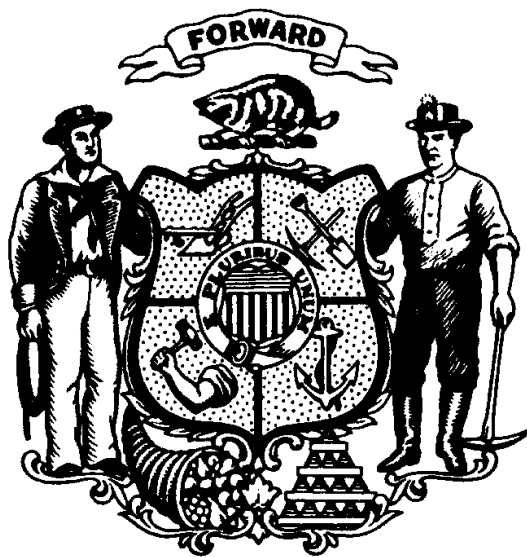


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 521**



Publication Date: May 31, 1999  
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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 (2)

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

1. Rules were adopted amending s. ATCP 60.19 (3) and (4), relating to drug residues in raw milk.

#### **Finding of Emergency**

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

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATCP 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

**Publication Date:** April 30, 1999  
**Effective Date:** April 30, 1999  
**Expiration Date:** September 27, 1999  
**Hearing Date:** June 18, 1999  
**[See Notice this Register]**

2. Rules adopted revising s. ATCP 10.45, relating to security of dairy plant payments to milk producers.

#### **Finding of Emergency**

(1) Section 100.06, Stats., is designed to provide "reasonable assurance" that dairy farmers will be paid for the milk they produce. Under ss. 97.20(2)(d)2. and 100.06, Stats., a dairy plant must, as a condition to licensing, comply with applicable security requirements under s. 100.06, Stats., and department rules under ch. ATCP 100, Wis. Adm. Code. Since dairy plant licenses expire on April 30 annually, dairy plants must comply with applicable security requirements in order to qualify for license renewal on May 1 of each year.

(2) Under s. 100.06, Stats., and ch. ATCP 100, a dairy plant operator who purchases milk from producers must do one of the following:

(a) File with the department of agriculture, trade and consumer protection ("department") audited financial statements which show that the operator meets minimum financial standards established by s. 100.06, Stats.

(b) File security with the department in an amount equal to at least 75% of the operator's "maximum liability to producers," as calculated under s. ATCP 100.45(5).

(c) Enter into a dairy plant trusteeship under ch. ATCP 100, Subch. V.

(3) Under s. ATCP 100.45(5), a dairy plant operator's "maximum liability to producers" is based on the plant operator's largest monthly purchase of milk during the *preceding* license year. Milk prices hit all time record highs in 1998, dramatically increasing

monthly dairy plant payrolls. Security requirements for the 1999 license year are currently based on these inflated 1998 monthly payrolls, even though 1999 monthly payrolls have dropped dramatically in response to price changes.

(4) Since December 1998, the average market price for raw milk has fallen by approximately 40%. Dairy economists expect BFP average prices to remain at least 12% to 16.2% below last year's average during 1999. Because of the dramatic decline in milk prices, dairy plants have smaller producer payroll obligations than they had in 1998.

(5) Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since December. This has created serious financial hardships for some dairy plants.

(6) Current security requirements, based on 1998 producer prices and payrolls, are excessive in relation to current payroll obligations and impose an added financial burden on dairy plants. Current security requirements under s. ATCP 100.45(5), based on last year's prices, are at least 31 to 48% higher than they would be if calculated at current prices.

(7) Because of the dramatic decline in dairy prices, some dairy plant operators are required to file large amounts of additional security, often amounting to millions of dollars. This is a major expense for affected operators. Operators may find it difficult, financially, to obtain and file the required security. If a dairy plant is unable to file the required security in connection with the May 1, 1999 license renewal, the department will be forced to take action against the dairy plant's license. This could result in the forced closing of some unsecured dairy plants. The forced closing of an unsecured plant may, in turn, result in serious financial losses to producer patrons.

(8) By requiring excessive security based on last year's prices, current rules are making it unnecessarily difficult and expensive for dairy plants to obtain and file security. This could contribute to the financial failure of some dairy plants, or to the forced closing of some unsecured plants. Dairy plant financial failures or closings, if they occur, may cause serious and widespread financial injury to milk producers in this state. This constitutes a serious and imminent threat to the public welfare.

(9) In order to reduce the risk of dairy plant financial failures or forced closings, rule amendments are urgently needed to adjust dairy plant security requirements to appropriate levels based on current milk prices. The rule amendments will relieve financially stressed dairy plants from unnecessary financial burdens and will make it easier for those dairy plants to file security with the department. That, in turn, will reduce the risk of dairy plant financial failures, or the forced closing of unsecured plants, which may adversely affect milk producers.

(10) Rule amendments, to be effective, must be promulgated prior to the dairy plant license year beginning May 1, 1999. That is not possible under normal rulemaking procedures. Therefore, the following emergency rule is needed to protect the public welfare.

(11) Should milk prices rise beyond the levels currently anticipated for the license year beginning May 1, 1999, so that security filed under this emergency rule is less than 75% of a dairy plant operator's current monthly producer payroll, the operator is required to notify the department of that fact under s. 100.06, Stats.,

and s. ATCP 100.20(3). The department may demand additional security at that time.

**Publication Date:** April 20, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999

## **EMERGENCY RULES NOW IN EFFECT**

### **Commerce**

#### **(Flammable & Combustible Liquids, Ch. Comm10)**

Rules adopted revising **ch. Comm 10**, relating to regulation of flammable and combustible liquids.

#### **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, welfare and the environment.

The facts constituting the emergency are as follows. Under ss. 101.09, 101.142 and 101.144, Stats., the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

**Publication Date:** December 11, 1998  
**Effective Date:** December 11, 1998  
**Expiration Date:** May 10, 1999  
**Hearing Date:** March 3, 1999  
**Extension Through:** July 8, 1999

## **EMERGENCY RULES NOW IN EFFECT**

### **Commerce & Natural Resources**

#### **(Petroleum Environmental Cleanup Fund Interagency Responsibilities, Ch. Comm 46)**

Rules adopted revising **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

## Finding of Emergency

The Departments of Commerce and Natural Resources find that an emergency exists and that adoption of a rule included in this order is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under sections 101.143 and 101.144, Wisconsin Statutes, the Department of Commerce protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directed the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. An emergency rule in response to that directive was adopted by the Department and became effective on January 1, 1999. Since that date, further improvements for jointly administering the PECFA fund have been developed, which are consistent with the JCRAR directive and which are expected to significantly mitigate the backlog of claims to this oversubscribed fund.

**Publication Dates:** February 23 & March 1, 1999

**Effective Date:** February 23, 1999

**Expiration Date:** July 23, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### Commerce

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

1. Rules adopted revising **ch. Comm 113**, relating to the annual allocation of volume cap on tax-exempt private activity bonds.

## Finding of Emergency & Rule Analysis

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

Several areas in the State of Wisconsin have recently experienced severe economic distress due to large plant closings which have put hundreds of Wisconsin residents out of work. As a result of two large paper mills being shut down a year ago, 1997 Wisconsin Act 237 created s. 560.147, Stats., authorizing the Rapid Response Fund within the Wisconsin Development Fund. The fund is part of the Rapid Response Initiative, which assists areas affected by these and future closings. Commerce is now proposing as part of this initiative a Rapid Response Set Aside within the volume cap allocation process which will enable businesses in these distressed areas to obtain the financing they need to make the necessary capital investments to create and retain jobs. Several projects are pending in that need this change in order to move forward with their plans. Allocation of volume cap is in highest demand in the spring and summer due to the construction cycle. The Rapid Response set-aside must be in place as soon as possible in order for projects

to receive allocation and begin construction as soon as possible. Jobs cannot be created or retained until projects go forward.

**Publication Date:** February 17, 1999

**Effective Date:** February 17, 1999

**Expiration Date:** July 17, 1999

**Hearing Date:** April 12, 1999

2. Rules adopted creating **ch. Comm 112**, relating to the Wisconsin Development Zone Program.

## Finding of Emergency

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

Pursuant to ss. 560.70 to 560.797, Stats., the Department of Commerce is responsible for administering Wisconsin Development Zone Program. These rules are being adopted to incorporate in the administrative code the recent amendments contained in 1997 Wis. Act 27 that entirely changed the eligibility and the criteria for certified development zone businesses and the process for the verification and the claiming of tax credits. Section 560.785, Stats., directs the Department of Commerce to develop rules and exceptions to those rules concerning the eligibility for tax benefits. After a review and evaluation of all the certified businesses and their projects a number of exceptions have been identified in order to meet the needs of different areas of the state and to fulfill our commitments to businesses that were made prior to this legislation. In order to process claims for tax years beginning on or after January, 1, 1998, these rules must be made available immediately.

**Publication Date:** February 25, 1999

**Effective Date:** February 25, 1999

**Expiration Date:** July 25, 1999

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## EMERGENCY RULES NOW IN EFFECT (3)

### 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

**Hearing Dates:** March 1 and 3, 1999

**Extension Through:** June 30, 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 than 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  
**Hearing Date:** February 15, 1999  
**Extension Through:** July 7, 1999

3. Rules adopted creating **ch. DOC 330**, relating to pharmacological treatment of serious child sex offenders.

## 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 peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created s. 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

**Publication Date:** January 1, 1999  
**Effective Date:** January 1, 1999  
**Expiration Date:** May 31, 1999  
**Hearing Dates:** March 1, 2 and 3, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Emergency Response Board*

Rules adopted revising **s. ERB 1.04**, relating to reporting requirements for gasoline and diesel fuel present at 10,000 pounds or more at retail gas stations.

## Finding of Emergency and Rule Analysis

The Wisconsin Division of Emergency Management finds that an emergency exists and that adoption of this rule is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows:

The U.S. Environmental Protection Agency has stated in writing, its intent to implement a rule change effective March 1, 1999. The rule change will increase the 42 USC 11021 and 11022 reporting threshold for gasoline to 75,000 gallons and for diesel fuel to 100,000 gallons, when stored in below ground tanks at retail gas stations. This change will have the effect of exempting most gasoline stations from EPCRA reporting requirements. It will also mean that gasoline and diesel fuel that is present in 10,000 pounds or more will not be uniformly reported under EPCRA. If implemented, this rule change will occur during a reporting period and will take effect on the deadline for submission of 1999 reporting information, which applies to chemicals that were present in 1998. This will create a situation where facilities reporting prior to the rule change would be reporting under one requirement and those reporting after the March 1, 1999 deadline would be reporting under a different requirement. It is not clear which requirement would affect those facilities that submit documentation prior to the intended rule change, that is, by the reporting deadline, and whether these facilities would have to amend their submissions to be in compliance with the law.

The most commonly spilled substances in Wisconsin are petroleum products, gasoline and diesel fuel. This information is important to fire departments as well as Local Emergency Planning Committees as an emergency response planning tool. The Tier Two chemical information is provided to the local fire department with jurisdiction over the facility and to the appropriate Local Emergency Planning Committee. This is the only comprehensive list of hazardous materials that is available to fire departments and Local Emergency Planning Committees.

Further, in Wisconsin, individual preprinted forms are printed in mid December and mailed out by the first week of January to assist facilities in meeting reporting requirements. This is well before the time when U.S. EPA has stated that they intend to implement a rule change. Because EPA intends to implement the change on the March 1, 1999 reporting deadline, it is not possible to mail forms out

at that time and have facilities make the necessary submissions by the March 1, 1999 deadline. Wisconsin facilities have come to expect that inventory reporting materials will be mailed out in a time frame that will allow adequate time for the facility to meet the March 1, 1999 reporting deadline. Facilities that fail to submit the necessary reporting materials by the March 1, 1999 reporting deadline would be in non-compliance with federal and state EPCRA reporting requirements.

Individual states do not have the authority to implement requirements under EPCRA which are less stringent than the federal requirements. This emergency rule would maintain the existing reporting requirements that have been in place since the inception of the program in 1986. Specifically, this rule states that the reporting thresholds for gasoline and diesel fuel would be maintained at 10,000 pounds for retail gas stations. This emergency rule will allow Wisconsin Emergency Management the ability to distribute reporting materials in a timely manner and will permit the facilities to submit the necessary paperwork prior to the March 1, 1999 deadline. By allowing facilities sufficient time prior to the March 1, 1999 deadline, they will have the opportunity to make the necessary submissions under EPCRA and to remain in compliance with federal and state law. This will also insure that all gasoline and diesel fuel stored in amounts of 10,000 pounds or more in the state is reported under EPCRA. This in turn will insure that all fire departments and Local Emergency Planning Committees will continue to have access to a comprehensive listing of hazardous materials under the Emergency Planning and Community Right-to-Know Act.

**Publication Date:** January 20, 1999  
**Effective Date:** January 20, 1999  
**Expiration Date:** June 19, 1999  
**Hearing Dates:** March 16 & 19, 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  
**Hearing Date:** March 3, 1999  
**Extension Through:** July 1, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Financial Institutions* (Division of Securities)

Rules adopted creating **s. DFI-Sec 2.01(1)(c)6 and (d)6.**, relating to designating alternative accounting guidelines for the preparation of financial statements for certain governmental issuers of securities.

### Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

These emergency rules are necessitated by a new accounting guideline relating to disclosures about Year 2000\* issues applicable to the preparation of financial statements for governmental issuers of securities as required by Governmental Accounting Standards Board Technical Bulletin 98-1, *Disclosures about Year 2000 Issues* ("GASB TB 98-1", or "Guideline"). The existence of this issue and the need for emergency rule treatment to assist governmental issuers was brought to the attention of the Division by representatives of Wisconsin public accounting groups and Wisconsin bond attorneys who recently learned about a Report by the American Institute of Certified Public Accountants regarding GASB TB 98-1.

As a result of that Report (and as particularized below) many Wisconsin governmental issuers would have the audit opinions for their financial statements for years ending after October, 1998, qualified with respect to disclosures about Year 2000 issues. Thus beginning in approximately March and April of 1999 and continuing through the accounting period ending 12/31/99, that new accounting Guideline will adversely impact the ability of Wisconsin and other state and local governmental securities issuers to continue to use on an "automatic"/self-executing basis, the existing securities registration exemption in s. 551.22(1)(a) of the Wisconsin Securities Law to offer and sell their debt securities to public investors in Wisconsin.

Over the years and to date, Wisconsin and other state and local governmental securities issuers having "full-GAAP" financial statements (e.g. prepared in accordance with generally accepted accounting principles) have been able to sell their debt securities to Wisconsin public investors in reliance on automatic use of the registration exemption in s. 551.22(1)(a), Wis. Stats., without the need for any exemption or other filing with the Division.

GASB TB 98-1 requires footnote disclosure of Year 2000 information regarding a governmental issuer's preparedness in terms of making its systems and equipment Year 2000 compliant. GASB TB 98-1 applies to financial statements dated October 31, 1998, and terminates for financial statements issued for purposes of the accounting period ending December 31, 1999, unless systems and equipment are not Year 2000 compliant as of the balance sheet date. In response to GASB TB 98-1, members of the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) issued a Report under the title "AICPA Illustrative Reporting Guidance on Year 2000 Disclosures Made Under GASB TB 98-1, Issued October 22, 1998." That Report raised the concern that in light of the unprecedented nature of the Year 2000 issue, the required disclosures will be neither ascertainable by management nor verifiable by auditors. As a result, the AICPA strongly recommended that auditors issue qualified opinions (scope limitations) with respect to such Year 2000 issue disclosures.

Consequently, all Wisconsin and other governmental securities issuers whose financial statements would contain such qualified opinions, would not meet (in the absence of the emergency rules) the "full-GAAP" financial statement requirement for automatic use of the registration exemption in 551.22(1)(a), Wis. Stats. Thus, such

issuers would either have to go through a regulatory filing and review procedure with the Division prior to each offering, or would have to restrict the initial offering to securities law provisions that would preclude underwriters from reoffering those securities to investors in the primary and secondary markets.

In the absence of the emergency rules, governmental securities issuers would be adversely affected by the costs of making securities filings with their attendant delays. Also, even though Year 2000 issues equivalently affect private corporate issuers of securities, because there is no counterpart to GASB TB 98-1 within the standards promulgated by the Financial Accounting Standards Board applicable to private corporate securities issuers, the additional costs and filing delays would be singularly borne by governmental securities issuers (if the emergency rules were not adopted).

Finally, having a filing requirement under the Wisconsin Securities Law be triggered for Wisconsin and other state and local governmental securities offerings solely because of an auditor's qualification in an audit report on the Year 2000 issue, would result in added regulatory filing and review processes and procedures under the Wisconsin Securities Law that would not provide any "value added" investor protection benefits.

Therefore, in similar fashion to emergency rule-making action taken by the Division in 1994 and 1996 regarding specific accounting issues which occurred at those times, and for the purpose of alleviating the disruption that would occur in the borrowing/bonding plans of Wisconsin and other state and local governmental issuers that regularly claim exemption status under sec. 551.22(1)(a), Wis. Stats., for the offer and sale of their debt securities in Wisconsin, the Division, in consultation with representatives of Wisconsin accounting groups and Wisconsin bond attorneys, is adopting these emergency rules designating an alternative-to-full-GAAP financial statement requirement (when the governmental issuer's financial statements are full-GAAP) where the auditor's opinion is qualified in accordance with GASB TB 98-1 with respect to disclosures concerning Year 2000 issues. As a result of such emergency rules, those Wisconsin and other state and local governmental securities issuers affected by GASB TB 98-1 will be able to continue to rely on the "automatic" registration exemption under 551.22(1)(a), Wis. Stats., for their securities offerings.

[Because this issue which has been triggered by GASB TB 98-1 has a limited "shelf life" such that no permanent rules relating to it will be needed after December 31, 2000, when action is taken by the Division to promulgate identical permanent rules to become effective upon expiration of the emergency rules, the permanent rules will provide for a December 31, 2000 "sunset" date, after which the permanent rules on the issue will no longer be effective.]

\*The Year 2000 problem is the result of shortcomings in electronic data-processing systems and equipment that may adversely affect operations in the year 2000 and beyond. The problem stems from the use within electronic systems and equipment of two-digit storage for calendar years. Affected and uncorrected systems and equipment may be unable to distinguish the year 2000 from the year 1900; as a result, such systems may process inaccurately or stop processing altogether.

**Publication Date:** February 25, 1999  
**Effective Date:** March 1, 1999  
**Expiration Date:** July 29, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Professional Geologists, Hydrologists and Soil Scientists*

Rules adopted creating **chs. GHSS 1 to 5**, relating to the registration and regulation of professional geologists, hydrologists and soil scientists.

### Exemption From Finding of Emergency

The Examining Board of Geologists, Hydrologists and Soil Scientists finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, safety or welfare. A statement of the facts constituting the emergency is:

Section 64 of 1997 Wis. Act 300 states that the board is not required to make a finding of emergency. However, the board offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of professional geologists, hydrologists and soil scientists was created in 1997 Wis. Act 300. The Act was published on June 30, 1998; however the Act created an effective date for the new regulation as being the first day of the 6th month beginning after the effective date of this subsection.

**Publication Date:** May 15, 1999  
**Effective Date:** May 15, 1999  
**Expiration Date:** October 12, 1999  
**Hearing Date:** June 23, 1999

[See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT (4)

### *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  
**Extension Through:** June 27, 1999

- 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 employees 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 employees 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 employee or prospective employee having or expected to have access to any of its clients. If the background information form returned to an entity by an employee or prospective employee 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  
**Extension Through:** June 27, 1999

### 3. Rules adopted amending chs. HFS 12, relating to background checks.

#### Finding of Emergency

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

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently** bar a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes temporarily bar a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose special precautionary measures to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status.

The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11(5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts, Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

**Publication Date:** December 12, 1998  
**Effective Date:** December 12, 1998  
**Expiration Date:** May 4, 1999  
**Extension Through:** June 27, 1999

### 4. Rules adopted revising chs. HFS 12 and 13, created as an emergency rules relating to caregivers background checks and reporting of caregiver misconduct.

#### Finding of Emergency

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

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 included an appendix which consisted of a list of crimes. That Crimes List was modified by emergency order published on December 12, 1998. This order, which is being published following the Department's public hearings on the emergency rules and the proposed replacement permanent rules, makes further significant changes in the Crimes List and other parts of the ch. HFS 12 emergency rules.

The Crimes List appended to ch. HFS 12 is modified by this order to move several crimes from "permanent bar" status to "bar with rehabilitation" status, to place time limits on having to demonstrate rehabilitation for certain other crimes, and to remove some crimes altogether from the Crimes List. Also in ch. HFS 12, definitions have been added for "access" and "Department-designated tribe" and have been significantly revised for "caregiver" and "under the entity's control." Indian tribes designated by the Department are permitted to conduct rehabilitation reviews for bar with rehabilitation crimes.

This order also makes changes in ch. HFS 13, emergency rules for reporting caregiver misconduct and for maintenance of a caregiver misconduct registry. Those emergency rules were also published on October 1, 1998. Changes made in ch. HFS 13 by this



order include addition of definitions for "access" and "course of conduct" and significantly revised definitions for "abuse," "caretaker," and "under the entity's control," and permission is given for the subject of a report to have a representative present when the subject has any contact with Department investigators.

The Department is modifying the chs. HFS 12 and 13 emergency rules by emergency order at this time because of their critical importance for proper implementation of the statutory caregiver background check and caregiver misconduct reporting requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The rule changes, including revision of the Crimes List, have been incorporated in the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until June 1, 1999 at the earliest.

**Publication Date:** February 27, 1999  
**Effective Date:** February 27, 1999  
**Expiration Date:** May 4, 1999  
**Extension Through:** June 27, 1999

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

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

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

1. Rules adopted amending ss. **HFS 119.07 (6) (b) and 119.15**, relating to the Health Insurance Risk-Sharing Plan.

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

Section 149.143 (4), Stats., as affected by 1997 Wisconsin Act 27, permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on December 11, 1998 on the proposed rules, as required by s. 149.20, Stats.

### **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. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,123 HIRSP policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates by just over 10% in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule and the rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in

accordance with the authority and requirements set out in s. 149.143 (2)(a)3. and 4., Stats., as affected by Act 27.

**Publication Date:** December 31, 1998  
**Effective Date:** January 1, 1999  
**Expiration Date:** May 31, 1999  
**Hearing Date:** March 11, 1999

2. Rules adopted creating **ch. HFS 114**, relating to neonatal intensive care unit training grants.

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

The Legislature in s. 9122 (3tz) of 1997 Wisconsin Act 237 directed the Department to promulgate rules required under s. 9122 (3ty) of 1997 Wisconsin Act 237 by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency. These are the rules.

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

Section 9122 (3ty) (b) of 1997 Wisconsin Act 237 directs the Department to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 to provide up to 10 grants to public or private hospitals to pay for specialized training and on-site consultation and support of medical personnel of neonatal intensive care units in the principles and practice of developmentally supportive and family-centered care for high-risk infants and their families. Section 9122 (3ty) (c) of Act 237 directs the Department to promulgate rules that establish criteria and procedures for awarding grants. The rules are to define "specialized training and on-site consultation and support," which must include a minimum of 40 hours of formal training and 160 hours of practice work.

This order creates ch. HFS 114 relating to distribution of grants to applicant public or private hospitals' neonatal intensive care units to pay for training of staff in the principles and practice of developmentally supportive and family-centered care. The rules include a process by which hospitals may apply for training funds, requirements relating to the training and requirements relating to training center record-keeping and reporting.

**Publication Date:** January 21, 1999  
**Effective Date:** January 21, 1999  
**Expiration Date:** June 20, 1999  
**Hearing Date:** April 7, 1999

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

### ***Insurance***

1. Rule adopted amending **s. Ins 2.80 (2) (intro.) and (a)**, relating to delaying effective date for NAIC valuation of life insurance policies model regulation, ("XXX"), from January 1, 1999 to July 1, 1999.

### **Finding of Emergency**

Statutory authority: ss. 601.41 (3), 227.24

Statute interpreted: none

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

On December 16, 1997 the Commissioner created Ins 2.80, Wis. Adm. Code in order to adopt the 1995 National Association of Insurance Commissioners ("NAIC") valuation of life insurance policies model regulation, or "XXX". This new rule concerning

requirements for determining the valuation of reserve liabilities for life insurance policies is currently to take effect on January 1, 1999. Recently the NAIC agreed to consider a revised model regulation and the NAIC is expected to formally approve such a model early in 1999. Wisconsin is the only state that has set January 1, 1999 as an effective date for the 1995 model regulation. This emergency order is necessary to allow time to consider implementation of the revised model regulation once it is adopted by the NAIC.

**Publication Date:** December 23, 1998  
**Effective Date:** January 1, 1999  
**Expiration Date:** May 31, 1999  
**Hearing Date:** March 12, 1999

2. Rules adopted amending s. **Ins 3.39 (34)(b)1. and 2., 3.b., and 6.,** relating to guarantee issue eligibility for Medicare Supplement insurance.

### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance commissioners) model Medicare Supplement regulations. In order to provide more certainty and provide guarantee issue to the appropriate persons in Wisconsin, it is necessary that the change be put into effect as soon as possible. In addition, other permanent changes to the Medicare Supplement requirements are effective February 1, 1999 and this change effective the same date will allow insurers to modify their policies one time rather than two.

**Publication Date:** January 28, 1999  
**Effective Date:** February 1, 1999  
**Expiration Date:** July 1, 1999  
**Hearing Date:** March 3, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

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

Rules adopted creating s. **NR 20.33 (5)**, relating to special closure of the sturgeon spearing season if harvest reaches or exceeds 80% of the total allowable harvest.

### Finding of Emergency

The department of natural resources finds that an emergency exists and rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter water clarity in Lake Winnebago has been improving steadily over the last decade at a rate faster than anticipated, which has substantially increased the potential for overharvest of sturgeon by spearers. Even with the new harvest restrictions passed in 1996, exceptionally clear water during the 1998 spearing season resulted in a total harvest of 2,051 fish, which was in excess of our total allowable harvest goals. An emergency order is needed to prevent

overharvest of sturgeon during the 1999 season while permanent rules are being developed for implementation in the year 2000.

**Publication Date:** February 5, 1999  
**Effective Date:** February 5, 1999  
**Expiration Date:** July 5, 1999  
**Hearing Date:** March 16, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

**(Environmental Protection--Water Regulation, Chs. NR 300--)**

Rules adopted creating **ch. NR 303**, relating to department determinations of navigability for farm drainage ditches.

### Exemption From Finding of Emergency

The Department was directed by the JCRAR under s. 227.26 (2) (b), Stats., to promulgate emergency rules regarding navigability

### Analysis prepared by the Department of Natural Resources

Statutory authority: s. 227.26 (2)(b)

Statute interpreted: s. 30.10 (4)(c)

This order codifies present department program guidance for staff making navigability determinations for farm drainage ditches, identifying various methods and information to be relied on when making such determinations.

**Publication Date:** May 1, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999  
**Hearing Dates:** June 16 and 17, 1999  
 [See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT

### *Public Instruction*

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  
**Extension Through:** May 29, 1999

## EMERGENCY RULES NOW IN EFFECT (2)

### Public Service Commission

1. Rules adopted revising **ch. PSC 4**, relating to small generating plants.

### Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin ratepayers by ensuring a reliable energy supply in 2000 and beyond, the Commission's review process of proposed new generating plants that are less than 100 MW in size must be amended. A revision is needed so the review process for such projects can be completed in time to allow construction of necessary projects, if approved, by June 1, 2000. Permanent rules cannot be adopted in time to affect the Commission's review period. An emergency rule is necessary to change the Commission's review process immediately.

**Publication Date:** January 19, 1999  
**Effective Date:** January 19, 1999  
**Expiration Date:** June 18, 1999  
**Hearing Date:** February 22, 1999

2. Rules adopted creating **ch. PSC 186**, relating to standards for water and sewer service in mobile home parks.

### Exemption From Finding of Emergency

These rules are now being adopted as emergency rules effective May 1, 1999, as directed by section 22(2) of 1997 Wis. Act 229.

**Publication Date:** May 1, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999

## EMERGENCY RULES NOW IN EFFECT

### Regulation & Licensing

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 develop 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  
**Extension Through:** May 29, 1999

## EMERGENCY RULES NOW IN EFFECT

### Revenue

A rule was adopted creating **s. Tax 11.20**, relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

### Exemption From Finding of Emergency

On February 25, 1999, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26, (2) (b), Stats., directed the Department of Revenue to use the emergency rule making process to promulgate as an emergency rule, within 30 days, its policies interpreting s. 77.54 (26m), Stats.

### Analysis by the Department of Revenue

Statutory authority: ss. 227.11 (2) (a) & 227.26 (2) (b)  
 Statute interpreted: s. 77.54 (26m)

Section Tax 11.20 is created to address the sales and use tax exemptions for waste reduction and recycling activities.

**Publication Date:** March 27, 1999  
**Effective Date:** March 27, 1999  
**Expiration Date:** August 24, 1999

## EMERGENCY RULES NOW IN EFFECT

### Workforce Development

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

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  
**Extension Through:** June 27, 1999

2. Rules adopted renumbering **ch. HFS 55** and revising **DWD 55**, relating to criminal background checks in daycare.

### 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:

This represents the most recent amended version of this emergency rule which was first adopted on October 1, 1998. Beginning on October 1, 1998, recently enacted provisions 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 those 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 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:** March 26, 1999  
**Effective Date:** March 26, 1999  
**Expiration Date:** August 23, 1999

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### ***Nursing Home Administrator Examining Board***

**Subject:**

NHA Code – Relating to granting reciprocal licenses to persons who hold a license as a nursing home administrator in another state.

**Description of policy issues:**

*Objective of the rule:*

- To clarify when an applicant for a nursing home administrator license must have one year of experience in the field of institutional administration.
- To include alternative bases under which an applicant for a reciprocal nursing home administrator license would qualify for a license in Wisconsin.

*Policy analysis:*

Section NHA 4.01 (1) (c) would be revised to clarify that an individual who completes a “regular course of study” is not required to obtain one year of experience in the field of institutional administration, because “a program of study,” includes a supervised clinical practicum.

An additional alternative would be created for granting a reciprocal license to persons licensed in another state who have been certified by the American College of Health Care Administrators. This association certifies nursing home administrators who have had two years of experience as a nursing home administrator, who have had two years licensure as a nursing home administrator and who have completed 20 hours of continuing education during the previous two years. To be certified, a person must also pass a certification examination. The National Association of Boards of Examiners of Long Term Care Administrators endorsed this certification program as an option for reciprocity in June 1997, and many states are now considering this alternative.

Also, to create an alternative to granting reciprocal licenses to persons who hold a bachelor’s degree in any field who satisfy requirements set forth in the rules.

**Statutory authority:**

SS. 15.08 (5) (b), 227.11 (2), 456.02, 456.04 and 456.08, Stats.

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

80 hours.

### ***Pharmacy Examining Board***

**Subject:**

Phar Code – Relating to requiring each pharmacy to keep written records of all dispensing errors as an aid in developing a quality improvement program for the pharmacy.

**Description of policy issues:**

*Objective of the rule:*

To require that every pharmacy document in writing all dispensing errors. Errors to be documented would include dispensing the wrong drug to a patient, or dispensing the wrong strength, wrong directions for use or wrong dosage form. It would also include improper or inadequate packaging, inadequate or incorrect warning labels, failure to detect and resolve a significant potential or actual problem with the patient’s pharmaceutical care, labeling errors such as wrong patient or wrong prescriber, and the delivery of a medication to the wrong patient. The purpose for requiring the documentation of such errors is so the reports may be utilized by pharmacies in developing a system of continuous quality improvement in their dispensing practices.

*Policy analysis:*

Unfortunately, dispensing errors do occur in pharmacy practice on infrequent occasions. The question becomes one of adopting procedures within the pharmacy that will serve to reduce, if not eliminate, those dispensing errors. Such reports could prove invaluable in assuring that the dispensing error was thoroughly evaluated to assess how the error occurred and what steps are necessary to assure, to the extent possible, that similar errors will not occur in the future. Such documentation may be seen as a part of a continuous quality improvement program for a pharmacy, which is clearly in the best interest of the health, safety and welfare of patients.

**Statutory authority:**

SS. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a) and (e), Stats.

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

80 hours.

### ***Revenue***

**Subject:**

S. Tax 11.64 – Relating to background music.

**Description of policy issues:**

*Objective of the rule:*

The objectives of the proposed rule are to:

- Properly classify background music services regularly amplified and transmitted simultaneously to 50 or more subscribers as taxable cable television system services. These services are classified as cable television system services under the definition provided in s. 77.52 (2) (am), Stats., and are thus taxable under s. 77.52 (2) (a) 12., Stats. The treatment of these services as nontaxable in s. Tax 11.64 (2) is incorrect.

- Move provisions relating to cable television system services from s. Tax 11.66 to this section, because these services are taxed separately from telecommunications services, and the background music services described in this section are cable television system services.

*Policy analysis:*

The treatment of background music services regularly amplified and transmitted simultaneously to 50 or more subscribers as taxable is a new policy which will become effective on the effective date of the rule order. This treatment is consistent with the definition of cable television system in s. 77.52 (2) (am), Stats.

If the rule is not changed, it will be incorrect in that it does not properly reflect the taxability of background music services, as provided by statute.

**Statutory authority:**

Section 227.11 (2) (a), Stats.

**Estimate of staff time required:**

The Department estimates it will take approximately 50 hours to develop this rule order.

***Workforce Development*****Subject:**

Ch. DWD 18 – Relating to Public Assistance record retention.

**Description of policy issues:***Objective of the rule:*

Shorten retention period for public assistance paper records from six years to the statutory minimum of three years to save on storage costs, except in special cases. Replace outdated AFDC references with current W-2 references.

*Existing policies and new policies included in the proposed rule and an analysis of policy alternatives:*

Current policy requires retention of public assistance paper for six years after the last benefit payment. The new rule will allow for disposal after three years, except in cases of overpayment, fraud, federal quality control review, intentional program violation, or divestment and asset allocation. The suggested change was approved by the State Public Records Board in March 1999.

**Statutory authority for the proposed rule:**

Section 59.52 (18), Stats.

**Estimate of the amount of time employes will spend developing the proposed rule and of other resources needed to develop the rule:**

10 hours.

***Workforce Development*****Subject:**

S. DWD 149.04 – Relating to disclosure of Unemployment Compensation records.

**Description of policy issues:***Objective of the rule:*

Update obsolete AFDC references to current W-2 references.

*Existing policies and new policies included in the proposed rule and an analysis of policy alternatives:*

Unemployment compensation records may currently be released to various governmental units in the administration of public benefits programs. The proposed rule change will update obsolete AFDC references to current W-2 references and include W-2 agencies in the authorization, limited to information specified by the Department under the W-2 contract.

**Statutory authority for the proposed rule:**

Section 108.14, Stats.

**Estimate of the amount of time employes will spend developing the proposed rule and of other resources needed to develop the rule:**

5 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.*

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

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

On May 13, 1999, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### ***Analysis***

The proposed rule affects ch. ATPC 15, Wis. Adm. Code, relating to humane officer certification and training.

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

The Department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Animal Health is primarily responsible for the promulgation of this rule.

##### ***Contact Information***

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

Lynn Jarzombek  
Division of Animal Health  
Telephone (608) 224-4883

or

Attorney Ruth Heike  
Telephone (608) 224-5025

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

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

On May 14, 1999, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### ***Analysis***

The proposed rule affects ch. ATPC 34, Wis. Adm. Code, relating to the "Clean Sweep" program.

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

The Department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Animal Health is primarily responsible for the promulgation of this rule.

##### ***Contact Information***

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

Roger Springman  
Division of Agricultural Resource Mgmt.  
Telephone (608) 224-4545

or

Attorney Reid Klopp  
Telephone (608) 224-5028

#### **Commerce**

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

On May 7, 1999, the Wisconsin Department of Commerce referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### ***Analysis***

The proposed rule affects ch. Comm 83, relating to private sewage systems.

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

A public hearing is required and will be scheduled. The agency unit responsible for the promulgation of the proposed rule is the Department of Commerce.

##### ***Contact Information***

If you have questions regarding this rule, please contact:

Jean M. MacCubbin  
Telephone (608) 266-0955

#### **Commerce**

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

On May 17, 1999, the Wisconsin Department of Commerce referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### ***Analysis***

The proposed rule affects chs. Comm 5, 82 and 84, relating to credentials and fire sprinkler systems.

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

A public hearing is required and will be scheduled. The agency unit responsible for the promulgation of the proposed rule is the Safety and Buildings Division.

##### ***Contact Information***

If you have questions regarding this rule, please contact:

Ronald Acker  
Telephone (608) 267-7907

## Commerce

### Rule Submittal Date

On May 14, 1999, the Wisconsin Department of Commerce referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed rule affects ch. Comm 111, relating to certified capital companies.

### Agency Procedure for Promulgation

A public hearing is required and will be scheduled. The agency unit responsible for the promulgation of the proposed rule is the Office of Loans and Grants.

### Contact Information

If you have questions regarding this rule, please contact:

Richard Meyer  
Telephone (608) 266-3080

## Professional Geologists, Hydrologists and Soil Scientists Examining Board

### Rule Submittal Date

On May 14, 1999, the Examining Board of Professional Geologists, Hydrologists and Soil Scientists submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2), 470.03 and 470.04, Stats.

The proposed rule-making order relates to the registration and regulation of professional geologists, hydrologists and soil scientists.

### Agency Procedure for Promulgation

A public hearing is required and will be held June 23, 1999 at 10:00 a.m. in Room 180 at 1400 East Washington Ave., Madison, Wisconsin.

### Contact Information

If you have questions regarding this rule, please contact:

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

## Health and Family Services

### Rule Submittal Date

On May 7, 1999, the Wisconsin Department of Health and Family Services referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

Statutory authority:

SS. 253.13 (1) and 227.11 (2) (a), Stats.

### Subject:

The proposed rule affects ch. HFS 115, Wis. Adm. Code, relating to screening of newborn children for congenital and metabolic disorders.

### Reason for rules, intended effects, requirements:

The Department administers the Newborn Screening Program under s. 253.13, Stats.

Under the Newborn Screening Program, children immediately following birth are screened for specified congenital and metabolic disorders. Screening is done by drawing a blood sample from each newborn and testing that same blood sample for the presence of any of 7 different disorders listed in the Department's rules for the program, including PKU (phenylketonuria) and cystic fibrosis. There is a different test to detect each disorder.

Section 125.13 (1), Stats., directs the Department to specify by rule the disorders/conditions for which screening is done.

This order adds a related group of 14 disorders as one disorder/condition to the list of congenital and metabolic disorders/conditions in ch. HFS 115 for which testing of blood samples is done. The new disorder/condition is called Medium Chain acyl-coenzyme A dehydrogenase Deficiency (MCAD) and related disorders of lipid metabolism.

The Department's Newborn Screening Advisory Group unanimously supported the recommendation of Department staff to add the above condition to the list in s. HFS 115.04. Through this testing, an estimated 15 to 20 babies a year in Wisconsin will be identified as having the condition. Morbidity and mortality are high if treatment is not begun before the onset of clinical symptoms. Treatment is simple and inexpensive. The screening technology has only recently been developed.

### Agency Procedure for Promulgation

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

### Contact Information

If you have questions regarding this rule, please contact:

Michael Pfrang  
Division of Public Health  
Telephone (608) 266-7550

## Insurance, Commissioner of

### Rule Submittal Date

In accordance with ss. 227.14 and 227.15, the Wisconsin Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on May 17, 1999.

### Analysis

These changes will affect subchs. III and IV of ch. Ins 8 and create ch. Ins 19, Wis. Adm. Code, relating to health insurance.

### Agency Procedure for Promulgation

A public hearing is required and the date for the public hearing is June 24, 1999 at 9:30 a.m.

### Contact Information

A copy of the proposed rule may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/rule.htm> or by contacting:

Tammi Kuhl  
OCI Central Files  
Telephone (608) 266-0110

For additional information, please contact:

Fred Nepple  
OCI Legal Unit  
Telephone (608) 266-7726  
Email at [fnepple@mail.state.wi.us](mailto:fnepple@mail.state.wi.us)



**Natural Resources****Rule Submittal Date**

On May 10, 1999, the Wisconsin Department of Natural Resources referred a proposed rule [LF-20-99] to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects chs. NR 40, 41 and 45, relating to public use of Department lands.

**Agency Procedure for Promulgation**

A public hearing is required and three hearings are scheduled for June 24, 28 and 29, 1999.

**Contact Information**

If you have questions regarding this rule, please contact:

Doug Fendry  
Bureau of Facilities and Lands  
Telephone (608) 267-2764

**Natural Resources****Rule Submittal Date**

On May 10, 1999, the Wisconsin Department of Natural Resources referred a proposed rule [PR-3-98] to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. NR 45, relating to the automated park reservation system.

**Agency Procedure for Promulgation**

A public hearing is required and three hearings are scheduled for June 24, 28 and 29, 1999.

**Contact Information**

If you have questions regarding this rule, please contact:

Kimberly Currie  
Bureau of Parks and Recreation  
Telephone (608) 264-6035

**Natural Resources****Rule Submittal Date**

On May 10, 1999, the Wisconsin Department of Natural Resources referred a proposed rule [FR-21-99] to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. NR 46, relating to stumpage values for wood products cut from Forest Crop Law and Managed Forest Law lands.

**Agency Procedure for Promulgation**

A public hearing is required and a hearing is scheduled for June 11, 1999.

**Contact Information**

If you have questions regarding this rule, please contact:

Ken Hujanen  
Bureau of Forestry  
Telephone (608) 266-3545

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## NOTICE SECTION

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### Notice of Hearings

#### *Agriculture, Trade and Consumer Protection* [CR 99-85]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed Department rule related to the certification and training of humane officers (proposed chapter ATCP 15, Wis. Adm. Code).

#### Written Comments

The hearings will be held at the times and places shown below. Preceding each public hearing, the Department will hold a question and answer session on the proposed rule. The public is invited to attend the sessions and hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **June 30, 1999**, for additional written comments.

#### Copies of Rule and Contact Information

A copy of the proposed rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, P. O. Box 8911, Madison, WI 53708-8911, or by calling 608 224-4872. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **June 4, 1999**, either by writing to Lynn Jarzombek, P. O. Box 8911, Madison, WI 53708-8911, or by calling 608-224-4883. TTY users call 608-224-5058. Handicap access is available at the hearings.

#### Hearing Information

Three hearings are scheduled:

<u>Date and Time</u>	<u>Location</u>
<b>June 15, 1999</b> <b>Tuesday</b> <b>Question and</b> <b>Answer Session,</b> <b>1:00 p.m. to 1:30 p.m.</b> <b>Public Hearing,</b> <b>1:30 p.m. to 2:30 p.m.</b>	<b>Board Room</b> <b>State Agriculture Bldg.</b> <b>2811 Agriculture Dr.</b> <b>MADISON, WI</b>
<b>June 16, 1999</b> <b>Wednesday</b> <b>Question and</b> <b>Answer Session,</b> <b>1:00 p.m. to 1:30 p.m.</b> <b>Public Hearing,</b> <b>1:30 p.m. to 2:30 p.m.</b>	<b>Dept. of Agriculture, Trade</b> <b>&amp; Consumer Protection</b> <b>3610 Oakwood Hills Pkwy.</b> <b>EAU CLAIRE, WI</b>
<b>June 17, 1999</b> <b>Thursday</b> <b>Question and</b> <b>Answer Session,</b> <b>1:00 p.m. to 1:30 p.m.</b> <b>Public Hearing,</b> <b>1:30 p.m. to 2:30 p.m.</b>	<b>Room 152B</b> <b>District State Office Bldg.</b> <b>200 North Jefferson St.</b> <b>GREEN BAY, WI</b>

Written comments will be accepted until **June 30, 1999**.

### Analysis Prepared by the Dept. of Agriculture, Trade & Consumer Protection

Statutory authority: s. 173.27

Statutes interpreted: ss. 173.03 (1), 173.05, and 173.27

This rule establishes minimum training and certification requirements for humane officers, as required by s. 173.27, Stats. The Department developed this rule in consultation with an advisory committee that included representatives of the livestock industry, the equine industry, dog interests, law enforcement agencies, current humane officers, public health agencies, humane societies, veterinarians, and livestock truckers.

#### Humane Officer Certification

1997 Wis. Act 192 modernized the administration of Wisconsin's animal welfare laws. The legislation clarified the authority of humane officers, provided a wider range of options for dealing with animal welfare problems, and assured "due process" for affected animal owners. The legislation also required the Department to certify humane officers. To be certified, humane officers must complete an examination and meet training requirements established by the Department.

This rule requires a humane officer to be certified within one year after the humane officer is appointed, or by December 1, 2000, whichever is later. A humane officer must satisfy applicable training requirements and pass an examination before the humane officer is initially certified. A certified humane officer must satisfy continuing education requirements and must renew his or her certification every 2 years. No examination is required to renew a certification.

#### Initial Certification

A person wishing to be certified as a humane officer must do all the following:

- Complete an initial training program sponsored or approved by the Department. (There are some exceptions.)
- Pass an examination.
- Submit an application that includes all the following:
  - \* The applicant's name, address and telephone number.
  - \* The identity of the applicant's employer if the applicant is currently employed as a humane officer.
  - \* The date on which the applicant passed the examination required for initial certification.
  - \* A fee of \$25.

The Department must grant or deny a certification application within 30 days after the Department receives a complete application form.

#### Certification Renewal

A certification expires on December 31 of each odd-numbered year. A humane officer wishing to renew his or her certification must submit a renewal application on a form provided by the Department. The renewal application must include all the following:

- The applicant's name, address and telephone number.
- The identity of the applicant's employer if the applicant is currently employed as a humane officer.
- A renewal fee of \$25.
- Information showing that the applicant has satisfied applicable continuing education requirements. The information must identify and describe the continuing education programs attended.

A humane officer must complete 32 hours of continuing education during each biennium for which the humane officer is

certified. (This requirement does not apply during the biennium for which the person is initially certified.) The Department does not pre-approve continuing education programs. However, the Department may refuse to accept a continuing education program that is unrelated to a humane officer's duties.

#### Examination

Under this rule, a person who wishes to be certified as a humane officer must pass an examination administered by the Department. (No examination is required for certification renewal.) The examination will test applicants on animal husbandry and care practices, as well as applicable laws and investigative procedures. To pass the examination, an applicant must achieve a passing score on each part of the examination.

A person wishing to take the examination must provide his or her name, address and telephone number, pay a \$25 examination fee, and show that he or she is eligible to take the examination. A person is eligible to take the examination if one of the following applies:

- The person has completed an initial training program (see below). The applicant must identify the training program attended, including the program title, sponsor and dates.
- The person is exempt from initial training (see below).

A person who is exempt from initial training, but who fails the examination, must complete the initial training program before retaking the exam. A person who twice fails the examination may not retake it.

#### Initial Training

A person must complete an initial training program before taking the humane officer examination, except that the following persons are exempt if they pass the examination on the first attempt:

- A person employed as a humane officer in Wisconsin before December 1, 1999.
- A veterinarian.
- A person who has served as a humane officer in another state.

An initial training program must be sponsored or pre-approved by the Department. The Department will charge a fee to cover the cost of the initial training program which it sponsors. Other sponsors may apply for approval of their training programs (see below).

An initial training program must provide at least 40 hours of training in the following areas:

- At least 16 hours of training in animal husbandry and care practices including the following:
  - \* At least 10 hours of training related to farm animals. A portion of this training must be practical on-site training at a farm location.
  - \* At least 4 hours of training related to domestic non-farm animals.
  - \* At least 2 hours of training related to exotic animals, pet stores, animal collectors or other relevant animal care issues.
- At least 24 hours of legal and investigative training including:
  - \* At least 4 hours of training related to the legal system, the role of the animal cruelty investigator, Wisconsin laws related to animals, and other applicable laws.
  - \* At least 4 hours of training related to the rules of evidence, and the collection and preservation of evidence.
  - \* At least 4 hours of training related to interview and interrogation techniques, stages of the investigation and courtroom testimony.
  - \* At least 4 hours of training on search and seizure law, and on photographing, video taping or sketching the scene of the investigation.
  - \* At least 4 hours of training related to report writing.
  - \* At least 4 hours of training related to crisis intervention, humane officer safety and civil liability.

#### Initial Training Programs: Approval

The sponsor of an initial training program may apply to the Department for approval of that training program. The application must include the following information:

- A detailed outline showing the topics covered, the number of hours devoted to each topic, and the content of each topic.
- The identity and credentials of program instructors.
- The training location, including the location of any on-site farm training.
- A copy of the certificate that the sponsor will provide to persons who successfully complete the course, and the identity of each person authorized to sign certificates for the sponsor.

The Department must approve or disapprove a training program within 30 days after the Department receives a complete application from the program sponsor.

#### Humane Officer Appointments: Reporting

Under s. 173.27 (4), Stats., the Department must keep a current registry of all persons serving as humane officers. Under s. 173.03 (1), Stats., a county, city, village or town must report to the Department whenever that local entity appoints or terminates a humane officer. This rule requires the local entity to file the report in writing within 30 days after it appoints or terminates the humane officer. The report must include all the following.

- The identity of the local entity.
- The name and address of the humane officer.
- The humane officer's certification number if the humane officer is currently certified by the Department.
- The date of the humane officer's appointment or termination.

### **Fiscal Estimate**

The complete fiscal note is available on request.

For purposes of this fiscal estimate, in the first year of the humane officer certification program, it is estimated that 25 people will take the humane officer training and 40 people will take the humane officer examination. In future years, it is estimated 25 people will take the training and 22 people will take the examination.

#### Revenue:

DATCP can recover costs incurred with the training, examination and certification of humane officers. Fees are estimated at \$400 for the training course and \$25 each for examination and certification. Based on the estimated participation, these fees will generate \$12,000 PR the first year and \$11,100 thereafter. Under PR funds, the Department will absorb any costs incurred beyond the fee offset.

#### Expense:

The Department will expend estimated one-time costs of \$15,500 PR funds and .20 FTE (Full-Time Equivalent) of veterinary and clerical staff time to establish the humane officer certification program in its first year. Annual program costs are estimated at \$17,300 PR and .10 FTE veterinary and clerical staff time.

### **Initial Regulatory Flexibility Analysis**

This rule, ch. ATCP 15, interprets and establishes minimum standards of education for humane officers and establishes a certification program for humane officers, in compliance with 1997 Wis. Act 192. It has no impact on small businesses.

The statute allows a political subdivision to appoint humane officers, but it requires that, if the political subdivision appoints a humane officer, the humane officer must meet minimum training standards established by the Department of Agriculture, Trade and Consumer Protection and be certified by the Department. Therefore, the impacts of this rule are on the political subdivision which chooses to appoint a humane officer and the person appointed, not on a business.

Notice of the proposed rule has been delivered to the Department of Development, as required by s. 227.114 (5), Stats.

## Notice of Hearings

### *Agriculture, Trade and Consumer Protection* [CR 99-87]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rule amendments to ch. ATCP 34, Wis. Adm. Code, relating to the collection of unwanted agricultural chemicals and containers (Agricultural Clean Sweep).

### Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The Department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **July 2, 1999** for additional written comments.

### Hearing Information

Two hearings are scheduled:

<u>Date and Time</u>	<u>Location</u>
<b>June 23, 1999</b> <b>Wednesday</b> <b>afternoon session:</b> <b>1:00 – 5:00 p.m.</b>	<b>Prairie Oak State Office Bldg.</b> <b>Wis. DATCP</b> <b>2811 Agriculture Dr.</b> <b>MADISON, WI 53708</b>
<b>June 24, 1999</b> <b>Thursday</b> <b>afternoon session:</b> <b>1:00 – 5:00 p.m.</b>	<b>Portage County</b> <b>Courthouse Annex</b> <b>1462 Strongs Ave.</b> <b>STEVENS POINT, WI 54481</b>

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **June 11, 1999** either by writing to Paula Noel, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708, (608) 224-4505 or by contacting the message relay system (TTY) at (608) 224-5058. Handicap access is available at the hearings.

### Copies of Rule

A copy of the rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade, and Consumer Protection, Agricultural Resource Management Division, 2811 Agricultural Drive, Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4505. Copies will also be available at public meetings.

### Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory Authority: S. 93.55

Statute Interpreted: S. 93.55

This rule modifies current rules related to the Department's agricultural "clean sweep" program. The agricultural "clean sweep" program is designed to collect and safely dispose of unused agricultural chemicals and containers that might otherwise pose a threat to public health and the environment. Current agricultural "clean sweep" rules are contained in ch. ATCP 34, Wis. Adm. Code.

Under the agricultural "clean sweep" program, the Department awards grants to counties that sponsor agricultural "clean sweep" events, including temporary and permanent events. Counties contract with licensed hazardous waste contractors to collect, pack, transport and dispose of collected materials.

#### Grant Recipients

This rule reiterates (per s. 93.55, Stats.) that the Department may award "clean sweep" grants only to counties (or to an association of counties formed to conduct a "clean sweep" project). But under this rule, a county (or association of counties) may enter into an

agreement with another person or entity to administer a "clean sweep" grant on behalf of the county (or association).

#### County Contribution

Under this rule, a county must contribute at least \$3,000 to each county project for which a "clean sweep" grant is awarded. The Department may require counties to contribute a larger amount specified in the Department's announcement soliciting grant applications. Counties that jointly sponsor a "clean sweep" project may prorate the required contribution among them. A county's contribution for a "permanent collection event" may include county staff, building rent, facilities and equipment provided for waste chemical collection and handling at that event.

#### Temporary and Permanent Collection Events

This rule clarifies that the Department may fund "temporary collection events" (not more than 7 days at a temporary collection site) or "permanent collection events" (more than 7 days at a permanent hazardous waste collection facility).

#### Grant Purposes

This rule reiterates that agricultural "clean sweep" projects are intended to collect waste agricultural chemicals from farmers. However, this rule authorizes the department to fund the collection of waste agricultural pesticides from "very small quantity generators" (VSQG's) who are not farmers. This might include, for example, hardware stores, farm supply stores, cooperatives, municipalities and commercial pesticide applicators who accumulate no more than 220 pounds of waste pesticides per month.

#### Use of Grant Funds

Under this rule, as under the current rules, a "clean sweep" grant may be used to reimburse a county's direct costs to collect and dispose of waste agricultural chemicals and containers, including the cost to hire a licensed hazardous waste contractor. This rule clarifies that grant funds may also be used to reimburse a county's direct costs for any of the following:

- Equipment rentals, supplies and services used to operate the collection site and handle collected chemicals.
- County staff to receive and pack waste chemicals at a permanent collection event.
- Local educational and promotional activities related to the "clean sweep" project.

This rule clarifies that an agricultural "clean sweep" grant may not fund the disposal of any of the following:

- Oil that is not contaminated with chemicals.
- Batteries.
- Contaminated soil or debris.
- Fluorescent tubes.
- Triple-rinsed plastic pesticide containers (since those containers may be recycled through the Wisconsin fertilizer and chemical association's recycling program).
- Materials that may be readily handled under other waste disposal or recycling programs.
- Chemicals from persons other than farmers (except agricultural pesticides received from VSQG's according to this rule).
- Chemicals for which there are no federally-approved or state-approved disposal methods. (This rule, like the current rule, spells out procedures which the county and its contractor must follow when they encounter these materials.)

#### Collecting Waste Agricultural Pesticides from Nonfarmers

Under this rule, the Department will pay no more than 50% of a county's cost to collect and dispose of waste agricultural pesticides from VSQG's who are not farmers. The Department will specify the reimbursement rate in its announcement soliciting county grant applications. The Department may authorize a higher reimbursement rate in certain special cases. A county may charge the remaining costs to participating VSQG's.

VSQG's who are not farmers must pre-register to participate in an agricultural "clean sweep" project. A county must report the amounts and kinds of waste agricultural pesticides collected from

VSQG's, the county's costs to collect and dispose of those waste pesticides, and the payments received from participating VSQG's.

#### County May Not Charge Participating Farmers

This rule prohibits a county from charging a farmer for the first 200 pounds of agricultural chemicals collected from that farmer. A county may charge fees for amounts over 200 pounds if the Department approves the fees. Fees may depend, in part, on the amount of "clean sweep" grant funds and county funds committed to the project.

#### Hazardous Waste Contractors

Under current rules, a county receiving an agricultural "clean sweep" grant must contract with a licensed hazardous waste contractor to receive, pack, transport and dispose of hazardous wastes collected during the county project. Under the current rules, the Department must approve the hazardous waste contractor and assist the county in preparing the contract. Under the current rules, a copy of the contract must also be incorporated as part of the Department's grant contract with the county.

This rule modifies the current rules related to hazardous waste contractors. Under this rule, a county receiving an agricultural "clean sweep" grant must contract with a licensed hazardous waste contractor to receive, pack, transport and dispose of hazardous wastes collected during the county project. The Department's grant contract with the county must include a copy of the county's contract with the hazardous waste contractor. The contract must include a schedule of the contractor's charges to receive, transport and dispose of relevant categories of chemicals.

The contractor must attend training provided by the Department, and must comply with applicable requirements under this rule. The county must select the contractor by a specified date so the Department can train the contractor before the "clean sweep" project begins.

Under this rule, a hazardous waste contractor must be capable of all the following:

- Assisting counties and "clean sweep" participants to identify and segregate hazardous and solid wastes.
- Providing essential waste handling services including drum packing, testing for unknown chemicals, containing loose chemicals, and approving cylinders for disposal.
- Collecting, packing, and transporting poison-solids, poison-liquids and poison-flammables to waste management sites licensed by federal and state governments.
- Providing waste collection and disposal services for mercury-bearing and dioxin-bearing chemicals, acids, bases, and low-pressure gas cylinders and canisters, unless there are no federally-approved or state approved disposal options available.
- Properly handling chemicals for which no federally approved or state approved disposal options are available.
- Collecting and reporting information related to banned and target chemicals.
- Administering registration, recordkeeping and reporting requirements related to VSQG's who are not farmers.
- Meeting other requirements specified by the Department in its announcement soliciting county grant applications. (Among other things, the Department may specify grant terms and conditions that are reasonably designed to advance the Department's statewide "clean sweep" goals, and facilitate statewide administration of the "clean sweep" program.)

This rule does not require Department approval of a hazardous waste contractor. Nor does it require a county to use the state's hazardous waste contractor. However, the Department may require a county to submit proof that the hazardous waste contractor selected by the county meets applicable requirements under this rule. The Department may disapprove a hazardous waste contractor selected by a county if the Department finds that the contractor does not meet applicable requirements under this rule. The state of Wisconsin's hazardous waste contractor is an approved contractor for purposes of this rule.

#### Grant Applications and Awards

This rule clarifies the standards and procedures which the Department uses to invite county grant applications, establish grant conditions, evaluate grant applications, and award "clean sweep" grants to counties. Like the current rule, this rule requires the Department to enter into a grant contract with each county receiving a "clean sweep" grant, and spells out the required contents of that contract.

#### Reports and Payments

Like the current rule, this rule requires a county to file a final report with the Department before the Department pays any grant funds to the county. The county must file the report within 90 days after the "clean sweep" project is completed, and must include relevant information about the project. This rule authorizes the Department to make partial payments for "permanent collection events" while those events are ongoing. A county must file an interim report prior to each partial payment.

#### **Fiscal Estimate**

The proposed rule makes permanent several hazardous waste disposal services that were not legal prior to 1996. These service offerings will not result in significant cost increases. No increase in segregated fund appropriations are required.

The proposed rule will make permanent the required county cost-share match to receive ch. ATCP 34 grants. The cost-share will be set at \$3,000 per annual grant application. Counties have not found the required cost-share to be a burden and have continually reapplied to the Department for ch. ATCP 34 grants over the years.

The proposed rule will extend hazardous waste collection services to a wide range of businesses and municipalities, including school districts. It is expected that an extra 50 to 100 businesses, schools, and municipalities will use Ag Clean Sweep disposal services every year. However, as the current segregated fund appropriation has been found to be adequate for business services, there is no need to increase the appropriation at this time.

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

##### Businesses Affected:

The proposed rule will make it easier for a wide variety of businesses and public entities, including schools, to use the Agricultural Clean Sweep Program. The new rule extends services to any business or municipal entity that uses or holds non-household pesticides for disposal . . . provided prospective customers self-certify as a Very Small Quantity Generator (VSQG) pursuant to the Department of Natural Resources (DNR) administrative rule, ch. NR 610. This means that hardware stores, department stores, marinas, parks, cemeteries, and construction companies along with schools and local units of government can legally use Agricultural Clean Sweep. This change is expected to at least quadruple the number of businesses eligible for clean sweep disposal services.

Eligible businesses can receive convenient, lower-cost hazardous waste disposal services through Ag Clean Sweep participation. When available, on-site pickup services through private waste haulers are often very expensive. Businesses with unwanted agricultural pesticides can receive up to a 50% disposal subsidy from the Department. All other chemicals can be accepted, but businesses must pay full disposal costs.

Also affected by the proposed rule are national and regional hazardous waste contractors who operate federally- and state-approved disposal facilities. These companies could compete for contracts from counties who have been awarded Ag Clean Sweep Program grants by the Department. It is estimated that up to ten contractors could seek contracts from counties.

##### Operating Procedures Improved for Businesses:

The proposed rule streamlines and simplifies procedures for business participation in a host of ways. Hazardous waste contractors and county clean sweep coordinators can provide upfront pre-registration packets which contain all necessary information for an accurate estimate of disposal costs. At the same time, this early communication with hazardous waste haulers allows businesses to work with professionals who can provide direct advice

on hazardous waste rules and regulations. Poor knowledge of hazardous waste risks and federal/state regulations have been two obstacles preventing businesses from making good decisions on hazardous waste management.

Federal and state hazardous waste reporting requirements have been incorporated into Ag Clean Sweep procedures. Because long term liability under the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response Compensation and Liability Act (CERCLA) cannot be waived by public program participation, businesses, with the exceptions of farms, remain responsible for their wastes and appropriate records must be prepared and maintained.

#### Hazardous Waste Contractors:

The proposed rule allows counties who have been awarded ch. ATCP 34 grants to select their own hazardous waste contractor providing this contractor can meet Ag Clean Sweep performance standards, is selected by the annually established date, and is otherwise capable of meeting the Department's statewide hazardous waste goals. The Department of Administration's (DOA's) hazardous waste contractor selected under cooperative purchasing is available to counties not wishing to seek competitive bids.

Hazardous waste contractor performance will likely improve at permanent collection facilities as a result of the proposed rule. Counties with permanent facilities often have extensive experience with hazardous waste contracting. However, the impact of this rule on temporary or one-day collection events is more uncertain. In general, temporary event counties have limited experience with hazardous waste contracting and they may find it more difficult to meet program service and administrative requirements.

## Notice of Hearings

### *Agriculture, Trade and Consumer Protection*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on its emergency rule (ss. ATCP 60.19(3) and (4), Wis. Adm Code) relating to drug residues in raw milk. The hearings will be held at the times and places shown below.

### **Written Comments**

Pursuant to s. 227.24 (4), Stats., public comment is being sought on the Department's emergency rule. The public is invited to attend the hearings and make comments on the emergency rule. Following the public hearings, the hearing record will remain open until **June 30, 1999**, for additional written comments.

### **Copies of Rule and Contact Information**

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 15, 1999** either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608-224-4712), or by contacting the message relay system (TTY) at 608-266-4399 to forward your call to the Department at 608-224-5058. Handicap access is available at the hearings.

### **Hearing Information**

Three (3) hearings are scheduled. The hearings will be held simultaneously by videoconferencing at the following locations on **Friday, June 18, 1999, from 10:30 a.m. – 12:00 p.m.** These

hearings are being held in conjunction with hearings on a proposed permanent rule which is identical to the emergency rule.

#### Locations:

Wis. Dept. of Agriculture, Trade &  
Consumer Protection  
Room 472  
2811 Agriculture Drive  
Madison, WI 53704  
Handicapped accessible

State of Wis. Office Building  
Room 618  
200 North Jefferson St.  
Green Bay, WI 54301  
Handicapped accessible

State of Wis. Office Building  
Room 139  
718 West Clairemont Ave.  
Eau Claire, WI 54701  
Handicapped accessible

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

Statutory authority: ss. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8) and 97.23

Statutes interpreted: ss. 97.20, 97.22 and 97.23

This emergency rule modifies current rules under ch. ATCP 60, Wis. Adm. Code, related to follow-up testing of producer milk samples when a bulk tanker load of milk tests positive for a drug residue. This emergency rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue.

#### Follow-up Testing of Producer Milk Samples

Under current rules, a milk hauler must collect a sample of milk from every dairy farm milk shipment before loading that shipment onto a bulk milk tanker. The dairy plant operator receiving the bulk milk tanker load must perform a drug residue screening test on that tanker load. If the tanker load tests positive for any drug residue, the dairy plant operator must perform a drug residue test on each of the milk samples drawn from the producer milk shipments comprising the tanker load. If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. Current rules do not require confirmatory tests on producer samples that test positive for drug residues.

This emergency rule requires a dairy plant operator to perform a confirmatory test in duplicate on each producer milk sample that tests positive for any drug residue. Under this emergency rule, the dairy plant operator must perform a confirmatory test using the same test method and producer sample. The operator must perform the confirmatory test in duplicate, with single positive and negative controls. If one or both confirmatory test results are positive for a drug residue, the milk producer's sample is considered positive for that drug residue.

#### Disposing of Contaminated Milk

This emergency rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue. Current rules require a dairy plant operator to reject a bulk tanker load of milk that tests positive for drug residue. A rejected bulk load may not be used for human food. This emergency rule clarifies that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.

### **Finding of Emergency**

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATCP 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The Department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

### **Fiscal Estimate**

The proposed rule changes incorporates orders given to the Division of Food Safety by the Department secretary and deputy in three contested case decisions. These changes include the following:

1. Requires the dairy plant operator to conduct confirmation testing using positive and negative controls on a producer milk sample that screens positive for the presence of a drug residue.

2. Places the responsibility on the dairy plant operator to either dispose of or denature a bulk load of raw milk that tests positive for the presence of a drug residue.

The changes do not require any additional regulatory activity or recordkeeping by the Department. Therefore, there is no fiscal effect attributed to the adoption of these rule changes, except for

one-time costs associated with the rule-making of approximately \$500, consisting of printing, mailing and costs of holding hearings.

### **Initial Regulatory Flexibility Analysis**

The modifications to ch. ATCP 60, Wis. Adm. Code, Dairy Farms, will not have a fiscal impact on small businesses as defined in s. 227.114 (1) (a), Stats. There are approximately 110 dairy plants currently licensed and inspected by the Department that meet the definition of a small business.

The testing of every bulk load of raw milk for a drug residue received by a dairy plant operator is required under the dairy farm rule. A dairy plant operator is also required to test each of the producer milk samples collected for a bulk load that tests positive for a drug residue in order to identify the violative producer or producers.

A dairy plant operator is required to reject a bulk load of raw milk that tests positive for a drug residue. The rejected bulk load cannot be shipped to another dairy plant or used for human food.

The proposed changes to ch. ATCP 60, Wis. Adm. Code, are:

1. Clarify and standardize the testing procedures for the producer milk samples collected for a bulk load of raw milk that tested positive for a drug residue.

2. Clarify who is responsible for insuring that a bulk load of raw milk that tested positive for a drug residue is not used for human food.

The impact of the proposed rule changes on small business is negligible. It would not be necessary for licensed dairy plants to provide additional laboratory facilities or staff, or retain additional testing services to comply with these changes.

### **Notice of Hearings**

#### ***Agriculture, Trade and Consumer Protection*** **[CR 99-78]**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on its proposed permanent rule (ss. ATCP 60.19 (3) and (4), Wis. Adm Code) relating to drug residues in raw milk. This proposed rule is identical to the Department's emergency rule relating to drug residues in raw milk. The hearings will be held at the times and places shown below.

### **Written Comments**

The public is invited to attend the hearings and make comments on the rule. Following the public hearings, the hearing record will remain open until **June 30, 1999**, for additional written comments.

### **Copies of Rule and Contact Information**

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 15, 1999** either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608-224-4712), or by contacting the message relay system (TTY) at 608-266-4399 to forward your call to the Department at 608-224-5058. Handicap access is available at the hearings.

### **Hearing Information**

Three (3) hearings are scheduled. The hearings will be held simultaneously by videoconferencing at the following locations on **Friday, June 18, 1999, from 10:30 a.m. - 12:00 p.m.** These hearings are being held in conjunction with hearings on the

Department's emergency rule, which is identical to the proposed rule.

**Locations:**

Wis. Dept. of Agriculture, Trade &  
Consumer Protection  
Room 472  
2811 Agriculture Drive  
Madison, WI 53704  
Handicapped accessible

State of Wis. Office Building  
Room 618  
200 North Jefferson St.  
Green Bay, WI 54301  
Handicapped accessible

State of Wis. Office Building  
Room 139  
718 West Clairemont Ave.  
EauClaire, WI 54701  
Handicapped accessible

**Analysis Prepared by the Dept. of  
Agriculture, Trade and Consumer  
Protection**

Statutory authority: ss. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8) and 97.23

Statutes interpreted: ss. 97.20, 97.22 and 97.23

This rule modifies current rules under ch. ATCP 60, Wis. Adm. Code, related to follow-up testing of producer milk samples when a bulk tanker load of milk tests positive for a drug residue. This rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue.

**Follow-up Testing of Producer Milk Samples**

Under current rules, a milk hauler must collect a sample of milk from every dairy farm milk shipment before loading that shipment onto a bulk milk tanker. The dairy plant operator receiving the bulk milk tanker load must perform a drug residue screening test on that tanker load. If the tanker load tests positive for any drug residue, the dairy plant operator must perform a drug residue test on each of the milk samples drawn from the producer milk shipments comprising the tanker load. If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. Current rules do not require confirmatory tests on producer samples that test positive for drug residues.

This rule requires a dairy plant operator to perform a confirmatory test in duplicate on each producer milk sample that tests positive for any drug residue. Under this rule, the dairy plant operator must perform a confirmatory test using the same test method and producer sample. The operator must perform the confirmatory test in duplicate, with single positive and negative controls. If one or both confirmatory test results are positive for a drug residue, the milk producer's sample is considered positive for that drug residue.

**Disposing of Contaminated Milk**

This rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue. Current rules require a dairy plant operator to reject a bulk tanker load of milk that tests positive for drug residue. A rejected bulk load may not be used for human food. This rule clarifies that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.

**Fiscal Estimate**

The proposed rule changes incorporates orders given to the Division of Food Safety by the Department secretary and deputy in three contested case decisions. These changes include the following:

1. Requires the dairy plant operator to conduct confirmation testing using positive and negative controls on a producer milk sample that screens positive for the presence of a drug residue.

2. Places the responsibility on the dairy plant operator to either dispose of or denature a bulk load of raw milk that tests positive for the presence of a drug residue.

The changes do not require any additional regulatory activity or recordkeeping by the Department. Therefore, there is no fiscal effect attributed to the adoption of these rule changes, except for one-time costs associated with the rule-making of approximately \$500, consisting of printing, mailing and costs of holding hearings.

**Initial Regulatory Flexibility Analysis**

The modifications to ch. ATCP 60, Wis. Adm. Code, Dairy Farms, will not have a fiscal impact on small businesses as defined in s. 227.114 (1) (a), Stats. There are approximately 110 dairy plants currently licensed and inspected by the Department that meet the definition of a small business.

The testing of every bulk load of raw milk for a drug residue received by a dairy plant operator is required under the dairy farm rule. A dairy plant operator is also required to test each of the producer milk samples collected for a bulk load that tests positive for a drug residue in order to identify the violative producer or producers.

A dairy plant operator is required to reject a bulk load of raw milk that tests positive for a drug residue. The rejected bulk load cannot be shipped to another dairy plant or used for human food.

The proposed changes to ch. ATCP 60, Wis. Adm. Code, are:

1. Clarify and standardize the testing procedures for the producer milk samples collected for a bulk load of raw milk that tested positive for a drug residue.

2. Clarify who is responsible for insuring that a bulk load of raw milk that tested positive for a drug residue is not used for human food.

The impact of the proposed rule changes on small business is negligible. It would not be necessary for licensed dairy plants to provide additional laboratory facilities or staff, or retain additional testing services to comply with these changes.

**Notice of Hearings**

***Agriculture, Trade and Consumer Protection***  
**[CR 99-79]**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATCP 77, Wis. Adm. Code, relating to certification fees for laboratories engaged in public health testing of milk, water and food.

**Written Comments**

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **June 30, 1999**, for additional written comments.

**Copies of Rule and Contact Information**

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 15, 1999** either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608-224-4712), or by contacting the message relay system (TTY) at 608-266-4399 to forward your call to the Department at 608-224-5058. Handicap access is available at the hearings.



## Hearing Information

Three (3) hearings are scheduled. The hearings will be held simultaneously by videoconferencing at the following locations on **Friday, June 18, 1999, from 9:00 a.m. – 10:30 a.m.**

### Locations:

Wis. Dept. of Agriculture, Trade &  
Consumer Protection  
Room 472  
2811 Agriculture Drive  
Madison, WI 53704  
Handicapped accessible

State of Wis. Office Building  
Room 618  
200 North Jefferson St.  
Green Bay, WI 54301  
Handicapped accessible

State of Wis. Office Building  
Room 139  
718 West Clairemont Ave.  
Eau Claire, WI 54701  
Handicapped accessible

## Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07 (1) and 93.12 (4) and (7)

Statute interpreted: s. 93.12 (4) and (7)

The 1995–97 biennial budget act, 1995 Wis. Act. 27, transferred administration of Wisconsin's laboratory certification program for milk, food and water laboratories from the Department of Health and Family Services to the Department of Agriculture, Trade and Consumer Protection ("Department"), effective July 1, 1996.

Under this program, the Department is now responsible for certifying laboratories that test milk, food or water for compliance with public health standards prescribed by federal, state or local laws. Under 1995 Wis. Act 27, the Department's public health lab certification program must be funded by certification fees paid by the certified laboratories. The Department must establish these fees by rule.

The Department adopted the current fees in 1996. Under current rules, a laboratory operator must pay an annual certification fee of \$216 for each test at each laboratory for which the operator is certified. If a laboratory operator performs a test for less than a full calendar year, the annual certification fee is prorated at \$18 per month for each full month of certification for that test. Under current rules, milk and food laboratories pay the same fees as water laboratories.

This rule amends the current fee structure to account for cost differences between different types of laboratories. Certification of milk and food laboratories requires more time than certification of water laboratories. In a milk or food laboratory, the Department must also certify each individual analyst who performs any milk or food test. In a water laboratory, the Department is only required to certify one analyst who performs the water test for which the Department is certifying the laboratory.

This rule increases lab certification fees to provide sufficient program revenue to fund the lab certification program. It also creates a variable fee schedule that more closely reflects the time required to conduct on-site certification visits in different types of labs and, when required, determine the competency of individual analysts to conduct specific tests.

Under the proposed rule, a certified laboratory must pay the following applicable fees:

- Water tests. An annual certification fee of \$276 for each test which detects microbiological contaminants in drinking water. If the Department certifies a water laboratory to perform a test for less

than a full calendar year, the lab operator must pay a fee of \$23 for each full month of certification.

- Milk or food tests. An annual certification fee of \$336 for each milk or food test. If the Department certifies a milk or food laboratory to perform a test for less than a full calendar year, the lab operator must pay a fee of \$28 for each full month of certification.

- Certified analysts who perform milk or food tests. An annual certification fee of \$25 for each analyst who performs one or more milk or food tests. An analyst's certification is valid for an entire year, even if the analyst is no longer employed at the laboratory where the analyst was employed when the Department last granted or renewed the analyst's certification.

*Additional analyst certification.* A supplemental fee of \$150 for each requested certification of one or more analysts to conduct any milk or food test, if the certification occurs at any time other than during a mandatory inspection.

## Fiscal Estimate

The proposed rule increases fees for laboratory certification to offset the costs of this program as required in s. 93.12, Wis. Stats.

The Department certifies approximately 180 milk, food and water laboratories in Wisconsin. Currently, the laboratory certification program is underfunded. Portions of this program are mandatory. The Federal Pasteurized Milk Ordinance (PMO) requires laboratories examining milk and water for the grade A dairy industry to be certified. In order for grade A dairy plants to ship fluid milk and milk products out of state, the milk they process and the water they use must be examined at a laboratory certified under this program. About 85% of milk produced in Wisconsin is shipped out of state.

Certain local health departments and local units of government operate certified laboratories. These may be milk and water laboratories or water only laboratories. These are currently certified by the Department. These laboratories currently pay laboratory certification fees unless they are exempted from paying fees by being an agent of the Department for the retail food inspection program.

As stated above, this program is underfunded.

A. During the current fiscal year the Department collected \$123,000.

B. The program is authorized 2.5 FTE's (Full-Time Equivalents) requiring \$160,000 annual funding.

C. Proposed fees will likely generate \$182,000 annually, which should support the program for four (4) years without any additional fee increases.

The proposed annual fee schedule is as follows:

- A. Milk or food test – \$336
- B. Water test – \$276
- C. Analyst fee – \$25
- D. New analyst fee – \$150

## Initial Regulatory Flexibility Analysis

This rule establishes fees for certification of laboratories examining milk, food or water for the protection of public health. The 1995–97 biennial budget act transferred much of the administration of Wisconsin's laboratory certification program from the Department of Health and Family Services (DHFS) to the Department of Agriculture, Trade and Consumer Protection (DATCP). Shortly after that transfer, DATCP proposed rules establishing fees to offset the costs of certification of laboratories as required in s. 93.12, Wis. Stats. These fees are based on recovering 100% of the costs of this program from the industry affected by the program. Those rules also required the DATCP to evaluate laboratory certification fees by FY 2000 and make appropriate adjustments to the fees.

The approximately 180 laboratories currently certified range from small, one person laboratories to large facilities with dozens of analysts. This rule will have a fiscal impact on "small businesses" as defined in s. 227.114 (1) (a) Wis. Stats. Annual laboratory fees

are increased as compared to the \$216 per test fee currently charged by DATCP. This fee increase is due to the fact that the laboratory certification program is inadequately funded. Inadequate funding occurs because the number of laboratories requiring certification has decreased. Costs of the program have actually been reduced in the past two years by reducing program support activities.

The proposed rule will increase costs for laboratories that test milk, food or water. These laboratories currently pay a fee of \$216 per test. Fees under the proposed rule range from \$336 for one milk or food test to \$3,360 for 10 tests. Fees for water laboratories under the proposed rule range from \$276 for one test to \$1104 for four tests.

The proposed rule will impact local government water laboratories. These laboratories currently pay fees of \$216 per test, based on the number of tests they run. Under the proposed rule, these laboratories would pay a \$276 fee for each test.

The proposed rule has no other impact on small businesses. It would not be necessary for certified laboratories to retain additional professional services such as accounting or legal services to comply with this rule.

## Notice of Hearing

### Commerce

(Plumbing, Chs. Comm 82–87)

[CR 99–80]

Notice is hereby given that pursuant to s. 145.02 (2), Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules affecting ch. Comm 83, relating to private sewage systems.

## Hearing Information

The public hearing will be held as follows:

<b>Date and Time:</b>	<b>Location:</b>
June 29, 1999 Tuesday 10:00 a.m.	1st Floor Mtg. Room Plover Municipal Ctr. Village of Plover 2400 Post Rd. PLOVER, WI

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

## Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rule-making will remain open until **July 10, 1999**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

## Copies of Rules

A copy of the proposed rules may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266–8741, FAX (608) 264–8795 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

## Contact Information

Agency contact person for substantive questions:

Roman Kaminski, Program Manager  
Telephone Number (715) 345–5334

Agency contact person for internal processing:

Jean M. MacCubbin  
Environmental Code Consultant  
Telephone Number (608) 266–0955

## Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1), 101.63 (1), 101.73 (1), 101.82 (1) and 145.02 (3)

Statute interpreted: s. 145.02 (2)

Under s. 145.02, Stats., the Department of Commerce has the responsibility of the proper siting, design, installation, inspection, and maintenance of private sewage systems.

This rule revision relates to action of JCRAR on December 8, 1998 suspending the first two sentences of s. Comm 83.03 (2) regarding current mandate for a property to abandon a private sewage system once public sewer service is available.

This revision would remove the portion of the current rule that requires owners of private sewage systems to discontinue use of such systems and connect to public sewer when public sewer becomes available.

## Text of Rule

SECTION 1. Comm 83.03 (2) is amended to read:

**Comm 83.03 (2) PUBLIC SEWER CONNECTION SYSTEM ABANDONMENT.** ~~When public sewers approved by the department of natural resources become available to the premises served, the use of the private sewage system shall be discontinued within that period of time required by the order, but to exceed one year. The building sewer shall be disconnected from the private sewage systems and be connected to the public sewer. All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in accordance with ch. NR 113, Wis. Adm. Code. The top or entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with suitable soil material.~~

## Environmental Analysis and Review

### Record of Decision

The Department of Commerce intends to amend s. Comm 83.03 (2), Wis. Adm. Code in response to action taken on December 8, 1998 by the Joint Committee for Review of Administrative Rules. This is an administrative action that would remove the Department's requirement that the use of a private sewage system be discontinued when access to a public sewer becomes available to the property served.

Chapter ILHR 1 categorizes Departmental actions into three types for the purpose of determining needs for environmental analysis and review. Type I actions are major actions that may significantly affect the quality of the environment and require an environmental impact statement (EIS). Type II actions have some potential to affect the environment and require an environmental assessment (EA) to determine whether or not an EIS is needed. Type III actions do not normally have the potential to cause significant effects and do not require an EA or EIS.

The proposed administrative action is not categorized by Table ILHR 1.06. Section ILHR 1.06 (4) establishes that an action not categorized by Table ILHR 1.06 shall be evaluated for determination of the type of action. The Department has evaluated this action and determines that this action is a Type III action and that there is no need for further environmental assessment. This document constitutes the record of decision and findings of the Department's consideration of the potential environmental consequences of the proposed action.

The proposed action is of an administrative nature and would not affect the statutory authority of a local governmental unit, including a sewage district, to require connection to a public sewer. Thus, the Department considers this action to have no potential for significant adverse impact on the human environment.

### **Initial Regulatory Flexibility Analysis**

1. Types of small businesses that will be affected by the rules:  
None known.
2. Reporting, bookkeeping and other procedures required for compliance with the rules:  
None required.
3. Types of professional skills necessary for compliance with the rules:  
None required.

### **Fiscal Estimate**

The Department further believes that, pursuant to s. 281.34, Wis. Stats., municipalities and sanitary districts are in the best position to determine the availability of, and require connection to, public sewers.

There are no changes to Department workload or revenue with regard to this proposed rule revision.

## **Notice of Hearing**

### **Commerce**

*(Credentials, Ch. Comm 5)*

*(Plumbing, Chs. Comm 82–87)*

*[CR 99–86]*

Notice is hereby given that pursuant to ss. 101.02 (1), 145.17 (2) and 145.175, Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules relating to credentials and fire sprinkler systems.

### **Hearing Information**

June 23, 1999  
Wednesday  
1:00 p.m.

Conference Room 3B  
WHEDA Bldg.  
201 W. Washington Ave.  
Madison

### **Analysis of Proposed Rules**

Statutory authority: ss. 101.02 (1), (20) & (21), 145.02 (2), 145.17 (2) & 145.175

Statutes interpreted: ss. 101.02 (1), (20) & (21), 145.02 (2), 145.17 (2) & 145.175

Chapter Comm 5 of the Wisconsin Administrative Code contains the Department's rules for the issuance of numerous credentials that businesses and individuals are either mandated or permitted to obtain. These credentials are licenses, certifications and registrations that relate to activities associated with the construction and inspection of buildings and structures or specific components and elements that serve buildings and structures.

The proposed rules consist of revisions in chapter Comm 5 relating to the credentials associated with the installation of automatic fire sprinkler systems and to the issuance, renewal and revocation of credentials when the applicant or licensee does not comply with new Statutory requirements. The proposed rules also consist of revisions in chapters Comm 82 and 84 relating to the installation of combined plumbing/fire sprinkler systems in one- and 2-family homes.

Under the current rules, any individual may apply for and take the license examination for an automatic fire sprinkler contractor. However, an individual who wishes to take the license examination for a journeyman automatic fire sprinkler fitter must first have completed a sprinkler system apprenticeship. The proposed rules contain specific training and experience qualifications for

individuals applying for the automatic fire sprinkler contractor license examination. [Comm 5.51 (2m)]

The current rules also allow the renewal of credentials associated with automatic fire sprinkler systems without the need for obtaining any continuing education. The proposed rules require a specific number of hours of continuing education to be obtained by individuals wishing to renew an automatic fire sprinkler contractor license, a journeyman automatic fire sprinkler fitter license, and an automatic fire sprinkler contractor-maintenance registration. [Comm 5.51 (6)(c), Comm 5.52 (6)(c) and Comm 5.54 (5)(c)]

In accordance with new Statutory requirements, the proposed rules contain new requirements for the issuance, renewal, denial, suspension and revocation of licenses, certifications and registrations when the applicant or licensee does not provide required information, is delinquent in required payments, or fails to comply with a subpoena or warrant. The applicant or licensee must provide their social security number or federal employer identification number. The applicant or licensee must not be delinquent in tax payments or child support payments. And the applicant or licensee must not have failed to comply with a subpoena or warrant issued by the Department of Workforce Development or a county child support agency relating to paternity or child support proceedings. [Comm 5.01 (3) and Comm 5.10 (1)(a) 9. to 11.]

The proposed rules address the installation of combined plumbing/fire sprinkler systems in one- and 2-family homes by defining the systems to be part of the water supply system and by specifying the standards that must be met if one of the systems is voluntarily installed in a home. The proposed rules do not mandate the installation of the combined plumbing/sprinkler systems in homes. [Comm 82.11 and Comm 82.40]

The proposed rules also contain revisions to replace the word "credential" with "license, certification or registration" or with the specific word "license", "certification" or "registration" as applicable.

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **July 9, 1999**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

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

### **Copies of Rules**

A copy of the proposed rules may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701-2689, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

### **Initial Regulatory Flexibility Analysis**

1. Types of small businesses that will be affected by the rules.  
The proposed rules will affect any businesses that obtain licenses, certifications or registrations from the Division of Safety and Buildings.
2. Reporting, bookkeeping and other procedures required for compliance with the rules.  
When applying for issuance or renewal of a license, certification or registration, the applicant or licensee must provide their social security number or federal employer identification number.
3. Types of professional skills necessary for compliance with the rules.  
There are no types of professional skills necessary for compliance with the proposed rules.

## **Environmental Analysis**

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter ILHR 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

## **Fiscal Estimate**

### *Assumptions Used in Arriving at Fiscal Estimate*

The Safety and Buildings Division is responsible for administering and enforcing chapters Comm 5, 82 and 84. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing those chapters. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

## **Notice of Hearing**

### *Commerce*

### *(Financial Resources for Businesses and Communities, Chs. Comm 105-128) [CR 99-89]*

Notice is hereby given that pursuant to ss. 560.31 Stats., the Department of Commerce announces that it will hold public hearings on proposed rules relating to ch. Comm 111 Certified Capital Companies.

## **Hearing Information**

June 17, 1999  
Thursday  
9:00 a.m.

Conference Room 3B  
Third Floor, WHEDA Bldg.  
201 W. Washington Ave.  
Madison

## **Analysis of Rules**

Statutory Authority: ss 560.30 through 560.38

Statutes Interpreted: ss 560.30 through 560.38

Pursuant to ss. 560.30 through 560.38, Stats., the Department of Commerce (Commerce) is responsible for certifying capital companies. The certified capital companies are eligible for receiving premium tax credits from insurance companies to use to provide capital to new and growing certain small businesses in this state. Under the law, a person must apply to Commerce and submit a nonrefundable fee to become a certified capital company. These rules delineate the process that applicants must use as well as the process Commerce will use to evaluate and certify a capital company. The law limits a certified capital company from providing capital to certain businesses and to qualified investments. A certified capital company may request Commerce to determine whether an investment is a qualified investment and these rules specify the requirements to follow in making such requests. A certified capital company is also required to report specific information to Commerce on the investment capital, on violations of agreements by a qualified business receiving investment capital, and submit fiscal year financial statements to Commerce for audit. The law requires Commerce to conduct annual compliance reviews of certified capital companies and allows for decertification by the department, as well as voluntary decertification by the certified capital company.

## **Contact Person**

Troy Brown, Director, 608-266-7099

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **June 27, 1999**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

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

## **Written Comments**

A copy of the proposed rules may be obtained without cost from Richard Meyer, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266-3080 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

## **Initial Regulatory Flexibility Analysis**

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

Certified Capital Companies (CAPCOs) could be small businesses. Also, small businesses, other than businesses that predominantly provide professional services such as accountants, lawyers, physicians or real estate development businesses, could be created or helped by investments from a CAPCO, subject to conditions.

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

CAPCOs and other small businesses affected must know and understand general business principles, bookkeeping skills. In addition, CAPCOs, within 90 days of their fiscal year, must provide an annual audited financial statement to Commerce, showing compliance with the law and rules to maintain certification. Information needs to be provided to Commerce about the certified investors, amount of capital investments, the date on which the investment capital was received by the CAPCO, and the investment.

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

The statutes require that persons that have at least two years in the venture capital industry may be certified as a capital company. In addition to general business principles and knowledge, it will be necessary for persons to have knowledge of securities and their transactions, as well as capital investments to operate effectively. As a condition of maintaining eligibility, the certified capital company must ensure that qualified investments are made in terms of specific criteria outlined in the law.

## **Fiscal Estimate**

The 1997 Wisconsin Act 215, authorizes the creation of a certified capital company program and provides tax credits to persons who make certain types of investments in certified capital companies (CAPCOs). The act authorizes the Department of Commerce (Commerce) to administer the program and creates a program revenue appropriation in which fees and other monies collected for administering the program are deposited. As required by the law and rules Commerce will: (1) certify capital companies; (2) certify qualified businesses; (3) review annual reports and financial statements; (4) make written determinations regarding certified capital company distributions; (5) conduct annual compliance reviews of certified capital companies; and (6) determine and issue written notices of investment pool disqualification's.

Based on limited data, Commerce estimates it will certify approximately 16 CAPCO's and the program will generate approximately \$120,000 in program revenue from: (1) a \$7,500 application fee from a capital certified company seeking certification and (2) an annual \$5,000 certification fee.

Commerce estimates 2.0 PR positions at an annual cost of \$100,700 are required to administer the program. The costs are broken down as follows:

1.0 Financial Examiner (Salary and Fringe Benefits)	\$ 45,000
1.0 Financial Specialist (Salary and Fringe Benefits)	\$ 33,000
Supplies and Services	\$ 1,800
Rent	\$ 4,200
Department Overhead Charges	<u>\$ 16,200</u>
Total	\$100,700

No costs are anticipated by this program on local government.

## Notice of Proposed Rule

### State Elections Board

[CR 99-77]

Notice is hereby given that pursuant to ss.5.05(1)(f) and 227.11(2)(a), Stats., and interpreting ss.11.21(2), 11.21(9), 11.21(16), 11.31(6) and 20.510(1)(i), Stats., and according to the procedure set forth in s.227.16(2)(e), Stats., the State of Wisconsin Elections Board will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, on **June 1, 1999**, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

### Analysis Prepared by State Elections Board

Statutory authority: ss.5.05(1)(f) and 227.11(2)(a)

Statutes interpreted: ss.11.21(2), 11.21(9), 11.21(16), 11.31(6) and 20.510(1)(i)

This amended rule interprets ss.11.21(2), 11.21(9), 11.21(16), 11.31(6) and 20.510(1)(i), Stats. The rule provides standards for those registrants who are required to file campaign finance reports in electronic format and those registrants who may elect to file campaign finance reports in electronic format. The rule requires the registrant to use the Elections Board's software or use software that is compatible with the Board's campaign finance data base. The rule further requires registrants who file electronically to also file a hard copy of their reports. The amendment to the rule eliminates optional electronic filing between January 1, 1999 and July 1, 1999 and requires registrants who file a report electronically to file electronically thereafter.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f) and 227.11(2)(a), Stats., the Elections Board hereby creates Rule EIBd 6.05 interpreting ss.11.21(2), 11.21(9), 11.21(16), 11.31(6) and 20.510(1)(i), Stats., as follows:

### Text of Rule

SECTION 1. EIBd 6.05 is amended to read:

ELBD 6.05 FILING CAMPAIGN FINANCE REPORTS IN ELECTRONIC FORMAT

(1) Definitions: As used in this rule:

(a) "Campaign period" for a candidate, personal campaign committee or support committee has the same meaning as provided in s.11.26(17), Stats., and for any other registrant begins on January 1 of an odd-numbered year and ends on December 31 of the following year.

(b) "Contribution" has the same meaning as provided in s.11.01(6), Stats.

(c) "Electronic format" means computer diskette, modem, or other means of electronic transfer, using either software designated

by the board or software that meets the board's specifications for a standard file format.

(d) "Filing officer" means the state elections board.

(e) "Registrant" has the same meaning as provided in s.11.01(18m), Stats.

(f) "Report" means any filing required by ss.11.05, 11.06, 11.12(5) and (6), 11.20, and 11.23, Stats.

(2) Beginning with any campaign finance report filed on or after ~~July~~ January 1,

~~1999, covering activity on or after January 1, 1999~~, any registrant who files with the state elections board and who accepts contributions or makes disbursements in a total amount or value of \$20,000 or more during a campaign period shall file each campaign finance report that is required to be filed by Chapter 11, Stats., in an electronic format.

(3) ~~Beginning with the Fall 1998 preprimary report, covering activity from July 1, 1998, through the close of the reporting period,~~ Any registrant not required to file reports electronically may elect to file any campaign finance report in an electronic format.

(4) Any campaign finance report filed in an electronic format shall be transmitted in time to be received by the filing officer no later than the time provided by law for filing the report. Any registrant who files a campaign finance report electronically shall, thereafter, file electronically all campaign finance reports required to be filed by the registrant.

(5) If a registrant uses its own software to file electronically, it must submit a trial report to the board before the end of the report period to determine if the software can generate a report in a format that is compatible with the board's campaign finance data base.

(6) Each registrant who files a report in an electronic format shall file, with the filing officer, a paper copy of the report that complies with the format set forth in Forms EB-2, ~~EB-2a~~, EB-3, ~~EB-4~~, EB-7, EB-10, ~~EB-10a~~, EB-12 or EB-24. The paper copy of the report shall be signed by an individual authorized by the registrant to file and filed no later than the time prescribed by law for filing the report.

### Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

### Fiscal Estimate

The creation of this rule has no fiscal effect.

### Contact Person

George A. Dunst  
Legal Counsel  
State Elections Board  
132 E. Wilson Street  
P.O. Box 2973  
Madison, Wisconsin 53701-2973  
Phone 266-0136

## Notice of Hearing

### Professional Geologists, Hydrologists and Soil Scientists Examining Board

[CR 99-88]

Notice is hereby given that pursuant to authority vested in the Examining Board of Professional Geologists, Hydrologists and Soil Scientists by ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting ch. 470, Stats., the Examining Board of Professional Geologists, Hydrologists and Soil Scientists will hold a public hearing at the time and place indicated below to consider an emergency rule order and a permanent rule order to create chs. GHSS 1 to 5, relating to the registration and regulation of professional geologists, hydrologists and soil scientists.

## Hearing Information

### Date & Time:

June 23, 1999  
Wednesday  
10:00 A.M.

### Location:

Room 180  
1400 E. Washington Ave.  
MADISON, WI

## Written Comments

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 **July 2, 1999** to be included in the record of rule-making proceedings.

## Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 470.03 and 470.04

Statutes interpreted: ch. 470

This proposed rule-making order of the Examining Board of Geologists, Hydrologists and Soil Scientists creates rules as authorized by 1997 Wis. Act 300.

The purpose of the rules is to specify requirements and procedures which apply to all three sections of the Board. Chapter GHSS 1 identifies the requirements for the dimensions and use of licensure seals to verify how and when to use a licensure seal to verify that the professional has done the drawings or had direct supervision of the person. All firms holding themselves out to practice professional geology, hydrology and soil science must be registered. The firm must have a licensed professional who has responsible charge for each project. Chapter GHSS 1 also include definitions, the responsibilities for professional geologist, hydrologists and soil scientists branch offices, for changing an address, and failure to renew a license.

Chapters GHSS 2, 3 and 4 specify the licensure requirements for professional geologists, hydrologists and soil scientists. And Chapter GHSS 5 defines unprofessional conduct.

## Text of Rule

**SECTION 1.** Chapters GHSS 1 to 5 are created to read:

### Chapter GHSS 1

#### GENERAL REQUIREMENTS AND PROCEDURES

**GHSS 1.01 Purpose.** The purpose of rules in this chapter is to specify general requirements and procedures which apply to all 3 sections of the board. Requirements specific to professional geologists, professional hydrologists and professional soil scientists are specified in chs. GHSS 2, 3 and 4. Rules of professional conduct for all licensees are specified in ch. GHSS 5.

**GHSS 1.02 Licensure seals.** (1) Each professional geologist, hydrologist and soil scientist shall obtain a seal that complies with board specifications for licensure seals. The overall diameter may not be less than 1 5/8 inches nor more than 2 inches. Each seal shall include the licensee's name, license or permit number and city.

(2) The following designs for licensure seals have been approved:

*[designs not included]*

(3) A rubber stamp, identical in size, design and content to a board-approved seal, may be used as a substitute for a licensure seal.

(4) Each sheet of plans, drawings, documents, specifications and reports for professional geology, hydrology and soil science practice shall be signed, sealed and dated by the licensee who prepared, or directed and controlled preparation of, the written material, except as specified in sub. (5).

(5) If more than one sheet is bound together in a volume, the licensee who prepared or directed and controlled the preparation of the volume, may sign, seal and date only the title or index sheet if the signed sheet identifies clearly all other sheets comprising the bound volume and if any other sheets which are prepared by or under the direction and control of another licensee are signed, sealed and dated by the other licensee.

(6) Any addition, deletion or other revision to each sheet of plans, drawings, documents, specifications and reports for professional geology, hydrology, or soil science practice which affects public health and safety or any state or local code requirements may not be made unless signed, sealed and dated by the licensee who made or directed and controlled the making of the revision.

(7) All seals or stamps affixed to drawings to be filed as public documents shall be original. No stickers or electronically scanned images may be used. All seals and stamps on drawings shall be signed and dated by the licensed professional in a permanent ink contrasting with both the seal and the background. If other standards are prescribed by statute, the statutes shall govern.

**GHSS 1.03 Branch offices.** (1) **DEFINITIONS.** In this section,

(a) "Firm" means any business entity located in Wisconsin which provides or offers to provide geology, hydrology or soil science services to the public.

(b) "Resident" means a currently-registered professional geologist, professional hydrologist or professional soil scientist who spends the majority of his or her working schedule in one firm location and who is in charge of and responsible for the type of services offered or provided from that location.

(2) **RESIDENT REQUIRED; RESPONSIBILITIES.** Every firm maintaining one or more places of business in Wisconsin shall have:

(a) A resident professional geologist in each separate business location which provides or offers to provide professional geology services.

(b) A resident professional hydrologist in each separate business location which provides or offers to provide professional hydrology services.

(c) A resident professional soil scientist in each separate business location which provides or offers to provide professional soil science services.

(3) **NOTICE.** Every firm shall notify the board of at least one resident who is in charge of and responsible for each separate business location.

(4) **RESIDENT LIMITATION.** A resident may not be in charge of or responsible for services offered or provided from more than one business location.

**GHSS 1.04 Change of address.** Every licensee shall notify the board in writing of a change of address within 30 days of the change. The notice shall include the person's or firm's former and new addresses and each license or certification number held.

**GHSS 1.05 Failure to renew a license.** (1) If a licensee who fails to renew his or her license by the established renewal date applies for renewal of the license less than 5 years after its expiration, the license shall be renewed upon payment of the renewal fee specified in s. 440.08, Stats.

(2) (a) If a licensee applies for renewal of his or her license more than 5 years after its expiration, the board shall determine whether the applicant is competent to practice under the license in this state. The inquiry shall include a review of the applicant's practice within the previous 5 years, if any, in other licensing jurisdictions.

(b) After inquiry, the board shall impose any reasonable conditions on reinstatement of the license as the board deems

appropriate, including a requirement that the applicant complete any current requirement for original licensure.

## Chapter GHSS 2

### PROFESSIONAL GEOLOGIST LICENSE

**GHSS 2.01 Authority and purpose.** The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 470.03 (1) (a) and 470.04, Stats. The purpose of the rules in this chapter is to interpret basic education, experience and examination requirements for registration as a professional geologist as specified in ss. 470.04 and 470.05, Stats.

**GHSS 2.02 Applications.** An applicant who files an application but does not comply with a request for information related to the application within one year from the date of the request shall file a new application.

**Note:** Applications are available upon request to the Professional Geologist Section of the board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

**GHSS 2.03 Experience as a professional geologist.** (1) To qualify as satisfactory professional geologic work for the purposes of s. 470.02 (2) (c), Stats., an applicant's experience shall include the application of accepted principles in the practice of geology and shall demonstrate an applicant's progressive development of competence to practice as a professional geologist. The experience shall be acquired in the areas of the practice of geology listed in sub. (2) (a) to (m) or in other areas of the practice of geology which in the opinion of the professional geologist section provide the applicant with a knowledge of principles and data related to the practice of geology at least equivalent to that which would be acquired by experience in the areas of practice listed. Experience in every listed area is not required.

(2) Areas of experience in the practice of professional geology include:

(a) Mineralogy, including identification of minerals and mineral assemblages, the determination of physical and chemical properties of rocks, and determination of probable genesis and sequence of mineral assemblages.

(b) Petrography or petrology, including identification and classification of major rock types, determination of physical and chemical properties of rocks, and determination of probable genesis and sequence of rock formation.

(c) Geochemistry, including evaluation of geochemical data, and construction of geologic models based on geochemical analyses.

(d) Stratigraphy or historical analysis, including identification of rock sequences, establishment of the relative position of rock units, determination of the ages of rock units, interpretation of depositional environments and geologic histories, performance of facies analyses, and establishment of stratigraphic classifications.

(e) Structural geology, including identification of structural features and their interrelationships, determination of the orientation of structural features, performance of qualitative and quantitative structural analyses, correlation of separated structural features, and interpretation of structural features and tectonic histories.

(f) Paleontology, including determination of estimated relative geologic ages of rocks, identification of fossils and fossil assemblages, correlation of rock biostratigraphy, and paleoecological interpretation.

(g) Geomorphology, including identification of landforms, performance of geomorphic field investigations, determination of geomorphic processes and the development and age relationships of landforms and soils, and interpretation of geomorphic field data.

(h) Geophysics, including performance of geophysical investigations in the field, performance of geological interpretations of geophysical data, and identification of potentially hazardous geological conditions by use of geophysical techniques.

(i) Hydrogeology, including design and interpretation of hydrologic and hydrogeologic testing programs, utilization of physical and chemical data to evaluate hydrogeologic conditions, development and interpretation of groundwater geologic maps and sections, application of geophysical methods to analyze hydrogeologic conditions, determination of the physical and chemical properties of aquifers and vadose zones, determination of groundwater resources and quality, design of wells and drilling programs, development of groundwater resource management plans, and development of remedial action programs.

(j) Engineering geology, including geologic interpretation for engineering design, identification and interpretation of potential seismic and geologic hazards, development and interpretation of engineering geology maps and sections, evaluation of materials resources, establishment of site selection and evaluation criteria, design and implementation of field and laboratory programs, and provision of sample soils for geologic analysis and materials properties testing.

(k) Mining geology, including formulation of exploration programs, implementation of field investigations on prospects, performance of geologic interpretations for mineral reserves, performance of economic analyses and appraisals, provision of geologic interpretations for mineral resource, mine development, and mine reclamation or abandonment.

(L) Petroleum geology, including formulation of exploration plans, implementation of field investigations on prospects, performance of geologic interpretations of physical properties and hydrocarbon reserves, performance of petroleum economic analyses and appraisals, and provision of geologic interpretations for development and abandonment of hydrocarbon reservoirs.

(m) Glacial geology, including understanding glacial processes, deposits, landforms and environments; identification and classification of glacial sediment; performance of facies analyses; identification of glacial sequences and establishment of stratigraphic classifications; determination of glacial histories; and development and interpretation of glacial geologic maps and sections.

(3) Not more than one year of satisfactory experience credit may be granted for any calendar year.

**GHSS 2.04 Education.** (1) In satisfaction of the education requirement under s. 470.04 (2) (b), Stats., the professional geologist section shall accept a bachelor degree in geology, or a degree reflecting that the applicant has completed at least 30 semester hours or 45 quarter hours of course credits in geology of a variety and nature sufficient to constitute a major in geology, granted by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located, or accredited by a Canadian accrediting agency satisfactory to the board.

(2) If the degree is from an educational institution not meeting the requirements of sub. (1), the applicant must provide an official evaluation by a transcript evaluation service acceptable to the professional geologist section which shows that the degree is equivalent to a bachelor degree in geology or a bachelor degree with a major in geology meeting the requirements under sub. (1).

(3) In order to be considered a major in geology, an applicant must have completed at least 30 semester hours or 45 quarter hours of course credits which include credits in at least 4 of the following areas:

- (a) Geochemistry or geophysics.
- (b) Geologic field methods.
- (c) Glacial geology or geomorphology.
- (d) Hydrogeology or hydrology.
- (e) Mineralogy.
- (f) Petrology or petrography.
- (g) Stratigraphy or sedimentology.
- (h) Structural geology.

(4) In addition to the coursework required under sub. (3), other coursework that may be used to satisfy the 30 semester hour or

45 quarter hour requirement includes, but is not limited to, the following:

- (a) Engineering geology.
- (b) Historical geology.
- (c) Mining geology.
- (d) Paleontology.
- (e) Petroleum geology.
- (f) Physical geology.

**GHSS 2.05 Examinations.** (1) **REQUIRED EXAMINATIONS.** All applicants for initial registration as a professional geologist shall pass examinations for the professional practice of geology approved by the professional geologist section. Required examinations shall include a fundamentals examination and a principles and practice of geology examination.

(2) **FUNDAMENTALS EXAMINATION.** The fundamentals examination requires an understanding of the physical and mathematical sciences involved in the fundamentals of geology. To be eligible to take the fundamentals examination, an applicant shall have done one of the following:

(a) Be of not less than second semester senior standing in a bachelor program in geology meeting the requirements of s. GHSS 2.04.

(b) Completed at least 24 semester hours or 36 quarter hours of course credits in geology and be of not less than second semester senior standing in a bachelor program meeting the requirements of s. GHSS 2.04.

(c) Completed at least 5 years of experience which is determined by the professional geologist section to be equivalent to the requirements of s. GHSS 2.04.

(3) **PRINCIPLES AND PRACTICE EXAMINATION.** The principles and practice examination requires the ability to apply geologic principles and judgment to problems in the practice of professional geology.

(a) To be eligible to take the principles and practice examination, an applicant under s. 470.04 (2) (c) 1., Stats., shall have done the following:

1. Met the requirements under s. 470.04 (2) (a), Stats.

2. Met the requirement under s. 470.04 (2) (b), Stats., or have at least 5 years of professional experience in addition to the qualifying experience under subd. 3., which is determined by the professional geologist section to be equivalent to the requirement under s. 470.04 (2) (b), Stats.

3. Completed at least 4 years of professional experience in geologic work of a character satisfactory to the professional geologist section, or completed at least 3 years of professional experience in geologic work of a character satisfactory to the section if the applicant has one or more advanced degrees relevant to the practice of professional geology, demonstrating that the applicant is qualified to assume responsible charge of geologic work. At least one year of the qualifying professional experience under this subdivision must have been performed under the supervision of one or more of the following:

a. A person who is at the time of application registered as a professional geologist under this chapter or who, during the period of supervised experience, was registered as a professional geologist under ch. 443, 1995 Stats.

b. A person who, during the period of supervised experience, was registered as a professional geologist in another state, territory or possession of the United States or in another country that has registration requirements for professional geologists that are not lower than the requirements for registration under this chapter.

c. A person who, during the period of supervised experience, is deemed by the professional geologist section to have been qualified to have responsible charge of geologic work.

(b) To be eligible to take the principles and practice examination, an applicant under s. 470.04 (3) (c) 2., Stats., shall have done the following:

1. Met the requirements under s. 470.04 (2) (a), Stats.

2. Met the requirement under s. 470.04 (2) (b), Stats., or have at least 5 years of professional experience in addition to the qualifying experience under subd. 3., which is determined by the professional geologist section to be equivalent to the requirement under s. 470.04 (2) (b), Stats.

3. Completed at least 6 years of professional experience in geologic work of a character satisfactory to the professional geologist section, or completed at least 5 years of professional experience in geologic work of a character satisfactory to the section if the applicant has one or more advanced degrees relevant to the practice of professional geology, demonstrating that the applicant is qualified to assume responsible charge of geologic work. At least one year of the qualifying professional experience under this subdivision must have been performed under a peer review system approved by the professional geologist section.

(3) **APPLICATION FOR EXAMINATION.** An applicant for initial registration shall file an application for examination with the board not less than 2 months before the scheduled date of the examination.

(4) **AMERICANS WITH DISABILITIES ACT.** Otherwise qualified applicants with disabilities shall be provided with reasonable accommodations.

(5) **EXAMINATION AND REFUND FEES.** The fee for the examinations for professional geologists and the requirements for refund of fees are specified in s. 440.05, Stats., and ch. RL 4, respectively.

(6) **PLACE AND TIME OF EXAMINATIONS.** The examinations required by this section shall be held at sites and on dates designated by the professional geologist section.

(7) **PASSING SCORES.** (a) The passing scores set by the professional geologist section represent the minimum competency required to protect public health and safety.

(b) The fundamentals of geology and the principles and practice of geology examinations of the association of state boards of geology, and the examination on the elements of practice essential to the public health, safety or welfare are scored separately. An applicant shall achieve a passing score on each of the required examinations to qualify for licensure.

(c) The professional geologist section accepts the recommendations of the association of state boards of geology for the passing score on the fundamentals of geology and the principles and practice of geology examinations.

(d) The professional geologist section shall make the determination of the passing score on the examination on the elements of practice essential to the public health, safety or welfare after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics.

(8) **CHEATING.** The professional geologist section may deny release of scores or issuance of a credential if the board determines that the applicant violated rules of conduct of the examination or otherwise acted dishonestly.

**GHSS 2.06 Application contents.** An application for registration as a professional geologist shall include:

(1) Either of the following:

(a) Official transcripts of graduate and undergraduate training, properly attested to by the degree granting institution and submitted by the institution directly to the board establishing that the applicant has been granted a bachelor degree in geology or a bachelor degree with a geology major meeting the requirements under s. 470.04 (2) (b), Stats., granted by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located, or accredited by a Canadian accrediting agency satisfactory to the board, or



(b) A chronological history of the applicant's employment or other qualifying experience in satisfaction of s. 470.04 (7), Stats.

(2) A chronological history of the applicant's employment or other qualifying experience in satisfaction of s. 470.04 (2) (c) 1., Stats.

(3) For applicants applying under s. 470.04 (2) (c) 1., Stats., a completed "supervised geologic experience" form completed by an individual who has firsthand knowledge of the applicant's supervised experience relating to professional geology and who is one of the following:

(a) A professional geologist who, during the time of the supervised practice, was registered in this state.

(b) A professional geologist who, during the time of the supervised practice, was registered in another licensing jurisdiction that has registration requirements not lower than the requirements for registration in this state.

(c) A person whom the professional geologist section determines is qualified to have responsible charge of geologic work.

(4) For applicants applying under s. 470.04 (2) (c) 2., Stats., submission of at least 3 "peer evaluation" forms satisfactory to the professional geologist section completed by registered professional geologists who have had professional contact with the applicant's practice and who certify that the applicant is qualified to assume responsible charge of geologic work.

(5) References from at least 5 individuals, at least 3 of whom shall be professionally competent to evaluate the applicant's practice and at least one of whom shall be registered as a professional geologist in this state or in a state where an applicant by reciprocity is currently licensed.

(6) The fee required under s. 440.05 (1), Stats.

(7) For applicants previously licensed in another state, territory or possession of the United States or in another country, verification of the applicant's licensure in the licensing jurisdiction of original licensure or, if the applicant has permitted his or her registration in the jurisdiction of original licensure to lapse, verification of licensure in the licensing jurisdiction where the applicant is currently licensed and where the applicant was last engaged in the practice of professional geology.

(8) For applicants who have a pending criminal charge or have been convicted of a crime, all related information necessary for the professional geologist section to determine whether the circumstances of the pending criminal charge or criminal conviction are substantially related to the circumstances of the practice of geology.

(9) Any additional data, exhibits or references showing the extent and quality of the applicant's experience that may be required by the professional geologist section.

(10) Evidence of successful completion of the fundamentals of geology examination and the principles and practice of geology examination.

**Note:** Application forms, including the "supervised geologic experience" form and the "peer evaluation" form are available upon request to the Professional Geologist Section of the board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

### Chapter GHSS 3

#### PROFESSIONAL HYDROLOGIST LICENSE

**GHSS 3.01 Authority and purpose.** The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 470.03 (1) (a) and 470.04, Stats. The purpose of the rules in this chapter is to interpret basic education, experience and examination requirements for registration as a professional hydrologist as specified in ss. 470.04 and 470.05, Stats.

**GHSS 3.02 Applications.** An applicant who files an application but does not comply with a request for information related to the

application within one year from the date of the request shall file a new application.

**Note:** Applications are available upon request to the Professional Hydrologist Section of the board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

**GHSS 3.03 Experience as a professional hydrologist.** (1) To qualify as satisfactory professional hydrologic work for the purposes of s. 470.02 (3) (c) Stats., an applicant's experience shall include the application of accepted principles in the practice of hydrology and shall demonstrate an applicant's progressive development of competence to practice as a professional hydrologist. The experience shall be acquired in the areas of the practice of hydrology listed in sub. (2) (a) to (c) or in other areas of the practice of hydrology which in the opinion of the professional hydrologist section provide the applicant with a knowledge of principles and data related to the practice of hydrology at least equivalent to that which would be acquired by experience in the areas of practice listed. Experience in every listed area is not required.

(2) Areas of experience in the practice of professional hydrology include but are not limited to:

(a) Collection and inventory of hydrological data, including monitoring and characterizing surface and subsurface water quality and flow; monitoring precipitation quality, quantity and distribution; assessing surface and subsurface water quality, conditions and impacts; inventorying and assessing sources of water contamination; assessing conditions affecting surface and subsurface water quantity, quality and timing of flow; conducting field tests to determine the hydraulic characteristics of saturated and unsaturated media; inventorying channel and flood plain conditions affecting flow and habitat; inventorying physical, chemical or biological characteristics of lakes and wetlands; designing, installing and maintaining monitoring networks and equipment, such as stream gauges and monitoring wells, used to evaluate surface and subsurface water flow and quality; selecting sampling protocols for measuring surface and subsurface water; measuring surface water flow utilizing current meters and flow control structures; and conducting boring programs and tests to characterize conditions that affect subsurface water flow, contaminant flux, and the source and extent of subsurface contamination.

(b) Interpretation, analysis and modeling of hydrological processes, including estimating the frequency of hydrologic events; estimating water budgets of surface water and aquifer systems; estimating pollutant loads; modeling and assessing surface and subsurface water contaminant fate and transport; modeling and assessing watershed hydrology; modeling and assessing urban watersheds and stream flow; modeling and assessing surface water quality, modeling and assessing soil erosion and sediment transport; delineating regulatory floodplains; interpreting water chemistry data; evaluating subsurface water flow and quality characteristics; evaluating subsurface water discharge and recharge areas and rates; modeling subsurface water flow, quality and transport; analyzing the hydraulic characteristics of saturated and unsaturated media; and evaluating subsurface contamination and remedial alternatives.

(c) Planning design and management of hydrological systems, including designing water control structures, designing watershed management plans, designing runoff and erosion control measures, designing slope stabilization measures, designing detention and retention ponds, designing urban storm water management plans, designing for stream bank and lakeshore protection, designing channels and stream restoration work, designing subsurface remediation systems, and designing water supply wells and wellhead protection plans.

(3) Not more than one year of satisfactory experience credit may be granted for any calendar year.

**GHSS 3.04 Education.** (1) In satisfaction of the education requirement under s. 470.04 (3) (b), Stats., the professional hydrologist section shall accept a bachelor degree in hydrology or water resources, or a degree reflecting that the applicant has completed at least 30 semester hours or 45 quarter hours of course credits in hydrology or water resources of a variety and nature sufficient to constitute a major in hydrology or water resources,

granted by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located, or accredited by a Canadian accrediting agency satisfactory to the board.

(2) If the degree is from an educational institution not meeting the requirements of sub. (1), the applicant shall provide an official evaluation by a transcript evaluation service acceptable to the professional hydrologist section which shows that the degree is equivalent to a bachelor degree in hydrology or water resources or a bachelor degree with a major in hydrology or water resources meeting the requirements under sub. (1).

(3) In order to be considered a major in hydrology, the applicant must have completed at least 12 semester hours or 18 quarter hours of course credits in hydrology or water resources in at least 3 of the following areas:

- (a) Contaminant surface and subsurface water hydrology.
- (b) Field methods in surface and subsurface water hydrology.
- (c) Fluid mechanics/dynamics.
- (d) Fluvial geomorphology.
- (e) Open channel flow and hydraulics.
- (f) Stochastic hydrology.
- (g) Subsurface water hydrology.
- (h) Subsurface water and well hydraulics.
- (i) Surface or subsurface water modeling.
- (j) Surface water hydrology.
- (k) Unsaturated zone hydrology.
- (L) Water resource management.

(4) In addition to the coursework required under sub. (3), other hydrology or water resource related course work that may be used to satisfy the 30 semester hour or 45 quarter hour requirement include, but are not limited to courses in the following areas:

- (a) Aquatic biology.
- (b) Engineering.
- (c) Environmental health and toxicology.
- (d) Forestry.
- (e) Geography.
- (f) Geology.
- (g) Limnology.
- (h) Meteorology.
- (i) Natural resources.
- (j) Soil science.
- (i) Water chemistry.

**GHSS 3.05 Examinations.** (1) **REQUIRED EXAMINATIONS.** After December 31, 1998, all applicants for initial registration as a professional hydrologist shall pass examinations for the professional practice of hydrology approved by the professional hydrologist section. Required examinations shall include a fundamentals examination and a principles and practice examination.

(2) **FUNDAMENTALS EXAMINATION.** The fundamentals examination requires an understanding of the physical and mathematical sciences involved in the fundamentals of hydrology. To be eligible to take the fundamentals examination, an applicant shall have done one of the following:

- (a) Be of not less than second semester senior standing in a bachelor program in hydrology or water resources meeting the requirements of s. GHSS 3.04.
- (b) Completed at least 24 semester hours or 36 quarter hours of course credits in hydrology or water resources and be of not less than second semester senior standing in a bachelor program meeting the requirements of s. GHSS 3.04.

(c) Completed at least 5 years of experience which is determined by the professional hydrologist section to be equivalent to the requirements of s. GHSS 3.04.

(3) **PRINCIPLES AND PRACTICE EXAMINATION.** The principles and practice examination requires the ability to apply hydrologic principles and judgment to problems in the practice of professional hydrology.

(a) To be eligible to take the principles and practice examination, an applicant under s. 470.04 (3) (c) 1., Stats., shall have done the following:

- 1. Met the requirements under s. 470.04 (3) (a), Stats.
- 2. Met the requirement under s. 470.04 (3) (b), Stats., or have at least 5 years of professional experience in addition to the qualifying experience under subd. 3., which is determined by the professional hydrologist section to be equivalent to the requirement under s. 470.04 (3) (b), Stats.
- 3. Completed at least 4 years of professional experience in hydrologic work of a character satisfactory to the professional hydrologist section, or completed at least 3 years of professional experience in hydrologic work of a character satisfactory to the section if the applicant has one or more advanced degrees relevant to the practice of professional hydrology, demonstrating that the applicant is qualified to assume responsible charge of hydrologic work. At least 1 year of the qualifying professional experience under this subdivision must have been performed under the supervision of one or more of the following:

a. A person who is at the time of application registered as a professional hydrologist under this chapter or who, during the period of supervised experience, was registered as a professional geologist under ch. 443, 1995 Stats.

b. A person who, during the period of supervised experience, was registered as a professional hydrologist in another state, territory or possession of the United States or in another country that has registration requirements for professional hydrologists that are not lower than the requirements for registration under this chapter.

c. A person who, during the period of supervised experience, is deemed by the professional hydrologist section to have been qualified to have responsible charge of hydrologic work.

(b) To be eligible to take the principles and practice examination, an applicant under s. 470.04 (3) (c) 2., Stats., shall have done the following:

- 1. Met the requirements under s. 470.04 (3) (a), Stats.
- 2. Met the requirement under s. 470.04 (3) (b), Stats., or have at least 5 years of professional experience in addition to the qualifying experience under subd. 3., which is determined by the professional hydrologist section to be equivalent to the requirement under s. 470.04 (3) (b), Stats.

3. Completed at least 6 years of professional experience in hydrologic work of a character satisfactory to the professional hydrologist section, or completed at least 5 years of professional experience in hydrologic work of a character satisfactory to the section if the applicant has one or more advanced degrees relevant to the practice of professional hydrology, demonstrating that the applicant is qualified to assume responsible charge of hydrologic work. At least 1 year of the qualifying professional experience under this subdivision must have been performed under a peer review system approved by the professional hydrologist section.

(3) **APPLICATION FOR EXAMINATION.** An applicant for initial registration shall file an application for examination with the professional hydrologist section of the board not less than 2 months before the scheduled date of the examination.

(4) **AMERICANS WITH DISABILITIES ACT.** Otherwise qualified applicants with disabilities shall be provided with reasonable accommodations.

(5) **EXAMINATION AND REFUND FEES.** The fee for the examinations for professional hydrologists and the requirements for refund of fees are specified in s. 440.05, Stats., and ch. RL 4, respectively.

(6) PLACE AND TIME OF EXAMINATIONS. The examinations required by this section shall be held at sites and on dates designated by the professional hydrologist section.

(7) PASSING SCORES. (a) The passing scores set by the professional hydrologist section represent the minimum competency required to protect public health and safety.

(b) The fundamentals of hydrology and the principles and practice of hydrology examinations, and the examination on the elements of practice essential to the public health, safety or welfare are scored separately. An applicant shall achieve a passing score on each of the required examinations to qualify for licensure.

(c) The professional hydrologist section shall make the determination of the passing score on each required examination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics.

(8) CHEATING. The professional hydrologist section may deny release of scores or issuance of a credential if the board determines that the applicant violated rules of conduct of the examination or otherwise acted dishonestly.

**GHSS 3.06 Application contents.** An application for registration as a professional hydrologist shall include:

(1) Either of the following:

(a) Official transcripts of graduate and undergraduate training, properly attested to by the degree granting institution and submitted by the institution directly to the professional hydrologist section establishing that the applicant has been granted a bachelor degree in hydrology or water resources or a degree with a hydrology or water resources major meeting the requirements under s. 470.04 (3) (b), Stats., granted by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located, or accredited by a Canadian accrediting agency satisfactory to the board, or

(b) A chronological history of the applicant's employment or other qualifying experience in satisfaction of s. 470.04 (7), Stats.

(2) A chronological history of the applicant's employment or other qualifying experience in satisfaction of s. 470.04 (3) (c) 1. or 470.04 (3) (c) 2., Stats.

(3) For applicants applying under s. 470.04 (3) (c) 1., Stats., a completed "supervised hydrologic experience" form completed by an individual who has firsthand knowledge of the applicant's supervised experience relating to professional hydrology and who is one of the following:

(a) A professional hydrologist who, during the time of the supervised practice, was registered in this state.

(b) A professional hydrologist who, during the time of the supervised practice, was registered in another licensing jurisdiction that has registration requirements not lower than the requirements for registration in this state.

(c) A person who the professional hydrologist section determines is qualified to have responsible charge of hydrologic work.

(4) For applicants applying under s. 470.04 (3) (c) 2., Stats., submission of at least 3 "peer evaluation" forms satisfactory to the professional hydrologist section completed by registered professional hydrologists who have had professional contact with the applicant's practice and who certify that the applicant is qualified to assume responsible charge of hydrologic work.

(5) References from at least 5 individuals, at least 3 of whom shall be professionally competent to evaluate the applicant's practice.

(6) The fee required under s. 440.05 (1), Stats.

(7) For applicants previously licensed in another state, territory or possession of the United States or in another country, verification of the applicant's licensure in the licensing jurisdiction of original licensure or, if the applicant has permitted his or her registration in the jurisdiction of original licensure to lapse, verification of

licensure in the licensing jurisdiction where the applicant is currently licensed and where the applicant was last engaged in the practice of professional hydrology.

(8) For applicants who have a pending criminal charge or have been convicted of a crime, all related information necessary for the professional hydrologist section to determine whether the circumstances of the pending criminal charge or criminal conviction are substantially related to the circumstances of the practice of hydrology.

(9) Any additional data, exhibits or references showing the extent and quality of the applicant's experience that may be required by the professional hydrologist section.

(10) After December 31, 1998, evidence of successful completion of fundamentals of hydrology and the principles and practice of hydrology examinations.

**Note:** Application forms, including the "supervised hydrologic experience" form and the "peer evaluation" form are available upon request to the Professional Hydrologist Section of the board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

## Chapter GHSS 4

### PROFESSIONAL SOIL SCIENTIST LICENSE

**GHSS 4.01 Authority and purpose.** The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 470.03 (1) (a) and 470.04, Stats. The purpose of the rules in this chapter is to interpret basic education, experience and examination requirements for registration as a professional soil scientist as specified in ss. 470.04 and 470.05, Stats.

**GHSS 4.02 Applications.** An applicant who files an application but does not comply with a request for information related to the application within one year from the date of the request shall file a new application.

**Note:** Applications are available upon request to the Professional Soil Scientist Section of the board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

**GHSS 4.03 Experience as a professional soil scientist.** (1) To qualify as satisfactory professional soil science work for the purposes of s. 470.02 (3) (c) Stats., an applicant's experience shall include the application of accepted principles in the practice of soil science and shall demonstrate an applicant's progressive development of competence to practice as a professional soil scientist. The experience shall be acquired in the areas of the practice of soil science listed in sub. (2) (a) to (h) or in other areas of the practice of soil science which in the opinion of the professional soil scientist section provide the applicant with a knowledge of principles and data related to the practice of soil science at least equivalent to that which would be acquired by experience in the areas of practice listed. Experience in every listed area is not required.

(2) Areas of experience in the practice of professional soil science include:

(a) Soil physics: the study of the physical properties of porous media, including soils; and the determination of the state, distribution, transport and balances of matter and energy in porous media, especially as related to water, gas and heat.

(b) Soil chemistry: the determination of the chemical constituents, chemical properties, and chemical reactions in porous media, including soils.

(c) Soil classification, morphology and mapping: the description, classification, interpretation and mapping of soil materials in the landscape.

(d) Soil mineralogy: the study of soil science that deals with porous media inorganic materials, including the soils of the earth's crust to the depth of weathering or of sedimentation.

(e) Soil biochemistry: the study of soil science concerned with enzymes, and the reactions, activities and products of soil microorganisms.

(f) Soil biology: the assessment of soil-inhabiting microorganisms and macroorganisms, including their identification, functions, activities and cycles.

(e) Soil fertility: the analysis, interpretation and management of the soil to enhance soil quality and provide nutrients in adequate amounts and in proper balance for the growth of specified plants.

(f) Land use management: the management and practices associated with land waste application, nutrient management, non-point source contaminant control, soil and water conservation, and other land use issues associated with soil management.

(3) Not more than one year of satisfactory experience credit may be granted for any calendar year.

**GHSS 4.04 Education.** (1) In satisfaction of the education requirement under s. 470.04 (4) (b), Stats., the professional soil scientist section shall accept a bachelor's degree in soil science, or a bachelor's degree reflecting that the applicant has completed at least 30 semester hours or 45 quarter hours of course credits in soil science of a variety and nature sufficient to constitute a major in soil science, granted by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located, or accredited by a Canadian accrediting agency satisfactory to the board.

(2) If the degree is from an educational institution not meeting the requirements of sub. (1), the applicant must provide an official evaluation by a transcript evaluation service acceptable to the professional soil scientist section which shows that the degree is equivalent to a bachelor's degree in soil science or a bachelor's degree with a major in soil science meeting the requirements under sub. (1).

(3) In order to be considered a major in soil science, an applicant must have completed at least 30 semester hours or 45 quarter hours of course credits which include not less than 15 semester credits or 23 quarter credits in at least 3 of the following areas:

- (a) Soil biology.
- (b) Soil chemistry.
- (c) Soil classification, morphology and mapping.
- (d) Soil conservation and management.
- (e) Soil fertility.
- (f) Soil physics.

(4) In addition to the coursework required under sub. (3), other coursework that may be used to satisfy the 30 semester hour or 45 quarter hour requirement include, but are not limited to, the following:

- (a) Agronomy.
- (b) Bacteriology.
- (c) Botany.
- (d) Engineering.
- (e) Forestry.
- (f) Geography.
- (g) Geology.
- (h) Horticulture.
- (i) Hydrology.
- (j) Meteorology.
- (k) Plant pathology.

**GHSS 4.05 Examinations.** (1) **REQUIRED EXAMINATIONS.** After December 31, 1998, all applicants for initial registration as a professional soil scientist shall pass examinations for the professional practice of soil science approved by the professional soil scientist section. Required examinations shall include a fundamentals examination and a principles and practice examination.

(2) **FUNDAMENTALS EXAMINATION.** The fundamentals examination requires an understanding of the physical and mathematical sciences involved in the fundamentals of soil science.

To be eligible to take the fundamentals examination, an applicant shall have done one of the following:

(a) Be of not less than second semester senior standing in a bachelor of science program in soil science meeting the requirements of s. GHSS 4.04.

(b) Have completed at least 24 semester hours or 36 quarter hours of course credits for the degree in soil science meeting the requirements of s. GHSS 4.04.

(c) Have at least 5 years of experience which is determined by the professional soil scientist section to be equivalent to the requirements of s. GHSS 4.04.

(3) **PRINCIPLES AND PRACTICE EXAMINATION.** The principles and practice examination requires the ability to apply soil science principles and judgment to problems in the practice of professional soil science.

(a) To be eligible to take the principles and practice examination, an applicant under s. 470.04 (4) (c) 1., Stats., shall have done the following:

1. Met the requirements under s. 470.04 (4) (a), Stats.
2. Met the requirement under s. 470.04 (4) (b), Stats., or have at least 5 years of professional experience in addition to the qualifying experience under subd. 3., which is determined by the professional soil scientist section to be equivalent to the requirement under s. 470.04 (4) (b), Stats.

3. Completed at least 4 years of professional experience in soil science work of a character satisfactory to the professional soil scientist section, or completed at least 3 years of professional experience in soil science work of a character satisfactory to the section if the applicant has one or more advanced degrees relevant to the practice of professional soil science, demonstrating that the applicant is qualified to assume responsible charge of soil science work. At least one year of the qualifying professional experience under this subdivision must have been performed under the supervision of one or more of the following:

a. A person who is at the time of application registered as a professional soil scientist under this chapter or who, during the period of supervised experience, was registered as a professional geologist under ch. 443, 1995 Stats.

b. A person who, during the period of supervised experience, was registered as a professional soil scientist in another state, territory or possession of the United States or in another country that has registration requirements for professional soil scientists that are not lower than the requirements for registration under this chapter.

c. A person who, during the period of supervised experience, is deemed by the professional soil scientist section to have been qualified to have responsible charge of soil science work.

(b) To be eligible to take the principles and practice examination, an applicant under s. 470.04 (4) (c) 2., Stats., shall have done the following:

1. Met the requirements under s. 470.04 (4) (a), Stats.
2. Met the requirement under s. 470.04 (4) (b), Stats., or have at least 5 years of professional experience in addition to the qualifying experience under subd. 3., which is determined by the professional soil scientist section to be equivalent to the requirement under s. 470.04 (4) (b), Stats.

3. Completed at least 6 years of professional experience in soil science work of a character satisfactory to the professional soil scientist section, or completed at least 5 years of professional experience in soil science work of a character satisfactory to the section if the applicant has one or more advanced degrees relevant to the practice of professional soil science, demonstrating that the applicant is qualified to assume responsible charge of soil science work. At least one year of the qualifying professional experience under this subdivision must have been performed under a peer review system approved by the professional soil scientist section.

(3) **APPLICATION FOR EXAMINATION.** An applicant for initial registration shall file an application for examination with the professional soil scientist section not less than 2 months before the scheduled date of the examination.

(4) **AMERICANS WITH DISABILITIES ACT.** Otherwise qualified applicants with disabilities shall be provided with reasonable accommodations.

(5) **EXAMINATION AND REFUND FEES.** The fee for the examinations for professional soil scientists and the requirements for refund of fees are specified in s. 440.05, Stats., and ch. RL 4, respectively.

(6) **PLACE AND TIME OF EXAMINATIONS.** The examinations required by this section shall be held at sites and on dates designated by the professional soil scientist section.

(7) **PASSING SCORES.** (a) The passing scores set by the professional soil scientist section represent the minimum competency required to protect public health and safety.

(b) The fundamentals of soil science and the principles and practice of soil science examinations, and the examination on the elements of practice essential to the public health, safety or welfare are scored separately. An applicant shall achieve a passing score on each of the required examinations to qualify for licensure.

(c) The professional soil scientist section accepts the recommendations of the examination provider for the passing scores on the fundamentals of soil science and the principles and practice of soil science examinations.

(d) The professional soil scientist section shall make the determination of the passing score on the examination on the elements of practice essential to the public health, safety or welfare after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics.

(8) **CHEATING.** The professional soil scientist section may deny release of scores or issuance of a credential if the board determines that the applicant violated rules of conduct of the examination or otherwise acted dishonestly.

**GHSS 4.06 Application contents.** An application for registration as a professional soil scientist shall include:

(1) Either of the following:

(a) Official transcripts of graduate and undergraduate training, properly attested to by the degree granting institution and submitted by the institution directly to the professional soil scientist section establishing that the applicant has been granted a bachelor's degree in soil science or a bachelor's degree with a soil science major meeting the requirements under s. 470.04 (4) (b), Stats., granted by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located, or accredited by a Canadian accrediting agency satisfactory to the board, or

(b) A chronological history of the applicant's employment or other qualifying experience in satisfaction of s. 470.04 (7), Stats.

(2) A chronological history of the applicant's employment or other qualifying experience in satisfaction of s. 470.04 (4) (c) 1. or 470.04 (4) (c) 2., Stats.

(3) For applicants applying under s. 470.04 (4) (c) 1., Stats., a completed "supervised soil science experience" form completed by an individual who has firsthand knowledge of the applicant's supervised experience relating to professional soil science and who is one of the following:

(a) A professional soil scientist who, during the time of the supervised practice, was registered in this state.

(b) A professional soil scientist who, during the time of the supervised practice, was registered in another licensing jurisdiction that has registration requirements not lower than the requirements for registration in this state.

(c) A person who the board determines is qualified to have responsible charge of soil science work.

(4) For applicants applying under s. 470.04 (4) (c) 2., Stats., submission of at least 3 "peer evaluation" forms satisfactory to the board completed by registered professional soil scientists who have had professional contact with the applicant's practice and who

certify that the applicant is qualified to assume responsible charge of soil science work.

(5) References from at least 5 individuals, at least 3 of whom shall be professionally competent to evaluate the applicant's practice.

(6) The fee required under s. 440.05 (1), Stats.

(7) For applicants previously licensed in another state, territory or possession of the United States or in another country, verification of the applicant's licensure in the licensing jurisdiction of original licensure or, if the applicant has permitted his or her registration in the jurisdiction of original licensure to lapse, verification of licensure in the licensing jurisdiction where the applicant is currently licensed and where the applicant was last engaged in the practice of professional soil science.

(8) For applicants who have a pending criminal charge or have been convicted of a crime, all related information necessary for the professional soil scientist section to determine whether the circumstances of the pending criminal charge or criminal conviction are substantially related to the circumstances of the practice of soil science.

(9) Any additional data, exhibits or references showing the extent and quality of the applicant's experience that may be required by the professional soil scientist section.

(10) After December 31, 1998, evidence of successful completion of fundamentals of soil science and principles and practice of soil science examinations.

**Note:** Application forms are available upon request to the Professional Soil Scientist Section of the board at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

## Chapter GHSS 5

### UNPROFESSIONAL CONDUCT

**GHSS 5.01 Authority.** The rules of conduct in this chapter are adopted under authority of ss. 15.08 (5) (b), 227.11 (2), 470.03 (1) and 470.08, Stats.

**GHSS 5.02 Intent.** The intent of the board in adopting this chapter is to establish rules of professional conduct for the professions of geology, hydrology and soil science. A violation of any standard specified in this chapter may result in disciplinary action under s. 470.08, Stats.

**GHSS 5.03 Definitions.** The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding and abetting the same:

(1) Making a material misstatement in an application for a license or for renewal of a license.

(2) In sitting for any licensure examination, soliciting or knowingly disclosing examination content.

(3) Failing to cooperate with the board or a section of the board in an investigation under this section.

(4) Engaging in gross negligence in the practice of professional geology, professional hydrology or professional soil science through the performance of professional services which do not comply with an acceptable standard of practice that has a significant relationship to the protection of health, safety or public welfare and is performed in a manner indicating that the professional knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice.

(5) Providing incompetent services in the practice professional geology, professional hydrology or professional soil science which demonstrate any of the following:

(a) Lack of ability or fitness to discharge the duty owed by a professional geologist, professional hydrologist or professional soil scientist to a client or employer or to the public.

(b) Lack of knowledge of the fundamental principles of the profession or an inability to apply fundamental principles of the profession.

(c) Failure to maintain competency in the current practices and methods applicable to the profession.

(6) Subject to ss. 111.321, 111.322 and 111.34, Stats., engaging in the practice of professional geology, hydrology or soil science while the person's ability to engage in the practice was impaired by alcohol or other drugs.

(7) Having been adjudicated mentally incompetent by a court of competent jurisdiction.

(8) Subject to ss. 111.321, 111.322 and 111.335, Stats., having violated federal or state laws, local ordinances or administrative rules relating to the practice of professional geology, hydrology or soil science.

(9) Preparing deficient plans, drawings, maps, specifications or reports.

(10) Engaging in conduct which evidences a lack of trustworthiness to transact the business required by the profession.

(11) Misrepresenting professional qualifications such as education, specialized training or experience.

(12) Failing to provide appropriate supervision to those to whom a licensee has delegated services constituting the practice of professional geology, professional hydrology or professional soil science, including the following:

(a) Indirect or casual review or inspection of prepared plans, drawings, specifications, maps, plats, charts, reports or other documents.

(b) Delegation of any decision requiring professional judgment.

(c) Mere assumption by a professional geologist, professional hydrologist or professional soil scientist of responsibility for work without having control of the work.

(d) Assumption of charge, control or direct supervision of work in which the professional geologist, hydrologist or soil scientist does not have technical proficiency.

(13) When offering to perform professional services as a professional geologist, professional hydrologist or professional soil scientist, failing to accurately and truthfully represent to a prospective client or employer the capabilities and qualifications which the licensee has to perform the services to be rendered or the costs and completion times of a proposed project.

(14) Offering to perform or performing services, which the licensee is not qualified to perform by education or experience without retaining the services of another who is qualified.

(15) Using false, fraudulent or deceptive advertising or publicity; or practicing or attempting to practice under another's name.

(16) Falsely representing that the licensee is engaged in a partnership or association with another unless there exists in fact a partnership or association, or practicing under a firm name that misrepresents the identity of those practicing in the firm or misrepresents the type of services which the individuals, firm or partnership is authorized and qualified to perform.

(17) Collecting a fee for recommending the services of another unless written notice is first given to all parties concerned.

(18) Any conflict of interest, unless the licensee informs the client or employer of all the circumstances which may interfere with or impair the licensee's obligation to provide professional services, and unless the licensee has the full approval and consent of the client or employer.

(19) Failing to notify an employer or client and to withdraw from employment at any time if it becomes apparent that it is not possible to faithfully discharge the responsibilities and duties owed to the client or employer; or agreeing to perform professional services for a client or employer if the registrant has a significant financial or other interest which would impair or interfere with the registrant's responsibility to faithfully discharge professional services on behalf of the client or employer.

(20) Accepting payment from any party other than a client or employer for a particular project or having any direct or indirect financial interest in a service or phase of a service to be provided as part of a project unless the employer or client approves.

(21) Soliciting or accepting anything of value from material or equipment suppliers in return for specifying or endorsing a product.

(22) Violating the confidences of a client or employer, except as otherwise required by law.

(23) Providing services for a client or employer while a full-time employe of another employer without notifying all parties concerned.

(24) Aiding or abetting the unlicensed practice of professional geology, hydrology or soil science.

(25) Signing, sealing or stamping any plans, drawings, documents, specifications or reports for professional geology, hydrology or soil science practice which are not prepared by the licensee or under his or her personal direction and control.

### **Fiscal Estimate**

These rules implement the regulation of professional geologists, hydrologists and soil scientists as enacted by 1997 Wis. Act 300. The Joint Committee on Finance approved position authority and funds to implement this legislation through the 16.515 process on October 28, 1998. This approval was for FY 99, FY 00 and FY 01 (Fiscal Years 1999, 2000 and 2001). The staffing and funding for this registration needs to be reviewed for the 2001-03 biennium.

The cost to implement this legislation for FY 99 includes \$69,547 for salary and fringe (3.0 FTE(Full-Time Equivalent)); \$17,633 for Board expenses; \$8,036 for supplies and services; and \$16,500 for one-time costs (computers and office furniture). Annual costs for FY 00 and FY 01 are estimated at \$122,000 annually.

These rules increase neither the Department's revenues nor its expenditures. This rule does not appear to have any impact on local government costs.

### **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 Information**

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, WI 53708

Telephone (608) 266-0495

## **Notice of Hearings**

### **Health & Family Services**

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

#### **[CR 99-71]**

Notice is hereby given that, pursuant to s. 48.57(3m)(ar), Stats., the Department of Health and Family Services will hold public hearings to consider the creation of ch. HFS 58, Wis. Adm. Code, relating to the eligibility of nonparent relatives of children to receive kinship care benefits to help them provide care and maintenance for the children.

## Hearing Information

June 14, 1999 Monday From 11 a.m. to 3 p.m.	Birch Room Best Western Midway Hotel 2901 Martin Avenue WAUSAU, WI
June 15, 1999 Tuesday From 10 a.m. to 4 p.m.	Bureau of Milwaukee Child Welfare Site 3 611 N. Teutonia Ave. MILWAUKEE, WI
June 21, 1999 Monday From 11 a.m. to 3 p.m.	Madison B Room Comfort Inn East 4822 E. Washington Ave. MADISON, WI

The hearing sites are fully accessible to people with disabilities.

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

Kinship care is care and maintenance of a child who resides outside of the child's own home, either temporarily or for the long-term, with a relative who could be an adult brother or sister, a first cousin, a nephew or niece, an uncle or aunt or a grandparent, among others.

A recent session law, 1995 Wisconsin Act 289, created s. 48.57(3m), (3p) and (3t), Stats., which authorize a county or tribal child welfare agency to make a monthly payment of \$215, called a kinship care benefit, to an approved relative to help the relative provide care and maintenance for the child. These payments started on July 1, 1996 and by July 1, 1997 had replaced income maintenance payments under s. 49.33, Stats., for care provided by non-legally responsible relatives. The kinship care statutes were amended in October 1997, effective January 1, 1999, by 1997 Wisconsin Act 27 to make the Department responsible for administration of the kinship care program in Milwaukee County. The statutes were amended again in April 1998 by 1997 Wisconsin Act 105 to add sub. (3n), relating to long-term kinship care, and in June 1998 by 1997 Wisconsin Act 237 to direct the Department to promulgate rules that set forth criteria for determining the eligibility of a kinship care relative to receive the monthly kinship care payment.

These are the Department's rules for the kinship care program. The Department's rules cover all of the following topics:

- Conditions for applying for a benefit.
- How to apply for a benefit.
- Agency review of applications.
- Requesting an exemption for good cause from the requirement to cooperate with the agency in securing payment of child support.
- Eligibility criteria, under the headings of need of the child for the kinship care living arrangement, best interests of the child and jurisdictional considerations.
- The use of waiting lists.
- Reassessment at least annually of a kinship care relative's eligibility.
- Appeal rights of an applicant who has been denied a kinship care benefit or of a kinship care relative whose benefit has been discontinued following a reassessment.

This order also repeals current ch. HSS 58, Services for Youth Who Are Adjudicated Delinquent, which dates from August 1985 and is no longer in use.

## Contact Person

To find out more about the hearing or to request a copy of the proposed rules, write, phone or e-mail:

Mark Mitchell  
Bureau of Programs and Policies  
P. O. Box 8916  
Madison, Wisconsin 53708-8916  
608-266-2860 or,  
if you are hearing impaired,  
608-266-7376  
[mitchms@dhfs.state.wi.us](mailto:mitchms@dhfs.state.wi.us)

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at the 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

Written comments on the proposed rules received at the above address no later than **June 22, 1999** will be given the same consideration as testimony presented at the hearing.

## Fiscal Estimate

County departments of social services or human services and tribal child welfare agencies have been authorized since July 1996 under s. 48.57 (3m), (3p) and (3t), Stats., to make a monthly payment of \$215, called a kinship care benefit, to an approved non-parent relative of a child to help the relative provide care and maintenance for the child. The statutes were amended in April 1998 to make the Department responsible for administration of the program in Milwaukee County. The statutes were amended again in June 1998 to direct the Department to promulgate rules which set forth criteria for determining the eligibility of a relative to receive the monthly payment.

The program is administered by counties and tribes, and by the Department in Milwaukee County, any of which may contract with a public or private agency to administer all or part of the program.

These are the rules. They will not affect the expenditures or revenues of state government or local governments. The total costs of the monthly payments and the costs of program administration were taken into consideration by the Legislature when the program was authorized. The state pays the costs of the monthly payments, reimbursing counties, tribes and the Department under a sum certain appropriation. The costs of program administration are also borne by state government.

## Initial Regulatory Flexibility Analysis

These rules will not directly affect small businesses as "small business" is defined in s. 227.114(1)(a), Stats. The rules apply to the persons applying for kinship care benefits, to relatives who are receiving those benefits on behalf of children residing with them, to county departments and tribal child welfare agencies administering the kinship care program, to the department as it administers the kinship care program in Milwaukee County and to other agencies under contract with the department, a county department or a tribal child welfare agency for the purpose of administering the kinship care program.

## Notice of Hearing

*Insurance, Commissioner of*  
[CR 99-90]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth under

s. 227.18, Stats., OCI (Office of the Commissioner of Insurance) will hold a public hearing to consider the adoption of a proposed rulemaking order affecting subchs. III and IV of ch. Ins 8 and creating ch. Ins 19, Wis. Adm. Code, relating to health insurance.

### Hearing Information

June 24, 1999  
Thursday  
9:30 a.m.

Room 6, OCI  
121 East Wilson St  
Madison, WI

### Written Comments

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to:

Fred Nepple, OCI  
P.O. Box 7873  
Madison, WI 53707

### Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42 and 628.34 (12)

Statutes interpreted: ss. 600.01, 628.34 (12), 632.745 to 632.7945, and ch. 635

This rule revises standards governing group, association, and individual health insurance to reflect the requirements of the Health Insurance Portability and Accountability Act of 1996, U.S. P.L.104-191 (HIPAA), the Interim Rule under HIPAA adopted by the Federal Health Care Financing Authority, and changes in the Wisconsin Statutes reflecting those laws and regulation. The rule does the following:

1. Makes clear an insurer must cover a late enrollee under any employer health insurance policy, but permits the insurer to impose not more than a combined 18-month preexisting condition or affiliation period.
2. Makes clear that an insurer may not subject a new entrant, including a person who originally waived coverage during initial enrollment to accept alternative coverage, to more than a 12-month preexisting condition exclusion.
3. Makes clear that an insurer providing health insurance coverage to an employer may:
  - a. Limit issuance of coverage to those employees and their dependents who are included in a nondiscriminatory eligibility class established by a large employer.
  - b. Limit issuance of coverage to those employees and their dependents who are included in a nondiscriminatory class established by a collectively bargained agreement.
  - c. Issue coverage to an employer who has varying levels of contribution toward premium, but only if the classes are nondiscriminatory and the insurer consistently applies uniform minimum contribution requirements.
4. Makes clear that an insurer is not required to offer coverage to an individual who is not actively at work.
5. Makes clear that standards for health insurance coverage provided to or through an employer apply regardless of whether the coverage is denominated association group, group, or individual coverage.
6. Removes requirements that an insurer provide certain notices if an employer ceases to qualify as a small employer but retains requirements that an insurer permit an employer to "cure" inadequate participation to prevent nonrenewal or cancellation on that basis.

7. Prohibits an insurer from imposing more stringent participation requirement, for either small or large employers, than 70% (other than in dual enrollment).

8. Make various changes to reflect the repeal of the basic health insurance plan.

9. Makes clear that an insurer may permit application of no more than a 6-month probation period for eligibility for coverage under a policy issued to either a small or large employer.

10. Permits an insurer to issue coverage only through a bona fide association and market coverage only to persons eligible to join the bona fide association, subject to certain requirements, but prohibits insurers from otherwise marketing only to certain market segments.

11. Makes clear that an insurer may refuse to issue coverage to a small employer if the small employer was cancelled or non-renewed by the insurer for failure to pay premium, or for fraud, but only for a period of one year.

12. Permits an insurer to decline to issue coverage to a small employer on the basis that small employer employees are not within the insurer's provider service area, but only if the insurer adopts reasonable criteria and applies the criteria uniformly without regard to health status.

### Fiscal Estimate

There will be no state or local government fiscal effect.

### 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:

All small businesses seeking to obtain health insurance.

b. Description of reporting and bookkeeping procedures required:

None beyond those currently required.

c. Description of professional skills required:

None beyond those currently required.

### Contact Information

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/rule.htm> or by contacting:

Tammi Kuhl, Services Section  
Office of the Commissioner of Insurance  
Telephone (608) 266-0110  
or at:  
121 East Wilson Street  
P.O. Box 7873  
Madison WI 53707-7873

### Notice of Hearings

#### Natural Resources

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

[CR 99-82]

Notice is hereby given that pursuant to ss. 27.01(11)(b) and 227.11(2)(a), Stats., interpreting s. 27.01(11)(a), Stats., the Department of Natural Resources will hold public hearings on revisions to s. NR 45.10, Wis. Adm. Code, relating to camping and camping reservations on state parks and forests. The proposed rules implement the new automated camping reservation system. The new system allows reservation requests to be processed up to 11 months before a customer wants to occupy a site, rather than having to wait until January 10 of each calendar year. Rather than having to submit a paper reservation form to the park of their choice, or to call the park during business hours in the summer, the new system allows customers to call one toll-free number or access one web site to make a reservation anytime within the reservation window. The



proposed rules also reorganize the rules affecting outdoor group and backpack camping.

### **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.

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

### **Hearing Information**

<b>June 24, 1999</b> <b>Wednesday</b> at 11:30 a.m.	<b>Room 240</b> <b>Madison Area Technical College</b> 211 N. Carroll St. Madison
<b>June 28, 1999</b> <b>Monday</b> at 11:30 a.m.	<b>Conference Room 149</b> <b>Marathon Co. Courthouse</b> 500 Forest St. Wausau
<b>June 29, 1999</b> <b>Tuesday</b> at 11:30 a.m.	<b>Havenwoods State Forest</b> 6141 N. Hopkins Milwaukee

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kimberly Currie at (608) 264-6035 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments**

Written comments on the proposed rule may be submitted to Ms. Kimberly Currie, Bureau of Parks and Recreation, P.O. Box 7921, Madison, WI 53707 no later than June 30, 1999. Written comments will have the same weight and effect as oral statements presented at the public hearings. A copy of the proposed rule [PR-3-98] and fiscal estimate may be obtained from Ms. Currie.

### **Fiscal Estimate**

There is no fiscal effect.

## **Notice of Hearings**

### **Natural Resources**

*(Fish, Game, etc., Chs. NR 1-)*  
*[CR 99-83]*

Notice is hereby given that pursuant to ss. 23.09(2), 23.28(3), 27.01(2)(j) and 227.11(2)(a), Stats., interpreting ss. 23.09(2), 23.28(3), 27.01(2)(i) and (j) and 28.03, Stats., the Department of Natural Resources will hold public hearings on the repeal of chs. NR 40 and 41 and revisions to ch. NR 45, Wis. Adm. Code, relating to public use of department lands. Chapters NR 40 and 41 contain legal descriptions of state forests and state parks. These chapters are no longer necessary since the Natural Resources Board has the authority to make property boundary revisions. In its place, state parks and state forests will be defined in ch. NR 45.

Additional ch. NR 45 revisions include a revised description of the applicability of ch. NR 45 to include lands owned, eased and

leased by the Department, unless the Department waives jurisdiction; clarifies that it is illegal to possess someone's property without their permission; creates rules prohibiting placing structures, storing personal property or planting crops on Department lands except when authorized by the Department; prohibits possession of small amounts of marijuana (<25 grams); prohibits use of bicycle tire chains and tire studs on trails; prohibits dogs, cats or other animals on observation towers; clarifies the posting requirements for special use areas closed to hunting; clarifies that blinds used for waterfowl hunting are the only blinds allowed on Department lands after closing hours; prohibits pursuing, driving or chasing animals in areas closed to hunting, except when authorized by the Department; limits camping to 3 days on the Lower Wisconsin State Riverway, and restricts camping to people who arrive by watercraft; limits the reservation period for indoor group camps to 7 days in any 4-week period; allows use of electric motors at slow-no-wake speed in Ottawa Lake in Waukesha County; includes the Pinewoods Campground in the Southern Unit of the Kettle Moraine State Forest as a "Type A" campground; and modifies the current rule that restricts possession of containers from watercraft launched from designated launches on the Brule River State Forest to include watercraft removed from the launches.

### **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.

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

### **Hearing Information**

<b>June 24, 1999</b> <b>Wednesday</b> at 11:00 a.m.	<b>Room 240</b> <b>Madison Area Technical College</b> 211 N. Carroll St. Madison
<b>June 28, 1999</b> <b>Monday</b> at 11:00 a.m.	<b>Conference Room 149</b> <b>Marathon Co. Courthouse</b> 500 Forest St. Wausau
<b>June 29, 1999</b> <b>Tuesday</b> at 11:00 a.m.	<b>Havenwoods State Forest</b> 6141 N. Hopkins Milwaukee

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Doug Fendry at (608) 267-2764 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments**

Written comments on the proposed rule may be submitted to Mr. Doug Fendry, Bureau of Facilities and Lands, P.O. Box 7921, Madison, WI 53707 no later than **June 30, 1999**. Written comments will have the same weight and effect as oral statements presented at the public hearings. A copy of the proposed rule [LF-20-99] and fiscal estimate may be obtained from Mr. Fendry.

### **Fiscal Estimate**

There is no fiscal effect.

## Notice of Hearing

### *Natural Resources*

*(Fish, Game, etc., Chs. NR 1-)*  
**[CR 99-84]**

Notice is hereby given that pursuant to ss. 77.06(2), 77.91(1) and 227.11(2)(a), Stats., interpreting ss. 77.06(2) and 77.91(1), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 46, Wis. Adm. Code, relating to administration of the Forest Crop Law and the Managed Forest Law. The proposed rules:

1. Clarify the new building definition. The last Forest Crop Law conversions to the Managed Forest Law are still being processed and were submitted prior to the change in the building definition. The note following the definition explains what buildings are exempted from the new specification and should include all Forest Crop Law conversion lands.

2. Establish the revised stumpage rate. An annual hearing is required for the determination of stumpage values used in calculating severance and yield taxes on timber cut from Forest Crop lands and Managed Forest lands. The proposed revision to s. NR 46.30(2) adjusts stumpage rates for the 12 established zones. The average price change for sawtimber is a 6.97% increase over current rates. The pulpwood proposed prices are, on the average, 32.44% higher compared to current prices.

3. Change stumpage rate zones. In an effort to simplify and more accurately represent the actual prices received for timber cut on Forest Crop Law and Managed Forest Law lands, this rule repeals and recreates s. NR 46.30(2)(d) to create 14 new zone designations from the old 12 for the stumpage rate tables. This will eliminate the need for a 30% reduction in stumpage rates for pine cordwood in 27 counties.

### **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: Small private forest landowners and forest industries enrolled under the Forest Crop Law and the Managed Forest Law.

b. Description of reporting and bookkeeping procedures required: No new procedures.

c. Description of professional skills required: No new skills

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

### **Hearing Information**

**June 11, 1999**  
**Friday**  
**at 11:00 a.m.**

**Council Chamber**  
**Wausau City Hall**  
**407 Grant Street**  
**Wausau**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ken Hujanen at (608) 266-3545 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments**

Written comments on the proposed rule may be submitted to Mr. Ken Hujanen, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707 no later than **June 11, 1999**. Written comments will have the

same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [FR-21-99] and fiscal estimate may be obtained from Mr. Hujanen.

### **Fiscal Estimate**

The proposed 2,000 stumpage rate schedule includes an average 6.97% increase in sawtimber prices and a 32.44% average net change in cordwood prices. The severance and yield tax collection in CY '98 was \$1,257,842. Of course this, about 20% of the gross revenue is from sawtimber harvests. Eighty percent of the revenue was related to cordwood harvests. As a result, a 6.97% increase in sawtimber prices will produce an increase in gross revenue of about \$17,530. A 32.44% increase in cordwood values will generate about \$326,440 in additional revenue. The gross receipts are shared, the towns receiving roughly 50% and the state 50% of the revenue.

The change of zone lines for the stumpage rates will have no overall fiscal impact, but will have some impacts to specific counties that have changes zones. The actual impact is hard to judge until more specific figures are available. At the hearing more specific information will be available.

The other aspect of the rule change, a clarification of the note on the definition of "human residence has no fiscal effects on state or local costs or revenues that can be directly estimated.

The net effect of the rule change will be about a \$171,985 increase in state revenue and a \$171,985 increase in local revenue.

## Notice of Hearings

### *Natural Resources*

*(Environmental Protection-  
 Water Regulation,  
 Chs. NR 300-)*

Notice is hereby given that pursuant to s. 227.26(2)(b), Stats., interpreting s. 30.10(4)(c), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-12-99(E) relating to the creation of ch. NR 303 on department determinations of navigability for farm drainage ditches. This emergency order took effect on May 1, 1999. The emergency rule codifies department program guidance for staff making navigability determinations for farm drainage ditches, identifying various methods and information to be relied on when making the determinations.

### **Hearing Information**

**June 16, 1999**  
**Wednesday**  
**at 11:00 a.m.**

**Conference Room #1**  
**Portage Co. Courthouse Annex**  
**1516 Church St.**  
**Stevens Point**

**June 17, 1999**  
**Thursday**  
**at 10:00 a.m.**

**Room 708**  
**GEF #2, 101 W. Webster St.**  
**Madison**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Dale Simon at (608) 267-9868 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments**

Written comments on the emergency rule may be submitted to Mr. Dale Simon, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **June 21, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the emergency rule [FH-12-99 (E)] may be obtained from Ms. Elly Lawry, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707.

### **Fiscal Estimate**

There is no fiscal effect.

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***NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF  
EACH HOUSE OF THE LEGISLATURE, UNDER S. 227.19, STATS.***

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

**Agriculture, Trade and Consumer Protection**

**(CR 98-158):**

Ch. ATCP 75 – Relating to license exemptions for retail food establishments located in licensed restaurants.

**Commerce (CR 99-52):**

Ch. Comm 113 – Relating to allocation of volume cap on tax-exempt private activity bonds.

**Financial Institutions—Securities (CR 99-61):**

S. DFI-Sec 2.01 (1) (c) 6. and (d) 6. – Relating to designating an alternative accounting guideline for the preparation of financial statements for Wisconsin and other state and local governmental issuers of securities utilizing the securities registration exemption in s. 551.22 (1) (a), Stats.

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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.*

**Agriculture, Trade and Consumer Protection****(CR 98-154):**

An order affecting chs. ATCP 1, 2, 40, 42, 45, 50 and 161 and Jus 2 and ss. ATCP 92.05, 100.93, 109.03 and 121.01, relating to technical and remedial rule changes pertaining to contested case procedures, farm mediation and arbitration, sustainable agriculture, agricultural development and diversification, commercial feed, soil and water resource management, LP gas meters, freezer meat and food service plans, referral selling plans and car rental notices.

Effective 07-01-99.

**Corrections (CR 98-193):**

An order affecting ch. DOC 349, relating to holding, in municipal lockup facilities, juveniles who are alleged to have committed a juvenile act.

Effective 07-01-99.

**Corrections (CR 98-208):**

An order amending s. DOC 328.21 (3) and (7) (intro.), relating to the search and seizure of probation or parole offenders.

Effective 07-01-99.

**Financial Institutions--Banking (CR 99-12):**

An order affecting chs. DFI-Bkg 41 and RL 41, relating to the fees and registration for mortgage bankers, loan originators and mortgage brokers.

Effective 07-01-99.

**Insurance, Commissioner of (CR 99-14):**

An order repealing and recreating s. Ins 2.80, relating to valuation of life insurance policies model regulation.

Effective 07-01-99.

**Natural Resources (CR 98-178):**

An order amending s. NR 20.20 (73) (j) 4., relating to sport fishing for yellow perch in portions of tributaries to Lake Michigan defined as outlying trout and salmon waters.

Effective 06-01-99.

**Public Defender (CR 99-33):**

An order creating s. PD 6.04 (5), relating to multiple appointments on the same case.

Effective 07-01-99.

**Public Instruction (CR 98-164):**

An order repealing and recreating s. PI 3.03 (6) (b) 3., relating to alternative teacher permits.

Effective 07-01-99.

**Revenue (CR 98-144):**

An order affecting ss. Tax 11.19 and 11.70, relating to printed material exemptions and the sales and use tax treatment of advertising agencies.

Effective 07-01-99.

**Revenue (CR 98-171):**

An order affecting s. Tax 11.68, relating to construction contractors.

Effective 07-01-99.

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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 **May 31, 1999 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 98-97):**

An order affecting chs. ATCP 102 and 105, relating to motor vehicle fuel pricing.

Effective 06-01-99.

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

**(CR 98-123):**

An order affecting chs. ATCP 10 and 11, relating to fish farms, fish diseases and imports of live fish and fish eggs.

Effective 06-01-99.

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

**(CR 98-152):**

An order affecting chs. ATCP 10, 11 and 12, relating to:

- 1) Licensing fees charged to livestock markets, livestock dealers and livestock truckers;
- 2) Registration fees charged to the keepers of farm-raised deer;
- 3) Fees charged for a permit to operate an approved feedlot, and
- 4) The fee charged to an accredited veterinarian when the veterinarian obtains, from the Department of Agriculture, Trade and Consumer Protection, forms to be used in issuing interstate health certificates or certificates of veterinary inspection.

Effective 06-01-99.

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

**(CR 98-182):**

An order amending ss. ATCP 81.50, 81.51 and 81.52, relating to grade standards for colby and monterey (jack) cheese.

Effective 06-01-99.

### **Barbering and Cosmetology Examining Board**

**(CR 98-133):**

An order affecting chs. BC 1 to 9, relating to the licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

Effective 06-01-99.

### **Health and Family Services (CR 98-127):**

An order affecting ch. HSS 98, relating to lie detector testing of sex offenders who are in community placements.

Effective 06-01-99.

### **Health and Family Services (CR 98-136):**

An order amending ss. HSS 51.01, 51.02, 51.03 and 51.09, relating to the applicability of the Department's rules that establish criteria and procedures for placement of special needs children in adoptive homes.

Effective 06-01-99.

### **Insurance, Commissioner of (CR 98-186):**

An order affecting ch. Ins 51, relating to risk-based capital for health insurers.

Effective 06-01-99.

### **Natural Resources (CR 98-93):**

An order creating s. NR 50.23, relating to wildlife abatement and control grants for urban communities.

Effective 06-01-99.

### **Natural Resources (CR 98-146):**

An order creating ch. NR 167, relating to the land recycling loan program.

Effective 06-01-99.

### **Natural Resources (CR 98-148):**

An order repealing and recreating ch. NR 20 and amending s. NR 21.02 (16), relating to sport fishing regulations.

Effective 06-01-99.

### **Natural Resources (CR 98-150):**

An order affecting ss. NR 20.03 and 23.02, relating to Wisconsin-Michigan boundary waters.

Part effective 06-01-99.

Part effective 07-01-99.

### **Natural Resources (CR 98-151):**

An order creating ch. NR 809, subch. VIII, relating to water system capacity for community and non-transient non-community water systems.

Effective 06-01-99.

### **Natural Resources (CR 98-176):**

An order affecting ch. NR 47, relating to forestry grant programs.

Effective 06-01-99.

### **Natural Resources (CR 98-178):**

An order amending s. NR 20.20 (73) (j) 4., relating to sport fishing for yellow perch in portions of tributaries to Lake Michigan defined as outlying trout and salmon waters.

Effective 06-01-99.

### **Regulation and Licensing (CR 98-124):**

An order affecting ss. RL 5.01, 5.02, 5.06, 5.075 and 5.08, relating to charitable organizations.

Effective 06-01-99.

### **Revenue (CR 97-29):**

An order affecting s. Tax 11.12, relating to the sales and use tax treatment of certain items used in farming.

Effective 06-01-99.

### **Revenue (CR 98-128):**

An order affecting ss. Tax 11.09 and 11.28, relating to medicines and to gifts and other advertising specialties.

Effective 06-01-99.

**Social Workers, Marriage and Family Therapists, and Professional Counselors Examining Board (CR 98-53):**

An order amending s. SFC 1.02 (intro.) and creating ch. SFC 8, relating to continuing education requirements for renewal of social worker certificates.

Effective 06-01-99.

**Transportation (CR 98-145):**

An order affecting ch. Trans 31, relating to excursion permits on state-owned rail lines.

Effective 06-01-99.

**Veterans Affairs (CR 98-120):**

An order creating s. VA 1.19, relating to the cancellation of indebtedness under the economic assistance, veterans trust fund stabilization, personal and secondary loan programs.

Effective 06-01-99.

**Veterans Affairs (CR 98-200):**

An order amending s. VA 1.10 (7), relating to the release of information to a collection agency under contract with the state to collect delinquent Department loans.

Effective 06-01-99.

**Workforce Development (CR 99-6):**

An order amending s. DWD 290.155, relating to the annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

Effective 06-01-99.

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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 May, 1999, 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 10

- S. ATCP 10.02 (4)
- S. ATCP 10.025 (entire section)
- S. ATCP 10.652 (2), (4) (intro.) and (f) and (5)
- S. ATCP 10.68 (entire section)

##### Ch. ATCP 11

- S. ATCP 11.02 (2m)
- S. ATCP 11.14 (2)
- S. ATCP 11.58 (entire section)
- S. ATCP 11.59 (entire section)

##### Ch. ATCP 12

- S. ATCP 12.02 (2m) (a) and (b)
- S. ATCP 12.03 (2m) (a), (b), (d) and (e)
- S. ATCP 12.04 (2m) (a), (b), (d) and (e)

##### Ch. ATCP 81

- S. ATCP 81.50 (2)
- S. ATCP 81.51 (2)
- S. ATCP 81.52 (2)

##### Ch. ATCP 102

- S. ATCP 102.21 (1), (2), (5), (6), (7) and (8)

##### Ch. ATCP 105

- S. ATCP 105.001 (4m) and (6)
- S. ATCP 105.003 (entire section)
- S. ATCP 105.005 (entire section)
- S. ATCP 105.007 (2)
- S. ATCP 105.009 (4)
- S. ATCP 105.21 (entire section)
- S. ATCP 105.22 (entire section)
- S. ATCP 105.23 (entire section)

#### Barbering and Cosmetology Examining Board:

##### Ch. BC 1

- S. BC 1.01 (1), (1m), (2), (2m), (5), (6), (8), (9), (10m), (13m), (14), (15) and (16)

##### Ch. BC 2

- S. BC 2.01 (entire section)
- S. BC 2.02 (3)
- S. BC 2.03 (3), (4), (5) and (6)
- S. BC 2.045 (entire section)
- S. BC 2.06 (entire section)
- S. BC 2.07 (1), (1g), (1r) and (2)

##### Ch. BC 3

- S. BC 3.01 (2), (5), (6), (12), (13) and (14)
- S. BC 3.02 (entire section)
- S. BC 3.03 (entire section)
- S. BC 3.04 (1), (2) and (3)
- S. BC 3.06 (entire section)

##### Ch. BC 4

- S. BC 4.01 (2)
- S. BC 4.02 (3), (3a) and (4)
- S. BC 4.03 (entire section)
- S. BC 4.04 (1)
- S. BC 4.05 (1)
- S. BC 4.06 (2)
- S. BC 4.07 (intro.), (1), (3), (4) and (5)
- S. BC 4.08 (intro.), (1) and (2)
- S. BC 4.09 (2), (3) and (4)
- S. BC 4.10 (1) (a) and (b)

##### Ch. BC 5

- S. BC 5.02 (entire section)

##### Ch. BC 6

- S. BC 6.01 (entire section)
- S. BC 6.02 (entire section)
- S. BC 6.03 (1)
- S. BC 6.04 (1) and (3)
- S. BC 6.05 (2) and (3)

##### Ch. BC 7

- S. BC 7.03 (entire section)
- S. BC 7.04 (1)
- S. BC 7.09 (entire section)

##### Ch. BC 8

- S. BC 8.01 (entire section)

**Ch. BC 9**

- S. BC 9.01 (3)
- S. BC 9.02 (entire section)

**Health and Family Services:***(Community Services, Chs. HFS/HSS 30--)***Ch. HFS 51**

- S. HFS 51.01 (entire section)
- S. HFS 51.02 (entire section)
- S. HFS 51.03 (7), (9), (10) and (19)

**Ch. HFS 98**

- S. HFS 98.01 (1) (intro.)
- S. HFS 98.03 (16m), (16r), (17m), and (23g) to (30)
- S. HFS 98.04 (3) (L), (m) and (n)
- S. HFS 98.28 (entire section)
- S. HFS 98.29 (entire section)
- S. HFS 98.30 (entire section)
- S. HFS 98.31 (entire section)
- S. HFS 98.32 (entire section)

**Insurance, Commissioner of:****Ch. Ins 51**

- S. Ins 51.01 (8m), (9) (a) and (10)
- S. Ins 51.05 (1g) and (1r)
- S. Ins 51.60 (3)
- S. Ins 51.70 (entire section)

**Natural Resources:***(Fish, Game, etc., Chs. NR 1--)***Ch. NR 20 (entire chapter)****Ch. NR 21**

- S. NR 21.02 (16)

**Ch. NR 47**

- S. NR 47.004 (2) and (3) (intro.)
- S. NR 47.005 (1) and (3)
- S. NR 47.006 (1)
- S. NR 47.007 (1)
- S. NR 47.03 (2)
- S. NR 47.06 (1) (intro.) and (2) (intro.)
- S. NR 47.07 (1) (b) to (e), (2), (3) and (4)
- S. NR 47.12 (3) and (4)
- S. NR 47.18 (2)
- S. NR 47.20 (1) and (6)
- S. NR 47.52 (2) to (8)
- S. NR 47.53 (2), (3) and (5)
- S. NR 47.54 (1) and (3)
- S. NR 47.55 (1) (a), (2) (intro.), (g) and (i) and (3) (a)
- S. NR 47.56 (1) (b) and (d), (2) and (3)
- S. NR 47.57 (intro.) and (1)
- S. NR 47.58 (2)
- S. NR 47.70 (1), (2) (f), (g) and (h), (3) (a), (c) and (f), and (4)

**Ch. NR 50**

- S. NR 50.23 (entire section)

*(Environmental Protection--General, Chs. NR 100--)***Ch. NR 167 (entire chapter)***(Environmental Protection--Water Supply, Chs. NR 800--)***Ch. NR 809**

- S. NR 809.931 (entire section)
- S. NR 809.932 (entire section)
- S. NR 809.933 (entire section)

**Regulation and Licensing:****Ch. RL 5**

- S. RL 5.01 (entire section)
- S. RL 5.02 (1), (2), (2m) and (3)
- S. RL 5.06 (entire section)
- S. RL 5.075 (entire section)
- S. RL 5.08 (3m)

**Revenue:****Ch. Tax 11**

- S. Tax 11.09 (1), (4) (e) and (f) and (6)
- S. Tax 11.12 (1), (2) (d), (e) and (f), (3), (4) (a) and (b), (5), (6) (b) and (7) (b)
- S. Tax 11.28 (2) (b), (c) and (f), (3) (c), (4) (b) and (c) and (7)

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board:****Ch. SFC 1**

- S. SFC 1.02 (intro.)

**Ch. SFC 8 (entire chapter)****Transportation:****Ch. Trans 31**

- S. Trans 31.01 (entire section)
- S. Trans 31.02 (1), (1m), (5m), (8), (10), (11), (12) and (18)
- S. Trans 31.03 (1), (3) (a) and (b), (4) to (9)
- S. Trans 31.04 (1) (a), (e), (h), (j) and (n) and (2) (a)
- S. Trans 31.05 (1)
- S. Trans 31.07 (1) (intro.) and (2)

**Veteran Affairs:****Ch. VA 1**

- S. VA 1.10 (7)
- S. VA 1.19 (entire section)

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

- S. DWD 290.155 (entire section)



## EDITORIAL CORRECTIONS

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

### Agriculture, Trade & Consumer Protection:

#### Ch. ATCP 81

S. ATCP 81.21 (1) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

#### Ch. ATCP 102

S. ATCP 102.01 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

### Barbering and Cosmetology Examining Board:

#### Ch. BC 1

S. BC 1.01 (1m) had a correction made under s. 13.93 (2m) (b) 1., Stats.

#### Ch. BC 3

S. BC 3.01 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

### Health and Family Services:

*(Community Services, Chs. HFS/HSS 30--)*

**Ch. HSS 50 was renumbered ch. HFS 50 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. HSS 51 was renumbered ch. HFS 51 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. HSS 97 was renumbered ch. HFS 97 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. HSS 98 was renumbered ch. HFS 98 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. HSS 99 was renumbered ch. HFS 99 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 7., Stats.**

### Natural Resources:

*(Environmental Protection--Water Supply, Chs. NR 800--)*

#### Ch. NR 809

S. NR 809.80 (5) (b) and (8) had corrections made under s. 13.93 (2m) (b) 7., Stats.

### Revenue:

#### Ch. Tax 11

S. Tax 11.86 (6) had a correction made under s. 13.93 (2m) (b) 1., Stats.

### Veteran Affairs:

#### Ch. VA 1

S. VA 1.06 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

## ERRATA

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

### Commerce:

*(Infectious Agents, Ch. Comm 35)*

**Ch. Comm 35 (cover page) reprinted to correct phone number, and the rest of the chapter is reprinted to correct organizational style, as well as spelling and other miscellaneous errors.**

### Financial Institutions:

*(Savings and Loan) (cover page) reprinted to correct phone number.*

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Agriculture, Trade & Consumer Protection (CR 98-152)

Chs. ATCP 10 and 11 – Fees Related to Livestock Markets, Livestock Dealers, Livestock Truckers, Approved Feed Lot Operators, Keepers of Farm–Raised Deer and Forms for Interstate Health Certificates or Certificates of Veterinary Inspection.

#### Summary of Final Regulatory Flexibility Analysis:

##### General Overview

This rule changes the fee charged for a livestock market license, a livestock dealer license, a livestock trucker license, a livestock vehicle registration, an approved feedlot permit and an interstate health certificate or certificate of veterinary inspection form. This rule also continues the annual registration process for farm–raised deer which expired on December 31, 1998, and eliminates any farm–raised deer registration fee exemptions.

This rule will affect small businesses in Wisconsin. It includes provisions which relate to small businesses engaged in livestock activities such as marketing, dealing, trucking and feedlot raising, veterinary services and the farming of farm–raised deer.

##### Livestock Market, Dealer and Trucker Licenses and Approved Feedlot Permits

Wisconsin statutes require a person operating a livestock market or operating as a livestock dealer or livestock trucker to be licensed by the Department of Agriculture, Trade and Consumer Protection. Additionally, any livestock vehicles used by the person to transport livestock in the state must also be registered by the department. Wisconsin statutes also authorize the department to issue approved feedlot permits. The department has statutory authority to set fees for these licenses and permits by rule.

##### For a livestock market operator:

For a market, other than an equine market, conducting sales on 5 or more days a year, the fee changes from \$150 to \$225.

For a market, other than an equine market, conducting sales on fewer than 5 days a year, the fee changes from \$75 to \$115.

For an equine market, the fee changes from \$100 to \$150.

##### For a livestock dealer:

The fee changes from \$75 to \$115.

##### For a livestock trucker:

The fee changes from \$20 to \$30.

This rule changes the fee that a livestock market operator, livestock dealer and livestock trucker must pay for a supplementary annual license for each livestock vehicle registered from \$5 to \$10. This rule also changes the fee that a feedlot operator must pay for an approved feedlot permit from \$50 to \$75.

Many small businesses involved in livestock activities across Wisconsin will be affected by these fee increases. Presently, 62 basic annual livestock market licenses, 457 basic annual livestock dealer licenses, 486 basic annual livestock trucker licenses and 50 approved feedlot permits are issued along with 3,359 supplementary annual licenses for registered livestock vehicles. The department does not have adequate information to allow it to determine how many of these businesses fit the definition of small businesses. The department assumes that a significant number of these businesses are properly classified small businesses.

These small businesses will experience an increase in the cost of obtaining licenses, permits or certificates related to their business. The actual dollars of the increases vary from \$5 for livestock vehicles to \$75 for livestock market operators who conduct more than 5 sales per year. The benefit to these businesses of having the department provide services designed to assure the health of animals in Wisconsin animal agriculture far outweighs the amount of additional fees which each business will pay.

The regulatory work performed by the department is essential to the control of animal diseases in the state thus creating a viable environment for these small businesses to operate in. The department enforces requirements designed to prevent the introduction of diseased animals, conducts surveillance programs designed to detect diseases and takes steps to control outbreaks of contagious diseases. These department services help to ensure healthy livestock and a strong continuing animal agriculture industry for the state.

There are no requirements in this rule relating to recordkeeping or reporting information to the department.

##### Interstate Health Certificate Forms

The department presently furnishes veterinarians in the state with forms which are used by them to issue interstate health certificates or certificates of veterinary inspection. The current fee for a form is \$2.

This rule changes the form fee from \$2 to \$3.

All veterinary services in the state that issue interstate health certificate forms will be affected by this fee increase. Health certificates are prepared for the movement of animals. Approximately 28,000 health certificate forms are sold by the department each year. This fee increase will increase the operating costs of these veterinary services in direct proportion to the number of health certificate forms they issue.

Interstate health certificates serve as a mechanism to regulate the animal industries of the state. They guarantee the movement of healthy animals, thus providing protection to the animal owners of the state and reducing any public health risk. This fee increase supports the department's continuing efforts to ensure the health of the animals in the state resulting in savings in the future for the Wisconsin animal owner.

This rule does not add any recording keeping or reporting requirements to small businesses.

##### Farm–Raised Deer Registrations

Wisconsin statutes require a person keeping farm–raised deer to register with the department. Wisconsin statutes also authorize the department to set fees for farm–raised deer registration by rule. The department established an annual registration and the following annual fees:

\$50, for 15 or fewer farm-raised deer.

\$100, for more than 15 farm-raised deer.

\$0, if the herd of farm-raised deer is certified by the department as an accredited tuberculosis-free herd.

The department also set both these requirements, the annual registration (renewal) and the annual fee, to end on December 31, 1998.

This rule eliminates this sunset provision. Fees will continue at the same level, except the exemption for an accredited tuberculosis-free herd is removed. All farm-raised deer owners are required to register annually and pay the applicable fee.

Approximately 280 farm-raised deer farms exist that are impacted by this rule change. These farmers have paid annual registration fees up through and including 1998. This rule does not change or increase the fees which they have paid. It increases their anticipated costs of doing business because it requires payment of a fee which the farmers expected to be sunset at the end of 1998. A small number of these farmers, less than 30, presently pay no fee since they have herds certified as accredited tuberculosis-free herds by the department. These farmers will experience an increase in annual costs since they are now required to pay a registration fee.

Whether or not a fee is applicable, all farm-raised deer farmers were required to complete an annual registration application. Under the current rule, the requirement to file an annual registration application sunset at the end of 1998. Therefore, there is a minimal additional requirement of requiring these businesses to continue to file the application form which they have previously filed. This form is very short and does not require extensive time or effort to complete.

The department has incurred substantial costs in responding to the needs of the farm-raised deer industry to date. Continuation of farm-raised deer registration fees will help to maintain essential program work. The recent state cervidae tuberculosis outbreaks signify the necessity of an animal health program for deer and elk. The growth and prosperity of the industry is dependent upon healthy stock. The benefit to the industry of having this department work continued exceeds the costs incurred to comply with this rule.

#### Summary of Comments from Legislative Committees:

On February 8, 1999, this department transmitted the above rule for legislative committee review. On February 9, the rule was Assigned to the Assembly Committee on Agriculture and on February 10, the rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform.

The Assembly Committee on Agriculture held a public hearing on March 11 and on April 1, the committee released the rule not taking any action on it. The Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform did not take any action on the rule during its review period.

## **2. Agriculture, Trade & Consumer Protection (CR 98-123)**

Chs. ATCP 10 & 11 – Fish Farms, Fish Diseases and Imports of Live Fish and Fish Eggs

### Summary of Final Regulatory Flexibility Analysis:

#### General Overview

This rule establishes policies and procedures for the department of agriculture, trade and consumer protection to implement 1997 Wisconsin Act 27 which transferred the primary authority for regulating fish farms from the department of natural resources to the department of agriculture, trade and consumer protection.

This rule will affect small businesses in Wisconsin. It includes provisions which relate to small businesses engaged in fanning fish and importing live fish and fish eggs into Wisconsin.

#### Fish Farm Registration

The statute requires that any person who operates a fish farm must annually register the fish farm with the department. This rule identifies two categories of fish farms that must register and imposes annual registration fees, as follows:

**Type 1 (\$25 annual fee):** The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.

**Type 2 (\$50 annual fee):** The holder of a type 2 registration certificate may operate a fish farm and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish and fish eggs from the fish farm.

All private fish hatcheries previously licensed by the department of natural resources in 1997 were eligible for renewal with the department of agriculture, trade and consumer protection under the department's fish farm emergency rule in 1998. This rule establishes a permanent registration system for fish farms. In registering, fish farm operators will need to complete a form providing owner and custodian name and address and fish farm information such as the species of fish kept on the fish farm and a description of the fish farm.

The rule requires fish farm operators to maintain records for at least five years relating to all fish and fish eggs which the operator receives from or delivers to another person, including the names, addresses and fish farm registration numbers, if applicable, of the parties involved, the date and location of each transaction and the size or class, quantity and species of fish or fish eggs involved in each transaction.

The rule also requires that a person obtaining a registration certificate for any calendar year beginning after December 31, 2001, must have a health certificate issued by an accredited veterinarian or certified fish inspector for the fish farm not earlier than January 1 of the preceding calendar year. This annual health certificate must certify that the fish farm is free of all visible signs of infectious or contagious disease, whirling disease (*Myxobolus cerebralis*, or WD), if trout, salmon or other salmonids are kept on the fish farm and any other disease which the department of agriculture, trade and consumer protection specifies on the health certification form. A type I fish farm may meet this requirement by obtaining health certificates, issued not earlier than January 1 of the preceding calendar year, for each fish farm from whom the type 1 fish farm operator received fish or fish eggs in the preceding calendar year.

About 2,400 fish farms scattered across Wisconsin will be affected by the fish farm requirements in this rule. These farms were previously licensed by the department of natural resources, by completing an annual license application form, paying an annual fee (\$5, \$25 or \$50 depending upon the classification) and submitting year end reports on business operations. Under the department of agriculture, trade and consumer protection, the proposed annual fees are \$25 for a type 1 and \$50 for a type 2 registration. Most small business fish farms will have no change in fees. Recordkeeping requirements will be less burdensome for fish farm operators since they will only be required to maintain records and not file year end reports.

Beginning in 2002, the requirement for an annual health certificate for all registered fish farms will increase the costs of operating a fish farm. The requirement for an annual health certificate is a statutory requirement. The department provided a phase-in time with its rule designating a date of after 12/31/01 to obtain a health certificate. Therefore, the rule does not cause additional expense. Rather, it mitigates expense caused by the statute. The weight of this expense will be offset in the future with better fish health leading to increased production and marketability of product due to higher fish health standards.

The statute requires any person who brings live fish or fish eggs into this state for the purpose to introduction into the waters of the state, of use as bait or of rearing in a fish farm to have an annual permit issued by the department of agriculture, trade and consumer protection. Under this rule, the permit may authorize multiple import shipments, thereby minimizing the paperwork that small businesses are required to complete. A copy of the permit must accompany every import shipment. There is no fee for an import permit given by the department of agriculture, trade and consumer protection. In addition, the statute states a person importing non-native species must also obtain a permit from the department of natural resources.

In requesting an import permit, a person will need to complete a form providing name and address information of the requester, fish farm registration number, if applicable, the size or class, quantity and species of fish or fish eggs to be imported, the type of import recipient the fish will be imported to and source location information.

The rule requires a person who imports live fish or fish eggs to obtain a health certificate for each shipment of fish, if the fish originate from a wild source, or an annual health certificate, if the fish originate from an out-of-state fish farm. Issued by an accredited veterinarian or certified fish inspector, the health certificate must certify that the shipment or fish farm is free of all the following:

Visible signs of infectious or contagious disease.

Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*, or WD), if the health certificate is for salmonid imports.

White sturgeon iridovirus (WSI) if the health certificate is for sturgeon imports.

Other diseases, if any, which the department specifies on the health certification form.

The rule requires a person importing live fish or fish eggs to maintain records for at least five years relating to each import shipment, including the import source, the import date and destination, and the size or class, quantity and species of fish or fish eggs imported.

The department of natural resources required a person importing live fish and fish eggs to acquire a permit and for salmonid fish or fish eggs, to provide health certification for five specific diseases. The department of agriculture, trade and consumer protection is requiring a permit and health certification for all imports of live fish or fish eggs. The fish or fish eggs must be certified free of the diseases listed above. The requirement of health certification might increase the cost of importing live fish and fish eggs from out-of-state fish farms and will increase the cost of importing from wild sources, since this requirement did not exist before. It is assumed the source of the fish and fish eggs will pass the cost of the certification on to the importer. Health certification for imports will offer some degree of assurance that a healthy product is being imported which will result in savings for fish farms in the long run and reduced risks of diseased fish being released into the waters of the state. The requirement to maintain import records will add minimal costs since these records are standard business operational records.

#### Summary of Comments from Legislative Committees:

On February 8, 1999, this department transmitted the above rule for legislative committee review. On February 9, the rule was assigned to the Assembly Committee on Agriculture and on February 10, the rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform.

On March 9, the Assembly Committee on Agriculture notified the department that they were requesting a meeting with the department. On April 8, the 30 day review period for the committee expired with the committee taking no further action on the rule. The Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform did not take any action on the rule during its review period.

### **3. Agriculture, Trade & Consumer Protection** (CR 98-182)

Ch. ATPC 81 – Grade Standards for Colby and Monterey (Jack) Cheese

The Department of Agriculture, Trade and Consumer Protection hereby submits the following information for filing the above rule.

#### Summary of Final Regulatory Flexibility Analysis:

This rule modifies current rules under ch. ATPC 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese. This rule would implement, on a “permanent” basis, the revised grade standards which the department established by emergency rule on August 8, 1998.

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

The recently adopted emergency rule temporarily eliminated rule provisions requiring mechanical openings in colby and monterey (jack) cheese. Under the emergency rule, colby and monterey (jack) cheese may have either mechanical openings or a closed body. When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. This rule makes the same changes on a permanent basis.

This rule will not impose any direct costs on small businesses. The amendments do not require any additional reporting or recordkeeping. In addition, no other new procedures are required. No additional knowledge or professional skills are needed to meet the requirements of these amendments.

High volume manufacturers (typically larger businesses) using newer technology, equipment and packaging have experienced difficulties in manufacturing cheese to meet the current grade requirements for mechanical openings. Small cheese factories and packaging operations using more traditional technology, equipment and packaging could more easily achieve the open body characteristics currently required for Wisconsin certified premium grade AA and Wisconsin grade A (Wisconsin state brand). As a consequence of the rule change and the elimination of the requirement for mechanical openings, these small businesses may now experience increased competition in the marketplace in the sale of Wisconsin graded cheese which may now have an open or closed body. However, an apparent majority of the cheese industry believes that small cheese processors will be able to maintain or grow a niche market for open-bodied colby and monterey (jack) cheese in the retail deli case.

#### Summary of Comments from Legislative Committees:

On March 5, 1999, the department transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform on March 10 and the Assembly Committee on Agriculture on March 15. No action was taken during the review period by either committee.

## 4. Agriculture, Trade & Consumer Protection (CR 98-97)

Chs. ATCP 102 & 105 – Motor Vehicle Fuel Sales Below Cost.

#### Summary of Final Regulatory Flexibility Analysis:

This rule interprets s. 100.30, Wis. Stats., which prohibits sales below cost. The legislature recently modified this statute with 1997 Wis. Act 55. The department is proposing changes to the rule at this time to bring the rule into conformity with the amended statute. The proposed rule does not include any substantive provisions that are not already addressed in the statute. Therefore, the small business impacts are based on an analysis of the impacts of Wis. Act 55.

Small business in Wisconsin that sell motor vehicle fuels at either wholesale or retail are effected by the statutory change. There will be some increased reporting required and some retailers may need to purchase additional information services. However, these increased burdens on small business may be offset by the potential for increased revenues.

#### New definitions for “cost”

Under the new law, cost of motor vehicle fuel is based on “the average posted terminal price” of the fuel. This is the average of all the refining companies’ selling prices at the petroleum terminal located nearest to the retail station. Under the old law, cost of motor vehicle fuel was based on the seller’s invoice cost. The new definitions of cost should help sellers of motor vehicle fuel increase their revenue.

Under the old law, a seller who is able to purchase gasoline at low wholesale cost has two choices. They could either set their price at the minimum and hope to capture increased market share because of a low price, or they could set their price at a medium or high level and enjoy increased profits. If this seller chooses the first option, this forces other sellers with higher wholesale costs to set their price below the minimum markup so they do not lose market share.

(This is perfectly legal because of the “meeting competition” exception.) This scenario leads to an equilibrium retail price that is approximately 9.18% over the **lowest** terminal price.

Under the new law, all sellers in a certain area have the same “cost” for minimum markup purposes. All sellers must base their price on the **average** terminal price. This change leads to an equilibrium retail price that may be a couple pennies higher per gallon than the scenario discussed above because the 9.18% is over the **average** terminal price. This may result in higher revenues for some gasoline dealers.

#### Petroleum Pricing Service

The new definitions of cost rely on the “average posted terminal price.” This price is valuable proprietary information that, until recently, could only be obtained by subscribing to a service. The minimum cost of this service is roughly \$55 per month. The service will report prices via fax, e-mail, satellite, or allow their customers to search through the database (requires a modem and computer). Motor vehicle fuel sellers who wish to make their pricing decisions based on statutory costs (as opposed to competition) will need to subscribe to this service.

Shortly after Act 55 went into effect, the Wisconsin Petroleum Marketers Association arranged for one of the services (Axxiss – a Minnesota firm) to provide an 800 number that reports the average posted terminal price. Therefore, small business currently are able to obtain this service free of charge. However, it is uncertain whether or not this is a permanent arrangement.

Many petroleum dealers already subscribe to one of the services to determine where and when to buy fuel. At first glance 1997 Wis. Act 55 does not present an additional expense to this group. However, many of these business receive their prices early in the day. But these prices are irrelevant for determining minimum markup. The new law specifies that the average posted terminal price is at the “close of business” on the determination date. Therefore, petroleum dealers who already subscribe to the service must carefully determine whether the information they are already getting is relevant to the Unfair Sales Act. They may have to increase their spending on this service to get the information needed to comply with the statute.

Other petroleum dealers, typically small business, rely on a distributor or jobber to sell them fuel. These people have had no need for a subscription to a pricing service until now. Under the new law, a subscription to a pricing service will be essential to determine whether or not their price is in compliance with the law.

Although this could be a significant cost to the seller, it should be stressed that the neither the department nor the new statute requires small business to absorb this expense. Sellers could choose to simply always meet their competitor’s prices or estimate the “average posted terminal price” based on their own invoices or price reports pulled earlier in the day. However, if they chose one of these options, they must submit a notice to the department to take advantage of the meeting competition defense.

#### Private cause of action

Beginning August 1, 1998, sellers of motor vehicle fuel who are injured or threatened with injury may bring suit against their competitors who violate the Unfair Sales Act. Maximum damages are treble any monetary loss or \$2,000 per day, whichever is greater, plus attorney fees. Obviously, this could significantly impact small business. All business who sell gasoline will need to carefully assess their pricing policies and procedures and determine their level of risk of having to pay damages. In addition there will be a cost associated with bringing a suit or successfully defending against a suit.

Notification for meeting competition

The Unfair Sales Act has always granted certain exceptions where sales below cost are acceptable. The exception most widely used by motor vehicle fuel sellers is the "meeting competition defense." It is acceptable to sell fuel below cost if the seller is doing so to meet the price of a competitor. However, under the new statute, sellers who "notify the department" that they are lowering their price below the minimum in order to meet a competitor's price enjoy immunity from liability under private and state enforcement actions.

There will be a cost associated with submitting notifications. The department will accept notices via: fax, e-mail, U.S. mail, courier, or hand delivery. Because of the immunity that sellers will receive if they submit a notice, the department predicts that many sellers will wish to submit a notice on a very regular basis, simply as a risk management precaution. This will involve a significant paperwork burden for small business.

It should be stressed that submitting a notice is decision that the motor vehicle fuel sellers make for themselves. It is not mandated by the department or by the statute. Alternatively, a seller could chose to not sell below the minimum markup — regardless of what their competitors are doing — or they could simply take their chances on being sued for selling fuel below the minimum markup. Failing to provide notice does not mean that the seller will automatically lose any case that may be brought against them. However, there is a small forfeiture (\$50 to \$200) penalty for failing to provide notice.

Conclusion

It is very difficult to estimate the statute and rule's overall impact on small businesses. There may be a potential for increased revenues. However this could be offset by increases in expenses for a subscription to an oil pricing service and the expense of filing a notification with the department. These potential increases in expenses are entirely at the discretion of the business.

**Rule Contents**"Cost" of motor vehicle fuel

Act 55 extensively changed the method sellers use to determine their "cost" as defined in the statute. This rule clarifies and interprets some portions of the new rule. For example, the rule defines new statutory phrases such as: "terminal located closest to the retail station." In addition, the rule states some basic cost accounting methodology that must be used when determining the "cost of doing business"

"Meeting competition" notice

This rule prescribes the form and content of the notice which a motor vehicle fuel seller must file with the department to establish a presumptive "meeting competition" defense under the Unfair Sales Act.

Under Act 55, a person who lowers their price to meet the price of a direct competitor must file a "meeting competition" notice with the department. This rule prescribes the form and manor of notice required by the department.

Summary of Comments of Legislative Review Committees:

On March 11, 1999, the Assembly Committee on Consumer Affairs held a hearing on this rule. Several people offered testimony in support and nobody registered or spoke in opposition to the rule. The committee did not take action on the rule and the legislative review period expired on April 11, 1999.

**5. Barbering & Cosmetology Examining Board (CR 98-133)**

BC Code – The licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

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.

**6. Health & Family Services (CR 98-136)**

Ch. HSS 51 – The applicability of the Department's rules that establish criteria and procedures for placement of special needs children in adoptive homes.

Summary of Final Regulatory Flexibility Analysis:

These rules will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. The amendments make clear that the rules apply to county agencies providing adoption services under contract to the Department, and not only to the Department and private child-placing agencies, and in the process define "child-placing agency" and "county agency" and update addresses and organization names that appear in ch. HSS 51.

Summary of Comments:

No comments were reported.

**7. Health & Family Services (CR 98-127)**

Ch. HSS 98 – Lie detector testing of sex offenders who are in community placements.

Summary of Final Regulatory Flexibility Analysis:

These rules are not directly affect small businesses as "small business" is defined in s. 227.114 (1)(a), Stats. The rules apply to the Department and to persons who are sex offenders, that is, who meet any of the criteria under s. 301.45 (1), Stats., and are committed to the Department for treatment, and who are in or are scheduled to be in community placements under supervision of agents of the Department.

Summary of Comments:

No comments were reported.

**8. Insurance (CR 98-186)**

Ch. Ins 51 – Risk based capital for health insurers.

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 business and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees:

The legislative standing committees had no comments on this rule.

**9. Natural Resources (CR 98–148)**

Ch. NR 20 – Sport fishing regulations.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule will not directly affect small business; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate committee on Agriculture, Environmental Resources and Campaign Finance Reform. There were no comments.

**10. Natural Resources (CR 98–150)**

Chs. NR 20 & 23 – Wisconsin–Michigan boundary waters.

Summary of Final Regulatory Flexibility Analysis:

Although this rule will have no direct effect on small business, guides, bait shops and other tourism business will benefit from uniform regulations with the State of Michigan.

Summary of Comments by Legislative Review Committees:

The rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. There were no comments.

**11. Natural Resources (CR 98–178)**

S. NR 20.20 (73) (j) 4. – Sport fishing for yellow perch.

Summary of Final Regulatory Flexibility Analysis:

This rule will apply only to sport fishers and will not directly affect small businesses.

Summary of Comments by Legislative Review Committees:

The rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. There were no comments.

**12. Natural Resources (CR 98–176)**

Ch. NR 47 – Forestry grant programs.

Summary of Final Regulatory Flexibility Analysis:

The proposed amendments will not have an impact on small businesses because all the amendments are on grant programs. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly Committee on Rural Affairs and Forestry and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. There were no comments.

**13. Natural Resources (CR 98–93)**

S. NR 50.23 – Wildlife abatement and control grants for urban communities.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule relates to grants to urban municipalities; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. On February 17, 1999, the Assembly Committee on Natural Resources extended the review period for 30 days. No public hearing was scheduled during that time.

**14. Natural Resources (CR 98–146)**

Ch. NR 167 – Land recycling loan program.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not affect small businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The proposed rule was reviewed by the Assembly Committee on Conservation and Land Use and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. There were no comments.

**15. Natural Resources (CR 98–151)**

Ch. NR 809 – Water system capacity for community and nontransient noncommunity water systems.

Summary of Final Regulatory Flexibility Analysis:

The expected financial impacts of the proposed rule changes to small businesses are negligible as it does not require additional monitoring or increase construction requirements. The requirements in the proposed rule are mandated by federal regulations.

Summary of Comments by Legislative Review Committees:

The proposed rule was reviewed by the Assembly Committee on Environment and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance reform. There were no comments.

**16. Regulation and Licensing (CR 98–124)**

Ch. RL 5 – Charitable organizations.

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.

**17. Revenue (CR 97–29)**

S. Tax 11.12 – Sales and use tax treatment of farmers.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**18.Revenue (CR 98-128)**

SS. Tax 11.09 & 11.28. – Medicines and to gifts and other advertising specialties.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**19.Social Workers, Marriage and Family Therapists and Professional Counselors (CR 98-53)**

Chs. SFC 1 & 8 – Continuing education requirements for renewal of social worker certificates.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

**20. Transportation (CR 98-145)**

Ch. Trans 31 – Excursion Permits on State-Owned Rail Lines.

Summary of Final Regulatory Flexibility Analysis:

The rules will have an adverse effect on a limited number of small businesses. these businesses will be required to modify or operate equipment used to provide excursion trips so that human waste is not discharged onto the rail corridor. The rule will increase the application and inspection fee for a permit.

Summary of Comments:

No comments were reported.

**21.Veterans Affairs (CR 98-200)**

S. VA 1.10 (7) – Release of information to a collection agency under contract with the state to collect delinquent Department loans.

Summary of Final Regulatory Flexibility Analysis:

This rule is not expected to have an adverse impact on small businesses.

Summary of Comments:

No comments were reported.

**22.Veterans Affairs (CR 98-120)**

S. VA 1.19 – Cancellation of indebtedness under the economic assistance, veterans trust fund stabilization, personal and secondary loan programs.

Summary of Final Regulatory Flexibility Analysis:

This rule is not expected to have an adverse impact on small businesses.

Summary of Comments:

No comments were reported.

**23.Workforce Development (CR 99-6)**

S. DWD 290.155 – Annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not affect small business.

Summary of Comments:

No comments were reported.



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## *EXECUTIVE ORDERS*

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*The following is a listing of recent Executive Orders issued by the Governor.*

**Executive Order 368.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be flown at half-staff as a mark of respect for the late John Tomlin.

**Executive Order 369.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Peace Officers Who Have Given Their Lives in the Line of Duty.

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## PUBLIC NOTICE

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### **Public Notice** *Health and Family Services*

#### *(Medical Assistance Reimbursement of Nursing Homes: State of Wisconsin Medicaid Nursing Facility Payment Plan for FY 1999–2000)*

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.497, 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 setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect, as approved by the federal Health Care Financing Administration (HCFA).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective **July 1, 1999**.

The proposed changes would update the payment system and make various payment-related policy changes. Some of the changes are necessary to implement policies contained in the Wisconsin 1999–2001 Biennial Budget. Some of the changes are technical. Some others clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA recipients is approximately \$20,000,000, all funds including increases in patient liability, (\$15,000,000 FFP/GPR).

The proposed changes will implement expected changes in Wisconsin Statutes governing Medicaid payment systems, in particular affecting s. 49.45 (6m), Wis. Stats.

#### **Summary of Proposed Changes:**

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of the 1999–2001 Biennial Budget Bill, and to disburse the \$20,000,000 allotted in the bill to pay for a 1.8% rate increase. These modifications will include adjustments to the medians used to calculate maximums and per diem increases in Sections 5.400, 5.500 and 5.600, changes in the occupancy percentage used to establish the minimum occupancy standard in Section 3.030, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000. The over-the-counter drug parameter in Section 5.900 will be updated. The parameters for calculating the capital payment will be updated and moved from Section 3.530 to Section 5.000.

2. Reconfigure the direct care calculation in Section 3.100 to allow for a calculation of direct care maximums applying a case mix index adjustment to the present levels of care.

3. Start to phase in a new labor region index based on a different set of variables than the old system. Labor regions are used in calculating the direct care maximums.

4. Establish an incentive payment for homes with high Medicaid utilization and an atypically high number of private rooms.

5. Amend Section 3.526 (e) to allow Continuing Care Retirement Centers' actuaries to calculate the amount of reserves needed to offset lifetime contracts, if the contract language does not mandate that residents apply for Medicaid when the residents' funds are exhausted.

6. Amend Section 1.173 to include delinquent occupied bed assessment as grounds for withholding Medicaid payment.

7. Amend Section 3.062 to state that if banked beds are a part of a phase-down, those beds are expunged from the bed bank.

8. Create in Section 1.300 a definition of cost report stating that the 1997 cost report will be used to calculate the direct care, support, fuel and utilities components of the rate and the 1998 cost report will be used to calculate the property component, property tax and municipal service fees, and for IGT calculations. Exceptions to this may be for facilities in a start-up or phase-down period per Sections 4.300, 4.400, 4.500 and 4.600 as mentioned in Section 1.302.

9. Amend Section 3.532 to clarify how to apply the 40% cost share.
10. Change the date used to calculate the lease maximum in Section 3.523 to 1998–1999.
11. Clarify that Section 3.732 (6) refers to Section 3.600, over-the-counter drugs.
12. Amend Section 3.062 to provide that banking beds will only affect rates set for the following rate year.
13. Amend Section 3.520 to more clearly express the policy intended.
14. Amend Section 4.697 to state that the contractor will be paid only after the Department of Health and Family Services has approved the appraisal.
15. Amend Sections 3.030, 3.070, 3.126 (a) and 3.532 to limit the 50–bed facility exclusion to only facilities not associated with hospitals.
16. Create a definition in section 1.300 of facilities associated with hospitals.
17. Establish a payment rate for residents with traumatic brain injury who require special services but do not meet the criteria for admission to a special unit approved under Section 4.692.
18. Amend Section 4.320 to increase the minimum occupancy standard for new facilities.
19. Amend Section 4.433 to refer to Section 3.722, item 3.
20. Move Section 7.300 to Section 1.000.
21. Delete Section 7.000.
22. Amend Sections 3.534 and 3.010 to modify the 91% occupancy rate.
23. Add items to Sections 5.140, 5.150 and 5.160.
24. Create in Section 1.300 a definition of licensed beds as of June 30, 1999.
25. Amend Section 1.550 to clarify that no covered, but unreimbursed, services may be charged to a resident or a third party during therapeutic visits.

**Copies of the Proposed Changes:**

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing  
Attention: Nursing Home Medicaid Payment Plan  
P. O. Box 309  
Madison, WI 53701–0309

or by faxing:

James Cobb at  
FAX (608) 264–7720

The available proposed changes may be reviewed at the main office of any county Department of Social Services or Human Services.

**Written Comments/Meetings:**

Written comments on the proposed changes may be sent to the Division of Health Care Financing at the above address. The 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 changes based on comments received.

There will also be public meetings to seek input on the proposed plan amendments. If you would like to be sent a public meeting notice, please write to the above address. Revisions may be made in the proposed changes based on comments received at these forums.

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