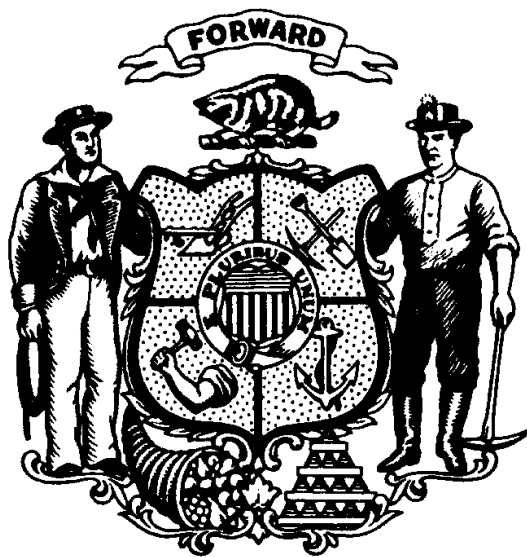


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 527**



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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  
**Extension Through:** November 25, 1999

2. Rules adopted revising s. ATCP 100.45, 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  
**Hearing Date:** May 18, 1999  
**Extension Through:** November 26, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (PECFA – Chs. Comm 46–47)

Rules adopted creating **ch. Comm 46**, relating to “Petroleum Environmental Cleanup Fund Interagency Responsibilities,” and relating to sites contaminated with petroleum products from petroleum storage tanks

### Exemption From Finding of Emergency

On September 22, 1999, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26 (2) (b), Stats., that directs the Departments Commerce and Natural Resources to promulgate as an emergency rule, no later than October 22, 1999, the policies and interpretations under which they intend to administer and implement the shared elements of the petroleum environmental cleanup fund program.

In administering the fund, the Departments had previously relied upon a Memorandum of Understanding for classifying contaminated sites and addressing other statements of policy that affect the two Departments. The rule that is being promulgated details the policies and interpretations under which the agencies intend to administer and guide the remedial decision making for sites with petroleum product contamination from petroleum product storage tank systems.

The rule defines “high priority site,” “medium priority site,” and “low priority site,” and provides that the Department of Natural Resources has authority for high priority sites and that the Department of Commerce has authority for low and medium priority sites. The rule requires transfer of authority for sites with petroleum contamination in the groundwater below the enforcement standard in ch. NR 140 from the Department of Natural Resources to the Department of Commerce. The rule also establishes procedures for transferring sites from one agency to the other when information relevant to the site classification becomes available.

**Publication Date:** October 20, 1999  
**Effective Date:** October 20, 1999  
**Expiration Date:** March 18, 2000  
**Hearing Date:** November 18, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Commerce

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

Rules adopted creating **ch. Comm 111**, relating to certified capital companies.

### Finding of Emergency

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

### Analysis of Rules

Statutory Authority: ss. 560.31, 560.34 (1m) (b), and 227.24  
 Statutes Interpreted: ss. 560.31, 560.34 (1m) (b), and 227.24

On June 17, 1999, the Department of Commerce (Commerce) held a public hearing on proposed rules in response to 1997 Wis. Act 215. That act provides tax credits to persons that make certain investments in certified capital companies that are certified by

Commerce. Legislators and persons interested in the rules testified at the hearing and requested that Commerce adopt an emergency rule that would (1) allow persons to apply for certification to become certified as capital companies, (2) allow persons to apply to make a certified capital investment in a certified capital company, and (3) set forth the operational and reporting requirements of certified capital companies required under the law. Since then, articles in the newspaper as well as business journals have pointed out the lack of venture capital in the state hinders high–tech growth and making that capital available will benefit Wisconsin as it has done in other states. This emergency rule is necessary to begin implementation of the law and to place Wisconsin in a better position to make capital available to draw high–tech industries, create new businesses, and expand existing businesses that will ultimately create new jobs and benefit all its citizens.

**Publication Date:** July 23, 1999  
**Effective Date:** July 23, 1999  
**Expiration Date:** December 19, 1999  
**Hearing Date:** August 17, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Crime Victims Rights Board*

Rules adopted creating **ch. CVRB 1**, relating to the rights of crime victims.

### Finding of Emergency

The Crime Victims Rights Board 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 is:

The Crime Victims Rights Board was created by 1997 Wis. Act 181, effective December 1, 1998, to enforce victims' rights established by Wis. Const. Art. I, s. 9m, adopted in 1993. The Wisconsin Constitution states that the Legislature shall provide remedies for the violation of victims' constitutional rights. The Board's process represents the only means of enforcing the remedies available to victims of crime who are not provided with the rights guaranteed to them by the Wisconsin Constitution and the Wisconsin statutes. The Board can issue reprimands to correct violations of victims' rights, seek forfeitures in egregious cases, and seek equitable relief to enforce victims' rights. The Board can also work to prevent future violations of victims' rights by issuing reports and recommendations on crime victims' rights and services.

Complaints must be presented to the Department of Justice before they can be presented to the Board. The Department estimates that it receives 200 complaints annually involving the treatment of crime victims. The Department has no authority to enforce victims' rights; the Department can only seek to mediate disputes. Of those complaints, approximately 25 per year cannot be resolved to the parties' satisfaction, and are therefore ripe for the Board's consideration. There are presently 5 complaints that could be referred to the Board if the Board were able to receive and act on complaints.

Until the Board establishes its complaint process by administrative rule, it is unable to provide the remedies constitutionally guaranteed to crime victims.

**Publication Date:** September 17, 1999  
**Effective Date:** September 17, 1999  
**Expiration Date:** February 14, 1999  
**Hearing Date:** November 9, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Employment Relations Commission*

Rules adopted revising **ch. ERC 33, Appendix C**, relating to the calculation of a minimum qualified economic offer in collective bargaining with professional school district employees.

### Finding of Emergency

We find that it is necessary to promulgate the amendment to ch. ERC 33, Appendix C as an emergency rule to preserve the public peace, health, safety and welfare. Without the amendment, the timely and peaceful resolution of collective bargaining disputes in Wisconsin will be endangered.

**Publication Date:** June 12, 1999  
**Effective Date:** June 12, 1999  
**Expiration Date:** November 9, 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  
**Extension Through:** December 10, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Health & Family Services*

#### **(Management, Technology, etc., Chs. HFS 1–)**

A rule was adopted revising **chapter HFS 12, Appendix A**, relating to caregiver 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:

Since October 1, 1998, the Department has been implementing statutes that became effective on that date that require use of uniform procedures to check the backgrounds of persons who apply to the Department, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child–placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non–client at the entity. The statutes, ss. 48.685 and 50.065, Stats., direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction, finding or charge, who have in their backgrounds a specified conviction, finding or charge substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or otherwise having contact with the clients of a service provider.

The new statutes, commonly referred to as the Caregiver Law, were effective on October 1, 1998, for applicants on or after that date for licensure, certification or other agency approval, and for persons applying to be hired by or to enter into a contract with a regulated entity on or after that date to provide services to clients or to take up residence as a non–client at a regulated entity.

For regulated agencies approved before October 1, 1998, and for persons employed by, under contract to or residing as non–clients at regulated entities before October 1, 1998, the Caregiver Law's required uniform procedures and "bars" are to apply beginning on October 1, 1999. That is to say, by October 1, 1999, background checks, using the uniform procedures, are to be completed for all service providers who were approved before October 1, 1998, and for all employes, contractors and non–client residents employed by, under contract to or living at a regulated entity before October 1, 1998, and action taken to withdraw approval, terminate employment or end a contract, as appropriate.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. Chapter HFS 12 included an appendix which consisted of a list of crimes. The original list specified 159 crimes for conviction of any one of which a person would be barred permanently (45 crimes), all programs, or would be barred temporarily, all programs, pending demonstration of rehabilitation, from being approved to be a service provider or from providing care or treatment to clients or otherwise having access to clients. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. The Crimes List in the current permanent rules specifies 117 crimes with 9 being permanent bar crimes for all programs.

This order again modifies ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes is reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being permanent bar crimes for all programs. The change to the ch. HFS 12 Crimes List is being made at this time because the 1999–2001 Budget Bill, now before the Legislature but not likely to take effect before October 1, 1999, is expected to provide for a more modest Crimes List than the one now appended to ch. HFS 12. This means that the Legislature intends that some persons who under the current rules would lose their jobs effective October 1, 1999, will be able to keep their jobs. The Department has the authority to further modify the Crimes List so that it corresponds to how the Legislature, after having heard arguments since October 1998 about how the

Caregiver Law should be amended and implemented, wants it to work. This is what the Department is doing through this order.

**Publication Date:** September 16, 1999  
**Effective Date:** September 16, 1999  
**Expiration Date:** February 13, 2000  
**Hearing Date:** October 28, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Health & Family Services*

#### **(Medical Assistance, Chs. HFS 101–108)**

1. Rules were adopted revising **chs. HFS 101 to 103, and 108**, relating to operation of BadgerCare health insurance program.

#### **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:

This order creates rules that specify how a new program called BadgerCare, established under s. 49.665, Stats., will work. Under BadgerCare, families with incomes up to 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance (MA) coverage of their health care costs, and that lack access to group health insurance, are eligible to have BadgerCare pay for their health care costs. The order incorporates the rules for operation of BadgerCare into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the MA program.

BadgerCare is projected to cover over 40,000 currently uninsured Wisconsin residents, including more than 23,000 children, by the end of 1999.

Benefits under BadgerCare will be identical to the comprehensive package of benefits provided by Medical Assistance. The existing Wisconsin Medicaid HMO managed care system, including mechanisms for assuring the quality of services, improving health outcomes and settling grievances, will be used also for BadgerCare.

Department rules for the operation of BadgerCare must be in effect before BadgerCare may begin. The program statute, s. 49.665, Stats., was effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement BadgerCare not later than July 1, 1998, or the effective date of the waiver, whichever date was later. The federal waiver letter approving BadgerCare was received on January 22, 1999. It specified that BadgerCare was not to be implemented prior to July 1, 1999. Once the letter was received, the Department began developing the rules. They are now ready. The Department is publishing the rules by emergency order so that they will go into effect on July 1, 1999, rather than at least 9 months later, which is about how long the process of making permanent rules takes, and thereby provide already authorized health care coverage as quickly as possible to families currently not covered by health insurance and unable to pay for needed health care.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate BadgerCare and in the process provide more specificity than s. 49.665, Stats., about the nonfinancial and financial conditions of eligibility for BadgerCare; state who is included in a BadgerCare group and whose income is taken into consideration when determining the eligibility of a



BadgerCare group; expand on statutory conditions for continuing to be eligible for BadgerCare; exempt a BadgerCare group with monthly income at or below 150% of the federal poverty level from being obliged to contribute toward the cost of the health care coverage; and set forth how the Department, as an alternative to providing Medical Assistance coverage, will go about purchasing family coverage offered by the employer of a member of a family eligible for BadgerCare if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

**Publication Date:** July 1, 1999  
**Effective Date:** July 1, 1999  
**Expiration Date:** November 28, 1999  
**Hearing Dates:** August 26, 27, 30 & 31, 1999

2. Rule adopted amending s. HFS 105.39 (4) (b) 3., relating to certification of specialized medical vehicle providers.

### Finding of Emergency

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

The Department's rules for certification of specialized motor vehicle (SMV) providers under the Medical Assistance (MA) program include requirements for SMV drivers. Among current requirements is that each driver must receive training in first aid and cardiopulmonary resuscitation (CPR) before driving a vehicle or serving as an attendant and must receive refresher training in first aid every 2 years and refresher training in CPR annually. The specific requirements for refresher training date from December 1, 1994. When revising its rules for SMV providers earlier in 1994 the Department proposed to require refresher training every 2 years for both first aid and CPR, but at the public hearings on the proposed rules 5 SMV providers said the CPR refresher training should take place annually and the Department agreed and made that its requirement.

Although the American Red Cross CPR training and certification that the person is trained continue to be annual, the equivalent American Heart Association CPR training and certification (the American Heart Association prefers "recognition" to "certification") is now every 2 years. This means that to comply with the Department's current MA rule for SMV drivers, s. HFS 105.39 (4) (b) 3., drivers who receive their training from the American Heart Association must repeat the training each year. That is unnecessary for maintenance of American Heart Association certification (recognition) and the time and expense involved is a burden on SMV providers and drivers. The Department is modifying the rule through this order to simply require that drivers maintain CPR certification.

The Department through this order is also changing the requirement for refresher training in first aid from every 2 years to at least every 3 years. That is because the American Red Cross certification in first aid is now for 3 years. A requirement for more frequent refresher training in first aid is a burden in time and expense involved for SMV providers and drivers.

**Publication Date:** July 3, 1999  
**Effective Date:** July 3, 1999  
**Expiration Date:** November 30, 1999  
**Hearing Date:** September 1, 1999

## EMERGENCY RULES NOW IN EFFECT (2)

### Health and Family Services (Health, Chs. HSS/HFS 110–)

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

#### Exemption From Finding of Emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats. by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on April 30, 1999 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 7,291 HIRSP policies in effect on March 31, 1999 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 in accordance with the authority and requirements set out in s. 149.143 (2) (a) 2., Stats. The Department is required to set premium rates by rule. These rates must be calculated in accordance with generally accepted actuarial principles. Policyholders are to pay 60% of the costs of HIRSP.

There are separate sets of tables in ch. HFS 119 that show unsubsidized and subsidized Plan 2 premium rates. Both sets of tables are amended by this order to increase the premium rates because Plan 2 costs, which historically have been running about 50% less than Plan 1 costs, began to increase several years ago and now are running at about 67% of Plan 1 costs. The Plan 2 premium rates need to be increased to cover increased costs of treatment for individuals enrolled under Plan 2. The order increases these premium rates by about 18%.

In January 1999, the Department published an emergency rule order to increase HIRSP unsubsidized Plan 2 premium rates by about 10%, with the intention of increasing those rates again in July 1999 to the level provided for in this order. However, in May 1999 the Legislature's Joint Committee for the Review of Administrative Rules (JCRAR) refused to extend the effective period of that part of the January 1999 emergency rule order relating to premium rate increases, with the result that effective May 31, 1999, the rates reverted back to the rates in effect before January 1, 1999. Consequently, to increase rates effective July 1, 1999, the Department through this rulemaking order has based the increased rates on the rates in effect prior to January 1, 1999.

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. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 1998. The Board of Governors approved a reconciliation methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula. By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 1999.

The result of this reconciliation process for calendar year 1998 indicated that insurance assessments collected were greater than the

20% of costs (net of the GPR contribution from appropriation s. 20.435(5)(af), Stats.), required of insurers. Also, the calendar year 1998 reconciliation process showed that an insufficient amount was collected from health care providers. As a result of this reconciliation, the insurer assessments for the time periods July 1, 1999 through December 31, 1999 and January 1, 2000 through June 30, 2000, are reduced to offset the overpayment in 1998. The total adjustments to the provider payment rates for the same time periods are sharply increased in order to recoup the provider contribution that was not collected in calendar year 1998. The budget for the plan year ending June 30, 2000 and the calendar year 1998 reconciliation process were approved by the HIRSP Board of Governors in April 1999.

**Publication Date:** June 30, 1999  
**Effective Date:** July 1, 1999  
**Expiration Date:** November 28, 1999  
**Hearing Date:** September 9, 1999

- Rules adopted creating s. **HSS 122.10**, relating to distribution of 3 closed nursing home beds to a nursing home that serves only veterans.

### Finding of Emergency

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

These rules are for the one–time distribution of 3 closed nursing home beds to a nursing home or nursing homes that serve only veterans. Following distribution of the 3 beds, the rules will be allowed to lapse.

Section 150.31, Stats., establishes a statewide bed limit for nursing homes as one means of controlling nursing home costs and Medical Assistance program expenditures. Within that bed limit a facility may close or its bed capacity may be reduced, in which case beds are freed up and may be redistributed by the Department under s. HSS 122.05(1)(c).

The Wisconsin Veterans Home at King has 4 separately licensed nursing home buildings on its grounds, and a total licensed capacity of 718 beds. It is operating at 99.9 percent of capacity with a long waiting list for admission. Managers of the Wisconsin Veterans Home have decided to close their underutilized 3 bed hospital operation at King. The 3 hospital beds are currently located in Stordock Hall. The 3 nursing home beds will replace the hospital beds. Because of the burgeoning population of older veterans, whose active service was during World War II, the Korean War, and the Vietnam War, and the immediate pressure on admissions to the facility, and the desirability of having flexibility when moving residents, Wisconsin Veterans Home managers have asked that the space previously used for hospital beds be converted to nursing home space and that 3 closed nursing home beds be transferred to the Veterans Home. These beds could be put on line immediately and provide some relief to those awaiting admission.

This rulemaking order establishes a process for considering applications for 3 closed nursing home beds to be made available to a nursing home or nursing homes that serve only veterans, that ask for no more than 3 beds and that do not require space to be added to

the building in which the beds will be located to accommodate those beds.

**Publication Date:** August 3, 1999  
**Effective Date:** August 3, 1999  
**Expiration Date:** December 31, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Higher Educational Aids Board

Rules adopted amending s. **HEA 11.03 (3)** and creating s. **HEA 11.03 (5)**, relating to the Minority Teacher Loan Program.

### Finding of Emergency

The 1989 Wis. Act 31 created s. 39.40, Stats., which provides for loans to minority students enrolled in programs of study leading to licensure as a teacher. The Wisconsin Higher Educational Aids Board (HEAB) administers this loan program under s. 39.40 and under ch. HEA 11. Current rules require that a student be enrolled full time and show financial need to be considered for participation in the Minority Teacher Loan Program. Students who did not enroll full time and did not show financial need were allowed to participate in the program in the past when part of the program was administered by another administrative body. These students are enrolled in teacher education programs that train teachers specifically for the school districts named in the statutes that outline the intent of the Minority Teacher Loan Program. Unless the Board changes its rules, many participating students will lose their eligibility in the program. This will cause a hardship to those students who relied on the interpretation of the prior system administration. Revising the rules would allow students who participated in the program in the past to continue to participate. The proposed revision will not affect expenditures of State funds for the Minority Teacher Loan Program.

**Publication Date:** August 6, 1999  
**Effective Date:** August 6, 1999  
**Expiration Date:** January 3, 2000  
**Hearing Date:** October 28, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Natural Resources

#### (Fish, Game, etc., Chs. NR 1–)

Rules adopted revising ch. **NR 10**, relating to the 1999 migratory game bird season.

### Finding of Emergency

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

provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Publication Date:** September 10, 1999  
**Effective Date:** September 10, 1999  
**Expiration Date:** February 7, 2000  
**Hearing Date:** October 14, 1999

## EMERGENCY RULES NOW IN EFFECT (2)

### *Natural Resources*

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

1. 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  
**Extension Through:** November 26, 1999

2. Rules adopted creating **ch. NR 328**, relating to regulation of water ski platforms and water ski jumps.

#### Analysis by the Department of Natural Resources

Statutory authority: ss. 30.135, 227.11 (2) (a) and 227.24

Statutes interpreted: ss. 30.66, 30.69 and 30.135

Chapter NR 328 describes the conditions where a water ski jump or platform will require a permit. It explains what constitutes a substantive written objection to a water ski jump or platform and provides a list of reasons that support a substantive written objection. It specifies the contents of a public notice and the process for making a substantive written objection. It details how the department will respond to complaints about an existing water ski jump or platform.

These rules were promulgated as emergency rules at the direction of the joint committee for review of administrative rules.

**Publication Date:** July 9, 1999  
**Effective Date:** July 9, 1999\*  
**Expiration Date:** December 6, 1999

\*Rule suspended by Joint Committee for Review of Administrative Rules on July 5, 1999.

## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

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

Rules adopted creating **ch. NR 746**, relating to sites contaminated with petroleum products from petroleum storage tanks.

#### Finding of Emergency

The Wisconsin Natural Resources Board 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 contributing to the emergency is:

The Department of Commerce has adopted administrative rules under ss. 101.143 and 101.144, Stats., to implement the Petroleum Environmental Cleanup Fund Act (PECEFA). The purpose of PECEFA is to reimburse responsible persons for the eligible costs incurred to investigate and remediate petroleum product discharges from a petroleum product storage system or home oil tank system. The recent emergency rule, ch. Comm 46, was adopted by both the Department of Natural Resources and the Department of Commerce in January 1999, incorporating parts of a Memorandum of Understanding between the two agencies that relates to the classification of contaminated sites and creating risk screening criteria for assessing petroleum–contaminated sites. However, ch. Comm 46 expired on September 27, 1999, prior to publication of the permanent rule. The emergency rule, ch. NR 746, is being proposed in order to ensure rules continue in effect during the time period between now and when the permanent rule is published. This action is also in response to a resolution adopted by the Joint Committee for Review of Administrative Rules (JCRAR), which directed the Department of Commerce and the Department of Natural Resources to promulgate a new emergency rule for this interim time period.

The emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 29, 1999.

**Publication Date:** October 20, 1999  
**Effective Date:** October 20, 1999  
**Expiration Date:** March 18, 2000  
**Hearing Date:** November 18, 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  
**Extension Through:** December 21, 1999

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Natural Resources*

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

**Subject:**

NR Code – Relating to fishing regulation changes through the (Spring 2000) Fish and Wildlife Hearings.

**Description of policy issues:**

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

Not known at this time.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Generally, proposed rule changes represent a change in policy (i.e. administrative rules).

**Statutory authority:**

Section 29.014, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 254 hours. Public hearings are proposed to be held in every county of the state (72 locations) in April 2000.

### *Psychology Examining Board*

**Subject:**

Psy Code – Relating to defining the terms “working day” and “in this state” for the purposes of the temporary practice provision found at s. 455.03, Stats.

**Description of policy issues:**

*Objective of the rule:*

Under s. 455.03, Stats., a psychologist who is licensed in another state may offer services as a psychologist in this state for not more than 60 working days in any year without holding a Wisconsin license. The objective of the rule would be to clarify that a “working day” is any day in which any psychological services are provided, regardless of the number of hours in that day that practice occurs. The rule would also make it clear that practice occurs in Wisconsin any time that the patient is located in Wisconsin, even if the out-of-state psychologist is located in his or her state of licensure and is providing the services by electronic or telephonic means.

*Policy analysis:*

There has been confusion in the past related to the temporary practice provision of the psychology practice act, with persons practicing under the provision seeking to clarify whether “60 working days” means 4870 hours or 60 calendar days. Also causing confusion is the situation where an out-of-state psychologist

provides some services to a patient at a time when both are located within this state and some services to that patient when the patient is located in Wisconsin and the psychologist is located in his or her state of licensure. The proposed rule would be considered to be practicing in Wisconsin any time the patient is located in this state.

**Statutory authority:**

SS. 15.08 (5) (b), 227.11 (2) and 455.08, Stats.

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

50 hours.

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

**Subject:**

SS. DWD 270.085 and 272.086 – Relating to student activities that do not constitute employment.

**Description of policy issues:**

*Objective of the rule:*

The objective of the proposed rule is to set certain conditions under which student activities within a school are not considered employment for purposes of child labor and minimum wage laws.

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

The current state administrative rules on labor standards and child labor do not contain specific provisions on the status of students who perform services such as helping in the lunchroom or minor clerical work in the school office or library. The field operations handbook of the Wage and Hour Division of the U.S. Department of Labor provides that student activities of this type should not be treated as employment under the wage and hour laws as long as certain conditions are met.

This rule proposes to adopt the federal standards and provide that a student activity will not be treated as employment if the activity has an educational benefit for the student, does not add more than one hour to the school day, and does not cause the displacement of a regular employee.

**Statutory authority for the proposed rule:**

SS. 103.66 and 104.04, Stats.

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

Approximately 40 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 October 29, 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. ATCP 81, Wis. Adm. Code, relating to cheese grading, packaging and labeling.

##### *Agency Procedure for Promulgation*

The Department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. Three (3) hearings are scheduled to be held simultaneously by videoconferencing on Thursday, December 9, 1999 from 1:00 p.m. to 3:00 p.m. at locations in Madison, Green Bay and Eau Claire. The Department's Food Safety Division is primarily responsible for this rule.

##### *Contact Information*

If you have questions, you may contact:

Terri Wenger  
Telephone (608) 224-4714  
FAX (608) 224-5045

#### **Crime Victims Rights Board**

##### *Rule Submittal Date*

Notice is hereby given that the Crime Victims Rights Board has submitted proposed administrative rules to the Legislative Council on October 29, 1999.

##### *Analysis*

These proposed rules create ch. CVRB 1, relating to the review of complaints alleging violations of the rights of crime victims. The Crime Victims Rights Board promulgated these proposed rules initially as emergency rules. The emergency rules were published in the *Wisconsin State Journal* on September 17, 1999.

##### *Agency Procedure for Promulgation*

A public hearing is required on these rules. Pursuant to s. 227.24 (4), Stats., a hearing on the emergency and permanent rules will be held on Tuesday, November 9, 1999 at 1:00 p.m. in Senate Room 330SW, State Capitol, Madison. The proposed rules were prepared by the Crime Victims Rights Board with assistance from staff at the Wisconsin Department of Justice.

##### *Contact Information*

Questions about the proposed rules should be addressed to:

Karen E. Timberlake  
Assistant Attorney General  
State of Wis. Dept. of Justice  
P. O. Box 7857  
Madison, WI 53707-7857

Telephone (608) 267-1300

Questions about the operations of the Board should be addressed to:

Jennifer Belich, Program Assistant  
Crime Victims Rights Board  
P. O. Box 7951  
Madison, WI 53707-7951

Telephone (414) 525-1698

#### **Elections Board**

##### *Rule Submittal Date*

On October 26, 1999, the State Elections Board referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### *Analysis*

The proposed rule amends s. EIBd 1.28 (2) (c), Wis. Adm. Code, relating to express advocacy in public communications.

##### *Agency Procedure for Promulgation*

A public hearing is not required. The Elections Board is following the 30-day notice procedure, under s. 227.16 (2) (e), Stats., for the promulgation of this rule.

##### *Contact Information*

For questions, please contact:

George A. Dunst, Legal Counsel  
State Elections Board  
Telephone (608) 266-0136

#### **Psychology Examining Board**

##### *Rule Submittal Date*

On October 20, 1999, the Psychology Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### *Analysis*

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

The proposed rule-making order amends ss. Psy 2.08 and 3.10, relating to re-examinations.

***Agency Procedure for Promulgation***

A public hearing is required and will be held on Tuesday, December 7, 1999, at 9:15 a.m. in Room 180, 1400 East Washington Ave., Madison.

***Contact Information***

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

***Transportation***

***Rule Submittal Date***

On October 29, 1999, the Wisconsin Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

***Analysis***

The proposed rule–making order affects ch. Trans 320, relating to calculation of fees for special events, security, traffic enforcement and escort services.

***Agency Procedure for Promulgation***

A public hearing is required and public hearings are scheduled for November 30, 1999 at Wausau and December 1, 1999 at Madison. The organizational unit responsible for promulgation of the proposed rule is the Division of State Patrol.

***Contact Information***

Julie A. Johnson, Paralegal  
Telephone (608) 266–8810  
FAX (608) 267–6734

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## NOTICE SECTION

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### Notice of Hearings

#### *Agriculture, Trade and Consumer Protection* *[CR 99–151]*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on proposed amendments to ch. ATCP 81, Wis. Adm. Code, relating to cheese grading, packaging and labeling.

#### **Written Comments**

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 January 14, 2000, 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, PO Box 8911, Madison, WI 53708–8911, 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 **December 2, 1999** either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708–8911, (608–224–4712), or by contacting the message relay system (TTY) at 608–224–5058. Handicap access is available at the hearing locations.

#### **Hearing Information**

Three (3) hearings are scheduled. The hearings will be held simultaneously by video conferencing at the following locations on Thursday, December 9, 1999, from 1:00 p.m. – 3:00 p.m.

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

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

State of Wisconsin 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) and 97.177 (4)

Statute interpreted: s. 97.177

The Department of Agriculture, Trade and Consumer Protection (DATCP) regulates the grading, packaging and labeling of cheese in

this state. This rule modifies current rules related to cheese grading, packaging and labeling. The current rules are contained in ch. ATCP 81, Wis. Adm. Code.

#### Wisconsin Cheese: Manufacturer's Label

Under current rules, a cheese manufacturer must label all bulk cheese with the name of the cheese, state identification, dairy plant identification, vat identification and date of manufacture. The labeling must remain on the bulk cheese until the cheese is used in the manufacture or processing of another food, or until the cheese is relabeled by a buyer who cuts and repackages the bulk cheese into consumer size packages.

This rule permits a cheese manufacturer to use electronic code labeling to display any or all of the required bulk cheese label information. Conventional labeling (not just electronic code labeling) must appear on all bulk cheese that leaves the manufacturer's custody and control. If a cheese manufacturer uses electronic code labeling, the manufacturer must provide a scanner or other device that enables a DATCP employee or agent to decode the information into a readable format at the place where the manufacturer keeps the cheese.

Under current rules, the bulk cheese label must disclose the month, date and year of manufacture. Under this rule, the labeler may abbreviate the date of manufacture using an alphanumeric or all numeric format. The abbreviation shall clearly identify the month, date and year, or a Julian calendar date consisting of a 2–digit designation for the year of manufacture followed by a 3–digit Julian date. A Julian calendar date is the numerical designation for a specified day of the year using consecutive numbers between "001" for January 1 and "365" for December 31.

#### Cheese from other States or Countries: Wisconsin Grade Labeling Prohibited

Under current rules, cheese from other states or countries may be identified with a Wisconsin grade mark or grade label if it is graded by a Wisconsin licensed cheese grader and labeled to identify the state or country of origin. This rule prohibits the use of Wisconsin grade labeling on cheese originating from other states or countries, even if that cheese is graded by a Wisconsin licensed grader.

#### Age Labeling of Cheese

Under current rules, if a manufacturer labels cheese as "aged" or "cured," the manufacturer's label must also disclose the minimum length of time that the cheese has been aged or cured. This rule applies the same requirement to any cheese (including retail cheese packages) labeled "aged" or "cured," regardless of who labeled that cheese.

#### Grade Labeling Retail Cheese Packages

Under current rules, DATCP may authorize a licensed food processing plant or retail food establishment to grade label retail packages of cheese. This rule clarifies that a licensed dairy plant may also cut, wrap and grade label cheese for retail distribution. A Wisconsin licensed cheese grader must grade the cheese, and the grade labeling must comply with applicable DATCP rules.

#### Swiss Cheese

This rule eliminates current weight and size requirements for rindless blocks of Swiss cheese. This change will give Wisconsin manufacturers greater flexibility to meet customers' demands. The Food Safety Task Force subcommittee recommended this change.

#### Recordkeeping

Under current rules, a licensed cheese grader must keep records showing the name of each person for whom cheese is graded, the quantity graded, the grading date, and the grade of each graded lot. This rule also requires the grader to keep fat and moisture records for each lot of cheese if the fat or moisture content is measured.



## **Fiscal Estimate**

### Assumptions Used in Arriving at Fiscal Estimate

Rules relating to cheese grading, packaging and labeling are contained in ch. ATCP 81, Wis. Adm. Code. These rules prevent fraud and deception, and assist wholesale and retail purchasers of cheese in making informed value comparisons and purchase decisions. Grade standards contained in the rules set the benchmarks for determining cheese quality.

Under current rules, all bulk cheese manufactured in Wisconsin must be labeled at the dairy plant or cheese factory with the name of the cheese, state identification, dairy plant identification, vat identification, and date of manufacture for the cheese. This rule amends ch. ATCP 81 to permit an electronic code labeling method for these items on the manufacturer's label for bulk cheese if a scanner or other appropriate device is provided where the cheese is located that enables an employe or agent of the Department to decode the information into a readable format. The use of electronic code labeling as the exclusive format for any required label information will be limited to cheese while it remains under the custody and control of the manufacturer. However, DATCP is unable to project how widely this method will be used. DATCP anticipates that some additional time will be needed during inspections or investigations to convert the coded information into a readable format for product identification. Currently, DATCP believes that the increased time and costs will be able to be absorbed by the Department.

Under this rule, Wisconsin grade labeling is prohibited on cheese manufactured in other states or foreign countries. Requirements related to age labeling will apply to any cheese label on which a claim is made. Weight and size requirements for Swiss cheese rindless blocks will be eliminated. These and other minor technical changes are not anticipated to have any long–range fiscal effect on the Department.

A one–time cost of approximately \$5700 will be incurred by the Department for permanent rule development.

### Long – Range Fiscal Implications

A small decrease in efficiency and increase in costs for Department activities are anticipated with the use of electronic code labeling of bulk cheese. However, DATCP believes the increase in costs will be able to be absorbed by the Department if the use of electronic code labeling is limited in scope to bulk cheese while it remains under the custody and control of the manufacturer.

## **Initial Regulatory Flexibility Analysis**

This proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to cheese grading, packaging and labeling.

Under this rule, cheese manufacturers will be permitted to use electronic code labeling as an alternative method to list any or all of the items of information required on the manufacturer's label for bulk cheese, as long as the cheese remains under the control and custody of the manufacturer. The decision to label bulk cheese in this manner will be fully voluntary. Coding methods will not be standardized under one uniform system from company to company. Therefore, the manufacturer must provide a scanner or other appropriate device where the cheese is located that enables an employe or agent of the Department to decode the information into a readable format. If the cheese is stored in public warehouse facilities, the warehouse may need to make adjustments in its recordkeeping and warehousing operations.

Bulk cheese must be labeled by the manufacturer with a standard, uncoded label format if the cheese will be sold in bulk form at a later date. Bulk cheese is often sold to other cheese packaging plants, manufacturers of processed or cold pack cheese, retail stores, and restaurants that have a need for product label information in a readily understandable format. Standard formats may also be necessary for interstate shipments to comply with labeling laws in other states.

In this rule, Wisconsin grade labeling is prohibited on cheese manufactured in other states or foreign countries. Protection of the "added value" attributable to Wisconsin grade labels for

Wisconsin–made cheese will be expected to enhance the marketshare of our state's dairy industry.

Under this rule, licensed cheese graders must maintain and make available to inspection any records of test results for fat and moisture content of any lot of cheese for which fat and moisture was measured. This rule does not require any additional testing, but simply requires that any results of tests conducted be made available for inspection to help ensure that the cheese meets the applicable standard of identity.

At the request of industry, this rule eliminates the weight and size requirements for Swiss cheese rindless blocks to provide greater flexibility for our manufacturers to meet the demand of their customers. Other rule changes are minor and technical in nature and are not expected to require any additional reporting or recordkeeping, knowledge or professional skills, nor increase costs to small businesses.

## **Notice of Proposed Rule**

### *Elections Board*

#### *[CR 99–150]*

Notice is hereby given that pursuant to ss. 5.05 (1) (f), 5.93 and 227.11 (2) (a), 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 **November 15, 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 the State Elections Board**

Statutory authority: ss. 5.05 (1) (f), 5.93 and 227.11 (2) (a)

Statutes interpreted: ss. 11.01 (3), (6), (7) and (16), 11.05, 11.25, 11.29, 11.30 and 11.36

This amended rule interprets ss. 11.01 (3), (6), (7) and (16), 11.05, 11.25, 11.29, 11.30 and 11.36, Stats. The amendment attempts to define more specifically those communications that are considered to be express advocacy subject to regulation by ch. 11 of the Wisconsin Statutes. The rule codifies the express advocacy test set forth by the U.S. Supreme Court in 1976, in Buckley v. Valeo, 424 U.S. 1, and reiterated in 1999 by the Wisconsin Supreme Court in WMC IMC, Inc., v. State Elections Board, (Case No. 98–0596), by establishing a nonexclusive list of terms that are considered to expressly advocate. The rule also extends express advocacy to the functional equivalents of those terms.

### **Text of Rule**

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss. 5.05 (1) (f), 5.93, and 227.11 (2) (a), Stats., the Elections Board hereby amends s. EIBd 1.28 (2) (c), interpreting ss. 11.01 (3), (6), (7) and (16), 11.05, 11.25, 11.29, 11.30 and 11.36, Stats., as follows:

**SECTION 1.** Section EIBd 1.28 (2) (c) is amended to read:

EIBd 1.28 (2) (c) Make ~~expenditures for the purpose~~ a communication containing terms such as the following or their functional equivalents with reference to a clearly identified candidate that expressly advocating advocates the election or defeat ~~of an identified that candidate and that unambiguously relates to the campaign of that candidate:~~

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"
7. "Defeat;"
8. "Reject."

## Initial Regulatory Flexibility Analysis

The amendment of this rule does not affect business.

## Fiscal Estimate

The amendment of this rule has no fiscal effect.

## Copies of Rule and Contact Information

Copies of this proposed rule are available upon request to:

George A. Dunst, Legal Counsel  
State Elections Board  
132 East Wilson St.  
P.O. Box 2973  
Madison, WI 53701–2973  
  
Telephone (608) 266–0136

## Notice of Hearings

### Health and Family Services

(Community Services, Chs. HFS 30––)

[CR 99–138]

[CR 99–141]

[CR 99–142]

Notice is hereby given that, pursuant to s. 51.42 (7) (b), Stats., the Department of Health and Family Services will hold public hearings to consider the repeal of ss. HFS 61.70 to 61.72 and 61.75, Wis. Adm. Code, and subch. V of ch. HFS 61, Wis. Adm. Code, and the creation of chs. HFS 32, 33 and 35, Wis. Adm. Code, relating to standards for community mental health inpatient treatment, adult day treatment and clinic programs.

## Hearing Information

The public hearings will be held:

<b>December 6, 1999</b> <b>Monday</b> <b>From 1:00 p.m.</b> <b>to 5:00 p.m.</b>	<b>Room 120</b> <b>State Office Bldg.</b> <b>819 North 6th St.</b> <b>MILWAUKEE, WI</b>
<b>December 10, 1999</b> <b>Friday</b> <b>From 1:00 p.m.</b> <b>to 5:00 p.m.</b>	<b>Room 751</b> <b>State Office Bldg.</b> <b>One Wilson St.</b> <b>MADISON, WI</b>
<b>December 14, 1999</b> <b>Tuesday</b> <b>From 12:30 p.m.</b> <b>to 4:30 p.m.</b>	<b>Room 123</b> <b>State Office Bldg.</b> <b>610 Gibson St.</b> <b>EAU CLAIRE, WI</b>
<b>December 16, 1999</b> <b>Thursday</b> <b>From 1:00 p.m.</b> <b>to 4:30 p.m.</b>	<b>Room 152</b> <b>State Office Bldg.</b> <b>200 North Jefferson St.</b> <b>GREEN BAY, WI</b>

The hearing sites are fully accessible to people with disabilities. Parking for people with disabilities attending the Madison hearing is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp and in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

## Analyses Prepared by the Dept. of Health and Family Services

The Department under s. 51.42 (7), Stats., certifies community mental health treatment programs. All of the Department's

standards for certification of community mental health treatment programs that have been included in subch. IV of ch. HFS 61, Wis. Adm. Code, are now being revised and at the same time renumbered into program-specific separate chapters of the Wisconsin Administrative Code. Separate chapters of the Wisconsin Administrative Code have recently been published for certification of emergency (crisis) service programs (ch. HFS 34) and day treatment programs for children (ch. HFS 40). At these hearings the Department is bringing before the public, for comment, proposed revised standards for inpatient, adult day treatment and mental health clinic programs.

### Analysis — Chapter HFS 32, Community Mental Health Inpatient Programs

This is a general revision, renumbering and considerable expansion of the Department's rules for certification of community mental health inpatient treatment programs. The current rules, ss. HFS 61.70 to 61.72, date from 1974 and have never been updated.

An inpatient mental health treatment program must be certified by the Department in order for the program to receive funds for services provided to a Medical Assistance recipient under s. 49.46 (2) (b) 6. f., Stats., community aids funding from counties under s. 51.423 (2), Stats., or payments provided as mandated insurance coverage under s. 632.89, Stats.

Inpatient mental health treatment programs are operated by hospitals, usually as a service or unit which is a part of a hospital. A hospital's inpatient mental health service is where patients receive inpatient mental health services. The term "service" is used throughout the rules in place of "program," but the meaning is the same.

The revised rules cover:

- Certification of a service (program);
- Actions the Department may take against a certified service for violating the rules;
- Waivers of particular requirements;
- Qualifications of staff;
- Required staff;
- Staff training;
- Minimum hours of staff services per patient;
- The intake process after a person is admitted to the service;
- Treatment plans;
- Review of the ongoing treatment plan;
- Medications administration;
- Termination of treatment and preparation of the discharge summary;
- Patient records;
- Patient rights; and
- Limitations on the use of seclusion, isolation and restraints.

By comparison with the current rules, the revised rules:

- Are more specific about the qualifications of clinical staff, and more detailed about the use of restraints and seclusion or other isolation and actions that may be taken against a certified service for violating the rules;
- Include new sections on the process for certifying a service and on patient rights; and
- Include new requirements concerning clinical supervision, orientation and inservice training for staff, uniform background checks on prospective new staff members, screening at admission, when treatment is provided to children, treatment plan review and reporting of certain deaths of patients.

### Analysis — Chapter HFS 33, Community Mental Health Adult Day Treatment Programs

This is a general revision, renumbering and considerable expansion of the Department's rules for certification of community

mental health day treatment programs for adults. The current rules, s. HFS 61.75, date from 1977.

A mental health day treatment program is a nonresidential, medically supervised program that offers a schedule of active treatment services provided in a therapeutic milieu and aimed at averting or shortening an individual's need for inpatient mental health services and improving the individual's ability to function as independently as possible. In July 1999 there were 52 certified programs operating in the state. Certification by the Department is a condition for county purchase of services from a program with community aids funds.

The current rules for certification of these programs identify required personnel, state that a program is to provide services that meet the needs of clients, specify some possible treatment goals and require for each client a written plan of treatment to be reviewed at least monthly and an up-to-date treatment record that includes individual goals and the treatment modalities to achieve them.

The revised rules add:

- Qualifications of professional staff;
- A detailed certification process similar in both organization and content to the certification process set out in the other new community mental health rule chapters;
- Special staffing requirements for programs serving clients who also have substance abuse treatment needs or are developmentally disabled;
- A requirement to follow uniform procedures under ch. HFS 12 for checking the backgrounds of prospective new employees;
- Staff training requirements;
- Minimum hours of operation;
- Staffing levels by purpose of admission (for stabilization services, restorative services or maintenance services);
- Criteria for admission;
- Requirements relating to consent for treatment, suicide prevention, administration of psychotropic medications, early termination of services and preparation of a discharge summary; and
- Sections on client rights and obtaining indications of client satisfaction with the quality and outcomes of services.

#### Analysis – Chapter HFS 35. Community Mental Health Clinic Programs

This is a general revision and renumbering of the Department's standards for certification of outpatient mental health clinics, also called outpatient psychotherapy clinics. In October 1999 there were 781 outpatient mental health clinic programs certified by the Department. The significance of Department program certification is that it is a condition for the purchase of services by counties with state community services funds, for reimbursement by the Medical Assistance (Medicaid) program for the costs of providing outpatient mental health services to Medical Assistance recipients and for mandatory coverage of outpatient mental health services by group insurance policies that provide coverage for any outpatient treatment. The standards now make up subch. V of ch. HFS 61, Wis. Adm. Code. The revised standards for mental health outpatient clinics will be in ch. HFS 35, Wis. Adm. Code.

The current rules for outpatient mental health clinic programs cover:

- Procedures for certification;
- Required personnel;
- Service requirements; and
- Denial, involuntary termination or suspension of certification.

The revised rules:

- Permit a clinic to meet, alternatively, the standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Council on Accreditation of Services for Families and Children (CASFC);

- Establish a detailed certification process similar in both organization and content to the certification process set out in new chapters of rules for other community mental health certified programs, which includes actions taken against certified programs and permits issuance of provisional certification pending correction of minor deficiencies;

- Add a requirement to follow uniform procedures under ch. HFS 12 for checking the backgrounds of prospective new employees;

- Modify minimum professional staffing of a clinic to consist of a clinic administrator, a clinical coordinator qualified under s. HFS 35.07 (3) (b) 1. to 8., a psychiatrist and a mental health professional qualified under s. HFS 35.07 (3) (b) 2. to 8.;

- Add training requirements for clinic staff;

- Permit Master's-level clinicians to offer one of four national professional registry listings in place of the requirement for 3000 hours of supervised clinical experience;

- Add or expand rule language on admission, assessment, consent for treatment, treatment planning and medications administration; and

- Add sections on client rights and obtaining information about client satisfaction with treatment.

### **Contact Information**

To find out more about the hearings or to request copies of the proposed rules, write or phone:

Dennis Bobo  
Bureau of Community Mental Health  
P.O. Box 7851  
Madison, WI 53707-7851

Telephone (608) 267-7711 or,  
if you are hearing-impaired, (608) 267-9400 (TDD)

If you are hearing- or visually-impaired, do not speak English, or have circumstances which might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number shown above. Persons requesting a non-English or sign language interpreter should contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **December 23, 1999** will be given the same consideration as testimony presented at the hearing.

### **Fiscal Estimate**

#### Chapter HFS 32. Community Mental Health Inpatient Programs

This order renumbers, updates and expands the Department's rules for certification of community mental health inpatient treatment programs.

There are currently 49 certified community mental health inpatient programs. Four of these are in other states. Of the 45 in Wisconsin, 38 are hospitals that are certified by the Department on the basis of compliance with standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). The remaining seven programs are approved under ch. HFS 124, the Department's rules for hospitals, but are not JCAHO-accredited. Acceptance of alternative JCAHO accreditation will continue under the renumbered and updated rules. The revised rules, therefore, will affect mainly the seven hospital programs that are not JCAHO-accredited. These include the Brown, Fond du Lac, Marathon, Rock and Waukesha county mental health centers. The other two programs are under contract to counties to operate inpatient programs.

The (mainly) updating revisions made by this order in the Department's standards for certification of community mental health inpatient treatment programs are not expected to affect the expenditures or revenues of state government, including

expenditures of the Medical Assistance Program, or county governments. The updating changes mainly bring the rules into compliance with current drafting standards; incorporate and add more detail to recent new statutory requirements, such as for reporting certain deaths of patients to the Department and conducting caregiver background checks on prospective and current employees; and identify recognized good management and treatment practices.

#### Chapter HFS 33. Community Mental Health Adult Day Treatment Programs

This is a renumbering and complete revision of what is now s. HFS 61.75. The program and personnel requirements under the new rules are stricter than under the current rules.

At the local level, the rule revisions may result in higher program costs for some of the 52 currently certified mental health day treatment programs for adults that choose to maintain their certification under the new rules. However, other programs certified under these rules may not experience any increase in costs. Additionally, there are adult mental health day treatment programs that are not presently certified, and any that choose to remain uncertified would not be affected by the new rules. The revised rules could result in higher costs to the state through the Medical Assistance (MA) program to the extent that the programs with higher costs bill the state for care provided to MA-eligible individuals. Also, some county departments of community programs or human service departments that provide or contract out for adult mental health day treatment programs may experience cost increases while other local agencies may not experience any cost changes. Overall, the revised rules should not result in a significant increase in state or local costs.

#### Chapter HFS 35. Community Mental Health Clinic Programs

These are rules for the 781 outpatient mental health clinics in the state that are certified by the Department under s. 51.42 (7) (b), Stats. The order renumbers and updates current rules found in ss. HFS 61.91 to 61.98 that were last revised in 1984.

Department certification of a clinic is a condition for the purchase of clinic services by counties with state community services funds, for reimbursement of the clinic by the Medical Assistance program for the costs of providing outpatient mental health services to Medical Assistance recipients, and for reimbursement of the clinic by private insurers required under s. 632.89, Stats., to cover outpatient mental health services under group insurance policies that provide coverage for any outpatient treatment.

The revised rules give more flexibility to clinics by permitting a clinic to meet standards of one of 2 specified national accrediting organizations in lieu of the standards in the rules and permitting Masters-level clinicians on a clinic's staff to offer one of 4 national professional listings in place of the requirement for 3000 hours of supervised clinical experience. The revised rules also add orientation and inservice training requirements, but without specification of the number of hours; require compliance with new statutes and rules on performing uniform background checks on applicants for employment and reporting instances of staff abuse or neglect of a patient or misappropriation of a patient's property; require assignment of responsibility for clinic operations and the treatment program, without thereby affecting the minimum required professional staffing of a clinic; and make the certification process and enforcement provisions similar to those in new rules for other community mental health programs.

The revised rules will not affect the expenditures or revenues of state government or local governments. About 28 of the clinics are directly operated by county governments. The costs of purchased and reimbursed services should not be affected by the rule changes. Some of the changed requirements either represent economies and efficiencies for state government or are largely already in effect as good management practices in the clinics. Others are statute-made changes or are clarifications.

### **Initial Regulatory Flexibility Analysis**

These orders update, renumber and expand rules on the basis of which the Department certifies community mental health inpatient

treatment programs, adult day treatment programs and outpatient clinic programs under s. 51.42 (7), Stats. The proposed new rules replace current rules in subch. IV of ch. HFS 61, Wis. Adm. Code.

Department certification of a program is a condition for public funding of services, including for reimbursement by Medicaid, and, since November 1992, for mandated coverage by private group health insurance policies.

There are currently 49 certified inpatient programs, all of which are operated by hospitals. None of the 45 Wisconsin hospitals with a certified mental health inpatient treatment program is a small business as "small business" is defined in s. 227.114 (1) (a), Stats.

There are currently 52 certified adult day treatment programs. Not more than one or 2 are operated by or as a small business as "small business" is defined in s. 227.114 (1) (a), Stats.

There are currently 781 certified clinic programs. About half of them are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

#### Adult Day Treatment Programs

The revised rules for adult day treatment programs add:

- Professional staff qualifications;
- A detailed certification process;
- Special staffing requirements for programs serving clients who also have substance abuse treatment needs or are developmentally disabled;
- Staff training requirements;
- Minimum hours of operation;
- Staffing levels by purpose of admission (for stabilization services, restorative services or maintenance services);
- Criteria for admission;
- Requirements relating to consent for treatment, suicide prevention, administration of psychotropic medications, early termination of services and preparation of a discharge summary; and
- Sections on client rights and obtaining indications of client satisfaction with the quality and outcomes of services.

#### Outpatient Clinic Programs

The revised rules for outpatient clinic programs:

- Permit a clinic to meet, alternatively, the standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Council on Accreditation of Services for Families and Children (CASFC);
- Establish a detailed certification process which includes actions taken against certified programs and permits issuance of provisional certification pending correction of minor deficiencies;
- Add that clinics are to follow uniform procedures under ch. HFS 12 for checking the backgrounds of prospective new employees;
- Modify minimum professional staffing of a clinic to consist of a clinic administrator, a clinical coordinator qualified under s. HFS 35.07 (3) (b) 1. to 8., a psychiatrist and a mental health professional qualified under s. HFS 35.07 (3) (b) 2. to 8.;
- Add training requirements for clinic staff;
- Permit Master's-level clinicians to offer one of four national professional registry listings in place of the requirement for 3000 hours of supervised clinical experience;
- Add or expand rule language on admission, assessment, consent for treatment, treatment planning and medications administration; and
- Add sections on client rights and obtaining information about client satisfaction with treatment.

No new professional skills are needed by programs for them to comply with the revised requirements for program certification. Many of the new requirements are recognized industry and professional good management practices.

## Notice of Hearing

### Psychology Examining Board

[CR 99–149]

Notice is hereby given that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 455.045, Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. Psy 2.08 and 3.10, relating to re–examinations.

### Hearing Information

December 7, 1999  
Tuesday  
9:15 a.m.

Room 180  
1400 East 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 **December 20, 1999**, to be included in the record of rule–making proceedings.

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

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

Statute interpreted: s. 455.045

Under s. Psy 2.08, an applicant for licensure as a psychologist or school psychologist may currently sit for the examinations required by the Board an indefinite number of times. This has resulted in a few applicants who have been reexamined as many as ten times without receiving a passing grade. The objective of this rule is to require that after failing to achieve a passing grade on any examination after four tries, the applicant be required to apply to the Board for permission to be reexamined a fourth time, and to demonstrate further education or training as the Board may require.

When an applicant has taken the national Examination for the Professional Practice of Psychology or the Examination on the Practice of School Psychology on four occasions and failed each time, there arises a presumption that the applicant may not be properly prepared to engage in the independent practice of psychology or school psychology until he or she receives further education or training. This rule would require that as a condition for being reexamined a fourth time, such applicants would be required to receive permission from the Board and to demonstrate to the Board that they have received further remedial education or training which in the opinion of the Board addresses those areas in which the applicant has shown weakness.

The Medical Examining Board has had a similar rule in place since 1976 and has found it to be an effective tool in assisting applicants to effectively address those areas of weakness which have caused repeated examination failures.

### Text of Rule

SECTION 1. Psy 2.08 is amended to read:

**Psy 2.08 Reexamination.** An applicant who fails an examination may apply for reexamination to achieve a passing grade in the examinations required under this chapter may apply for reexamination on forms provided by the board and pay the appropriate fee for each reexamination as required in s. 440.05, Stats. An applicant who fails to achieve a passing grade may be reexamined 3 times at not less than 3–month intervals. If the applicant fails to achieve a passing grade on the third reexamination, the applicant shall not be admitted to any further examination until

the applicant reapplies to the board for permission to be reexamined and presents evidence satisfactory to the board of further professional training or education as the board may prescribe or approve following its evaluation of the applicant's specific case.

SECTION 2. Psy 3.10 is amended to read:

**Psy 3.10 Reexamination.** An applicant who fails an examination may apply for reexamination to achieve a passing grade in the examinations required under this chapter may apply for reexamination on forms provided by the board and pay the appropriate fee for each reexamination as required in s. 440.05, Stats. An applicant who fails to achieve a passing grade may be reexamined 3 times at not less than 3–month intervals. If the applicant fails to achieve a passing grade on the third reexamination, the applicant shall not be admitted to any further examination until the applicant reapplies to the board for permission to be reexamined and presents evidence satisfactory to the board of further professional training or education as the board may prescribe or approve following its evaluation of the applicant's specific case.

### Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

### Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

### Copies of Rule and Contact 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

### Transportation

[CR 99–152]

Notice is hereby given that pursuant to ss. 85.51 and 348.25 (3), Stats., and interpreting ss. 85.51 and 348.26 (2), Stats., the Department of Transportation will hold public hearings at the following locations to consider the creation of ch. Trans 320, Wis. Adm. Code, relating to calculation of fees for special events, security, traffic enforcement and escort services.

### Hearing Information

November 30, 1999  
Tuesday  
1:30 P.M.

DSP Dist. 4 Headquarters  
2805 Martin Ave.  
Wausau, WI

December 1, 1999  
Wednesday  
12:30 P.M.

Room 144–B  
Hill Farms State Trans. Bldg.  
4802 Sheboygan Ave.  
Madison, WI

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

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

**Note:** This hearing is being conducted at 2 locations in order to give the public greater opportunity to present its facts, arguments and opinions. The records from both locations will be combined into a single Hearing Record on which the Department will base its decisions. Individuals need only attend one of the public hearings for their testimony to be fully considered.

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

The public record on this proposed rule-making will be held open until close of business **Wednesday, December 15, 1999**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Loralee Brumund  
Department of Transportation  
Division of State Patrol, Room 551  
P. O. Box 7912  
Madison, WI 53707–7912

### **Analysis Prepared by the Wis. Dept. of Transportation**

Statutory authority: ss. 85.51 and 348.25 (3)

Statutes interpreted: ss. 85.51 and 348.26 (2)

**General Summary of Proposed Rule.** 1997 Wis. Act 27 created s. 85.51, Stats., which permits the Division of State Patrol to charge a fee for security and traffic enforcement services provided at any

public event for which an admission fee is charged for spectators if the event is organized by a private organization. Act 27 also created ss. 25.40 (1) (a) 14 and 20.395 (5) (dg), Stats., which mandate that the fees for the events and for escort services be deposited in the general fund and credited to the appropriation account, and establishes that appropriation account in s. 20.395 (5) (dg), Stats.

This proposed rule-making creates ch. Trans 320, which establishes a uniform method for calculating fees charged to event organizers and motor carrier companies for traffic enforcement and escort services provided by the State Patrol beyond the normal traffic enforcement and safety tasks performed by State Patrol Troopers and Inspectors.

### **Fiscal Estimate**

The rule will increase revenues for providing special event security and traffic enforcement services by about \$35,000 per year. The Department already collects about \$75,000 per year for providing escort services for oversize and overweight loads. Since the rule incorporates the Department's existing formula for calculating escort fees, escort fee revenues should remain the same.

### **Initial Regulatory Flexibility Analysis**

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

### **Copies of Proposed Rule**

Copies of the proposed rule may be obtained upon request, without cost, by writing to Loralee Brumund, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707–7912, or by calling (608) 267–3622. Alternate formats of the proposed rule will be provided to individuals at their request.

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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.*

**Chiropractic Examining Board (CR 98–190):**

SS. Chir 4.03 and 6.03 – Relating to the duty to evaluate and inform patients of their presenting conditions.

**Health and Family Services (CR 99–113):**

SS. HFS 119.07 and 119.15 – Relating to operation of the Health Insurance Risk–Sharing Plan (HIRSP).

**Medical Examining Board (CR 99–128):**

SS. Med 1.06, 1.08, 2.02 and 2.04 – Relating to computer–based examinations.

**Public Service Commission (CR 98–172):**

Ch. PSC 117 – Relating to establishing rules for the assignment of costs and revenues, from sales of electric capacity or electric capacity and energy by public utilities to out–of–state customers that the public utility does not have a duty to serve (opportunity sales), in setting rates for retail electric service.

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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.*

**Employment Relations, Dept. of (CR 99–110):**

An order affecting ch. ER 18 and ss. ER 1.02, 29.03 and 29.04, relating to reinstatement eligibility and restoration of sick leave for state employes, other related time periods for state personnel transactions, and minor and technical rule changes.

Effective 01–01–00.

**Employment Relations—Merit Recruitment and Selection (CR 99–111):**

An order affecting ss. ER–MRS 1.02, 11.03, 16.025, 16.035, 16.04, 22.11 and 34.08, relating to reinstatement eligibility and employment register expiration for state employment and minor and technical rule changes.

Effective 01–01–00.

**Professional Geologists, Hydrologists and Soil Scientists Examining Board (CR 99–88):**

An order creating chs. GHSS 1 to 5, relating to the licensure and regulation of professional geologists, hydrologists and soil scientists.

Effective 01–01–00.

**Medical Examining Board (CR 99–1):**

An order affecting ch. Med 8, relating to licensure and regulation of physician assistants.

Effective 01–01–00.

**Medical Examining Board (CR 99–98):**

An order affecting chs. Med 6, 13 and 21 and ss. Med 10.02 and 17.02, relating to the repeal of rules relating to the practice of podiatry.

Effective 01–01–00.

**Natural Resources (CR 99–23):**

An order affecting ch. NR 20 and ss. NR 21.04, 23.05, 26.26, relating to fishing regulations for inland, outlying and boundary waters and fish refuges.

Part effective 01–01–00.

Part effective 04–01–00.

**Natural Resources (CR 99–47):**

An order affecting chs. NR 6, 8, 50 and 64 and s. NR 60.09, relating to snowmobiles.

Effective 01–01–00.

**Natural Resources (CR 99–82):**

An order affecting s. NR 45.10, relating to camping and reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Effective 01–01–00.

**Natural Resources (CR 99–97):**

An order affecting ss. NR 10.01, 10.06, 10.12 and 10.31, relating to the 1999 migratory game bird season.

Effective 01–01–00.



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## PUBLIC NOTICE

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### **Public Notice** *Dept. of Workforce Development* *(Temporary Assistance for Needy Families)*

#### **Background**

The Wisconsin Department of Workforce Development (DWD), through the Division of Economic Support, administers the Temporary Assistance for Needy Families (TANF) block grant program. As part of the TANF program, Congress created a caseload reduction credit. The credit was created to give States credit for families that have become self-sufficient and left the welfare rolls; it reduces the required work participation rate that a State must meet for a fiscal year. It reflects the reduction in the State's caseload in the prior year compared to its caseload under the Aid to Families with Dependent Children Program State Plan in effect in federal fiscal year 1995 (10/1/94–9/30/95), excluding reductions due to Federal law or to State changes in eligibility criteria.

To receive the caseload reduction credit, Wisconsin must submit data to the Administration for Children and Families, federal Department of Health and Human Services, by December 31, 1999. Under the federal regulations implementing the TANF program, 45 CFR 261.41 (a) (8), Wisconsin must certify that it has provided the public an appropriate opportunity to comment on the estimates and methodology used to determine the caseload reduction credit, that it considered the public comments it received on the methodology, and incorporated all net reductions resulting from Federal and State eligibility changes. In addition, it must include a summary of all public comments.

#### **Opportunity for Public Comment**

Through this notice the Department is announcing that the caseload reduction credit methodology is available for public comment on the Department's Website, <http://www.dwd.state.wi.us>. Copies of the methodology may also be obtained by contacting Sheryl Otto, by phone at 608/261-8087 or e-mail, [ottosh@dwd.state.wi.us](mailto:ottosh@dwd.state.wi.us). Comments on the methodology may be sent to Sheryl Otto, Bureau of Division-wide Services, 212 E. Washington Avenue, P.O. Box 7935, Madison, WI 53707-7935, fax 608/266-9693 or e-mail, [ottosh@dwd.state.wi.us](mailto:ottosh@dwd.state.wi.us). Comments must be received by **Friday, December 3, 1999**.

#### **Contact Information**

For more information about the TANF caseload reduction credit methodology, write or e-mail:

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