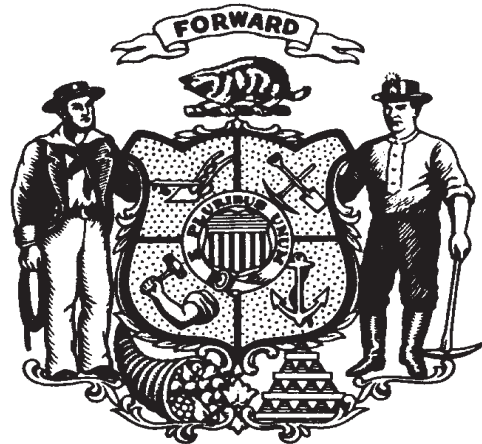


Wisconsin Administrative Register

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Emergency rules now in effect

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

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

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

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

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

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

Health and Family Services

(Community Services, Chs. HFS 30—)

(Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 105 and 107** and creating **ch. HFS 36**, relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based psychosocial rehabilitation services under the medical assistance program.

Exemption from finding of emergency

2003 Wisconsin Act 33, s. 9124 (10m) authorizes the Department to promulgate these rules using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Similar initial proposed rules were submitted to the Legislative Council Rules Clearinghouse on March 23, 2004.

Plain language analysis

The Department through this proposed order establishes the scope of community-based psychosocial rehabilitation services programs, standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based

psychosocial rehabilitation services under the medical assistance program as authorized by ss. 49.45 (30e) and 51.42 (7) (b), Stats. The Department anticipates that the rules created in this order will complement services provided by existing community support programs under s. 51.421, Stats., by making a fuller array of mental health and substance-use disorder services potentially available to those in need in each county or tribe. The Department further anticipates that this order will allow for the creation of a broad range of flexible, consumer-centered, recovery-oriented psychosocial rehabilitation services to both minors and adults, including elders, whose psychosocial needs require more than outpatient therapy, but less than the level of services provided by existing community support programs. Certified community-based psychosocial rehabilitation services programs that meet the requirements of s. 49.45 (30e), Stats., and this order may be fully or partially funded by medical assistance with county or tribal match. These programs may also coordinate with other existing funding sources.

Publication Date: June 29, 2004

Effective Date: July 1, 2004

Expiration Date: November 28, 2004

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

Rules adopted revising **ch. HFS 119**, relating to operation of the health insurance risk-sharing plan (HIRSP).

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk-Sharing Plan (HIRSP) Board of Governors on April 21, 2004 regarding the rules, as required by s. 149.20, Stats.

Plain language analysis

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP). HIRSP provides major medical health insurance for persons who are covered under Medicare because they are disabled, persons who have tested positive for HIV, and persons who have been refused coverage or who cannot get coverage at an affordable price in the private health insurance market because of their mental or physical health conditions. Also eligible for coverage are persons who do not currently have health insurance coverage, but who were covered under certain types of health insurance coverage (called creditable coverage) for at least 18 months in the past. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co-equal twenty percent amounts.

Publication Date: June 29, 2004
Effective Date: July 1, 2004
Expiration Date: November 28, 2004

Publication Date: June 10, 2004
Effective Date: June 10, 2004
Expiration Date: November 7, 2004
Hearing Date: August 25 and 26, 2004

Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2004.

Finding of emergency

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

Actuarial and accounting data necessary to establish PCF fees is first available in December of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2004.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 04–032, will be filed with the secretary of state in time to take effect October 1, 2004. Because the fund fee provisions of this rule first apply on July 1, 2004, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 18, 2004.

Publication Date: June 22, 2004
Effective Date: July 1, 2004
Expiration Date: November 28, 2004

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

1. Rules adopted revising **chs. NR 10 and 19**, relating to the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. The state legislature has also delegated to the department rule – making authority in 2003 Wisconsin Act 240 to regulate feeding of wild animals for non–hunting purposes including recreational and supplemental feeding. 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.

2. Rules adopted amending **s. NR 25.09 (2) (b) 2. e.**, relating to commercial fishing with trap nets in Lake Michigan.

Finding of emergency

The use of the emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect public peace, health, safety or welfare. A statement of facts constituting the emergency is: The rule change will clarify the boundaries of the trap net area and thus reduce or prevent potential user conflicts between recreational and commercial fishers in the Manitowoc/Two Rivers area by changing the locations where commercial trap nets may be set from June 28 to Labor Day.

Publication Date: June 28, 2004
Effective Date: June 28, 2004
Expiration Date: November 25, 2004
Hearing Date: August 2, 2004

3. Rules adopted creating **ss. NR 1.05, 1.06 and 1.07**, relating to Natural Resources Board policies on protection and management of public waters.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).
- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.
- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of

neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004

4. Rules adopted revising **ch. NR 10**, relating to the 2004 migratory game bird seasons.

Finding of emergency

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

Publication Date: August 31, 2004
Effective Date: August 31, 2004
Expiration Date: January 28, 2005
Hearing Date: October 13, 2004

Natural Resources (11)

(Environmental Protection – Water Regulation, Chs. NR 300—)

1. Rules adopted revising **ch. NR 300** and repealing **ch. NR 322**, relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

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- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004
Extension Through: November 14, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended s. NR 310.17 (4) (a).

2. Rules adopted revising **ch. NR 320**, relating to the regulation of bridges and culverts in or over navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

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Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

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Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004

3. Rules adopted revising **ch. NR 323**, relating to fish and wildlife habitat structures in navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004
Extension Through: November 14, 2004

4. Rules adopted revising **ch. NR 325**, relating to boathouses and fixed houseboats in navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

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To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: April 19, 2004
Effective Date: April 19, 2004
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004
Extension Through: November 14, 2004

- Rules adopted revising **ch. NR 326**, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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Publication Date: April 19, 2004
Effective Date: April 19, 2004*
Expiration Date: September 16, 2004
Hearing Date: May 19, 2004

*On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

- Rules adopted revising **ch. NR 328**, relating to shore erosion control of inland lakes and impoundments.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

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Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004

- 7. Rules adopted revising **ch. NR 329**, relating to miscellaneous structures in navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004

- 8. Rules adopted revising **ch. NR 340**, and creating **ch. NR 343**, relating to regulation of construction, dredging, and enlargement of an artificial water body.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water–based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004

- 9. Rules adopted revising **ch. NR 345**, relating to dredging in navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to

streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004

10. Rules adopted repealing s. NR 340.02 (2), (8) and (19) and to creating ch. NR 341, relating to regulation of grading on the bank of a navigable waterway.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general

permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams.

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin’s water-based recreation and tourism industry.

To carry out the intention of the Legislature that Act 118 will speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for general permits and jurisdiction under the new law.

Publication Date: May 19, 2004
Effective Date: May 19, 2004
Expiration Date: October 16, 2004
Hearing Date: June 16, 2004
Extension Through: December 14, 2004

11. Rules adopted creating ch. NR 310, relating to procedures for exemptions, general permits and individual permits for activities in navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as “areas of special natural resource interest” or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

- Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

- Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation.

Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

- Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water-based recreation and tourism industry.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004

Public Instruction

Rules were adopted revising **ch. PI 35**, relating to financial reporting requirements under the Milwaukee Parental Choice Program.

Finding of emergency

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

Per 2003 Wisconsin Act 15, the provisions under the rule must take effect beginning in the 2004–05 school year. Because some of the reporting requirements must be made by August 1, the rule must be in place as soon as possible to give the private schools enough notice to meet such requirements.

Publication Date: June 30, 2004
Effective Date: June 30, 2004
Expiration Date: November 27, 2004
Hearing Date: September 13, 2004

Regulation and Licensing

Rules were adopted repealing **ss. RL 31.035 (1m) and 31.036 (1m)**; and creating **ss. RL 4.01 (3g), (3r) and (5m), 4.07 and 4.09**, relating to criminal background investigations of applicants.

Exemption from finding of emergency

SECTION 4, Nonstatutory provisions., of 2003 Wisconsin Act 151 states: “(1) The department of regulation and licensing may, using the procedure under section 227.34 of the statutes, promulgate the rules under section 440.03 (13) (b) of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public

peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Analysis prepared by the Department of Regulation and Licensing

This emergency rule is promulgated pursuant to 2003 Wisconsin Act 151. Act 151 was created in response to federal Public Law 92–544, which required authorization by state statute to continue the FBI's policy of honoring state requests for criminal background reports.

Act 151 modifies the authority of the Department of Regulation and Licensing to conduct criminal background checks of applicants and requires rule-making by the Department to conduct investigations whether an applicant for or holder of any credential issued by the Department has been charged with or convicted of a crime. The emergency rule preserves the ability of the Department to continue its practice of conducting criminal background investigations of applicants and credential holders.

Publication Date: July 3, 2004
Effective Date: July 3, 2004
Expiration Date: November 30, 2004
Hearing Date: October 1, 2004

Revenue

Rules adopted creating **s. Tax 2.99**, relating to the dairy investment credit.

Finding of emergency

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

The emergency rule is to clarify the following terms as they apply to the dairy investment credit:

- “amount the claimant paid in the taxable year,”
- “dairy farm modernization or expansion,”
- “milk production,” and
- “used exclusively related to dairy animals.”

It is necessary to promulgate this rule order to remove the threat of inappropriate credit claims and the revenue loss to the state as a result of clarification of the above terms being absent in the statutes.

Publication Date: September 17, 2004
Effective Date: September 17, 2004
Expiration Date: January 14, 2005

Revenue

Rules adopted creating **s. Tax 3.04**, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces.

Finding of emergency

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

Section 71.05 (6) (b) 34, Stats., provides that a subtraction from income may be claimed for “any amount of basic, special, and incentive pay received from the federal government by a person who is a member of a reserve component of the U.S. armed forces, after being called into active federal service under the provisions of 10 USC 12302 (a) or 10 USC 12304, or into special state service authorized by the federal department of defense under 32 USC 502 (f), that is paid to the person for a period of time during which the person is on active duty.”

Included under 32 USC 502 (f) are persons who are serving on active duty or full–time duty in the active guard reserve (AGR) program. Discussion between the departments of revenue and military affairs and legislative personnel revealed that it was not intended that these persons benefit from the subtraction provided for in s. 71.05 (6) (b) 34, Stats.

It is necessary to promulgate this rule order to remove the threat of inappropriate subtractions from income and the revenue loss to the state as a result of information contained in the statutes that implies persons who are serving on active duty or full–time duty in the active guard reserve program are eligible to claim the subtraction from income for military pay received by members of a reserve component of the armed forces.

Publication Date: September 17, 2004
Effective Date: September 17, 2004
Expiration Date: January 14, 2005

Transportation

Rules adopted creating **ch. Trans 135**, relating to creation of a school bus oxidation catalyst grant program in certain counties.

Exemption from finding of emergency

The Legislature, by Section 2r of 2003 Wis. Act 220, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Transportation

Plain Language Analysis: 2003 Wis. Act 220 requires the Wisconsin Department of Transportation, in consultation with the Wisconsin Department of Natural Resources, to develop and administer a program to provide grants for the purchase and installation of oxidation catalysts on school buses customarily kept in the counties identified in s. 110.20 (5), Stats.: Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Act 220 amends s. 20.395 (5) (hq), Stats., to provide funds for the grant program under WisDOT’s vehicle inspection/maintenance (I/M) program appropriation.

Publication Date: September 1, 2004
Effective Date: September 1, 2004
Expiration Date: See Section 2r 2003 Wis. Act 220
Hearing Date: September 14, 2004

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 manufacturing, 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

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

Scope statements

Administration

Subject

The Department of Administration proposes to create rules relating to the use of electronic signatures by governmental units.

Objective of the rule. Implement 2003 Wisconsin Act 294, relating to electronic transactions and records.

Policy Analysis

2003 Wisconsin Act 294, published May 4, 2004, requires the Department to adopt by rule, standards regarding the receipt of electronic signatures that promote consistency and interoperability with standards adopted by other governmental units of the state, other states, the federal government and nongovernmental persons interacting with governmental units of the State.

Comparison to federal regulations

The Electronic Signatures in Global and National Commerce Act, commonly known as “E–sign”, (Public Law 106–229) took effect in October, 2000, to facilitate the use of electronic records and signatures in interstate or foreign commerce. With certain exceptions, E–sign preempts state laws that are inconsistent with its provisions. One of the exceptions permits a state to supersede the effect of the primarily electronic commerce provision of Title I of the Act (15 USC 7001) by enacting a law that constitutes an enactment of the Uniform Electronic Transactions Act (UETA). Another section of E–sign preserves the rulemaking authority of a state regulatory agency responsible for rulemaking under any other statutes. UETA establishes a legal framework to facilitate and validate certain electronic transactions. UETA also provides that upon mutual agreement of the parties, electronic records and electronic signatures will have the same legal effect and enforceability as written reports. Wisconsin Act 294 enacts UETA in Wisconsin and applies to State transactions but is not intended to limit, modify or supersede certain provisions contained in 15 USC s. 7001.

There are numerous chapters in the Code of Federal Regulations that pertain to the use of electronic signatures, some of which may impact state agencies’ filings, grant applications or reporting with the federal government. The following is a list of relevant federal regulations:

- 5CFR 19, 22–23, 118
- 7CFR 78
- 12 CFR 7, 8, 14, 18, 26, 28, 30, 49, 50, 53, 55–57, 61, 65–67, 69, 81, 83–85, 98, 105, 112, 114
- 14 CFR 99, 119
- 15CFR 15–17
- 17 CFR 5–6, 10, 13, 31–32, 44–45, 63–64, 71, 82, 93, 96–97, 116–117
- 19 CFR 74, 89, 104
- 21CFR 9, 20–21, 24–25, 33–34, 42–43, 436–48, 52, 58, 79, 87, 115, 120

- 25CFR 72–73
- 26CFR 36, 59, 76–77, 90, 102–103
- 29CFR 100
- 31CFR 70, 75, 88, 101
- 36CFR 12, 27, 86, 95, 107
- 40CFR 40, 80, 113
- 41CFR 91–92, 106
- 45CFR 37–38
- 47 CFR 3, 4, 11
- 48CFR 35, 39, 62, 68

Statutory authority

Sections 16.004 (1) and 137.25 (2), Stats.

Staff time required

The Department estimates that state employees will spend 1,000 hours to develop this rule.

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

Subject

To repeal ss. A–E 4.08 (7) and 6.05 (9) relating to examination and review procedure.

Objective of the rule. To eliminate the availability of the land surveyor and professional engineer applicants to review his or her failed examination.

Policy Analysis

The subjectivity of the land surveyor and professional engineering examinations has been removed by the test designer, National Council of Examiners for Engineering and Surveyors (NCEES) for several years. The current format of the tests is now all multiple choice. NCEES currently allows for hand checking to re–verify that the test results for a fee much less than what they charge an applicant from Wisconsin who would desire to see the incorrect answers from his or her failed examination.

An examination review allows for the integrity of the examination to be compromised. If a review is requested, NCEES will deliver the incorrect answers to the state for the applicant’s review. This allows for an individual to gain extra familiarity, insight, and preparation with the examination than for someone who has not taken the test before or has not requested a review. There is also risk of test materials floating around once the questions are delivered which the state must be liable for if lost or stolen, which can be in the hundreds of thousands of dollars.

Statutory authority

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

Comparison to federal regulations

The federal government does not regulate or oversee the examination review procedure for engineers or land surveyors involving licensure, and a search of the United States Code Services (USCS) and the Code of Federal Regulations (CFR) returned no entries regarding this subject.

Comparison with similar rules in adjacent states

Wisconsin is the only state in the Great Lakes region, including Iowa, that allows for an applicant to review an examination.

Staff time required

30 hours.

Commerce**Subject**

Objective of the rule. The primary purpose of this rule revision is to prohibit unauthorized mixing of one grade or type of a petroleum product with another grade or type of petroleum product, and subsequent distribution into the retail market. Minor miscellaneous updates are also expected, to make the code consistent with current practices.

Policy analysis

The code currently requires identification of a petroleum product as to its name or grade; and prohibits mixing of dissimilar fuels, dissimilar octane, or dissimilar grade, that would allow fraudulent fuel sales.

The rule revision would expand this prohibition to include any unauthorized mixing of these products. This expansion would improve the Department's ability to verify the inventory control that is required for these products under chapter Comm 10 – because required records of product deliveries could be directly compared to required records of tank contents and sales volumes, rather than obscured by unknown mixing of fuels with dissimilar grade or dissimilar octane. This prohibition of all unauthorized mixing would then complete the consumer protection cycle that is intended to be achieved by the inspection, sampling, testing, and labeling requirements for these products in chapter Comm 48 and in chapter 168 of the statutes.

The only policy alternative would be to not promulgate this prohibition, which would allow the current unauthorized mixing to occur.

Statutory authority

Sections 168.11 (1), 168.14 (2), and 168.16 (4) of the statutes.

Staff time required

The Department estimates approximately 100 hours will be needed to develop the rules. This time includes drafting the changes and processing them through public hearings, legislative review, and adoption. The Department will assign existing staff to develop the rules, and no other additional resources will be needed.

Entities affected by the rule

Vendors and marketers of petroleum products.

Comparison to federal regulations

There are no existing or proposed federal regulations that address the rule revision described in this scope statement.

Commerce**Subject**

Objective of the rule. The objective is to eliminate the Volume Cap Allocation Council as part of the review and

evaluation process for volume cap allocation for Industrial Revenue Bond (IRB) financing.

Policy analysis

The council evaluates volume cap applications and makes recommendations to the secretary on volume cap allocation. The council is strictly advisory in that the secretary makes the final decisions on cap allocation.

Elimination of the council could accelerate the approval process for volume cap allocation. Council meetings are typically not scheduled until there are enough projects that are ready for consideration. This delay may be detrimental to a business that is ready to proceed with the closing of an IRB in that the start of construction may be delayed or costlier interim financing would have to continue.

Because the council is an advisory board, any decisions made by the council can be changed by the secretary. The elimination of the council does not eliminate any final decision-making entity.

The council differs from other department councils or boards in that bonding authority is being allocated, not actual department dollars. Other “non-Commerce dollar” programs, such as the tax credit programs, incorporate a review and approval process that does not include a council or board.

The alternative of not eliminating the council could be viewed as an additional layer of formal review that might help to insulate the secretary's office from external pressure to approve a particular award.

Statutory authority

Section 15.04 (1) (c), Stats., authorizes department heads to create and appoint any council or committee as the operation of the department requires.

Staff time required

The Department estimates that it will take approximately 40 hours to develop this rule. This time includes drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Entities affected by the rule

The rule will affect the current members of the Volume Cap Allocation Council.

Comparison to federal regulations

There is no existing or proposed federal regulation that addresses the elimination of the Volume Cap Allocation Council.

Health and Family Services**Subject**

The Department of Health and Family Services proposes to amend ch. HFS 133, rules relating to home health agencies (HHAs).

Policy analysis

The Department proposes to amend ch. HFS 133 to provide regulatory relief to HHA providers by removing potentially burdensome requirements, including requirements that are more prescriptive or duplicative of federal requirements. The Department anticipates that the proposed modifications will include revisions to s. HFS 133.08 concerning patient rights and s. HFS 133.09 concerning policies and procedures for

admitting and discharging patients to make these sections more compatible with federal requirements. Since the proposed changes will affect Medicaid provider certification and covered services, changes may also be made to chs. HFS 105 and 107. The Department also intends to make minor, technical changes that will have little or no substantive effect on the entities regulated.

The proposed revisions are not expected to compromise the health, safety, and welfare of home health care patients.

Comparison to federal regulations

The federal conditions of participation for home health agencies are in the Code of Federal Regulations, Title 42 CFR Part 484. These regulations establish conditions and standards for the operation of agencies that primarily provide both skilled nursing and other therapeutic services to patients in their homes. State and federal regulations for home health services are comparable, and the intent of these regulations is to foster safe and adequate care and treatment of patients by home health agencies. A significant difference between the state and federal regulations governing home health agencies is that the state regulations are more prescriptive and less patient outcome-oriented.

Statutory authority

Sections 50.49 (2) (a) and (b) and 227.11 (2), Stats.

Staff time required

The Department estimates that it will take approximately 150 staff hours to draft the proposed rules.

Insurance

Subject

Objective of the rule. The proposed rule will revise the OCI rules relating to Medicare supplement, Medicare select, Medicare cost, Medicare replacement, Medicare advantage and Medicare + choice, and prescription drug plans to reflect the revisions and requirements under federal law enacted by the Medicare Improvement and Modernization Act of 2003 (HR1).

Policy analysis

The current rules reflect the requirements of federal law as contained in the NAIC models. The revised rules will reflect the changes made by Congress when it adopted HR1 and the revisions made to the NAIC models to reflect those changes. These changes may include removing any prescription drug benefit contained in current and future Medicare supplement coverages after December 31, 2005, in most instances and creating 2 federally-specified Medicare supplement and Medicare select plans with higher cost-sharing provisions than under current plans.

Statutory authority

Sections 600.03 (28p), 601.41, 628.34, 632.81, Stats., provide authority for this rule.

Staff time required

300 Hours

Comparison to federal regulations

There is no federal regulation that addresses the activities regulated by this rule. These products are state regulated, based on NAIC Model laws and regulations.

Entities affected by the rule

This rule will affect insurers and agents who offer these products. In addition it will indirectly affect consumers and individuals who purchase the products, and health care providers.

Insurance

Subject

Regarding Ch. Ins 15 Subch. II, Wis. Adm. Code, relating to vehicle protection device warranties.

Objective of the rule. The rule will implement the requirements of Act 302 by specifying the fees to be charged for applications, annual review and for late filings and date that annual filings are required to be filed with OCI.

Policy analysis

Currently these types of plans are regulated as insurance or warranties. This statutory revision creates a new regulatory scheme for these vehicle protection device warranties.

Statutory authority

The statutory authority for the rule are sections 100.23, 601.31 and 632.185, Stats.

Staff time required

100 hours and no other resource are necessary

Comparison to federal regulations

None

Entities affected by the rule

Entities selling vehicle protection products as defined in s. 100.203 (1) (e), Stats., such as glass etching, steering wheel locks, alarm systems etc.

Insurance

Subject

Regarding Sections Ins 17.01 (3), 17.28 (6) and 17.28 (6s) (c), Wis. Adm. Code, relating to annual patients compensation fund and mediation fund fees for the fiscal year starting July 1, 2005 and updating surcharge tables.

Objective of the rule. To establish the annual fees which participating health care providers must pay to the injured patients and family's compensation fund as required by statute for the fiscal and year beginning July 1, 2005 and to update the surcharge tables in 17.28 (6s) (c) which have not been updated or changed since 1986.

Policy analysis

Existing policies are as set forth in the statutes cited in the next section and in the rules themselves; no new or alternate policies are contemplated at this time.

Statutory authority

Sections 601.41 (3), 655.004, 655.27 (3) and (3) (bg) and 655.61, Stats.

Staff time required

40 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendation of the board's actuarial committee based on the analysis and recommendation of the fund's actuaries and the director of state courts.

Comparison to federal regulations

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

Entities affected by the rule

All health care provider participants in the fund as set forth in s. 655.002 (1), Wis. Stats.

Natural Resources**Subject**

Objective of the rule. NR 166 is the administrative code for the Safe Drinking Water Loan Program (SDWLP), which provides loans to local units of government to finance drinking water construction projects. The objective of the NR 166 rule revision is to clarify rules for scoring and ranking the loan projects and to clarify and add project cost eligibility rules.

The proposal to repeal NR 127, NR 128 and NR 160 has one objective—to remove rules for obsolete programs from the Wisconsin Administrative Code. All three of these rules were for grant programs that have been out of operation for more than 10 years due to changes in federal regulations and state statutes.

Policy analysis

The top priorities of the Safe Drinking Water Loan Program are to protect public health and ensure compliance with Safe Drinking Water Act requirements. Project scoring and eligibility rules for obtaining SDWLP funds were written in a way that allows DNR to achieve these priorities. However, some of the language in the existing code is unclear and subjective, making it difficult to assign scores to projects in some circumstances and to determine eligibility of some project costs. Staff from the Bureau of Drinking Water & Groundwater and the Bureau of Community Financial Assistance intend to work together to bring clarity to these areas of the code. Code language needs to be modified to ensure that project scoring is accomplished objectively and that funds are provided to projects and costs that meet the priorities of the program.

Statutory authority

Sections 281.59 and 281.61, Wis. Stats., contain the statutory authority for the Safe Drinking Water Loan Program.

Staff time required

We estimate that staff from each of the Bureau of Drinking Water & Groundwater and the Bureau of Community Financial Assistance will spend approximately 125 hours on revising NR 166. We expect Legal Services will need approximately 30 hours to review and process this code revision. Management & Budget and Science Services staff will likely spend a total of 4 hours or less working on NR 166.

Submittal of rules to legislative council clearinghouse

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

Athletic Trainers Affiliated Credentialing Board

Rule Submittal Date

On September 21, 2004, the Athletic Trainers Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

Statutory Authority: ss. 15.085 (5) (b), 227.11 (2) and 448.9525 (2), Stats.

The proposed rule-making order relates to referral requirements.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 8, 2004 at 9:15 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal
(608) 266-0495

Commerce

Rule Submittal Date

On October 1, 2004, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule revises ch. Comm 129, relating to technology commercialization programs.

Agency Procedure for Promulgation

The Division of Business Development is responsible for the proposed rules. A public hearing is required and will be scheduled at a later date.

Contact Information

Jamie Wall, Administrator
Telephone: (608) 267-0770
E-Mail: jwall@commerce.state.wi.us

Dentistry Examining Board

Rule Submittal Date

On October 1, 2004, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

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

The proposed rule-making order relates to the definition of "dental school."

Agency Procedure for Promulgation

A public hearing is required and will be held on November 3, 2004 at 9:00 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin 53702.

Contact Information

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

Employee Trust Funds

Rule Submittal Date

On September 17, 2004, the Department of Employee Trust Funds submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The proposed rule revises ss. ETF 10.30, 10.75 and 10.82 regarding the Department's receipt of documents and other correspondence by facsimile and electronic mail.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 28, 2004, at 1:30 PM in the downstairs Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

The Department's Office of Legal Services is primarily responsible for this rule.

Contact Information

Robert Weber, Chief Counsel
(608) 266-5804

Natural Resources

Rule Submittal Date

On September 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The subject matter of the proposed rule relates to chs. NR 106, 149 and 219, whole effluent toxicity (WET) test methods.

Agency Procedure for Promulgation

A public hearing is required and scheduled for October 12, 2004.

The Bureau of Watershed Management is the organizational unit responsible for promulgation of the proposed rule.

Contact Information

Kari Fleming
(608) 267-7663

Natural Resources**Rule Submittal Date**

On September 15, 2004, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

The subject matter of the proposed rule relates to chs. NR 406 and 410, asbestos permit exemption fees and a program for recovering the exact costs of laboratory fees for sample analysis for the asbestos program.

Agency Procedure for Promulgation

Public hearings are required and scheduled for October 13, 14 and 15, 2004.

The Bureau of Air Management is the organizational unit responsible for promulgation of the proposed rule.

Contact Information

Nathan Luedke
(608) 264–8892

Regulation and Licensing**Rule Submittal Date**

On October 1, 2004, the Department of Regulation and

Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

Statutory Authority: s. 227.11 (2), Stats., and ss. 440.99, 440.991, 440.915, 440.992, 440.9925, 440.993, 440.9935, 440.994, 440.9945, 440.995, 440.9955, 440.996, 440.9975, 440.998 and 440.999, Stats., as created by 2003 Wisconsin Act 150.

The proposed rule–making order relates to the licensure and regulation of athlete agents.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 12, 2004 at 10:00 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin 53702.

Contact Information

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

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 04-103]

(Reprinted from 9-15-04 Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed rule that implements the livestock premises registration program created by 2003 Wis. Act 229. Persons who keep livestock in this state must register the premises annually with the DATCP. Each premises will receive a unique premises registration number generated by the United States Department of Agriculture. There is no fee to register.

DATCP will hold five public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, December 10, 2004, for additional written comments. Comments may be sent to the Division of Animal Health at the address below or by e-mail to: hearingcommentsAH@datcp.state.wi.us.

DATCP's proposed rule will be posted on the Wisconsin Legislative Council web site at: http://www.legis.state.wi.us/lc/adm_rules.htm. You may also obtain a free copy of this rule by making a request to:

Wisconsin Department Agriculture, Trade and Consumer Protection

Division of Animal Health

P.O. Box 8911

Madison, WI 53708-8911

Telephone: (608) 224-4883

Copies will also be available at the public hearing.

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by e-mail at Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing-impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by October 22, 2004, by contacting Melissa Mace, Division of Animal Health, Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Locations:

Tuesday, November 9, 2004

2:00 p.m. to 4:00 p.m. and 4:30 p.m. to 6:30 p.m.

W DATCP Regional Office

3610 Oakwood Hills Parkway

Eau Claire, WI 54701-7754

Wednesday, November 10, 2004

2:00 p.m. to 4:00 p.m. and 4:30 p.m. to 6:30 p.m.

Calamus Town Hall

W9820 County Trunk D

Beaver Dam, WI 53916

Monday, November 15, 2004

2:00 p.m. to 4:00 p.m. and 4:30 p.m. to 6:30 p.m.

Iowa County Courthouse, Room 204

222 N. Iowa Street

Dodgeville, WI 53533

Wednesday, November 17, 2004

2:00 p.m. to 4:00 p.m. and 4:30 p.m. to 6:30 p.m.

Brown County Library

515 Pine Street

Green Bay, WI 54301

Tuesday, November 30, 2004

2:00 p.m. to 4:00 p.m. and 4:30 p.m. to 6:30 p.m.

Community Center, Matheson Memorial Library

101 North Wisconsin Street

Elkhorn, WI 53121

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

This rule implements the livestock premises registration program created by 2003 Wis. Act 229. This program is intended to protect animal health and the security of the food chain. Among other things, premises registration will facilitate more rapid response to animal disease emergencies.

Under this rule, persons who keep livestock in this state must register annually with the Department of Agriculture, Trade and Consumer Protection ("DATCP"). DATCP will assign a unique premises registration number, generated by the United States Department of Agriculture ("USDA"), to each registered premises. Registration information is confidential, and there is no fee to register. Registration complies with standards contained in the National Animal Identification System ("national plan").

Statutory Authority

Statutory Authority: ss. 93.07 (1), 93.07 (10), 95.51 (3m) and (7), 95.55 (6), 95.68 (8), 95.69 (8), 95.71 (8), 95.72 (5), 97.22 (8) and 97.42 (4), Stats.

Statutes interpreted: ss. 93.07 (10), 95.51, 95.55, 95.60, 95.68, 95.69, 95.71, 95.72, 97.22 and 97.42, Stats.

DATCP has broad general authority under s. 93.07 (1), Stats., to make and enforce rules to implement laws under its jurisdiction. Section 95.51, Stats., creates a livestock premises registration program and directs DATCP to implement the program. The following statutes specifically authorize DATCP to adopt rules related to the following subjects:

- Section 93.07 (10), Stats. (animal health).

- Section 95.51 (3m) and (7), Stats. (livestock premises registration program).
- Section 95.55 (6), Stats. (deer farms).
- Section 95.68 (8), Stats. (animal markets).
- Section 95.69 (8), Stats. (animal dealers).
- Section 95.71 (8), Stats. (animal truckers).
- Section 95.72 (5), Stats. (rendering plants and other entities that collect and process livestock carcasses).
- Section 97.22 (8), Stats. (dairy farms).
- Section 97.42 (4), Stats. (slaughter establishments).

Background

Wisconsin is the first state in the nation to mandate a livestock premises registration program. The Wisconsin program is part of a national effort to create a comprehensive livestock identification system. The national plan spells out the goals and standards for all states to follow.

The national plan was developed under the auspices of USDA and the United States Animal Health Association, in cooperation with the livestock industry. It calls for a system that can identify all animals and premises exposed to a foreign animal disease (such as foot and mouth disease) within 48 hours after the disease is discovered. This rapid response capability will be critically important in the event of a major animal disease emergency.

This rule addresses livestock *premises* registration, not *animal* identification. But premises registration is a necessary first step toward a comprehensive livestock identification system. By itself, premises registration will also facilitate more effective disease control and emergency response. Under the national plan, each state is responsible for establishing an effective premises registration program that meets national standards.

Program Administration

The Wisconsin Livestock Identification Consortium (“WLIC”), which represents a broad spectrum of the livestock industry groups, has led the nation in developing a premises registration system that meets national standards. Recently, USDA picked the WLIC system as the prototype for a national premises registration system. DATCP will likely contract with WLIC to administer the livestock registration program on behalf of DATCP. This rule spells out contract standards, including confidentiality requirements.

DATCP has requested, and hopes to receive, continued federal funding for the registration program. If federal funding is not forthcoming, it will be necessary to fund the premises registration program with state tax dollars or registration fees. The Legislature will determine the funding source and amount. This rule does not create any registration fees.

DATCP estimates that the program will affect at least 60,000 livestock premises in Wisconsin and will cost approximately \$918,000 each year. DATCP will work with the livestock industry and others to promote voluntary compliance but may also take enforcement action against persons who knowingly refuse to comply. Penalties are set by statute and are equivalent to those under other animal health and food safety laws.

Rule Content

This rule implements Wisconsin’s Livestock Premises Registration Law (2003 Wis. Act 229), which takes effect on November 1, 2005. The rule includes the following key provisions:

Annual Registration Required

A person may not keep “livestock” in this state unless the livestock premises are annually registered with DATCP. “Livestock” includes cattle, swine, poultry, sheep, goats, horses, farm–raised deer, bison, camelids (such as llamas), ratites (such as ostriches and emus) and fish.

If 2 or more persons have a role in keeping livestock at the same location (for example, if one person owns the livestock, another tends them, and a 3rd owns the land), any one of those persons may register that location (the others need not register). Registration does not create any “ownership” rights that do not otherwise exist. It merely identifies a location in this state at which livestock are kept. DATCP assigns a unique premises code that continues with that location, even if the registrant changes (some exceptions apply).

Operators of livestock facilities currently licensed by DATCP (dairy farms, deer farms, fish farms, animal markets, animal dealer premises, animal trucker premises, slaughter establishments, equine quarantine facilities and rendering establishments) must register the facilities licensed to them and may not let others register those premises for them. License holders will be able to register by filling out a few extra lines on their annual license renewal forms.

Effective Dates

The registration requirement under this rule will take effect on January 1, 2006, except that for livestock facilities currently licensed by DATCP, the registration requirement will take effect on the first day of the first full license year beginning after January 1, 2006. For example, the registration requirement first applies to dairy farms on May 1, 2006, because dairy farm licenses expire on April 30 of each year.

An annual registration *expires* on December 31, or in the case of livestock premises currently licensed by DATCP, on the annual license expiration date.

How to Register

There is no fee to register livestock premises. A person may register on–line or in writing on forms prescribed by the DATCP. Forms will be readily available from DATCP and its contract agent. DATCP will send annual renewal forms to registrants to make renewal as easy as possible. Renewals, like initial registrations, may be transacted on–line.

Each registrant must provide the following information:

- Registrant’s legal name, any trade names, mailing address, and phone number.
- Primary premises location and any secondary locations included in the registered premises.
- Name and phone number of a contact person with knowledge of livestock movements to and from all locations comprising the premises.
- Type(s) of livestock operation.
- Type(s) of livestock kept.

DATCP or its agent will issue a written or electronic premises registration certificate to each registrant, depending on the form of registration. The registration certificate will include a unique premises registration code generated by USDA (the premises code is assigned to the primary premises location). If the registrant is currently licensed by DATCP (dairy farms, deer farms, livestock markets, etc.), the premises code will be included on the registrant’s annual license.

Confidentiality

Premises registration information required under this rule is confidential. However, the premises code itself is not confidential. Neither DATCP nor its contract agent may disclose confidential registration information to any other

person or agency (except USDA). DATCP may disclose confidential registration information if necessary to prevent or control disease, or to protect public health, safety or welfare. DATCP may also disclose information with the registrant's permission.

This confidentiality does not apply to information required under other laws. For example, information that was required of license holders and was open to public inspection prior to the effective date of the livestock premises registration law remains open to public inspection. But premises registration information required for the first time under the new law, or under this rule, must be kept confidential.

DATCP may create aggregate information (such as maps and statistics) from registration information, but may not disclose that information if it would reveal (or make it possible to deduce with certainty) the address or identity of any registrant.

Contract Agent

DATCP may contract with an agent (presumably WLIC) to process registrations, manage registration information, and perform other functions on behalf of DATCP. The registration process must be conducted under the name of DATCP, not the contract agent. DATCP must approve the registration process and forms.

The contract agent may not do any of the following without DATCP approval:

- Change the registration process or forms.
- Use or disclose any information that it acquires as DATCP's agent.
- Purport to collect information as DATCP's agent.
- Ask a registrant for permission to use or release confidential registration information.

A contract agent must specifically identify to DATCP the individuals who will handle confidential information. Each of those individuals must sign a confidentiality agreement with DATCP. Neither the contract agent, nor any individual affiliated with the contract agent, may disclose confidential information or use it for financial advantage.

A contract agent must comply with applicable state standards related to the storage, handling and disposition of state records. If a contract is terminated, the contract agent must return all registration records to DATCP. DATCP may terminate a contract at any time.

Receiving Livestock from Unregistered Premises

This rule prohibits the receipt of livestock from unregistered premises for purposes of sale, exhibition or slaughter. But this prohibition does not apply unless USDA or surrounding states impose an equivalent prohibition in all of the surrounding states.

Changes to Existing Rules

This rule modifies current DATCP rules related to the licensing of dairy farms, deer farms, fish farms, animal markets, animal dealer premises, animal trucker premises, slaughter establishments, equine quarantine facilities and rendering establishments by incorporating by reference the new livestock premises registration requirements under this rule.

Fiscal Impact

The livestock premises registration program will have no fiscal impact on local government, but it will have a significant fiscal impact on DATCP. DATCP expects to incur one–time costs of \$42,000 and annual costs of \$918,600 to implement the program (see fiscal estimate attached).

DATCP has requested, and hopes to receive, federal funding to cover these costs. However, federal funding is not assured.

If federal funding is not forthcoming, state funding will be needed. As required by 2003 Wisconsin Act 229, DATCP will submit a biennial budget request for state appropriations (tax dollars or fee revenues) to fund the program in the FY 2005–07 biennium. The Legislature will determine the funding source and amount. This rule does not create any registration fees.

Business Impact

This rule implements the livestock premises registration program mandated by the Legislature in 2003 Wisconsin Act 229. This rule will affect an estimated 60,000 Wisconsin businesses, including the following (many of these businesses are “small businesses”):

- Livestock producers, including dairy, beef, swine, poultry, farm–raised deer, sheep, goat, fish and exotic livestock producers.
- Horse owners and stable operators.
- Livestock markets, dealers and truckers.
- Slaughter establishments.
- Rendering and dead animal processing establishments.
- Operators of livestock exhibitions.
- Veterinary clinics.

Affected businesses must register their premises annually with DATCP. There is no fee. Businesses can register on–line or in writing. Businesses currently licensed by DATCP, including dairy farms, deer farms, fish farms, animal markets, animal dealers, animal truckers, slaughter establishments, equine quarantine facilities and rendering establishments, can comply just by completing a few additional lines on their annual license applications. DATCP will facilitate annual renewals by sending automatic renewal notices to all registrants.

This rule does not create any new record–keeping or reporting requirements, other than the basic annual registration requirement. It does not require businesses to hire any new professional services. This rule establishes a delayed effective date of January 1, 2006, so that affected business will have time to understand and comply with the new registration requirement. For persons currently licensed by DATCP, the effective dates are further delayed to coincide with the start of an annual licensing period.

DATCP will work with the livestock industry to implement the new program, which will have important benefits for the industry. DATCP and its contract agent will implement an information and education program, and it will provide convenient registration mechanisms for affected businesses. DATCP will also make it easy for registrants to renew annually by sending automatic renewal forms (registrants need only update pre–printed information, if that information has changed).

This rule will not have a significant adverse economic impact on small business, and it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.

A small business analysis (“initial regulatory flexibility analysis”) is attached.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but it will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Federal Regulation

There is, as yet, no federal law mandating nationwide registration of livestock premises. However, USDA plans to implement a comprehensive livestock identification program that includes state registration of livestock premises. USDA and the United States Animal Health Association have developed a national plan in cooperation with the livestock industry.

Under 2003 Wis. Act 229, Wisconsin rules must be consistent with the national plan. This rule is consistent with the current national plan and will be modified as necessary as the national plan evolves. USDA has funded the development of Wisconsin's premises registration system and may fund its implementation.

Notice of Hearing

Athletic Trainers Affiliated Credentialing Board

[CR 04–105]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Athletic Trainers Affiliated Credentialing Board in ss. 15.085 (5) (b), 227.11 (2) and 448.9525 (2), Stats., and interpreting s. 448.956, Stats., the Athletic Trainers Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to create s. AT 4.02 (5), relating to referrals.

Hearing Date, Time and Location

Date: November 8, 2004
Time: 9:15 a.m.
Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by November 17, 2004, to be included in the record of rule-making proceedings.

Analysis Prepared by Dept. of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.085 (5) (b), 227.11 (2) and 448.9525 (2), Stats.

Statutes interpreted: s. 448.956, Stats.

A new provision is being added to modify s. AT 4.02 to clarify the duties of a licensee in the clinical context and when working on behalf of a primary employer in the instance of receiving a referral of a patient for treatment. Currently, the mandatory protocol requirements for the treatment of an athletic injury do not explicitly provide guidelines delineating the consultation duty and protocol disclosure duty of a licensee who receives a referral of a patient from a person who is not the licensee's consulting physician. Modifying s. AT 4.02 will assist licensees by clarifying the type of disclosures and professional consultations that must be made with consulting physicians and health care providers in the instance of the evaluation and treatment of referred patients.

SECTION 1 creates a new provision to clarify the five conditions under which a licensee may accept the referral of

a patient from a health care provider who is not the licensee's consulting physician.

This proposed rule-making order was reviewed and approved by the Medical Examining Board.

Federal Regulations: There is no existing federal regulation regarding referrals.

State Regulations:

Michigan — No regulation.

Illinois — No rules regarding referrals.

Indiana — (Referral by physician, osteopath, podiatrist, chiropractor)

IC25–5.1–1–4 Athletic training

Sec. 4. "Athletic training" means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries under the direction of a licensed physician, osteopath, podiatrist, or chiropractor. However, in a clinic accessible to the general public, the term means practicing athletic training only upon the referral and order of a licensed physician, osteopath, podiatrist, or chiropractor.

Minnesota — (Referral – license to practice – medicine, chiropractic, podiatry, dentistry. In corporate setting, the AT may also work under the direct supervision of a physical therapist, which is similar to a referral.) Minn. Stats. Section 148.7806 Athletic training.

Athletic training by a registered athletic trainer under section 148.7808 includes the activities described in paragraphs (c) to (e).

(c) At the primary employment site, except in a corporate setting, an athletic trainer may evaluate and treat an athlete for an athletic injury not previously diagnosed for not more than 30 days, or a period of time as designated by the primary physician on the protocol form, from the date of the initial evaluation and treatment. Preventative care after resolution of the injury is not considered treatment. This paragraph does not apply to a person who is referred for treatment by a person licensed in this state to practice medicine as defined in section 147.081, to practice chiropractic as defined in section 148.01, to practice podiatry as defined in section 153.01, or to practice dentistry as defined in section 150A.05 and whose license is in good standing.

(d) An athletic trainer may:

(e) In a clinical, corporate, and physical therapy setting, when the service provided is, or is represented as being, physical therapy, an athletic trainer may work only under the direct supervision of a physical therapist as defined in section 148.65.

Iowa — (Referral – doctor, dentist)

IAC–645–351.6(1) *Standards for athletic training—direct service. c. Standard 3—documentation.* The athletic trainer shall accept responsibility for recording details of the athlete's health status. Documentation shall include:

(2) Referral source (doctor, dentist).

Fiscal Estimate

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

Private Sector Fiscal Effect

The Department of Regulation and Licensing has determined that this rule has no significant fiscal effect on the private sector.

Final Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearing
Dentistry Examining Board
[CR 04-109]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 447.04 (1) (a) 3., Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to create DE 1.02 (4m), relating to the definition of "dental school."

Hearing Date, Time and Location

Date: November 3, 2004
Time: 9:00 a.m.
Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by November 15, 2004, to be included in the record of rule-making proceedings. Analysis prepared by the Department of Regulation and Licensing.

Analysis

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

Statutes interpreted: s. 447.04 (1) (a) 3., Stats.

In Section 1, the Dentistry Examining Board proposes to define dental school to specify that the school or college must be approved by the board; be a 4 year program or equivalent; and result in the degree of doctor of dental surgery or doctor of dental medicine.

Regulation in adjoining states:

Illinois:

Does not define the term "dental school" in its administrative rules.

Indiana:

Does not define the term "dental school" in its administrative rules.

Iowa:

The term "accredited school" is defined as a dental, dental hygiene, or dental assisting education program accredited by the American Dental Association Commission on Dental Accreditation.

Michigan:

Does not include the term "dental school" in its administrative rules.

Minnesota:

Does not define the term "dental school" in its administrative rules. However, the term "Commission on Accreditation" is defined as the Commission on Dental Accreditation of the American Dental Association.

There is no existing federal regulation that defines dental schools.

TEXT OF RULE

SECTION 1. DE 1.02 (4m) is created to read:

DE 1.02 (4m) "Dental school" means a school or college approved by the board that offers at least 4 academic years of instruction or its equivalent in all dental disciplines and that leads to the degree of doctor of dental surgery or doctor of dental medicine.

Fiscal Estimate

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

Private Sector Fiscal Effect

The Department of Regulation and Licensing has determined that this rule has no significant fiscal effect on the private sector.

Final Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearing
Employee Trust Funds
[CR 04-104]

The Wisconsin Department of Employee Trust Funds (DETF) will hold a public hearing to review this proposed rule, which amends Wis. Admin. Code ss. ETF 10.30 (8), 10.75 (2) (a) and 10.82 (1), repeals and recreates s. ETF 10.82 (2) and creates s. ETF 10.82 (1) (am) regarding the receipt of facsimile and electronic mail communications by the department. The public hearing will be held on **October 28, 2004**, at 1:30 PM in the downstairs Conference Room GB at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

The public record on this proposed rule making will be held open until 4:30 p.m. on Friday, November 12, 2004, to permit persons who are unable to attend the public hearing in person to submit written comments on the proposed rule. Any such written comments should be addressed to Robert Weber, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931.

Statutory authority:

This proposed rule will be promulgated under the authority granted to the Secretary of the Department of Employee Trust Funds under Wis. Stat. s. 40.03 (2) (i).

Explanation of agency authority:

The Secretary of the Department of Employee Trust Funds is expressly authorized to promulgate rules required for the efficient administration of the Public Employee Trust Fund or the benefit plans administered by the Department. Rules required for the administration of group health, long-term care, income continuation or life insurance plans under

subchs. IV to VI of ch. 40, Stats., must also be approved by the Group Insurance Board. Approval by the Deferred Compensation Board is necessary for all rules required for the administration of deferred compensation plans established under subch. VII of ch. 40. Those programs aside, rule-making under Wis. Stat. s. 40.03 (2) (i) requires the approval of the Employee Trust Funds Board and rules relating to teachers must be approved by the Teachers Retirement Board while rules relating to participants other than teachers must be approved by the Wisconsin Retirement Board.

Related statute or rule:

Wis. Stat. ss. 137.11, 137.16, 137.17, and 137.23, all being part of subchapter II (“Electronic Transactions and Records; Electronic Notarization and Acknowledgement”) of ch. 137 as affected by 2003 Wis. Act 294, effective May 5, 2004. Act 294 is intended to enact the Uniform Electronic Transactions Act in Wisconsin. As described by the National Conference of Commissioners on Uniform State Laws, the UETA is designed to support the use of electronic commerce. The primary objective of the UETA to establish the legal equivalence of electronic records and signatures with paper writings and manually signed signatures, removing barriers to electronic commerce.

Plain language analysis:

The rule is loosely modeled on provisions of ss. 137.11, 137.16, 137.17, and 137.23, Stats. The proposed rule codifies a general department policy that receipt of a document via facsimile (“fax”) or electronic mail (“e-mail”) is functionally identical to receipt of that document by other available means, such as mail delivery or delivery by hand, for purposes of administering benefits under ch. 40 of the Wisconsin Statutes. An electronic copy may be treated as the original.

The rule does provide a different treatment of electronic documents concerning time of receipt. Facsimiles and e-mails may be received even when the Department’s offices are closed, unlike other forms of communication.

Beginning in 1997, the DETF has optically imaged participant files to computer instead of retaining paper copies of documents. Since then, for DETF record keeping purposes at least, a facsimile is functionally identical to the original document.

The rule repeals and recreates Wis. Admin. Code s. ETF 10.82 (2). That provision was originally promulgated in 1995 for the purpose of allowing for documents to be filed via facsimile transmission, in order to preserve the earliest possible date of receipt, and included several additional requirements, including that the original of the document be provided to the DETF within 14 days, so that it could be added to the participant’s file for future reference. The rule expressly applied only to forms listed in the rule. The purpose of that 1995 rule-making was to allow a person to “lock in” an earlier date of receipt by DETF than might be possible if the applicant relied only on mail, or other delivery methods that are less immediate than electronic transmission.

The proposed rule is permissive. It does not require the department to accept documents transmitted electronically as originals when there may be doubts about the completeness or authenticity of the document. The department may make inquiries and require additional authentication. The department also retains its strong preference for receipt of certain documents in the original (or by certified copy), such as court orders. However, when authenticity is satisfactorily established, the rule provides the department may even accept court orders by fax or e-mail.

Since the department promulgated its first fax rule in 1995, an occasional question has arisen about whether the rule prohibited receiving documents by facsimile if the document was not specifically listed in the rule, or whether DETF had technically “received” a document at all if it arrived by fax but the sender then deliberately failed to send the original within 14 days. This proposed rule resolves those questions, in large part, by removing the list of permitted documents and minimizing the criteria for deeming a fax or e-mail document as “received” by the department.

Some administrative rules written since 1995 have included specific authorization to receive a particular document by “fax.” This proposed rule codifies a general policy, rather than a piecemeal approach, by amending those provisions to fit under the proposed rule.

Summary of, and comparison with, existing or proposed federal regulation:

Public Law 106–229 (June 30, 2000), the federal Electronic Signatures in Global and National Commerce Act, codified at 15 U.S. Code ss. 7001 to 7006, 7021 and 7031, provides that in all transactions in or affecting interstate or foreign commerce, a contract or other record relating to the transaction shall not be denied legal effect merely because it is in electronic form. The federal law generally preempts state laws that require contracts or other records be written, signed, or in non-electronic form and, to at least some extent, requires governmental agencies to use and accept electronic records and electronic signatures with respect to records other than contracts to which the agency is a party. However, the federal law also allows states to instead adopt the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws.

Comparison with rules in adjacent states:

There are numerous administrative code provisions in adjacent states that use the terms “facsimile,” “fax,” “e-mail” or “electronic mail.” A search on one legal database located 880 documents containing such references. For example, the Illinois Secretary of State accepts filings by electronic or facsimile transmission and the date the transmission is received is the receipt date, if the document is acknowledged and accepted. See 2 Illinois Administrative Code s. 570.40. Similar provisions for honoring the time of receipt of a fax can be found in 44 Ill. Adm. Code ss. 1.2005, 500.300, 526.2005, 1100.2005, 1120.2005, 1300.2005, 1400.2505, 1500.2005, 1600.2005 and 2000.2005. Some other Illinois code provisions require a separate acknowledgement of receipt in order to establish the fax was received.

Summary of factual data and analytical methodologies:

The proposed rule is based on DETF experiences with documents received by fax, particularly under the 1995 fax rule codified as s. ETF 10.82 (2).

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The department relies on the text of proposed rule itself, which affects only the department and persons who elect to communicate with the department by fax or e-mail. The rule applies only to such communications. The vast majority of the communications to and from the Department pertain to the pension and employee fringe benefit plans administered by the Department and benefit determinations concerning particular individuals. The only employers participating in these benefit plans are the state and some local units of government in the state. The rule therefore has no effect on small businesses.

Anticipated costs incurred by private sector:

None.

Effect on small business:

No effect.

Agency contact person name and title:

For questions about the proposed rule, please write or call Robert Weber, Chief Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 266-5804. Fax: (608) 267-0633. E-mail: rob.weber@etf.state.wi.us

Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rule may be submitted to Robert Weber, Chief Counsel, Department of Employee Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 PM on Friday, November 12, 2004.

Initial regulatory flexibility analysis:

The proposed rule has no effect on small businesses.

Fiscal estimate:

The proposed rule has a direct fiscal impact on the Department of Employee Trust Funds, which will need to expand the number of ports available for its fax server in order to handle DETF fax machines not currently connected to the server. DETF is able to verify time of receipt outside of normal working hours only if the fax machine is connected to the fax server. The cost to upgrade to eight (8) fax lines is \$2,495. The cost of extended support, to assure one day turnaround in the event of a failure, is an additional \$1,495 per year. It is possible that additional telephone lines may also be necessary. Those costs are not included in this estimate. These costs would be administrative expenses borne by the Public Employee Trust Fund, not state funds.

The proposed rule generates no revenues for unit of government. It has no effect on the fiscal liabilities of the state or of any county, city, village, town, school district, technical college district or sewerage district.

Free copies of proposed rule:

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

**Notice of Hearings
(revised from 9-30-04 Register)**

Natural Resources

Environmental Protection—Water Regulation,

Chs. NR 300—

[CR 04-088]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12 (1), (1p) and (3) (br), 30.13 (1) and (1m), 30.206 and 227.11 (2), Stats., interpreting ss. 30.12 (1), (1g) (a), (b), (e) and (f), (1p), (3) and (3m), 30.13 (1) and (1m), 30.20 (1g) (b) 2. and 30.206, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 326, Wis. Adm. Code, relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways. The proposed rule will implement 2003 Wisconsin Act 118 by establishing construction, design and placement standards for

projects to be eligible for statutory exemptions, establishing general permits and establishing standards for projects that may be authorized under an individual permit. The proposed rule defines and describes design standards to qualify for exemptions for piers, wharves, seasonal boat shelters, boat hoists, boat lifts and swimming rafts. The rule establishes general permits for preexisting piers and permanent boat shelters which meet certain conditions, and establishes standards for specific individual permits for piers. Department staff will work with stakeholders prior to public hearing to develop more specific standards for marinas, and identify any other general or individual permits that may be appropriate.

NOTICE IS HEREBY FURTHER GIVEN that the Department will also be seeking comments on an alternative to the Department's proposed rule that was developed by a citizen stakeholder group. A copy of this alternative rule will be available no later than October 8, 2004.

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: Pier and building contractors, commercial marinas and other waterfront businesses along public navigable waterways will be affected by the rule revisions.

b. Description of reporting and bookkeeping procedures required: The person responsible for a project in or along a lake or stream must develop plans and occasionally conduct some analyses, submit an application, and observe the site during construction. For some activities, photographs of the completed project are required.

c. Description of professional skills required: Map reading, basic computer use, mathematics, drawing to scale, and clear writing.

While it may be helpful or efficient, hiring a consulting firm is not necessary to comply with these requirements. Many projects are planned and conducted by individuals with no professional background. If the site has particularly challenging features, such as steep slopes, erosive soils, highly variable features or if the intensity of neighboring uses are likely to create controversy, then professional ecological or engineering expertise may be helpful.

The Department's Small Business Regulatory Coordinator may be contacted at: SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold an open house from 4:00 p.m. to 6:00 p.m. prior to the hearings in Green Bay, Eau Claire, Tomahawk, Hayward and Waukesha and from 10:00 to noon in Madison. Department staff will be available to answer questions regarding the proposed rules.

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

Monday, November 1, 2004 at 6:00 p.m.

Video conference participation will be available between:

Manufacturing Educ. Center
Chippewa Valley Tech. College Gateway Campus
2320 Alpine Road
Eau Claire

MAC137, Instructional Services Building
UW-Green Bay, 2420 Nicolet Drive
Green Bay

Wednesday, November 3, 2004 at 6:00 p.m.

Banquet Room, Comfort Inn and Conference Center
1738 Comfort Drive
Tomahawk

Thursday, November 4, 2004 at 6:00 p.m.

County Board Room, Sawyer Co. Courthouse
10610 Main Street
Hayward

Tuesday, November 9, 2004 at 6:00 p.m.

Room 151, State Office Building
141 NW Barstow Street
Waukesha

Wednesday, November 10, 2004 at 12:00 p.m.

Room 027, GEF #2
101 South Webster Street
Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Roberta Lund at (608) 266-2220 with specific information on your request at least 10 days before the date of the scheduled hearing.

Submittal of comments and copy of proposed rules:

The Department's proposed rule and the stakeholder proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Ms. Liesa Lehmann, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until December 1, 2004. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707.

Fiscal Estimate

Most of the permitting activities covered by this administrative rule remain unchanged in terms of the workload required by Department staff and revenues generated by required permits. The exception is for permanent boat shelter permits, which were issued on an individual permit basis prior to Act 118, and will be issued as general permits under this proposed administrative rule. The net fiscal impact is estimated to be a workload decrease of about 95 hours/year, which equates to about \$2,000 in salary and fringe benefits, and a revenue decrease of about \$4,800/year.

Overall, the full implementation of Act 118 and its multiple related rules is not expected to have a major impact on DNR water permit revenues or workload.

The Department's proposed rule and the stakeholder proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Ms. Liesa Lehmann, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until December 1, 2004. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707.

Notice of Hearings

Natural Resources

Environmental Protection—Air Pollution Control, **Chs. NR 400—**

[CR 04-106]

(Reprinted from 9-30-04 Register)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1), (6) and (17), 285.60 (6) and 285.69 (1), Stats., interpreting ss. 285.11 (6) and (17), 285.60 and 285.61, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 400, 406, 407 and 410, Wis. Adm. Code, relating to providing the interface of the state air permitting programs with federal changes to the air permitting program. The State Implementation Plan developed under s. 285.11 (6), Stats., will also be revised. On December 31, 2002, the U.S. Environmental Protection Agency published regulations that significantly changed the way new and modified sources of air pollution are permitted. Changes necessary to implement the federal program cannot be fully utilized unless additional changes are made to the state construction and operation permitting regulations. The proposed rule revisions have been designed to take full advantage of the flexibility made available under the proposed changes that adopt the federal air permitting revisions without compromising on Department or public opportunity for review. The proposed rule revisions are intended to provide flexibility to stationary sources utilizing the permit applicability exclusions provided within the federal rule changes.

Currently, all emission limitations and specific conditions that are contained within a construction permit are considered federally enforceable because there is no mechanism within the construction permit program to identify "state-only" requirements whose underlying authority does not rest within Wisconsin's State Implementation Plan. These rule revisions will enable Wisconsin to identify requirements as "state-only" conditions in construction permits where the underlying rule has not been submitted to U.S. Environmental Protection Agency for inclusion in the State Implementation Plan and thus not intended to be federally enforceable, or is not required by federal law.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:

SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

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

Tuesday, October 26, 2004 at 1:00 p.m.
Room 124A & B, State Office Building
1681 Second Ave. South
Wisconsin Rapids

Thursday, October 28, 2004 at 1:00 p.m.
Room 511, GEF #2
101 South Webster Street
Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bob Eckdale at (608) 266-2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

Proposed revisions to chs. NR 405 and 408, Wis. Adm. Code, titled "Prevention of Significant Deterioration" (PSD) and "Construction Permits for direct major sources in nonattainment areas" (NSR) respectively, provides revisions to the permitting requirements for major sources and major modifications to major sources. The revised changes, contained in Board Order AM-06-04, have been initiated due to changes in the federal versions of this permitting program. These revisions have been made with the intention of reducing applicability of the program and the administrative burden associated with permitting without sacrificing environmental quality.

Because these rule revisions will reduce the number of PSD/NSR permits that the department will process annually, revenues from the completion of these permits will be lost. Based upon 2002 permitting efforts, the department estimates this lost revenue to be \$480,000 annually. Increasing minor source permitting efforts and exemption reviews, may result due to less regulatory burden, the department estimates that this increasing level would equal \$140,000 based upon proposed review fees included in the proposed rule revisions.

The department estimates that although these revisions will reduce the number of projects that would be subject to permitting under the PSD/NSR program, the department will be required to spend resources conducting complex applicability determinations and preparing exclusions from the PSD/NSR program under the options provided for in the rule revisions. These exclusions will be labor intensive on the front end in order to ultimately provide regulatory relief. It is estimated that any time that would have been available as a result of the reduced number of PSD/NSR permit applications will be spent responding to requests for applicability determinations or in preparing exclusionary documents for sources taking advantage of the exclusionary options. The department estimates that the costs to prepare these exclusionary documents will equal or exceed the costs of preparing PSD/NSR permits, and but may be possible to

absorb within the agency's budget. These fiscal impacts were reported in the Fiscal Estimate prepared for Natural Resources Board Order AM-06-04. Fiscal impacts associated with this proposed rule will not go beyond those estimated under Order AM-06-04. Thus no additional fiscal impacts are expected.

Long range fiscal implications: As a result of the revisions, fewer projects will be reviewed each year under federal air permit provisions resulting in lost program revenue, a portion of which may be reacquired by additional applications for state construction permits.

Submittal of comments and copy of proposed rules

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Jeff Hanson, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 1, 2004. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained by writing Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-7718.

Notice of Hearings

Natural Resources

Environmental Protection—Air Pollution Control, **Chs. NR 400—**

[CR 04-107]

(Reprinted from 9-30-04 Register)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1) and (6), 285.60 (2g), (3) and (6) and 285.69 (1), Stats., interpreting ss. 285.11 (6), 285.60 (2g) and (3), 285.61 and 285.62, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 400, 406, 407 and 410, Wis. Adm. Code, relating to implementing general and registration air permit programs required by 2003 Wisconsin Act 118. The State Implementation Plan developed under s. 285.11 (6), Stats., will also be revised. The proposed rule revision establishes criteria and procedures for the issuance of general and registration air permits. These rules are intended to provide industry and the Department with a streamlined approach to permitting low emitting sources or categories of similar sources. Sources that are eligible for and which choose to take advantage of a general or registration permit would complete a simplified permit application form. General and registration permits would already have been completed by the Department for the targeted sources or source categories using permit language that is standard for the sources to be covered by the permit. This process will provide greater certainty, flexibility and timeliness to the permitting process.

The proposed rule establishes the general framework for these permits by setting implementation criteria. Specific permit criteria will be developed during permit preparation of sources that could be regulated by registration or general permits include those that have actual emissions significantly lower than federal major source thresholds, nonmetallic mineral processing plants, asphalt plants, small natural gas fired generators, digestors, small heating units, printing presses and hospital sterilization equipment.

Also included in this proposed rule is a minor change to clarify the permit exemption criteria for grain processing and grain storage facilities. This clarification is necessary to ensure that column dryers and rack dryers are included in the

exemption criteria, as was intended in the original rule development. Included in this package as well is a minor technical change to provide correct references to the recently updated ch. NR 445 which was inadvertently omitted in the processing of that rule package.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at:
SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

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

Thursday, October 28, 2004 at 3:00 p.m.
Room 511, GEF #2
101 South Webster Street
Madison

Wednesday, November 3, 2004 at 1:00 p.m.
Room 141, DNR SE Region Hdqrs.
2300 N. Dr. Martin Luther King Jr., Drive
Milwaukee

Thursday, November 4, 2004 at 1:00 p.m.
Schmeekle Room, UW-Stevens Point
2419 North Point Drive
Stevens Point

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 Bob Eckdale at (608) 266-2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The use of general and registration permits will result in reduced programmatic costs in the long run. While the Department will spend resources similar to that of a standard permit review to prepare a general permit or a registration permit, the resulting product will be used to regulate several similar sources resulting in lower costs associated with review of permit applications.

It is anticipated that approximately 50 registration permits and 50 general permits will be issued for new construction annually. Under proposed fees for these projects, the department would see \$155,000 in additional revenue. If these projects were required to undergo the traditional permit route, the Department would garner approximately \$500,000 in permit fees for these projects. Although the registration and general permit programs will result in less administrative burden for regulated facilities, the department will incur the costs of implementing the program and developing permits for use under these programs. Thus, these programs are not expected to change the department's need for permitting resources.

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Jeff Hanson, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 5, 2004. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained by writing Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-7718.

Notice of Hearings

Natural Resources

Environmental Protection—Air Pollution Control, **Chs. NR 400—**

[CR 04-102]

(Revised from 9-30-04 Register)

NOTICE IS HEREBY GIVEN that pursuant to s. 285.69 (3), Stats., interpreting s. 285.69 (3), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 406 and 410, Wis. Adm. Code, relating to asbestos permit exemption fees and inspection fees and a program for recovering the exact costs of laboratory fees for sample analysis for the asbestos program. The State Implementation Plan developed under s. 285.11 (6), Stats., will also be revised. Section NR 410.05 explains the scenarios in which a fee is charged with the Notification of Intent to Demolish and Renovate required in ch. NR 447. The current language establishes three fees based on the amount of friable asbestos containing material that will be involved in the scope of the project. This order modifies ch. NR 410 by increasing the inspection fee amounts that can be collected, as well as adding a new level in which inspection fees can be charged. This order also revises language in chs. NR 406 and 410 that is inconsistent with ch. NR 447. Finally, the proposed rule creates the ability to charge the costs of laboratory analysis for samples taken at nonresidential demolition and renovation projects.

Initial regulatory flexibility analysis

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

a. Types of small businesses affected: Building owners, asbestos abatement contractors, demolition contractors and environmental consultants.

b. Description of reporting and bookkeeping procedures required: No additional compliance or reporting requirements are required.

c. Description of professional skills required: No additional skills are required.

The Department's Small Business Regulatory Coordinator may be contacted at: SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

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

Department's consideration of the impacts of the proposal and reasonable alternatives.

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

Wednesday, October 13, 2004 at 11:30 a.m.

Room 139, DNR SE Region Hdqrs.
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee

Thursday, October 14, 2004 at 11:30 a.m.

Prairie Room, Portage County Library
1001 Main Street
Stevens Point

Friday, October 15, 2004 at 11:30 a.m.

Room 349, GEF #3
125 South Webster Street
Madison

Thursday, October 28, 2004 at 11:30 a.m.

Room 774B, GEF #2
101 South Webster Street
Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bob Eckdale at (608) 266-2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

1. The Department's existing asbestos program oversees ch. NR 447, Control of Asbestos Emissions. 2003 Wisconsin Act 33 provided for an increase and fee cap to the combination of abatement project permit exemption review and inspection fees that are collected through s. NR 410.05. Act 33 also created a provision for responsible owners or operators to pay for actual costs of lab analysis of samples collected by the Department for non-residential asbestos demolition and renovation projects. The system for billing the responsible owner/operator will not cause any increase in state costs in modifying existing billing systems for either the Department or the Department's Laboratory, the State Lab of Hygiene's

Wisconsin Occupational Health Laboratory (WOHL). The WOHL indirect rate for sample analysis costs includes the costs for billing owners/operators.

2. Governmental fire departments may see the increase in the combination of permit exemption and inspection fees for conducting fire training burns on existing structures that are part of a commercial or other development project. Existing fees are already charged to fire departments. In June 1995, the fees required in the asbestos regulations were waived for residential-type dwelling units or structures used for legitimate fire department training burns that are not part of a commercial or other developmental project. As a result, currently less than 5% of the fire training burn projects are required to submit a fee. Schools and sewerage districts having renovation or demolition work will also be charged the fee increase based on the amount of asbestos abated. Fees for both governmental fire departments and schools will depend also on the amount of regulated asbestos abatement projects that occur within a given year.

3. Small business owners fee increases will depend on the amount of regulated asbestos and the amount of abatement projects that they have within a given year. Typically, asbestos abatement companies pay the fees as operators for the owner and pass on these costs in the overall bill to the property owner. Overall, the margin of profit for operators may decrease on small asbestos abatement projects as a result of the fee increase.

Long-range fiscal implications. It is estimated that asbestos fee revenues will remain stable due to the presence of asbestos in buildings and increase in building recycling.

Submittal of comments and copy of proposed rules:

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. Mail to Nathan Luedke, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 1, 2004. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained by writing Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-7718.

Rule orders filed with the revisor of statutes bureau

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

**Commerce
(CR 04-035)**

An order affecting Chs. Comm 2 and 81 to 85, relating to the uniform state plumbing code and fees.
Effective 1-1-05.

**Commerce
(CR 04-054)**

An order affecting Ch. Comm 40, relating to gas systems.
Effective 12-1-04.

**Health and Family Services
(CR 04-056)**

An order affecting ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).
Effective 11-1-04.

**Natural Resources
(CR 04-022)**

An order affecting ch. NR 208, relating to wastewater treatment works compliance maintenance.
Effective 12-1-04.

**Natural Resources
(CR 04-048)**

An order affecting ch. NR 46, relating to the administration of the Forest Crop Law and the Managed Forest Law.
Effective 11-1-04.

**Public Instruction
(CR 04-027)**

An order affecting ch. PI 6, relating to public librarian certification.
Effective 12-1-04.

Public notices

Health and Family Services
(Medical Assistance Reimbursement for Services Provided by
Free–Standing End Stage Renal Disease Providers)

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

The Wisconsin Department of Health and Family Services is proposing to modify the reimbursement rate for services provided by free–standing end stage renal disease (ESRD) providers. This notice is being published in compliance with 42 CFR § 447.205, which requires the state Medicaid agency to provide public notice of any significant proposed change in its methods and standards for setting payment rates for services. The Department's proposal involves no change in services.

Proposed Change

2003 Act 33, the 2003–2005 biennial budget, directed the Department to change the Medicaid reimbursement rate for free–standing ESRD clinics. The Department will pay free–standing ESRD providers the Medicare reimbursement rate for the services that they provide.

Wisconsin Medicaid will reimburse free–standing ESRD providers the full Medicare payment plus the Medicare coinsurance and deductible, minus any applicable Medicaid copayments. Wisconsin Medicaid will issue interim payments at the estimated Medicare levels for claims with DOS on and after November 1, 2004, until the system is fully operational and able to process claims according to Medicare's guidelines. This is currently estimated to be April 15, 2005. Once claims are processed at Medicare's reimbursement rate, the interim payments will be reconciled against the claim payments.

The proposed change is to adopt the Medicare reimbursement rate for services provided by free–standing ESRD providers. The change will apply to dialysis services provided on dates of service on and after November 1, 2004.

The projected fiscal effect of these changes is a savings of \$4.041 million GPR and \$5.659 million FED for a total of \$9.7 million AF in state fiscal year 2005.

Notice of this change was previously given in the Administrative Register on June 14, 2004, with a proposed effective date of July 1, 2004. Notice is being republished to announce a new effective date and to correct certain information relating to the proposed rate methodology. On September 29, 2004, the Department also submitted to the federal Department of Health and Human Services (HHS) a proposed Medicaid State Plan Amendment reflecting this change. The Amendment is proposed to be effective on November 1, 2004. HHS has 90 days to approve, deny, or request further information about the proposed amendment.

Copies of the Proposed Change:

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

Regular Mail

Marge Hannon Pifer
Bureau of Fee–for–Service Health Care Benefits
Division of Health Care Financing
P.O. Box 309
Madison, WI 53701–0309

Phone

Marge Hannon Pifer
(608) 266–1940

FAX

(608) 266-1096

Attention: Marge Hannon Pifer

E-Mail

pifermh@dhfs.state.wi.us

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

Written Comments

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

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

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