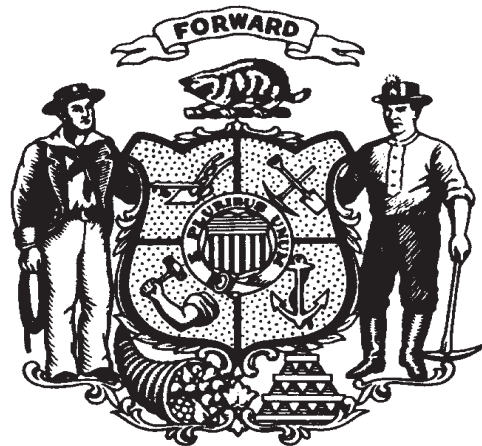


# Wisconsin Administrative Register

No. 580



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## Emergency rules now in effect

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

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

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

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

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

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Agriculture, Trade and Consumer Protection

Rules adopted creating **ss. ATCP 99.13, 99.25, 100.13 and 101.25**, relating to the partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

#### Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection 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 who procure agricultural commodities from producers.

(2) 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, the department may compensate producers from the fund. A contractor's annual fund assessment is based, in large part, on the contractor's annual financial statement. The producer security law spells out a formula for calculating assessments. However, the department may modify assessments by rule.

(3) The fund assessment formula is designed to require higher assessments of contractors who have weak financial statements (and may thus present greater default risks). But the statutory formula may generate unexpectedly high assessments in some cases, where a contractor's strong

financial condition is temporarily affected by financial transactions related to a merger or acquisition. This may cause unfair hardship, and may unfairly penalize some mergers or acquisitions that actually strengthen security for agricultural producers. This may have an unnecessarily adverse impact on contractors, producers and Wisconsin economic development.

(4) The department may adjust assessments by rule, in order to ameliorate unintended results. But the normal rulemaking process will require at least a year to complete. The temporary emergency rule is needed to address this matter in the short term, and to provide relief for contractors already affected.

**Publication Date:** January 29, 2004

**Effective Date:** January 29, 2004

**Expiration Date:** June 27, 2004

**Hearing Dates:** April 26 and 27, 2004

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### Gaming

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

#### Finding of emergency

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

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

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

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

**Publication Date:** January 8, 2004  
**Effective Date:** January 8, 2004  
**Expiration Date:** June 6, 2004  
**Hearing Date:** March 16, 2004

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

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

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

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

#### **Finding of emergency**

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

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

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

### **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

### **Veterans Affairs**

Rules adopted creating **ch. VA 18**, relating to the administration of the registered nurse education stipend program.

#### **Exemption from finding of emergency**

The legislature by Section 9158 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 Veterans Affairs.**

Statutory authority: s. 45.365 (7), Stats.

Statute interpreted: s. 45.365 (7), Stats.

The creation of chapter VA 18 establishes the application process, eligibility criteria, stipend amount, repayment provisions, and employment requirements for the administration of the stipend program authorized by the legislature and governor in 2003 Wis. Act 33. The stipend program was enacted to provide stipends to individuals to attend school and receive the necessary credentials to become employed at the Veterans Homes operated by the Department of Veterans Affairs at King and Union Grove, Wisconsin.

**Publication Date:** March 30, 2004  
**Effective Date:** March 30, 2004  
**Expiration Date:** August 27, 2004

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

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

### Finding of emergency

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

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

### Analysis Prepared by the Department of Workforce Development

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

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that “no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person’s life, health, safety or welfare.” Section 103.01 (3), Stats., defines “place of employment” as “any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

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

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

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial,

for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

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

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

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

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

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

### Finding of emergency

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

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

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

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

time of year that the relevant determinations are generally made.

**Publication Date:** December 18, 2003  
**Effective Date:** January 1, 2004  
**Expiration Date:** May 30, 2004  
**Hearing Date:** February 19, 2004



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## Scope statements

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### Agriculture, Trade and Consumer Protection

#### Subject

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

#### Registration of Livestock Premises

Administrative Code Reference: Chapter ATCP 17, Wis. Adm. Code (New). This rule may also include changes to existing rules, including chs. ATCP 10, 12 and 60, Wis. Adm. Code.

*Objective of the rule.* This rule will implement livestock premises registration requirements under s. 95.51, Stats. This includes mandatory registration of premises where a person keeps cattle, swine, horses, poultry, farm-raised deer, sheep, goats and other livestock that the department may identify by rule. The rule will spell out registration requirements and procedures, including requirements related to the confidentiality and release of records.

#### Policy analysis

DATCP administers laws related to animal health and food safety, and currently licenses dairy farms, farm-raised deer herds and animal markets. The Legislature recently enacted s. 95.51, Stats., which requires other persons keeping livestock in this state to register the livestock premises with DATCP. DATCP must assign a unique code to each premises (including premises that it currently licenses), and must establish a database of premises codes and related information.

Premises codes must be consistent with federal standards. DATCP may contract with an agent to administer the premises registration program on behalf of DATCP. DATCP and its agent must keep registration information confidential (there are limited exceptions).

Premises registration is the first step toward the development of a state and national system for tracking and locating livestock. This system will provide better disease prevention and response, including prompt animal trace-back in the event of a major disease outbreak.

This rule will implement the new registration requirements for livestock premises. This rule may address the following issues, among others:

- Identification of premises that must be registered, including any exemptions that may apply.
- Definition and scope of the term “premises.”
- Registration procedures, including electronic and hard-copy alternatives. In the case of dairy farms, farm-raised deer herds and animal markets, DATCP will integrate the new registration requirements with its current licensing system.
- Data base management responsibilities of DATCP and its agent, including confidentiality requirements.
- Rules related to the release of aggregate data compiled from confidential individual records.
- Consistency with federal guidelines and standards.

- Other issues related to the effective implementation and management of a livestock premises registration system.

#### Comparison to federal regulations

Currently, there are no federal laws requiring mandatory livestock premises registration or animal identification (some identification requirements may apply when livestock move in interstate or international commerce). There are several proposals in Congress to establish a national livestock identification and tracking system.

A national committee, consisting of state and federal officials, livestock producer representatives, processing industry representatives and animal health professionals, has developed a United States Animal Identification Plan. The plan provides a general framework and standards for a national animal tracking and traceback system. Among other things, the plan calls for states to implement premises registration systems. These systems will provide the foundation for an eventual animal tracking and traceback system.

Wisconsin is the first state to enact comprehensive livestock premises registration legislation. The Wisconsin legislation is consistent with the national plan. DATCP hopes to receive federal funding to implement the Wisconsin registration program as a national “pilot” program.

#### Policy Alternatives

Section 95.51, Stats., requires DATCP to implement a livestock premises registration program, and to adopt rules for that program. DATCP has no alternative but to adopt rules. The rule contents must be consistent with the policy directives contained in the legislation. DATCP rules will spell out the details of the program, consistent with those statutory directives.

#### Statutory alternatives

None at this time. DATCP intends to implement the livestock premises registration program mandated by the Legislature. Experience with the registration program may reveal other legislative needs.

#### Staff time required

DATCP estimates that it will use approximately 0.8 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.

### Financial Institutions – Securities

#### Subject

Wisconsin investment adviser licensing rules relating to custody of customer funds and/or securities.

#### Description of policy issues and comparison to federal regulations

*Objective of the rules.* The objective of the rules is the replacement of Wisconsin’s existing Securities Law rule requirements applicable to Wisconsin-licensed investment advisers that have custody of customer funds and/or

securities, with the proposed final amended rules on that subject recently developed by the North American Securities Administrators Association (“NASAA”). In the paragraphs following below is a summary of relevant background information regarding the rule proposal.

Current rule DFI–Sec 5.035, Wis. Adm. Code, under the Wisconsin Securities Law sets forth the regulatory requirements for state–licensed investment advisers who have custody of customer funds or securities. In 1999, NASAA previously developed amended Model Investment Adviser Custody Rules that could be used by any state jurisdiction in connection with their regulation of state–licensed investment advisers. (Wisconsin’s current rule DFI–Sec 5.035, amended most recently in 2000, incorporated some of the elements of the NASAA Model Rule.)

Recently, the U.S. Securities & Exchange Commission adopted for effectiveness on September 25, 2003, amendments to the federal custody rule under the Investment Advisers Act of 1940 applicable to federally registered investment advisers. However, pursuant to the National Securities Markets Improvement Act of 1996, such federal changes are not applicable to investment advisers licensed solely in state jurisdictions.

The amended SEC rule for the first time defines “custody” and requires federally registered advisers having “custody” to maintain client funds or securities with a “qualified custodian.” Because the present NASAA Model Rules were drafted based on the predecessor federal rules that did not contain a definition of custody, the September 2003 federal custody rule changes necessitated changes in the NASAA Model rules to provide needed uniformity on that issue between the regulation of federal–registered and non–federal registered investment advisers, as well as to provide equivalent levels of investor protection.

Accordingly, the NASAA Investment Adviser Regulatory Policy and Review Project Group was charged with developing amendments to the NASAA Custody Rules to bring them into alignment with the September 2003 federal custody rule. That Project Group has completed its development of needed amendments to the NASAA Custody Rules, and those amendments are to be voted upon for adoption by the NASAA state member jurisdictions at the NASAA Annual Spring Conference in Washington D.C. on April 18, 2004. In the event the NASAA membership votes to adopt the amended NASAA Custody Rule, the Division of Securities will move forward with this rule proposal.

#### **Policy analysis**

The NASAA Project Group determined that amendments were required to five NASAA Model Rules pertaining to Custody. Accordingly, substantive amendments were made to the Asset Audit Rule [Rule 102(e)(1)–1], a books and records–related rule [Rule 203(a)2], and to the Minimum Financial Requirements for Investment Advisers rule [Rule 202(d)–1]. Less substantive amendments were made to a separate rule regarding bonding requirements [Rule 202(e)–1], and an Unethical Practices provision [Rule 102(a)(4)–1]. The proposed final amended NASAA Model Custody Rule incorporates the changes to all five of those rules.

#### **Statutory authority**

Sections 551.32(1s), 551.33(1) and (6), and 551.63(1) and (2), Wis. Stats.

#### **Staff time required**

Estimated time to be spent by state employees to develop the rule—20 hours.

## **Natural Resources**

### **Subject**

The Department is proposing a revision to ch. NR 410 that will specify an increase in asbestos permit exemption and inspection fees. The rule will also create a fee for all costs that the department incurs for laboratory testing for nonresidential asbestos demolition and renovation projects. These fees were approved in the fiscal year 2003–2005 budget. The proposed revision does not address any existing or proposed federal regulations.

Statutory Authority: Section 285.69 (3), Stats.

### **Policy analysis**

Asbestos is a known carcinogenic substance that was widely used in building construction materials. The DNR has been delegated by the US EPA to enforce the Asbestos NESHAP regulation as it applies to nonresidential building demolition and renovation projects. The asbestos program fee increase will provide the funding necessary to support compliance efforts and develop an electronic notification system. The Governor’s office has requested that laboratory analysis fees be collected to reimburse the Department for the cost incurred during a compliance inspection. Historically these costs have been deducted from the total fees collected.

Stakeholder Involvement: The Wisconsin Occupational Health laboratory (WOHL) will be consulted in developing a fee collection process. Building owners, asbestos abatement contractors, demolition contractors, environmental consultants, the public and others in the regulated community will be addressed through the public comment process.

### **Staff time required**

The Department will need approximately 500 hours of total staff time.

## **Natural Resources**

### **Subject**

Rules pertaining to the implementation and enforcement of deer baiting and feeding regulations.

### **Policy analysis**

Recently signed legislation requires the department to promulgate rules that regulates the baiting and feeding of deer within the parameters established in the legislation.

In 2003, the Board supported the department’s position that deer baiting and feeding should be banned statewide to eliminate a potential risk by which CWD and other infectious diseases (such as Bovine TB) could be spread. The rule that would have banned baiting and feeding of deer statewide was suspended. As a result, the department had to draft an emergency rule which was adopted by the NRB that banned baiting and feeding in counties within a CWD zone and in any county within 10 miles of a captive or wild animal that tests positive for TB or CWD. The legislation, which these rules will clarify, allows deer baiting and feeding to be banned in the counties identified in the emergency rule and limits baiting and feeding to two gallons per site in the remainder of the state.

All citizens in the state of Wisconsin are affected or have an interest in this legislation and the associated rules. Specifically impacted are deer hunters, landowners, and wildlife watchers.

### **Comparison to federal regulations**

Provided state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of Federal

statutes and regulations, the regulation of hunting and trapping of native species has been delegated to state fish and wildlife agencies. No federal regulations regarding baiting and feeding of deer on non-federal lands have been drafted or implemented. Additionally, none of the proposed rules exceed the authorities granted the states in 50 CFR 10.

**Statutory authority**

Sections 29.014, 29.063, 29.335, 29.336, and 227.11, Stats.

**Staff time required**

Approximately 302 hours will be needed by the department.

## **Veterinary Examining Board**

**Subject**

Continuing education requirements for veterinarians and veterinary technicians.

*Objective of the rule.* Creating rules to specify the requirements for continuing education sufficient to ensure competency of veterinarians and veterinary technicians in the practice of veterinary medicine, including the use, handling, distribution, and disposal of pesticides.

**Policy analysis**

The goal of continuing education is to keep the licensee

current in the profession. Twenty-four regulated professions currently have continuing education requirements. The Department supports continuing education requirements for veterinarians and veterinary technicians and other professionals as an effective, proactive means to prevent public harm.

2003 Wisconsin Act 103 prohibits the Veterinary Examining Board from renewing a veterinary license unless the applicant certifies that he or she has completed 30 hours of approved continuing education programs or courses during the preceding 2-year licensure period for veterinarians and 15 hours for veterinary technicians.

Evidence of continuing education completed by licensees during the preceding 2-year certification or licensure period must be submitted by veterinarians and veterinary technicians.

**Comparison to federal regulations**

None. Establishing continuing education requirements and monitoring for compliance for veterinarians is a regulatory activity undertaken by the individual states.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2) and 453.03 (2), Stats.

**Staff time required**

250 hours.

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## Submittal of rules to legislative council clearinghouse

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

### Commerce

#### Rule Submittal Date

On April 15, 2004, the Department of Commerce submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule affects chs. Comm 2 and 81 to 87, relating to fees and uniform state plumbing code.

#### Agency Procedure for Promulgation

A public hearing is scheduled for May 19, 2004.

The Safety and Buildings Division of the Department of Commerce is primarily responsible for promulgation of this rule.

#### Contact

If you have questions regarding this rule, you may contact Jean MacCubbin, at (608) 266-0955.

### Insurance

#### Rule Submittal Date

On April 6, 2004, the Office of the Commissioner of Insurance submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule affects ch. Ins 17, relating to annual patients compensation fund and mediation fund fees.

#### Agency Procedure for Promulgation

A public hearing will be held Tuesday, May 18, 2004.

The Services Section of the Office of the Commissioner of Insurance is primarily responsible for promulgation of this rule.

#### Contact

If you have questions regarding this rule, you may contact Inger Williams, at (608) 264-8110 or at 125 South Webster Street, PO Box 7873, Madison WI 53707-7873.

### Natural Resources

#### Rule Submittal Date

On April 9, 2004, the Department of Natural Resources submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule affects ch. NR 219, relating to analytical test methods for testing effluent discharges.

### Agency Procedure for Promulgation

A public hearing is scheduled for May 19, 2004.

The Bureau of Integrated Science Services is primarily responsible for promulgation of this rule.

#### Contact

If you have questions regarding this rule, you may contact Ron Arneson at (608) 264-8949.

### Transportation

#### Rule Submittal Date

On April 15, 2004, the Department of Transportation submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule affects ch. Trans 1, relating to elderly and disabled transportation assistance to counties.

#### Agency Procedure for Promulgation

A public hearing is scheduled for May 19, 2004.

The Division of Transportation Investment Management, Bureau of Transit and Local Roads.

#### Contact

If you have questions regarding this rule, you may contact Julie Johnson at (608) 266-8810.

### Workforce Development

#### Rule Submittal Date

On April 15, 2004, the Department of Workforce Development submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule affects ch. DWD 272, relating to increasing Wisconsin's minimum wages.

#### Agency Procedure for Promulgation

Public hearings are required and will be held on May 17, 18, 19 and 20, 2004.

The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

#### Contact

Elaine Pridgen

(608) 267-9403

Email: elaine.pridgen@dwd.state.wi.us

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## Rule-making notices

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### Notice of Hearing

#### Commerce (Plumbing)

[CR 04-035]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.14 (4m) and 227.17, Stats., the Department of Commerce will hold public hearings on proposed rules relating to Uniform State Plumbing Code, chs. Comm 81 to 87.

#### The public hearing(s) will be held as follows:

Date and Time:

**Wednesday, May 19, 2004 at 9:30 a.m.**

Location:

TG Thompson Commerce Bldg., Conf. Rm. 3C

201 W. Washington Ave.

Madison, WI

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **June 4, 2004**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing or to the following. Individual:

Jean M. MacCubbin, Department of Commerce

Safety & Buildings Division

P.O. Box 2689

Madison, WI 53701-2689

E-mail: [jmaccubbin@commerce.state.wi.us](mailto:jmaccubbin@commerce.state.wi.us).

#### Analysis Prepared by the Department of Commerce

Statutory authority: Sections 101.19 (1) (a), 101.63 (1), 101.73 (2), 145.02 (2), and 167, Stats.

Statutes interpreted: Sections 145.02 (2) and (3), and 145.13, Stats.

Under section 145.02, Stats., the Department of Commerce has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. Additional authority has been granted to allow Commerce to establish fees, set inspection and construction standards and adopt rules to provide for public health, safety and welfare. To fulfill this responsibility the Department has promulgated the state uniform plumbing code, chapters Comm 81 to 87.

The Federal Clean Water Act requires all states to ensure that the nation's waters meet their fishable/swimable designation. In response, Wisconsin's DNR has established performance standards for urban stormwater runoff in chapter NR 151. The proposed revisions to chapter Comm 82 (specifically Comm 82.36 and 82.365) contain options for the designs of plumbing systems so as to aid citizens in their compliance with NR 151. The NR 151 provisions will become effective October 1, 2004.

State stormwater discharge permit rules, under chapter NR 216, have been updated to respond to EPA Phase II stormwater regulations, 40 CFR part 122.26(d). NR 216 also

serves as the implementation vehicle for the NR 151 performance standards. Phase II regulates disturbed areas of 1 acre or more. The Federal construction site regulation for such sites requires the creation of a post construction stormwater management plan and implementation of that plan. Revisions to NR 216 require that these post construction stormwater management plans meet or exceed the performance standards set by NR 151. Most of the commercial construction sites under Commerce authority will be affected by those DNR rules.

A comparison of the four surrounding states found the following. Both Iowa and Michigan have adopted national model codes. Iowa has adopted the Uniform Plumbing Code (UPC) and Michigan has adopted the International Plumbing Code (IPC). Minnesota's code is a state written uniform code and Illinois has a state written uniform plumbing code with exceptions for cities that existed prior to Illinois statehood.

The IPC, UPC and Minnesota's code require that all roofs, paved areas, yards, courts and courtyards drain into a separate storm sewer system, or a combined sewer system, or to an approved place of disposal. The "approved place of disposal" is defined as being approved by the authority having jurisdiction. Because of the flexibility of this requirement, a local authority in Iowa, Michigan, Minnesota or one of the cities adopting a national model plumbing code could allow subsurface infiltration. Illinois' code addresses piping materials for stormwater, not the acceptable discharge points, leaving the place of disposal unregulated at the state level.

The most significant difference in other state's codes and this proposal is the recognition and regulation of subsurface storm infiltration systems as viable means of managing stormwater. The subsurface infiltration requirements proposed for Wisconsin are based, in part on experience with Wisconsin private onsite wastewater treatment plumbing systems and knowledge acquired from other states (Maryland and Oregon) where stormwater infiltration has been an accepted practice.

The proposed revisions include minor changes to chapter Comm 2 related to fees for two products (commercial water vending or dispensing machines, and exterior grease interceptors) to be consistent with chapter Comm 84 product review requirements.

Chapter Comm 81; Revisions to chapter Comm 81 include definitions relating to stormwater and clearwater plumbing systems.

Chapter Comm 82; A number of additions and revisions are proposed for chapter Comm 82, relating to the design, construction, installation, supervision and inspection of plumbing.

A summary of the significant rule revisions in chapter Comm 82 is as follows:

1. Tables 82.20-1 and 82.20-2 are being amended to include submittals specific to use of the stormwater and reuse of clearwater, and stormwater plumbing conveyance, detention and infiltration systems.

2. Section Comm 82.36 is being repealed and recreated to reflect new options for the design, installation and maintenance of piping, devices and appurtenances in connection with stormwater and clearwater plumbing systems. Proposed changes in this section are as follows:

- Options are allowed for designers to use tables, equations and computer models to comply with the performance requirements stated in the revisions.

- Options are permitted for calculating the inputs to the plumbing system.

- Requirements for calculating runoff volumes are created.

- Tables Comm 82.36–1 to 82.36–4 have been revised for use with both horizontal and vertical piping and expressed in gallons per minute by pipe material and construction.

- Detention on parking lots is limited to 6 inches in depth, except where prohibited by local ordinance.

- The requirement for insulating stormwater piping is clarified so that only stormwater sewers affected by freezing and clearwater sewers require insulation.

- The addition of language to allow pressurized discharges into stormwater piping under certain circumstances.

- The addition of requirements for grates on stormwater horizontal piping inlets.

- Operation and maintenance requirements are proposed for stormwater systems.

3. Section Comm 82.365 is created to address stormwater and clearwater infiltration systems. Proposed requirements are as follows.

- Requirements for site and soil evaluation are added as a requirement for stormwater and clearwater infiltration systems.

- Soil treatment volume limits are established by creating a new Table 82.365–1, and hydraulic application rates are assigned by the creation of Table 82.365–2.

- Requirements are provided for groundwater mounding assessments for infiltration components with a width of more than 15 feet and depth to groundwater of more than 15 feet.

- A requirement that dry detention systems must be designed to drain within 24 hours of a storm event.

4. Table Comm 82.70–1, plumbing treatment standards, is amended to prohibit the irrigation of food crops with plumbing system reuse water and to create a performance requirement for cyst and oocyst reduction for possible human contact water such as car washing and toilet and urinal flushing.

Chapter Comm 84; Section Comm 84.30 (6) is amended to recognize infiltration components allowed for use in designing stormwater infiltration systems. An additional paragraph recognizes synthetic aggregate for POWTS and stormwater infiltration systems.

The proposed rule revisions were developed with the assistance of the Plumbing Advisory Code Council.

<b>Name</b>	<b>Representing</b>
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Thomas Boehnen	American Society of Plumbing
Rudy Petrowitsch	American Society of Sanitary Engineers
Jack Ellinger/Alex Newirth/Louie Pody	State AFL–CIO
Gary Kowalke	Plumbing contractors
Mark Krowski	City of Milwaukee, Plumbing Inspection
Jeff Kuhn	Plumbing & Mechanical Contractors of SE WI
Clint McCullough	Madison Contractors Association
Bob Netzler/Art Biesek	League of Wisconsin Municipalities
Joe Zoulek	WI Association of Plumbing, Heating, & Cooling Contractors, Inc.
Dave Viola	Plumbing Manufacturers Institute
Dale Schlieve	WI Society of Professional Designers of Engineering Systems, Inc.
Gene Shumann	Plumbing designers

Also assisting Commerce with these rule revisions were technical advisors (Jim Davis and Steve Macejkovic, technical college instructors) and members of an ad hoc stormwater workgroup, which included the following individuals: Mazen Amer, City of Milwaukee – Engineering; Tom Cottreau, City of Milwaukee– Plumbing Inspection; Willie Gonwa; Tirad Engineering, Inc.; Dan Jensen; Weiser Concrete; Bob Pups, City of Greenfield – Plumbing Inspection; Mary Anne Lowndes, WDNR; and Jim Wolf, City of Madison – Plumbing Inspection.

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

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

<http://www.commerce.state.wi.us/SB/SB–DivCodeDevelopment.html>. Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Bureau of Program Development P.O. Box 2689, Madison, WI 53701–2689, e–mail [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us), telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearing(s).

#### **Initial Regulatory Flexibility Analysis**

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

Small businesses involved in the disturbance and development of building sites with disturbed areas of one acre or more will be affected by these rules. Small businesses that own such sites will be required to develop and submit a stormwater management plan in accordance with this chapter.

If an applicant chooses to comply with the treatment standards of ch. NR 151 and to use a stormwater or clearwater plumbing or infiltration system as the solution, the cost of a project may increase depending on the size and scope of the system proposed. There may be on–going maintenance costs to the property owner depending on the stormwater and clearwater plumbing or infiltration system installed.

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

No new reporting or bookkeeping is required.

Types of professional skills necessary for compliance with the rules.

When utilizing infiltration for the handling of stormwater or clearwater on a building site, a small business may need to retain the services of a certified soil tester, soil scientist or other professional to conduct a site and soil investigation as well as to assist in the design of the stormwater or clearwater infiltration plan.

#### **Environmental Assessment**

Rule No.: Chs. Comm 2 and 81–84

Relating to: Fees and Uniform State Plumbing Code

Notice is hereby given that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearing to be held:

Wednesday, May 19, 2004

9:30 a.m.

TG Thompson Commerce Bldg., Conf. Rm. 3C

Madison, WI  
201 W. Washington Ave.

Requests for the EA and comments on the EA should be directed to:

Jean M. MacCubbin  
Department of Commerce  
Safety & Buildings Division  
P.O. Box 2689  
Madison, WI 53701-2689  
(608) 266-0955  
E-mail: [jmaccubbin@commerce.state.wi.us](mailto:jmaccubbin@commerce.state.wi.us)  
or TTY (608) 264-8777

Written comments will be accepted until: **June 4, 2004.**

### **Fiscal Estimate**

No State fiscal effect.

If an applicant chooses to comply with the treatment standards of ch. NR 151 and to use a stormwater or clearwater plumbing or infiltration system as the solution, the cost of a project may increase depending on the size and scope of the system proposed. There may be on-going maintenance costs to the property owner depending on the stormwater and clearwater plumbing or infiltration system installed.

## **Notice of Hearing**

### **Insurance [CR 04-032]**

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting sections Ins 17.01(3) and 17.28 (6), Wis. Adm. Code, relating to annual patients compensation fund and mediation fund fees.

### **Hearing Information**

**Date: Tuesday, May 18, 2004**

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

Place: OCI, 2<sup>nd</sup> Floor, Room 223, 125 South Webster Street, Madison, WI

Written comments or email comments submitted through the Wisconsin Administrative Rule website at <https://apps3.dhfs.state.wi.us/admrules/public/Home> on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI by the end of business on the date of the hearing. Written comments should be addressed to: Alice M. Shuman-Johnson, OCI, PO Box 7873, Madison WI 53707-7873.

### **Analysis**

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

Statutes interpreted: s. 655.27 (3), Stats.

The commissioner of insurance, with the approval of the board of governors (board) of the patients compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund. This rule establishes those fees for the fiscal year beginning July 1, 2004. These fees represent a 20 % decrease compared with fees paid for the 2003-04 fiscal year. The board approved these fees at its meetings on December 17, 2003 and on February 25, 2004, based on the

recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

The board is also required to promulgate by rule the annual fees for the operation of the patients compensation mediation system, based on the recommendation of the director of state courts. This rule implements the funding level recommendation of the board's actuarial and underwriting committee by establishing mediation panel fees for the next fiscal year at \$46.00 for physicians and \$3.00 per occupied bed for hospitals, representing an increase from 2003-04 fiscal year mediation panel fees.

### **Comparison of Similar Rules in Adjacent States as Found by OCI**

To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

### **Summary of and Preliminary Comparison with any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule**

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or activities.

### **Fiscal Estimate**

The Patients Compensation Fund (Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1, based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its February 25, 2004 meeting.

The Wisconsin Patients Compensation Fund is a unique fund; there are no funds like it in the country. The WI PCF provides unlimited liability and participation is mandatory. These two items are what makes it unique as compared to funds in other states. The only persons being affected by this rule change; are the Fund participants themselves; as the PCF is fully funded through assessments paid by Fund participants.

There is no effect on GPR.

Estimated revenue from fees, for fiscal year 2004-2005, is approximately \$23.0 million, which represents a 20% decrease to fiscal year, 2003-2004 fee revenue.

### **Initial Regulatory Flexibility Analysis**

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

### **Contact Person**

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

## **Notice of Hearing**

### **Natural Resources**

### **(Environmental Protection—WPDES)**

### **[CR 04-033]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 281.19 (1), 283.31, 283.55 (1) and 299.15, Stats.,

interpreting chs. 281, 283 and 299, Stats., the Department of Natural Resources will hold a public hearing repealing and recreating Tables A, B, BM, C, D, E, EM and F of ch. NR 219 and creating Table ES of ch. NR 219, Wis. Adm. Code, relating to analytical test methods for testing effluent discharges. Chapter NR 219 establishes analytical test procedures required for the analyses of wastewater samples for WPDES permit compliance. The purpose of revising ch. NR 219 is to adopt revisions to the federal regulations. Other U.S. EPA methods which have been revised will have their citations updated. In addition, methods for the analysis of PCBs in sludge will be included.

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

**May 12, 2004**      **Video conference participation will**  
(Wednesday)      **be available at:**  
at 9:00 a.m.      Room 8F, State Office Building  
101 E. Wilson Street, Madison  
Room 618, State Office Building  
200 N. Jefferson Street, Green Bay  
Room 139, State Office Building  
718 W. Clairemont Ave., Eau Claire

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ron Arneson at (608) 264-8949 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Written Comments and Copies of Rule

Written comments on the proposed rule may be submitted by mail to Mr. Ron Arneson, Bureau of Integrated Science Services, P.O. Box 7921, Madison, WI 53707 or by e-mail to Mr. Arneson at [Ronald.Arneson@dnr.state.wi.us](mailto:Ronald.Arneson@dnr.state.wi.us) no later than **May 21, 2004**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rules and fiscal estimates are available at <http://DNR.Wisconsin.gov/org/es/science/LC/> or may be obtained from Mr. Arneson.

#### Initial Regulatory Flexibility Analysis

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

- Types of small businesses affected: All certified and registered laboratories analyzing samples for compliance with WPDES permits.
- Description of reporting and bookkeeping procedures required: No new procedures.
- Description of professional skills required: No new skills.

#### Fiscal Estimate

The proposed rule would require that municipal sewage treatment plant sludges have required extract clean-up procedures for the analysis of PCBs in sludge. Many laboratories do not use all of the clean-up procedures necessary to enable proper chromatography of sludge samples.

There will be no significant cost increases to the state to prepare and implement the rules.

The increased cost estimates for municipalities are as follows:

Current PCB testing for most municipalities is once every 5 years at a cost estimated at about \$125 per sample. At an average of

81 samples per year, this equates to \$10,125 per year (81 X \$125 = \$10,125).

The number of samples would remain the same under the revised administrative code changes. It is assumed the additional clean-up step for the analyses will cost approximately \$125 per sample more. Therefore, the total cost under the proposed rule revision is \$20,250 per year (81 X \$250 = \$20,250).

The estimated net increase in sampling costs is \$10,125 per year (\$20,250 new - \$10,125 existing = \$10,125)

It is assumed that there are no other significant costs to the state or to municipalities to implement the proposed rule revisions.

#### Environmental Analysis

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

### Notice of Hearing Natural Resources

#### (Environmental Protection-Water Regulation)

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.01 (1am), 30.12, 30.121, 30.123, 30.13, 30.19, 30.20, 30.2035, 30.206, 30.208, 30.209, 30.28, 30.291, 30.298, 227.11 (2), 227.24, 281.22, 281.36 and 281.37, Stats., interpreting ss. 30.01 (1am), 30.10 to 30.27, 30.281, 31.02 to 31.38, 281.22, 281.36 and 281.37, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order Nos. FH-13-04(E), FH-14-04(E), FH-15-04(E), FH-16-04(E), FH-17-04(E), FH-18-04(E), FH-19-04(E), FH-20-04(E), FH-22-04(E), FH-23-04(E) pertaining to regulation of activities in Wisconsin's navigable public waters. These emergency orders will take effect on April 19, 2004.

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

**May 19, 2004**      Room 041, GEF #3  
(Wednesday)      125 South Webster Street  
at 3:00 p.m.      Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Liesa Nesta at (608) 266-2997 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Analysis Prepared by Department of Natural Resources

The emergency rules explain procedures for exemptions, general permits and individual permits, designate waters where exemptions don't apply, and provide standards for piers, dredging, shore protection and other activities along lakes and rivers. The proposed emergency rules implement 2003 Wisconsin Act 118, which went into effect on February



6, 2004. The rules are intended to speed waterway permit decisions and assure the law changes are applied consistently statewide while maintaining the protections for lakes and rivers that are guaranteed by Wisconsin's courts and constitution. The individual emergency orders include:

- FH-13-04(E) creating ss. NR 1.016, 1.05, 1.06 and 1.07 relating to Natural Resources Board policies on protection and management of public waters
- FH-14-04(E) repealing ch. NR 322, revising ch. NR 300 and creating ch. NR 310 relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways
- FH-15-04(E) revising ch. NR 320 relating to the regulation of bridges and culverts in or over navigable waterways
- FH-16-04(E) repealing and recreating ch. NR 323 relating to fish and wildlife habitat structures in navigable waterways
- FH-17-04(E) revising ch. NR 325 relating to boathouses and fixed houseboats in navigable waterways
- FH-18-04(E) revising ch. NR 326 relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways
- FH-19-04(E) creating subch. I of ch. NR 328 relating to shore erosion control of inland lakes and impoundments
- FH-20-04(E) creating ch. NR 329 relating to miscellaneous structures in navigable waterways
- FH-22-04(E) creating ch. NR 343 relating to regulation of construction dredging and enlargement of an artificial water body
- FH-23-04(E) creating ch. NR 345 relating to dredging in navigable waterways

#### Written Comments and Copies of Rule

Written comments on the emergency rule may be submitted to Ms. Liesa Nesta, Bureau of Fisheries Management and Habitat Protection – FH/3, P.O. Box 7921, Madison, WI 53707-7921 no later than **May 21, 2004**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the individual emergency rules may be obtained from Ms. Nesta or they are available on either the Revisor of Statutes website at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code) or the Department's website at: [www.dnr.wi.gov/org/water/fhp/waterway/emergencyrules.html](http://www.dnr.wi.gov/org/water/fhp/waterway/emergencyrules.html).

### Notice of Hearing Natural Resources

#### (Environmental Protection – Air Pollution Control) [CR 04-023]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11, Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 421, 460, 463 and 484, Wis. Adm. Code, relating to national emission standards for hazardous air pollutants for facilities engaged in the secondary production of aluminum. This national emission standard for hazardous air pollutants (NESHAP) became effective on March 23, 2000 when it was published in the Federal Register as 40 CFR part 63 Subpart RRR. Section 285.27 (2), Stats., requires the Department to promulgate NESHAPs into Wisconsin administrative code. These standards apply to new and existing major and minor sources of hazardous air

pollutant emissions that are part of the secondary production of aluminum. As required by s. 285.27 (2) (a), Stats., the proposed rule is substantially consistent with, and does not exceed, the federal requirement.

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

**May 19, 2004** Room 517, GEF #2  
(Wednesday) 101 South Webster Street  
at 11:00 a.m. Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dan Rosenthal at (608) 266-3450 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### Written Comments and Copies of Rule

Written comments on the proposed rule may be submitted to Mr. Dan Rosenthal, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than **June 4, 2004**. Written comments will have the same weight and effect as oral statements presented at the hearing.

A copy of the proposed rule AM-38-03 and its fiscal estimate may be obtained from:

Proposed Rules  
Bureau of Air Management  
P.O. Box 7921  
Madison, WI 53707

Phone: (608) 266-7718  
FAX: (608) 267-0560

#### Initial Regulatory Flexibility Analysis

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

- a. Types of small businesses affected: Salvage recovery operations
- b. Description of reporting and bookkeeping procedures required: Identical to requirements in the federal NESHAP
- c. Description of professional skills required: Identical to requirement in the federal NESHAP

#### Fiscal Estimate

The department is already responsible for implementing this NESHAP, and does so through routine inspection, enforcement activities, and the operation permit program. Incorporating this NESHAP into Wisconsin Administrative Code does not impose additional costs on the the department.

Local governments have no role in implementing this standard and therefore will not incur any costs as a result of this proposed rule action .

#### Environmental Analysis

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

## Notice of Hearing

### Transportation [CR 04-034]

NOTICE IS HEREBY GIVEN that pursuant to s. 85.21, Stats., and interpreting s. 85.21, Stats., the Department of Transportation will hold a public hearing in **Room 951** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **19th day of May, 2004**, at **10:00 AM**, to consider the amendment of ch. Trans 1, Wisconsin Administrative Code, relating to the elderly and disabled transportation assistance to counties.

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

The public record on this proposed rule making will be held open until close of business May 26, 2004, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to David Lowe, Department of Transportation, Division of Transportation Investment Management, Specialized Transit Section, Room 951, P. O. Box 7913, Madison, WI 53707-7913.

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

#### Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: s. 85.21, Stats.

Statutes Interpreted: s. 85.21, Stats.

#### General Summary of Proposed Rule

Chapter Trans 1 establishes the Department's administrative interpretation of s. 85.21, Stats., and prescribes administrative policies and procedures for implementing the elderly and disabled transportation assistance to counties authorized under s. 85.21, Stats. The purpose of this rule making is to cap the amount counties can keep in trust funds, update language regarding program procedures and report requirements and allow counties more flexibility in meeting trip purpose priorities.

The current rule allows a county to establish a trust fund and deposit all or part of its allocation into this fund. Trust funds can only be used for the purchase or maintenance of transportation equipment or to make grants to other governments and private non-profit organizations, which provide specialized transportation services. When the rules governing trust funds were established, counties were not eligible applicants under the Section 5310 Capital Assistance program for specialized transportation. (The 5310 Program provides grants to cover 80% of the cost of vehicles with the grantee paying the remaining 20%). In the past, trust funds provided a means for counties to save the significant amounts of money needed for the purchase of vehicles. Counties are now eligible applicants for the 5310 Program and can also contract with successful 5310 Program grantees in their county. The need to save large amounts of program dollars for vehicles no longer exists. Currently, a few counties have amassed considerable sums of money in their trust funds. The proposed rule places a cap on trust funds at \$80,000.

DOT's District offices currently have a front-door role in this program, providing basic program information and referring interested parties to the program expert in the Central Office. The proposed changes update ch. Trans 1 to reflect this current business practice.

Currently, the rule prescribes ways a county can meet trip purpose requirements. The proposed rule increases flexibility in how counties administer trip purpose requirements to meet each county's individual need.

The current rule requires that all passenger revenue received in a given year be applied to transportation expenses incurred in that same year. This is difficult to apply in reality as bills for expenditures may now come in for several months after the end of the calendar year. The proposed changes keep the intent of the original rule—applying passenger revenues to transportation expenses—but don't define a timeline.

Providing more flexibility to counties and limiting the amount of aid that may be held in trust should result in higher levels of service to Wisconsin's elderly and disabled population.

#### Fiscal Estimate

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

#### Initial Regulatory Flexibility Analysis

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

#### Copies of Proposed Rule and Contact Person

Copies of the rule may be obtained upon request, without cost, by writing to David Lowe, Department of Transportation, Division of Transportation Investment Management, Specialized Transit Section, Room 951, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-9476. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

## Notice of Hearings

### Workforce Development

(Labor Standards, Chs. DWD 270—)

[CR 04-036]

NOTICE IS HEREBY GIVEN that pursuant to Sections 104.04 and 227.11, Stats., the Department of Workforce Development proposes to hold 5 public hearings to consider the amendment of rules relating to increasing Wisconsin's minimum wages.

#### Hearing Information

**Monday, May 17, 2004 – 1:00 p.m.**

Rock County Job Center  
1900 Center Avenue Room K  
Janesville

**Tuesday, May 18, 2004 – 1:00 p.m.**

Milwaukee Job Center South/UMOS  
1644 S. 9th Street  
Milwaukee

**Wednesday, May 19, 2004 – 1:00 p.m.**

Chippewa Valley Technical College  
Clairemont Campus  
Room 103 Auditorium  
620 W Clairemont Avenue

Eau Claire

**Thursday, May 20, 2004 – 9:00–11:00 a.m.**

UW Marathon County  
Room 233 Lecture Hall  
518 S. 7th Avenue  
Wausau

**Thursday, May 20, 2004 – 2:00 p.m.**

Brown County Central Library  
515 Pine Street – Meeting Rooms 1 & 2 (downstairs)  
Green Bay

Interested persons are invited to appear at a hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

#### **Analysis Prepared by the Department of Workforce Development**

Statutory authority: Sections 104.04 and 227.11, Stats.

Statutes interpreted: Chapter 104, Stats.

*Wisconsin needs a minimum wage increase*

Creating good paying jobs and a “high end” economy is a top priority for Governor Jim Doyle’s administration. A key focus of the Governor’s *Grow Wisconsin* economic development plan is investing in people and helping families climb the economic ladder. One of the most important initiatives in the Governor’s plan is raising the state minimum wage. Such an increase ensures that Wisconsin’s lowest wage workers will share in the benefits of economic growth as Wisconsin’s economy moves forward.

This is a critical time for Wisconsin to support low-wage workers by increasing the minimum wage. In 2004, the federal minimum wage will fall to its lowest inflation-adjusted value of all time. The buying power of the minimum wage in 1970 equaled about \$8.00 in 2003 dollars. Given the declining value of the minimum wage and the lack of federal action to increase it, 12 other states have already established minimum wages above the federal level.

When wages are so low that workers and their families can’t afford their most basic needs, the costs that society, particularly taxpayers, must bear related to poverty are so insidious that anything that helps divert those expenses back to the consumers of the services provided by those low-wage workers is worthwhile. Educational failure, workforce failure, citizenship failure can very often be traced back to families forced to live in poverty. An adequate minimum wage supports workers, helps strengthen families and communities, and promotes the state’s overall economic and fiscal health. Family-supporting wages reduce dependence on the state and increase tax revenue from these families, decreasing the burden on Wisconsin’s taxpayers.

It is estimated that 200,000 workers will be affected by Wisconsin’s minimum wage increase. Many of these workers are adults and a larger than proportionate share are minorities. Putting more money in the hand of these low-wage workers will result in \$175 million in consumer expenditures in Wisconsin’s economy. Low-wage workers spend nearly their

entire income in the local economy on basics. This spending stimulates the local economy and benefits local businesses because spending is concentrated locally on food, clothing, shelter, and transportation. Evidence of a negative effect on employment opportunities available to low-wage workers as a result of a minimum wage increase is inconclusive as both advocates and opponents are able to produce studies supporting their side of the issue.

#### *Minimum wage increases*

Chapter 104, Stats., and Chapter DWD 272 provide that Wisconsin’s minimum wage should be sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her reasonable comfort, physical well-being, decency, and moral well-being. Section 104.04, Stats., directs the Department of Workforce Development to determine the state’s minimum wage taking into consideration the effect of the wage on the economy of the state, including employment opportunities for low-wage workers and regional economic conditions within the state.

Governor Doyle and the Department of Workforce Development convened a Minimum Wage Advisory Council to assist with determining whether there should be an increase in Wisconsin’s minimum wage. The Council included leaders from the business community, labor organizations, the university system, and both houses of the legislature. The Department’s Office of Economic Advisors provided the Advisory Council with data from the U.S. Census; Current Population Survey; and the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics. The Council considered this data and made the following recommendations:

#### **General minimum wage rate**

- Increases to \$5.70/hour effective when rule is effective (currently \$5.15/hour)
- Increases to \$6.50/hour effective 10/01/05

#### **Minor minimum wage rate**

- Increases to \$5.30/hour effective when rule is effective (currently same as adult rate \$5.15/hour)
- Increases to \$5.90/hour effective 10/01/05

#### **Opportunity minimum wage rate**

- Increases to \$5.30/hour effective when rule is effective (currently \$4.25/hour)
- Increases to \$5.90/hour effective 10/01/05

#### **Agriculture minimum wage rate for workers age 18 and over**

Increases to \$5.15/hour effective when rule is effective (currently \$4.05/hour)

#### **Agricultural minimum wage rate for workers age 17 and under**

Increases to \$4.25/hour effective when rule is effective (currently \$3.70/hour)

#### **Camp counselor minimum wage rate for workers age 18 and over**

- Increases to \$285/week effective when rule is effective, and \$315/week effective 10/01/05, if no room or board provided (currently \$140/week)
- Increases to \$217/week effective when rule is effective, and \$240/week effective 10/01/05, if board provided (currently \$110/week)
- Increases to \$171/week effective when rule is effective, and \$189/week effective 10/01/05, if room and board provided (currently \$91/week)

### Camp counselor minimum wage rate for workers age 17 and under

- Increases to \$265/week effective when rule is effective, and \$275/week effective 10/01/05, if no room or board provided (currently \$123/week)
- Increases to \$202/week effective when rule is effective, and \$209/week effective 10/01/05, if board provided (currently \$92/week)
- Increases to \$159/week effective when rule is effective, and \$165/week effective 10/01/05, if room and board provided (currently \$74/week)

### Golf caddy minimum wage rate

Increases to \$10.50 for 18 holes, and \$5.90 for 9 holes effective when rule is effective (currently \$5.95 for 18 holes and \$3.35 for 9 holes)

#### *Effect of minimum wage increases on Wisconsin's economy*

The Department of Workforce Development estimates that 200,000 workers will be affected by the minimum wage increases. The average wage increase among the 200,000 affected workers will be about \$.60 per hour.

- The \$5.15 to \$5.70 increase in the general rate that will occur when this rule is effective will directly raise the pay of 40,000 to 45,000 workers.
- The \$5.70 to \$6.50 increase in the general rate that will occur on October 1, 2005, will directly raise the pay of 50,000 to 60,000 workers.
- The \$5.15 to \$5.30 increase in the minor rate that will occur when this rule is effective will directly raise the pay of 15,000 to 20,000 workers.
- The \$5.30 to \$5.90 increase in the minor rate that will occur on October 1, 2005, will directly raise the pay of 20,000 to 30,000 workers.
- It is expected that approximately 110,000 workers making slightly above the new minimum wages will be indirectly affected by the minimum wage increases and will also receive pay increases.

It is estimated that nearly 80% of these low-wage workers are over 18 years of age, 65% are female, and over one-third are heads of their household. These workers are African-American, Hispanic, and Asian in numbers larger than their proportion in the population. Over two-thirds of these low-wage workers work more than half-time:

- 30% work 1–19 hours per week
- 35% work 20–34 hours per week
- 35% work 35+ hours per week

They work as food service workers, retail clerks, cleaning and housekeeping laborers, personal care attendants, child care workers, telemarketers, laundry and dry cleaning workers, veterinary assistants, home health care aides, office workers, gaming change and booth cashiers, building and grounds maintenance laborers, and many other occupations in virtually all industries in the state.

The industry with the largest number of workers affected by a minimum wage increase is the leisure and hospitality industry—75% of affected employees work in this industry. Leisure and hospitality includes accommodations and foods as well as arts, entertainment, and recreation. Pay is low in the leisure and hospitality industry overall but particularly low in the accommodations and foods sector. In hotels and motels, 40% of workers earn less than \$6.50, and in restaurants 20% of workers earn less than \$6.50. The pay of Wisconsin workers in the accommodations and foods industry is almost the lowest in the country ranking 49<sup>th</sup> nationally.

The effect of the wage increase on business will be \$175 million in increased payroll costs. Low-wage workers will circulate this money back into the economy immediately, representing a 0.1 percent increase in the gross state product. The increased spending by affected workers may be a revenue growth for some businesses. The effects may be slightly greater in northern, rural regions of the state where minimum wage jobs make up a greater percentage of the workforce. Higher wages also have a positive impact on both workers and their employers by reducing turnover, increasing work experience, and saving on training and recruitment costs for both workers and employers. Any increase in the cost of doing business will likely be passed on to consumers as part of the price of the product or service being purchased.

Section 227.114, Stats., requires that the Department consider the effect of the rule on small business, which is defined as fewer than 25 employees or \$2.5 million in gross annual sales, and consider exemptions or less stringent deadlines for compliance if there is an effect on small business. The Department estimates that a very high percentage of workers affected by this minimum wage increase work for employers with less than 25 employees or \$2.5 million in gross annual sales. If the rule exempted these employers from minimum wage coverage, it would render the minimum wage nearly meaningless.

#### *Fiscal effect on state and local government*

It is estimated that 35% of the additional \$175 million in consumer expenditures will be on items subject to the sales tax. This translates to increased revenue of approximately \$3 million for the state and some increased revenue for counties with a local sales tax.

There may be increased state revenue from the income tax on higher incomes for approximately 200,000 workers. A request is being submitted to the Department of Revenue for an estimate of the increase and any possible offset due to decreased corporate tax revenue based on increased payroll costs. An amended fiscal estimate will be included when the proposed rule is submitted for legislative review.

It is estimated that 100–200 local governmental employees across the state who work as seasonal summer helpers may be affected by the increase. The increased cost is estimated at approximately \$20,000 across all local governments in the state. The minimum wage increase is not expected to affect state employees.

#### *Federal law and adjacent states*

Section 227.14 (2)3. and 4., Stats., requires the Department to compare the proposed rule to any existing or proposed federal regulation and rules in adjacent states.

#### **General rate:**

Federal	\$5.15
Iowa	\$5.15
Michigan	\$5.15
Minnesota	\$5.15 for employers covered by Federal Labor Standards Act
	\$4.90 for employers not covered by Federal Labor Standards Act
Illinois	\$5.50, increasing to \$6.50 on January 1, 2005

#### **Minor rate:**

Federal	None
Iowa	None
Michigan	None
Minnesota	None
Illinois	\$5.00, increasing to \$6.00 on January 1, 2005

**Opportunity rate:**

Federal \$4.25 for employees under 20 years old for first 90 days of employment

Iowa \$4.25 for all employees for first 90 days of employment

Michigan \$4.25 for 16- to 19-year-olds for first 90 days of employment

Minnesota \$4.25 for employees under 20 years old for first 90 days of employment

Illinois No opportunity wage of general application. Employers may apply for license from Illinois Department of Labor to pay adult learners 70% of minimum wage rate for initial six months of employment.

**Agricultural rate:**

Federal None

Iowa None

Michigan None

Minnesota None

Illinois None

**Camp counselor rate:**

Federal None

Iowa None

Michigan None

Minnesota None

Illinois \$220 per week, increasing to \$260 per week on January 1, 2005

**Golf caddy rate:**

Federal: None

Iowa: None

Michigan: None

Minnesota: None

Illinois: Exempt from minimum wage

**Proposed federal change:**

Senator Kennedy introduced an amendment to the welfare reform reauthorization bill that would increase the federal minimum wage from \$5.15 to \$7.00 over 2 years. As of April 1, the Senate is deadlocked and the minimum wage increase and welfare reform reauthorization are in limbo. The current welfare reform authorization expires June 30. Senator

Kennedy has vowed to attempt to attach his minimum wage measure to every bill that hits the Senate floor.

On April 14, Republican Senators announced that they are crafting legislation that would phase in an increase of the federal minimum wage to \$6.25, packaged with business-friendly measures.

**Technical correction**

The proposed rule also repeals and recreates the policy that travel time for the benefit of the employer is work time. It is rewritten for clarity and with no change in substance.

**Initial Regulatory Flexibility Analysis**

The proposed rules will affect small business as defined in s. 227.14, Stats. The businesses affected are primarily in the leisure and hospitality industry. These businesses will be required to pay their workers at or above the new minimum wages. There are no additional reporting or bookkeeping requirements, and no professional skills are necessary for compliance with the rule.

**Contact Information**

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing "minimum wage" in the search engine. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

Elaine Pridgen

Office of Legal Counsel

Dept. of Workforce Development

201 E. Washington Avenue

P.O. Box 7946

Madison, WI 53707-7946

(608) 267-9403

[elaine.pridgen@dwd.state.wi.us](mailto:elaine.pridgen@dwd.state.wi.us)

**Written Comments**

Written comments on the proposed rules received at the above address or through the <http://adminrules.wisconsin.gov> web site no later than May 21, 2004, will be given the same consideration as testimony presented at the hearing.

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## Submittal of proposed rules to the legislature

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

**Gaming**  
**(CR 04–019)**

Ch. Game 23, relating to purses paid to greyhound owners who are residents of the State of Wisconsin.

**Medical Examining Board**  
**(CR 04–017)**

Ch. Med 19, relating to the certification and regulation of occupational therapists and occupational therapy assistants.

**Natural Resources**  
**(CR 03–081)**

Chs. NR 10 and 27, relating to the classification of gray wolves.

**Psychology Examining Board**  
**(CR 04–021)**

Chs. Psy 1, 2, 4 and 5, relating to the definitions of client and psychological treatment, degree requirements, interim determination of degree requirements met, continuing education courses and professional conduct.

**Regulation and Licensing**  
**(CR 04–007)**

Chs. RL 81 to 83 and 85, relating to applications, examinations, appraisal experience and continuing education (Real Estate Appraisers Board).

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## Rule orders filed with the revisor of statutes bureau

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

**Commerce  
(CR 03-075)**

An order affecting ch. Comm 5, relating to licenses, certifications and registrations.  
Effective 8-1-04 and 2-1-05.

**Pharmacy Examining Board  
(CR 03-096)**

An order affecting ch. Phar 6 relating to the professional service area requirements where the pharmacist is absent.  
Effective 6-1-04.

**Transportation  
(CR 03-116)**

An order affecting ch. Trans 300, relating to school bus equipment standards.  
Effective 5-1-04.

**Workforce Development  
(CR 04-006)**

An order affecting chs. DWD 290 and 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.  
Effective 6-1-04.

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## Rules published with this register and final regulatory flexibility analyses

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*The following administrative rule orders have been adopted and published in the April 30, 2004, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

### **Agriculture, Trade and Consumer Protection (CR 03-076)**

An order affecting ch. ATCP 30, Appendix A, relating to pesticide product restrictions. Effective 5-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

The changes to ch. ATCP 30 Appendix A will affect small businesses in Wisconsin. Atrazine cannot be used in certain areas of Wisconsin where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10, Wis. Adm. Code. The greatest small business impact of the changes will be on users of atrazine — farmers who grow corn. The proposed prohibition area contains approximately 3,200 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 800 acres of corn will be affected. Between 2 and 4 producers would be affected, depending on their corn acreage and their reliance on atrazine products. These producers are small businesses, as defined by s. 227.114 (1) (a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in additional or replacement business and the impacts are not further discussed in this document.

The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While this activity is routing, documentation would need to be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current atrazine rule.

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

#### **Summary of Comments by Legislative Review Committees**

On January 6, 2004, DATCP transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform and to the Assembly Committee on Agriculture. Neither the Assembly Committee on Agriculture nor the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform took any action on the rule during their review period.

### **Employment Relations Commission (CR 03-115)**

An order affecting chs. ERC 1, 10 and 20, relating to increased filing fees. Effective 5-1-04.

### **Summary of Final Regulatory Flexibility Analysis**

Small businesses rarely use those Commission's services impacted by the increase in filing fees. The occasional impact on small business of the fee increase will be limited to payment of the employer share of the increased fees.

#### **Summary of Comments by Legislative Review Committees**

No comments were received.

### **Insurance (CR 03-055)**

An order affecting ch. Ins 8, relating to Small Employer Group Health Insurance Uniform Application. Effective 5-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

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

#### **Summary of Comments by Legislative Review Committees**

The legislative standing committees had requested modifications which were made prior to finalizing the rule through germane amendments.

### **Natural Resources (CR 03-064)**

An order affecting ch. NR 116, relating to the exclusion of costs of a nonconforming building or a building with a nonconforming use. Effective 5-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

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

#### **Summary of Comments by Legislative Review Committees**

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

### **Physical Therapists Affiliated Credentialing Board (CR 03-020)**

An order affecting chs. PT 1 to 9 relating to the licensing of physical therapists and physical therapist assistants, as well as continuing education requirements. Effective 5-1-04.

#### **Summary of Final Regulatory Flexibility Analysis**

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



**Summary of Comments by Legislative Review Committees**

No comments were received.

**Public Instruction  
(CR 03-102)**

An order affecting ch. PI 5, relating to high school equivalency diplomas. Effective 5-1-04.

**Summary of Final Regulatory Flexibility Analysis**

There is no impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Revenue  
(CR 03-104)**

An order affecting ch. Tax 18, relating to assessment of agricultural land. Effective 5-1-04.

**Summary of Final Regulatory Flexibility Analysis**

There is no impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Tourism  
(CR 03-113)**

An order affecting ch. Tour 1, relating to the joint effort marketing program. Effective 5-1-04.

**Summary of Final Regulatory Flexibility Analysis**

No negative impact on small business is anticipated from the adoption of this rule.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation  
(CR 03-117)**

An order affecting ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways. Effective 5-1-04.

**Summary of Final Regulatory Flexibility Analysis**

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

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Transportation  
(CR 03-116)**

An order affecting ch. Trans 300, relating to school bus equipment standards. Effective 5-1-04.

**Summary of Final Regulatory Flexibility Analysis**

This proposed rule will have no significant adverse impact on small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in **April 2004**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### Revisions

#### **Agriculture, Trade & Consumer Protection**

##### **Ch. ATCP 30**

S. ATCP 30.31 (2)

#### **Employment Relations Commission**

##### **Ch. ERC 1**

S. ERC 1.06 (1) to (3)

##### **Ch. ERC 10**

S. ERC 10.21 (1) to (5)

##### **Ch. ERC 20**

S. ERC 20.21 (1) to (4)

#### **Insurance**

##### **Ch. Ins 8**

S. Ins 8.49

#### **Natural Resources**

##### **Ch. NR 116**

S. NR 116.15 (1) (c)

#### **Physical Therapists Credentialing Board**

##### **Ch. PT 1**

S. PT 1.01

S. PT 1.02 (intro.), (2) and (6)

S. PT 1.03 (1) (intro.), (c), (d), (2) and (3)

##### **Ch. PT 2**

S. PT 2.01 (1) (h), (i), (6) (a), (b) and (8) (intro.)

S. PT 2.04

##### **Ch. PT 3**

S. PT 3.01 (1), (3) to (7)

##### **Ch. PT 4**

S. PT 4.01 (1) (d)

**Ch. PT 5** (Entire chapter)

##### **Ch. PT 6**

S. PT 6.01

##### **Ch. PT 7**

S. PT 7.01

S. PT 7.02 (1), (19), (20), and (21)

S. PT 7.03

S. PT 7.04

##### **Ch. PT 8**

S. PT 8.01

**Ch. PT 9** (Entire chapter)

#### **Public Instruction**

##### **Ch. PI 5**

S. PI 5.01 (1)

S. PI 5.02 (6m) and (9)

S. PI 5.035 (1) (b), (2), (5) and (6)

S. PI 5.037

S. PI 5.04

S. PI 5.05 (1) (a)

#### **Revenue**

##### **Ch. Tax 18**

S. Tax 18.07 (1) (b) and (c)

#### **Tourism**

##### **Ch. Tour 1**

S. Tour 1.03 (3w)

#### **Transportation**

##### **Ch. Trans 276**

S. 276.07 (13)

##### **Ch. Trans 300**

S. Trans 300.15 (2) (d)

S. Trans 300.19 (5)

S. Trans 300.31 (4)

S. Trans 300.34 (1), (4) (c), (f) and (k)

S. Trans 300.355

S. Trans 300.54 (1) (a), (d) and (L)

S. Trans 300.59 (1)

S. Trans 300.60 (4)

S. Trans 300.64 (2) and (3) (c)

S. Trans 300.69 (3)

S. Trans 300.73

S. Trans 300.81 (6)

**Editorial corrections**

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

**Agriculture, Trade and Consumer Protection**

**Ch. ATCP 30**

S. ATCP 30.24 (10) (a)

**Natural Resources**

**Ch. NR 116**

S. NR 116.12 (2) (b)

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## Executive orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 40.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Specialist Bert E. Hoyer of the United States Army Reserve who lost his life during Operation Iraqi Freedom.

**Executive Order 41.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Captain John F. Kurth of the United States Army who lost his life during Operation Iraqi Freedom.

**Executive Order 42.** Relating to a proclamation declaring a state of emergency in Langlade County.

**Executive Order 43.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Private First Class Sean M. Schneider of the United States Army who lost his life during Operation Iraqi Freedom.

**Executive Order 44.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Specialist Michelle Witmer of the Wisconsin National Guard who lost her life during Operation Iraqi Freedom.

**Executive Order 45.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Corporal Jesse Thiry of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

**Executive Order 46.** Relating to a proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for Private First Class Ryan Jerabek of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

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## Notice of nonacquiescence

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### Tax Appeals Commission

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FRANK D. AND BILLIE J. LEACH

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Petitioners,

NOTICE OF NONACQUIESCENCE

v.

:

Docket No. 02-I-320

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

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Pursuant to Sec. 73.01 (4) (e) 2., Stats., the respondent hereby gives notice that, although it is not appealing the decision or order of the Tax Appeals Commission rendered in the above-captioned matter under date of March 29, 2004, it has adopted a position of nonacquiescence in regard to that decision or order. The effect of this action is that, although the decision or order is binding on the parties for the instant case, the Commission's conclusions of law, the rationale and construction of statutes in the instant case are not binding upon or required to be followed by the respondent in other cases.

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