Chronic wasting disease test results if testing is required under current rules (testing is currently required, unless the animal is less than 16 months old).

• A deer farm operator must retain these records for at least 5 years, and must make the records available to DATCP for inspection and copying upon request**.**

Deer Imports and Movement; Tuberculosis Status

Current rules regulate imports of cervids (including farm−raised deer) to this state. This rule strengthens current import restrictions related to tuberculosis. Under this rule, no person may import a cervid except from a "tuberculosis free" or "tuberculosis qualified" herd (there are limited exemptions). Under current rules and this rule, cervids imported from "tuberculosis modified accredited states" must also be confined for tuberculosis testing following import.

Current rules also regulate the movement of farm−raised deer from deer farms in this state. This rule makes minor adjustments to current rules (timing of tuberculosis tests to determine source herd status), and exempts movements between locations that are part of the same registered deer farm.

Hunting Preserves; General

Under this rule, no person may sell or offer the opportunity to hunt farm−raised deer on any premises unless all of the following apply:

• The person holds, for those premises, both a deer farm registration certificate (see above) and a hunting preserve certificate (see below) from DATCP.

• Farm−raised deer, when hunted, have unimpeded access to at least 80 acres of land.

• The person complies with applicable requirements under this rule.

Hunting Preserve Certificate

Under this rule, DATCP may issue a hunting preserve certificate for a registered deer farm. A hunting preserve certificate expires 10 years after it is issued (the deer farm registration must be renewed annually). A hunting preserve certificate is not transferable between persons or premises. A hunting preserve certificate is not valid unless the holder also holds a current annual deer farm registration certificate.

A person must apply for a hunting preserve certificate on a form provided DATCP. The application must include all of the following:

• The applicant's name, address, and deer farm registration number.

• The address of the deer farm premises for which the applicant seeks a hunting preserve certificate.

• Documentation showing that farm−raised deer hunted on the premises will have unimpeded access to at least 80 acres of land.

• A nonrefundable fee of $150.

DATCP must grant or deny an application within 90 business days after DATCP receives a complete application. DATCP must inspect the premises before issuing a hunting preserve certificate, and may inspect relevant records as necessary.

Hunting Preserves; Chronic Wasting Disease Testing

Under this rule, a hunting preserve operator must have a chronic wasting disease test performed on every farm−raised deer at least 16 months old that is killed on the hunting preserve (see deer farm testing requirements above). The hunting preserve operator must inform the hunter of the test results.

Hunting Preserves; Animal Identification

Hunting preserves, like other deer farms, must comply with animal identification requirements (see above). Current rules prohibit any person from removing, altering or tampering with an animal's official individual identification. Under this rule, no portion of a farm−raised deer carcass may leave a hunting preserve unless it bears official individual identification or a "dead tag" issued by DATCP (see above).

Hunting Preserves; Recordkeeping

This rule requires a hunting preserve operator to do all the following:

• Keep records required of other deer farm operators.

• Keep the following records related to each farm−raised deer that is killed on the hunting preserve:

− The name and address of the person who killed the farm−raised deer.

− The date and time when the farm−raised deer was killed, and the location of the premises where it was killed.

− The name and address of the person who collected the chronic wasting disease test sample from the farm−raised deer carcass.

− The laboratory test reports from the chronic wasting disease test.

− The disposition of the carcass.

− The official individual identification or "dead tag" number attached to the carcass. If the carcass has both an official individual identification and a "dead tag," the record must include both numbers.

• Keep copies of all advertising and promotional materials used to promote the hunting preserve.

• Record the name and address of every person who pays for the opportunity to hunt farm−raised deer at the hunting preserve.

• Retain the required records for at least 5 years, and make them available to DATCP for inspection and copying upon request.

Hunting Preserves; Prohibited Conduct

Under this rule, no person operating a farm−raised deer hunting preserve may do any of the following:

• Violate or allow others to violate laws prohibiting "shining" of animals.

• Violate or assist any violation of DATCP animal health rules.

• Make any false, deceptive or misleading representation to a customer or potential customer.

• Misrepresent that DATCP or any other person has approved, endorsed or recommended a hunting preserve.

• Misrepresent the weight of a killed farm−raised deer.

• Misrepresent, to a hunter, that any portion of a carcass delivered to the hunter is that of the farm−raised deer killed by the hunter.

Animal Disease Quarantines

Under current rules, DATCP may quarantine animals to prevent or control diseases that may affect domestic or exotic animals. Under this rule, DATCP may quarantine animals to prevent or control diseases that may affect *any* animals (not just domestic or exotic animals), or to prevent or control diseases that may be transmitted from animals to humans.

Animal Imports; Health Certificate

Current rules prohibit a person from importing any of the following animals without a health certificate (certificate of veterinary inspection):

• Bovine animals (there are limited exemptions).

• Swine (there are limited exemptions).

• Equine animals (there are limited exemptions).

• Poultry.

• Sheep (except sheep imported to slaughter).

• Goats.

• Dogs or domestic cats.

• Circus, rodeo, racing or menagerie animals.

• Exotic ruminants and South American camelids (alpacas and llamas).

• Cervids (including deer and elk).

• Ratites (except ratites imported from a federal quarantine facility).

This rule extends the current health certificate requirement to animal species that are not covered by current rules. This rule prohibits a person from importing *any* animal without a health certificate. This rule continues current limited exemptions for domestic livestock, including exemptions for livestock imported directly to slaughter (farm−raised deer imported directly to slaughter must be tested for chronic wasting disease if they are at least 16 months old). This rule also exempts invertebrates that are imported in compliance with DATCP pest control rules.

Alpacas and Llamas; Imports

Under current rules, a person must obtain a DATCP permit before importing an alpaca or llama. The person must have the animal tested for tuberculosis and brucellosis. A health certificate (certificate of veterinary inspection) must accompany the imported animal. This rule eliminates the permit, tuberculosis testing and brucellosis testing requirements, but retains the health certificate requirement.

Wild Animal Imports

This rule prohibits a person from importing a wild animal to this state unless all of the following apply:

• DATCP issues an import permit for that import. DATCP may not issue an import permit for an animal that DNR has designated as a "harmful wild animal" unless DNR also approves the import.

• A valid health certificate (certificate of veterinary inspection) accompanies the imported animal.

These wild animal import requirements to not apply to invertebrates imported in compliance with DATCP pest control laws. Nor do they apply to domestic animals (see list above). However, domestic animals are subject to other import regulations under current rules and this rule.

This rule prohibits imports of prairie dogs and certain African rodents that have been implicated in the spread of "monkey pox." However, DATCP may issue an import permit if one of the following applies:

• The animal is imported directly to an accredited zoo.

• The animal is imported directly to a bona fide research facility.

• The animal is imported directly to a veterinary facility for treatment, or is returning directly from treatment at a veterinary facility.

Animal Dealers

Before the Captive Wildlife Law was enacted, DATCP licensed "livestock dealers" ("livestock" includes bovine animals, sheep, goats, swine, farm−raised deer, equines and other farm animals). The Captive Wildlife Law changed the "livestock dealer" license to an "animal dealer" license.

DATCP now licenses "animal dealers" who deal in livestock *or wild animals.* Captive white−tail deer are now considered "livestock" (farm−raised deer). This rule modifies current rules to reflect this expanded coverage. This rule also clarifies and reorganizes current licensing requirements. Under this rule:

• A person must be annually licensed by DATCP, as an animal dealer, if the person does any of the following (see exemptions below):

− Engages in the business of buying livestock or wild animals for resale, slaughter or exchange.

− Engages in the business of selling or exchanging livestock or wild animals.

− Engages in the business of leasing out livestock or wild animals to others.

• The following persons are *exempt* from licensing as animal dealers:

− An employee of a licensed animal dealer who acts solely on behalf of that licensed animal dealer.

− A farm operator who buys or exchanges livestock solely for dairy, breeding or feeding operations on that farm, or who sells only livestock produced on that farm.

− An animal market operator licensed by DATCP.

− The operator of a licensed meat establishment who buys livestock solely for slaughter at that meat establishment.

− The holder of a DNR captive wildlife license who buys, sells or exchanges wild animals pursuant to the license, solely for purposes of the licensed operation.

• A person must do all the following to obtain an animal dealer license (no change from current rules):

− Submit a complete license application.

− Pay an annual license fee of $115 (no change from current rules).

− Obtain an animal trucker license, if the person also operates as an animal trucker (see below).

− Register all vehicles that the person uses to transport animals.

− Pass a test administered by DATCP. No test is required for the renewal of an existing license.

• DATCP must grant or deny a license application within 30 business days after the applicant submits a complete application and takes any required test (no change from current rules).

• DATCP may deny, suspend or revoke a license, including violation of animal health or humane laws (no change from current rules).

• An animal dealer must do all of the following (this rule reorganizes, but does not change, current rules):

− Maintain the animal dealer premises in a clean and sanitary condition.

− Provide adequate food, water, shelter, bedding and pen space for all animals held more than 12 hours.

− Properly identify animals.

− Keep proper records.

− Handle animals in a humane manner.

− Comply with applicable requirements related to animal transport vehicles (see below).

− Refrain from commingling animals of different species within the same vehicle or enclosure.

• This rule prohibits an animal dealer from accepting delivery of animals from an unlicensed animal trucker, or shipping animals via an unlicensed animal trucker.

Animal Market Operators

Before the Captive Wildlife Law was enacted, DATCP licensed "livestock market operators" ("livestock" includes bovine animals, sheep, goats, swine, farm−raised deer, equines and other farm animals). The Captive Wildlife Law changed the "livestock market operator" license to an "animal market operator" license.

DATCP now licenses "animal market operators" who operate market facilities that are open to the public for the purpose of trading in livestock *or wild animals.* Captive white−tail deer are now considered "livestock" (farm−raised deer). This rule modifies current rules to reflect this expanded coverage. This rule also clarifies and reorganizes current licensing requirements. Under this rule:

• No person may operate an animal market without an annual license from DATCP. A separate license is required for each animal market (no change from current rules).

• An animal market operator may apply for a Class A, Class B or Class E animal market license (no change from current rules):

− At a *class A animal market*, an operator may conduct livestock and wild animal sales on any number of days during the license year.

− At a *class B animal market*, an operator may conduct livestock sales on no more than 4 days during the license year. An operator may not conduct wildlife sales at a class B animal market.

− At a *class E animal market*, an operator may conduct sales of equine animals on any number of days during the license year. An operator may not conduct sales of any other livestock or any wild animals at a class E animal market.

• A person must do all the following to obtain an animal market license (no change from current rules):

− Submit a complete license application.

− Pay an annual license fee. The fee is $225 for a class A market, $115 for a class B market, and $150 for a class E market (no change from current rules).

− Obtain an animal trucker license, if the person also operates as an animal trucker (see below).

− Register all vehicles that the person uses to transport animals.

− Pass a test administered by DATCP. No test is required for the renewal of an existing license.

• DATCP must act on a license application within 30 business days after the applicant submits a complete application and takes any required test (no change from current rules). DATCP must inspect a class A market before licensing that market for the first time. If an inspection is required, DATCP has an additional 60 days to act on the license application.

− DATCP may deny, suspend or revoke a license for cause, including violation of animal health or humane laws (no change from current rules).

• An animal market operator must do all the following (this rule reorganizes, but does not change, current rules):

− Comply with animal market construction standards.

− Keep the animal market in a clean and sanitary condition.

− Provide adequate food, water, shelter, bedding and pen space for all animals held more than 12 hours.

− Properly identify animals.

− Keep proper records.

− Handle animals in a humane manner.

− Remove animals from the animal market premises within 4 days after they enter the market (some special provisions apply).

− Comply with applicable requirements related to animal transport vehicles (see below).

− Refrain from commingling animals of different species in the same enclosure.

• This rule prohibits an animal dealer from accepting delivery of animals from an unlicensed animal trucker, or shipping animals via an unlicensed animal trucker.

Animal Truckers

Before the Captive Wildlife Law was enacted, DATCP licensed "livestock truckers" ("livestock" included bovine animals, sheep, goats, swine, farm−raised deer, equines and other farm animals). The Captive Wildlife Law changed the "livestock trucker" license to an "animal trucker" license.

DATCP now licenses "animal truckers" who transport livestock *or wild animals* for hire.

Captive white−tail deer are now considered "livestock" (farm−raised deer). This rule modifies current rules to reflect this expanded coverage. This rule also clarifies and reorganizes current license requirements. Under this rule:

• A person must be annually licensed by DATCP, as an animal trucker, if the person transports livestock or wild animals *for hire*. The following persons are exempt from licensing as animal truckers:

− An employee of a licensed animal trucker who transports animals solely on behalf of the license holder, in vehicles registered by the license holder.

− Persons who are solely engaged in transporting their own animals.

− Persons who are solely engaged in the following activities:

* Hauling animals on an occasional basis for persons participating in a livestock exhibition, fair, trail ride, youth livestock event or similar activity.

* Hauling animals on an incidental basis in connection with another business, such as a veterinary practice or a stable operation, does not ordinarily involve the sale of animals.

* Hauling animals for other persons fewer than 6 times per year.

• A person must do all the following to obtain a license (no change from current rules):

− Submit a complete license application.

− Pay license fees. There is a basic annual fee of $30, plus a $10 fee for each vehicle used to transport livestock or wild animals (no fee change from current rules).

− Register all vehicles used to transport livestock or wild animals.

− Pass a test administered by DATCP. No test is required for the renewal of an existing license.

• DATCP must act on a license application within 30 business days after the applicant submits a complete application and takes any required test (no change from current rules).

• DATCP may deny, suspend or revoke a license for cause, including violation of animal health or humane laws (no change from current rules).

• An animal trucker must do all of the following (this rule reorganizes, but does not change, current rules):

− Maintain properly equipped vehicles.

− Properly identify animals.

− Keep proper records.

− Transport and handle animals in a safe and humane manner.

• An animal trucker may not:

− Commingle different animal species on the same transport vehicle.

− Transport diseased or downer animals with healthy animals on the same transport vehicle (there is a limited exception for slaughter shipments).

Animal Transport Vehicles

Under current rules and this rule, an animal dealer, animal market operator or animal trucker must register every vehicle that the person uses to transport livestock or wild animals. The operator must register annually and pay an annual fee of $10 per vehicle. DATCP must grant or deny a registration application within 30 business days after the person submits a complete application.

Under current rules and this rule, the following requirements apply to every vehicle that an animal dealer, animal market operator or animal trucker uses to transport livestock or wild animals:

• The vehicle must be properly identified with the operator's name and business address, the operator's DATCP license number(s), and the DATCP vehicle registration number.

• The vehicle must be properly constructed and equipped to handle each type of animal transported.

• The vehicle must be kept in a clean and sanitary condition.

Fiscal Estimate

The rule will not have a major impact on State or Local government resources. This rule;

1) Implements Wisconsin's Captive Wildlife Law (2001 Wis. Act 56), which took effect on January 1, 2003.

2) Modifies related animal health rules administered by the Department of Agriculture, Trade and Consumer Protection (DATCP).

3) Coordinates animal disease control activities of DATCP and the Department of Natural Resources (DNR).

Some of these changes will increase the workload in the department, however it is anticipated that the workload generated can be absorbed.

Initial Regulatory Flexibility Analysis

This rule affects the following businesses, among others:

• Deer farmers.

• Deer hunting preserve operators.

• Persons raising poultry and farm−raised game birds.

• Persons importing animals to this state.

• Wild animal dealers, truckers and market operators.

Many of those affected are "small businesses" as defined in s. 227.114 (1) (a), Stats.

Effects on Small Business

This rule adds regulatory requirements for some businesses, but these requirements are necessary for animal disease control and not expected to impose an undue burden. The new Captive Wildlife Law mandates some of the requirements.

In some cases, this rule gives affected businesses wider latitude to choose a preferred method of compliance. This rule will benefit affected businesses by clarifying regulatory requirements, and coordinating DATCP and DNR regulation.

This rule imposes new fees related to deer hunting preserves. The new fee ($150 for a 10−year hunting preserve certificate) is modest, and is needed to defray costs of providing inspections newly mandated by the Legislature. This rule requires deer farm operators, including hunting preserve operators, to identify dead animals with "dead tags" purchased at cost from DATCP. The "dead tags" are needed for disease control and traceback, including chronic wasting disease control.

This rule codifies, but does not increase, current fees for poultry and farm−raised game bird operators that wish to participate in the National Poultry Improvement Plan. The fees are modest ($20−200, depending on flock size and type), and merely cover DATCP's cost to provide inspections and services required under the National Poultry Improvement Plan.

The rule expands current regulation of livestock truckers, dealers and markets to include entities that handle wild animals. This change was mandated by the Legislature. The change could have a substantial impact on wild animal markets, dealers and truckers, which will now have to comply with the same regulations that apply to livestock markets, dealers and truckers. However, DATCP does not believe that many "small businesses" will be affected.

This rule will require health certificates (certificates of veterinary inspection) for the import of certain animals that can now be imported without a certificate. This rule also requires persons importing wild animals to obtain a permit for DATCP (there is no charge for the permit). The new import requirements are consistent with current requirements for livestock, are needed to control serious diseases that may be spread by these animals, and which are not adequately addressed by current import controls.

This rule will add some record keeping requirements, especially for deer hunting preserves, wild animal markets, and wild animal dealers and truckers.

Steps to Assist Small Business

In some cases, this rule gives affected businesses wider latitude to choose a preferred method of compliance. For example, this rule:

• Authorizes alternative forms of "official individual identification" of animals.

• Provides more flexibility related to the timing of required tuberculosis tests.

• Makes it easier and cheaper for deer farm operators to have test samples collected for chronic wasting disease tests. Under current rules, a veterinarian must collect the samples at the herd premises. Under this rule, the deer farm operator may send the deer head to the veterinarian who collects the test sample from the brain.

This rule will benefit affected businesses by clarifying regulatory requirements, and coordinating DATCP and DNR regulation. This rule provides a "one stop" clearinghouse for animal disease reporting and health certificate filing.

Conclusion

This rule will have an impact on small business. In most cases, this rule will not have a significant adverse impact. And in some cases, it will have a positive impact. DATCP has attempted to minimize adverse effects on small business. Effects, if any, are necessary to ensure more effective control of serious animal diseases that may affect humans, domestic animals and wild animals.

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 03−119]

[CR 03−120]

(Reprinted from 12/31/03 Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on 2 proposed rules that do the following:

• Amend ch. ATCP 35, Wis. Adm. Code, relating to the agricultural chemical cleanup program.

• Amend ch. ATCP 40, Wis. Adm. Code, relating to fertilizer tonnage fee surcharges used to fund the agricultural chemical cleanup program.

The department will hold one hearing, covering both rules, at the time and place shown below. The department invites the public to attend the hearing and comment on the proposed rules. Following the public hearing, the hearing record will remain open until January 31, 2004, for additional written comments.

You may obtain free copies of the rules by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224−4523. Copies will also be available at the hearing.

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **January 19, 2004,** by writing to Judy Testolin, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708−8911, telephone (608) 224−4523. Alternatively, you may contact the Department TDD at (608) 224−5058. Handicap access is available at the hearing.

The hearing is scheduled :

Thursday, January 22, 2004, 2:00 p.m. until 5:00 p.m.

Alliant Energy Center

1919 Alliant Energy Center Way

Monona – Wingra Room (Second Floor)

Madison, WI 53713

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

Agricultural Chemical Cleanup Program (ATCP 35).

Statutory Authority: ss. 93.07 (1) and 94.73 (11), Stats.

Statute Interpreted: s. 94.73, Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently administers an agricultural chemical cleanup program under s. 94.73, Stats. This program is designed to clean up spills of agricultural chemicals and minimize environmental contamination. Under this program, DATCP may reimburse a portion of the eligible cleanup cost.

DATCP has adopted rules, under ch. ATCP 35, Wis. Adm. Code, to govern this program. This rule modifies current rules. Among other things, this rule implements statutory changes enacted in 2003 Wis. Act 33 (biennial budget act).

Landspreading Soil from Cleanup Sites

In appropriate cases under current rules, a cleanup operation may include landspreading of soils contaminated with spilled fertilizers or pesticides. Landspreading may reduce the concentration of the fertilizer or pesticide, and may provide an economical and potentially useful disposal option.

This rule clarifies that a person who landspreads soil contaminated with a pesticide is, for purposes of pesticide applicator licensing and certification, engaged in the application of that pesticide. The person must be licensed and certified to spread the pesticide−contaminated soil, to the same extent as if the person were applying the pesticide.

Costs to Remove Existing Structures

In some cases, it may be necessary to remove existing structures in order to clean up a spill site. Current rules generally prohibit DATCP from reimbursing costs incurred for the removal of existing structures. But DATCP may reimburse costs to remove certain concrete or asphalt structures (containment structures, parking areas, roadways, curbs and sidewalks) if DATCP pre−approves the removal after finding that the removal is less expensive than other cleanup alternatives.

Under current rules, DATCP may also reimburse costs to remove and reinstall certain movable structures or equipment, or to replace certain fixtures (such as fences and utility lines) that were in good operating condition when removed for the cleanup.

This rule changes and clarifies the current rules. Under this rule, DATCP may reimburse all the following:

• Costs to remove *any* concrete or asphalt (not just the concrete or asphalt structures identified in the current rules) if DATCP pre−approves that removal after finding that it is less expensive than other cleanup alternatives. Under this rule, as under current rules, DATCP may reimburse the depreciated value of the concrete or asphalt, as well as the costs of removal and disposal. However, DATCP may not reimburse the cost of replacing the concrete or asphalt.

• Costs to install engineered barriers, to limit infiltration of existing contamination. The responsible person must agree to maintain the barrier at his or her expense.

• Temporary removal and reinstallation of a surface, structure, fixture or equipment item that is removed *intact*, and returned *intact* to its original use and approximate original location.

• The following corrective measures related to fixtures (such as fences and utility lines) that are in good condition and operating adequately when the corrective measure occurs:

* Temporary or permanent relocation.

* Removal and replacement with a new fixture of the same size and quality, including any upgrade required by law.

* Protection during a spill cleanup, through shoring or other methods.

Repeat Spills

This rule authorizes DATCP, in consultation with the agricultural chemical cleanup council, to reduce the reimbursement rate for cleanups of repeat spills. Under this rule, DATCP may reduce the reimbursement rate for a spill cleanup if DATCP has received or paid a reimbursement claim related to a prior spill at the same site.

The presumptive reimbursement rate (reduced rate) is 50%, unless DATCP finds that a larger or smaller reduction

is appropriate. In determining the amount of the reduction, DATCP may consider all of the following in consultation with the agricultural chemical cleanup council:

- The type of agricultural chemical discharged.
- The nature, size and location of discharge.
- The similarity between the discharge and prior discharges.
- The number of prior discharges, and the number of prior discharges for which the department has reimbursed corrective action costs.
- The responsible person's apparent negligence, if any.
- Whether the discharge was caused by a law violation.
- Other factors that the department or the agricultural chemical cleanup council consider relevant.

Alternative Sources of Drinking Water

In some cases, spills of agricultural chemicals may impair drinking water supplies. Current rules prohibit DATCP from reimbursing well replacement costs, except that DATCP may reimburse up to $20,000 in well replacement costs if DATCP or the Department of Natural Resources (DNR) orders the well replacement.

This rule expands DATCP's authority to reimburse well replacement costs, consistent with legislative changes enacted in 2001 Wisconsin Act 16. Under this rule, DATCP may reimburse up to $50,000 in costs incurred for any of the following actions ordered by DATCP or DNR:

- Replacement or restoration of private wells.
- Connection to alternative water sources, whether public or private.

Contractor to Disclose Identity of Landspreading Subcontractor

Current rules require contractors to disclose certain information in bids for cleanup services. This rule requires a contractor to disclose, in every bid that includes landspreading services, the name of the subcontractor (if any) who will provide those services.

Noncompetitive Bids

Under current rules, if DATCP finds that a bid for cleanup services is unreasonable, or that the cleanup service is unnecessary, DATCP may disapprove the bid, require additional bids or reimburse a lesser amount. This rule authorizes DATCP to take the same actions if DATCP finds that bids appear to be noncompetitive.

Payment Schedule

Under current rules, DATCP must pay cleanup reimbursement claims in installments if the cleanup fund balance is less than $1 million. DATCP may pay an initial installment of up to $50,000. DATCP may not make any additional payment to a claimant in any fiscal year until DATCP has paid initial installments to all eligible claimants in that year. This may delay full reimbursement to some claimants, even when adequate funds are available to pay all eligible claimants. DATCP must pay interest on any delayed payments. This rule changes the current method of payment. Under this rule, DATCP may pay the full amount of reimbursement claims on a first−come, first−served basis (there is no $50,000 installment limit). This will allow DATCP to pay claims more quickly, and limit interest costs to the agricultural chemical cleanup fund.

Reimbursement Rate

Under current rules, DATCP reimburses 80% of eligible cleanup costs. There is a minimum cleanup cost "deductible" of $3,000 or $7,500 (depending upon the type of business doing the cleanup), and DATCP does not reimburse costs to the extent that they exceed $400,000. The maximum allowed payment per cleanup, including interest on delayed payments, is $317,600 or $314,000 (depending on the applicable "deductible").

This rule reduces the current reimbursement rate, consistent with legislation enacted in 2003 Wisconsin Act 33. Under this rule, DATCP will reimburse 75% of eligible cleanup costs incurred on or after January 1, 2004. There will still be a minimum cleanup cost "deductible" of $3,000 or $7,500 (depending upon the type of business doing the cleanup). DATCP will still not reimburse costs to the extent that they exceed $400,000. The maximum allowed payment per cleanup will be $297,750 or $294,375 (depending on the applicable "deductible").

Repeal of Obsolete Provisions

This rule repeals obsolete retroactivity provisions contained related to reimbursement claims filed with the department prior to November 1, 2000.

Fiscal Estimate

DATCP estimates that this rule will save $180,000 for the agricultural chemical cleanup fund each year. This includes the following projected savings:

- By lowering the cleanup cost reimbursement rate from 80% to 75% (as required by current law), DATCP will save approximately $160,000 each year.
- By paying reimbursement claims on a first−come, first−served basis instead of installments, DATCP will save approximately $20,000 in interest costs each year.

DATCP estimates that it will save an additional $50,000 each year by reducing the reimbursement rate for repeat spills. But DATCP estimates that these savings will be offset, each year, by $50,000 in additional reimbursement payments related to concrete structure removal and private well replacement.

Initial Regulatory Flexibility Analysis

This rule affects businesses that clean up spills of fertilizers and pesticides in Wisconsin. Currently more than 360 businesses are involved in fertilizer or pesticide cleanups. Most of the cleanups occur at farm centers, agricultural dealerships and agricultural cooperatives. Many of these businesses are "small businesses" as defined in s. 227.114 (1) (a), Stats.

This rule will affect the reimbursement of spill cleanup costs. But this rule will not, by itself, have a major impact on small business. This rule merely implements a reimbursement rate reduction that the Legislature has already mandated. The rule changes expedite reimbursement payments, and increase reimbursement eligibility for certain cleanup costs. Small businesses will not need additional professional services to comply with this rule.

This rule will reduce reimbursement rates for repeat spills. However, businesses handling agricultural chemicals can participate in the department's Environmental Partners program to minimize their risk of repeat spills.

Environmental Assessment

DATCP has prepared an environmental assessment on this rule. You may obtain a free copy of the environmental assessment by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224−4523. Copies will also be available at the hearing.

Fertilizer Tonnage Fees Used to Fund the Agricultural Chemical Cleanup Program (ATCP 40)

Statutory authority: ss. 93.07 (1), Stats.

Statutes interpreted: ss. 94.64 (4) (a) 1., 5. and 6., Stats.

The department of agriculture, trade and consumer protection (DATCP) currently administers an agricultural chemical cleanup program under s. 94.73, Stats. The program is partly funded by fertilizer tonnage fee surcharges.

Fertilizer manufacturers and distributors currently pay tonnage fees and surcharges, based on their annual gross sales of fertilizer in this state. Under current rules, manufacturers pay a surcharge of 38 cents per ton to fund the agricultural chemical cleanup program. This rule increases the surcharge to 86 cents per ton, as authorized by 2003 Wis. Act 33. The new surcharge will apply to fertilizer distributed after July 1, 2004, with initial payment due in August 2005.

This rule also updates current rules to reflect fee changes made by 1999 Wisconsin Act 9 (DATCP has already changed its fee collections according to reflect the statutory changes). The statutory changes decreased the basic fertilizer inspection fee by 2 cents per ton, and added a fertilizer weights and measures inspection fee of 2 cent per ton.

Fiscal Estimate

This rule will increase fertilizer tonnage fee revenues deposited to the agricultural chemical cleanup fund. The increased fee revenues will help finance the reimbursement of agricultural chemical spill cleanup costs, and reduce a projected deficit in the fund. In recent years, the fund has expended from $3.6 to $3.9 million per year in reimbursement payments, whole generating only $2,614,000 in annual revenues.

The fund had a substantial reserve until recently, but that reserve dropped below $200,000 at the end of FY 2002−03. Fiscal year 2003−04 is expected to end with unreimbursed claims (a deficit) of $784,000. Those claims (and associated interest expenses) must be reimbursed in subsequent years.

Initial Regulatory Flexibility Analysis

This rule affects tonnage fees paid by businesses (approximately 500) that are licensed to manufacture or distribute fertilizer in Wisconsin. This rule may indirectly affect farmers, landscape businesses and other persons who purchase and use fertilizer, to the extent that tonnage fee costs are passed on to those purchasers. Some of the affected businesses are "small businesses" as defined in s. 227.114 (1) (a), Stats.

This rule will not have a major adverse impact on small business. The rule will generate an additional $624,000 in fees on the 1,300,000 tons of fertilizer sold annually in Wisconsin. These fertilizers have an average price of more than $150 per ton. The fee increase represents a price increase of about 0.3% on an agricultural input that typically has annual price fluctuations of several percent. This rule does not add any new record keeping or reporting requirements for affected businesses.

By increasing revenues for the agricultural chemical cleanup fund, this rule will benefit businesses (including fertilizer manufacturers and distributors) who rely on the fund for reimbursement of spill cleanup costs. Cleanups often cost more than $30,000, and sometimes more than $100,000. This rule will assist small businesses by assuring adequate funding to cover up to 75% of cleanup costs (subject to a $3,000 deductible).

It will also help ensure faster payment of cleanup reimbursement claims.

Notice of Hearing
Educational Approval Board
[CR 03−126]

NOTICE IS HEREBY GIVEN that pursuant to ss. 45.54 (2), (3), (10) (c) 4., and 227.11 (2), Stats., and interpreting ss. 45.54 (2), (3), (7) and (10), Stats., the Wisconsin Educational Approval Board will hold a public hearing at the time and place indicated below to consider an order relating to the regulation of for−profit postsecondary schools; out−of−state, non−profit colleges and universities; and in−state, non−profit institutions incorporated after 1991.

Hearing Information

The public hearing will be held:

Tuesday, February 10, 2004 at 1:30 p.m.

8th Floor Board Conference Room

Department of Veterans Affairs

30 W. Mifflin Street

Madison, Wisconsin

Interested persons are invited to present information at the hearing. Persons appearing may provide oral testimony but are urged to submit facts, opinions and argument in writing. Written commentary may also be submitted without making a personal appearance by mail addressed to the Educational Approval Board, 30 W. Mifflin Street, P.O. Box 8696, Madison, WI 53708. Written comments must be **received** by February 9, 2004 to be included in the official record of rule−making proceedings.

Any person who has a qualifying disability as defined by the Americans with Disabilities Act that requires the meeting or materials at the meeting to be in an accessible location or format must contact the EAB at 608/266−1996 at least ten days prior to the hearing so that necessary arrangements can be made.

Analysis prepared by the Educational Approval Board

This rule will implement provisions related to the creation of a student protection fund. Enabling legislation was contained in the 2003−05 biennial budget (2003 Wisconsin Act 33). In addition, the rule will clarify a number of existing rule provisions.

−Clarifies that the board approves schools and their programs.

The rule updates a number of outdated references to clarify that the board approves schools and the programs they offer. Although programs are comprised of a series of courses, the board does not approve these courses individually.

−Create provisions related to implementing a student protection fund.

Under current rule, a school subject to board oversight must provide a surety bond in an amount equal to 125% of unearned tuition as a condition of obtaining and retaining approval. The bond is intended to provide indemnification to any student, parent, guardian, or sponsor suffering loss or damage as a result of any fraud or false representation used in procuring enrollment, a violation of school approval and operating requirements, or the student being unable to complete a program because the school failed to perform its contractual obligation.

The board also relies on the surety bond as a measure of a school's financial stability. When applying for a bond, a surety company evaluates a school's finances and assesses the

risks for failure. If a school is unable or has trouble securing a bond, it generally means there are underlying financial concerns which the board carefully considers during the approval process.

When establishing the bond level, the board relies on information that is typically included in the school's annual financial statements. Unfortunately, this information can be 12 to 18 months old by the time it is received and analyzed. As a result, bond levels are not always sufficient to fully protect students being served and their sponsors.

For new schools, it is even more challenging to set an appropriate bond level. Because no financial history exists, the board must rely on enrollment and tuition revenue projections from the prospective school. It can be a year or more before reliable data is available to know if the bond was set at an appropriate level. In the past, there have been schools that have closed during this critical "start−up" period and students (and their sponsors) have not been fully protected by the bond.

In an attempt to better protect students, the 2003−05 state budget (2003 Wisconsin Act 33) included a provision authorizing the board to create a student protection fund. The fund would become the primary mechanism for providing protection to students in catastrophic situations in which a school closes.

This rule requires schools subject to board oversight to pay a new fee equal to $0.50 per $1,000 of adjusted gross annual school revenue (AGASR). The AGASR refers to the amount of revenue remaining after subtracting from gross annual school revenues the amount of refunds actually made to Wisconsin students or their sponsors during the same fiscal year for which the school reported the gross annual school revenues.

The fees generated will be placed into a newly created student protection appropriation. To the extent that the surety bond is unable to fully cover the losses incurred by a student or sponsor when a school closes, the board would be permitted to authorize the full or partial payment of those losses from the student protection appropriation.

Once funding in the student protection appropriation reaches $1.0 million, the fee assessment for schools will no longer be imposed, as required by state statute.

The rule also specifies that unexpended general operating revenues received by the board shall be transferred to the student protection appropriation, except that the board could retain unexpended revenues up to 20 percent of its annual operating budget to manage cash flow variances and unanticipated revenue reductions. Because the board in entirely funded by program revenues, this will help ensure that approved schools do not incur unanticipated fee increases.

−Amend surety bond requirements as a result of creating a student protection fund.

The student protection fund will allow the board to better protect students and their sponsors in school closure situations. Under the student protection fund, the risk of any one school closing will be spread across the more than 125 schools the board approves. At the same time, the student protection fee paid will be more equitable, reflecting not only a school's level of risk but also its ability to pay the fee.

In response to creating the student protection fund, the board will modify the current requirements for surety bonds. Instead of requiring schools to obtain a bond equal to 125 percent of unearned tuition, the board will require schools to carry a fixed bond of $25,000 or 125% of unearned tuition, *whichever is less*. The rule retains current provisions that allow the board to reduce these bonds if certain criteria are met. However, the rule specifies that no bond could be less than $1,000, or an amount equal to $2,000 for each representative, if any, the school employs. The overall impact of reducing the surety bond levels will more than offset increases from the student protection fee.

−Clarify the instructor qualifications required by the EAB.

Under current rule, a school is required to provide certain information regarding its faculty and/or instructors as a condition of board approval. This rule establishes specific criteria regarding the qualifications faculty members and/or instructors must possess.

−Clarify when newly approved schools are required to submit their 1st payment renewal fee.

The rule clarifies that a new school may defer its first payment renewal fee −− otherwise due no later than September 1st −− until March 1st of the following year.

Fiscal Estimate/Initial Regulatory Flexibility Analysis

This proposed administrative rule will implement the provisions contained in the 2003−05 state budget (2003 Wisconsin Act 33) creating a student protection fund. Under the statutory provisions of the student protection fund, the Educational Approval Board (EAB) is required to develop rules for a new student protection fee. Funding generated from these fees will be placed in a separate appropriation to make payment to certain individuals who suffer a loss due to the closure of a school that has been approved by the EAB.

Under the proposed rule order, beginning in 2005, schools regulated by the EAB would pay an annual fee of $0.50 per $1,000 of school revenue. Reported school revenues for the 2004 approval year are $92.6 million. It is estimated that school revenues will increase by 10 percent in 2005 to $101.8 million. By applying the $0.50 fee to this figure, it is estimated that $50,900 will be generated in FY 05. The rule also includes a provision in which any unexpended operating revenues of the EAB exceeding a 20 percent reserve would be transferred to the fund.

While the proposed rule order imposes a new fee on schools, it will also reduce the current bonding requirements for schools. Under current rule, a school must obtain a surety bond equal to 125 percent of its unearned tuition, unless the EAB approves a reduction. For the 2004 approval year, schools will be required to obtain over $9.3 million in bond coverage. Based on rate filings with the state's Office of the Commissioner of Insurance, the average cost charged by surety companies is approximately $10 per $1,000 of needed coverage. Therefore it is assumed that the required surety bonds are currently costing schools roughly $93,000 annually.

The proposed rule will modify the surety bond requirement and specify that the maximum surety bond needed would be $25,000 or 125 percent of unearned tuition, whichever is less. This would require total bond coverage of about $2.1 million. Using the same cost information, this level of bond coverage would cost schools approximately $21,000. The resulting $72,000 in savings would offset the $50,900 of costs associated with the new fee.

The overall fiscal impact of this proposed rule on EAB−approved schools will result in estimated net savings of about $21,100. However, individual schools will be affected differently based on their specific financial circumstances. Based on an analysis of individual school information, the proposed rule will result in savings for 55 schools. Forty−four schools will experience an increase of less than $100 and 31 will incur an increase greater than $100.

Although some schools will experience a cost increase, many of them are already experiencing savings because their current bond reflects a reduction granted by the EAB. Thus,

the calculated increase may not be representative of the "true savings."

As the amount of revenue generated by schools subject to EAB oversight increases, so will the fees collected under the provisions of this rule. However, under s. 45.54 (10) (cm), Stats., the EAB is required to discontinue collecting fees to support the student protection fund during the period of time that the balance in the fund exceeds $1.0 million. Assuming that no payments are made from the student protection fund and that unexpended annual operating revenues are transferred into the fund, it is estimated that it will take nearly 10 years to reach the $1.0 million threshold. At that time, schools subject to EAB oversight would no longer be assessed a fee.

Copies of the Rule and Contact Person

Copies of this proposed rule are available from the EAB website <eab.state.wi.us> or upon request to:

Blanca James

Educational Approval Board

30 W. Mifflin Street, 9th Floor

P.O. Box 8696

Madison, Wisconsin 53708

608/266−1996

Questions regarding the rule should be directed to David Dies at 608/267−7733.

Submittal of proposed rules to the legislature

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

Employment Relations Commission
(CR 03−115)
Chs. ERC 1, 10 and 20, relating to increased filing fees.

Tourism
(CR 03−113)
Ch. Tour 1, relating to the joint effort marketing rule.

Transportation
(CR 03−114)
Ch. Trans 250, relating to oversize and overweight permits for vehicles and loads.

Veterans Affairs
(CR 03−110)
Ch. VA 17, relating to the administration of the military funeral honors program.

Workforce Development
(CR 03−092)
Chs. DWD 218, 220, 221, 224, 225 and PC 1, 2, 4, 5 and 7, relating to transfer of Personnel Commission responsibilities to the Equal Rights Division and other revisions to civil rights rules.

Workforce Development
(CR 03−101)
Ch. DWD 59, relating to child care local pass−through program.

Rule orders filed with the revisor of statutes bureau

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

Public Service Commission
(CR 03−099)

An order affecting ch. PSC 135, relating to natural gas safety.

Effective 3−1−04.

Regulation and Licensing
(CR 03−084)

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

Effective 2−1−04.

Public notices

Department of Agriculture, Trade and Consumer Protection

Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under Wis. Stat. s. 779.41 (1), mechanics or repair businesses who transport, repair or perform any work on personal property at the request of the owner have a statutory lien on the property for the just and reasonable charges associated with the work, and may retain possession of the property until the charges are paid.

Generally, a mechanic's lien under Wis. Stat. s. 779.41, has priority over any previously recorded security interest in the personal property but only for the appropriate charges at the specified dollar amounts below.

Under Wis. Stat. s. 779.41 (1m), the Department is required to annually publish adjusted dollar amounts for charges on repairs to personal property subject to mechanic's liens. The adjustments are based on the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

The Department has determined that current dollar amounts specified under Wis. Stats. ss. 779.41 (1), (1) (a), (1) (b), and (1) (c) shall be increased by 1.6%, according to the prior year annual change in the consumer price index. Thus, the dollar amounts for charges under the mechanic's lien law are adjusted as follows:

Under Wis. Stat. s. 779.41 (1), mechanic's liens generally, $1,750.

Under Wis. Stat. s. 779.41 (1) (a), mechanic's liens on a trailer or semi−trailer designed for use with a road tractor, $5,250.

Under Wis. Stat. s. 779.41 (1) (b), mechanic's liens on road machinery, including mobile cranes, trench hoes, farm tractors, machines of husbandry, or off−highway construction vehicles and equipment, $8,750.

Under Wis. Stat. s. 779.41 (1) (c) 1. to 4., mechanic's liens on vehicles:

1. More than 10,000 and less than 20,000 pounds, $3,500.

2. 20,000 pounds or more, but less than 40,000 pounds, $6,910.

3. 40,000 pounds or more, but less than 60,000 pounds, $10,505.

4. 60,000 pounds or more, $13,590.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2004 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register.*

Contact Information:

Paul Dingee, Section Chief

Trade Practices Bureau

Department of Agriculture, Trade and Consumer Protection 2811 Agriculture Drive

P.O. Box 8911

Madison, WI 53708−8911

Telephone: (608) 224−4925

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 Mail

Wisconsin Administrative Register

Dated Material. Please Do Not Delay!