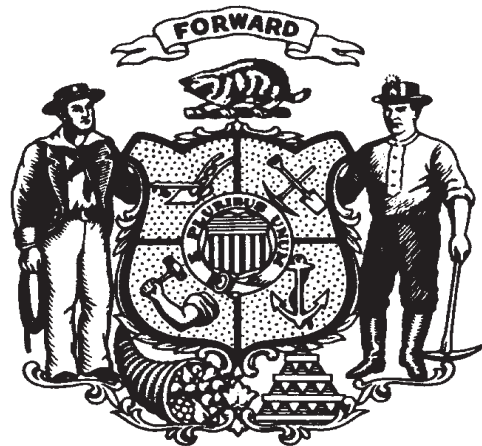


Wisconsin Administrative Register

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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.

Agriculture, Trade & Consumer Protection (2)

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

Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection currently administers an agricultural producer security program under ch. 126, Stats. (“producer security law”). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors who procure agricultural commodities from producers.

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund (“the fund”). If a contractor defaults in payments to producers, the department may compensate producers from the fund. A contractor’s annual fund assessment is based, in large part, on the contractor’s annual financial statement. The producer security law spells out a formula for calculating assessments. However, the department may modify assessments by rule.

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

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

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

Publication Date: January 29, 2004

Effective Date: January 29, 2004

Expiration Date: June 27, 2004

Hearing Dates: April 26 and 27, 2004

Extension Through: September 30, 2004

2. Rules adopted creating **ss. ATCP 99.135, 99.255, 100.135 and 101.255**, relating to the reduction of certain annual agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

Finding of emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) currently administers an agricultural producer security program under ch. 126, Stats. (“producer security law”). This program is designed to protect agricultural producers from catastrophic financial defaults by contractors who procure agricultural commodities from producers.

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund (“the fund”). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. Fund assessments are calculated according to a statutory formula, but DATCP may modify fund assessments by rule.

(3) The law directs DATCP to obtain bonds or other backup security for the fund. The backup security is intended to protect producers against large contractor defaults that may exceed the capacity of the fund. But changes in the insurance and bonding industry have prevented DATCP from obtaining any backup security (DATCP has received no acceptable bids).

(4) Before the fund was created in 2002, contractors who failed to meet minimum financial standards were required to file individual security (typically a bond or letter of credit) with DATCP. The amount of security was based on the size of the contractor’s producer payroll (potential default exposure). DATCP returned much of this security after the fund was created. But because DATCP was unable to obtain backup security for the fund, DATCP retained security from some of the largest contractors. DATCP did this in order to protect agricultural producers against large contractor defaults that might exceed the capacity of the fund.

(5) DATCP’s action protected agricultural producers against catastrophic defaults, but imposed additional costs on some large contractors. The affected contractors (approximately 6 contractors) must now pay security costs *and* fund assessments. This emergency rule reduces fund assessments for these contractors, to compensate for the added security costs that the contractors must incur.

(6) This temporary emergency rule will provide needed financial relief (assessment reductions) to the affected contractors in the current license year, pending the adoption of permanent rules to provide longer term relief. This emergency rule will provide cost savings and fairer treatment to the affected contractors, consistent with the original intent of the producer security law, pending the adoption of permanent rules. This emergency rule will promote the public welfare by helping to maintain the security, stability and competitiveness of Wisconsin's agricultural economy and processing industry.

Publication Date: April 29, 2004
Effective Date: April 29, 2004
Expiration Date: September 26, 2004

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

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–)**

- 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.

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

- 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

- 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
[See Notice this Register]

- 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

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 s. NR 310.17 (4) (a).

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:

- 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.

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:

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

[See Notice this Register]

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.

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

- 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:

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

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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

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

6. 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.

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
[See Notice this Register]

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
[See Notice this Register]

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
[See Notice this Register]

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:

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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.

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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: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
 [See Notice this Register]

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

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:

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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.

Publication Date: August 24, 2004
Effective Date: August 24, 2004
Expiration Date: January 21, 2005
Hearing Date: September 28, 2004
 [See Notice this Register]

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
 [See Notice this Register]

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

Veterans Affairs

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

Exemption from finding of emergency

The legislature by Section 9158 of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Veterans Affairs.

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

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

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

Publication Date: March 30, 2004
Effective Date: March 30, 2004
Expiration Date: August 27, 2004
Hearing Date: June 18, 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 manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel.”

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

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

Nonmedical home care companion employees who are employed by a third–party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter

and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for–profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

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

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

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

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

Scope statements

Health and Family Services

Subject

Objective of the rule. The Department proposes to revise section HFS 107.07, relating to dental services under the Medical Assistance (MA) program.

Policy analysis

Pursuant to the authority provided under s. 49.45 (10), Stats., to promulgate rules to administer the Medical Assistance program, the Department intends to revise s. HFS 107.07 to do the following:

1. Reduce the number of services requiring prior authorization;
2. Change the coverage status of several services;
3. Update the rules for consistency with current dental practices and the MA dental services benefit; and
4. Improve the organization of s. HFS 107.07.

Statutory authority

Sections 49.45 (10) and 227.11 (2), Stats.

Staff time required

The Department estimates that it will take approximately 30 hours of staff time to develop the proposed rules.

Entities affected by the rules

Business entities affected will include dentists, dental offices, Federally Qualified Health Centers (FQHCs) to the extent they have a dental operation, and the Department's HMO partners in Southeastern Wisconsin (Milwaukee, Kenosha, Racine, and Waukesha Counties).

Comparison to federal regulations

42 CFR § 440 addresses Medical Assistance, including required and optional services provided under State Plans.

Natural Resources

Subject

Objective of the rule. The objective of the proposed rules is to address department and angler fisheries concerns via regulation changes proposed for the 2005 spring hearings.

Policy analysis

The Department is beginning the administrative process of developing fishing regulation changes that we anticipate recommending for the 2005 Spring Fish and Wildlife Rules Hearings.

A variety of fishing regulation changes will be proposed by Fisheries and Law Enforcement staff to address fishery, law enforcement, and angler concerns. Proposed rule changes will be approved through joint review. Approved proposals will be developed for inclusion in the 2005 Spring Hearings. At this time, the Bureau of Fisheries Management and Habitat Protection, Law Enforcement and local fisheries staff are in the process of developing rule change proposals. The FH

Bureau will then review the proposals with the Bureaus of Law Enforcement and Legal Services.

Statutory authority

Section 29.014, 29.024, 29.041, and 227.11, stats.

Staff time required

Approximately 260 hours will be needed by the Department to develop these rules.

Entities affected by the rules

These proposed fishing regulation changes would affect and are of interest to most anglers in the state, and could be of interest to those in the tourism industry involved in fishing. New regulations may result in increased law enforcement, fisheries and customer service work load as anglers become familiar with new rules. At the same time, rule simplifications may reduce work load.

Comparison to federal regulations

There are no federal regulations regarding recreational fishing regulations. That authority is given to the State.

Natural Resources

Subject

Objective of the rule. Chapter NR 460 (Emission Standards for Hazardous Air Pollutants For Source Categories – General Provisions) is amended to incorporate amendments made to the federal general provisions. Chapter NR 463 (Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks) is amended to incorporate amendments made to the federal chromium standard and renumbered to create subchapter I. Other chapters may be amended, if germane and appropriate, to accomplish the actions described above.

Policy analysis

There are no policy issues to be resolved. The US EPA amended the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories: General Provisions (40CFR Part 63, Subpart A) on April 5, 2002 and the NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40CFR Part 63, Subpart N) on July 19, 2004. This action incorporates the federal amendments into the corresponding portions of the Wisconsin Administrative Code.

Statutory authority

Sections 285.11 (1), 285.27 (2), and 227.11 (2) (a), Stats.

Staff time required

About 200 hours of Department staff time will be needed to amend these rules.

Comparison to federal regulations

This action will amend existing state rules to make them identical to the already amended federal rules.

Entities affected by the rules

The amendments to the general provisions could affect up to 1,000 facilities statewide, and the amendments to the

chromium standard could affect up to 35 facilities statewide. It is expected that the placement of these requirements in the Administrative Code will make it easier for regulated facilities to interact with the regulating authority (DNR instead of EPA).

Natural Resources

Subject

Objective of the rule. Appendix PPPP in chapter NR 460 and subchapter IV in chapter NR 465 will be created to incorporate national emission standards for hazardous air pollutants (NESHAP) for the surface coating of plastic parts and products. Appendix MMMM in chapter NR 460 and subchapter V in chapter NR 465 will be created to incorporate NESHAP for the surface coating of miscellaneous metal parts and products. Other chapters may be amended, if germane and appropriate, to accomplish the actions described above.

Policy analysis

There are no policy issues to be resolved. The US EPA promulgated the NESHAP for the surface coating of miscellaneous metal parts and products, effective January 2, 2004 (40 CFR part 63, Subpart MMMM), and the NESHAP for the surface coating of plastic parts and products, effective on April 19, 2004 (40 CFR Part 63, Subpart PPPP). The two NESHAP establish maximum achievable control technology (MACT) requirements for these two source categories. This action incorporates these two NESHAP into the Wisconsin Administrative Code.

Section 285.27 (2), Stats., requires that the Department promulgate NESHAP by rule. In addition, since these two NESHAP each affect more than ten facilities in Wisconsin, promulgation into state rule is consistent with the MACT Streamlining Policy approved by the Natural Resources Board.

Statutory authority

Sections 285.11 (1), 285.27 (2), and 227.11 (2) (a), Stats.

Staff time required

About 500 hours of Department staff time will be needed to develop these rules.

Comparison to federal regulations

This action will amend existing state rules to make them identical to the already amended federal rules.

Entities affected by the rules

As noted above, the federal NESHAP for the two source categories are existing federal regulations. While some changes to the federal rule language and organization will be necessary to accommodate state administrative rule format, no substantial changes will be made, and the state rules will be essentially identical to the federal NESHAP.

Transportation

Subject

Objective of the rule. This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding 4 highway segments to the network. The actual segments being proposed are:

STH 27 from STH 171 at Mt. Sterling to USH 14 S. of Viroqua

CTH S from CTH B to 7258 CTH S

CTH B from USH 53 to CTH S

CTH P from USH 2 to CTH B

Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to make changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received requests from Ralph Hamel of Ralph Hamel Forest Products, Inc., in Vesper, WI, and Lemone Transfer of Lake Nebagamon, WI, to add these highway segments.

Comparison to federal regulations

In the Surface Transportation Assistance Act of 1982 (STAA), the federal government acted under the Commerce clause of the United States Constitution to provide uniform standards on vehicle length applicable in all states. The length provisions of STAA apply to truck tractor–semitrailer combinations and to truck tractor–semitrailer–trailer combinations. (See Jan. 6, 1983, Public Law 97–424, § 411) The uniform standards provide that:

- No state shall impose a limit of less than 48 feet on a semitrailer operating in a truck tractor–semitrailer combination.
- No state shall impose a length limit of less than 28 feet on any semitrailer or trailer operating in a truck tractor–semitrailer–trailer combination.
- No state may limit the length of truck tractors.
- No state shall impose an overall length limitation on commercial vehicles operating in truck tractor–semitrailer or truck tractor–semitrailer–trailer combinations.
- No state shall prohibit operation of truck tractor–semitrailer–trailer combinations.

The State of Wisconsin complied with the federal requirements outlined above by enacting 1983 Wisconsin Act 78 which amended s. 348.07 (2), Stats., and s. 348.08 (1), Stats. This act created ss. 348.07 (2) (f), (fm), (gm) and 348.08 (1) (e) to implement the federal length requirements. In 1986 the legislature created s. 348.07 (2) (gr), Stats., to add 53 foot semitrailers as part of a two vehicle combination to the types of vehicles that may operate along with STAA authorized vehicles. (See 1985 Wisconsin Act 165)

The vehicles authorized by the STAA may operate on the national system of interstate and defense highways and on those federal aid primary highways designated by regulation of the secretary of the United States Department of Transportation. In 1984 the USDOT adopted 23 CFR Part 658 which in Appendix A lists the highways in each state upon which STAA authorized vehicles may operate. Collectively these highways are known as the National Network. In 1983 Wisconsin Act 78, the legislature enacted § 348.07(4), Stats., which directs the Wisconsin Department of Transportation to adopt a rule designating the highways in Wisconsin on which STAA authorized vehicles may be operated consistent with federal regulations.

The Department of Transportation first adopted ch. Trans 276 of the Wisconsin Administrative Code in December of 1984. The rule is consistent with 23 CFR Part 658 in that the Wisconsin rule designates all of the highways in Wisconsin that are listed in 23 CFR Part 658 as part of the National

Network for STAA authorized vehicles. The federal regulation does not prohibit states from allowing operation of STAA authorized vehicles on additional state highways. The rule making authority granted to the Wisconsin Department of Transportation in s. 348.07 (4), Stats., allows the DOT to add routes in Wisconsin consistent with public safety. The rule making process also provides a mechanism to review requests from businesses and shipping firms for access to the designated highway system for points of origin and delivery beyond 5 miles from a designated route. A process to review and respond to requests for reasonable access is required by 23 CFR Part 658.

Entities affected by the rules

The rule will affect the requesters of the routes to be designated and other operators of commercial motor vehicles.

Statutory authority

Section 348.07 (4), Stats.

Staff time required

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

Veterans Affairs**Subject**

Objective of the rule. The Department seeks to update the interment fees charged to a veteran's spouse or other eligible

dependent for burial in a state veterans' cemetery. The fees will be changed to more accurately reflect the current cost of interment.

Policy analysis

The Department is required to operate the state veterans' cemeteries in a fiscally responsible manner. The fees were initially set in 1996 and were calculated based upon the average cost to the department of interring a spouse or other dependent. The costs associated with operating the cemeteries have increased over the past 8 years. Accordingly, the Department must adjust the interment fees to reflect the current cost of interment.

Statutory authority

Section 45.358 (3m)

Staff time required

Approximately 5 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

Entities affected by the rules

The rule will affect veterans' spouses and other eligible dependents who choose to be interred in a state veterans cemetery.

Comparison to federal regulations

The state veterans' cemeteries are operated under the authority of state law. There is no existing or proposed federal regulation that has any bearing upon the proposed rule.

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On August 24, 2004, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

This order proposes revising ch. ATPC 30, relating to atrazine restrictions for 2005.

Agency Procedure for Promulgation

The department will hold a public hearings on this rule on October 5, 2004.

The department's Agricultural Resource Development Division is primarily responsible for this rule.

Contact Information

Randy Zogbaum
608 224–4524

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On August 30, 2004, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

This order proposes revising ch. ATPC 75, relating to retail food establishments.

Agency Procedure for Promulgation

The department will hold a public hearings on this rule on October 7, 2004.

The department's Food Safety Division is primarily responsible for this rule.

Contact Information

Wayne A. Kopp
608 224–4718
wayne.kopp@datcp.state.wi.us

Dentistry Examining Board

Rule Submittal Date

On August 27, 2004, the Dentistry Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 447.02 (2) (b), Stats.

The proposed rule-making order relates to the requirements for administering the office facilities and

equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

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.

Health and Family Services

Rule Submittal Date

On August 17, 2004, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject Matter

This order proposes revising ch. HFS 196, relating to restaurants, including its Appendix, known as the Wisconsin Food Code.

Agency Procedure for Promulgation

Public hearings will be held on October 7, 2004.

Contact Information

James Kaplanek
608–261–8361
kaplajh@dhfs.state.wi.us

Regulation and Licensing

Rule Submittal Date

On September 1, 2004, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject Matter

This proposed rule-making order relates to criminal background investigations and fingerprinting of applicants.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 1, 2004 at 9:00 a.m. in Room 179A, 1400 East Washington Avenue, Madison, WI 53702.

Contact Information

Pamela Haack, Paralegal
608–266–0495

Rule–making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 04–094]

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed amendment to chapter ATCP 30, Wis. Adm. Code, relating to the use of atrazine pesticides. The hearing will be held at the time and place shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until October 22, 2004, for additional written comments.

Written comments should be sent to the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management attention Randy Zogbaum, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708. Written comments can be submitted via email to randy.zogbaum@datcp.state.wi.us.

You may obtain a free copy of this rule and the environmental impact statement by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224–4524 or emailing randy.zogbaum@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to:

http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=26421661&infobase=code.nfo&j1=atcp%20&jump=atcp%20&softpage=Browse_Frame_Pg

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **September 24, 2004**, by writing to Randy Zogbaum, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4524. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

Hearing Location:

Tuesday, October 5, 2004, 4 p.m. to 7 p.m.

Adams County Library

569 North Cedar Street

Meeting Room

Adams, WI 53910

Handicapped accessible

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates pesticide use to prevent groundwater contamination. Current rules restrict the use of atrazine pesticides, and prohibit atrazine use in areas where groundwater contamination has exceeded state enforcement standards established by the Department of Natural Resources (“DNR”).

This rule update expands one current atrazine prohibition area in Adams County, based on new groundwater data

showing atrazine contamination in excess of DNR enforcement standards. This rule adds 1,280 acres to the current prohibition area. This rule does not eliminate any prohibition areas.

Statutory Authority

Statutory authority: ss. 93.07 (1), 94.69 (1), 160.19 (2), and 160.21 (1), Stats.

Statutes interpreted: ss. 94.69, 160.19, 160.21, 160.23 and 160.25, Stats.

DATCP has broad authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP has authority to adopt pesticide rules under s. 94.69 (1), Stats. Under ss. 160.19 (2) and 160.21 (1), Stats., DATCP must regulate pesticide use, as necessary, to prevent groundwater contamination and restore groundwater quality.

Background

DATCP currently regulates atrazine use to protect Wisconsin groundwater. Atrazine is an agricultural herbicide that has been widely used for many years. Atrazine has been found in groundwater in many areas of the state. Current DATCP rules do all the following:

- Specify maximum atrazine use rates. These rates are about half the rates normally allowed under the federal label.
- Limit the timing of atrazine applications. Under current rules, atrazine applications are allowed only from April 1 through July 31.
- Prohibit atrazine use on 1.2 million acres of land. Current rules prohibit atrazine use in 102 designated areas where contamination has been found at or above groundwater enforcement standards adopted by DNR. Current rules also prohibit atrazine mixing and loading operations that are not conducted over a spill containment surface.

Current rules spell out standards for the creation and repeal of prohibition areas. DATCP updates its atrazine rules each year, based on existing regulatory standards and new groundwater findings. This rule is a routine annual update to DATCP’s current atrazine rules.

Rule Content

This rule expands one current prohibition area in Adams County, based on existing regulatory standards and new groundwater findings. This rule adds 1,280 acres to the current prohibition area (this rule contains a map showing the expanded prohibition area). This rule does not repeal any existing prohibition areas.

Environmental Impact

This rule will help to protect and restore groundwater quality in Adams County. The attached Environmental Impact Statement provides background information related to DATCP’s overall regulation of atrazine pesticides. This rule is consistent with the state groundwater law, and with the overall protocol for atrazine regulation that has been in effect since 1991.

Fiscal Impact

This rule will require some additional department expenditures for groundwater testing and informational services related to the expanded prohibition area. The department expects to absorb these expenditures within the department’s current budget. For more information contact Randy Zogbaum at (608) 224–4524.

Business Impact

This rule will have affect 2 to 4 farmers located in the expanded atrazine prohibition area created by the rule. However, those farmers have other pesticides available for weed control. This rule will not have a significant economic impact on farmers or other businesses, and is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.. For more information contact DATCP small business regulatory coordinator Dennis Fay at (608) 224–5031 or email at dennis.fay@datcp.state.wi.us.

Federal Regulations

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency (“EPA”). Persons may not use pesticides in a manner inconsistent with the federal label.

The current federal label for atrazine suggests that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clearer, more definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to create a pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin’s current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

Adjacent State Regulations

Wisconsin atrazine regulations are stronger than those in adjacent states:

- Iowa restricts atrazine application rates to 1/2 the federal label rate in 23 counties (7 with county–wide restrictions and 16 with restrictions in some townships).
- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination exceeds a level of concern. This program suggests pesticide use restrictions or management practices to reduce surface water or groundwater contamination. To date, this program has not been implemented anywhere in Minnesota.
- Illinois and Michigan have no atrazine regulations.

Businesses Affected

The changes to ch. ATPC 30, Wis. Adm. Code, Appendix A will affect small businesses in Wisconsin. The greatest small business impact of the changes will be on users of atrazine — farmers who grow corn. The proposed prohibition area contains approximately 1280 acres. Assuming that 50% of this land is in corn and that 50% of these acres are treated with atrazine, then 320 acres of corn will be affected. Between 2 and 4 producers would be affected, depending on their corn acreage and their reliance on atrazine products. These producers are small businesses, as defined by s. 227.114 (1) (a), Stats. Secondary effects may be felt by distributors and applicators of atrazine pesticides, crop consultants and equipment dealers. Since the secondary effects relate to identifying and assisting farmers in implementing alternative weed control methods, these effects will most likely result in additional or replacement business and the impacts are not further discussed in this document.

Specific economic impacts of alternative pest control techniques are discussed in the environmental impact statement for this rule.

Reporting, Recordkeeping and Other Procedures Required for Compliance

The maximum application rate for atrazine use in Wisconsin is based on soil texture. This may necessitate referring to a soil survey map or obtaining a soil test. While

this activity is routine, documentation would need to be maintained to justify the selected application rate. A map delineating application areas must be prepared if the field is subdivided and variable application rates are used. This procedure is already required under the current rule.

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

Atrazine cannot be used in certain areas of Wisconsin where groundwater contamination exceeds the atrazine enforcement standard in s. NR 140.10 Wis. Adm. Code.

Professional Skills Required to Comply

The proposed changes affect how much atrazine can be applied and on which fields. Because overall use of atrazine will be reduced in Wisconsin, alternative weed control techniques may be needed in some situations. These techniques may include different crop rotations, reduced atrazine rates, either alone or in combination with other herbicides, or combinations of herbicides and mechanical weed control measures.

While alternative weed control techniques are available, adoption of these techniques on individual farms will in some cases require assistance. In the past, this type of assistance has been provided by University of Wisconsin Extension personnel and farm chemical dealers. In recent years, many farmers have been using crop consultants to scout fields, identify specific pest problems and recommend control measures. The department anticipates these three information sources will continue to be used as the primary source of information, both on whether atrazine can be used and which alternatives are likely to work for each situation.

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 04–096]

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a joint hearing with the Wisconsin Department of Health and Family Services (DHFS). At the hearing, DATCP will propose to make minor changes to the rule regulating food safety in retail food establishments, such as grocery stores, and to update the Wisconsin Food Code. DHFS will propose separate but nearly identical rules for restaurants.

The public hearing will be held by videoconference on October 7, 2004, at the places shown below. DATCP invites the public to attend the hearing at these locations and comment on the proposed rule. Following the public hearing date, the hearing record will remain open until October 22, 2004, for additional written comments, which may be sent to the Division of Food Safety at the address (below) or by e–mail to hearingcomments@datcp.state.wi.us.

DATCP’s proposed rule will be posted at 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 the department:

Division of Food Safety
 Department of Agriculture, Trade and Consumer Protection
 P.O. Box 8911
 Madison, WI 53708–8911
 Telephone: (608) 224–4700
 E–mail: kathy.porter@datcp.state.wi.us

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 (e-mail: keeley.moll@datcp.state.wi.us), at the Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911; telephone (608) 224–5039.

Hearing-impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by Thursday, September 24, 2004, by contacting Debbie Mazanec (e-mail: Debbie.mazanec@datcp.state.wi.us), P.O. Box 8911, Madison WI 53708–8911; telephone (608) 224–4712; or telephone message relay system (TTY) at (608) 266–4399 to forward your call to the department at (608) 224–5058. Handicap access is available at all locations for the hearing.

Hearing will be held on **Thursday, October 7, 2004**, from 9:30 a.m. through 12:30 p.m., via interactive videoconferencing at the following locations:

Madison – Main Broadcast Center
UW Pyle Center
Room 227
702 Langdon St.
Madison, WI 53706

Waukesha
Waukesha State Office Building
Department of Transportation Offices
Room 153
141 NW Barstow St.
Waukesha, WI 53188

Appleton
Fox Valley Technical College
Room G1131
1825 Bluemound Dr.
Appleton, WI 54913–2277

Wisconsin Rapids
Dept. of Transportation
Room 120
1681 2nd Ave. S
P.O. Box 8021
Wisconsin Rapids, WI 54495–8021

Eau Claire
Eau Claire State Office Building
Room 139
718 W. Clairemont Ave.
Eau Claire, WI 54702

Spooner
WI DNR Northern Region Office
Conference Room
810 West Maple St.
Spooner, WI 54801

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) currently licenses and inspects retail food establishments, such as grocery stores. DATCP has adopted food safety rules for retail food establishments. The current rules are based on the federal Model Food Code. This rule updates the Wisconsin Food Code, based on changes contained in the most current (2001) edition of the federal Model Food Code. This rule also makes other minor changes to clarify current rules.

The Wisconsin Department of Health and Family Services (“DHFS”) is proposing nearly identical rules for restaurants. This is a joint effort by DATCP and DHFS to maintain consistent and up-to-date standards for all retail food operations. Some grocery stores include restaurants, and vice-versa. DATCP and DHFS coordinate their licensing and inspection activities so that there is no regulatory overlap.

Rulemaking Authority

Statutory Authority: ss. 93.07 (1), 97.30 (5) and 227.14 (1s), Stats.

Statute Interpreted: s. 97.30, Stats.

DATCP has broad authority, under s. 93.07 (1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP licenses retail food establishments under s. 97.30, Stats. DATCP may adopt rules for retail food establishments, pursuant to s. 97.30 (5), Stats. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling, display and storage; and food sources and food labeling.

The format of the Wisconsin Food Code is different from that of most state administrative rules. DATCP and DHFS are authorized, under s. 227.14 (1s), Stats., to use the drafting format of the federal model food code. This rule follows that authorized format.

Background

The United States Food and Drug Administration (“FDA”) publishes a federal model food code. The model food code provides practical, science-based food safety standards for grocery stores, restaurants and other retail food establishments. Many states base their retail food regulations on the federal model food code.

Current DATCP and DHFS rules are based on the 1999 version of the model food code. DATCP has adopted the model food code as an Appendix to ch. ATCP 75, Wis. Adm. Code (the Wisconsin Food Code). DHFS has adopted the model food code as an Appendix to ch. HFS 196, Wis. Adm. Code.

FDA updated the model food code in 2001. This rule updates the Wisconsin food code based on the 2001 updates to the federal model food code. This rule also makes other minor changes and clarifications to current rules.

Rule Content

This rule makes a large number of updates and technical changes to current DATCP rules. The following are some of the more significant changes:

Food Temperatures

Under current rules, “potentially hazardous foods” must be kept sufficiently hot (or sufficiently cold) to prevent the rapid and progressive growth of infectious or toxigenic microorganisms. This rule changes the required minimum temperature of hot “potentially hazardous” foods from 140o F. to 135o F. This rule also allows cold “potentially

hazardous” foods (which are normally refrigerated at 41o F. or lower) to remain unrefrigerated for up to 6 hours if certain procedures are followed.

Definitions

A restaurant is a place that prepares or serves “meals.” This rule modifies the definition of “meal” so that it no longer includes individual pastry items served with a beverage. For example, a grocery store will no longer be subject to potential regulation as a “restaurant” merely because it serves doughnuts and coffee. This rule also makes a number of other technical changes to current definitions.

Food Employees

This rule clarifies current standards related to food employee health and sanitation. Among other things, this rule does the following:

- Allows employees to contact ready-to-eat food with bare hands under certain limited conditions (special requirements apply).

- Clarifies current provisions limiting food contact by employees affected with certain illnesses or symptoms.

- Clarifies current requirements related to food employee hand-washing, and requires employees to wash hands before putting on gloves to work with food.

Food Safety and Labeling

This rule clarifies current standards related to the safety and labeling of food offered for sale in a retail food establishment. Among other things, this rule does the following:

- Clarifies current requirements related to food sources.

- Clarifies provisions related to the handling and sale of raw eggs and shellfish.

- Requires hazard control (HACCP) procedures or warning labels for unpasteurized juice.

- Clarifies date-marking requirements for ready-to-eat “potentially hazardous” foods.

- Requires warning disclosures related to the sale of certain uncooked ready-to-eat foods, including uncooked meat, fish, eggs and shellfish.

Food Equipment and Utensils

This rule makes minor clarifications related to current standards for food equipment and utensils.

Water, Plumbing and Waste

This rule makes minor technical changes suggested by the Department of Commerce, Wisconsin’s plumbing code agency. It also makes minor technical changes related to handwash sinks and temporary food establishments.

Buildings and Facilities

This rule does the following:

- Prohibits facility configurations that cause the general public to enter or exit a retail food establishment through a food processing area.

- Requires food establishments to comply with applicable provisions of the Wisconsin commercial building code.

- Makes other minor technical changes related to standards for retail food buildings and facilities.

License Fee Correction

Current rules incorrectly set an annual license fee of \$60 for retail food establishments with annual food sales of less than \$25,000. This rule corrects (reduces) the license fee to \$40, which is the fee established by s. 97.30(3m)(cm), Stats.

Fiscal Impact

This rule will have no significant fiscal effect on state or local government. The rule will not alter state or local retail food enforcement activities. A fiscal estimate is attached.

Business Impact

This rule affects retail food establishments such as grocery stores, bakeries and convenience stores. Many of these businesses are small businesses. This rule will benefit affected businesses by clarifying existing regulatory requirements. In some cases, this rule gives affected businesses wider latitude to choose a preferred method of compliance. This rule will not have a significant economic impact on small business, and is not subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats.

The rule adds some minor new requirements for some retail food establishments, but these requirements are not expected to impose any significant burdens. This rule will benefit businesses that have combined grocery and restaurant operations, because it will maintain consistency with DHFS restaurant rules. 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 will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Federal Regulation

Federal law, like state law, generally prohibits the sale of adulterated or misbranded food. There are no federal regulations that specifically address retail food operations. However, FDA publishes a model food code that is based on the best available science and information related to retail food safety.

FDA, the United States Department of Health and Human Services, and the United States Department of Agriculture encourage state and local governments to adopt retail food safety regulations that are consistent with the federal model food code. The current Wisconsin Food Code is based on the 1999 edition of the federal model food code. This rule updates the Wisconsin Food Code to incorporate changes contained in the 2001 (most recent) edition of the federal model food code.

Regulatory Approach and Supporting Information

FDA developed and published the federal model food code based on the best available science and information related to retail food safety. The federal model food code encourages consistent state and local regulation of retail food establishments. Numerous states have adopted state retail food regulations based on the federal model food code. FDA periodically updates the federal model food code. FDA adopted the latest edition in 2001 and added a supplement in 2003.

The current Wisconsin Food Code is based on the 1999 edition of the federal model food code. This rule updates the Wisconsin Food Code based on the 2001 edition of the federal model food code (as supplemented in 2003). DATCP and DHFS made minor adjustments to the model food code in consultation with Wisconsin local health agencies, the Wisconsin Conference on Food Protection, and the National Conference on Food Protection. DATCP and DHFS also drew on 2 years of field experience with the current rule.

DATCP and DHFS also developed this rule in consultation with an advisory committee that included local health agencies (large and small), the Wisconsin Grocers Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin and the University of Wisconsin Extension–Food Science.

Surrounding State Programs

The states adjacent to Wisconsin have all adopted retail food regulations based on some version of the federal model food code:

Minnesota – Minnesota’s current regulations are based on the 1997 edition of the federal model food code.

Iowa – Iowa’s current regulations are based on the 1997 edition of the federal model food code.

Illinois – Illinois’ current regulations are based on the 1995 edition of the federal model food code. Like Wisconsin, Illinois is proposing to update its regulations based on the 2001 edition of the federal model food code.

Michigan – Michigan’s current regulations, like Wisconsin’s, are based on the 1999 edition of the federal model food code.

Notice of Hearing Dentistry Examining Board [CR 04–095]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 447.02 (2) (b), Stats., and interpreting s. 447.02 (2) (b), Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. DE 11.11 and 11.12; to amend s. DE 11.02 (1) to (4); to repeal and recreate ss. DE 11.02 (5) and 11.03 to 11.10; and to create s. DE 11.02 (1m), (3m) and (6) to (11), relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia.

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), 227.11 (2) and 447.02 (2) (b), Stats.

Statutes interpreted: s. 447.02 (2) (b), Stats.

The purpose of this rule is to establish and modify the requirements for administering the office facilities and equipment required for safe and effective administration and the applicable standards of care, in addition to providing for reporting of adverse occurrences related to anesthesia administration.

These requirements are part of a recent attempt by state licensing boards to regulate “oral conscious sedation.” Oral conscious sedation drugs are being marketed to dentists for the purpose of managing patient anxiety surrounding dental work in patients that remain conscious throughout the procedure. There are inherent risks to public health and safety that must be managed.

SECTIONS 1, 2, 3, 4, 5, 6 and 7 add new definitions for “anxiolysis,” various levels of sedation, types of sedation, routes of sedation and sedation levels; and amends definitions of “local anesthesia,” “conscious sedation” and “direct supervision.”

SECTION 8 establishes and modifies requirements for administering levels 1 and 2 nitrous oxide or oxygen inhalation analgesia, level 3 enteral conscious sedation, level 3 parenteral sedation, and levels 4 and 5 deep sedation and general anesthesia. It further establishes the requirements for conforming the office facilities and equipment required for safe and effective administration and the applicable standards of care, e.g. emergency preparedness, in addition to providing for reporting of adverse occurrences related to anesthesia administration. In addition to the supervision levels set forth in this section, a permit requirement is added. Finally, the section adds a reporting requirement for dentists for any mortality or other incident resulting in any physical or mental injury that requires hospitalization if that event occurred as a result of anesthesia administration regulated by this chapter.

SECTION 9 repeals ss. DE 11.11 and 11.12.

A comparison with any existing or proposed federal regulation:

No proposed or existing federal regulation intended to address oral conscious sedation currently exists.

A comparison of similar rules in adjacent states:

Illinois

The Illinois Dental Practice Act contains specific provisions governing anesthesia. Permits are required for the administration of conscious sedation. Dentists are required to have specialized training and office facilities must contain certain equipment. Adverse occurrences are also required to be reported. Permits must be renewed biennially. Additional information is available at the Illinois website: <http://www.ildpr.com/WHO/ARprospd/WEBdentrules.pdf>

Indiana

The Indiana State Board of Dentistry requires dentists to obtain a permit prior to administering general anesthesia, deep sedation, or light parenteral conscious sedation. Education and training are required to obtain such permits. Permits must be renewed biennially. Five hours of continuing education are required for permit renewal. Certain emergency equipment is also required. Additional information is available at Indiana’s website: <http://www.ai.org/legislative/iac/T08280/A00030.PDF>

Iowa

The Iowa Board of Dental Examiners requires a permit for the administration of deep sedation, general anesthesia, and conscious sedation. Dentists are required to have specialized training and office facilities must contain certain equipment. Adverse occurrences are also required to be reported. Six hours of continuing education are required for permit renewals. Additional information is available at Iowa’s website: <http://www.legis.state.ia.us/Rules/Current/iac/650iac/65029/65029.pdf>

Michigan

The Michigan Board of Dentistry has rules governing general anesthesia and intravenous conscious sedation. The

Michigan Board is currently contemplating a rules' revision to include specific rules for conscious sedation. Additional information is available at Michigan's website: http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33811101&Dpt=CH&RngHigh

Minnesota

The Minnesota Board of Dentistry has rules governing general anesthesia and conscious sedation. Education and training are required for both. However, no special permit is issued. Additional information is available at Minnesota's website:

<http://www.revisor.leg.state.mn.us/arule/3100/3600.html>

To view the proposed rule and submit written comments via e-mail/internet, you may visit the following website:

<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Fiscal Estimate

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

Initial 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 Hearings Health and Family Services (Health, Chs. 110–)

[CR 04–093]

NOTICE IS HEREBY GIVEN that pursuant to ss. ss. 254.71 (6) and 254.74 (1), Stats., and interpreting ss. 254.61 to 254.62, 254.64 to 254.72, 254.74 and 254.85, Stats., the Department of Health and Family Services will hold public hearings to consider the proposed permanent rules amending HFS 196.04 (1) (b), (2) (b) 4., Table HFS 196.04, 196.05 (2) (a) and (b), 196.07 and Appendix; and creating HFS 196.03 (1g), (1r) and (3m) and 196.04 (1) (d) and (e), relating to restaurants and affecting small businesses.

Hearing Information

The public is invited to attend the hearing at the time and locations listed below. Comments will be heard by interactive videoconferencing from each of the listed sites.

Thursday October 7, 2004, 9:30 a.m. to 12:30 p.m.

Main Broadcast Center
Madison
UW Pyle Center
Room 227
702 Langdon Street
Madison, WI 53706

Waukesha
Waukesha State Office Building
Department of Transportation Offices
Room 153
141 NW Barstow St.
Waukesha, WI 53188

Appleton
Fox Valley Technical College
Room G1131
1825 Bluemound Dr
Appleton, WI 54913–2277

Wisconsin Rapids
Dept of Transportation
Room 120
1681 2nd Ave S
PO Box 8021
Wisconsin Rapids, WI 54495–8021

Eau Claire
Eau Claire State Office Building
Room 139
718 W. Clairemont Ave
Eau Claire, WI 54702

Spooner
WI DNR Northern Region Office
Conference Room
810 West Maple St.
Spooner, WI 54801

The hearing sites are fully accessible to people with disabilities. If you are hearing or visually impaired, do not speak English, or have circumstances that might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments may be submitted at the public hearing or in lieu of attending a public hearing, written comments can be submitted by regular mail or email to the contact person listed below. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet website at the web address listed below.

Deadline for Comment Submission

The deadline for submitting comments is 4:30 p.m., on **October 22, 2004.**

Analysis Prepared by the Department of Health and Family Services

This order proposes revising ch. HFS 196, relating to restaurants, including its Appendix, known as the Wisconsin Food Code. The operator of every restaurant in the state must have a permit from the Department of Health and Family Services or an agent local health department before the restaurant may open for business and the restaurant must maintain its permit in order for it to continue operating. The permit signifies that the restaurant complies with the

requirements in ch. HFS 196, which is intended to protect public health and safety. The requirements of this chapter are enforced either by the Department or a local health department that the Department has designated as the Department's agent.

The Department's current rules for restaurants were established in 1985 and most recently revised in 2001. Through sections one to six of this order, the Department is proposing to make the following revisions in HFS 196:

- change the term "limited term restaurant" to "pre-packaged restaurant;"
- define the terms "caterer," "contract cook" and "pre-packaged restaurant;"
- modify table HFS 196.04 to eliminate reference to the term "limited;"
- clarify that caterers operating from their permitted restaurants need not obtain additional permits for locations where the caterer serves food; and
- specify operating conditions under which contract cooks are not required to obtain restaurant permits.

Section seven of this order pertains to the Wisconsin Food Code Appendix to HFS 196 and contains the bulk of the proposed changes. The existing Wisconsin Food Code is modeled after the 1999 Food and Drug Administration (FDA) Model Food Code, which contains model requirements for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents FDA's best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service. Over 44 U.S. states and territories have adopted some version of the FDA Model Food Code and 9 states or territories are in the rulemaking process to adopt the FDA Model Food Code. The Department, which regulates Wisconsin restaurants under ch. HFS 196, and the Department of Agriculture, Trade, and Consumer Protection (DATCP), which licenses and inspects retail food establishments, such as grocery stores under ch. ATCP 75, jointly adopted the Wisconsin Food Code in 2001 for their respective regulatory activities. A common Wisconsin Food Code for restaurants and retail food establishments ensures that the same rules will apply to all types of food establishments, including combinations. Although DATCP and DHFS (or their local agents) coordinate their activities so that a combined grocery store and restaurant is regulated by DATCP or DHFS, but not both, joint adoption and updating of the Wisconsin Food Code is still important for consistent regulation.

The FDA revised its Model Food Code in 2001. The Department proposes to update the Wisconsin Food Code to the 2001 FDA Model Food Code, which reflects the most currently available science and trends in food safety. In addition, the Department proposes to clarify or correct areas of the Wisconsin Food Code that do not reflect current Department policy. Revisions to the Wisconsin Food Code will also reflect modifications from both the Wisconsin Conference on Food Protection and the National Conference on Food Protection, as well as mutually agreed upon suggestions derived from two years of field application by both the Department and DATCP.

Initial Regulatory Flexibility Analysis

The proposed changes to ch. HFS 196 will have a minimal effect on restaurants. The proposed rule changes principally clarify rule intent and allow flexibility for restaurant compliance.

Small Business Coordinator
Rosie Greer

Department of Health and Family Services
1 W. Wilson St. Rm. 658
Madison, WI 53702
Greerrj@dhfs.state.wi.us
608–266–1279
Fax: 608–267–1434

Fiscal Estimate

None of the changes in the Wisconsin Food Code will appreciably, if at all, have a fiscal effect on local government or the private sector. The only costs the Department will incur in implementing this rule will be that of copying and distributing the revised Wisconsin Food Code to affected parties. The Department can absorb this cost in its current budget.

For More Information

A copy of the full text of the rules and the full text of the fiscal estimate, and other documents associated with this rulemaking may be obtained, at no charge, from the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>. At this website you can also register to receive email notification whenever the Department posts new information about this rulemaking and, during the public comment period, you can submit comments on the rulemaking order electronically and view comments that others have submitted about the rule.

Copies of Rule and Contact Person

A copy of the full text of the rule and the fiscal estimate may also be obtained by contacting the Department's representative listed below:

James Kaplanek
Division of Public Health
Bureau of Environmental and Occupational Health
Food Safety and Recreational Licensing Section
1 W. Wilson St. Room #1051
P.O. Box 2659
Madison WI 53701–2659
608–261–8361
kaplajh@dhfs.state.wi.us
Fax: 608–267–3241

Notice of Hearings (amended from 8/31/04 Wis. Adm. Register)

Natural Resources Fish, Game, etc., Chs. NR 1— [CR 04–091]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 and 227.11, Stats., interpreting s. 29.014, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to deer management unit population goals and boundaries. The proposed rule would modify the boundaries of Deer Management Units 35, 38, 39, 75A and 76. The rule would modify the overwinter deer population goals for Units 3, 4, 15, 28, 29A, 61 and 74A. In addition, based on public comments, the Department may make goal or boundary changes to Units 3, 5, 23, 49A, 51B, 59A, 59B, 61 and 74B.

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 Department will hold an open house for one–half hour prior to each hearing. Department staff will be available to answer questions regarding the proposed rule.

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

Wednesday, September 22, 2004

Bill Lazansky Community Center
13412 Hwy. 32/64, Mountain at 6:30 p.m.

Iron River Community Center
East U.S. Highway 2
Iron River at 7:30 p.m.

Thursday, September 23, 2004

2nd Floor Conference Room
Law Enforcement Center
222 N. Beaumont
Prairie du Chien at 6:30 p.m.

Lower Level Meeting Room
Terminal Building
Rhineland/Oneida County Airport
Airport Road off U.S. Highway 8 West
Rhineland at 6:30 p.m.

Town of Brooklyn Administrative Building
400 Main Street
Brooklyn at 6:30 p.m.

Monday, September 27, 2004

Chippewa Valley Technical College
620 W. Clairemont Ave.
Eau Claire at 7:00 p.m.

Tuesday, September 28, 2004

UW Extension Ag Research Station
W6646 Hwy. 70 East
Spooner at 7:00 p.m.

Mercer Community Center
2648 W. Margaret Street
Mercer at 6:30 p.m.

Lower Level West Meeting Room
Rusk Co. Community Library
418 W. Corbett Avenue
Ladysmith at 6:30 p.m.

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

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 Mr. Brad Koele, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 14, 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 Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707.

Notice of Hearing Natural Resources

Environmental Protection – Water Regulation, Chs. NR 300—

NOTICE IS HEREBY GIVEN that pursuant to 30.01 (1am), 30.12, 30.121, 30.123, 30.13, 30.19, 30.20, 30.2035, 30.206, 30.208, 30.209, 30.28, 30.291, 30.298, 227.11 (2), 227.24, 281.22, 281.36 and 281.37, Stats., interpreting ss. 30.01 (1am), 30.10 to 30.27, 30.281, 31.02 to 31.38, 281.22, 281.36 and 281.37, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order Nos. FH–59–04(E), FH–60–04(E), FH–61–04(E), FH–62–04(E), FH–63–04(E), FH–64–04(E) and FH–65–04(E) pertaining to regulation of activities in Wisconsin's navigable public waters. These emergency orders took effect on August 24, 2004.

The emergency rules explain procedures for exemptions, general permits and individual permits, designate waters where exemptions don't apply, and provide standards for dredging and shore protection and other activities along lakes and rivers. The proposed emergency rules implement 2003 Wisconsin Act 118, which went into effect on February 6, 2004. The rules are intended to speed waterway permit decisions and assure the law changes are applied consistently statewide while maintaining the protections for lakes and rivers that are guaranteed by Wisconsin's courts and constitution. The individual emergency orders include:

- FH–59–04(E) creating ss. NR 1.05, 1.06 and 1.07 relating to Natural Resources Board policies on protection and management of public waters

- FH-60-04(E) creating ch. NR 310 relating to timelines and procedures for exemptions, general permits and individual permits for activities in navigable waterways

- FH-61-04(E) revising ch. NR 320 relating to the regulation of bridges and culverts in or over navigable waterways

- FH-62-04(E) creating ch. NR 329 relating to miscellaneous structures in navigable waterways

- FH-63-04(E) creating ch. NR 343 relating to regulation of construction dredging and enlargement of an artificial water body

- FH-64-04(E) creating ch. NR 345 relating to dredging in navigable waterways

- FH-65-04(E) creating subch. I of ch. NR 328 relating to shore erosion control of inland lakes and impoundments

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

Tuesday, September 28, 2004 at 3:00 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 Ms. Roberta Lund at (608) 266-2220 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Impact

The net fiscal impact of the rule on the Department is an ongoing cost of \$274,900 and 5 FTE, and a one time cost of \$1,976,900 and 34 FTE.

The emergency 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. Roberta Lund, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until October 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 individual emergency rules and fiscal estimate may be obtained from Ms. Lund or they are available on either the Revisor of Statutes website at www.legis.state.wi.us/rsb/code or the Department's website at www.dnr.wi.gov/org/water/fhp/waterway/emergencyrules.shtml.

Notice of Hearing Regulation and Licensing

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.03 (13) (a), Stats., as renumbered and amended by 2003 Wisconsin Act 151, and s. 440.03 (13) (b) and (c), Stats., as created by 2003 Wisconsin Act 151, and interpreting s. 440.03 (13) (a), (b) and (c), Stats., will hold a public hearing at the time and place indicated below on the

order adopting emergency rules to repeal RL 31.035 (1m) and 31.036 (1m); and to create RL 4.01 (3g), (3r) and (5m), 4.07 and 4.09, relating to criminal background investigations of applicant.

Hearing Date, Time and Location

Date: October 1, 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 October 11, 2004 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: s. 227.11 (2), Stats., and s. 440.03 (13) (a), Stats., as renumbered and amended by 2003 Wisconsin Act 151, and s. 440.03 (13) (b) and (c), Stats., as created by 2003 Wisconsin Act 151.

Statutes interpreted: s. 440.03 (13) (a), (b) and (c), Stats.

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.

Section RL 4.01 (3g) creates a definition for "credential."

Section RL 4.01 (3r) creates a definition for "credentialing authority."

Section RL 4.01 (5m) creates a definition for "investigate."

Section RL 4.07 authorizes the Department of Regulation and Licensing to continue to conduct investigations to determine whether an applicant for a credential issued by the department, an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential has been charged with or convicted of a crime.

Section RL 4.09 authorizes the Department of Regulation and Licensing to continue to conduct investigations to determine whether a holder of a credential issued by the department, an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential has been charged with or convicted of a crime.

Sections RL 31.035 (1m) and 31.036 (1m) are repealed, as s. 440.03 (13), Stats., as amended, eliminates the ability of the Department to exempt peace officers from the finger printing requirement for credentialing as a private detective or private security person.

Fiscal Estimate

The promulgation of this rule should produce no significant impact on the private sector. The Department of Regulation and Licensing will incur \$500 in costs for staff to print and distribute the rule change.

Copies of Rule and Contact Person

Copies of this emergency 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 Regulation and Licensing

[CR 04–097]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.03 (13) (a), Stats., as renumbered and amended by 2003 Wisconsin Act 151, and s. 440.03 (13) (b) and (c), Stats., as created by 2003 Wisconsin Act 151, and interpreting s. 440.03 (13) (a), (b) and (c), Stats., will hold a public hearing at the time and place indicated below to consider an order to repeal RL 31.035 (1m) and 31.036 (1m); and to create RL 4.01 (3g), (3r) and (5m), 4.07, 4.08 and 4.09, relating to criminal background investigations and fingerprinting of applicants.

Hearing Date, Time and Location

Date: October 1, 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 October 11, 2004 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: s. 227.11 (2), Stats., s. 440.03 (13) (a), Stats., as renumbered and amended by 2003 Wisconsin Act 151, and s. 440.03 (13) (b) and (c), Stats., as created by 2003 Wisconsin Act 151.

Statutes interpreted: s. 440.03 (13) (a), (b) and (c), Stats.

This proposed rule-making order is being promulgated pursuant to 2003 Wisconsin Act 151. 2003 Wisconsin Act 151 was created in response to federal Public Law 92–544, which required authorization by state statute to continue the Federal Bureau of Investigation’s policy of honoring state requests for criminal background reports.

2003 Wisconsin 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.

SECTION 1 creates definitions for “credential,” “credentialing authority” and “investigate.”

SECTION 2 creates s. RL 4.07 to authorize the department to conduct investigations to determine whether an applicant for a credential issued by the department, an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential has been charged with or convicted of a crime.

SECTION 2 creates s. RL 4.08 to allow the department to require that an applicant be photographed and fingerprinted as part of the credentialing process, if there exists reason to believe that the applicant has failed to accurately describe his or her conviction record.

SECTION 2 also creates s. RL 4.09 to authorize the department to conduct investigations to determine whether a holder of a credential issued by the department, an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential has been charged with or convicted of a crime. In addition, s. RL 4.09 establishes that credential holders are required to self-report convictions to the department.

SECTIONS 4 and 5 repeal ss. RL 31.035 (1m) and 31.036 (1m) to conform to the requirements of 2003 Wisconsin Act 151, which eliminates the ability of the department to exempt peace officers from the fingerprinting requirement for credentialing as a private detective or private security person.

Comparisons of similar rules in adjacent states. For the purposes of this analysis, the statutes and regulations of Illinois, Indiana, Iowa, Michigan and Minnesota were examined to compare regarding criminal background checks requirements associated with licensing for the representative professions of physicians, nurses, real estate appraisers and accountants. In addition, licensing agencies (or boards) in each state were contacted by phone and asked whether their state had any background check requirements.

Generally, requirements for criminal background checks in adjacent states are not codified in statutes or administrative code. In most states, however, applicants do have to respond to questions regarding conviction history on the relevant application form. In Minnesota and Michigan, application forms for real estate appraisers require the applicants to authorize criminal background checks. Illinois has a law [225 ILCS 54/5–23] requiring criminal background checks for nurses with the state police and FBI. If a name check reveals a criminal history, a fingerprint check is required. Via rulemaking, Illinois [Section 1300.20] all initial nurse applicants are subject to fingerprint processing. Illinois also has a statute [Section 225 ILCS 60/9.7] requiring criminal background checks for physicians. The rule [1285.80(e)] implementing this section requires that the Illinois Department of Professional Regulation check criminal backgrounds of endorsement candidates through the Federation of State Medical Boards or Chiropractic Information Network – Board Action Database.

Comparison of federal law. Generally, the federal government does not involve itself in licensure of professions. However, criminal background checks are required pursuant to federal law in related areas. See, for example: P.L. 108–173, Background checks on prospective direct patient access employees for long term care facilities or providers; 42 USCS § 13041 Child care worker employee background checks; and 42 USCS § 5119, Child abuse crime information reporting; See also: 15 USCS § 5902, which requires a criminal record background check for states issuing an initial weapons license to an armored car crew member [referenced

by Wis. Stat. § 440.26 (3m) Rules concerning dangerous weapons for private detectives and security personnel.]

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 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

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection**(CR 04–039)**

Chapter ATCP 34, relating to the Clean Sweep Program.

Commerce**(CR 04–052)**

Chapters Comm 2 and 90, relating to design and construction of public swimming pools and fees.

Commerce**(CR 04–068)**

Chapter Comm 87, relating to private sewage system replacement or rehabilitation grant program.

Commerce**(CR 04–070)**

Chapter Comm 14, relating to substantial compliance in the Fire Dues Program.

Financial Institutions – Banking**(CR 04–089)**

Chapter DFI–Bkg 46, relating to responsible high cost mortgage lending.

Financial Institutions – Securities**(CR 04–074)**

Relating to licensing requirements for investment advisers having custody of customer funds or securities.

Health and Family Services**(CR 04–055)**

Chapter HFS 118, relating to Wisconsin’s statewide trauma care system.

Insurance**(CR 04–071)**

Chapter Ins 50, relating to prescribing mortality tables and actuarial opinions, analysis and reports.

Insurance**(CR 04–079)**

Chapter Ins 18, relating to annual adjustment to the minimum necessary cost or payment to access independent review under a health benefit plan.

Justice**(CR 04–028)**

Chapter Jus 16, relating to the enforcement of the tobacco master settlement agreement.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**(CR 03–098)**

Chapter MPSW 4, relating to supervised pre–certification and pre–licensure social work.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board**(CR 04–044)**

Chapter MPSW 1, relating to alcohol and drug counseling.

Natural Resources**(CR 04–024)**

Chapters NR 20, 21, 22 and 26, relating to fishing on the inland, outlying and boundary waters of Wisconsin.

Natural Resources**(CR 04–033)**

Chapter NR 219, relating to analytical test methods for testing effluent discharges.

Natural Resources**(CR 04–047)**

Chapter NR 114, relating to septage operator certification.

Natural Resources**(CR 04–048)**

Chapter NR 46, relating to the administration of the forest crop law and the managed forest law.

Natural Resources**(CR 04–059)**

Chapter NR 10, relating to the 2004 migratory game bird seasons.

Public Instruction**(CR 04–069)**

Chapter PI 35, relating to prorating under the Milwaukee parental choice program.

Transportation**(CR 04–004)**

Chapter Trans 152, relating to Wisconsin interstate fuel tax and international registration program.

Transportation**(CR 04–057)**

Chapter Trans 202, relating to the Wisconsin scenic byways program.

Veterans Affairs**(CR 04–080)**

Chapter VA 2, relating to the part–time study grant program and the tuition and fee reimbursement grant program.

Veterinary Examining Board**(CR 04–018)**

Chapters VE 2 and 5, relating to admission time for national examinations and post graduate training permits.

Workforce Development**(CR 04–010)**

Chapter DWD 270, relating to child labor.

Workforce Development**(CR 04–081)**

Chapter DWD 290, relating to prevailing wage rates.

Workforce Development**(CR 04–082)**

Chapter DWD 12, relating to grievance procedure for resolving complaints of employment displacement under the Wisconsin Works program.

Rule orders filed with the revisor of statutes bureau

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

Agriculture, Trade and Consumer Protection (CR 03–119)

An order affecting ch. ATCP 35, relating to the agricultural chemical cleanup program.
Effective 11–1–04.

Health and Family Services (CR 04–045)

An order affecting ch. HFS 158, relating to the fee for

monitoring radiation emissions in the vicinity of nuclear power plants.
Effective 11–1–04.

Natural Resources (CR 03–054)

An order affecting ch. NR 118, relating to minimum standards and guidelines for Lower St. Croix National Scenic Riverway zoning ordinances.
Effective 11–1–04.