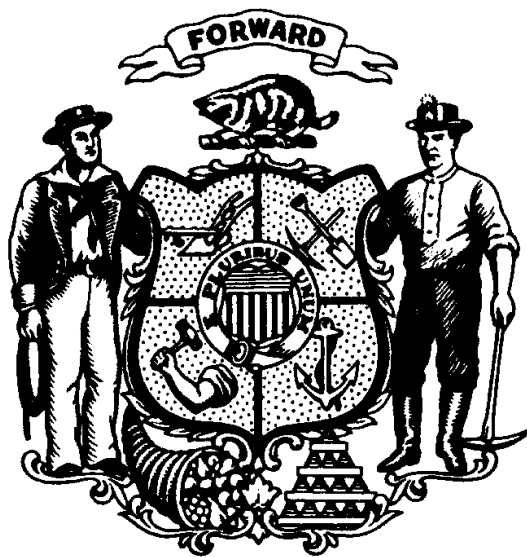


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 516**



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## EMERGENCY RULES NOW IN EFFECT

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

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

*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, 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.*

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### EMERGENCY RULES NOW IN EFFECT (3)

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

1. Rules adopted creating **ss. ATCP 10.68** and **11.58**, relating to fish farms and imports of live fish and fish eggs.

#### **Exemption From Finding of Emergency**

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

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

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

#### **Fish Farms**

##### Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

##### Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.
- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.
- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

##### Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:
  - \*Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.
  - \*Allows public fishing, for a fee, for fish hatched at that fish farm.
- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:
  - \*Allows public fishing at the fish farm for a fee.
  - \*Sells or trades fish, from the fish farm, to any person.
- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:
  - \*Sell minnows to any person
  - \*Sell fish or fish eggs to a type A registrant.
- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:
  - \*The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.
  - \*The fish farm consists solely of ponds used to hold or grow fish.
  - \*The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

Registration Fees

This emergency rule establishes the following registration fees:

- Type A registration \$50.00
- Type B registration \$25.00
- Type C registration \$ 5.00
- Type D registration \$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.
- DNR informs DATCP that DNR has approved the facility.

Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.
- The date on which the operator received or delivered the fish or fish eggs.
- The location at which the operator received or delivered the fish or fish eggs.
- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.
- Violating the terms of the registration
- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.
- Physically assaulting a DATCP employee performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.
- Paying registration fees with a worthless check.

**Fish Imports**Import Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.

- Selling them as bait, or for resale as bait.
- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.
- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.
- The number of each fish farm registration certificate, if any, held by the importer.
- Each species of fish or fish eggs which the importer is authorized to import under the permit.
- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.
- The purpose for which the fish or fish eggs are being imported.
- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.
- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).
- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non-native fish DNR approval.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employe from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employe while the employe is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.
- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.

- The location at which the import shipment was received in this state.

- The size, quantity and species of fish or fish eggs included in the import shipment.

#### Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

**Publication Date:** March 16, 1998  
**Effective Date:** March 16, 1998  
**Expiration Date:** See section 9104 (3xr) 1997 Wis. Act 27  
**Hearing Date:** April 27, 1998

2. Rules adopted amending s. ATCP 75.015 (7)(c), relating to the retail food establishment license exemption for restaurant permit holders.

### Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores (grocery stores, convenience stores, bakeries, delicatessens, etc.) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

The state of Wisconsin department of health and family services (DHFS) currently licenses (permits) and inspects restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196, Wis. Adm. Code.

Recently, many retail food stores have added restaurant operations, and vice versa.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate regulation by DATCP and DHFS. The operator may be subject to duplicate licensing, duplicate license fee payments, and duplicate inspection based on different (and sometimes inconsistent) rules.

The current duplication is unnecessary, confusing, and wasteful of public and private resources. This temporary emergency rule is needed to eliminate duplication, and protect public welfare, during the food store license year that begins on July 1, 1998. DATCP also plans to adopt a permanent rule according to normal rulemaking procedures under ch. 227, Stats.

This emergency rule applies to food store licenses issued by DATCP, but does not apply to food store licenses issued by agent

cities and counties under s. 97.41, Stats. DATCP plans to adopt permanent rules for all food store licenses, whether issued by DATCP or by agent cities or counties, effective July 1, 1999.

**Publication Date:** July 1, 1998  
**Effective Date:** July 1, 1998  
**Expiration Date:** November 28, 1998  
**Hearing Date:** November 11, 1998

3. Rules adopted amending ss. ATCP 81.50 (2), 81.51 (2), and 81.52 (2), relating to grade standards for colby and monterey (jack) cheese.

### Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

**Publication Date:** August 8, 1998  
**Effective Date:** August 8, 1998  
**Expiration Date:** January 4, 1999  
**Hearing Date:** September 14, 1998  
**Extension Through:** March 4, 1999

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## **EMERGENCY RULES NOW IN EFFECT**

### *Commerce*

#### **(Rental Unit Energy Efficiency, Ch. Comm 67)**

Rules were adopted revising **ch. Comm 67**, relating to rental unit energy efficiency.

#### **Finding of Emergency**

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

The facts constituting the emergency are as follows. Under s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

- Buildings of one or two rental units that were constructed after December 1, 1978.
- Buildings of three or more rental units that were constructed after April 15, 1976.
- Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

- Attics
- Furnaces and boilers
- Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building
- Sill boxes
- Heating and plumbing supply in unheated crawlspaces
- Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

**Publication Date:** June 30, 1998  
**Effective Date:** June 30, 1998  
**Expiration Date:** November 27, 1998  
**Hearing Date:** August 14, 1998  
**Extension Through:** January 25, 1999

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## **EMERGENCY RULES NOW IN EFFECT**

### *Commerce*

#### **(Financial Resources for Communities, Chs. Comm 105 to 128)**

Rules adopted creating **ch. Comm 118**, relating to the Wisconsin Promise Challenge Grant Program.

#### **Finding of Emergency**

On July 16, 1998, 1997 Wis. Act 237, took effect. The act created Section 1901(lz) which appropriated \$424,000 for fiscal year 1998-99 that may be awarded in the form of grants by the National and Community Service Board attached to the Department of

Commerce to any countywide consortium. Countywide consortiums who agree to provide five fundamental resources intended to mentor, nurture, protect, teach and serve persons under the age of 26 years are eligible to receive Wisconsin Promise Challenge Grants. The amount of the grant ranges from \$3,000 to \$15,000, depending on the number of underserved youth who are to receive the five fundamental resources. In order to be eligible, the grant recipient is required to match the grant, in cash, in an amount that is not less than twice the amount of the grant money received. In addition the law, specifies conditions on the use of the grant monies and requires documentation on the number of underserved youths who received the five fundamental resources and the positive outcomes and result of those efforts. Since funds are only available for this fiscal year and the law sunsets on January 1, 2000, the Department is promulgating an emergency rule in order to make these funds and the grant program available as quickly as possible so counties may provide the five fundamental resources to underserved youth.

This emergency rule was developed in consultation with the National and Community Service Board, the Department of Health and Family Services and the Department of Administration.

**Publication Date:** September 12, 1998  
**Effective Date:** September 12, 1998  
**Expiration Date:** February 9, 1999  
**Hearing Date:** November 30, 1998

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## **EMERGENCY RULES NOW IN EFFECT (2)**

### *Department of Corrections*

1. Rules were adopted amending **s. DOC 328.21**, relating to absconders.

#### **Finding of Emergency**

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: A recent legislative enactment providing funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to search an offenders residence only for contraband. This rule amendment allows a search of an offender's residence for contraband or an offender.

**Publication Date:** December 3, 1998  
**Effective Date:** December 3, 1998  
**Expiration Date:** May 2, 1999

2. Rules were adopted revising **ch. DOC 349**, relating to holding juveniles in municipal lockup facilities.

#### **Finding of Emergency**

The Department of Corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more

six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to establish an approval process and operational standards for the safety of the public and juveniles while permanent rules are being developed.

This order:

1. Adopts the statutory definitions of adult, delinquent, and juvenile.

2. Defines the term secure custody status.

3. Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.

4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.

5. Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.

6. Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.

7. Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.

8. Provides that the lockup administrator shall develop and implement policies and procedure to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.

9. Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the observations. If the juvenile is identified by the facility staff as being at risk (for example, suicidal tendency, under the influence of drugs or alcohol, or mental disturbance) the observations shall be at least once every 15 minutes at irregular intervals.

10. Requires that juvenile records be maintained in a confidential manner and kept separate from adult records, in accordance with s. 938.396, Stats.

The order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

**Publication Date:** December 10, 1998

**Effective Date:** December 10, 1998

**Expiration Date:** May 9, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Financial Institutions*

#### **(Division of Banking)**

Rules adopted renumbering and revising **ch. RL 41** to be **ch. DFI-Bkg 41**, relating to mortgage banking.

## Exemption From Finding of Emergency

Statutory Authority: ss. 224.72 (8) and 224.73 (3); and 1997 Wis. Act 145, Section 72.

This emergency rule sets forth the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the registration periods for all registrations and renewals of registrations.

**Publication Date:** December 4, 1998

**Effective Date:** December 4, 1998

**Expiration Date:** May 3, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Health & Family Services*

#### **(Management, Technology & Finance, Chs. HFS 1--)**

#### **(Health, Chs. HFS 110--)**

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129**, relating to reporting and investigating caregiver misconduct.

## Finding of Emergency

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

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified

community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department-regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999  
**Hearing Dates:** January 12, 20 & 26, 1999  
 [See Notice this Register]

2. Rules adopted creating **ch. HFS 12**, relating to caregiver background checks.

### Finding of Emergency

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

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employes or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a

serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employes and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employe or prospective employe having or expected to have access to any of its clients. If the background information form returned to an entity by an employe or prospective employe indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999  
**Hearing Dates:** January 12, 20 & 26, 1999  
 [See Notice this Register]

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## **EMERGENCY RULES NOW IN EFFECT**

### ***Health and Family Services***

#### **(Community Services, Chs. 30--)**

Rule was adopted amending s. HFS 94.24 (2)(e), relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

#### **Finding of Emergency**

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

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource

Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront criminogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

<b>Publication Date:</b>	<b>August 15, 1998</b>
<b>Effective Date:</b>	<b>August 15, 1998</b>
<b>Expiration Date:</b>	<b>January 11, 1999</b>
<b>Hearing Date:</b>	<b>December 17, 1998</b>
<b>Extension Through:</b>	<b>March 11, 1999</b>

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## **EMERGENCY RULES NOW IN EFFECT (3)**

### ***Health and Family Services***

#### **(Health, Chs. HSS/HFS 110--)**

1. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk-Sharing Plan.

#### **Finding of Emergency**

The Legislature in s. 9123 (4) of 1997 Wis. Act 27 permitted the Department to promulgate any rules that the Department is authorized or required to promulgate under ch. 149, Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department was specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

#### **Analysis Prepared by the Department of Health and Family Services**

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has a \$1,000 deductible. Plan 2 has a \$500 deductible. On December 31, 1997 there were 7,318 HIRSP policies in effect, 83 % of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out-of-pocket maximum of \$2,000 (which includes the \$1,000 deductible) per individual and \$4,000 per family for major medical and \$500 per individual for Medicare supplement. There is a lifetime limit of \$1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than \$20,000.

The current Budget Act, 1997 Wis. Act 27, transferred responsibility for the Health Insurance Risk-Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance Risk-Sharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re-creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3)(a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

- Transfer of plan administration responsibility from an "administering carrier" selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department's fiscal agent for the Medical Assistance Program, called in the revised statute the "plan administrator";

- Deletion of a physician certification requirement in connection with applications of some persons for coverage;

- Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

- Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

- Modification of the respective roles of the state agency, now the Department, and the Board of Governors;

- Clarification that the alternative plan for Medicare recipients reduces the benefits payable by the amounts paid by Medicare;

- Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost-effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

- Continuation of an alternative plan of health insurance that has a \$2500 deductible (this was added by emergency order effective January 1, 1998);

- Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board's Grievance Committee if in the best interests of the State; and

- Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to December 31, 1998.

**Publication Date:** July 1, 1998  
**Effective Date:** July 1, 1998  
**Expiration Date:** November 28, 1998  
**Hearing Date:** September 29, 1998  
**Extension Through:** January 26, 1999

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

## Finding of Emergency

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

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead-based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead-based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead-based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register as 40 CFR 745, Subparts L and Q.



If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead-based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

#### Certification

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
- Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
- Provides for a maximum 3-year certification period from the completion date of the most recent training course instead of a one-year or 2-year period from the date certification is issued.
- Revises how worker-safety training is received by requiring that worker-safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.
- Adds work practice standards for lead-based paint activities.

#### Accreditation

- Adds a mandatory hands-on skills assessment for hands-on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker-safety training, followed by a 16-hour worker course, with an additional 16-hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no-expiration accreditation.

#### Enforcement and oversight

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker-homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria. In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

**Publication Date:** August 29, 1998

**Effective Date:** August 29, 1998

**Expiration Date:** January 25, 1999

**Hearing Dates:** November 30, December 1, 7 & 9, 1998

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

### Finding of Emergency

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

Competitive market forces and the spread of managed care networks and plans during the last few years have adversely affected health care services availability in some rural areas of Wisconsin. In particular, greatly reduced inpatient care at hospitals in rural areas is making it increasingly more difficult for the hospitals to survive. Most of the rural hospitals in a precarious financial condition are located in the western and northern parts of the state. Many serve areas with health care professional shortages. Some of the locations are popular tourist destinations.

These changes to the Department's rules for hospitals will enable eligible hospitals in rural Wisconsin to become limited service medical facilities called "critical access" hospitals and thereby reduce their costs but still be certified to receive Medicare and Medicaid funding for care provided to Medicare and Medicaid recipients.

The critical access hospital is defined under changes made to the federal Social Security Act by P.L. 105-33, the Balanced Budget Act of 1997, and conforming changes to ch. 50, Wis. Stats., made by the 1997 Wisconsin Act 237. A critical access hospital must be a nonprofit or public facility that is located in a rural area, usually more than a 35-mile drive from another hospital or is certified by the State as being a necessary provider of health care services to residents in the area. This type of hospital must make available 24-hour emergency care services; provide inpatient care for a patient for a period not to exceed 96 hours; and can have inpatient services provided by registered nurses with advanced qualifications, with physician oversight but without the physician being present in the facility. A critical access hospital must have nursing services available on a 24-hour basis, but need not otherwise staff the facility when no patients are present, and it may have auxiliary services, such as laboratory work, provided on a part-time, off-site basis.

Many of the features of a critical access hospital represent departures from what has been understood as a hospital under both federal law (for purposes of Medicare and Medicaid hospital provider certification) and state law (for purposes of hospital approval). The recent federal statute and state statute changes have re-defined "hospital" to accommodate critical access hospitals. Under the new federal Medicare Rural Hospital Flexibility Program, 42 USC 1395i - 4, criteria are specified by which a state designates a hospital as a critical access hospital and by which the Secretary of the federal Department of Health and Human Services approves a facility as a critical access hospital.

This rulemaking order amends ch. HFS 124, relating to hospitals, to accommodate critical access hospitals. The order amends the definition of "hospital" to make it like the amended statutory definition; specifies eligibility criteria for the Department's designation of a facility as a critical access hospital, and a process for applying for designation; and requires a critical access hospital to be operated in compliance with all provisions of ch. HFS 124, but with exceptions that relate to limits on the number of acute care and swing beds, limits and exceptions on acute inpatient stays, staffing in the absence of inpatients, health care professional staff who provide inpatient care, permission to obtain specified auxiliary services on a part-time and off-site basis and a requirement for a written agreement with one or more full-time general hospitals covering referrals of patients from the critical access hospital and other matters.

Thirty-three rural hospitals in the state with low annual inpatient days have been identified as potential applicants for critical access hospital status. From 3 to 8 of these are now actively considering closing altogether or changing their health care delivery focus. They must decide soon about maintaining their levels of operation. The need to preserve some type of hospital service is critical for people in these small towns and their surrounding areas.

Once a rural hospital closes it can no longer acquire federal critical access hospital status. Changes to ch. HFS 124 are necessary so that the Department can designate a rural hospital as a critical access hospital. The rule changes are being made by emergency order to prevent the imminent closing of several rural hospitals and the consequent loss of readily accessible hospital services for people in the rural areas served by those hospitals.

**Publication Date:** September 12, 1998  
**Effective Date:** September 12, 1998  
**Expiration Date:** February 9, 1999  
**Hearing Date:** October 13, 1998

## **EMERGENCY RULES NOW IN EFFECT (5)**

### *Natural Resources*

#### **(Fish, Game, etc., Chs. NR 1---**

1. A rule was adopted revising s. NR 45.10 (3) and (4), relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

### **Exemption From Finding of Emergency**

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

#### Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.

2. Establishes time frame for making reservations.

**Publication Date:** December 15, 1997  
**Effective Date:** April 1, 1998  
**Expiration Date:** April 1, 1999  
**Hearing Date:** January 12, 1998

2. Rules adopted revising chs. NR 10 and 11, relating to deer hunting in Deer Management Unit 67A.

### **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. Deer are causing significant crop damage concerns in this Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

**Publication Date:** June 24, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999

3. Rules were adopted revising ch. NR 19, relating to wildlife damage abatement and claims program.

### **Exemption From Finding of Emergency**

Pursuant to s. 9137(11s)(b), 1997, Wis. Act 27 the department is not required to make a finding of emergency for this rule promulgated under s. 227.24, Stats.

**Publication Date:** July 1, 1998  
**Effective Date:** July 1, 1998  
**Expiration Date:** November 28, 1998  
**Extension Through:** January 26, 1999

4. Rules adopted revising s. NR 20.03 (1)(k), relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

### **Finding of Emergency**

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

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

**Publication Date:** June 27, 1998  
**Effective Date:** June 27, 1998  
**Expiration Date:** November 24, 1998  
**Hearing Date:** July 24, 1998  
**Extension Through:** January 22, 1999

5. Rules adopted revising s. NR 10.01 (1), relating to the 1998 migratory game bird season.

### **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 into conformity with the federal regulations. Normal rulemaking 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:** September 15, 1998  
**Effective Date:** September 15, 1998  
**Expiration Date:** February 12, 1999  
**Hearing Date:** October 15, 1998

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## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

#### **(Environmental Protection–Remediation, Chs. NR 700–)**

Rules adopted creating **ch. NR 749**, relating to the assessment and collection of fees for providing assistance regarding the remediation and redevelopment of contaminated lands.

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is that in order for the Department to facilitate the cleanup and redevelopment of many contaminated sites that could adversely affect public health, safety or welfare, fee revenue must be generated immediately in order to timely fill the program revenue positions which were authorized in the recent budget bill.

#### **Finding of Emergency**

**Publication Date:** September 19, 1998  
**Effective Date:** September 19, 1998  
**Expiration Date:** February 16, 1999

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## EMERGENCY RULES NOW IN EFFECT (3)

### *Public Instruction*

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee parental school 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:

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wis. Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998–99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as providing for under the Act. The requirements established under this rule were discussed with the private schools

participating under the program during the 1996–97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

**Publication Date:** August 5, 1998  
**Effective Date:** August 5, 1998  
**Expiration Date:** January 1, 1999  
**Hearing Date:** October 13, 1998  
**Extension Through:** March 1, 1999

2. Rules adopted creating **ch. PI 38**, relating to grants for peer review and mentoring.

#### **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:

Under s. 115.405 (2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participant CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28 (7) and 115.192, Stats., to implement peer review and mentoring programs.

The grant award period begins the 1998–99 school year, since the timelines would be too stringent to implement this grant program by September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. In order for applicants to develop proposals and for the state superintendent to review the proposals and make grant awards in time for the upcoming school year, rules must be in place as soon as possible.

**Publication Date:** August 15, 1998  
**Effective Date:** August 15, 1998  
**Expiration Date:** January 11, 1999  
**Hearing Date:** October 20, 1998  
**Extension Through:** March 11, 1999

3. Rule adopted revising **s. PI 3.03 (6) (b) 3.**, relating to alternate teaching permits.

#### **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:

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Dates:** January 4, 5, 6 & 7, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### Public Service Commission

1. Rules were adopted amending **s. PSC 4.30 (4) (a) and (5) (a) and (b)**, relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

### Finding of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

**Publication Date:** July 17, 1998  
**Effective Date:** July 17, 1998  
**Expiration Date:** December 14, 1998

2. Rules adopted creating **ch. PSC 187**, relating to Sewer Main Extension: Cost Recovery.

### Exemption From Finding of Emergency

Pursuant to the legislature's instruction in s. 66.076 (1) (b), Stats., as created by 1997 Wis. Act 213, and section 5 of that Act, the Public Service Commission is adopting emergency rules, establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer.

Section 5 (1)(b) of 1997 Wis. Act 213, the legislature specifically exempted the commission from finding of emergency required by s. 227.24, Stats.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Date:** January 8, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### Regulation & Licensing

1. Rules were adopted creating **chs. RL 131 to 135**, relating to the registration and regulation of home inspectors.

### Exemption From Finding of Emergency

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

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create

a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to developed administrative rules which must be in effect on the effective date of the new regulation.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Date:** December 17, 1998

2. Rules adopted creating **chs. RL 140 to 142**, relating to the registration of music, art and dance therapists.

### Finding of Emergency

The proposed rules interpret the provisions contained in s. 440.03 (14), Stats., as created by 1997 Wis. Act 261, which governs the registration of music, art and dance therapists. Section 440.03 (14)(d), Stats., states that the department shall promulgate rules that specify the services within the scope of practice of music, art and dance therapy that a registrant is qualified to perform. Section 440.03 (14)(d), Stats., gives authority to the department to make investigations and conduct hearings to determine whether a violation of that subsection or any rule promulgated under s. 440.03 (14)(d), Stats., has occurred and to reprimand a person who is registered under par. (a) or deny, limit, suspend or revoke a certification of registration if it finds that an applicant or certificate holder has violated that subsection or any rule promulgated under par. (d). These provisions will become effect on December 1, 1998.

Under the normal rule-making process, the proposed rules would not take effect until the spring of 1999. The department is requesting that this rule be put into effect before 1999 for the following reasons:

(1) The emergency rules will enable the department to adopt application which would be implemented on December 1, 1998.

(2) The emergency rules will enable the department to provide immediate guidance to the various professions regarding their scope of practice.

(3) Without the adoption of the emergency rules, the department will not be able to discipline registrants until the spring of 1999. The emergency rules will enable the department to immediately determine what constitutes grounds for discipline and to take appropriate action based upon that determination.

**Publication Date:** November 29, 1998  
**Effective Date:** December 1, 1998  
**Expiration Date:** April 30, 1999  
**Hearing Date:** January 12, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Revenue

Rules adopted amending **s. Tax 2.39** and creating **s. Tax 2.395**, relating to the use of an alternative apportionment method.

### Finding of Emergency

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

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment methods, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25 (14), Stats. The allowance of an alternative

apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative methods of apportionment on or before January 1, 2000.

**Publication Date:** September 29, 1998  
**Effective Date:** September 29, 1998  
**Expiration Date:** February 26, 1999  
**Hearing Date:** December 28, 1998

## **EMERGENCY RULES NOW IN EFFECT**

### *Transportation*

Rules adopted revising **ch. Trans 328**, relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

### **Finding of Emergency**

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is that new federal hazardous material rules include intrastate transportation. Within the revised rules are exceptions allowed for farm operations, the use of certain nonspecification packages and permanently mounted nonspecification nonbulk metal tanks used to transport flammable liquids in intrastate commerce. The exceptions will only apply if state statutes or regulations are in effect prior to October 1, 1998 allowing those exceptions. Failure to implement the allowed exceptions would have a negative impact on the state agricultural community as well as other businesses who would benefit from them.

**Publication Date:** September 15, 1998  
**Effective Date:** September 15, 1998  
**Expiration Date:** February 12, 1999  
**Hearing Date:** October 5, 1998

## **EMERGENCY RULES NOW IN EFFECT**

### *Veterans Affairs*

Rules adopted amending **s. VA 2.01 (2) (b)2.**, relating to the expenditure limitation for dentures under the health care aid grant program.

### **Finding of Emergency**

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

The Department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2) (b) 2., Wis. Adm. Code., the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap. The Department was required to terminate denture coverage within the first two weeks of the most recent fiscal year. A significant number of applications were returned to veterans who were thus unable to receive coverage for dentures.

The treatment plans submitted with the applications typically encompass the removal of teeth with a resulting need for dentures. Failure to provide dentures could have a negative impact upon an individual's health. It is necessary that the Department has sufficient expenditure authority to meet the significant demand for this health care benefit. The emergency rule cap will accomplish this goal.

**Publication Date:** October 12, 1998  
**Effective Date:** October 12, 1998  
**Expiration Date:** March 11, 1999  
**Hearing Date:** December 11, 1998

## **EMERGENCY RULES NOW IN EFFECT (2)**

### *Workforce Development*

**(Economic Support, Chs. DWD 11-59)**

1. Rules adopted renumbering **ss. HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

### **Finding of Emergency**

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

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999

2. Rules adopted renumbering **chs. HSS 80 to 82** as **chs. DWD 40 to 42**, and creating **ch. DWD 43**, relating to child support administrative enforcement.

### **Finding of Emergency**

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

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Employe Trust Funds*

**Subject:**

ETF Code – Relating to creation of provisions currently in contract and insurance plan relating to the Income Continuation Insurance programs established under ss. 40.61 and 40.62, Stats.

**Description of policy issues:**

*Objectives of the rule:*

1. To codify contract and plan provisions regarding the state and local Income Continuation Insurance programs.
2. To codify existing practices, procedures, and policy interpretations of the state and local Income Continuation Insurance programs.

*Policy analysis:*

Section 40.61 (1), Stats., authorizes the procedures and provisions pertaining to enrollment, premium and coverage for income continuation benefits to be established either by rule or contract. From 1977 to 1986, the terms of the ICI plan were contained in an administrative rule. See former Wis. Adm. Code chapter Grp 25. While stating the terms and conditions of the insurance in the contract between the Group Insurance Board and the claims administrator has been convenient and flexible, most have become well established and are not likely to be subject to frequent modification. The Legislature has directed that general policies specifically adopted by an agency to govern its enforcement or administration of a statute should be promulgated by rule. See s. 227.10 (1), Stats. In addition, codification of the insurance provisions as an administrative rule will make the terms of insurance more readily accessible to interested parties.

The rule will serve as a single compendium of information related to the benefits of the income continuation insurance, coverage under the plan, and the procedures, practices and policies affecting the making, handling and payment of claims. Codification of the terms and conditions of insurance will separate the insurance plan from the administrative services contract under which the Group Insurance Board arranges for claims processing. Promulgation of the terms and conditions of insurance as an administrative rule should also better permit the Group Insurance Board to resolve claims disputes by focusing on the intended design of the ICI program and the policies the Board intended to implement, instead of on nuances of contract law and drafting.

*Policy alternatives to the proposed rule:*

Do not promulgate rules. Not having rules in place describing the terms and conditions of insurance may result in appeal and court decisions contrary to established practice and plan design which are not intended by the Board, but instead based on contract construction doctrines.

**Statutory authority for rule-making:**

Sections 40.61 (1) and 227.10 (1), Stats.

**Staff time required:**

The Department estimates that state employes will spend 200 hours to develop this rule.

### *Emergency Response Board*

**Subject:**

S. ERB 1.04 (8) – Relating to inventory reporting for gasoline and diesel fuel at petroleum marketing facilities.

**Description of policy issues:**

*Description of policy issues to be resolved (include groups likely to be impacted or interested in the issue):*

The United States Environmental Protection Agency has stated in writing its intention to raise the reporting thresholds for gasoline and diesel fuel at retail gas stations. U.S. EPA's intent is to exempt most retail gas stations from reporting under 42 USC 11021 and 11022. This will mean that gasoline and diesel fuel, the two most commonly spilled substances in Wisconsin will no longer be reported on Tier Two Inventory Forms when present at retail gas stations, even though the substances are present in amounts equal to or greater than 10,000 pounds. Tier Two Inventory Forms are submitted to the local fire department with jurisdiction over the facility, the Local Emergency Planning Committee, and to Wisconsin Emergency Management (formerly the SERB). Section ERB 1.04 (8) will maintain the 10,000 pound threshold for gasoline and diesel fuel when it is present at retail gas stations. The rule will not affect inventory reporting fees as the petroleum marketing exemption will remain in place.

Groups likely to be interested in the rule include Local Emergency Planning Committees, county emergency management offices, fire departments, retail gas stations, and environmental organizations.

*Explain the facts that necessitate the proposed rule:*

The United States Environmental Protection Agency has indicated in writing its intention to raise the 42 USC 11021 and 11022 reporting thresholds for gasoline and diesel fuel when present at retail gas stations. They anticipate the rule to take effect on March 1, 1999. The proposed s. ERB 1.04 (8) will insure that a comprehensive and uniform list of hazardous substances will continue to be available to local fire departments and to Local Emergency Planning Committees.

**Statutory authority of the rule:**

Sections 166.20 (2) (a) and (b), (5) (a) 3., and 227.11 (2) (a), Stats.

**Estimate of the amount of time that state employes will spend to develop the rule and of other resources necessary to develop the rule:**

50 hours.

### *Law Enforcement Standards Board*

**Subject:**

Ch. LES 4 – Relating to certification of law enforcement, jail and secure detention instructors by the Law Enforcement Standards Board.

**Description of policy issues:**

*Description of objectives:*

The objective of intended rule-making is to respond to recommendations from strategic planning to improve basic law enforcement, jail and secure detention instruction by improving the qualifications of instructors and the procedures whereby they receive certification by the Law Enforcement Standards Board.

*Policy analysis:*

Strategic planning to improve basic law enforcement training was conducted in Wisconsin during 1997 and into 1998. The Law Enforcement Standards Board received a comprehensive report entitled, "Training for Tomorrow – Preparing Today's Law Enforcement Officers for the Challenges of the 21<sup>st</sup> Century" at its March 1998 meeting. It approved the report as a "working document" and authorized its staff (the Training and Standards Bureau, Wisconsin Department of Justice) to proceed with analyses of the report. At its September 1998 meeting, the Board authorized its staff to "Proceed with review and response to TFT instructor recommendations."

Instructors are certified by the Board under ch. LES 4, Wis. Adm. Code. Improvements for instructor certification in response to strategic planning will require that ch. LES 4 be amended or otherwise changed.

**Statutory authority:**

Section 165.85 (3) (a), Stats.

**Estimates of the amount of state employe time and any other resources that will be necessary to develop the rule:**

An assistant attorney general, a training officer and a program assistant will require up to 200 hours to develop improved administrative rules and to assist the Standards Board with their promulgation. Up to \$2000 will be required to reimburse travel expenses for advisory group members.

**Natural Resources****(Fish, Game, etc., Chs. NR 1--)****Subject:**

Chs. NR 10 and 15 – Relating to annual Wildlife Management (trapping and hunting regulations) housekeeping rule changes.

**Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

Minor changes will be made to trapping, blind restriction and wildlife refuge rules. Groups likely to be impacted or interested include the trapping community, waterfowl hunters in the Bong State Recreation Area, and early goose season participants in the proposed Big Muskego Lake Wildlife Refuge.

This action does not represent a change from past policy.

**Statutory authority:**

Section 29.174, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 186 hours. One public hearing will be held in April, 1999 at Madison, Wisconsin.

**Natural Resources****(Air Pollution Control, Chs. NR 400--)****Subject:**

NR Code – Relating to a response to U.S. EPA's Nitrogen Oxides (NO<sub>x</sub>) State Implementation Plan (SIP) Call to Reduce Ozone Transport.

**Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

The (NO<sub>x</sub>) SIP call established a nitrogen oxides (NO<sub>x</sub>) emissions budget for Wisconsin (and 21 other states) and gave the state some discretion as to how the reductions in NO<sub>x</sub> emissions would be achieved. EPA established the emissions budget by assuming the application of "highly cost-effective" controls on large NO<sub>x</sub> emission sources.

The Department must identify the sources required to reduce their NO<sub>x</sub> emissions and the Department will be working with stakeholders (e.g., electric utilities, Wisconsin Paper Council, Wisconsin Manufacturers and Commerce, environmental groups, other state agencies) to develop control programs for these source categories.

*Explain the facts that necessitate the proposed change:*

The Department has responded in the past with administrative rules to address requirements of the Clean Air Act related to ozone control. This rule package, however, represents the first comprehensive effort to address ozone control through the reduction of nitrogen oxide emissions in Wisconsin.

**Statutory authority:**

42 USC 7410 (a) (2) (D) and (k) (5); ss. 227.11 and 285.11 (1), (5) and (6), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 744 hours. Five public hearings will be held during June and July 1999, at Madison, Milwaukee, Green Bay, Stevens Point and Eau Claire.

**Public Instruction****Subject:**

Chs. PI 3 and 4 – Relating to standards of attainment for licensure as a teacher in Wisconsin and to the standards and procedures for the approval of teacher preparatory programs leading to licensure in Wisconsin.

**Description of policy issues:***Rationale for proposed rule development:*

The national movement to develop standards for both P-12 schools and higher education, and the demand for greater accountability of teachers and students to demonstrate what they know and are able to do is one of the primary forces behind the creation of the new ch. PI 3, Wis. Adm. Code. Additionally, Wisconsin has recently developed K-12 standards for its public schools and has begun to develop assessments to determine student competence in meeting the standards. It is imperative that high quality standards and assessment now define teacher preparation. Currently, program review of teacher preparation in Wisconsin is done through a review of multiple input measures and standards. While teacher education program quality is high, there has been limited effort to quantify program success. The new rules will include performance standards and both qualitative and quantitative assessments, which will demonstrate what teacher candidates know and are able to do.

*Describe the objective(s) of the proposed rule:*

All Wisconsin colleges and universities offering teacher preparation programs will use high quality performance standards and assessments in the development of their teacher preparation programs.

Teacher education program approval will move from an input model to a performance-based standards and assessment model.

Teacher candidates prepared under the new rules will be able to demonstrate what they know and can do through performance assessment.

*Describe any existing relevant policies to be included in the administrative rule:*

Chapter PI 3 establishes standards of attainment for licensure as a teacher in Wisconsin. Chapter PI 4 establishes standards and procedures for the approval of teacher preparatory programs leading to licensure in Wisconsin. These two chapters are being combined and several of the provisions in chs. PI 3 and 4 will remain intact but reorganized.

*Describe any new policies to be included in the proposed rule:*

The rules will move toward competency based criteria specifying 10 standards for teacher, administrator, and pupil services staff to obtain before receiving a teaching, administrator or pupil services license in Wisconsin.

The new system of licensing will have three stages of licensure:

- 1) Initial educator;
- 2) Professional educator; and
- 3) Master educator.

*Describe policy alternatives:*

Retain current rules under chs. PI 3 and 4.

**Statutory reference/authority:**

Sections 115.28 (7) and 227.11(2) (a), Stats.

**Estimate the amount of time/staff resources necessary to develop rule:**

The amount of time needed for rule development by Department staff and the amount of other resources necessary are indeterminable. The time needed in creating the rule language, itself, will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than 6 months to complete.

### ***Public Service Commission***

**Subject:**

Ch. PSC 132— Relating to including cable operators.

**Description of policy issues:**

*Objective of the rule:*

The objective of the proposed rule is to bring ch. PSC 132 into compliance with s. 196.04 (4), Stats., which it implements. Chapter PSC 132 was created to set forth the compensation to be paid and conditions to be met by a public utility for the construction or maintenance of facilities within a railroad right-of-way in cases where the utility and the railroad cannot agree. Section 3134mi of 1997 Wis. Act 27 amended the statute to include cable operators, as defined in s. 66.082 (2) (b), Stats. However, the current definition of “public utility” in s. PSC 132.02 (3) does not include cable operators and must be amended to be in compliance with the statute.

*Existing policies relevant to rule and new policies proposed:*

There are no existing policies since the Commission has not previously had the authority to be involved in right-of-way disputes between railroads and cable operators. The new policy is to apply the same conditions and compensation to cases where the railroad and cable operator cannot agree as are currently applied when railroads and public utilities including telecommunications providers cannot agree. Since the Commission has established these conditions and compensation as reasonable and equitable in cases involving public utilities and telecommunications providers, it is appropriate for the Commission to utilize those same standards when determining equitable and reasonable conditions and compensation in cases involving cable operators.

**Statutory authority:**

Sections 196.02 (1) and (3), 196.04 (4) and 227.11 (2), Stats.

**Time estimates for rule development:**

It is estimated that completing the rule-making proceeding will take approximately 20 hours. Pursuant to s. 227.16 (2), Stats., since the proposed rule brings an existing rule into conformity with a statute that has been changed, no public hearing is necessary unless a petition requesting one is filed.

If you have specific questions or comments regarding this proposed rule-making, please contact Joyce S. Mahan, Attorney, Telecommunications Division, at (608) 267-6919.

### ***Workforce Development (Prevailing Wage Rates, Chs. DWD 290-294)***

**Subject:**

S. DWD 290.155 – Relating to threshold limits for application of the state prevailing wage rate laws.

**Description of policy issues:**

*Description of the objective of the rule:*

The state prevailing wage rate laws require that, when a state agency or local governmental unit constructs a public works project, it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under ss. 66.293 (5) and 103.49 (3g), Stats., and as adjusted under s. DWD 290.155, Wis. Adm. Code, the state prevailing wage rate laws do not apply to any “single-trade public works project” (a project involving the employment of only one trade) whose estimated cost is below \$32,000, and it does not apply to any “multi-trade public works project” whose estimated cost is below \$160,000.

Also under ss. 66.293 (5) and 103.49 (3g), Stats., the Department is required to adjust the dollar amounts of the threshold limits each year, in proportion to any change in construction costs since the limits were last determined.

The objective of the proposed rule is to amend the current threshold limits to \$33,000 for single-trade projects and \$164,000 for multi-trade projects, based on a 2.6% increase in the construction cost index between November 1997 and December 1998.

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

This adjustment to the threshold limits is required by the statutes cited above. The rule was amended last year to provide for the use of the Construction Cost Index of the Engineering News-Record to measure any increase in building costs. This proposal involves no change other than to reflect the 2.6% cost increase over the past year in the threshold limits.

**Statutory authority for the rule:**

Sections 66.293 (5) and 103.49 (3g), Stats.

**Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

Less than 20 hours.



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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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### **Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse**

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

#### **Natural Resources**

##### **Rule Submittal Date**

On December 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. FH-5-99] to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule-making order affects s. NR 25.06 (2) (e) 2., relating to commercial fishing quota for whitefish in Lake Michigan and Green Bay.

##### **Agency Procedure for Promulgation**

A public hearing is required and will be held on January 15, 1999.

##### **Contact Person**

If you have questions regarding this rule, you may contact:

Bill Horns  
Bureau of Fisheries Management & Habitat Protection  
Telephone (608) 266-8782

#### **Natural Resources**

##### **Rule Submittal Date**

On December 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. WT-54-98] to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule-making order affects chs. NR 105, 106, 211 and 215, relating to regulating the discharge of chloride to surface waters of the state.

##### **Agency Procedure for Promulgation**

A public hearing is required and public hearings will be held on January 11, 12, 13 and 19, 1999.

##### **Contact Person**

If you have questions regarding this rule, you may contact:

Dan Joyce  
Bureau of Watershed Management  
Telephone (608) 266-0289

#### **Natural Resources**

##### **Rule Submittal Date**

On December 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. WT-39-98] to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule-making order affects ch. NR 200, relating to applications for discharge permits and water quality standards variances.

##### **Agency Procedure for Promulgation**

A public hearing is required and will be held on January 20, 1999.

##### **Contact Person**

If you have questions regarding this rule, you may contact:

Tom Mugan  
Bureau of Watershed Management  
Telephone (608) 266-7420

#### **Natural Resources**

##### **Rule Submittal Date**

On December 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. WT-7-99] to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule-making order affects ch. NR 233, relating to regulation of effluent limitations and pretreatment standards for the pesticide chemicals industry.

##### **Agency Procedure for Promulgation**

A public hearing is required and will be held on January 20, 1999.

##### **Contact Person**

If you have questions regarding this rule, you may contact:

Charles Schuler  
Bureau of Watershed Management  
Telephone (608) 267-7631

#### **Natural Resources**

##### **Rule Submittal Date**

On December 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [Board Order No. WT-8-99] to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule-making order affects ch. NR 252, relating to regulation of effluent limitations and pretreatment standards for the leather tanning and finishing industry.

***Agency Procedure for Promulgation***

A public hearing is required and will be held on January 20, 1999.

***Contact Person***

If you have questions regarding this rule, you may contact:

Charles Schuler  
Bureau of Watershed Management  
Telephone (608) 267-7631

***Psychology Examining Board******Rule Submittal Date***

On December 14, 1998, the Psychology Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

***Analysis***

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), 455.045 (3), 455.065 and 455.08, Stats.

The proposed rule-making order relates to requirements for examination and licensure of psychologists, renewal, continuing education and conduct.

***Agency Procedure for Promulgation***

A public hearing is required and will be held on January 11, 1999 at 1400 East Washington Avenue, Room 179A at 9:30 a.m.

***Contact Person***

Pamela Haack  
Administrative Rules Coordinator  
Telephone (608) 266-0495

***Veterans Affairs******Rule Submittal Date***

On December 10, 1998, the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, amending s. VA 1.10 (7), relating to the disclosure of confidential information to collection agencies.

***Analysis***

The proposed rule would permit the Wisconsin Department of Veterans Affairs to release confidential information to a collection agency under contract with the Department or the Department of Administration to pursue collection of delinquent Departmental loans.

***Agency Procedure for Promulgation***

A public hearing is required and will be scheduled. The Division of Veterans Programs is primarily responsible for preparing the rule.

***Contact Person***

John Rosinski  
Chief Legal Counsel  
Telephone (608) 266-7916

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## NOTICE SECTION

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### Notice of Hearings

*Health & Family Services  
(Management & Technology,  
Strategic Finance,  
Chs. HFS 1-)*

Notice is hereby given that pursuant to ss. 48.685 (4), (5), (6) (b) and (c) and (7) (a) and (b), 50.065 (1) (d) and (f), (4), (5), (6) (b) and (c) and (7) (a) and (b) and 146.40 (4g) and (4r), Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and s. 227.11 (2), Stats., the Department of Health and Family Services will hold public hearings to consider the proposed creation of ch. HFS 12, Wis. Adm. Code, relating to caregiver background checks, and ch. HFS 13, Wis. Adm. Code, relating to reporting and investigation of caregiver misconduct and operation of a caregiver misconduct registry, and emergency rules published on October 1, 1998 and amended on December 12, 1998 on the same subjects.

### Hearing Information

<b>January 12, 1999</b> <b>Tuesday</b> <b>From 9 a.m. to noon</b> <b>and 1 p.m. to 4 p.m.</b>	<b>Wausau Inn</b> <b>2001 N. Mountain Rd.</b> <b>WAUSAU, WI</b>
<b>January 20, 1999</b> <b>Wednesday</b> <b>From 9 a.m. to noon</b> <b>and 1 p.m. to 4 p.m.</b>	<b>Room 45</b> <b>State Office Bldg.</b> <b>819 N. 6<sup>th</sup> Street</b> <b>MILWAUKEE, WI</b>
<b>January 26, 1999</b> <b>Tuesday</b> <b>From 9 a.m. to noon</b> <b>and 1 p.m. to 4 p.m.</b>	<b>Conference Center</b> <b>Mendota Mental Health Institute</b> <b>301 Troy Drive</b> <b>MADISON, WI</b>

The hearing sites are fully accessible to people with disabilities.

### Analysis Prepared by the Department of Health and Family Services

#### Chapter HFS 12, Caregiver Background Checks

Sections 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes and treatment foster homes for children and carry out requested adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13 (14), Stats. Sections 48.685 and 50.065, Stats., apply also to the regulated entities, that is, to the entities that are licensed, registered, certified or approved, as they hire persons to be employees, enter into contracts with persons to provide services to clients or permit nonclients to reside at the facilities.

The new statutes prohibit a regulatory agency from licensing, certifying, registering or approving a person to be a service provider or to reside as a nonclient at an entity if the agency knows or should know that the person has been convicted of, or has a pending charge for, a serious crime; is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but is not credentialed or the credential is not current or is so limited as to prevent the provision of adequate client care. Similarly,

regulated entities planning to hire or contract with a person expected to have access to clients may not hire or contract with the person if the entity knows or should know of the existence of a prohibited criminal conviction or charge, or a finding, or the absence or inadequacy of a required credential.

An agency or entity is expected to know of a person's prohibited criminal conviction or charge or a finding or the absence or inadequacy of a required credential by (1) having the person complete a Department-developed background information disclosure form and (2) conducting a search for information about any prohibited conviction, charge or finding against the person or any credential inadequacy.

The new statutes direct the Department to develop a background information form, and the Department and the other regulatory agencies to require, beginning October 1, 1998, that all persons applying for a license, certification, registration or approval, or for approval to reside as nonclients at an entity complete that form and return it to the agency and, by October 1, 1999, that all persons who were licensed, certified, registered or approved or given permission to reside at an entity as nonclients prior to October 1, 1998, are to have completed and returned that form to the agency. Beginning October 1, 1998, all regulated entities are to have applicants for employment who will be in contact with clients complete and return the same form as well as all persons who propose to enter into a contract with an entity to provide services to the entity's clients. By October 1, 1999, this is to be done by all persons who were hired by or under contract to the entity before October 1, 1998.

The Department is expected to have any person who applies for continuation of a license, certification, approval or registration update the background information form at that time, and an entity is to require this every 4 years for a person employed by or under contract to the entity who has access to clients and any nonclient who lives at the entity.

The new statutes direct a regulatory agency, on receipt of an application for regulatory approval or for approval of a nonclient to reside at an entity, to also undertake a search for any of the following information relating to the applicant's background: any criminal history information, from records maintained by the Department of Justice; any substantiated allegations of abuse or neglect of a client or misappropriation of a client's property, from the Department's caregiver misconduct registry under ch. HFS 13; any information maintained by the Department about substantiated reports of child abuse or neglect against the person; any information maintained by the Department of Regulation and Licensing regarding the status of the person's required credentials; and any information maintained by the Department about a previous denial to the applicant of regulatory approval, residence at an entity, employment by an entity or a contract with an entity. Entities are to undertake the same search for background information about applicants for employment and persons who propose to provide services under contract to the entity's clients.

At least every 4 years the Department is to undertake repeat searches, in the same manner as before, for background information on persons holding regulatory approvals from the Department and on persons who are nonclient residents of entities, and at least every 4 years an entity is to undertake repeat searches, in the same manner as before, for background information on persons employed by or under contract to the entity and having access to clients.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the new statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

The Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237, repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A which includes 156 crimes, 25 of which are permanent bar crimes for all programs, that is, a conviction for the crime or commission of the offense means that the individual is permanently barred from receiving approval to operate an entity or to be hired by or have a contract with or reside at an entity.

#### Chapter HFS 13. Reporting of Caregiver Misconduct

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HSS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to replace that part with a reference to a new ch. HFS 13 created by this order.

A recent session law, 1997 Wisconsin Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a

report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

### **Contact Person**

To find out more about the hearing or to request a copy of either proposed ch. HFS 12 or 13, write, phone or e-mail:

Larry Hartzke  
Bureau of Quality Assurance  
P.O. Box 309  
Madison, Wisconsin 53701  
608-267-2943 or,  
if you are hearing impaired,  
608-266-1511 (TTY)  
[hartzlr@dhfs.state.wi.us](mailto:hartzlr@dhfs.state.wi.us)

If you are hearing or visually impaired, do not speak English, or have circumstances which 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 shown above. Persons requesting a non-English or sign language interpreter should 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 received by mail or e-mail at an above address no later than 5 p.m., **February 2, 1999**, will be given the same consideration as testimony presented at a hearing.

### **Fiscal Estimate**

#### Chapter HFS 12, Caregiver Background Checks

This order repeats the requirements in ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, and adds the necessary implementing rules, for background checks conducted in a uniform manner on all persons who apply to the Department for or have received from the Department a license, certification, registration or certificate of approval to operate a facility, service organization or program that provides care or treatment to people needing it, or who propose to reside at a regulated facility. Background checks are also to be carried out in the same uniform manner by county social services and human services departments and licensed child-placing agencies on applicants for a foster home license or an adoption home study and persons who have received a foster home license from the county department or child-placing agency. Finally, background checks are to be carried out in the same uniform manner by the regulated facilities, service organizations and programs, called "entities," on all persons before hiring them or contracting with them to provide care to clients or otherwise have regular contact with clients, and periodically on all persons employed by or under contract who provide care to clients or otherwise have regular contact with them.

The Department (and county departments and some school boards) will experience a significant workload in conducting background checks on providers and reviewing requests for waivers of employment, license or residence bars. However, this workload is the result of the requirements included in Acts 27 and 237. Therefore, this order by itself does not affect the expenditures or revenues of state government or local governments.

#### Chapter HFS 13. Reporting of Caregiver Misconduct

This order expands the misconduct part of what has been called the nurse aide registry that s. 146.40 (4g), Stats., requires the Department to maintain. The misconduct part of the registry prior to October 1, 1998, listed nursing assistants working in hospitals and nursing homes, home health agency aides and hospice program aides for whom there was a substantiated allegation of abuse or neglect of a patient or resident or misappropriation of a patient's or resident's property. Subsections (4g) and (4r) of s. 146.40, Stats., were amended by 1997 Wisconsin Acts 27 and 237 to require the Department to include in the misconduct part of the registry

caregivers working for other specified facilities, service organizations and programs regulated by the Department and therefore to make them subject to having allegations of misconduct reported to the Department, Department review of reports and investigation and decision whether an allegation is substantiated, a right to appeal the Department's decision to the Department of Administration's Division of Hearings and Appeals, and for the Department to enter the caregiver's name and the Department's or Division of Hearings and Appeals' decision on the registry. Entities are required to report caregiver misconduct, and the Department is required to review all reports received, conduct further investigation as necessary, make decisions as to whether allegations are substantiated, enter names and findings on the registry, and disclose registry information upon request.

To expand the misconduct part of the registry, this order creates ch. HFS 13 and amends ch. HSS 129. Under ch. HFS 13, the registry name is now caregiver registry. The misconduct part of the registry is consolidated for all caregivers in ch. HFS 13.

This order will not affect the expenditures or revenues of state government or local governments. Any increased costs to the Department for operating the expanded registry are the result of Acts 27 and 237 and were taken into consideration during deliberations on the bills that became Acts 27 and 237.

## **Initial Regulatory Flexibility Analysis**

### Chapter HFS 12, Caregiver Background Checks

These rules apply to the following "agencies:" the Department, county social services and human services departments that license foster homes for children or carry out adoption home studies, child-placing agencies that do the same, and school boards that contract for a day care program. These rules also apply to the following licensed, certified, registered or approved "entities:"

- certified community mental health programs;
- certified community alcohol and other drug abuse (AODA) prevention and treatment programs;
- family day care centers for children;
- group day care centers for children;
- day camps for children
- foster homes and treatment foster homes for children;
- group homes for children;
- shelter care facilities for children;
- child-caring institutions
- child-placing agencies;
- ambulance service providers;
- adult family homes certified or licensed by the Department;
- residential care apartment complexes (formerly called assisted living facilities);
- community-based residential facilities (CBRFs);
- nursing homes and facilities for the developmentally disabled;
- hospice programs;
- home health agencies;
- rural medical centers; and
- hospitals.

Many of the entities are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. This includes about 1/3 of the community mental health and AODA programs; nearly all of the 2665 family day care centers; nearly 1/3 of the 2269 group day care centers; 12 of the 80 private child-placing agencies; most of the 2800 foster homes and 10% of 140 group homes; 25 of 450 ambulance service providers; 7 of 45 residential care apartment complexes; 600 of 1120 CBRFs; 96 of 472 nursing homes; most of the hospice programs; and 115 of 191 home health agencies.

The rules require entities to have prospective employees, contractors and nonclient residents, beginning October 1, 1998, complete a standard Background Information Form developed by

the Department, to have current employees, contractors and nonclient residents fill out that form by October 1, 1999, and to have employees, contractors and nonclient residents fill out that form every 4 years after the first time. The rules also require an entity to undertake searches from several specified sources for background information about applicants for employment and any person who proposes to provide services under contract to the entity's clients. Finally, the rules prohibit an entity from hiring or contracting with a person or allowing a nonclient to reside at the entity, or retaining the person, if that person has a conviction or charge for a serious crime, has been found to have abused or neglected a client or child or misappropriated a client's property or does not have the proper professional credential. However, for specified crimes and other acts and offenses, which would otherwise bar a person from residence or employment, a person is permitted to ask an agency for a waiver of the bar based on evidence of rehabilitation.

The requirements found in the rules are either taken from the statutes that the rules are implementing, ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, or those statutes direct the Department to specify the requirements.

No new professional skills are necessary for entities to comply with ch. HFS 12.

### Chapter HFS 13, Reporting of Caregiver Misconduct

These rules apply to the following licensed, certified, registered or approved "entities:"

- certified community mental health programs;
- certified community alcohol and other drug abuse (AODA) prevention and treatment programs;
- ambulance service providers;
- adult family homes certified or licensed by the Department;
- residential care apartment complexes (formerly called assisted living facilities);
- community-based residential facilities (CBRFs);
- nursing homes and facilities for the developmentally disabled;
- hospice programs;
- home health agencies;
- rural medical centers; and
- hospitals.

Many of the entities are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. This includes about 1/3 of the community mental health and AODA programs; 25 of 450 ambulance service providers; 7 of 45 residential care apartment complexes; 600 of 1120 CBRFs; 96 of 472 nursing homes; most of the hospice programs; and 115 of 191 home health agencies.

The rules require an entity to report to the Department allegations of caregiver misconduct toward residents or patients. Misconduct is abuse or neglect of a client or misappropriation of the client's property. The Department has current rules in ch. HFS 129 that require this reporting by nursing homes and facilities for the developmentally disabled, hospitals, home health agencies and hospice programs. Section 146.40 (4g) and (4r), Stats., was amended by 1997 Wisconsin Act 27 to expand the reporting responsibility to the other types of caregivers listed above. This order consolidates under ch. HFS 13 the required reporting of misconduct, follow-up investigation by the Department and maintenance by the Department of a registry of caregivers for whom allegations of misconduct have been substantiated.

No new professional skills are necessary for entities to comply with ch. HFS 13.

## **Notice of Hearing**

### *Division of Hearings and Appeals*

Notice is hereby given that pursuant to s. 15.03, Stats., the Division of Hearings and Appeals will hold a public hearing to consider the creation of ch. HA 3, Wis. Adm. Code, relating to the

appeal procedure for Medicaid, food stamp, public assistance and social service programs.

### Hearing Information

The hearing will be held as follows:

<u>Date &amp; Time</u>	<u>Location</u>
January 14, 1999 Thursday 10:00 a.m.	Div. of Hearings & Appeals Suite 201 5005 University Ave. (Corner of Univ. Ave & Whitney Way) MADISON, WI

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available at the east end of the building.

### Written Comments

The public record on this proposed rule-making will be held open until close of business **January 21, 1999** to permit the submission of written comments from persons unable to attend the public hearing or those who wish to supplement testimony offered at the hearing. Any such comments should be sent to:

Louis Dunlap  
Division of Hearings and Appeals  
P.O. Box 7875  
Madison, WI 53707-7875

### Analysis Prepared by the Division of Hearings and Appeals

These proposed rules describe the requirements and process for the appeal by individuals of adverse actions which affect their benefits in the Medicaid, food stamps, public assistance and social services programs administered by the Departments of Health and Family Services, Workforce Development, and Administration.

Before government reorganization in 1996, "fair hearings" required by law for the various public assistance and social service programs were conducted pursuant to ch. HSS 225 by the Office of Administrative Hearings located in the Department of Health and Social Services. In the course of reorganization, that office merged with the Division of Hearings and Appeals and the administration of the food stamp program was moved to the Department of Workforce Development. These changes, as well as the fact that ch. HSS 225 was generally outdated, create the need for a new rule governing the hearing process. The new Departmental review process conducted by the Division on W-2 is also addressed.

The proposed rule:

- Defines the actions appealable in the medical assistance, food stamp, public assistance and social services programs administered by the three departments.
- Describes the process, requirements and time limits for requesting a hearing and the circumstances under which program benefits will be ordered continued pending a hearing decision.
- Describes the rights of a person requesting a hearing before and during the proceeding.
- Defines the powers of the administrative law judge who conducts the hearing.
- Indicates the required content and form of a hearing decision, the circumstances under which a decision will be issued as proposed rather than final and the time requirements for issuance.
- Describes the process for rehearing of or amendment to a hearing.
- Provides the requirements and time frames for the prevailing party to request payments of costs.

- Describes the process for review of agency decisions under the Wisconsin Works program.

### Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

### Fiscal Estimate

There is no fiscal effect, as these rules regulate a process already performed.

### Contact Information

To find out more about the hearing or to request a copy of the proposed rules, write or telephone:

Louis Dunlap  
Division of Hearings and Appeals  
5005 University Avenue, Suite 201  
P. O. Box 7875  
Madison, WI 53707-7875

#### Telephone

(608) 267-7376 or,  
if you are hearing impaired, 264-9853

### Notice of Hearing

#### Natural Resources

#### *(Fish, Game, etc., Chs. NR 1--)*

Notice is hereby given that pursuant to ss. 29.085, 29.174 (3), 29.33 (1) and 227.11 (2) (a), Stats., interpreting ss. 29.085, 29.174 (2) (a) and 29.33 (1), Stats., the Department of Natural Resources will hold a public hearing on the revision of s. NR 25.06 (2) (e) 2., Wis. Adm. Code, relating to the commercial fishing quota for whitefish in Lake Michigan and Green Bay.

### Agency Analysis

The proposed rule will increase by 40% the annual total allowable commercial harvest of whitefish from 1,770,000 pounds to 2,470,000 pounds.

The Department also plans to discuss at this hearing the request of the Wisconsin Commercial Fisheries Association to either increase the depth to which trap nets are allowed or to eliminate the trap net depth restriction.

### Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:

Commercial fishers of whitefish.

- b. Description of reporting and bookkeeping procedures required:

No new procedures.

- c. Description of professional skills required:

No new skills.

### Environmental Assessment

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

### Hearing Information

Notice is hereby further given that the hearing will be held on:

**Date & Time**

January 15, 1999  
Friday  
3:00 p.m.

**Location**

General Mtg. Room A150  
Door Co. Courthouse  
421 Nebraska St.  
STURGEON BAY, WI

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 William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Written Comments and Contact Information**

Written comments on the proposed rule may be submitted to:

Mr. William Horns  
Bureau of Fisheries Management & Habitat Protection  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **January 22, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [FH-5-99] and fiscal estimate may be obtained from Mr. Horns.

**Fiscal Estimate**Summary of Bill:

This rule increases the total allowable annual commercial harvest of Lake Michigan and Green Bay whitefish from 1,770,000 pounds to 2,470,000 pounds.

There is no fiscal effect.

**Notice of Hearings***Natural Resources*

*(Environmental Protection--General,  
Chs. NR 100--)*

*(Environmental Protection--WPDES,  
Chs. NR 200--)*

Notice is hereby given that pursuant to ss. 227.11 (2), 281.15, 283.13 and 283.21 (1) (a), Stats., interpreting ss. 281.15 and 283.13, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 105, 106, 211 and 215, Wis. Adm. Code, relating to regulating the discharge of chloride to surface waters of the state.

**Agency Analysis**

The proposed rule will create ch. NR 106, subch. IV which contains the procedure for regulating the discharge of chloride to surface waters of the state. For existing dischargers, chloride effluent limitations will be calculated using the Wisconsin chloride toxicity criteria which is being established in Tables 1 and 5 of ch. NR 105. If the calculated limit cannot be met, the discharger is given the option of having a traditional permit, with the calculated chloride limit included in the permit or a source reduction-based permit. If the latter approach is chosen, an "interim" limit permit will require source reduction measures to be taken.

Newly-constructed facilities seeking a permit for the first time will have chloride effluent limitations calculated using the Wisconsin chloride toxicity criteria. The limitations will be included in the permit and made effective upon issuance of the permit. In special situations where a permittee has a need to switch discharging from either the ground to a surface water or from one

surface water to another, if the permittee can demonstrate that the proposed discharge will result in a net environmental benefit, the Department may use the strategy for existing dischargers.

Chapter NR 211, subch. IV is being created to give publicly-owned treatment works broader authority to regulate domestic sources of chloride. Section NR 215.06 (26) is also being created to add chloride to the list of nonconventional pollutants.

**Initial Regulatory Flexibility Analysis**

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

Any small business that discharges chloride.

b. Description of reporting and bookkeeping procedures required:

No new procedures are required, chloride is added to the list of pollutants already being monitored.

c. Description of professional skills required:

No new skills.

**Environmental Assessment**

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

**Hearing Information**

Notice is hereby further given that the hearings will be held on:

**Date & Time**

January 11, 1999  
Monday  
1:00 p.m.

**Location**

Council Chambers  
Rhineland City Hall  
135 S. Stevens St.  
RHINELANDER, WI

January 12, 1999  
Tuesday  
9:00 a.m.

Room 158/185  
DNR W. Central Reg. Hdqrs.  
1300 W. Clairemont Ave.  
EAU CLAIRE, WI

January 13, 1999  
Wednesday  
10:00 a.m.

Conference Room, DNR  
2421 Darwin Rd.  
MADISON, WI

January 19, 1999  
Tuesday  
9:30 a.m.

Room 141  
DNR Southeast Reg. Hdqrs.  
2300 N. Dr. M. L. King, Jr. Dr.  
MILWAUKEE, WI

January 19, 1999  
Tuesday  
2:30 p.m.

Room 310  
Green Bay City Hall  
100 N. Jefferson St.  
GREEN BAY, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dan Joyce at (608) 266-0289 with specific information on your request at least 10 days before the date of the scheduled hearing.

## Written Comments and Contact Information

Written comments on the proposed rule may be submitted to:

Mr. Dan Joyce  
Bureau of Watershed Management  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **January 26, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WT-54-98] and fiscal estimate may be obtained from Mr. Joyce.

## Fiscal Estimate

### Summary of rule:

Chapter NR 105 is being revised to add chloride and its toxicity criteria to the list of other toxic substances. Changes are proposed to ch. NR 106 for establishing procedures for determining water quality-based effluent limitations for dischargers of chloride to surface waters. Presently, publicly-owned treatment works (POTW's) have the authority under ch. NR 211 to regulate discharges from non-domestic sources. This rule is being revised to broaden POTW's authority to include the regulation of domestic sources of chloride. Chloride is being added to the list of toxic substances in ch. NR 215.

### Fiscal impact:

There are 529 POTW's that discharge to surface waters. It is estimated that 100 of these may incur costs in order to comply with the new chloride water quality criteria. Typically, costs would be associated with identifying sources of chloride and conducting public awareness programs. In some extreme cases, there may be costs associated with enacting sewer use ordinances to further restrict chloride discharges. Due to the extreme variability in the sources and relative quantities of chloride inputs to sewer systems from one municipality to another, it would be speculative to estimate costs.

There are at least ten municipal/commercial zeolite water softeners which discharge directly to surface waters. The regenerant wastes from these facilities have such a high chloride concentration that it cannot be made non-toxic. Hence, these facilities will have to either hook up to the sanitary sewer (if the POTW allows it), or explore an alternative method of softening water. Due to the extreme variability in sewer systems from one municipality to another, it would be speculative to estimate costs of hook-ups to sanitary sewers. Since only a few municipal softening plants to date have explored alternative softening methods and the technology is rapidly changing, it is likewise speculative to estimate alternative softening costs.

There are less than fifty food processors and dairies that discharge directly to surface waters of the state. Some of these dischargers may be unable to meet water quality-based effluent limitations and consequently may need to consider implementing source reduction measures; however, it is projected that the majority of dischargers will be able to comply with the limitations. Costs associated with the chloride rule are difficult to determine due to the case-by-case nature of implementation. For dischargers other than POTW's, there may be savings rather than costs, since plant efficiency improvements invariably result from undertaking source reduction programs intended for improving effluent quality.

Although it is not possible to quantify, there may be a minor increase in workload involved in drafting WPDES permits, since there will be some negotiations between the permit drafter and permittee prior to permit issuance, and some time spent reviewing source reduction plans. Offsetting this additional staff time, there will be more consistency in permits, which will result in less litigation.

### Long-range fiscal implications:

None.

## Notice of Hearing

### *Natural Resources (Environmental Protection--WPDES, Chs. NR 200--)*

Notice is hereby given that pursuant to ss. 227.11(2), 283.15 (2) (b) 2. and 283.31, Stats., interpreting ss. 227.116, 283.15 and 283.37, Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 200, Wis. Adm. Code, relating to applications for discharge permits and water quality standards variances.

## Agency Analysis

The Department proposes to revise the rule to:

1. State in general terms the type of information the Department may require permittees to submit on application forms and more specifically the standard effluent monitoring requirements for various categories and sizes of dischargers. This will generally not result in changes to what the Department currently requires, but serve to formalize what has become common Department practice. It should result in improved consistency.

2. Create a new subchapter for the requirements for filing applications for water quality variances. Currently, the Department conveys information requests by letter after an applicant notifies the Department of its intent to apply for a variance. Promulgation of these requirements was directed by statute.

## Initial Regulatory Flexibility Analysis

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.

## Environmental Assessment

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

## Hearing Information

Notice is hereby further given that the hearing will be held on:

<u>Date &amp; Time</u>	<u>Location</u>
January 20, 1999 Wednesday 10:30 a.m.	Room 305, GEF #3 125 South Webster St. MADISON, WI

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 Tom Muga at (608) 266-7420 with specific information on your request at least 10 days before the date of the scheduled hearing.

## Written Comments and Contact Information

Written comments on the proposed rule may be submitted to:

Mr. Tom Muga  
Bureau of Watershed Management  
P.O. Box 7921  
Madison, WI 53707



Written comments must be received no later than **February 1, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WT-39-98] and fiscal estimate may be obtained from Mr. Mugan.

### **Fiscal Estimate**

Chapter NR 200 sets forth requirements for filing wastewater discharge permit applications, prescribes the form of those applications, and specifies time limits for Department action on them. The Department proposes revisions to ch. NR 200 that will:

1) State in general terms the type of information the Department may require permittees to submit on application forms and more specifically the standard effluent monitoring requirements for various categories and sizes of dischargers. This will generally not result in changes to current requirements, but will serve to formalize what has become Department practice.

2) Create a new subchapter to set forth requirements for filing applications for water quality variances. Currently, the Department conveys information requests by letter after an applicant notifies the Department of its intent to apply for a variance. This will not result in changes to current Department requirements, but will standardize requirements, based on what the Department has learned through experience.

#### Fiscal impact:

None. The changes should result in no fiscal impact, because the changes merely formalize current Department practice administered under more general authority.

#### Long-range fiscal implications:

None.

## **Notice of Hearing**

### *Natural Resources*

#### *(Environmental Protection--WPDES, Chs. NR 200--)*

Notice is hereby given that pursuant to ss. 283.11 (1), 283.19 (1), 283.21 (1) and 227.11 (2) (a), Stats., interpreting ss. 283.11, 283.13, 283.19 and 283.21, Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 233, Wis. Adm. Code, relating to regulation of effluent limitations and pretreatment standards for the pesticide chemicals industry.

### **Agency Analysis**

Section 283.11 (1), Stats., requires the adoption of state wastewater codes that are equivalent to those established by the U.S. Environmental Protection Agency. The U.S. EPA amended their rules for the pesticide chemicals industry which established effluent limits for certain priority pollutants and pesticide active ingredients for this industry. This rule limits the direct discharge of pollutants into navigable waters of Wisconsin and into publicly-owned treatment works by existing and new facilities that formulate, package and repackage pesticide products.

### **Initial Regulatory Flexibility Analysis**

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.

### **Environmental Assessment**

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

## **Hearing Information**

Notice is hereby further given that the hearing will be held on:

<u>Date &amp; Time</u>	<u>Location</u>
January 20, 1999 Wednesday 9:30 a.m.	Room 305, GEF #3 125 South Webster St. MADISON, WI

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 Charles Schuler at (608) 267-7631 with specific information on your request at least 10 days before the date of the scheduled hearing.

## **Written Comments and Contact Information**

Written comments on the proposed rule may be submitted to:

Mr. Charles Schuler  
Bureau of Watershed Management  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **February 1, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WT-7-99] and fiscal estimate may be obtained from Mr. Schuler.

## **Fiscal Estimate**

#### Summary of rule:

The purpose of amending ch. NR 233 is to update the present code to ensure consistency with changes made to the federal regulations found at 40 CFR 455. The new code is equivalent to the federal regulations. The Department does not have the authority to be more or less stringent than the federal regulations. The purpose of these amendments is to specify effluent limitations for BPT, BCT, BAT, and NSPS for the direct discharge of pollutants to waters of the state and to establish pretreatment standards for the introduction of pollutants to publicly-owned treatment works (POTW's).

The effect of amending ch. NR 233, Wis. Adm. Code, will be to establish state standards and limitations for industrial wastewater discharges from the formulating, packaging and repackaging sectors of the pesticide chemical industry. For facilities that formulate, package, or repackage pesticides, this proposed rule establishes effluent limitations and pretreatment standards which allow each facility to choose to meet a zero discharge limitation or comply with a pollution prevention alternative that authorizes discharge of pesticide active ingredients and priority pollutants after various pollution prevention practices are followed and treatment is conducted as needed. This proposed rule also establishes a zero discharge limitation and pretreatment standard for agricultural pesticide refilling establishments.

#### Fiscal impact:

These rule changes will have no fiscal effect on state or local government. Existing staff will implement and administer these changes in their normal course of duties.

#### Long-range fiscal implications:

None.

## **Notice of Hearing**

### *Natural Resources*

#### *(Environmental Protection--WPDES, Chs. NR 200--)*

Notice is hereby given that pursuant to ss. 283.11(1), 283.19(1), 283.21(1) and 227.11(2)(a), Stats., interpreting ss. 283.11, 283.13, 283.19 and 283.21, Stats., the Department of Natural Resources will

hold a public hearing on revisions to ch. NR 252, Wis. Adm. Code, relating to regulation of effluent limitations and pretreatment standards for the leather tanning and finishing industry.

### **Agency Analysis**

Section 283.11(1), Stats., requires the adoption of state wastewater codes that are equivalent to those established by the U.S. Environmental Protection Agency. The U.S. EPA amended their rules for the leather tanning and finishing industry which established effluent limits. This rule limits the direct discharge of pollutants into navigable waters of Wisconsin and into publicly owned treatment works by existing and new facilities that engage in leather tanning and finishing.

### **Initial Regulatory Flexibility Analysis**

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.

### **Environmental Assessment**

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

### **Hearing Information**

Notice is hereby further given that the hearing will be held on:

<b>Date &amp; Time</b>	<b>Location</b>
<b>January 20, 1999 Wednesday 9:30 a.m.</b>	<b>Room 305, GEF #3 125 South Webster St. MADISON, WI</b>

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 Charles Schuler at (608) 267-7631 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments and Contact Information**

Written comments on the proposed rule may be submitted to:

Mr. Charles Schuler  
Bureau of Watershed Management  
P.O. Box 7921  
Madison, WI 53707

Written comments must be received no later than **February 1, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WT-8-99] and fiscal estimate may be obtained from Mr. Schuler.

### **Fiscal Estimate**

#### Summary of rule:

The purpose of amending ch. NR 252 is to update the present code to ensure consistency with changes made to the federal regulations found at 40 CFR 425. The new code is equivalent to the federal regulations. The Department does not have the authority to be more or less stringent than the federal regulations. Chapter NR 252 regulates discharge from leather tanning and finishing facilities. The purpose of these amendments is to specify effluent

limitations for BPT, BCT, BAT, and NSPS for the direct discharge of pollutants to waters of the state and to establish pretreatment standards for the introduction of pollutants into publicly-owned treatment works (POTW's).

The effect of amending ch. NR 252, Wis. Adm. Code, will be to establish state standards and limitations for industrial wastewater discharges from the leather tanning and finishing industry. These amendments add new analytical methods for the measurement of sulfide in wastewaters at certain tanneries, clarify procedural requirements for POTW's to follow in determining whether sulfide pretreatment standards are applicable, revise effluent limitations for BPT and NSPS, and clarify the production levels below which the chromium PSES do not apply. Finally, the amendments remove the upper pH limit for PSES at certain tanneries.

#### Fiscal impact:

These rule changes will have no fiscal effect on state or local government. Existing staff will implement and administer these changes in their normal course of duties.

#### Long-range fiscal implications:

None.

## **Notice of Hearings**

### ***Psychology Examining Board***

Notice is hereby given that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b), 227.11 (2), 455.045 (3), 455.045 (3), 455.065 and 455.08, Stats., and interpreting ss. 455.01, 455.04, 455.045, 455.06, 455.065 and 455.08, Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal Psy 2.09 (1) (j) and (2) and 5.02 (1) (intro.), (a) and (b); to renumber and amend s. Psy 2.12; to amend ss. Psy 1.01, 1.02 (5), 2.01 (1), (2) and (7), 2.02 (2), 2.09 (1) (a) 2., 10., (b), (c) and (4), 3.01 (1) and (2), 4.01, 4.03 (title), (intro.) and (2) and 5.01 (7); to repeal and recreate s. Psy 4.02 (2), (3) and (4); to create s. Psy 5.01 (32), relating to requirements for examination and licensure of psychologists, renewal and conduct.

### **Hearing Information**

<b>January 11, 1999 Monday 9:15 a.m.</b>	<b>Room 179A 1400 E. Washington Ave. Madison, WI</b>
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### **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 January 25, 1999 to be included in the record of rule-making proceedings.

### **Analysis prepared by the Department of Regulation and Licensing**

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 455.045 (3), 455.065 and 455.08  
Statutes interpreted: ss. 455.01, 455.04, 455.045, 455.06, 455.065 and 455.08

In this proposed rule-making order the Psychology Examining Board clarifies the requirements for licensure for those holding a doctoral degree in psychology and the qualification and responsibility of supervisors. The clarification includes, but not limited to, licensure by reciprocity, licensure of holders of the certificate of professional qualification, licensure of senior psychologists, renewal of a lapsed license, along with approval of

continuing education programs and acceptable continuing education programs.

Rules are amended relating to qualification of persons supervising psychological trainees to create minimum experience requirements and to provide that supervisors must be licensed as psychologists. Continuing education rules are amended for purposes of simplification and the convenience of licensees, and to provide for audits of compliance with continuing education requirements. The board is attempting to facilitate licensure of persons licensed in other states by becoming signatory to the agreement of reciprocity of the Association of State and Provincial Psychology Boards. The board proposes amendments designed to make the board eligible to participate in the agreement without significantly changing the actual procedures followed by the board in the licensure process.

The board has become aware that the supervision of future candidates for a license who are engaged in meeting the supervised experience requirements is occasionally carried out by inexperienced persons who may not be qualified to carry out the required supervisory responsibilities. The board proposes to create amendments which would create such minimum qualifications, primarily by requiring that supervisors be licensed psychologists who have had at least three years of post-licensure professional experience.

The rules establishing the requirements for approval of continuing education have evolved in a somewhat disorganized manner and are confusing to licensees and difficult for the board to administer. The board proposes repeal and recreation of s. Psy 4.02 (2), (3) and (4), designed to remedy that situation by clarifying and simplifying the approval process.

The board requires that licensees at the time of biennial renewal of their licenses certify to having completed 40 hours of board-approved continuing education. In auditing licensees under investigation for allegations of misconduct, the board has found that a significant number of such licensees have not in fact completed required continuing education. The board proposes to create a rule which would provide for random audit of ten percent of all licensees during each biennial licensing period.

The board's current rules of conduct define as unprofessional conduct conviction of a crime the circumstances of which substantially relate to the practice of psychology, but do not define as unprofessional conduct adverse action by the psychology licensing board in another state. The board proposes the creation of a new disciplinary rule which would remedy that situation.

Section Psy 2.02 (2), provides that applicants must complete their application before the first of the month prior to the month in which the examination is given. In some instances, this is insufficient time to complete the arrangements for admission to the examination. The board would propose amending the rule to increase the time for processing examination applications to at least 30 days.

Rules are also amended relating to form, style and grammar of existing rules in order to improve readability; changes are made relating to examination passing scores; and changes also update citations referencing statutes which have been renumbered, modified or repealed.

## Text of Rule

**SECTION 1.** Psy 1.01 is amended to read:

Psy 1.01 The rules in chs. Psy 1 to 5 are adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 (2) (a) and ~~445.08, 455.045 (3), 455.065 (1), 455.065 (3), 455.065 (5), 455.08 and 455.09 (1) (g)~~, Stats.

**SECTION 2.** Psy 1.02 (5) is amended to read:

Psy 1.02 (5) "Disciplinary proceeding" means a proceeding against one or more licensees in which the board determines whether or not to revoke or suspend a license, to reprimand a licensee, or ~~to~~ limit a license, or refuse to renew a license.

**SECTION 3.** Psy 2.01 (1), (2) and (7) are amended to read:

Psy 2.01 (1) The properly completed and signed application form ~~accompanied by a recent full-face photograph of the applicant.~~

(2) The application fee ~~specified under~~ authorized by s. 440.05 (2), Stats.

(7) Evidence of successful completion of ~~the professional practice of psychology~~ an examination prepared by professional examination services approved by the board.

**SECTION 4.** Psy 2.02 (2) is amended to read:

Psy 2.02 (2) No applicant may be admitted to the examination on the professional practice of psychology unless the requirements stated in s. Psy 2.01 (1) to (3) have been met ~~before the first of the month immediately~~ at least 30 days prior to the board meeting preceding the date of the examination.

**SECTION 5.** Psy 2.09 (1) (a) is amended to read:

Psy 2.09 (1) (a) Training in professional psychology is must be doctoral training offered in a regionally accredited institution of higher education.

**SECTION 6.** Psy 2.09 (1) (j) is repealed.

**SECTION 7.** Psy 2.09 (2) is repealed.

**SECTION 8.** Psy 2.09 (3) (a) 2., 10., (b), (c) and (4) are amended to read:

Psy 2.09 (3) (a) 2. The first 1,500 hours of the experience should be under the direction of one licensed ~~or license-eligible~~ psychologist who satisfied the requirements of pars. (b) and (c) and who shall be responsible for the integrity and the quality of the training. It shall be planned, organized and integrated, and appropriate to the intended area of practice. There shall be a minimum of 2 hours per week of regularly scheduled formal face-to-face individual supervision with the specific intent of dealing with services rendered directly by the trainee. There must also be at least 2 additional hours per week in learning activities such as: case conferences, seminars, addressing practice issues, co-therapy with a staff person including discussion, group supervision or additional individual supervision.

10. There must be multidisciplinary team membership with the trainees being teamed with other professional specialists in serving clients. It is desirable that trainees also be teamed with other psychologists and other trainees. ~~It is the responsibility of the applicant to demonstrate that he or she had a variety of role models within the field of psychology.~~

(b) *Qualifications of supervisor.* All supervisors of the trainee shall be licensed ~~or license-eligible~~ psychologists and shall have adequate training, knowledge and skill to render competently any psychological service that a psychological trainee undertakes. The supervisor may not permit a trainee to engage in any psychological practice that the supervising psychologist cannot competently perform. Supervisors shall not be a relative by blood or marriage nor be involved in any other dual relationship which obliges the supervisor to the ~~supervisee~~ trainee.

(c) *Responsibility of supervisor.* All supervisors shall be legally and ethically responsible for the activities of the psychological trainee. Supervisors shall be available or make appropriate provision for emergency consultation and intervention. Supervisors shall be able to interrupt or ~~top~~ stop the ~~supervisee~~ trainee from practicing in given cases and to stop the supervisory relationship if necessary. All supervisors of the trainee shall be required to provide a written evaluation of the supervised experience. Prepared evaluations or reports of progress, including strengths and weaknesses, shall be written and discussed with the ~~supervisee~~ trainee on at least a quarterly basis.

(4) APPEARANCE BEFORE THE BOARD. The applicant ~~may~~ shall be required to appear before the board in person prior to licensure to allow the board to make such inquiry of them as to qualifications and other matters as it considers proper.

**SECTION 9.** Psy 2.12 is renumbered Psy 2.12 (1) and Psy 2.12 (1) (title), as renumbered, is amended to read:

Psy 2.12 (1) (title) LICENSURE BY COMITY.

**SECTION 10.** Psy 2.12 (2), (3) and (4) are created to read:

Psy 2.12 (2) LICENSURE BY RECIPROCITY. Applicants who are licensed in another state which is signatory to the agreement of reciprocity of the association of state and provincial psychology

boards, and who apply on or after the effective date that the board becomes signatory to that agreement, shall meet the requirements of s. Psy 2.01 (1), (2), (6), (8), (10) and (11).

(3) **LICENSURE OF HOLDERS OF THE CERTIFICATE OF PROFESSIONAL QUALIFICATION.** Applicants who are licensed in another state who hold the certificate of professional qualification in psychology issued by the association of state and provincial psychology boards shall meet the requirements of s. Psy 2.01 (1), (2), (6), (8), (10) and (11).

(4) **LICENSURE OF SENIOR PSYCHOLOGISTS.** Applicants who have been licensed for 20 or more years in another licensing jurisdiction of the United States or Canada that had requirements for licensure substantially equivalent to the requirements for licensure in this state at the time of original licensure, and who have never been disciplined by the licensing board of any state or province, shall meet the requirements of s. Psy 2.01 (1), (2), (6), (8), (10) and (11).

**SECTION 11.** Psy 3.01 (1) and (2) are amended to read:

Psy 3.01 (1) The properly completed and signed application form ~~accompanied by a recent full-face photograph of the applicant.~~

(2) The application fee ~~specified under~~ authorized by s. 440.05 (2), Stats.

**SECTION 12.** Psy 4.01 is amended to read:

Psy 4.01 **Biennial renewal.** On or before September 30 of the odd-numbered year following issuance of the license, the licensee shall apply for renewal to the department and submit the fee specified in s. 440.05 ~~(3)~~ 440.08 (2) (a), Stats.

**SECTION 13.** Psy 4.02 (2), (3) and (4) are repealed and recreated to read:

Psy 4.02 (2) **APPROVAL OF CONTINUING EDUCATION PROGRAMS.** The board shall approve the following programs and courses:

(a) Continuing education programs and courses sponsored or co-sponsored by a presenter approved by the committee for the approval of continuing education sponsors of the American psychological association.

(b) Educational programs recognized as approved at the time of attendance as "category I" continuing medical education programs by the council on medical education of the American medical association or the American osteopathic association.

(c) Graduate level courses or continuing education courses relevant to the professional practice of psychology offered by accredited colleges and universities.

(d) Continuing education courses approved by the psychology licensing board in another state where the participant is also licensed.

(3) **ACCEPTABLE CONTINUING EDUCATION PROGRAMS.** Acceptable continuing education programs shall meet the following criteria:

(a) The subject matter is psychology or relevant to the practice of psychology.

(b) The sponsor agrees to monitor the attendance and furnish to each participant a certificate of attendance.

(c) The program presenters are competent in the area of the subject matter presented.

(d) The intended audience is psychologists or persons with sufficient professional background to support a level of program content appropriate to licensed psychologists.

(e) Where feasible, attainment of learning objectives is assessed.

(f) The sponsor, program and presenter follow the principles set forth in the American psychological association code of conduct.

(4) Applicants for renewal will be asked to certify their attendance at required continuing education. The board shall conduct a random audit of 10 percent of all licensees on a biennial basis, and shall audit any licensee who is under investigation by the board for alleged misconduct.

**SECTION 14.** Psy 4.03 (title), (intro.) and (2) are amended to read:

Psy 4.03 (title) **Reinstatement Renewal of a lapsed license.** Failure to renew a license by September 30 of odd-numbered years shall cause the license to lapse. A licensee who allows the license to lapse may apply to the board for ~~reinstatement~~ renewal of the license as follows:

(2) If the licensee applies for renewal of the license more than 5 years after its expiration, the board shall make an inquiry as it finds necessary to determine whether the applicant is competent to practice as a psychologist or private practice school psychologist in this state, and shall impose any reasonable conditions on ~~reinstatement~~ renewal of the license that the board considers appropriate. An applicant under this subsection is presumed to be competent to practice as a psychologist or private practice school psychologist in this state if at the time of application the applicant is licensed by a similar examining board of another state or territory of the United States or of a foreign country or province whose standards, in the opinion of the board, are equivalent to or higher than the requirements for licensure as a psychologist under s. 455.04 (1), Stats., or as a private practice psychologist under s. 455.04 (4), Stats. Notwithstanding any presumption of competency under this subsection, the examining board shall require each applicant under this subsection to pass the appropriate examination specified under s. 455.045 (1) (b) or (2) (b), Stats.

**SECTION 15.** Psy 5.01 (7) is amended to read:

Psy 5.01 (7) Reporting distorted, erroneous, ~~and/or~~ or misleading psychological information.

**SECTION 16.** Psy 5.01 (32) is created to read:

Psy 5.01 (32) Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice psychology which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by any agency of the federal government, including but not limited to the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.

**SECTION 17.** Psy 5.02 (1) (intro.), (a) and (b) are repealed.

### **Fiscal Estimate**

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

### **Initial Regulatory Flexibility Analysis**

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an 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 Proposed Rule Revenue**

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 77.51(2), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **January 1, 1999**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

## Contact Person

Please contact Mark Wipperfurth at (608) 266-8253, if you have any questions regarding this proposed rule order.

## Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a)

Statute interpreted: s. 77.51(2)

SECTIONS 1 AND 2. Tax 11.68(1) and (2)(title), (a) and (b) are renumbered Tax 11.68(2) and (3)(title), (a) and (b) and new sub. (1) is created, to provide a definition of "real property construction activities," to reflect the amendment of s. 77.51(2), Stats., by 1997 Wis. Act 27. As a result of that amendment, only those activities that take place at a site where tangible personal property is affixed to real property are included in the definition.

Tax 11.68(2)(b)1. as renumbered is amended, to clarify that a contractor is a retailer of certain property that it installs.

SECTION 3. Tax 11.68(2)(c) is repealed, to reflect the amendment of s. 77.51(2), Stats., by 1997 Wis. Act 27.

SECTIONS 4 AND 5. Tax 11.68(3) to (12) are renumbered Tax 11.68(4) to (13), due to the creation of new sub. (1) as explained in SECTION 2.

Tax 11.68 (4)(f) as renumbered is amended, to restore dropped text and to conform punctuation to Legislative Council Rules Clearinghouse standards.

Tax 11.68(7)(a)6. as renumbered is amended, to change a department policy, so that underground storage tanks of a service station used to carry on a trade or business are tangible personal property when installed.

Tax 11.68(7)(a)9. as renumbered is amended, to clarify language per Legislative Council Rules Clearinghouse standards.

Tax 11.68(7)(b) and (9)(b) as renumbered are amended, and Tax 11.68(4)(b)2. is created, to reflect the department's position that taxable services may be resold by a construction contractor, such as a landscaper.

Tax 11.68(11)(c) as renumbered is amended, to correct a direct quote of statutory language.

Tax 11.68(13)(title), (a) and (c) to (e) as renumbered are amended, to reflect the creation of the stadium tax by 1995 Wis. Act 56.

## Text of Rule

SECTION 1. Tax 11.68(1) and (2)(title), (a) and (b) are renumbered Tax 11.68(2) and (3)(title), (a) and (b), and as renumbered Tax 11.68(2)(b)1. is amended to read:

Tax 11.68(2)(b)1. Property it installs which retains its character as personal property after sale and installation.

Note to Revisor: In the notes at the end of sub. (2)(b)1., 2. and 3., change the references from subs. (4), (6) and (10) to subs. (5), (7) and (11), respectively.

SECTION 2. Tax 11.68(1) is created to read:

Tax 11.68(1) DEFINITION. In this section, "real property construction activities" means activities that occur at a site where tangible personal property that is applied or adapted to the use or purpose to which real property is devoted is affixed to that real property, if the intent of the person who affixes that property is to make a permanent accession to the real property. "Real property construction activities" do not include affixing to real property tangible personal property that remains tangible personal property after it is affixed.

Note: The definition of real property construction activities was revised effective for sales of property pursuant to contracts entered into on or after December 1, 1997, to:

(a) Reverse the effect of the Wisconsin Supreme Court decision in the case of Wisconsin Department of Revenue vs. Sterling Custom Homes (283 N.W. 2d 573 (1979)) prospectively from the effective date of this revision, and

(b) Provide by statute those criteria that were used by the Supreme Court in the case of Dept. of Revenue vs. A.O. Smith Harvestore Products, Inc. (72 Wis. 2d 60, (1976)), for purposes of determining whether tangible personal property becomes real property. The meaning of each of the criteria is explained in the Supreme Court's decision.

SECTION 3. Tax 11.68(2)(c) is repealed.

SECTION 4. Tax 11.68(3)(title), (a), (b) and (c) to (f) and (4) to (12) are renumbered Tax 11.68(4)(title), (a), (b)1. and (c) to (f) and (5) to (13), and as renumbered Tax 11.68(4)(f), (7)(a)6. and 9. and (b), (9)(b), (11)(c) and (13)(title), (a) and (c) to (e) are amended to read:

Tax 11.68(4)(f) Under s. 77.54(41), Stats., contractors, subcontractors or builders may purchase without sales or use tax building materials, supplies and equipment acquired solely for or used solely in the construction, renovation or development of property that would be exempt under s. 70.11(36), Stats. Section 70.11(36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities; and functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.

(7)(a)6. Personal property used to carry on a trade or business, including fixtures and equipment installed in stores, taverns, night clubs, restaurants, ice arenas, bowling ~~alleys~~ centers, hotels and motels, barber and beauty shops, figure salons, theaters and gasoline service stations. ~~Underground storage tanks at gasoline service stations are real property.~~

Note to Revisor: Insert the following example at the end of subd. 6.:

Example: An underground storage tank installed at a gasoline service station and used in the sale of gasoline remains personal property after installation.

9. Except as provided in ss. 77.51(4)(b)6. and (15)(b)5. and 77.54(31), Stats., mobile homes located in a mobile home park on land owned by a person other than the mobile home owner. Exemptions are provided by ss. 77.51(4)(b)6. and (15)(b)5. and 77.54(31), Stats., for 35% of the total amount for which a new mobile home ~~that is sold; provided it~~ is a primary housing unit, or ~~that it~~ is transported in 2 unattached sections ~~if and~~ the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation, ~~is sold;~~ and the full amount for which a used mobile home that is a primary housing unit is sold or purchased. No credit may be allowed for trade-ins and the exemption does not apply to a lease or rental.

(b) If a few items of tangible personal property or taxable services, minor in cost in relation to the total amount of a contract, are sold as part of a contract which includes construction of a building or other structure and no separate charge is made for the personal property or taxable services, the cost of the property or taxable services to the construction contractor shall be used as the measure of gross receipts subject to sales tax. If a separate charge is made for any of the items, they are subject to the tax, ~~but not less than on their cost.~~

Note to Revisor: Replace the example at the end of sub. (7)(b) with the following:

Examples: 1) A refrigerator and drapes are included in the contract to construct a new house. The cost of the refrigerator and drapes to the construction contractor is included in the construction contractor's measure of gross receipts subject to sales tax.

2) Landscaping services, minor in amount, are included in the contract to construct a new house. An amount equal to the charge by the landscaping subcontractor to the general contractor for landscaping services is included in the general contractor's measure of gross receipts subject to sales tax.

(9)(b) A contractor may purchase without tax ~~as property~~ for resale tangible personal property which retains its character as personal property after installation as described in sub. (6) ~~(7) and taxable services~~, even though the resale of the property ~~or taxable services~~ by the contractor is exempt when the property is sold to a governmental unit or other exempt entity having a Wisconsin certificate of exempt status. This property includes furniture; processing machinery or equipment used in a municipal sewerage or water treatment plant; classroom laboratory sinks, tables and other equipment; and seating for an auditorium. Taxable services include landscaping services. This exemption does not apply to property ~~or taxable services~~ which becomes a part of real property as described in sub. (5) ~~(6)~~ and par. (a).

(11)(c) Section 77.52(2)(a)10., Stats., provides in part that "...the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration, but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustrations, illustration but not of limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs."

#### (13)(title) COUNTY AND STADIUM TAXES ON BUILDING MATERIALS.

(a) Section 77.71(3), Stats., imposes ~~an excise tax~~ taxes upon a contractor engaged in construction activities, which includes constructing, altering, repairing or improving real property within a county or special district which has adopted the county or stadium tax. ~~The tax is~~ taxes are measured by the sales price of the tangible personal property used in constructing, altering, repairing or improving real property which becomes a component part of real property in that county or special district, unless the contractor has paid the county or stadium tax of a county or special district in this state or a similar local sales tax in another state on the purchase of that property.

(c) In providing repair services to real property subject to taxation under s. 77.52(2)(a)10., Stats., a contractor may purchase without county or stadium tax for resale the building materials used in providing the taxable services, and the county ~~excise tax and stadium taxes~~ imposed under s. 77.71(3), Stats., ~~does do~~ not apply to those purchases.

(d) Section 77.77(3), Stats., provides that the sales tax under s. 77.71(1), Stats., and the ~~excise tax~~ county and stadium taxes under s. 77.71(3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others ~~is are~~ not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance or special district resolution, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The ~~excise tax~~ county and stadium taxes under s. 77.71(3), Stats., on building materials used in real property construction activities ~~is are~~ not imposed if the contractor purchased the building materials before the effective date of the county or stadium tax of that county or special district or has paid the sales tax of another county or special district in this state in purchasing the building materials.

#### SECTION 5. Tax 11.68(4)(b)2. is created to read:

Tax 11.68(4)(b)2. Taxable services which a construction contractor will resell may be purchased without tax for resale.

Note to Revisor: 1) In the note at the end of sub. (4)(b), change the reference from subs. (4) and (6) to subs. (5) and (7), respectively.

2) Replace example 2 at the end of sub. (9)(a) with the following:

2m) A contractor shall pay tax on its purchases of equipment for use at a municipal well or pumping station that becomes a part of realty after installation.

3) In the note at the end of sub. (10)(c), change the reference from sub. (9) to sub. (10).

4) In the first note at the end of Tax 11.68, insert periods after subs. 11. and 20. in the reference to s. 77.52(2)(a), Stats.

5) In the second note at the end of Tax 11.68, make the following changes:

a) at the beginning of part (i), replace "Thirty-five percent" with "The exemption of 35%";

b) remove the word "and" before part (n); and

c) add the following at the end of the note:

;(o) The stadium tax on building materials became effective January 1, 1996, pursuant to 1995 Wis. Act 56; and (p) The change to the definition of "real property construction activities" to include only those activities that take place at a site where tangible personal property is affixed to real property became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

### **Initial Regulatory Flexibility Analysis**

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

### **Fiscal Estimate**

The rule changes Department policy to provide that underground storage tanks of gasoline service stations are considered tangible personal property when installed. Previously, these tanks had been considered real property. The change will increase sales tax revenue, since tax will now be imposed on the entire costs of underground storage tanks, plus repairs and other services to those tanks, rather than on the materials used in constructing those tanks. Because data on the amount of the value of underground storage tanks installed in the state are not available, an estimate of the revenue gain cannot be made.

Other changes reflect changes in the statutes made by the 1995 Wis. Act 56 and 1997 Wis. Act 27, clarify the Department's current policy or conform language and style to Legislative Council Rules Clearinghouse standards. These changes have no fiscal effect.

## **Notice of Hearings**

### **Workforce Development (Economic Support, Chs. DWD 11 to 59)**

Notice is given that pursuant to s. 49.129 (7), Stats., the Department of Workforce Development proposes to hold public hearings to consider the creation of rules under ch. DWD 14, Wis. Adm. Code, relating to electronic benefit transfer.

## Hearing Information

January 21, 1999 Thursday 1:30 – 4:30 p.m.	Madison Room 400X, GEF 1 201 E. Washington Ave.
January 25, 1999 Monday 1:00 – 4:00 p.m.	Eau Claire Room 105 State Office Bldg. 718 W. Clairemont
January 28, 1999 Thursday 10:00 a.m. – 1:00 p.m.	Milwaukee Room 240 Martin Luther King Center 531 W. Vliet St.

These hearings are held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266-4573, or Telecommunication Device for the Deaf (TTY) at (608)267-0927, at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

### Copies of Rule

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Division of Economic Support, P.O. Box 7935, Madison, Wisconsin, 53707-7935, by calling (608) 267-4573, or at the appointed times and places the hearings are held.

### Written Comments

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings may be submitted no later than **February 5, 1999** for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Tim Burnett at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

### Initial Regulatory Flexibility Analysis

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

The rule will affect retail food stores authorized by the USDA Food and Nutrition Service to accept food stamps. DWD will afford all authorized retailers the opportunity to participate in the EBT system. As DWD's agent, the EBT services vendor will arrange for authorized retailers with owned or leased point of sale (POS) terminals to use the equipment for EBT transactions. During the first two years of EBT operations, the department shall pay a fee of \$.08 per food stamp purchase and merchandise return transaction conducted on POS terminals owned or leased by retailers which have signed an agreement with the EBT vendor to use such equipment. The department shall also commission a study to determine actual EBT costs incurred by retailers.

As an alternative, the vendor may supply EBT-only POS equipment to authorized retailers in accordance with federal regulatory requirements. Under a federal waiver, the vendor may not provide a POS terminal to retailers with less than \$100 per month in food stamp redemption activity. Retailers who do not have a POS terminal will use a manual voucher system. Also, non-traditional retailers such as route vendors and farmer's markets without access to telephone lines may use the manual voucher system.

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

(1) A manual voucher system is required if the retailer does not have a POS device or if the POS device is not useable. The manual

voucher must be submitted for payment within a specified amount of time. (2) An agreement for EBT services between the retailer and the EBT vendor is required, (3) Employee training which includes technical training on the specific EBT equipment in the retailer's store, manual procedures, reversals, adjustments, corrections, and accessing the retailer customer service helpline, and (4) Reconciliation of transaction data.

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

Paper coupon procedures will be replaced by reconciliation procedures and accounting for settlement purposes similar to debit and credit card procedures.

### Fiscal Estimate

All cost assumptions for the state and local governments for this program were included in the legislation which created sec. 49.129, Stats. (1995 Act 368). There are no additional costs for state government or local governments as a result of the promulgation of these administrative rule changes.

## Notice of Hearing Workforce Development (Economic Support, Chs. DWD 11 to 59)

Notice is given that pursuant to sec. 49.138, Wis. Stats., the Department of Workforce Development proposes to hold a public hearing to consider the repeal, renumbering, amendment and creation of rules under chapter DWD 16, Wis. Adm. Code, relating to the emergency assistance program.

### Hearing Information

January 21, 1999 Thursday 10:00 a.m.	Madison Room 400X, GEF 1 201 E. Washington Ave.
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The hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call the EEO/AA office of the Division of Economic Support at (608) 267-0927 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

### Copies of Rule

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Office of Legal Counsel, P.O. Box 7946, Madison, Wisconsin, 53707-7946, by calling (608) 261-8513, or at the appointed time and place the hearing is held.

### Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings may be submitted no later than **January 28, 1999**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to the DWD Office of Legal Counsel at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

### Initial Regulatory Flexibility Analysis

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

The only small businesses that will be affected by this rule will be privately-run W-2 agencies.

2.Reporting, bookkeeping and other procedures required for compliance with the rules. No additional reporting or bookkeeping procedures are created by this rule.

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

None

### **Fiscal Estimate**

The rule is based on the funding assumptions in the current budget, 1997 Wis. Act 27.

## **Notice of Hearing** *Workforce Development* *(Economic Support,* *Chs. DWD 11 to 59)*

Notice is given that pursuant to ss. 49.143(2) and 49.33, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the repeal, renumbering, amendment and creation of rules under chapter DWD 17, Wis. Adm. Code, relating to the training of income maintenance workers.

### **Hearing Information**

January 21, 1999  
Thursday  
10:00 a.m.

Madison  
Room 400X, GEF 1  
201 E. Washington Ave.

The hearing is held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call the EEO/AA office of the Division of Economic Support at (608) 267-0927 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

### **Copies of Rule**

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Office of Legal Counsel, P.O. Box 7946, Madison, Wisconsin, 53707-7946, by calling(608) 261-8513, or at the appointed time and place the hearing is held.

### **Written Comments**

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings may be submitted no later than **January 28, 1999**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to the DWD Office of Legal Counsel at the address notedabove. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

### **Initial Regulatory Flexibility Analysis**

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

The only small businesses that will be affected by this rule will be privately-run W-2 agencies.

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

No additional reporting or bookkeeping procedures are created by this rule. Income maintenance agencies will continue to have an obligation to keep records of the training of their employees.

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

None.

### **Fiscal Estimate**

All costs to the Department and local governments for the training of income maintenance workers were included in the 1997-1999 biennial budget act, 1997 Wisconsin Act 27. There are no additional costs for state government or local governments as a result of the promulgation of these administrative rule changes.

## **Notice of Hearing** *Workforce Development* *(Economic Support,* *Chs. DWD 11 to 59)*

Notice is given that pursuant to ss. 48.651 and 49.155(ld), Wis. Stats., the Department of Workforce Development proposes to hold a public hearing to consider the repeal, renumbering, amendment and creation of rules under chapter DWD 55, Wis. Adm. Code, relating to criminal record background checks for certified day care operators and other persons.

### **Hearing Information**

January 15, 1999  
Friday  
10:00 a.m.

Madison  
Room 400X, GEF 1  
201 E. Washington Ave.

The hearing is held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call the EEO/AA office of the Division of Economic Support at (608) 267-0927 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

### **Copies of Rule**

A copy of the rules to be considered may be obtained from the State Department of WorkforceDevelopment, Office of Legal Counsel, P.O. Box 7946, Madison, Wisconsin, 53707-7946, by calling(608) 261-8513, or at the appointed time and place the hearing is held.

### **Written Comments**

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings may be submitted no later than **January 22, 1999**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to the DWD Office of Legal Counsel at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

### **Initial Regulatory Flexibility Analysis**

1.Types of small businesses that will be affected by the rules. Certified day care operators.

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

The primary procedures involve the completion of background information disclosure forms and checking with government agencies and other sources for background information.

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

None.

### **Fiscal Estimate**

All costs to the Department and local governments for the expanded background checks were included in the 1997-1999



biennial budget act, 1997 Wisconsin Act 27. There are no additional costs for state government or local governments as a result of the promulgation of these administrative rule changes.

## **Notice of Hearing**

### ***Workforce Development (Economic Support, Chs. DWD 11 to 59)***

Notice is given that pursuant to s. 49.155(lg), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the repeal, renumbering, amendment and creation of rules under chapter DWD 56, Wis. Adm. Code, relating to the administration of day care funds.

### **Hearing Information**

**January 15, 1999  
Friday  
10:00 a.m.**

**Madison  
Room 400X, GEF 1  
201 E. Washington Ave.**

This hearing is held in accessible facilities. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call the EEO/AA office of the Division of Economic Support at (608) 267-0927 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

### **Copies of Rule**

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Office of Legal

Counsel, P.O. Box 7946, Madison, Wisconsin, 53707-7946, by calling (608) 261-8513, or at the appointed times and places the hearing is held

### **Written Comments**

Interested persons are invited to appear at the hearings and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings may be submitted no later than **January 22, 1999**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to the DWD Office of Legal Counsel at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

### **Initial Regulatory Flexibility Analysis**

1. Types of small businesses that will be affected by the rules. Certified day care operators.

2. Reporting, bookkeeping and other procedures required for compliance with the rules. No significant changes are made to current procedures.

3. Types of professional skills necessary for compliance with the rules. None

### **Fiscal Estimate**

All costs to the Department and local governments for these program changes were included in the 1997-1999 biennial budget act, 1997 Wisconsin Act 27. There are no additional costs for state government or local governments as a result of the promulgation of these administrative rule changes.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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*The following administrative rules 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 of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.*

**Accounting Examining Board (CR 98-91):**

An order affecting ss. Accy 3.05, 3.055 and 7.035, relating to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant (CPA) after December 31, 2000.

Effective 02-01-99.

**Hearing & Speech Examining Board (CR 98-115):**

An order affecting ss. HAS 1.01, 2.01, 3.02 and 7.05 and chs. HAS 6 and 8, relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

Effective 02-01-99.

**Insurance, Commissioner of (CR 98-98):**

An order affecting ss. Ins 3.27, 3.39 and 3.46, relating to revising requirements for Medicare supplement policies to comply with recent federal and state laws.

Effective 02-01-99.

**Regulation and Licensing (CR 98-107):**

An order creating ch. RL 8 and Appendix I of ch. RL 8, relating to the issuance and use of administrative warnings.

Effective 02-01-99.

**Regulation and Licensing (CR 98-132):**

An order affecting ss. RL 80.03, 83.01, 84.01 and 86.01 and chs. RL 81, 85 and 87, relating to real estate appraisers.

Effective 02-01-99.

**Transportation (CR 98-105):**

An order affecting ss. Trans 325.02, 325.05, 326.01, 326.07, 328.03 and 328.04, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials and motor carrier safety requirements for intrastate transportation of hazardous materials.

Effective 02-01-99.

**Transportation (CR 98-111):**

An order creating ch. Trans 197, relating to charges for submission of proof of insurance.

Effective 02-01-99.

**Transportation (CR 98-121):**

An order creating s. Trans 231.01 (9) and repealing and recreating ch. Trans 233, relating to division of land abutting a state trunk highway or connecting highway.

Effective 02-01-99.

**Transportation (CR 98-122):**

An order creating ch. Trans 210, relating to the major highway project numerical evaluation process.

Effective 02-01-99.

**Transportation (CR 98-125):**

An order creating ch. Trans 57, relating to standards for airport siting.

Effective 02-01-99.

**Transportation (CR 98-131):**

An order affecting ch. Trans 400, relating to the Wisconsin Environmental Policy Act (WEPA).

Effective 03-01-99.

**Transportation (CR 98-140):**

An order affecting ch. Trans 309, relating to ambulance inspection.

Effective 04-01-99.

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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*The following administrative rule orders have been adopted and published in the **December 31, 1998 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

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

### **Agriculture, Trade and Consumer Protection**

#### **(CR 98-1):**

An order revising ch. ATCP 134, relating to residential rental practices.

Effective 01-01-99.

#### **Commerce (CR 98-52):**

An order repealing and recreating ch. Comm 87, relating to the private sewage system replacement or rehabilitation grant program (Wisconsin Fund).

Effective 02-01-99.

#### **Commerce (CR 98-65):**

An order affecting ch. ILHR 47, relating to the petroleum environmental cleanup fund.

Effective 01-01-99.

#### **Commerce (CR 98-74):**

An order affecting ch. Comm 115, relating to the community-based economic development program.

Effective 01-01-99.

#### **Commerce (CR 98-106):**

An order creating s. Comm 69.18 (2) (a) 2.c., relating to the exemption of elevator access to certain areas within government-owned or -operated buildings or facilities.

Effective 01-01-99.

#### **Commerce (CR 98-109):**

An order affecting ch. ILHR 57, subch. II, relating to the exemption of accessibility requirements for certain multilevel, multifamily dwelling units.

Effective 01-01-99.

#### **Employe Trust Funds (CR 98-101):**

An order creating s. ETF 50.48 (4) (c), relating to the administration of the Long-Term Disability Insurance (LTDI) program.

Effective 01-01-99.

#### **Financial Institutions--Securities (CR 98-114):**

An order affecting chs. DFI-Sec 2, 3 and 5 and ss. DFI-Sec 1.02, 7.01 and 9.01, relating to federal covered securities, federal covered advisers and investment adviser representatives.

Effective 01-01-99.

#### **Insurance, Commissioner of (CR 98-80):**

An order affecting s. Ins 4.10, relating to changes in the requirements for the Wisconsin Insurance Plan.

Effective 01-01-99.

#### **Natural Resources (CR 95-223):**

An order affecting chs. NR 518 and 718 and ss. NR 419.07, 500.03, 811.16 and 812.08, relating to the remediation of soil contamination through landspreading.

Part effective 01-01-99.

#### **Natural Resources (CR 97-89):**

An order affecting ch. NR 140, relating to groundwater quality standards.

Part effective 01-01-99.

Part effective 12-31-99.

Part effective 01-01-00.

#### **Natural Resources (CR 98-95):**

An order amending ss. NR 25.02 (25) and 25.05 (1) (d), relating to commercial fishing for chubs on Lake Michigan.

Effective 01-01-99.

#### **Natural Resources (CR 98-96):**

An order affecting ss. NR 46.15, 46.16 and 46.17, relating to the definition of "human residence" as it pertains to the forest tax law landowners.

Effective 01-02-99.

#### **Optometry Examining Board (CR 98-75):**

An order affecting ch. Opt 3 and ss. Opt 4.01, 4.02, 4.03 and 6.03, relating to credential applications and examination requirements for individuals applying for a license to practice optometry.

Effective 01-01-99.

#### **Pharmacy Examining Board (CR 98-16):**

An order affecting chs. Phar 1 to 8, 10, 12, 13 and 14, relating to pharmacists and pharmacies.

Effective 01-01-99.

#### **Revenue (CR 97-97):**

An order affecting ss. Tax 19.01, 19.03, 19.04 and 19.05 and ch. Tax 19 (title), relating to tax rate disparity payments.

Effective 01-01-99.

#### **Transportation (CR 98-102):**

An order affecting s. Trans 157.05, relating to titling of vehicles held by trusts.

Effective 01-01-99.

#### **Veterinary Examining Board (CR 98-9):**

An order affecting chs. VE 1 to 10, relating to veterinarians and veterinary technicians.

Effective 01-01-99.

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## *SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS*

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The following administrative rule revisions and corrections have taken place in December, 1998, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### REVISIONS

#### **Agriculture, Trade and Consumer Protection:**

##### **Ch. ATCP 134**

- S. ATCP 134.01 (intro.), (1) to (6)
- S. ATCP 134.02 (1m), (1r), (3), (4), (10) and (14)
- S. ATCP 134.03 (2)
- S. ATCP 134.04 (1) (b) and (2) (b)
- S. ATCP 134.05 (entire section)
- S. ATCP 134.06 (1) to (3)
- S. ATCP 134.08 (7)
- S. ATCP 134.09 (2) and (4)

#### **Commerce:**

##### ***(Petroleum Environmental Cleanup Fund, Ch. Comm 47)***

##### **Ch. Comm 47**

- S. Comm 47.01 (2), (3) (a), (4) (c), (d), (e), (f) and (g) and (5)
- S. Comm 47.015 (entire section)
- S. Comm 47.02 (entire section)
- S. Comm 47.025 (1) (b) and (c) and (5) (a)
- S. Comm 47.03 (entire section)
- S. Comm 47.10 (1) (a) and (b)
- S. Comm 47.11 (entire section)
- S. Comm 47.115 (1)
- S. Comm 47.12 (1) and (2) (c)
- S. Comm 47.30 (4)
- S. Comm 47.305 (1) (c) to (g)
- S. Comm 47.31 (entire section)
- S. Comm 47.33 (entire section)
- S. Comm 47.335 (1), (3) (c) and (4)
- S. Comm 47.336 (entire section)
- S. Comm 47.337 (entire section)
- S. Comm 47.338 (entire section)
- S. Comm 47.339 (entire section)
- S. Comm 47.35 (1) and (2) (a)
- S. Comm 47.355 (entire section)
- S. Comm 47.405 (2)

##### ***(Building & Heating, etc., Chs. Comm 50 to 64)***

##### **Ch. Comm 57**

- S. Comm 57.70 (entire section)
- S. Comm 57.77 (6) (c)
- S. Comm 57.81 Footnote 7 of Table 1
- S. Comm 57.84 (2) (d)

##### ***(Barrier-Free Design, Ch. Comm 69)***

##### **Ch. Comm 69**

- S. Comm 69.18 (2) (a)

##### ***(Plumbing, Chs. Comm 82-87)***

##### **Ch. Comm 87 (entire chapter)**

##### ***(Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)***

##### **Ch. Comm 115**

- S. Comm 115.02 (2m), (5), (9), (9m), (13), (14), (15) and (16)
- S. Comm 115.03 (2), (3) and (6)
- S. Comm 115.035 (entire section)
- S. Comm 115.04 (1) (c), (3), (4) and (6) (a)
- S. Comm 115.043 (entire section)
- S. Comm 115.045 (2) (a)
- S. Comm 115.046 (entire section)
- S. Comm 115.048 (entire section)
- S. Comm 115.05 (1) (intro.), (a), (j), (k) and (4)
- S. Comm 115.06 (entire section)
- S. Comm 115.07 (entire section)
- S. Comm 115.08 (entire section)
- S. Comm 115.09 (entire section)

#### **Employe Trust Funds:**

##### **Ch. ETF 50**

- S. ETF 50.48 (4) (c)

#### **Financial Institutions:**

##### ***(Securities)***

##### **Ch. DFI-Sec 1**

- S. DFI-Sec 1.02 (2) (b), (5) (c), (7) (b) and (14) to (18)

##### **Ch. DFI-Sec 2**

- S. DFI-Sec 2.01 (1) (a), (3) (a) to (d), (9) and (10) (a)
- S. DFI-Sec 2.02 (9) (a) and (L)
- S. DFI-Sec 2.04 (entire section)

##### **Ch. DFI-Sec 3**

- S. DFI-Sec 3.01 (1) (a) and (2)
- S. DFI-Sec 3.02 (1) (h) and (m)
- S. DFI-Sec 3.03 (3)
- S. DFI-Sec 3.07 (entire section)

**Ch. DFI–Sec 5**

- S. DFI–Sec 5.01 (1), (3) (intro.), (4) (b), (5) and (7)
- S. DFI–Sec 5.02 (entire section)
- S. DFI–Sec 5.03 (1) (intro.), (2) to (5), (6), (7) and (8)
- S. DFI–Sec 5.04 (1), (7) and (8)
- S. DFI–Sec 5.05 (1), (11) (d) and (12) (intro.)
- S. DFI–Sec 5.06 (intro.), (12) and (13)
- S. DFI–Sec 5.07 (entire section)
- S. DFI–Sec 5.08 (2)
- S. DFI–Sec 5.09 (entire section)

**Ch. DFI–Sec 7**

- S. DFI–Sec 7.01 (6) (a), (d) and (f)

**Ch. DFI–Sec 9**

- S. DFI–Sec 9.01 (1) (b) and (d)

**Insurance, Commissioner of:****Ch. Ins 4**

- S. Ins 4.10 (3) (a), (b), (c) and (g), (4) (b) and (c), (7) (a), (d) and (e), (8) (b), (d) and (e), (9) (b) and (c), (10) (d) and (e), (11) (a) (intro.), (c) and (e), (12) (b) and (h), (13) (b), (d), (f) and (g), (14) (a), (b), (c) and (d), (18) and (19)

**Natural Resources:****(Fish, Game, etc., Chs. NR 1--)****Ch. NR 25**

- S. NR 25.02 (25)
- S. NR 25.05 (1) (d)
- S. NR 25.10 (2) (i)

**Ch. NR 46**

- S. NR 46.15 (9)
- S. NR 46.16 (8)

**(Environmental Protection--General, Chs. NR 100--)****Ch. NR 140**

- S. NR 140.03 (entire section)
- S. NR 140.05 (20)
- S. NR 140.10 Table 1
- S. NR 140.16 (1)
- S. NR 140.20 Table 3
- S. NR 140.24 (1) (a)
- S. NR 140.26 (1) (a)
- S. NR 140.28 (1) (c) and (d), (2) (intro.), (5) (a), (6) (intro.), (a) and (b)

**(Environmental Protection--Investigation and Remediation, Chs. NR 700--)****Ch. NR 718**

- S. NR 718.03 (3) to (13)
- S. NR 718.09 (1) and (7) (intro.) and (8)
- S. NR 718.11 (1)
- S. NR 718.13 (1)
- S. NR 718.14 (3)

**(Environmental Protection--Water Supply, Chs. NR 800--)****Ch. NR 811**

- S. NR 811.16 (4) (d)

**Ch. NR 812**

- S. NR 812.08 (4) (f) and Table A

**Optometry Examining Board:****Ch. Opt 3**

- S. Opt 3.02 (1) (b)
- S. Opt 3.03 (entire section)
- S. Opt 3.04 (entire section)
- S. Opt 3.05 (entire section)
- S. Opt 3.07 (2)
- S. Opt 3.10 (1), (2) and (3)
- S. Opt 3.12 (entire section)

**Ch. Opt 4**

- S. Opt 4.01 (2) and (4)
- S. Opt 4.03 (entire section)

**Ch. Opt 5**

- S. Opt 5.04 (entire section)

**Pharmacy Examining Board:****Ch. Phar 1**

- S. Phar 1.01 (entire section)
- S. Phar 1.02 (7), (8), (11) and (14)

**Ch. Phar 2**

- S. Phar 2.01 (intro.)
- S. Phar 2.02 (1) (intro.) and (d)
- S. Phar 2.03 (1), (3), (4) and (5)
- S. Phar 2.04 (entire section)
- S. Phar 2.05 (entire section)
- S. Phar 2.06 (entire section)

**Ch. Phar 3 (entire chapter)****Ch. Phar 4**

- S. Phar 4.01 (3)
- S. Phar 4.02 (1), (2), (5) and (6)
- S. Phar 4.03 (3)
- S. Phar 4.035 (entire section)
- S. Phar 4.045 (entire section)
- S. Phar 4.046 (entire section)
- S. Phar 4.05 (1) and (4)

**Ch. Phar 5**

- S. Phar 5.01 (1) and (2)
- S. Phar 5.02 (entire section)
- S. Phar 5.04 (entire section)
- S. Phar 5.05 (entire section)

**Ch. Phar 6**

- S. Phar 6.01 (entire section)
- S. Phar 6.06 (1) (j)
- S. Phar 6.08 (entire section)

**Ch. Phar 7**

- S. Phar 7.01 (1) (a), (e), (em), (f) (intro.) and (3)
- S. Phar 7.04 (entire section)
- S. Phar 7.065 (entire section)
- S. Phar 7.07 (1)

**Ch. Phar 8**

- S. Phar 8.01 (entire section)
- S. Phar 8.02 (1), (2) and (3) (e)
- S. Phar 8.03 (1) and (3)
- S. Phar 8.04 (1)
- S. Phar 8.05 (2)
- S. Phar 8.09 (4)
- S. Phar 8.12 (entire section)

**Ch. Phar 10**

- S. Phar 10.02 (1), (2) and (3)
- S. Phar 10.03 (7m) and (19)

**Ch. Phar 12**

- S. Phar 12.03 (2) (intro.), (a), (b), (c), (d) and (5)

**Ch. Phar 13**

- S. Phar 13.02 (3)
- S. Phar 13.07 (entire section)

**Ch. Phar 14 (entire chapter)****Revenue:****Ch. Tax 19**

- S. Tax 19.01 (entire section)
- S. Tax 19.03 (1) (a), (am), (b), (c), (d), (e), (g), (h), (k) and (L) and (2) (intro.), (a), (b) and (c), (3) and (4) (intro.), (a) and (d)
- S. Tax 19.04 (entire section)
- S. Tax 19.05 (1) (intro.), (b) and (2)

**Transportation:****Ch. Trans 76 (entire chapter)****Ch. Trans 157**

- S. Trans 157.05 (1) and (2) (intro.) and (i)

**Veterinary Examining Board:****Ch. VE 1**

- S. VE 1.02 (1m), (2), (11) and (11m)

**Ch. VE 2**

- S. VE 2.01 (1) and (2)
- S. VE 2.03 (entire section)
- S. VE 2.04 (1) and (3)
- S. VE 2.05 (1) (intro.), (a), (b), (c) and (3)

**Ch. VE 3**

- S. VE 3.02 (intro.), (1), (2), (3) and (4)
- S. VE 3.03 (entire section)
- S. VE 3.04 (entire section)
- S. VE 3.05 (entire section)

**Ch. VE 4**

- S. VE 4.01 (1), (2) (intro.), (a) to (g), (3) and (5)
- S. VE 4.02 (2) and (3)

**Ch. VE 5**

- S. VE 5.02 (1) (intro.), (a), (b), (c), (d) and (e)
- S. VE 5.03 (1) (intro.), (a), (b), (c) and (d)

**Ch. VE 6**

- S. VE 6.02 (2)
- S. VE 6.03 (1) (intro.), (a), (b), (c) and (d)
- S. VE 6.04 (entire section)

**Ch. VE 7**

- S. VE 7.02 (1) (intro.), (3) (intro.), (a) to (c), (4) (intro.), (a) and (b), (5) (a) and (b), (6) (a) to (c), (7) and (8)
- S. VE 7.03 (2) (a) to (o) and (3) (a) to (i)
- S. VE 7.06 (10)

**Ch. VE 8**

- S. VE 8.01 (2)
- S. VE 8.02 (entire section)
- S. VE 8.03 (entire section)

**Ch. VE 9**

- S. VE 9.01 (intro.)
- S. VE 9.02 (1)
- S. VE 9.03 (entire section)
- S. VE 9.035 (2)
- S. VE 9.04 (entire section)
- S. VE 9.05 (intro.), (1) to (9) and (12)
- S. VE 9.06 (entire section)

**Ch. VE 10**

- S. VE 10.01 (entire section)
- S. VE 10.02 (entire section)
- S. VE 10.03 (entire section)
- S. VE 10.04 (entire section)
- S. VE 10.06 (entire section)

## EDITORIAL CORRECTIONS

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

### Commerce:

*(Petroleum Environmental Cleanup Fund,  
Ch. Comm 47)*

**Ch. Comm 47 was renumbered from ch. ILHR 47 and corrections were made under s. 13.93 (2m) (b) 7., Stats.**

S. Comm 47.50 (entire section) had corrections made under s. 13.93 (2m) (b) 1., Stats.

*(Barrier-Free Design, Ch. Comm 69)*

**Ch. Comm 69 had corrections made under s. 13.93 (2m) (b) 7., Stats.**

### Financial Institutions:

*(Securities)*

**Ch. DFI-Sec 2**

S. DFI-Sec 2.01 had a correction made under s. 13.93 (2m) (b) 1., Stats.

**Ch. DFI-Sec 3**

S. DFI-Sec 3.01 (entire section) had a correction made under s. 13.93 (2m) (b) 1., Stats.

**Ch. DFI-Sec 7**

S. DFI-Sec 7.01 (entire section) had corrections made under s. 13.93 (2m) (b) 1., Stats.

### Natural Resources:

*(Fish, Game, etc., Chs. NR 1--)*

**Ch. NR 25 (entire chapter) had corrections made under s. 13.93 (2m) (b) 7., Stats.**

**Ch. NR 46**

S. NR 46.15 (15) had a correction made under s. 13.93 (2m) (b) 7., Stats.

*(Environmental Protection--Investigation and Remediation, Chs. NR 700--)*

**Ch. NR 718 (entire chapter) had corrections made under s. 13.93 (2m) (b) 7., Stats.**

*(Environmental Protection--Water Supply,  
Chs. NR 800--)*

**Ch. NR 811**

S. NR 811.02 (22) and (28) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.09 (intro.) and (1) (d) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.11 (5) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.16 (entire section) had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

S. NR 811.19 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.29 (1) (g) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.41 (2) (f) had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

S. NR 811.57 (5) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.61 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.66 (2) (d) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.78 (entire section) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. NR 811.80 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 812**

S. NR 812.01 (1) (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 812.07 (50), (81), (97), (123) and (124) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. NR 812.08 (entire section) had corrections made under s. 13.93 (2m) (b) 7., Stats.

### Revenue:

**Ch. Tax 19**

S. Tax 19.03 (1) had a correction made under s. 13.93 (2m) (b) 1., Stats.

### Veterinary Examining Board:

**Ch. VE 7**

S. VE 7.06 (8) and (9) had corrections made under s. 13.93 (2m) (b) 7., Stats.

## ERRATA

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

### Commerce:

*(Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)*

**Ch. Comm 119 reprinted to correct title.**

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Agriculture, Trade & Consumer Protection (CR 98-1)

Ch. ATPC 134 – Residential Rental Practices.

#### Summary of Final Regulatory Flexibility Analysis:

The department's proposed rules will have an impact on most landlords who lease residential dwelling units. Many of these landlords are small businesses as defined by s. 227.114 (1)(a), Stats.

The current rules regulate residential rental practices by landlords under ch. ATPC 134, Wis. Adm. Code. This rule, which was developed in consultation with an ad hoc advisory committee that included landlord and tenant representatives clarifies and simplifies the rules. This rule will assist landlords in complying with ch. ATPC 134, and should effect a decrease in legal conflicts between landlords and tenants. Among other things, this rule:

- Clarifies the coverage of the rule.
- Clarifies the definition of "rental agreement." A rental agreement (conveying a tenancy interest in real estate) does not arise until the parties agree on the essential terms of tenancy, including the specific dwelling unit and the amount of rent to be paid for that dwelling unit.
- Allows landlords and tenants to agree that they will enter into a rental agreement in the future, assuming the satisfactory negotiation of specific terms and conditions, before a specific dwelling unit is identified, but prohibits deceptive "bait and switch" tactics by landlords.
- Clarifies current rules related to the return and withholding of "earnest money" deposits paid by prospective tenants.
- Modifies current rules related to the documentation of pre-existing damages.
- Clarifies current requirements related to the disclosure of conditions affecting the habitability of the dwelling unit.
- Clarifies current procedures for negotiating nonstandard rental provisions which do any of the following:
  - \* Expand a landlord's normal right of entry to a tenant's dwelling unit.
  - \* Expand the normal reasons for which a landlord may withhold a tenant's security deposit.
  - \* Give the landlord a lien on the tenant's personal property.
- Requires landlords to provide tenants receipts for cash rent payments.
- Prohibits rental provisions which purport to waive the landlord's legal obligation to provided fit and habitable premises.
- Clarifies current rules related to a landlord's entry into a tenant's dwelling unit.

- Regulates, but does not prohibit, penalties for late rent payment.

- Clarifies the deadline by which a landlord must return or account for a tenant's security deposit.

- Clarifies procedures for returning security deposits and earnest money.

- Prohibits forcible "self-help" or constructive evictions.

As a result of input received during the public hearing and comment period, the division modified the draft rule to accommodate the needs of small business owners / landlords in the following areas:

- The draft rule was modified to allow landlords to charge the actual cost of, but not more than \$20, for the purpose of obtaining a consumer credit report on a prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or its contract affiliates, subject to some limitations. This change is intended to reduce costs associated with screening tenants who falsify applications.

- The draft rule was modified to allow up to 21 calendar days for landlords to complete application processing before requiring return of earnest money deposits. The purpose of this change is to reduce the costs of processing rental applications and provide small business owners with the requisite time to adequately screen tenants.

- The draft rule was modified to allow multiple non-standard rental provisions to be contained within a single document and to allow the document to be pre-printed. This change is intended to reduce paperwork and printing costs.

- The draft rule was modified to allow tenants to designate, in writing, the specific parties to whom the security deposit shall be paid. The purpose of this change is to reduce confusion regarding which party in a rental agreement is due the return of a security deposit, and reduce liability to business owners.

The revisions do not create additional financial burdens and therefore will have no adverse impact on small business.

#### Summary of Comments of Legislative Committees:

On July 28, 1998, this department transmitted the above rule for legislative committee review. On July 29, 1998 this rule was assigned to the Senate Committee on Business, Economic Development and Urban Affairs. On August 6, 1998, the rule was assigned to the Assembly Committee on Housing. No action taken during the review period by the committees.

On September 3, the Board of Agriculture, Trade and Consumer Protection approved a minor modification to the rule provisions regarding credit checks as a result of contacts received from legislators and members of the Wisconsin credit industry. The department was asked to modify the rule to better identify the types of consumer credit reports for which a landlord may charge a prospective tenant. This rule modification was transmitted to the chairpersons of the above committees on September 4, 1998 for an additional 10 day review period. The department received no comments or requests for hearing during the additional review period from the committees.



**2. Commerce (CR 98-65)**

Ch. ILHR 47 – Petroleum Environmental Cleanup Fund.

Summary of Final Regulatory Flexibility Analysis:

The rule has elements that soften the regulatory impact on small businesses. The most significant element of flexibility is the provision that allows more frequent progress payments, under the fund, for the smallest owners and operators. The rule also allows reduced reporting and complexity for sites that are remediated for \$80,000 or less. Although not all of these sites will be for small businesses, the provision is expected to apply to many owners and operators who qualify as small businesses. The oral and written hearing comments received did not address significant small business issues.

The rule change should not materially impact the cost of report preparation by small businesses. And, the rule package does not change the total estimated costs and expenses for small businesses. The timing of reimbursement and the manner in which costs are managed, changes, based upon the rule, but the total reimbursement is not impacted.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Environment and the Senate Committee on Business, Economic Development, and Urban Affairs. No comments were received.

**3. Commerce (CR 98-109)**

Ch. Comm 57, Subch. II – Exemption of accessibility requirements for certain multilevel multifamily dwellings units.

Summary of Final Regulatory Flexibility Analysis:

The rule changes are consistent with the 1997 Wisconsin Act 237 that exempts accessibility regulations for certain multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators. Small housing providers must submit plans and specifications for multilevel multifamily housing to be reviewed for compliance with the construction standards specified in chapter ILHR 66 or chapter ILHR 57, however, the accessibility provisions for this type of housing will not be required.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Housing and the Senate Committee on Business, Economic Development and Urban Affairs. No comments were received.

**4. Commerce (CR 98-106)**

S. Comm 69.18 – Exemption of elevator access to certain areas within government-owned or operated buildings or facilities.

Summary of Final Regulatory Flexibility Analysis:

The rules establish an exemption for elevator access to certain small areas with low occupancy within government-owned or operated buildings or facilities. The rules give more design flexibility to government agencies when they construct new buildings or facilities or do alterations to existing buildings or facilities.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Government Operations and the Senate Committee on Business and Economic Development and Urban Affairs. No comments were received.

**5. Commerce (CR 98-52)**

Ch. Comm 87 – Private sewage system replacement or rehabilitation grant program (Wisconsin Fund)

Summary of Final Regulatory Flexibility Analysis:

The rules establish updated grant fund amount tables for private sewage system replacement or rehabilitation. The rules provided for the handling of the 10% allocation of the annual grant fund allocation to be segregated for experimental private sewage system replacement or rehabilitation.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Business, Economic Development and Urban Affairs. No comments were received.

**6. Commerce (CR 98-74)**

Ch. Comm 115 – Community-Based Economic Development Program.

Summary of Final Regulatory Flexibility Analysis:

No comments or issues were received at public hearings from small businesses.

Summary of Comments:

The rules were reviewed by the Assembly Committee on Small Businesses and Economic Development and the Senate committee on Business, Economic Development and Urban Affairs. No comments were received.

**7. Employee Trust Funds (CR 98-101)**

S. ETF 50.48 – Administration of the long-term disability insurance program.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule itself does not directly affect small businesses.

Summary of Comments:

No comments were reported.

**8. Financial Institutions-Securities (CR 98-114)**

DFI-Sec Code – Federal covered securities, federal covered advisors and investment adviser representatives.

Summary of Final Regulatory Flexibility Analysis:

No final regulatory flexibility analysis is included on the basis that the Division of Securities has determined, after complying with s. 227.0 16(1) to (5), Wis. Stats., that the proposed rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments:

No comments were reported.

**9. Insurance (CR 98-80)**

S. Ins 4.10 – Changes in the requirements for the Wisconsin Insurance Plan.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

The legislative standing committees had no comments on this rule.

**10. Natural Resources (CR 98-95)**

Ch. NR 25 – Commercial fishing for chubs in Lake Michigan.

Summary of Final Regulatory Flexibility Analysis:

This rule would directly affect commercial fishers by expanding winter chub fishing opportunities.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate environment and Energy Committee. There were no comments.

**11. Natural Resources (CR 98-96)**

Ch. NR 46 – Definition of human residence as it pertains to forest tax law landowners

Summary of Final Regulatory Flexibility Analysis:

This rule does not affect small business. Small private forest landowners and forest industries enrolled under the Managed Forest Law will be required to meet the new building specifications on lands entered under the Managed Forest Law after January 1, 1 999 and pay withdrawal penalties when the specifications are exceeded.

Summary of Comments by Legislative Review Committees:

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

**12. Natural Resources (CR 97-89)**

Ch. NR 140 – Groundwater quality standards.

Summary of Final Regulatory Flexibility Analysis:

The Department does not believe that the proposed rule amendments will have a significant economic impact on a substantial number of small businesses. The compliance and reporting requirements in ch. NR 140 are not changed by the proposed amendments. If a standard is exceeded, the owner or operator of a facility, practice or activity, including any small business, must report the violation to the appropriate regulatory agency. Depending on the type of facility and its activities, e.g., wastewater treatment operation, there may be one or more of the new substances for which a facility may have to monitor and report exceedances and take one or more appropriate responses as required by ch. NR 140.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Senate Environment and Energy Committee and the Assembly Natural Resources Committee. On June 11, 1 998, the Senate Committee requested a meeting with the Department, but took no action of the rule. The Assembly Natural Resources Committee held a public hearing and requested the Department to modify the rule. At its August 26, 1998 meeting, the Natural Resources Board removed the health standards for ammonia and retained ammonia as an indicator parameter. A delayed effective date of January 1, 2000 for a health standard for boron and the retention of boron as an indicator parameter until December 31, 1999 was also approved. The revised rule was resubmitted to the Committees.

**13. Natural Resources (CR 95-223)**

Chs. NR 419, 500, 518 & 718 – Remediation of soil contamination through landspreading.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not create additional regulatory or compliance requirements beyond the existing scope of the NR 700 series. With the exception of increased competition among soil remediation service providers, there are no small business impacts that result from this rule. The rule is intended to maintain a single point of contract, thus streamlining the cleanup process and, in some cases, providing a more cost effective remedy for businesses of all sizes that find themselves responsible for the remediation of petroleum contamination.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Natural Resources Committee and the Senate Environment and Energy Committee. On August 5, 1998, the Assembly Natural Resources Committee held a public hearing. there were no recommendations made as a result of the public hearing.

**14. Optometry Examining Board (CR 98-75)**

Opt Code – Credential applications and examination requirements for individuals applying for a license to practice optometry.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**15. Pharmacy Examining Board (CR 98-16)**

Phar Code – Pharmacists and pharmacies.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**16. Revenue (CR 97-97)**

Ch. Tax 19 – Tax rate disparity payments.

Summary of Final Regulatory Flexibility Analysis:

No regulatory flexibility analysis is required because the proposed rule does not have a significant economic impact on a substantial number of small businesses.

Summary of Comments:

No comments were reported.

**17. Transportation (CR 98-102)**

Ch. Trans 157 – Titling of vehicles held by trusts.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**18. Veterinary Examining Board (CR 98-9)**

VE Code – Veterinarians and veterinary technicians.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

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## PUBLIC NOTICES

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### Public Notice

*Dept. of Agriculture, Trade and Consumer Protection*

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

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

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

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

The Department has determined that current dollar amounts specified under ss. 779.41(1) (intro), (1) (a), (1) (b), and (1) (c), Stats., shall be increased by 1.7%, according to the prior year annual change in the consumer price index. Thus, dollar amounts for charges under the mechanic's lien law are adjusted as follows:

Under s. 779.41 (1) (intro), mechanic's liens generally, \$1,570.

Under s. 779.41 (1) (a), mechanic's liens on a trailer or semitrailer designed for use with a road tractor, \$4,715.

Under s. 779.41 (1) (b), mechanic's liens on road machinery, including mobile cranes, trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment, \$7,855.

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

1. More than 10,000 and less than 20,000 pounds, \$3,145.
2. 20,000 pounds or more but less than 40,000 pounds, \$6,205.
3. 40,000 pounds or more, but less than 60,000 pounds, \$9,430.
4. 60,000 pounds or more, \$12,570.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after **January 1, 1999** for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the Wisconsin Administrative Register.

#### **Contact Information**

Merry Fran Tryon, Director  
Consumer Protection Bureau  
Dept. of Agriculture, Trade and Consumer Protection  
2811 Agriculture Dr.  
P.O. Box 8911  
Madison, WI 53708-8911

Telephone:  
(608) 224-4921

## Public Notice

*Department of Financial Institutions  
(Division of Savings Institutions)*

### **Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts for 1999**

Under s. 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance shall pay interest on the outstanding principal of the escrow.

Section 13.052 (5) (am) 2, Stats., directs the Department of Financial Institutions, Division of Savings Institutions, to determine annually the required interest rate. The rate is based on the average interest rate paid by Wisconsin depository institutions on passbook savings accounts.

The Department of Financial Institutions, Division of Savings Institutions, has calculated the interest rate required to be paid on escrow accounts under s. 138.052 (5), Stats, to be 2.74% per year. This interest rate shall remain in effect until the first day of the first month following publication of the new interest rate in the Wisconsin Administrative Register.

### **Contact People**

Lisa Roys, Director of Communications  
Department of Financial Institutions  
Telephone (608) 266-0450

Mr. Thomas M. Boykoff, Administrator  
Division of Savings Institutions  
Department of Financial Institutions  
Telephone (608) 261-4338

## Public Notice

*Department of Health and Family Services*

### ***(Medical Assistance Reimbursement for Case Management Services: Targeted Case Management for Child Welfare Clients in Out-of-Home Care)***

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

Among providers of case management services are those who provide targeted case management for families with children up to the age of 21 who are at risk of physical, mental, or emotional dysfunction. The recipients of this service make up what is called Target Group N.

The Wisconsin Department of Health and Family Services recently proposed to modify the rate methodology for targeted case management (TCM) services delivered by the Bureau of Milwaukee Child Welfare or its subcontractors for those clients in Target Group N where the child has been placed in substitute (out-of-home) care within Milwaukee County. The Department's proposal involved no change in the definition of the already existing group and the benefits remained the same. At this time, the Department is proposing to apply this methodology on a statewide basis.

The state's estimate of any expected increase or decrease in annual aggregate Medicaid expenditures shows an increase of \$18,102,042 (Federal Financial Participation-FFP \$10,651,241) in state fiscal year (SFY) 1999 and \$24,136,056 (FFP \$14,201,655) in SFY 2000. A decrease would take place in Title IV-E expenditures of \$12,671,429 (FFP \$6,335,715) in SFY 1999 and \$16,895,239 (FFP \$8,447,620) in SFY 2000.

The billing process will be established in such a manner as to prevent the processing of duplicate billings for the same client for the same service period. This will be accomplished by installing edits between procedure codes in the Wisconsin Medicaid Management Information System (MMIS) system. The methodology also contains a provision for adjusting the rate to an actual cost basis after completion of the federal fiscal year. In addition, amendments are being proposed to the Department's Cost Allocation Plan to ensure avoidance of duplicate claims for TCM and Title IV-E.

The Department is changing its methods and standards in this manner because this is a more efficient and comprehensive way to track the time expended in delivering these case management services.

The methodology uses the federally approved Random Moment Time Study (RMTS) as a tool in developing the monthly rate per client. Initially the Department requested from the U.S. Health Care Financing Administration (HCFA) authority to implement the new rate methodology in Milwaukee, effective April 1, 1998. At this time, the Department is seeking the authority to implement the methodology on a statewide basis.

### **Proposed Change**

The proposed change is to: Create a new rate methodology which will employ the Random Moment Time Study (RMTS) as a tool in developing the monthly rate per client for targeted case management services.

### **Copies of Proposed Change**

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

#### Regular Mail

Attention: State Plan Coordinator  
Bureau of Health Care Financing  
P.O. Box 309  
Madison, WI 53701-0309

#### Phone

James Johnston  
Policy Section Chief  
(608) 267-9474

#### FAX

(608) 266-1096  
Attention: State Plan Coordinator

#### E-Mail

[matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us)

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

### **Written Comments**

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Bureau of Health Care Financing. The FAX number is (608) 266-1096. The e-mail address is [matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology, based on comments received.

## **Public Notice**

### *Department of Health and Family Services*

### *(Medical Assistance Reimbursement for Pharmaceutical Products: Incentive Payments for Substituting Less Expensive Drugs)*

The State of Wisconsin reimburses providers for pharmaceutical products provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This

program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

The Wisconsin Department of Health and Family Services is proposing to modify the reimbursement for drugs by paying an incentive dispensing fee through the Pharmaceutical Care Codes to pharmacists for contacting prescribing providers to recommend that their orders be changed to a clinically appropriate but less expensive drug.

The Department's proposal involves no change in the drugs available to recipients of Medical Assistance. The benefits to recipients remain the same as are presently available.

The Department is changing its methods and standards in this manner because it will encourage therapeutic substitution, thus serving to reduce costs to the program without reducing the benefits available to recipients.

### **Proposed Change**

The proposed change is to pay an incentive dispensing fee through the Pharmaceutical Care Codes to pharmacists for contacting prescribing providers to change orders to a clinically appropriate but less expensive drug. Pharmacies will be reimbursed this incentive payment only when a change in drugs occurs.

### **Copies of the Available Proposed Change:**

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

#### Regular Mail

Attention: State Plan Coordinator  
Division of Health Care Financing  
P.O. Box 309  
Madison, WI 53701-0309

#### Phone

James Johnston  
Community Services Section Chief  
(608) 267-9474

#### FAX

(608) 266-1096  
Attention: State Plan Coordinator

#### E-Mail

[matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us)

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

### **Written Comments**

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Division of Health Care Financing. The FAX number is (608) 266-1096. The e-mail address is [matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

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*ACTIONS BY THE JOINT COMMITTEE FOR REVIEW OF  
ADMINISTRATIVE RULES*

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**Action by the Joint Committee for  
Review of Administrative Rules**

*Dept. of Commerce  
(Plumbing, Chs. Comm 82-87)*

The Joint Committee for the Review of Administrative Rules met in Executive Session on December 8, 1998 and adopted the following motion:

**Comm 83.03 (2):**            **Relating to** the discontinuation of use of privately-owned wastewater treatment systems upon the installation of a public system approved by the Department of Natural Resources.

Moved by Representative Gunderson, seconded by Senator Welch that, pursuant to s. 227.26 (2) (d), Stats., and for the reasons set forth in s. 227.19 (4) (d) 6., Stats., the Joint Committee for Review of Administrative Rules suspend the first two sentences of s. Comm 83.03 (2), Wis. Adm. Code.

Ayes (10)

Noes (0)

Motion carried:    **Rule suspended.**

**Action by the Joint Committee for  
Review of Administrative Rules**

*Dept. of Natural Resources*

The Joint Committee for the Review of Administrative Rules met in Executive Session on December 8, 1998 and adopted the following motion:

**DNR Guidance Documents:**    **Relating to** determinations of navigability of farm drainage ditches pursuant to s. 30.10 (4) (c), Stats.

Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.26 (2) (b), Stats., the Joint Committee for Review of Administrative Rules require that the Department of Natural Resources promulgate as an emergency rule, within 30 days, all guidance documents published by the agency that provide direction to agency staff on the determination of navigability of farm drainage ditches.

Ayes (10)

Noes (0)

Motion carried:    **DNR To Promulgate Rule in 30 Days.**





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