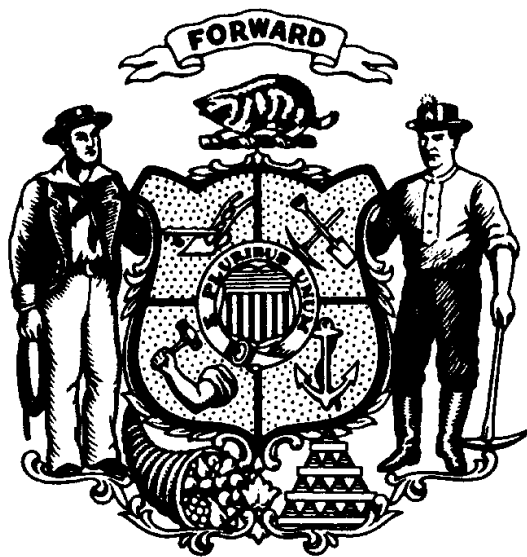


# WISCONSIN ADMINISTRATIVE REGISTER

**No. 539**



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**ERRATA**

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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.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

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### Agriculture, Trade & Consumer Protection – (3)

1. Rule adopted amending **s. ATCP 74.08 (1)**, relating to fees required of agent cities and counties that license and inspect retail food establishments.

#### Finding of Emergency

The Department of Agriculture, Trade and Consumer Protection (“department”) finds that an emergency rule is necessary to promote the public welfare, and prevent unnecessary economic hardship on cities and counties that license and inspect retail food establishments for the department. The facts constituting the emergency are as follows:

(1) The department licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., the department may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments for the department. The department monitors and assists the agent city or county. From the license fees that it collects, an agent city or county must pay the department an annual fee to cover the department’s costs. The department sets the fee by rule.

(2) By rule, the department establishes license fees for retail food establishments that it licenses directly. An agent city or county may charge a license fee that differs from the state license fee established by the department.

(3) Under current rules, an agent city or county must pay the department an annual fee, for each retail food establishment, that is equal to 20% of the license fee that the department would charge if it licensed the establishment directly.

(4) Effective February 1, 1998; the department increased license fees for retail food establishments that it licenses. The fee increase was caused, in part, by a legislative budget change that required the department to recover 60% (rather than 50%) of its program costs from license fees. The fee change approximately doubled the department’s license fees, increasing the maximum retail food license fee from \$210 to \$450 and the minimum fee from \$42 to \$90.

(5) The department’s 1998 license fee increase incidentally increased the annual fees that agent cities were required to pay to the department, beginning with the license year ending June 30, 1999. As a result of the department’s license fee increase, agent cities and counties were required to pay the department 20% of the increased license fee amounts. This change effectively doubled city and county fee payments to the department and imposed a serious financial burden on those city and county governments. The increased fee payments

also exceeded the amounts needed to cover the department’s costs under agent city and agent county agreements.

(6) In order to reduce the financial burden on local governments and eliminate the department’s surplus receipts, it is necessary to reduce the agent city and county percentage fee payment from 20% to 10% beginning with the license year that ends June 30, 2000. The public welfare necessitates that the department make this rule change by June 30, 2000. However, it is not possible to make this rule change by June 30 using normal rulemaking procedures. The department is, therefore, adopting this rule change by emergency rule, pending adoption by normal rulemaking procedures.

<b>Publication Date:</b>	<b>June 30, 2000</b>
<b>Effective Date:</b>	<b>July 1, 2000</b>
<b>Expiration Date:</b>	<b>November 29, 2000</b>

2. Rule adopted repealing **s. ATCP 134.06 (3) (c) note and creating s. ATCP 134.06 (3) (d)**, relating to residential rental practices.

#### Exemption from finding of emergency

On June 21, 2000, the Legislature’s Joint Committee for Review of Administrative Rules (JCRAR) found that the “note” to s. ATCP 134.06 (3) (c) is actually a rule and directed DATCP to adopt the “note” as an emergency rule. According to s. 227.26 (2) (b), Stats., DATCP must promulgate the emergency rule under s. 227.24 (1) (a), Stats., within 30 days after the JCRAR directs DATCP to do so. Because the JCRAR has directed DATCP to adopt this emergency rule, DATCP is not required to make any other finding of emergency.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state landlord-tenant rules contained in ch. ATCP 134, Wis. Adm. Code. These rules affect over 1.5 million Wisconsin residents.

This emergency rule modifies current residential rental practices rules related to security deposit withholding. Under current rules, a landlord may not withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible. A “note” to s. ATCP 134.06 (3) (c) also states that a landlord may not withhold from a tenant’s security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant neglect.

<b>Publication Date:</b>	<b>July 20, 2000</b>
<b>Effective Date:</b>	<b>July 20, 2000</b>
<b>Expiration Date:</b>	<b>December 18, 2000</b>

3. Rules adopted creating **ch. ATCP 16**, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis “non-modified accredited” state.

#### Finding of Emergency

(1) Bovine tuberculosis is a contagious, infectious and communicable disease caused by *Mycobacterium bovis* (*M. bovis*). It affects cattle, bison, deer, elk, goats and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts. Bovine tuberculosis causes weight loss and general debilitation, and can be fatal.

(2) Wisconsin is currently classified by the United States Department of Agriculture (USDA) as “accredited-free” for tuberculosis.

(3) The USDA recently reclassified Michigan from “accredited-free” to “non-modified accredited,” reflecting a higher risk of bovine tuberculosis.

(4) A significant number of bovine animals, goats and cervids are imported to Wisconsin from Michigan each year.

(5) The last known case of bovine tuberculosis in cattle in Wisconsin was confirmed in an animal imported from Michigan.

(6) If bovine tuberculosis becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in this state.

(7) An emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease in cattle, goats and cervids and will help protect the marketability of Wisconsin-raised animals.

<b>Publication Date:</b>	<b>August 11, 2000</b>
<b>Effective Date:</b>	<b>August 11, 2000</b>
<b>Expiration Date:</b>	<b>January 8, 2001</b>
<b>Hearing Date:</b>	<b>September 19, 2000</b>

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## Commerce – (2)

### (PECFA – Chs. Comm 46–47)

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

#### Exemption from finding of emergency

(See section 9110 (3yu) 1999 Wis. Act 9)

#### Analysis prepared by the Department of Commerce

Statutory authority: ss. 227.11 (2) (a) and 227.24 and s. 9110 (3yu) (b) of 1999 Wis. Act 9.

Statutes interpreted: ss. 101.143, 101.144, 292.11, and 292.31 and ch. 160

The proposed ch. Comm 46 is identical to ch. NR 746 that is being promulgated by the Department of Natural Resources.

Chapter Comm 46 provides that the Department of Natural Resources has authority for “high-risk sites” and that the Department of Commerce has authority for “low and medium risk sites.” The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a “high-risk site” or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter Comm 46 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.
2. Determining when sites may close.
3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum-contaminated site.
4. Tracking the achievement of remediation progress and success.
5. Reporting of program activities.

<b>Publication Date:</b>	<b>May 17, 2000</b>
<b>Effective Date:</b>	<b>May 18, 2000</b>
<b>Expiration Date:</b>	<b>September 1, 2000</b>
<b>Hearing Dates:</b>	<b>June 15, July 10 &amp; 12, 2000</b>
<b>Extension Through:</b>	<b>December 29, 2000</b>

2. Rules adopted amending **s. Comm 47.53**, relating to appeals of decisions issued under the Petroleum Environmental Cleanup Act (PECFA) program.

#### Finding of Emergency

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

The department is receiving funds from a bonding initiative to enable it to issue approximately 3,500 decisions on applications for PECFA funding which had been awaiting the availability of

funding. Because these decisions will be issued over a very short time frame, parties receiving decisions and law firms representing them, will be required to review and analyze a large volume of decisions to determine whether they wish to appeal specific departmental decisions. Given the large number of decisions and the normal rate of appeals, it is reasonable to expect that the public will be required to prepare and file a large volume of appeals within a short time period. Attorneys, lenders and consultants representing multiple claimants have expressed concern about the workload associated with having to review decisions and draft appeals on the higher volume of decisions issued by the department within the current 30 day window. The emergency rule temporarily expands the filing period from 30 days to 90 days to provide additional time to evaluate decisions and determine whether an appeal should be filed. The rule covers the time period when the highest volume of decisions are to be issued.

<b>Publication Date:</b>	<b>February 15, 2000</b>
<b>Effective Date:</b>	<b>February 15, 2000</b>
<b>Expiration Date:</b>	<b>July 14, 2000</b>
<b>Hearing Date:</b>	<b>March, 27, 2000</b>
<b>Extension Through:</b>	<b>October 11, 2000</b>

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## Health & Family Services

### (Community Services, Chs. HFS 30–)

Rules were adopted creating **ch. HFS 79**, relating to state supplemental security income payments.

#### Finding of Emergency

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

Sections 49.77 and 49.775, Stats., authorize the Department to administer Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. These SSI payments are funded by state general purpose revenue and federal Temporary Assistance for Needy Families (TANF) grant funding in excess of \$140,000,000 per state fiscal year. These payments are distributed monthly to approximately 100,000 beneficiaries and their dependent children. Neither s. 49.77 or 49.775, Stats., direct the Department to develop administrative rules to administer the program.

An unavoidable aspect of the program is the Department’s need to periodically recover payments incorrectly made to benefit recipients. Overpayments and incorrect payments occur due to delays in transmission of eligibility and pricing information between the federal Social Security Administration and the Department and are not due to the Department’s error or omission. On November 24, 1999, by order of the Wisconsin Court of Appeals, District II, the Department was found, absent administrative rule, to lack the authority to administratively recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits. The Department sought to appeal the decision to the Wisconsin Supreme Court, but recently learned that the Supreme Court will not hear the case. The Department’s inability to recover payments made in error will cost the Department about \$10,000 per month. Developing and promulgating permanent administrative rules to address the Court’s decision will require at least 7 months, thereby costing the Department approximately another \$70,000. The Department deems this unanticipated expense a threat to the public welfare insofar as Wisconsin and federal taxpayers should not be called upon to shoulder the burden of these unanticipated and undeserved expenses. Therefore, the Department is promulgating this emergency rule until the Department can promulgate a similar permanent rule.

This emergency rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to again effectively administer both state and federal public welfare funding. By issuing this rule, the Department will

effectively recover taxpayer monies to which recipients were not entitled, pending the promulgation of permanent rules.

**Publication Date:** September 5, 2000  
**Effective Date:** September 5, 2000  
**Expiration Date:** February 2, 2001  
**Hearing Date:** December 13, 2000

[See Notice this Register]

## Health & Family Services (Health, Chs. HFS 110–)

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

### Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. Department staff consulted with the Health Insurance Risk-Sharing Plan (HIRSP) Board of Governors on April 26, 2000 on the rules, as required by s. 149.20, Stats.

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

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty-four percent of the 8,427 HIRSP policies in effect in March 2000, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 12.4%. Rate increases for specific policyholders range from 3.5% to 15.0%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. This increase reflects industry-wide premium increases and takes into account the increase in costs associated with Plan 1 claims. According to state law, HIRSP premiums cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market. The average 12.4% rate increase for Plan 1 is the minimum increase necessary to maintain premiums at the lowest level permitted by law.

A second type of medical coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Sixteen percent of the 8,427 HIRSP policies in effect in March 2000, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 18.2%. Rate increases for specific policyholders range from 7.5% to 21%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry-wide cost increases and adjust premiums to a level that more accurately reflects actual claim costs for Plan 2 policyholders.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles. Policyholders are to pay 60% of the costs of HIRSP.

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 1999. The Board of Governors approved a 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, 2000. The total annual

contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$10,119,482. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$9,898,358. On April 26, 2000, the HIRSP Board of Governors approved the calendar year 1999 reconciliation process and the HIRSP budget for the plan year July 1, 2000 through June 30, 2001.

**Publication Date:** June 30, 2000  
**Effective Date:** July 1, 2000  
**Expiration Date:** November 29, 2000

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

1. Rules adopted revising **ch. NR 10**, relating to deer hunting in certain deer management units.

### 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. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and forest resources, and to minimize deer nuisance problems, thereby protecting the public peace, health, safety and welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify the rules will result in excessively high deer populations well above established goal levels, causing substantial deer damage to agricultural lands and forest resources, and potential for disease.

**Publication Date:** May 15, 2000  
**Effective Date:** August 4, 2000  
**Expiration Date:** January 1, 2001

2. Rules adopted revising **ch. NR 10**, relating to the 2000 migratory game bird season.

### Finding of Emergency

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

**Publication Date:** September 1, 2000  
**Effective Date:** September 1, 2000  
**Expiration Date:** January 29, 2001  
**Hearing Date:** October 16, 2000

3. Rules adopted creating **s. NR 1.445** and revising **ch. NR 51**, relating to the stewardship program.

### Exemption from finding of emergency

Emergency rules are necessary for the department to act as authorized under s. 23.0917, Stats., as created by 1999 Wis. Act 9. According to section 9136(10g) of this Act, the department is not required to make a finding of emergency or provide evidence that promulgating this emergency rule is necessary for the preservation of public peace, health, safety or welfare. In addition, the emergency rules promulgated under this authority remain in effect until June 30, 2001, or until the date on which the corresponding permanent rules take effect, whichever is sooner.

### Analysis prepared by the Department of Natural Resources:

Statutory authority: ss. 227.11(2), 227.24, Stats. and s. 9136 (10g), 1999 Wis. Act 9

Statutes interpreted: ss. 23.09(19), (20) and (20m), 23.0917, 23.092, 23.094, 23.096, 23.098, 23.17, 23.175, 23.197, 23.27, 23.29, 23.295, 30.24 and 30.277, Stats.

The emergency rule:

- Implements a statutory change that requires the department to obtain county approval for acquisitions in counties where greater than 66% of the land is publicly owned.

- Moves three stewardship grant programs (local park aids, urban green space, and urban rivers) from ch. NR 50 to ch. NR 51. Improves grant administration by combining all stewardship grant programs into one chapter.

- Revises and expands program definitions, including definitions for nature-based outdoor recreation and middle kettle moraine, to clarify terms, reflect statutory changes and improve grant administration.

- Implements a statutory change that expands grant eligibility to include non 501(c)(3) organizations.

- Reorganizes the structure of chapter 51 to incorporate new programs and local government programs.

- Implements statutory changes that identify priorities and expand the purposes for which nonprofit conservation organizations can receive grants. Makes minor revisions to improve grant administration.

- Makes minor revisions to bring the natural areas program in line with statutory changes.

- Establishes the administrative framework for the new bluff protection program. Defines "bluff" and sets program priorities.

- Makes minor revisions in the habitat areas and fisheries program to bring the program in line with statutory changes and improve grant administration.

- Establishes the administrative framework for acquisition of property by the department and nonprofit conservation organizations to preserve wild lakes. Defines "wild lake."

- Makes minor revisions to the stream bank program to bring the program in line with statutory changes.

- Makes minor revisions to the state trails program to improve grant administration.

- Implements a statutory change that makes nonprofit conservation organizations eligible for grants for state property development. Revises grant priorities and makes minor revisions to improve administration of the state property development grant program.

- Establishes the administrative framework and sets priorities for the new Baraboo Hills subprogram.

- Clarifies and streamlines the administration of local assistance grants to governmental units.

- Clarifies and streamlines the administration of the local park aids, urban green space, and urban rivers grant programs which provide grant funds for governmental units and nonprofit conservation organizations. Implements statutory changes that require that all grants issued under these programs be for nature-based outdoor recreation. Lists eligible nature-based projects and sets grant priorities. Also implements a statutory change that allows "shoreline enhancements" to be funded under the urban rivers program and provides a list of typical shorelines enhancements that will qualify for the program.

- Establishes the administrative framework for the new acquisition of development rights program that provides grant funds to local governments and nonprofit conservation organizations. Sets priorities and identifies other factors that will be considered in awarding grants.

- Makes minor revisions to improve administration of the Heritage state park and forest trust program.

<b>Publication Date:</b>	<b>September 1, 2000</b>
<b>Effective Date:</b>	<b>September 1, 2000</b>
<b>Expiration Date:</b>	<b>See section 9136 (10g), 1999 Wis. Act 9</b>
<b>Hearing Dates:</b>	<b>November 1 &amp; 2, 2000</b>

4. Rules adopted revising **ch. NR 47**, relating to the federal cost sharing program to suppress gypsy moths.

#### Finding of Emergency

An emergency rule is necessary in order to make the cost shared gypsy moth suppression program available for aerial treatments in May 2001. Given the survival of caterpillars this summer, the department expects that populations of gypsy moth will be high enough in some localities in 2001 to necessitate suppression to protect tree health. In order to offer participation in the aerial treatment project and cost sharing from the U.S. Forest Service, it is necessary that preparatory work be done this fall and winter to define treatment blocks. When gypsy moth outbreaks occur, the public typically becomes concerned and looks for ways to reduce the

population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner and others when pesticides are not used according to directions. The Department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

<b>Publication Date:</b>	<b>November 10, 2000</b>
<b>Effective Date:</b>	<b>November 10, 2000</b>
<b>Expiration Date:</b>	<b>April 9, 2001</b>

### Natural Resources

#### (Environmental Protection – General, Chs. NR 100–)

Rules adopted creating **ch. NR 168**, relating to the brownfield site assessment grant program administration.

#### Finding of Emergency

This rule implements the brownfield site assessment grant program. Created in the 1999–2000 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination of an eligible site or facility; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos as part of demolition activities; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. The legislature appropriated \$1.45 million for the 99–01 biennium for these grants. Local governments are required to contribute matching funds as cash or in-kind, or both, equal to 20% of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that 70% of available funds are to be allocated to "small" grants (i.e. a grant award between \$2,000 and \$30,000); and 30% of available funds are to be allocated to "large" grants (i.e. a grant award of more than \$30,000 but not more than \$100,000). Act 9 required that the department promulgate these rules as necessary to administer the program, and directed the department to promulgate them as emergency rules.

<b>Publication Date:</b>	<b>July 10, 2000</b>
<b>Effective Date:</b>	<b>July 10, 2000</b>
<b>Expiration Date:</b>	<b>December 8, 2000</b>

### Natural Resources

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

Rules adopted revising **chs. NR 700, 716, 720, 722, 726 and creating ch. NR 746**, relating to site contaminated with petroleum products discharged from petroleum storage tanks.

#### Exemption from finding of emergency

(See section 9110 (3yu) 1999 Wis. Act 9)

The proposed ch. NR 746 is identical to ch. Comm 46 that is being promulgated by the Department of Commerce.

Chapter NR 746 provides that the Department of Natural Resources has authority for "high-risk sites" and that the Department of Commerce has authority for "low and medium risk sites." The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a "high-risk site" or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter NR 746 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.

2. Determining when sites may close.

3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum-contaminated site.

4. Tracking the achievement of remediation progress and success.

5. Reporting of program activities.

The amendments and new provisions that are proposed to be added to chs. NR 700, 716, 720, 722 and 726, as part of this rule package, consist of cross-references to ch. NR 746 that are proposed to be inserted in chs. NR 700, 716 and 726, and exemptions from the requirements in chs. NR 720 and 722 that would conflict with the requirements in ch. NR 746: that is, an exemption from the soil cleanup standards in ch. NR 720 and the remedial action option evaluation requirements in ch. NR 722 for those sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy the risk criteria in s. NR 746.06 and are eligible for closure under s. NR 746.07.

<b>Publication Date:</b>	<b>May 17, 2000</b>
<b>Effective Date:</b>	<b>May 18, 2000</b>
<b>Expiration Date:</b>	<b>September 1, 2000</b>
<b>Hearing Dates:</b>	<b>June 15, July 10 &amp; 12, 2000</b>
<b>Extension Through:</b>	<b>December 29, 2000</b>

## Public Service Commission

Rules adopted creating **s. PSC 2.06**, relating to procedures for the confidential treatment of records.

### Exemption from finding of emergency

At the direction of the Joint Committee for Review of Administrative Rules under s. 227.26 (2) (b), Stats., the Commission adopts a rule to create s. PSC 2.06, Wis. Adm. Code, relating to procedures for the confidential treatment of records.

### Analysis by the Public Service Commission

Statutory authority: ss. 196.02(1) and (3), 227.11, 227.24 and 227.26, Stats.

Statutes interpreted: ss. 196.14, 196.72 and 196.795(9), Stats.

On August 15, 2000, the Commission voted to promulgate administrative rules on requests for confidential handling of documents filed with the Commission. On September 20, 2000, the Joint Committee for Review of Administrative Rules directed the Commission to adopt a rule on the subject under s. 227.26(2)(b), Stats. This rule creates a process for obtaining a designation of confidential status. Under the rule, a determination on whether information shall be treated confidentially shall be made at the time the information is given to the Commission. Under previous Commission procedures, if a person filing a document sought confidential treatment of information in the document, the filer could do so by identifying the grounds under which confidentiality could be granted. The Commission would accept the filing, but the acceptance did not constitute a determination that public access to the information would not be permitted. The Commission would determine if confidential status should be granted when a request for that information was made by another person.

Under this rule, a person who wishes the Commission to keep confidential information in the possession of the Commission, or requested by the Commission, must make an application for confidential status. The application must identify the information for which confidential treatment is sought and identify the authority under which confidential status should be granted. Within 21 days after receiving an application, the Commission may seek additional information from the applicant, if needed, to make a confidentiality determination. The applicant must respond within 30 days to the information request.

The Commission will make a determination on a confidentiality request within 30 days of receiving the additional information or within 30 days of the filing of the application if no additional information is needed. The determination will specify what, if any,

information is given confidential treatment and the basis for that determination.

The Commission will give the applicant written notice of its determination. The Commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice. If an applicant is authorized to file information confidentially in the context of a Commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for that proceeding.

<b>Publication Date:</b>	<b>October 23, 2000</b>
<b>Effective Date:</b>	<b>October 23, 2000</b>
<b>Expiration Date:</b>	<b>March 22, 2001</b>

## Regulation and Licensing

Rules adopted revising **chs. RL 90 to 92**, relating to educational and examination requirements for massage therapists and bodyworkers.

### Exemption from finding of emergency

Section 2 of 1999 Wis. Act 98 states that the department is not required to make a finding of emergency and that the department need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules.

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

Statutory authority: s. 227.11 (2), Stats., and s. 440.982 (1) (b), Stats., as amended by 1999 Wis. Act 98.

Statutes interpreted: ss. 440.03 (1) and 440.982 (1) (a) and (b), Stats.

The emergency rule revision to chs. RL 90, 91 and 92 is necessary to implement 1999 Wis. Act 98, relating to educational and examination requirements for massage therapists and bodyworkers. The rules redefine an approved course of instruction to state that a course of instruction may now be approved by the department in addition to being offered by a school approved by the Educational Approval Board under s. 45.54, Stats. Prior to 1999 Wis. Act 98, an approved course of instruction could only be offered by a school approved by the Educational Approval Board.

The rules provide that a course of instruction approved by the department is either: (1) an associate degree program, or a vocational diploma program in massage therapy or bodywork offered by a technical college, or (2) a course of instruction in massage therapy or bodywork offered by a school accredited by an accrediting agency recognized by the U.S. Department of Education, or the Commission on Massage Training Accreditation.

An approved course of instruction must also meet the minimum requirements set forth in s. RL 92.02 (5), consisting of 600 classroom hours satisfying the subject area requirements listed in that section. Additional amendments renumber those remaining sections where affected.

SECTIONS 2, 4 and 6 create definitions of accrediting agency, associate degree program and vocational diploma program.

SECTION 3 renumbers and amends a provision to allow the department to approve a course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 7 amends the introduction to s. RL 91.01, removing a reference to a section that is deleted.

SECTION 8 repeals a provision relating to a registration that is no longer offered.

SECTION 9 renumbers and amends a provision relating to an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 11 renumbers and amends provisions relating to successful completion of examinations required for registration.

SECTION 13 amends a provision relating to the submitted proof pertaining to completion of an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 14 repeals a reference to a formerly approved course of instruction and creates a provision that a course of instruction from a school that is not approved by the educational approval board be from a school that is either a technical college or accredited by an accrediting agency.

SECTION 15 amends provisions to require evidence that the applicant completed a course in adult cardiopulmonary resuscitation.

<b>Publication Date:</b>	<b>September 3, 2000</b>
<b>Effective Date:</b>	<b>September 3, 2000</b>
<b>Expiration Date:</b>	<b>January 31, 2001</b>
<b>Hearing Date:</b>	<b>October 3, 2000</b>

## Revenue

Rules were adopted creating **s. Tax 9.69**, relating to the Master Settlement Agreement between the state of Wisconsin and tobacco product manufacturers.

### Exemption from finding of emergency

Under a nonstatutory provision in 1999 Wis. Act 122, the Department of Revenue is authorized to promulgate an emergency rule. The emergency rule is for the purpose of setting forth the requirements and methods to be used to ascertain the amount of Wisconsin excise tax paid each year on cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund or, if the department deems it appropriate, is a participating manufacturer under the Master Settlement Agreement between the state and tobacco product manufacturers. The emergency rule shall cover the period from the effective date of 1999 Wis. Act 122, May 23, 2000, to the date a permanent rule becomes effective. (Note: The department is required under s. 895.10 (4), Stats., as created by 1999 Wis. Act 122, to promulgate a rule and is required under a nonstatutory provision to submit a proposed permanent rule to the Legislative Council by September 1, 2000.)

A nonstatutory provision in 1999 Wis. Act 122 provides that the department is not required to provide a finding of emergency or to provide evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare.

The rule is therefore promulgated as an emergency rule without a finding of emergency and without evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The rule shall take effect upon publication in the official state newspaper and shall apply retroactively to sales of cigarettes on or after May 23, 2000, as provided in s. 895.10 (2) (intro.), Stats., as created by 1999 Wis. Act 122. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

<b>Publication Date:</b>	<b>August 17, 2000</b>
<b>Effective Date:</b>	<b>August 17, 2000</b>
<b>Expiration Date:</b>	<b>January 14, 2001</b>
<b>Hearing Date:</b>	<b>September 18, 2000</b>

## Tobacco Control Board

Rules adopted creating **ch. TCB 1**, relating to the administration and awarding of grants for tobacco control and establishing criteria for recipients of the grants.

### Finding of Emergency

The Wisconsin Tobacco Control Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the health, safety and welfare of Wisconsin residents, particularly youth and current smokers. A statement of the facts constituting the emergency is as follows:

The health and fiscal impact of tobacco use are well documented. In Wisconsin alone, 7,800 deaths occur each year from tobacco-related disease. In addition, Wisconsin government, residents and health care providers pay over \$1.3 billion annually for health care costs associated with tobacco use.

While tobacco's effects are in individuals' futures, immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been a 19 percent increase in high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease and stroke.

In addition, tobacco use among specific populations continues to present an ongoing threat to the health of Wisconsin citizens. Wisconsin has a rate of tobacco use among pregnant women that is 30 percent higher than the national average. In addition, the national smoking rate among African-American youth doubled from 14 percent in 1993 to 28 percent in 1997. Finally, the 48% smoking rate of Medicaid recipients is twice the rate of the general population.

The ongoing and emerging health impacts and costs associated with tobacco use necessitate the immediate implementation of the comprehensive initiative to address tobacco use in Wisconsin.

The Board, through this order, is creating chapter TCB 1 relating to the Board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants. The rule is being promulgated under the authority of s. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation and eliminating environmental tobacco smoke.

<b>Publication Date:</b>	<b>November 7, 2000</b>
<b>Effective Date:</b>	<b>November 7, 2000</b>
<b>Expiration Date:</b>	<b>April 6, 2001</b>

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

Rules adopted creating **s. DWD 12.28**, relating to Wisconsin works disregard of year 2000 census income.

### Finding of Emergency

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

The Department of Workforce Development is acting under its statutory authority to establish additional eligibility criteria and specify how eligibility criteria are to be administered for the Wisconsin Works (W-2) program. The department is promulgating a rule to exclude income earned from temporary employment with the U.S. Census Bureau in determining W-2 and child care eligibility and child care copayments. The rule will contribute to the welfare of the people of Wisconsin by broadening the pool of available workers to help ensure an accurate Census count, particularly in low-income neighborhoods. The rule must be effective immediately because temporary Census employment is expected to begin April 2000 and last two to six months. DWD will not be seeking a permanent rule on this issue.

<b>Publication Date:</b>	<b>April 9, 2000</b>
<b>Effective Date:</b>	<b>April 9, 2000</b>
<b>Expiration Date:</b>	<b>September 6, 2000</b>
<b>Hearing Date:</b>	<b>May 15, 2000</b>
<b>Extension Through:</b>	<b>December 31, 2000</b>

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### Agriculture, Trade and Consumer Protection

#### Subject

Chs. ATCP 29 and 35 – Relating to the agricultural chemical cleanup program.

#### Description of Policy Issues

*Objectives of the rule.* To increase fees to maintain required minimum balance in agricultural chemical cleanup fund; to clarify eligibility for reimbursement of agricultural chemical cleanup costs.

*Existing policies, new policies and an analysis of policy alternatives.* DATCP administers an agricultural chemical cleanup program under s. 94.73, Stats. The program is designed to promote cleanup of agricultural chemical spills. DATCP may reimburse eligible persons a portion of their costs to clean up spills. DATCP makes reimbursement payments from the agricultural chemical cleanup fund, which is financed by agricultural chemical company license surcharges.

DATCP may modify surcharges by rule. DATCP must establish surcharges to keep the fund balance between \$2 million and \$5 million at the end of each fiscal year. A fee increase will be needed during FY 2001–2002 to maintain the required minimum balance of \$2 million. If the Legislature appropriates more GPR funds for this program, a smaller fee increase will be needed.

DATCP also proposes minor rule changes to clarify eligibility for reimbursement of agricultural chemical cleanup costs. Current law is vague on whether certain applicants may qualify for reimbursement.

If DATCP does not increase fees, and the Legislature provides no additional GPR appropriations, fund balances will drop below required statutory levels and eligible applicants will be denied funding. Cleanups will be delayed and environmental damage will increase. Failure to clarify reimbursement eligibility may result in legal disputes.

The Legislature could provide enough GPR funding to replace the GPR funding that the Legislature removed from the fund in the past. Depending on the amount of legislative funding, this would reduce the need for a license fee increase. If the Legislature does not provide enough funding to maintain the required minimum fund balance, DATCP is legally obligated to increase fees.

#### Statutory Authority

Section 94.73 (15)

#### Staff Time Required

DATCP estimates that it will use approximately 0.1 FTE staff to develop this rule. This includes investigation; drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

### Commissioner of Insurance

#### Subject

Ins 4.01 – Relating to whether mobile homes are subject to the valued property law.

#### Description of Policy Issues

*Objective of the rule.* To reconsider the definition of mobile homes as real property and when total losses of mobile homes are subject to the valued policy law.

*Existing policies, new policies and an analysis of policy alternatives.* The current rule defines mobile homes as not subject

to s. 632.05, Stats, only in terms of whether they once were on wheels and does not consider whether the “mobile home” is currently basically a permanent structure and considered real property under other laws such as the tax laws s. 70.043 (1), Stats.

#### Statutory Authority

Sections 601.41 (3), 632.05 and 628.34 (12)

#### Staff Time Required

60 hours

### Commissioner of Insurance

#### Subject

Ins 6.50, 6.57, 6.58, 6.59, 6.61, Ch. 22, Ch. 26, Ch. 28 and possibly other sections – Relating to conformance to the NAIC Model Producer Act, compliance with the Gramm–Leach–Bliley Act and rental car insurance issues.

#### Description of Policy Issues

*Objective of the rule.* Under federal law, Wisconsin and other states must become reciprocal or uniform otherwise a national licensing body would be created. These changes would attempt to accomplish this. The changes would attempt to make insurance producer licensing more uniform and simplify multi–state licensing. In addition, consideration for licensing regarding Rental Car insurance and legal expense insurance.

*Existing policies, new policies and an analysis of policy alternatives.* This is a broad revision of Wisconsin intermediary licensing rules prompted by federal legislation. If Wisconsin and at least 27 other states do not enact “reciprocal” or “uniform” rules regarding licensing, a federal licensing body (similar to NASD) would be created to take over insurance agent licensing functions from the states. The NAIC model Producer Act was developed by state insurance regulatory bodies to accomplish this.

#### Statutory Authority

Sections 601.41 (3), 628.02 to 628.11, 628.40 and 628.34 (12)

#### Staff Time Required

400 hours

### Workforce Development

#### Subject

DWD 14.24 – Relating to stale electronic food stamp accounts.

#### Description of Policy Issues

*Objective of the rule.* To repeal DWD 14.24, which allows the department to deactivate electronic food stamp accounts that have not been accessed for 90 days. After deactivation, the benefits are made available to the food stamp group if they reapply for food stamps or contact the local economic support agency.

*Existing policies, new policies and an analysis of policy alternatives.* DWD 14.24 was intended to ensure contact with food stamp recipients who are not using their electronic benefit cards. Based on feedback from local agencies, client advocates and others, DWD now is concerned that the process by which accounts are deactivated and then need to be reactivated has the potential to serve as a barrier to participation, particularly among the elderly and disabled. DWD further has decided that this potentiality outweighs any value the current policy may have in ensuring contact with recipients. The new policy will repeal the department’s authority to deactivate accounts that have not been accessed for 90 days. DWD



will initiate other efforts to communicate with recipients who are not using their cards to discuss any concerns they may have.

**Statutory Authority**

Sections 49.129 (7) and 227.11 (2)

**Staff Time Required**

35 hours

**Workforce Development****Subject**

DWD 80.67 – Relating to worker’s compensation insurer name change or reorganization.

**Description of Policy Issues**

*Objective of the rule.* The current rule provides that when there is a change in the name, ownership, or control of a worker’s compensation insurance company, the insurer must notify DWD and the Wisconsin Compensation Rating Bureau (WCRB) 90 days prior to the change. The current rule also requires the insurer to notify its insured employers by issuing a new policy.

The proposed rule changes the notice requirement from 90 days to 30 days, consistent with the 30–day notice requirement that the

Office of the Commissioner Insurance (OCI) applies to all insurers. The proposed rule also offers worker’s compensation insurers the option to notify employers of these changes by endorsement. In this situation, an endorsement is a one–page amendment to the employer’s insurance policy that clearly notifies the employer that the insurer has a new name, a change in ownership or control, or both.

*Existing policies, new policies and an analysis of policy alternatives.* DWD and WCRB agree that they do not need more than the 30–day notice that OCI receives. DWD and WCRB also agree that allowing insurers to amend employers’ insurance policies by endorsement is equally effective to alert employers of the name change. Endorsement is a common industry practice to accomplish minor changes approved by OCI. The notice to employers provided by the endorsement helps to assure that claims by injured workers are properly routed without delay.

**Statutory Authority**

Sections 102.15 (1) and 102.31 (2) (a)

**Staff Time Required**

40 hours, including the time DWD staff spend coordinating the rule change with WCRB and OCI.



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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.*

#### Commerce

##### Rule Submittal Date

On November 6, 2000, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule-making order affects chs. Comm 2, 5 and 20 to 25, relating to uniform dwelling code inspection agencies.

##### Agency Procedure for Promulgation

A public hearing is required and will be held on December 12, 2000.

##### Contact Information

If you have questions, please contact:

Duane Hubeler  
Telephone: (608) 266-1390  
Mailing Address:  
Department of Commerce  
4th Floor, 201 W. Washington Avenue  
P.O. Box 7970  
Madison, WI 53707

#### Natural Resources

##### Rule Submittal Date

On October 26, 2000, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule-making order affects chs. NR 1, 10, 12 and 19, relating to deer hunting and the wildlife damage abatement and claims program.

##### Agency Procedure for Promulgation

Public hearings will be held on December 4, 5, 11, 12, 13 and 14, 2000.

##### Contact Information

If you have questions, please contact:

William VanderZouwen  
Telephone: (608) 266-8840  
Mailing address:  
Bureau of Wildlife Management  
Dept. of Natural Resources  
101 S. Webster Street  
Madison, WI 53703

#### Natural Resources

##### Rule Submittal Date

On November 8, 2000, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule-making order affects s. NR 1.95, relating to wetlands preservation, protection, restoration and management.

##### Agency Procedure for Promulgation

Public hearings will be held on December 11, 12, 13, 14, 18 and 19, 2000.

##### Contact Information

If you have questions, please contact:

Scott Hausmann  
Telephone: (608) 267-7498  
Mailing address:  
Bureau of Fisheries Management and Habitat Protection  
Dept. of Natural Resources  
101 S. Webster Street  
Madison, WI 53703

#### Natural Resources

##### Rule Submittal Date

On November 8, 2000, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule-making order affects chs. NR 103 and 350, relating to wetland compensatory mitigation.

##### Agency Procedure for Promulgation

Public hearings will be held on December 11, 12, 13, 14, 18 and 19, 2000.

##### Contact Information

If you have questions, please contact:

Scott Hausmann  
Telephone: (608) 267-7498  
Mailing address:  
Bureau of Fisheries Management and Habitat Protection  
Dept. of Natural Resources  
101 S. Webster Street  
Madison, WI 53703

#### Natural Resources

##### Rule Submittal Date

On November 8, 2000, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule-making order affects chs. NR 422, 460, 465 and 484, relating to volatile organic compound emissions and national emission standards for hazardous air pollutants for wood furniture manufacturing.

##### Agency Procedure for Promulgation

Public hearings will be held on December 14 and 15, 2000.

**Contact Information**

If you have questions, please contact:  
Robert Eckdale  
Telephone: (608) 266-2856  
Mailing address:  
Bureau of Air Management  
Dept. of Natural Resources  
101 S. Webster Street  
Madison, WI 53703

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

On November 8, 2000, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule-making order affects ch. NR 809, relating to public notification requirements for public water systems.

**Agency Procedure for Promulgation**

Public hearings will be held on December 14 and 15, 2000.

**Contact Information**

If you have questions, please contact:  
Don Swailes  
Telephone: (608) 266-7093  
Mailing address:  
Bureau of Drinking Water and Groundwater  
Dept. of Natural Resources  
101 S. Webster Street  
Madison, WI 53703

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

On November 8, 2000, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule-making order affects ch. NR 809, relating to lead and copper monitoring and treatment requirements for public water systems.

**Agency Procedure for Promulgation**

Public hearings will be held on December 14 and 15, 2000.

**Contact Information**

If you have questions, please contact:  
Don Swailes  
Telephone: (608) 266-7093  
Mailing address:  
Bureau of Drinking Water and Groundwater  
Dept. of Natural Resources  
101 S. Webster Street  
Madison, WI 53703

**Pharmacy Examining Board****Rule Submittal Date**

On November 6, 2000, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 15.08 (5) (b), 227.11 (2), 450.02 (2g) (a) and (3) (e), 450.03 (2) and 450.04 (1).

The proposed rule-making order relates to consultation programs and licensure requirements.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on December 12, 2000.

**Contact Information**

If you have questions, please contact:  
Pamela Haack  
Telephone: (608) 266-0495  
Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)  
Mailing address:  
Office of Administrative Rules  
Dept. of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708

**Pharmacy Examining Board****Rule Submittal Date**

On November 6, 2000, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a) and (e).

The proposed rule-making order relates to supervising pharmacy interns.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on December 12, 2000.

**Contact Information**

If you have questions, please contact:  
Pamela Haack  
Telephone: (608) 266-0495  
Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)  
Mailing address:  
Office of Administrative Rules  
Dept. of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board****Rule Submittal Date**

On November 6, 2000, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) and 457.03 (3)

The proposed rule-making order relates to the state jurisprudence examination.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on January 11, 2001.

**Contact Information**

If you have questions, please contact:  
Pamela Haack  
Telephone: (608) 266-0495  
Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)  
Mailing address:  
Office of Administrative Rules  
Dept. of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708

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# NOTICES

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## Notice of Hearings

### Agriculture, Trade and Consumer Protection

[CR 00-145]

(Reprinted from mid-November Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" states. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rules. Following the public hearings, the hearing record will remain open until **December 8, 2000**, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4883. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **Friday, November 17, 2000**, by writing to Lynn Miller, Division of Animal Health, P.O. Box 8911, Madison WI. 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Two hearings are scheduled:

**Tuesday, November 28, 2000, 6:30 pm until 8:30 pm**  
**Dept. of Agriculture, Trade and Consumer Protection**  
**Board Room**  
**2811 Agriculture Drive**  
**Madison, WI 53704**  
**Handicapped accessible**

**Thursday, November 30, 2000, 6:30 pm until 8:30 pm**  
**Dept. of Agriculture, Trade and Consumer Protection**  
**Conference Room**  
**3610 Oakwood Hills Parkway**  
**Eau Claire, WI 54701-7754**  
**Handicapped accessible**

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

Statutory Authority: s. 93.07 (1)

Statute Interpreted: ss. 93.07 (10), 95.20 and 95.25

In order to protect animals and the public from bovine tuberculosis, this rule restricts the importation of animals from states that the United States department of agriculture (USDA) has classified as tuberculosis "non-modified accredited".

### Background

Bovine tuberculosis (TB) is an infectious disease caused by *Mycobacterium bovis* (*M. bovis*). It is generally described as a chronic debilitating disease of cattle but it may have an acute, rapidly progressive course. It can cause disease in most warm-blooded vertebrates, including humans. If TB becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in the state.

The Wisconsin department of agriculture, trade and consumer protection (department) administers a TB eradication program in cooperation with USDA. After several decades of intense effort, the disease was nearly eradicated in the United States. But recently, the USDA reclassified Michigan from "accredited-free" to

"non-modified accredited" because TB was confirmed in several cattle herds and in several native white-tailed deer.

TB is easily transmitted. Wisconsin imports a substantial number of animals from Michigan, and the last known incident of TB in a bovine animal in Wisconsin involved an animal that was imported from Michigan. For these reasons, the department proposes to regulate the import of animals that originate from "non-modified accredited" states.

### Pre-Import Requirements

Under this rule, bovine animals, goats and cervids imported to Wisconsin from a tuberculosis "non-modified accredited" state must be accompanied by a certificate of veterinary inspection. The importer must obtain an import permit from the department.

The veterinarian who completes the certificate of veterinary inspection must certify that the animal originates from a herd in which a whole herd TB test has been completed within the last 12 months. The veterinarian must certify that the whole herd test included every animal over 6 months of age in the herd, and that all test results were negative.

An imported animal must be individually tested for tuberculosis within 60 days (90 days for a cervid) prior to the import date, unless the animal is less than 6 month old on the import date. The test may be performed as part of a whole herd test if the whole herd test is performed within 60 days (90 days for a cervid) prior to the import date.

### Post-Import Testing

An animal imported to Wisconsin from a tuberculosis non-modified accredited state must be tested for tuberculosis not less than 90 days nor more than 120 days after it is imported. This testing requirement does not apply to feeder cattle that are confined to the receiving premises until they are shipped to slaughter. (The feeder cattle, when shipped to slaughter, must be accompanied by USDA form VS1-27.)

### Post-Import Confinement

Animals imported to Wisconsin from a tuberculosis non-modified accredited state may not be commingled with any other animals in this state, or removed from the premises at which they are first received in this state, until they test negative for tuberculosis or are shipped to slaughter.

### Exception

This rule does not apply to animals that are imported directly to a slaughtering establishment for slaughter.

### Fiscal Estimate

The Department anticipates costs to the Department of approximately \$2000 as a result of this rule. The Department can accommodate these costs in its current budget. The Department does not anticipate any additional costs to counties or other local governments.

### Initial Regulatory Flexibility Analysis

This rule will affect small businesses that import bovine animals, goats or cervids into this state. It requires the operator of those businesses to either refrain from importing bovine animals, goats or cervids from states the United States department of agriculture has designated as tuberculosis non-modified accredited states, or to comply with the standards this rule establishes to assure that the animals that are imported are not infected with bovine tuberculosis.

At the present time, the USDA has only designated one state, Michigan, as non-modified accredited. If the small business operator imports bovine animals, goats or cervids from Michigan, the operator will need to assure that the animal originates from a herd which has tested negative for tuberculosis within the past 12 months

and that the animal has tested negative within the past 60 days (90 days for cervids). This places a burden on the business operator but it does not completely prohibit import of animals from Michigan. The burden of assuring that the animals have been properly tested is minimal compared to the burden that would be experienced by Wisconsin's animal agriculture industry if bovine tuberculosis is introduced to Wisconsin by an animal imported from a non-modified accredited state.

This rule requires persons, including small business operators, who import animals from non-modified accredited states to have the animals retested for tuberculosis after being imported. The imported animals must be kept segregated from other animals until the retest is completed. These requirements add costs for the importer, but the costs that would be incurred if infected animals are imported without these precautions are substantially higher. And, the importer has the ability to avoid these costs entirely by importing animals from other states of origin rather than from a non-modified accredited state.

## Notice of Hearings

### Agriculture, Trade and Consumer Protection

[CR 00-146]

(Reprinted from mid-November Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule relating to reimbursement of Johne's Disease testing costs. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until December 8, 2000, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4883. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **Friday, November 17, 2000**, by writing to Lynn Miller, Division of Animal Health, P.O. Box 8911, Madison WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Two hearings are scheduled:

**Tuesday, November 28, 2000, 2:00 pm until 4:00 pm**  
**Dept. of Agriculture, Trade and Consumer Protection**  
**Board Room**  
**2811 Agriculture Drive**  
**Madison, WI 53704**  
**Handicapped accessible**

**Thursday, November 30, 2000, 2:00 pm until 4:00 pm**  
**Dept. of Agriculture, Trade and Consumer Protection**  
**Conference Room**  
**3610 Oakwood Hills Parkway**  
**Eau Claire, WI 54701-7754**  
**Handicapped accessible**

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

Statutory Authority: ss. 93.07 (1) and 95.197 (2)

Statute Interpreted: s. 95.197

Johne's disease (paratuberculosis) is a serious disease of cattle. The 1999-2001 biennial budget act (1999 Wis. Act 9) established a grant program to help cattle owners pay for Johne's disease testing. The department of agriculture, trade and consumer protection (DATCP) administers the grant program. This rule establishes standards for the grant program, as required by the biennial budget act.

## Background

Under s. 95.197, Stats., and current DATCP rules, a seller warrants that cattle are free of Johne's disease at the time of sale unless the seller discloses to the prospective buyer the current Johne's disease herd classification of the source herd. Every herd of cattle has a Johne's disease herd classification.

A herd is automatically classified "maximum risk for Johne's disease" unless DATCP assigns a different herd classification based on an annual herd test. DATCP may assign one of several herd classifications, based on annual herd test results. An annual herd test is voluntary. A herd owner may arrange and pay for an annual herd test, and may ask the department to classify the herd based on the test results.

## Grant Program

The biennial budget act (1999 Wis. Act 9) provided \$100,000 in grant funds FY 2000-01 to help cattle owners pay for annual Johne's disease herd tests. Under this rule, a herd owner who asks the department to classify a herd based on an annual herd test may apply for reimbursement of laboratory costs associated with the annual test. When DATCP classifies the herd, it will tell the herd owner how to apply for reimbursement.

To obtain reimbursement, a herd owner must file a claim by February 1 of the year following the year in which the herd owner tests the herd. The herd owner must submit copies of bills that establish the amount of laboratory costs charged to the herd owner. DATCP will distribute available funds by June 30 (following the February 1 annual application deadline).

DATCP may reimburse all or part of an applicant's claim, depending on available funding. If allowed claims exceed available funding, DATCP will pay each herd owner a pro rata share based on the amount of each herd owner's allowed claim. A herd owner may not resubmit the unpaid portion of a claim in a subsequent year.

## Fiscal Estimate

The Department estimates that 2400 herds will be classified over a 12 month period and that 80% of the herd owners will file a reimbursement claim. If each claim requires 20 minutes to review and enter data for payment, the cost for salary and fringe will be \$12,600. We estimate postage will cost \$600 per year. The department will absorb these costs in the existing budget by reprioritizing staff assignments and expenses.

This estimate covers costs for the first year of the program only. Herd participation is expected to increase approximately 20 to 50% each year. This will also increase costs incurred by the department at a similar rate. At some point in time, the department may not be able to absorb the costs.

## Small Business Analysis

This rule will help cattle owners by reimbursing Johne's disease testing costs. The department has minimized procedural requirements related to reimbursement application, so that it will be easy for herd owners to apply. The department has included only those requirements that are necessary to ensure financial accountability in the distribution of public funds. This rule gives herd owners a substantial amount of time to apply for reimbursement. Herd owners must simply document the laboratory costs for which they seek reimbursement. DATCP will give herd owners information on how to apply.

## Initial Regulatory Flexibility Analysis

This rule establishes standards for the grant program created by 1999 Wis. Act 9 to assist cattle owners in paying for Johne's disease testing. It will affect cattle owners who wish to obtain reimbursement for a portion of the costs incurred to test their herds for Johne's disease.

When a herd owner has his herd tested for Johne's disease and requests that the herd be classified on the basis of that test, the department will advise the herd owner that he or she is eligible to participate in the grant program. To participate in the grant program, the herd owner must file a claim no later than February 1 of the year following the calendar year in which the herd was tested. The owner must provide copies of bills from either the veterinarian or the laboratory to establish amount of laboratory costs incurred.



This claim filing process is the least onerous possible that is consistent with the state's need to audit and assure that grants are only given in appropriate amounts to eligible owners. The rule permits filing the claim anytime between the date their herd is classified and February 1 of the year after the testing is conducted. This allows significant flexibility for the animal owner.

It is not anticipated that the animal owner will need any significant professional skills to complete the claim form and become eligible for a grant under this rule.

**Notice of Hearing**  
**Commerce**  
**(Uniform Dwelling, Chs. Comm 20–25)**  
**[CR 00–159]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.651, 101.72 and 101.74, Stats., the Department of Commerce will hold a public hearing on proposed rules relating to Uniform Dwelling Code Inspection Agencies.

The public hearing will be held as follows:

<u>Date &amp; Time</u>	<u>Location</u>
<b>December 12, 2000</b> <b>Tuesday</b> <b>9:00 A.M.</b>	<b>Room 3B</b> <b>Thompson Commerce Center</b> <b>201 W. Washington Avenue</b> <b>Madison, WI</b>

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until Friday, December 22, 2000, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

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

A copy of the proposed rules may be obtained without cost from Audrey Fries, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266–9375 or (608) 264–8777 (TTY). Copies will also be available at the public hearings.

**Analysis of Proposed Rules**

Statutory Authority: ss. 101.02 (1), 101.63 (1), 101.64 (3), 101.72 and 101.74

Statute Interpreted: s. 101.651 (2m)

The last budget bill, 1999 Wisconsin Act 9, created s. 101.651 (2m), Stats., which requires municipalities with less than 2,500 population to adopt and enforce the Uniform Dwelling Code (UDC) unless they take certain specified steps. However, there is no time limit specified for these steps to be taken. Section 101.651 (3) (b), Stats., was created at the same time which requires the department to enforce the UDC and to provide inspection services in those municipalities that have not otherwise provided for enforcement and inspection services under 101.651 (2m) (intro.) and (a), Stats., or that have not adopted an ordinance forgoing all enforcement and inspection as allowed under s. 101.651 (2m) (b), Stats.

The department plans to enforce the UDC and provide inspection services in those municipalities through the use of UDC Inspection Agencies registered with the department. The UDC Inspection Agency would be responsible for the issuance of building permits and UDC seals, and the performance of plan reviews and dwelling

inspections. The dwelling owner would be responsible for hiring the UDC Inspection Agency to enforce the UDC for that dwelling.

Treatment sections 5 to 9 of this rule have an earlier effective date than the remainder of the sections to allow the department to register these agencies prior to requiring a homeowner to use them to inspect his or her dwelling.

**Initial Regulatory Flexibility Analysis**

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

Homebuilders who have previously done business only in non-enforcing municipalities will now be subject to permitting, plan review, and inspection activities.

Independent inspection firms will be affected. There will be a greater demand for their services.

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

Homebuilders who have previously done business only in non-enforcing municipalities will have to comply with rules for obtaining permits and for complying with plan review requirements.

A larger number of inspectors will have to obtain seals from the department or municipality and will be required to forward completed permit applications to the department.

The procedures and records of the UDC Inspection Agencies will be subject to audit by the department.

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

There should be no additional professional skills needed to comply with these rules.

**Notice of Environmental Analysis – Dept. of Commerce**

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

**Fiscal Estimate**

1999 Wisconsin Act 9 expanded the Uniform Dwelling Code (UDC) permit and inspection program to apply mandatorily to cities, villages and towns with populations of 2,500 or less. Effective May 1, 2000, the Department of Commerce is required to provide a UDC permit and inspection program for newly constructed homes in municipalities with populations of 2,500 or less in which the county or the municipality does not take action. Cities, villages and towns with populations of 2,500 or less are able to opt out of the county or state permit and inspection program by resolution of the governing board filed with the Department.

Based on census data, it is anticipated that there will be 11,500 new housing starts annually that are currently not under permit. Commerce estimates that 35 % of these housing starts (4,025 homes per year) will secure UDC permits and have a permit and inspection activity associated with each permit. That means municipalities, counties or Commerce will be providing permit and inspection programs for the new housing starts. Municipalities and counties that provide permit and inspection programs will administer their own programs. Municipalities and counties that do not administer their own programs will have the permit and inspection programs administered by Commerce. It is anticipated that 50 percent of the UDC permits issued (2,000 homes per year) will have permit and inspection programs administered through Commerce.

For those permit and inspection programs that Commerce will be responsible for, Commerce will establish a registration program for UDC inspection agencies. The agencies, which will utilize UDC-certified building inspectors, will review building plans, perform field inspections, issue permits and collect fees. The agencies will fund their costs from the fee. The agents will purchase uniform building permit seals from Commerce at a cost of \$25.00 each.

Although it is anticipated that all permit and inspection programs administered through Commerce will be through registered inspection agencies, there will be added duties for Commerce staff. Added duties include consultation, registration administration, education and training, contractor and local government auditing, permit handling, and review of petitions for variance. The recently authorized additional 1.5 FTE positions (1.0 FTE building inspector and 0.5 FTE program assistant) will provide the Division with the ability to meet the demands of the expanded program.

Municipalities and agencies will purchase Uniform Building Permit Seals with every new housing start that secures a UDC permit. It is anticipated that increased revenue generated from the purchase of the Uniform Building Permit Seal, at a fee of \$25 each, will cover the projected costs.

There are no long-range fiscal implications anticipated.

## Notice of Hearing Corrections [CR 00-79]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 302.07, 302.08, 302.11 (2) and 302.04, Stats., the Department of Corrections proposes the following rule relating to security.

### Hearing Information

<u>Date &amp; Time</u>	<u>Location</u>
<b>December 13, 2000</b>	<b>UW-Milwaukee</b>
<b>Wednesday</b>	<b>UWM- Union</b>
<b>6:00 P.M. to 8.00 P.M.</b>	<b>Alumni Fireside Lounge,</b>
	<b>First Floor</b>
	<b>2200 E. Kenwood Blvd.</b>
	<b>Milwaukee, Wisconsin</b>

The public hearing sites are accessible to people with disabilities.

### Analysis Prepared by the Dept. of Corrections

Some provisions of the department of corrections administrative rule relating to security have not been updated since the rule was created in 1980. With over 20 years of experience working with the rule, the department proposes to update the rule.

#### Background

DOC 306 governs security standards and practices at state correctional institutions. As technology, science, population and government evolve over time, security standards and practices must adapt to those changes. We ultimately grow wiser and more efficient based on new knowledge and procedures. What was thought routine, necessary or even effective correctional practice in 1980 may not be accurate today.

For example, our prison population has grown from 1,930 in 1976 to more than 18,000 in 2000, and has a projected population of more than 27,000 in the year 2001. This enormous increase in prisoners, along with their increased level of sophistication, has placed a greater burden on correctional staff and has created the possibility for a more hazardous environment. In many ways, Wardens and staff no longer enjoy the luxury of time that once afforded them the ability to maneuver bureaucratic requirements. Correctional staff must now make urgent decisions regarding the best way to ensure staff, inmate and visitor safety and security. These situation and decisions are infinitely different from those of 20 years ago when the current rule was promulgated. The changes in this rule make it possible for inmate rights and needs to be protected without compromising institution security.

#### Definitions

- Removes the definitions for "Director of the bureau of correctional health services," "Administrator of the division of program services," "Division of program services," "CN chloroacetophenone and CS-o-chlorobenzyl malononitrile."

- Adds definition of "Authority," and "Issuance of firearms," adds "X-ray" to definition of "body cavity search," and adds "hair, fingernails, saliva, or semen" to definition of "body contents search."

- Changes the terms "Voluntary Confinement" to "Protective Confinement," "chemical agent" to "incapacitating agent," and changes the definition of "Superintendent" to "Warden."

#### Reports/Records/Plans

Throughout this rule change, requirements regarding keeping reports, records, and plans are maintained, while the enumerated contents are eliminated. The Department's Internal Management Procedures will dictate what information is necessary and these documents will continue to be kept in a consistent manner. The following is a list of the changes in this rule:

- Maintains requirement for an incident report, but removes language dictating the contents of the report.

- Maintains requirement for a report regarding escape, but removes language detailing information required to be included in the report.

- Maintains requirement for staff to provide report on a visitor search, but deletes enumerated requirements of the report.

- Maintains requirement that the institution keep a record of the use of restraints, but removes language listing what information the record must contain.

- Maintains requirement that a record of search be kept, but deletes language specifying material that must be included in the report.

- Maintains requirement for institution plans regarding escape, but removes requirement that the plans are filed with the administrator and removes language specifying the contents of the plan.

- Maintains requirement for emergency preparedness and disturbance plans, but deletes language detailing the contents.

#### Protective Confinement

By removing the requirements that an inmate remain in protective confinement for at least 72 hours unless security director approves prior release and that the inmate be released automatically after the 72 hours, this rule clarifies that determining the length of stay in protective confinement is the security director's role. In order to facilitate protection of inmates at risk, this rule removes the artificial figure of 72 hours and grants the security director the ability to regulate protective placement as long as the inmate remains at risk.

#### Issuance and Use of Firearms

This rule allows an authority other than the Warden to issue firearms to staff and recognizes that circumstances arise within the institution where the warden may be unavailable at a time when firearms must be issued in order to maintain security. This rule change provides a process whereby designated staff may have authority to act in the warden's absence. DOC Security Internal Management Procedures and Emergency Preparedness Manual will specify the line of succession and circumstances under which firearms authorization may occur.

This rule requires that staff actions prior to discharging a firearm are consistent with mandated comprehensive and uniform training requirements.

#### Incapacitating Agents

Science changes so rapidly and now provides us with a wider variety of incapacitating agents that are often times safer and more effective in controlling inmates. Department Security Internal Management Procedures will provide a wider variety of situation-appropriate alternatives in a graduated force option continuum. We are no longer limited to the narrow selection of "chemicals" enumerated in the current rule and it is futile, given sciences speedy advances, to attempt to continue enumerating incapacitating agents within the rule.

To ensure safety and proper application, this rule requires that only trained staff use incapacitating agents and grants general authority for their use under certain circumstances. The current rule reads so as to allow any staff member, even those not trained in the use of these agents, to use an incapacitating agent so long as it is done in the presence of a trained staff member. This rule ensures that the staff member actually administering or using the agent is properly

trained, thereby ensuring greater safety to those involved in the situation.

This rule requires that the Division of Adult Institutions provide incapacitating agent training which includes safe handling, legal use, division policies and procedures, fundamentals of using and when incapacitating agents may and shall be used. In light of this requirement, the language dictating the procedure for using incapacitating agents is unnecessary and is removed.

The rule adds the following as situations for which staff may use incapacitating agents:

- a. To apprehend an inmate who has escaped
- b. To change the location of an inmate
- c. To control a disruptive inmate
- d. To prevent unlawful damage to property
- e. To enforce a departmental rule, policy or procedure or an order of a staff member

### **Mechanical Restraints**

This rule permits use of mechanical restraints to immobilize inmates for the protection of property. Occasionally, highly destructive inmates do considerable damage to state and personal property. For example, inmates already in segregation manage to destroy light fixtures, plumbing, electrical boxes, windows, etc. This type of destruction is not only costly, but obviously jeopardizes the welfare of staff and inmates. Such inmates also use this behavior to create weapons and escape confinement.

Recognizing a need in today's changing institutions, this rule permits Warden's discretion in determining if security warrants use of mechanical restraints for movement within the institution. Situations in which the mechanical restraints are necessary for movement within the institution are too numerous and various to attempt listing in the rule. To do so would unnecessarily and unduly limit the ability of the Warden to ensure safety and security within the institution by responding to individual circumstances with the appropriate security measures. For example, mechanical restraints may be necessary during institution lock-downs, inclement weather such as severe fog, electrical blackouts, etc. There are a number of situations that may be unanticipated and due to circumstances beyond the Department's control. The Warden must have the ability to react in these situations.

### **Escapes**

To ensure staff safety and limit liability, staff may no longer be authorized to use their own cars to pursue escapees.

### **Search**

This rule changes institution searches from permissive to mandatory and establishes the Department's clear intention to periodically search entire institutions

The effectiveness and validity of this type of search is dependent upon eliminating the requirement that inmates be given advance notice. Searches are considered a regular and necessary part of maintaining institution security and this rule removes the administratively burdensome requirement for housing unit supervisors or shift supervisors to authorize searches of inmate living quarters.

The current rules allow inmates to conceal contraband under the guise of "legal material" by forbidding staff to read and review this alleged legal material. This rule will allow staff, during a living quarters search, to examine legal materials to the extent necessary to determine that the item is, in fact, legal material and does not contain contraband.

This rule enumerates circumstances under which a strip search may be conducted and expands the reasons for conducting a body contents search.

This rule adds "biological specimen analysis" as a type of search in response to new laws allowing and/or requiring certain testing such as DNA.

This rule maintains the requirement that staff have reasonable grounds to search an inmate, but eliminates listed factors for staff to consider in deciding if reasonable grounds exist. Such factors will

continue to be the subject of staff training and detailed in the department's internal policies and procedures.

This rule deletes the arbitrary recommendations for consideration in determining whether or not to conduct a search. This determination is best left to the Department's policies and procedures due to the changing circumstances and the variety of situations correctional staff encounter in today's institutions.

This rule also deletes the requirement that the security director of each correctional institution submit monthly reports to the administrator regarding seized contraband. These reports continue to be maintained at institutions and the Administrator has access to these reports on demand. To continue keeping records at DOC Central Office, in addition to the institutions, would be redundant and an unnecessary use of time and resources.

### **Visitors**

Allows institutions the option to store visitors' personal property that may not be carried into the institution. There may be instances when visitors have too much personal property to be securely stored given minimal space and resources available.

This rule requires Warden approval for strip searches or personal searches of visitors.

### **Persons under the Influence of Intoxicating Substances**

Occasionally, visitors are found with drugs, or become disruptive due to apparent influence of intoxicating substances. The Warden currently has statutory authority to arrest and detain under sec. 301.29(2) Wis. Stats. In practice, the Department does not have arresting protocols and therefore handles these procedures through law enforcement. This rule allows the Warden to deny a visit and to detain a visitor and inform law enforcement if the visitor appears to be under the influence of an intoxicating substance. This rule also allows the Warden to detain staff members, and to notify law enforcement, who appear to be under the influence of an intoxicating substance.

### **Text of Rule**

**DOC 306.01 Applicability and purpose.** Pursuant to authority vested in the department by ss. 301.02, 301.03 (2), 302.07 and 227.11 (2), Stats., the department adopts this chapter for purposes of establishing security standards and practices at state correctional institutions.

**DOC 306.02 Definitions.** In this chapter:

(1) "Administrator" means the administrator of the division or designee.

(2) "Authority" means the highest-ranking individual available in the institution, based on the written institution line of succession.

(3) "Bodily injury" means physical injury, illness, or any impairment of physical condition.

(4) "Deadly force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.

(5) "Department" means the department of corrections.

(6) "Disciplinary hearing" means a hearing authorized under ch. DOC 303 for the disciplining of inmates for misconduct.

(7) "Disturbance" means any of the following:

(a) An assault on any person by 2 or more inmates.

(b) The taking of a hostage by an inmate.

(c) The destruction of state property or the property of another by 2 or more inmates.

(d) The refusal by 2 or more inmates, acting in concert, to comply with an order.

(e) Any words or acts which incite or encourage inmates to do any of the above.

(8) "Division" means the division of adult institutions, department of corrections.

(9) "Emergency" means an immediate threat to the safety of the public, staff or inmates of an institution, other than a disturbance. An emergency may include, but is not limited to the following:

(a) A public health threat.

- (b) A utility malfunction.
- (c) A fire.
- (d) A bomb threat or explosion.
- (e) An employee job action.
- (f) Any natural disaster.
- (g) A civil disturbance.
- (h) Inmate escape.

(10) "Force" means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way.

(11) "Great bodily injury" means bodily injury which creates a high probability of death, serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(12) "Mechanical restraint" means a commercially manufactured device approved by the department and applied to impede free movement of the inmate.

(13) "Non-deadly force" means force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.

(14) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable.

(15) "Secretary" means the secretary of the department of corrections, or designee.

(16) "Security director" means the security director at an institution, or designee.

(17) "Warden" means the warden at an institution, or designee.

**DOC 306.03 Security policy.** Primary security objectives of the department are to protect the public, staff, and inmates and to afford inmates the opportunity to participate in correctional activities in a safe setting.

**DOC 306.04 Responsibility of employees.** Every employee of the department is responsible for the safe custody of the inmates confined in the institutions.

**DOC 306.05 Protective confinement.** (1) The security director may place an inmate in protective confinement if one of the following exist:

- (a) The inmate requests the placement in writing.
- (b) The security director is satisfied that the placement is necessary for the safety and welfare of the inmate.

(2) An inmate shall remain in protective confinement unless the security director determines that the conditions which warranted protective confinement no longer exist and approves release.

(3) The department shall consider an inmate in protective confinement to be in maximum custody as defined in s. DOC 302.

(4) Inmates in protective confinement shall have privileges and property at least equivalent to privileges and property allowed to inmates in temporary lock-up under s. DOC 303.11.

(a) Additional privileges and property as determined by what is ordinarily allowed inmates by the rules governing the location of the unit in which the inmate is protectively confined.

(5) The security director shall review placements in protective confinement at least every 90 days.

**DOC 306.06 Inmate count.** Each warden shall establish and maintain a system to accurately account for all inmates in the warden's custody at all times. The institution shall make a count of all inmates at least 4 times each day. The institution shall space these counts to minimize interference with school, work, program, and recreational activities.

**DOC 306.07 Use of force.** (1) Corporal punishment of inmates is forbidden.

(2) Staff may use non-deadly force against inmates only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:

- (a) To prevent death or bodily injury to oneself or another.
- (b) To regain control of an institution or part of an institution.
- (c) To prevent escape or apprehend an escapee.
- (d) To change the location of an inmate.
- (e) To control a disruptive inmate.
- (f) To prevent unlawful damage to property.
- (g) To enforce a departmental rule, a policy or procedure or an order of a staff member.

(3) The use of an incapacitating agent is a form of non-deadly force and is regulated by s. DOC 306.09.

(4) Staff may use deadly force only if the user of force reasonably believes it is immediately necessary for the purpose of stopping the action in any of the following situations:

- (a) To prevent death or bodily injury to oneself or another.
- (b) To prevent unlawful damage to property that may result in death or bodily injury to oneself or another.
- (c) To regain control of an institution or part of an institution.
- (d) To prevent escape or apprehend an escapee.

(5) Staff may not use deadly force if its use creates a substantial danger of harm to innocent third parties, unless the danger created by not using such force is greater than the danger created by using it.

**DOC 306.08 Use of firearms.** (1) In this section, "Issuance of firearms" means the deployment of firearms to authorized individuals, as determined by the warden, beyond designated armed posts in response to an emergency or disturbance.

(2) Only the warden or authority who is available may issue firearms to staff.

(3) Except in disturbances or emergencies, only staff assigned to posts requiring the use of firearms shall be armed.

(4) Staff may only use firearms approved by the department and only after successfully completing the training program in sub. (5).

(5) The division shall provide an annual firearms training and qualification program which shall include instruction on the following:

- (a) Safe handling of firearms while on duty.
- (b) Legal use of firearms and the use of deadly force.
- (c) Division policies and procedures regarding firearms.
- (d) Fundamentals of firearms use, including range firing.
- (e) When firearms may and shall be used, including the use of verbal warnings and warning shots.

(6) If a staff member discharges a firearm pursuant to s. DOC 306.07(4), either accidentally or intentionally, staff shall do the following:

(a) The staff member who discharged the firearm shall notify the staff member's supervisor as soon as possible.

(b) As soon as possible following the use of an incapacitating agent, all staff present during the incident shall write and submit an incident report.

(c) A supervisor shall investigate the incident and submit a report to the warden. The supervisor shall state in the report all facts relevant to the discharge of the firearm and shall include the supervisor's opinion as to whether the discharge was justified and occurred in accordance with this chapter. The warden shall send the reports required by par. (b) and this paragraph and the warden's conclusions as to the justification for the discharge and whether it was in accordance with these rules to the administrator.

(d) If a person is injured or killed by the discharge of a firearm, the department shall convene a firearm review panel to investigate the incident. The panel shall consist of 5 persons selected as follows:

1. Two members designated by the secretary, one of whom shall be a member of the public and one of whom shall be a member of the department staff who shall serve as chairperson.



2. Two members designated by the administrator, one of whom shall be a member of the central office staff and one of whom shall be a member of the public.

3. One member designated by the warden of the institution where the incident occurred, who is a member of the institution staff.

(e) The panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to the use of force.

(7) Only staff authorized by the warden may carry firearms off the grounds of the institution.

**DOC 306.09 Use of incapacitating agents. (1) DEFINITION.** In this section "incapacitating agent" means any agent or device commercially manufactured and approved by the department for the purpose of temporary control of an inmate or area.

(2) **REGULATION.** The use of an incapacitating agent is a form of non-deadly force and is regulated by this section.

(3) **AUTHORIZATION.** Staff may use incapacitating agents in any of the following situations:

- (a) To prevent death or bodily injury to oneself or another.
- (b) To regain control of an institution or part of an institution.
- (c) To prevent escape or apprehend an escapee.
- (d) To change the location of an inmate.
- (e) To control a disruptive inmate.
- (f) To prevent unlawful damage to property.
- (g) To enforce a departmental rule, policy or procedure or an order of a staff member.

(4) **APPLICATION.** Only a staff member trained under sub. (5) may use an incapacitating agent.

(5) **TRAINING.** The division shall provide an incapacitating agent training program that shall include instruction on the following:

- (a) Safe handling of incapacitating agents while on duty.
- (b) Legal use of incapacitating agents.
- (c) Division policies and procedures regarding incapacitating agents.
- (d) Fundamentals of use of incapacitating agents.
- (e) When incapacitating agents may and shall be used.

(6) **MEDICAL ATTENTION AND CLEAN-UP.** As soon as possible after an incapacitating agent has been used, staff shall provide exposed inmates an opportunity for any necessary hygienic needs and shall consult with medical staff who shall provide any appropriate medical care.

(7) **INCIDENT REPORT.** As soon as possible following the use of an incapacitating agent, all staff present during the incident shall write and submit an incident report.

**DOC 306.10 Mechanical restraints for transportation of inmates. (1) AUTHORIZATION.** Staff members may use mechanical restraints if the warden determines that the use of mechanical restraints is necessary to protect the public, staff or other inmates or to maintain the security of the institution.

(2) **MOVEMENT WITHIN INSTITUTION** Staff may use mechanical restraints in the following situations if the warden determines that the use of mechanical restraints is necessary to protect the public, staff or other inmates or to maintain the security of the institution:

- (a) In transporting an inmate from within the institution to outside the institution.
- (b) In transporting an inmate to segregation or temporary lock-up status.
- (c) For an inmate who is in segregation or temporary lock-up status, while the inmate is outside his or her cell.
- (d) For other security reasons as determined by the warden.

(3) **MOVEMENT OUTSIDE INSTITUTION.** Staff may use mechanical restraints in transporting an inmate outside an institution, in accordance with s. DOC 302.12.

**DOC 306.11 Use of mechanical restraints to immobilize inmates. (1)** Staff may use mechanical restraints to confine inmates only with the express authorization of the shift supervisor and only in the following circumstances:

(a) To protect staff and inmates from an inmate who poses an immediate risk of physical injury to others unless restrained.

(b) To protect an inmate who poses an immediate threat of physical injury to self unless restrained.

(c) To protect property.

(2) Staff may not use mechanical restraints:

(a) As a method of punishment.

(b) In a way that causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the inmate.

(3) When staff places an inmate in a mechanical restraint, staff shall follow all of the following procedures:

(a) The shift supervisor shall notify the licensed psychologist or designee acting under the supervision of the licensed psychologist, or a psychiatrist, and a member of the medical staff. They shall interview the inmate and arrange for a physical and mental examination as soon as possible. They shall recommend to the warden, based on their interview and the examinations, whether the inmate should remain in restraints. The warden shall evaluate the recommendation and decide if the inmate shall remain in restraints.

(b) A staff member shall observe an inmate in restraints every 15 minutes.

(c) If possible, staff may release an inmate from restraints to perform bodily functions and for meals. Three staff members, one of who shall be a security supervisor, shall be present at the time of release.

(d) The security director shall keep a record of persons placed in restraints.

(e) The security director shall not allow an inmate to remain in restraints for longer than 12 hours, unless the inmate is examined by a licensed psychologist or a designee acting under the supervision of the licensed psychologist, or a psychiatrist, and a member of the medical staff who shall make a recommendation to the warden as to whether the person should remain in restraints. The institution shall conduct such an examination at least every 12 hours an inmate is in restraints. The warden shall notify the administrator of the decision to continue the use of restraints beyond 12 hours.

(4) The Security director shall maintain a supply of restraining devices which staff shall periodically examine.

**DOC 306.12 Duty of staff regarding escapes.** Staff shall take actions to prevent the escape of any inmate.

**DOC 306.13 Escapes. (1)** Each institution shall have a written plan to be implemented if an escape occurs or is attempted. The security director shall prepare this plan and shall review and update the plan yearly.

(2) If a staff member is taken as a hostage in an escape or escape attempt, that hostage has no authority to order any action or inaction by staff. Staff shall disregard any orders issued by a hostage.

(3) The institution shall coordinate the pursuit of escapees with law enforcement authorities.

**DOC 306.14 Search of institution premises.** A staff member may conduct a search of any area on the premises of a correctional institution.

**DOC 306.15 Periodic search of entire institution.** Warden may suspend or modify institution operations and authorize a search of all or part of institution premises.

**DOC 306.16 Search of inmate living quarters. (1)** Staff may conduct a search of the living quarters of any inmate at any time. Entry into the living quarters of an inmate by a staff member to retrieve state property does not constitute a search of the living quarters of an inmate.

(2) The institution shall maintain a written record of all searches conducted under sub. (1).

(3) If staff seize any property or damage any property pursuant to the search of an inmate's living quarters, staff shall identify the property to the inmate in writing. The institution shall reimburse the inmate for damage to any property that is not contraband. The institution shall value any property which is damaged at its fair market value, not replacement cost.

(4) In conducting searches under this section, staff shall disturb the effects of the inmate as little as possible, consistent with thoroughness.

(5) Staff shall read only that part of the inmate's legal materials as necessary to determine that the item is legal material and does not contain contraband.

**DOC 306.17 Search of inmates. (1) PERSONAL SEARCH.** (a) In this subsection, "personal search" means a search of a person, including, but not limited to, the clothing, frisking the body, and an inspection of the mouth.

(b) Any staff member may conduct a personal search of an inmate under any of the following circumstances:

1. If the staff member has reasonable grounds to believe that the inmate possesses contraband.

2. At the direction of a supervisor either verbally or in written job instructions, post orders, or policies and procedures.

3. Before an inmate enters or leaves the security enclosure of a maximum or medium security institution or the grounds of a minimum-security institution.

4. Before an inmate enters or leaves the segregation unit or changes status within the segregation unit of an institution.

5. Before and after a visit to an inmate or as part of a periodic search or lockdown of a housing unit.

(2) **STRIP SEARCH.** (a) In this subsection, "strip search" means a search in which the person is required to remove all clothes.

(b) Permissible inspection pursuant to a strip search includes examination of the inmate's clothing and body and visual inspection of body cavities. Staff shall conduct a strip search in a clean and private place. Any staff member may conduct a visual inspection of body cavities. Except in emergencies, a person of the same sex as the inmate being searched shall conduct the strip search.

(c) Staff may conduct a strip search of an inmate under any of the following circumstances:

1. Before an inmate leaves or enters the security enclosure of a maximum or medium security institution or the grounds of a minimum-security institution.

2. Before an inmate enters or leaves the segregation unit or changes status within the segregation unit of an institution.

3. Before and after a visit under s. DOC 309.

4. As part of a periodic search and lockdown of an institution under s. DOC 306.15.

5. At the direction of a supervisor. Staff shall write a report or log entry of the searches under this subdivision.

(3) **BODY CAVITY SEARCH.** (a) In this subsection, "body cavity search" means an x-ray, or a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

(b) Medical staff shall conduct body cavity searches. Medical staff may conduct a body cavity search only if the warden approves. The warden shall approve if there is probable cause to believe that contraband is hidden in a body cavity.

(4) **BODY CONTENTS SEARCH.** (a) In this subsection, "body contents search" means a search in which the inmate is required to provide a biological specimen, including, but not limited to a sample of urine, breath, blood, stool, hair, fingernails, saliva, or semen for testing.

(b) Only assigned staff may obtain samples as part of a body contents search.

(c) Staff may conduct a body contents search only under one of the following conditions and only after approval by the warden:

1. Security reasons.
2. Program reasons.

3. Investigation purposes.

4. As part of a random testing program.

5. For a biological specimen analysis. In this subsection, "biological specimen analysis" means a search in which the inmate is required by a court to provide a biological specimen for deoxyribonucleic acid or DNA analysis under s. 973.047, Stats., or any other biological specimen analysis. Biological specimens may include, but are not limited to, a sample of urine, breath, blood, stool, hair, fingernails, saliva, or semen.

(5) **STAFF CONDUCT.** (a) Staff shall strive to preserve the dignity of inmates in all searches conducted under this section.

(b) Before a search is conducted pursuant to this section, staff shall inform the inmate that a search is about to occur, the nature of the search, and the place where the search is to occur.

**DOC 306.18 Search of visitors. (1)** Before a visit by a non-inmate to an institution is permitted, the staff member responsible for the admission of visitors shall be satisfied that the visitor is not carrying any unauthorized objects into the institution.

(2) The institution shall have information readily available to visitors informing them of the objects they may carry into the institution. The institution may provide a place for the safekeeping of objects that may not be carried into the institution.

(3) Before admitting a visitor, the staff member responsible for admission may require the visitor to empty pockets and containers, permit the inspection of containers and submit the visitor and objects carried by the visitor into the institution to inspection by a device designed to detect metal or other unauthorized objects.

(4) The warden may require a visitor to submit to a personal search or strip search as defined in s. DOC 306.17 (1) and (2) prior to entering the institution. The staff member may conduct such a search only with the approval of the warden, who shall require the search only if there are reasonable grounds to believe the visitor is concealing an unauthorized object.

(5) The staff member shall write a report if the visitor refuses to submit to a search or if the search is conducted, and shall submit the report to the security director, with a copy to the warden and the administrator.

(6) Before an inspection or search is conducted pursuant to subs. (3) and (4) staff shall inform the visitor orally and in writing, either by a sign posted in a prominent place or on a notice, that the visitor need not permit the inspection or search and that if the visitor does not permit it, staff shall not admit the visitor to the institution at that time.

(7) If in an inspection pursuant to sub. (3) or a search under sub. (4) staff finds an unauthorized object, staff may deny the visitor the visit to the institution on the occasion, may suspend the visitor from further visits to the institution, or may allow the visit without the object.

(8) If the institution finds an unauthorized object pursuant to a search under this section, and it is illegal to conceal or possess the object, the warden shall inform a law enforcement agency and turn the object over to the law enforcement agency for referral to the district attorney pursuant to ss. 302.04 and 302.07, Stats. and deny the visit. If the institution determines that the visitor appears to be under the influence of an intoxicating substance, the warden shall deny the visit, may detain the visitor, and may inform a law enforcement agency.

(9) Staff shall conduct all inspections and searches in a courteous manner. Staff shall strive to protect the dignity of visitors who are inspected or searched pursuant to this section.

**DOC 306.19 Search of staff. (1)** The warden may require that a staff member be searched while on the grounds of an institution or require that a staff member's car be searched while on institution grounds. The institution may conduct such a search by requiring the staff members to empty pockets and containers and submit themselves and objects they carry into the institution to inspection by a device designed to detect metal or other unauthorized objects, a personal search, or a strip search, as defined under s. DOC 306.17 (1) and (2). Before a strip search of a staff member or the search of a staff members' vehicle is conducted, the warden and the

administrator shall approve the search. They shall approve the search only if there are reasonable grounds to believe the staff member is concealing an unauthorized object. The institution shall not admit a staff member who refuses to submit to a search into the institution or may remove such a staff member from the institution and may subject the staff member to disciplinary action.

(2) If an unauthorized object is found pursuant to a search conducted under this section and it is illegal to conceal or possess the object, the warden may detain the staff member pursuant to ss. 302.04 and 302.07, Stats., and shall inform a law enforcement agency and turn the object over to the sheriff or law enforcement agency for referral to the district attorney. If the warden determines that the staff member appears to be under the influence of an intoxicating substance, the warden may detain the staff member and may inform a law enforcement agency.

(3) Staff shall conduct all searches in a courteous manner. Staff shall strive to protect the dignity of staff who are inspected or searched.

(4) Each institution shall inform staff in writing what objects they may not carry into the institution.

(5) If a strip search is conducted pursuant to this section, the staff member conducting the search shall file a report with the security director. The security director shall provide a copy of the report to the warden and the administrator.

**DOC 306.20 Use of contraband as evidence at disciplinary hearing.** Contraband that is seized during a search under this chapter may be used as evidence by the institution at a disciplinary hearing conducted under ch. DOC 303.

**DOC 306.21 Use of test results as evidence at disciplinary hearings.** Subject to the confirmation required under s. DOC 303.59 (2), the institution may use results of physical examinations and tests performed on body content specimens for the purpose of detecting intoxicating substances as evidence at a disciplinary hearing conducted pursuant to ch. DOC 303.

**DOC 306.22 Emergency.** (1) If an emergency occurs that prevents the normal functioning of the institution, the warden may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.07 to 306.09, until the emergency is ended and order is restored to the institution.

(2) If an emergency occurs, the secretary may convene an emergency review panel to investigate the emergency. The panel shall be made up of persons selected in accordance with s. DOC 306.08 (5) (d) the panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to an emergency. The department shall provide the panel with staff adequate to conduct a thorough investigation of the emergency.

**DOC 306.23 Disturbance.** (1) If a disturbance occurs that prevents the normal functioning of the institution, the warden may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.07 to 306.09, until the disturbance is ended and order is restored to the institution. The warden shall make provisions for access to medical care.

(2) If a disturbance occurs and a person is injured and if it results in the suspension of these rules, the secretary may convene a disturbance review panel to investigate the disturbance. The secretary shall appoint the panel in accordance with s. DOC 306.08 (5) (d) and the panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to a disturbance. ). The department shall provide the panel with staff adequate to conduct a thorough investigation of the disturbance.

(3) A staff member taken hostage has no authority to order any action or inaction by staff.

**DOC 306.24 Emergency preparedness plan.** (1) The warden shall ensure that the institution has a written emergency preparedness plan for disturbances and emergencies and that a copy

of the plan is filed with the administrator and implemented in a disturbance or an emergency.

(2) The purposes of the written emergency preparedness plan for disturbances and emergencies shall be:

(a) To ensure the safety and welfare of the general public, staff, and inmates.

(b) To protect property.

(c) To maintain and restore order to the institution.

(d) To identify any person who participated in the disturbance, to provide for disciplinary action to be taken according to these rules, and to provide relevant information to a law enforcement agency so that participants can be arrested and prosecuted.

(e) To identify any person who contributed to the creation of an emergency and to provide this information to a law enforcement agency for the person's arrest and prosecution.

(3) The plan shall give the highest priority to insuring the safety and welfare of the general public, staff, and inmates.

## Chapter DOC 306

### APPENDIX

**Note: DOC 306.05.** Some inmates wish to be confined because they fear for their safety. Protective confinement is permitted by this rule.

Maximum custody is used in this case for the inmate's safety. Because the status is not punitive, DOC attempts to provide normal property and privileges consistent with the place where the confinement occurs, but the inmate shall be allowed at least the privileges and property allowed in temporary lock-up (TLU).

**Note: DOC 306.06.** Accurate counts are essential for security and recordkeeping. Given the variety among institutional schedules, each warden is given the responsibility to see to it that an accurate system exists and that it does not unduly interfere with programs.

**Note: DOC 306.07.** DOC 306.07 states the purposes for which non-deadly force and deadly force may be used.

Situations arise in prison that must be controlled before substantial danger to others arises. The requirements for discipline and order in a prison and to prevent escapes give substantial responsibility to prison officials that may require the use of force to fulfill.

Sub. (2) states the circumstances in which non-deadly force may be used in a prison. This rule applies to correctional staff and not inmates. Inmates are not authorized to use force at any time by this rule.

This section does not require that the user of force reasonably believe that in so doing he or she is preventing an unlawful interference with another. A typical situation in which a correctional staff member would be authorized to use force in defense of another is if there was a fight between or among inmates. The correctional staff member must be authorized to use force to stop the fight. In so doing, it might be necessary to use force against someone who is not unlawfully interfering with another but who is lawfully defending himself or herself. This is so because, in a prison setting, correctional staff must have the authority to prevent disturbances without worrying about whom is wrongfully fighting and who is acting in self defense.

Sub. (3) (d) authorizes the use of force to change the location of an inmate. Occasionally, an inmate is ordered to be placed in a segregation unit and refuses to go. To maintain the orderly operation of the institution, staff may have to physically move an inmate from one place to another.

Sub. (3) (g) authorizes the use of force to enforce department rules, policies and procedures and staff member orders. A typical situation in which a correctional officer would be authorized to use force under this paragraph is if an inmate refuses to be strip-searched prior to entering the segregation unit. Without the strip search the inmate could be hiding a weapon that could be used by a self-destructive inmate to kill or severely injure himself or herself or someone else. If the inmate cannot be persuaded to obey the order, staff may use force to compel compliance.

**Note: DOC 306.08.** The use of firearms is subject to the limitations on the use of force in DOC 306.07. This section reflects present policy of the department of corrections. Correctional staff in daily contact with inmates are not armed. Rather, officers who are posted in towers and in control centers are the only staff who are issued firearms, unless there is a disturbance or an emergency. Sub. (3).

Sub. (6) provides for the investigation of incidents in which a weapon is discharged. This investigation is for the purpose of administrative review and is not intended to take the place of an investigation conducted by another government agency.

Subsection (6) provides for investigation and reporting through the normal chain of command and for investigation and reporting by a special panel when anyone is killed or wounded by a firearm discharge. Because of the seriousness of such an event, it is desirable to include on the panel people from outside the department of corrections to insure that the investigation is conducted with the necessary objectivity.

Sub (7) indicates that the warden must authorize staff before they may carry firearms off grounds. Correctional staff officers need not be deputized since "Correctional staff have authority and possess the power of a peace officer in pursuing and capturing escaped inmates." (OAG 103-79).

**Note: DOC 306.09.** DOC 306.09 authorizes and regulates the use of incapacitating agents in adult correctional institutions.

As stated in sub. (2), this section regulates the use of incapacitating agents. Because incapacitating agents pose a risk of injury to others, staff may only use them in limited situations.

Subsection (3) identifies situations in which incapacitating agents may be used. Under this subsection, incapacitating agents may be used to regain control of an institution or part of an institution over which physical control has been lost during an emergency, DOC 306.24 (1), or disturbance, DOC 306.23 (1). "Part of an institution" may be a building or a small area like a room. Whether an incapacitating agent should be used in such a situation depends upon whether using the incapacitating agent is less hazardous for both the person seeking to use the incapacitating agent and the inmate than using other reasonable means to accomplish the purpose.

This rule requires appropriate medical care, if necessary, and an opportunity for hygienic care. "Exposed inmates" are not just those against whom the agent is used but those exposed to it because they are nearby. Medical examinations and cleaning may minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of incapacitating agents as well as the discomfort they may cause.

The incident report for incapacitating agents in sub. (7) ensures adequate administrative notification and review of the use of incapacitating agents.

**Note: DOC 306.11.** DOC 306.11 regulates the use of restraints to immobilize inmates. Restraining devices are permitted in three situations: to protect property; to protect others from an inmate; and to protect an inmate from himself or herself. The use for transporting is regulated by DOC 302.10, relating to custody requirements for inmates. DOC 306.11 addresses the other uses. While the use of restraints is never pleasant, it is sometimes more humane than other measures for controlling dangerous or disturbed people. Subs. (1) and (2) are designed to insure that restraining devices are used only when necessary, to regulate their use to insure that they are used humanely, and to adequately provide for the safety of inmates and correctional staff.

It is important that the authority to require restraining devices be centralized. For this reason, only the warden or the staff member in charge may order their continued use or removal after review of psychological or medical staff reports. Sub. (3) (a).

To avoid injury, it is necessary to have adequate staff to subdue the inmate.

Inmates placed in restraints are typically in need of counseling, time to calm down, and periodic monitoring to insure that the person is not being injured by the restraints. Furthermore, the decision to keep

a person in restraints must be continually reviewed. Sub. (3) (a) and (b) provide for medical exams and monitoring to get the inmate the immediate help he or she needs that may permit the removal of the restraints, as well as a review of the necessity for them.

Sub. (3) (c) provides for the removal of the restraints for meals and to perform bodily functions when possible. This is to preserve the inmate's dignity, consistent with the safety of the inmate and staff.

Sub. (3) (e) requires an examination by a licensed psychologist or a designee acting under the supervision of a licensed psychologist, or a psychiatrist, and a member of the medical staff every 12 hours an inmate remains in restraints. This is to provide expert judgment about the need for restraints and to provide additional mental health services to the inmate.

Sub. (4) requires that DOC shall maintain and periodically review a supply of restraining devices. This is to insure that devices that might injure an inmate or permit escape are not used.

**Note: DOC 306.12.** DOC 306.12 states the general policy that it is the responsibility of each staff member to take appropriate actions to prevent escapes. Appropriate action may include being alert and diligent, reporting observations and events, and may also include taking physical actions consistent with directed duty and training. Decisive action when signs of trouble exist is also important.

**Note: DOC 306.13.** Sub. (2) states the rule that no hostage, no matter what his or her rank, has any authority while a hostage. A person under such stress cannot be expected to make decisions that affect himself or herself, the institution, or inmates. To permit a person to retain authority while a hostage is an invitation to take high ranking officials as hostages.

**Note: DOC 306.14.** DOC 306.14 authorizes the search of institution premises at any time. Contraband, including drugs and weapons, are sometimes concealed in areas of general access, in workshops and in classrooms. Searches turn up contraband and also serve as a deterrent to bringing contraband into institutions.

Such searches must be performed randomly so that inmates may not move the contraband in anticipation of a search. DOC is not required to give a specific reason for conducting a search.

**Note: DOC 306.15.** DOC 306.15 (1) permits that each institution may be completely searched periodically. DOC has discovered contraband during these searches. This has convinced correctional officials of the desirability of such searches and of random area searches

These searches are to include the living quarters of inmates as good correctional practice.

**Note: DOC 306.16.** The search of the living quarters of an inmate is of importance to correctional officials and inmates. It is important that random searches of living quarters be conducted because contraband, including drugs and objects fashioned into dangerous weapons, are sometimes discovered during such searches and such searches deter the possession of contraband.

Contraband is a direct threat to the safety of staff and the institution as a whole. Weapons can be used against staff as well as inmates and may be an inducement to cause a disturbance that threatens everyone in the institution.

DOC conducts its searches unannounced so that inmates do not have the opportunity to remove contraband from the living unit. Various means may be used to conduct searches, including the use of canines and other available technological methods.

DOC staff conduct searches in a manner which demonstrates respect for an inmate's personal property. DOC staff shall notify inmates of any objects that are seized.

**Note: DOC 306.17.** DOC 306.17 is primarily directed to controlling the entry of contraband, including intoxicating substances, into correctional institutions and its movement within institutions. Visitors or inmates who go outside may carry contraband into institutions. It is transported by inmates within institutions and is frequently moved to avoid detection. Contraband, including money illegally obtained, is also removed from

institutions. Much of this contraband poses a threat to inmates, to correctional treatment, to staff, and to the very institution itself. See the note to DOC 306.16.

Body contents searches and urinalyses in particular are directed at controlling inmate use of intoxicants. Drug and alcohol use promotes the illegal entry, movement and selling of contraband within institutions and provides financial incentives which may corrupt other inmates and staff. Body contents searches and subsequent testing of those specimens are effective means to detect illicit use of drugs and alcohol. Test results may form the basis for disciplinary action, the prospect of which should deter inmates from using intoxicants or bringing them into the institutions.

Because inmates bring contraband in and out of institutions, it is necessary to permit strip searches upon entry and exit.

DOC places inmates in segregation units because they have committed a serious violation of prison rules, or because they are dangerous or disturbed. With this need for a heightened level of security, it is essential to the safety of inmates that contraband not be brought into a segregation unit. Strip searches of inmates as they move in or out of the segregation unit are necessary for security.

Sub. (2) (c) 3. authorizes strip searches prior to and after a visit. Frequently, visitors are not restricted to the visiting area during visits. Either the authority must exist to permit the search of visitors and inmates, or contact with visitors must be limited.

Sub. (2) (c) 4. authorizes strip searches during a search of an entire institution or a part of an institution during a lockdown. Without strip searches during a lockdown, inmates can conceal contraband on their persons and defeat the purpose of the search under s. DOC 306.15.

Sub. (2) (c) limits staff members' discretion to conduct strip searches.

Sub. (4) (c) describes the circumstances under which a body contents search may be conducted. Medical staff is in no way restricted from requesting physical examinations and tests for medical reasons. The division of adult institutions is expected to develop a protocol to define the role of health staff and their obligations under these rules for both body cavity and body contents searches. When possible, less invasive means of screening for contraband will be employed before involving health care staff.

**Note: DOC 306.18.** DOC 306.18 regulates the search of visitors. Other rules relating to visits are found under ch. DOC 309.

Sub. (1) states the principle that correctional staff must be satisfied that visitors are not carrying unauthorized objects into the institution. Because such objects may be things which people normally carry with them and which visitors might assume are authorized, it is important to inform visitors of what they may or may not carry. Visitors may be provided with a place to store their belongings during the visit. Sub. (2).

If a visitor does not wish to submit to an inspection or search, the visitor need not do so. This will result in the visitor not being permitted to enter the institution on this occasion. No authority exists independently to require visitors to submit to inspections or searches. However, the responsibility for the safety of the institution does permit visitors to be excluded if they refuse to submit to inspections and, in the rare cases when they are conducted, personal searches.

The large majority of visitors are asked to empty pockets, permit the inspection of containers and submit to a metal detector screening similar to those used in airports. Sub. (3). This typically satisfies staff that contraband is not concealed. Occasionally, correctional staff has received information that a visitor is carrying contraband and that the inspection called for in sub. (3) will not detect it. If there are reasonable grounds to believe a visitor is carrying contraband, the warden may require the visitor to submit to a personal search or strip search as defined in DOC 306.17 (1) (a) and (2) (a) or be excluded from the institution.

Sub. (6) states the rule that visitors shall be excluded from the institution if they attempt to bring contraband into the institution.

The visiting privilege itself may be suspended, as provided in ch. DOC 309. It is not the intention of the rule to exclude people who unwittingly carry unauthorized objects.

Sub. (8) requires correctional staff to turn over to law enforcement such objects which it is illegal to possess or conceal. The warden is a peace officer within the institution and on institution grounds by virtue of 301.29 (2), Stats. Under s. 939.22 (22), Stats., "peace officer" means any persons vested by law with a duty to maintain public order or to make arrest for crimes, whether that duty extends to all crimes or is limited to specific crimes. Sec. 302.095, Stats., makes delivering articles to inmates a crime subject to being detained by staff and turned over to the sheriff or local law enforcement officers. (OAG-103-79).

**Note: DOC 306.19.** Searches of staff members are sometimes necessary. This is so for three reasons. First, staff members may inadvertently bring unauthorized objects into institutions. For example, an employee taking medication may bring in more than he or she needs for an 8-hour period. Second, inmates may threaten staff or their families and thereby attempt to force the staff member to bring contraband into an institution. Third, a staff member may deliberately bring an unauthorized object into an institution.

**Note: DOC 306.23.** Sub. (1) permits the suspension of the rules of the department. It is not intended that this rule be relied on frequently, but only in situations where the usual functioning of the institution becomes impossible. For example, programs and visits are impossible if a portion of an institution is taken over by inmates. Some rules, like those relating to the use of force, may never be suspended. This is provided for in the rule.

### Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

### Fiscal Estimate

Chapter DOC 306 pertains to institution security standards and practices. This rule was created in 1980, and has not been updated since then. Due to various changes in correctional terminology, practices, and technological changes, the department proposes to update the rule.

The changes are basically in three categories: (1) definitions and terminology, (2) use of various levels of force and restraints, and (3) search procedures.

(1) Changed definitions include various staff titles to reflect current organization charts, changing the term "voluntary confinement" to "protective confinement," and changing the definition of "chemical agent" to "incapacitating agent." It is not believed that these and other similar changes will have a fiscal effect on the department.

(2) A number of changes are made to procedures that are acceptable for staff to use in various situations where some degree of force is needed. Generally, more discretion is permitted. Reporting requirements are maintained, but with less detail required in some cases. These changes could possibly result in a saving of staff time in filling out more detailed reports.

(3) Search procedures are modified in some cases. In general, the effect of the changes is to permit increased use of search procedures in various circumstances. One example is the deletion of the enumeration of criteria staff should consider in determining reasonable grounds for a search. Another removes the requirement for a housing unit supervisor or shift supervisor to approve a search of inmate living quarters. These procedural changes are not estimated to have a fiscal impact on the department.

Overall, the revisions to DOC 306 are not expected to have any significant fiscal impact on the department.

### Contact Person

Julie M. Kane (608) 267-9839  
Office of Legal Counsel  
149 East Wilson Street  
P.O. Box 7925  
Madison, Wisconsin 53707-7925

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

hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

### Written Comments

Written comments on the proposed rules received at the above address no later than December 22, 2000 will be given the same consideration as testimony presented at the hearing.

## Notice of Hearing Dentistry Examining Board [CR 00-143]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 447.04 (1) (a) 6. and (2) (a) 6., Stats., and interpreting s. 447.04 (1) (a) 6. and (2) (a) 6., Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. DE 2.01 (1) (g); and to create s. DE 2.09, relating to a system of remediation for applicants who have failed the clinical and laboratory examinations more than three times.

### Hearing Date, Time and Location

**Date:** January 3, 2001  
**Time:** 9:00 A.M.  
**Location:** 1400 East Washington Avenue  
Room 179A  
Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by January 17, 2001 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), 227.11 (2), 447.04 (1) (a) 6. and (2) (a) 6.

Statute interpreted: s. 447.04 (1) (a) 6. and (2) (a) 6.

This proposed rule-making order of the Dentistry Examining Board creates s. DE 2.09, relating to a system of remediation for applicants who have failed the clinical and laboratory examinations more than three times.

Currently, there is no system of remediation in place for those dental applicants who have failed the clinical and laboratory examinations more than three times. In order to protect the health, safety, and welfare of the public, a system of remediation is necessary to ensure that applicants who have deficiencies obtain the necessary training and education before being able to take further examinations.

### Text of Rule

SECTION 1. DE 2.01 (1) (g) is amended to read:

DE 2.01 (1) (g) Verification from the central regional dental testing service or other board-approved testing services of successful completion of an examination in clinical and laboratory demonstrations taken within the 5-year period immediately preceding application. In this paragraph, "successful completion" means an applicant has passed all parts of the examination in no more than 3 attempts on any one part. ~~If an applicant fails to~~

~~successfully complete the examination, he or she reverts to the status of a new applicant for examination in clinical and laboratory demonstrations.~~

SECTION 2. DE 2.09 is created to read:

**DE 2.09 Failure and reexamination.** An applicant who fails to achieve a passing grade on the board-approved examination in clinical and laboratory demonstrations 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. If the applicant fails to achieve a passing grade on the third reexamination, the applicant may not be admitted to any further examination until the applicant reapplies for licensure and presents evidence satisfactory to the board of further professional training or education as the board may prescribe 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 Person

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

## Notice of Hearing Professional Geologists, Hydrologists and Soil Scientists Examining Board [CR 00-139]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Professional Geologists, Hydrologists and Soil Scientists in ss. 15.08 (5) (b), 15.405 (2m) and 227.11 (2), Stats., and interpreting s. 470.03, Stats., the Examining Board of Professional Geologists, Hydrologists and Soil Scientists will hold a public hearing at the time and place indicated below to consider an order to create s. GHSS 1.07, relating to a rules committee.

### Hearing Date, Time and Location

**Date:** December 12, 2000  
**Time:** 9:45 A.M.  
**Location:** 1400 East Washington Avenue  
Room 180  
Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by November 13, 2000 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), 15.405 (2m) and 227.11 (2)

Statute interpreted: s. 470.03



Current rules for the Examining Board of Professional Geologists, Hydrologists and Soil Scientists do not permit the formation of a rules committee to act for the board in rule-making proceedings. The objective of the rule is to authorize the board to form a rules committee. The board may currently approve and adopt rules proposed by any section of the board. A rules committee would better enable the board to develop and refine rules proposed by the sections or the board. This would meet the objective of standardizing the rules development process between the sections of the board and provide for greater efficiency.

The proposed rule would consist of two sections. The first section would permit the board to approve and adopt rules proposed by any section of the board. The second section would define the composition of a rules committee and provide that the rules committee shall act for the board in rule-making proceedings except for final rule adoption.

### Text of Rule

SECTION 1. GHSS 1.07 is created to read:

**GHSS 1.07 Rule-making.** (1) **PROCEDURE.** The board may approve and adopt rules proposed by any section of the board.

(2) **RULES COMMITTEE.** (a) The rules committee is comprised of one professional member from each section and 2 public members. The board chair shall appoint the 2 public members from any of the 3 sections of the board.

(b) The rules committee shall act for the board in rule-making proceedings except for final approval as specified in sub. (1).

### Fiscal Estimate

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

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

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

### Initial Regulatory Flexibility Analysis

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

### Copies of Rule and Contact Person

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

## Notice of Hearings Health and Family Services (Community Services, Chs. HFS 30—) [CR 00-148]

NOTICE IS HEREBY GIVEN that pursuant to ss. 51.42 (7) (b), 51.421 (3) (a) and 227.11 (2) (a), Stats., the Department of Health and Family Services will hold public hearings to consider the proposed creation of ch. HFS 36, relating to standards for Community-Based Psychosocial Services for persons with mental illness and children with emotional disturbance.

### Hearing Information

The public hearings will be held:

<u>Date &amp; Time</u>	<u>Location</u>
<b>December 11, 2000</b> <b>Monday</b> <b>10:00 AM to 2:00 PM</b>	<b>Room 120</b> <b>State Office Building</b> <b>141 NW Barstow Street</b> <b>Waukesha, WI</b>

**December 12, 2000**  
**Tuesday**  
**10:30 AM to 2:30 PM**

**Room 123**  
**State Office Building**  
**610 Gibson Street**  
**Eau Claire, WI**

**December 15, 2000**  
**Friday**  
**10:30 AM to 2:30 PM**

**Room 152A**  
**State Office Building**  
**200 N. Jefferson Street**  
**Green Bay, WI**

The hearings are accessible to people with disabilities.

### Analysis prepared by the Dept. of Health and Family Services

The Department of Health and Family Services is holding public hearings to solicit public comment on proposed administrative rules establishing standards for the certification of programs to provide community-based psychosocial services for persons with mental disorders.

Section 49.45 (30e) (b), Stats., as created by 1997 Wisconsin Act 27, directs the Department to promulgate rules for community-based psychosocial service for the purpose of allowing a qualified service provider to be reimbursed through the Wisconsin Medical Assistance Program for psychosocial services provided to Medical Assistance recipients. These rules establish standards for determining program eligibility, identify the services that may be provided, and specify requirements for program certification. Section 49.46 (2) (b) 6. Lm., Stats., as created by 1997 Wisconsin Act 27, added psychosocial services provided by staff of a community-based psychosocial service to the list of covered benefits under the Wisconsin Medical Assistance Program.

Section 51.42 (7) (b), Stats., authorizes the Department to promulgate administrative rules necessary to administer mental health programs. Currently, no rules establish individuals' eligibility for psychosocial service benefits, nor specify the type, quantity and quality of psychosocial services. The specification of standards, structures and requirements for the Department to certify mental health programs is a responsibility of the Department. Therefore, the Department proposes these rules to permit Medical Assistance funding for psychosocial services as specified in s. 49.45 (30e) (b), Stats.

### Contact Person

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

Jan Devore  
Bureau of Community Mental Health  
P.O. Box 7851  
Madison, WI 53704-7851  
(608) 266-3249 or,

If you are hearing impaired, call (608) 267-9400 (TDD)

e-mail: [devorjk@dhfs.state.wi.us](mailto:devorjk@dhfs.state.wi.us)

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communications at a hearing difficult, therefore requiring an interpreter or a non-English large print or taped version of the hearing document, contact the Jan Devore at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments received by e-mail or mail at the above address no later than 4:00 p.m. on **December 19, 2000** will be given the same consideration as testimony presented at a hearing.

### Fiscal Estimate

This proposed order creates a new mental health program pursuant to s. 49.45 (30e) (b), Stats., as created by 1997 Wisconsin Act 27. These rules will affect counties who elect to provide the Medicaid match funding to provide services to individuals with mental health problems that require more than outpatient services and less than Community Support Program services. These individuals are now being served by counties under case management services which provides limited reimbursement from MA and with the match provided by county and state aids. Many of

the case management clients require treatment and rehabilitation services that are not covered under the targeted case management provisions of MA. This change would allow counties to receive reimbursement for these services for individuals who are eligible for MA.

Counties are presently providing the funding for these services from county tax revenue and state aids. This program will allow coverage by the Medical Assistance program if the county elects to provide the matching funds. The net effect should be an increase in revenue for providing services that are presently funded locally.

The Department would not have significant additional costs as we anticipate that the program certification of these providers will be conducted in conjunction with certifying other mental health programs like community support programs.

### Initial Regulatory Flexibility Analysis

These proposed administrative rules apply to county departments or agencies that contract with the county to provide comprehensive community services under this administrative code and to those that are certified to provide those services. The proposed rules do not apply to other mental health or human service programs. Consequently, the proposed rules will not have an effect on small businesses as defined under s. 227.114 (1) (a), Stats.

## Notice of Hearing Health and Family Services (Community Services, Chs. HFS 30—) [CR 00-150]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.77 and 49.775, Stats., and ss. 227.11 (2) (a) and 227.24 (4), Stats., the Department of Health and Family Services will hold a public hearing to consider the creation of ch. HFS 79, relating to the recovery of incorrectly paid benefits under the Wisconsin Supplemental Security Income (SSI) Program, and emergency rules published on September 15, 2000 on the same subject.

### Hearing Information

The public hearing will be held:

<u>Date &amp; Time</u>	<u>Location</u>
<b>December 13, 2000 Wednesday 1:00 PM to 3:00 PM</b>	<b>Conference Room 950A State Office Building 1 West Wilson Street Madison, WI</b>

The hearing site is fully accessible to people with disabilities.

Parking for people with disabilities attending the 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.

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

Sections 49.77 and 49.775, Stats., authorize the Department to administer Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. These SSI payments are funded by state general purpose revenue and federal Temporary Assistance for Needy Families (TANF) grant funding in excess of \$140,000,000 per state fiscal year. These payments are distributed monthly to approximately 100,000 beneficiaries and their dependent children. Neither s. 49.77 or 49.775, Stats., direct the Department to develop administrative rules to administer the program.

An unavoidable aspect of the program is the Department's need to periodically recover payments incorrectly made to benefit recipients. Overpayments and incorrect payments occur due to delays in transmission of eligibility and pricing information between the federal Social Security Administration and the

Department and are not due to the Department's error or omission. On November 24, 1999, by order of the Wisconsin Court of Appeals, District II, the Department was found, absent administrative rule, to lack the authority to administratively recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits. The Department sought to appeal the decision to the Wisconsin Supreme Court, but recently learned that the Supreme Court will not hear the case. Since the Department's inability to recover payments made in error may cost the Department about \$10,000 per month, the Department published an emergency rule on September 15, 2000 to recover overpayments and incorrect payments. Department is now promulgating a permanent rule and will hold a public hearing regarding both the establishment of the emergency rule and the promulgation of the permanent rule.

The emergency rule already in place and the proposed permanent rule provide the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to effectively administer both state and federal public welfare funding.

### Contact Person and Availability of Emergency and Proposed Permanent Rules

The hearing notice, emergency rules and proposed permanent rules are all available through the Department's web site at: [www.dhfs.state.wi.us/news/rules/index.htm](http://www.dhfs.state.wi.us/news/rules/index.htm). To find out more about the hearing or to request a written copy of the emergency or proposed permanent rules, write, phone or e-mail:

Kathleen Luedtke  
SSI Coordinator  
Division of Supportive Living  
P.O. Box 7851  
Madison, Wisconsin 53707  
(608) 266-6890 or,

If you are hearing impaired, (608) 266-7376

e-mail: [luedtka@dhfs.state.wi.us](mailto:luedtka@dhfs.state.wi.us)

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

Written comments received by mail, fax or e-mail at an above address no later than 5:00 p.m., **December 20, 2000**, will be given the same consideration as testimony presented at a hearing.

### Fiscal Estimate

The establishment of ch. HFS 79 will not affect the expenditures of either state or local governments. Administrative costs of the Wisconsin SSI Program are funded by general purpose tax revenues and will not change due to promulgation of this rule. Revenues to the program in the form of recovery of overpayments or incorrect payments will increase, allowing the Department to effectively manage the appropriation for this program.

### Initial Regulatory Flexibility Analysis

The promulgation of Ch. HFS 79 will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

## Notice of Hearings Natural Resources (Fish, Game, etc., Chs. NR 1—) (Environmental Protection – General, Chs. NR 100—) (Environmental Protection – Water Management, Chs. NR 300—) [CR 00-163] and [CR 00-164]

NOTICE IS HEREBY GIVEN that pursuant to ss. 1.11, 23.09, 23.32, 23.321, 29.011, 281.11 and 227.11 (2) (a), Stats., interpreting ss. 23.09, 23.321, 29.011 and 281.11, Stats., the Department of Natural Resources will hold public hearings on revisions to s. NR



1.95, Wis. Adm. Code, relating to the Natural Resources Board policy on wetlands preservation, protection, restoration and management. Since the policy was created in 1978, there have been numerous changes to federal laws and programs that have impacted heavily on how we regulate and manage Wisconsin's wetlands. In addition to "housekeeping" changes to reflect these changes, the strategic direction and goals being codified in s. NR 1.95 include revisions to:

Strengthen relationships with property owners, not-for-profit conservation organizations and local governments. Develop the outreach and incentives needed to encourage private wetland stewardship. Provide the technical assistance needed for private wetland stewardship.

Manage wetlands for biodiversity, wildlife health and ecological integrity. Identify important wetlands within watersheds and develop coherent ecologically based protection and management plan for each watershed. Encourage wetland restoration and enhancement projects for both specific functions and for the full range of functions.

Simplify our regulatory approach by identifying ways to improve our current regulatory program, by developing an effective wetland enforcement program and a compensatory mitigation program. Also look at developing a comprehensive state administered wetland protection program.

Develop and use modern technology. Increase the use and accessibility of the Wisconsin Wetland Inventory, develop a comprehensive, integrated and current wetland monitoring/resource inventory and increase the availability of wetland information.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 23.321, 281.15 and 227.11(2)(a), Stats., interpreting s. 23.321, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 103 and the creation of ch. NR 350, Wis. Adm. Code, relating to wetland compensatory mitigation. The proposed changes to ch. NR 103 address the process for consideration of wetland compensatory mitigation. To make the new process clear, the department proposes a complete re-write of the decision process section of the code under s. NR 103.08 (4). The revision would set forth a different review process depending on the type of activity or the characteristic of the wetland impact. When compensatory mitigation enters into a decision, the specifics for what is required for compensation shall be found in ch. NR 350.

A newly created ch. NR 350 is proposed to establish requirements for mitigation projects and mitigation banking in accordance with the requirements of the law including: a sequence of compensatory mitigation that requires practicable on-site compensation before allowing off-site compensation and/or use of banks; ratios for wetland replacement based on the type of wetland, proximity of the compensation site to the area of impact, and the type of replacement project; requirements for planning and design of compensation sites; requirements for short and long-term monitoring and management of compensation sites; financial assurances that the sites will be constructed and maintained as approved; requirements for long-term protection of sites as wetlands using easements or deed restrictions; a process for mitigation banking and the responsibilities of bank sponsors and the department; and requirements for public notification on mitigation banks and bank proposals.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

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

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

<b>December 11, 2000 Monday</b>	<b>Room 027, GEF #2, 101 South Webster Street Madison at 2:00 p.m.</b>
<b>December 12, 2000 Tuesday</b>	<b>Large Meeting Room DNR Northeast Region Hdqrs. 1125 N. Military Ave. Green Bay at 10:00 a.m.</b>
<b>December 12, 2000 Tuesday</b>	<b>Room 233 UW Marathon Co. Center 518 S. 7<sup>th</sup> Avenue Wausau at 4:00 p.m.</b>
<b>December 13, 2000 Wednesday</b>	<b>Conference Room #4 DNR Northern Region Hdqrs. 107 Sutliff Avenue Rhinelanders at 10:00 a.m.</b>
<b>December 14, 2000 Thursday</b>	<b>Agricultural Research Station W6646 Hwy. 70 Spooner at 10:00 a.m.</b>
<b>December 14, 2000 Thursday</b>	<b>Four Seasons Room Ramada Conference Center 1202 W. Clairemont Ave. Eau Claire at 4:00 p.m.</b>
<b>December 18, 2000 Monday</b>	<b>Best Western Conference Center Hwy. 18 &amp; 35 South Prairie du Chien at 12:00 p.m.</b>
<b>December 19, 2000 Tuesday</b>	<b>Room 255 Waukesha Co. Courthouse 1320 Pewaukee Road Waukesha at 10:00 a.m.</b>

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call P. Scott Hausmann at (608) 266-7360 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rules may be submitted to Mr. P. Scott Hausmann, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than December 29, 2000. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rules and fiscal estimates [FH-44-00] and [FH 47-00] may be obtained from Mr. Hausmann.

#### **Fiscal Estimate**

Section NR 1.95 – There is no fiscal effect. The proposed rule changes create no new authority or programs, and are not expected to have a fiscal impact.

Chs. NR 103 and 350 – The Department will incur one-time costs associated with promulgating the rules, including rule development, holding hearings, compiling a record, finalizing the rules, presentation to the Natural Resources Board, drafting guidance, and conducting training. Because the rule development phase is likely to be controversial, the Department estimates that it will devote at least 1,000 hours of staff time to complete the rule development process.

However, there are significant ongoing workload implications and costs associated with implementing a compensatory mitigation and enforcement program. The Department estimates that compensatory mitigation will require nearly 13,000 hours in additional effort annually for Water Division field staff – or the equivalent of 7 FTE. This includes estimated staff time spent on permit processing, consultations in cases that do not lead to formal permit applications, and monitoring of compensatory wetland mitigation sites. Additionally, the Department anticipates the need for an additional 1.0 FTE statewide program coordinator to administer the mitigation program for statewide consistency.

Act 147 also gave the Department the authority to enforce wetland water quality certification decisions and prosecute illegal wetland destruction. A Departmental workload analysis estimates that it will require an additional 4 FTE enforcement specialists to adequately administer the enforcement component of Act 147.

All totaled, the Department projects additional, ongoing annualized costs associated with an additional 12.0 FTE totaling \$591,000.

**Notice of Hearings**  
**Natural Resources**  
**(Environmental Protection – Air Pollution Control)**  
**(Chs. NR 400–)**  
**[CR 00–160]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1) and 285.27 (2), Stats., interpreting s. 285.27 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 422 and 484 and the creation of NR 460 Appendix JJ and ch. NR 465, Wis. Adm. Code, relating to volatile organic compound emissions and national emission standards for hazardous air pollutants for wood furniture manufacturing. The proposed rule will incorporate into the administrative code existing national emission standards for hazardous air pollutants for wood furniture manufacturing operation. These standards took effect on December 7, 1995, and are intended to protect public health by requiring the control of emissions of hazardous air pollutants to the level attainable by implementing the maximum achievable control technology. The standards include emission limitations for finishing materials and contact adhesives used by the wood furniture industry, as well as work practices for areas such as inspection and maintenance procedures, solvent cleaning and washoff operations and application equipment for finishing materials. Flexible compliance options are provided, including averaging and pollution prevention methods allowing sources to substitute non-toxic solvents for toxic ones. The standards include provisions exemption facilities based on low actual hazardous air pollution emissions and low use of finishing materials, adhesives and solvents for cleaning and washoff.

In addition, this proposed order makes a change to existing volatile organic compound control rules for this same industry. The change is proposed in order to make state VOC application equipment requirements consistent with, and no more restrictive than, the US EPA guidance for this industry.

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

- a. Types of small businesses affected: New and existing facilities which are involved in the manufacture of wood furniture or wood furniture components, and which have the potential to emit more than 10 tons per year of a single hazardous air pollutant.
- b. Description of reporting and bookkeeping procedures required: No procedures not already required under the federal law.
- c. Description of professional skills required: No additional skills

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

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

**December 14, 2000**  
**Thursday**

**Room 601**  
**UW Extension James P. Coughlin**  
**Center**  
**625 E. County Road Y**  
**Oshkosh at 1:30 p.m.**

**December 15, 2000**  
**Friday**

**Room 611B, GEF #2**  
**101 South Webster Street**  
**Madison at 1:30 p.m.**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Park at (608) 266-1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than December 29, 2000. Written comments will have the same weight and effect as oral statements presented at the hearings.

A copy of proposed rule AM-37-00 and its fiscal estimate may be obtained from:

Proposed Rules  
 Bureau of Air Management  
 P.O. Box 7921  
 Madison, WI 53707  
 Phone: (608) 266-7718  
 FAX: (608) 267-0560

**Fiscal Estimate**

The Department is already responsible for implementing this NESHAP, and does so through the operation permit program under ch. NR 407, Wis. Adm. Code. Incorporating this NESHAP into the Wisconsin Administrative Code does not impose additional costs on the Department.

**Notice of Hearings**  
**Natural Resources**  
**(Environmental Protection – Water Supply)**  
**(Chs. NR 800–)**  
**[CR 00–161] and [CR 00–162]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 280.11 and 281.17 (8), Stats., interpreting ss. 280.11 and 281.17 (8), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 809, Wis. Adm. Code, relating to lead and copper monitoring and treatment requirements for public water systems. The changes do not affect the lead or copper maximum contaminant level goals, the action levels or the basic regulatory requirements. Rule revisions will improve implementation by clearly defining appropriate sample site locations, criteria for monitoring reductions and steps for continuing corrosion control treatment. In addition, changes reduce the reporting burden for systems. Systems would not be required to submit certifications for first-draw samples, tier 1 sites or request for reduced monitoring. It also expands the time frame for reporting water quality parameters. Overall, this rule should not reduce the regulatory workload on public water systems, but should make it more simple and less costly to comply with the lead and copper rule.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 280.11 and 281.17(8), Stats., interpreting ss. 280.11 and 281.17 (8), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 809 and the creation of subch. IX of ch. NR 809, Wis. Adm. Code, relating to public notification requirements for public water systems. The revisions to the public notice rule are essentially an attempt to simplify and further clarify existing Safe Drinking Water Act required public notice requirements. These revisions separate public notifications into three categories called "tiers". Tier 1 public notices will be required for acute public health violations such as a violation of the Total Coliform Rule and notice must be issued within 24 hours. Tier 2

public notification will be required for non-acute maximum contaminant level violations and this type of notice may be delayed up to 30 days. Finally, tier 3 public notice is required for most monitoring and reporting violations and other "minor" violations and may be provided once per year.

The rule revisions clearly spell out what type of violations fit under each tier and provide step by step information regarding what must be done by public water systems that incur violations. In addition, creating the tiered notification process will substantially reduce overall noticing required of public water systems by allowing a "once per year" notice in a water system's annual consumer confidence report. This allowance should actually reduce the cost of noticing for some systems and greatly simplify the process for others.

In addition to clarifying and simplifying existing requirements, this rule revision includes new mandatory public notice language for newly regulated contaminants promulgated under other rules and reformatting existing tables to make them easier to understand and use. Overall, this regulation should not increase the regulatory workload on public water systems and should make it more simple and less costly to comply with public notice requirements.

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

- a. Types of small businesses affected: Any small business classified as having a public water system.
- b. Description of reporting and bookkeeping procedures required: No procedures not already required under the federal rule.
- c. Description of professional skills required: No skills not already required under the federal rule.

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

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

<b>December 14, 2000</b> <b>Thursday</b> <b>9:00 a.m.</b>	<b>Video conference participation will be available at:</b> <b>Room 021, GEF #2 Building</b> <b>101 S. Webster Street</b> <b>Madison</b>  <b>Room 139, State Office Building</b> <b>718 W. Clairemont Avenue</b> <b>Eau Claire</b>  <b>Room 618, State Office Building</b> <b>200 N. Jefferson Street</b> <b>Green Bay</b>  <b>Room B29, State Office Building</b> <b>3550 Mormon Coulee Road</b> <b>LaCrosse</b>  <b>Room 542, State Office Building</b> <b>819 N. 6<sup>th</sup> Street</b> <b>Milwaukee</b>  <b>Room 3, DNR Regional Headquarters,</b> <b>107 Sutliff Avenue</b> <b>Rhineland</b>
<b>December 15, 2000</b> <b>Friday</b> <b>3:00 p.m.</b>	<b>Video conference participation will be available at:</b> <b>Room 021, GEF #2 Building</b> <b>101 S. Webster Street</b> <b>Madison</b>  <b>Room 139, State Office Building</b> <b>718 W. Clairemont Avenue</b> <b>Eau Claire</b>

**Room 618, State Office Building**  
**200 N. Jefferson Street**  
**Green Bay**

**Room B29, State Office Building**  
**3550 Mormon Coulee Road**  
**LaCrosse**

**Room 542, State Office Building**  
**819 N. 6<sup>th</sup> Street**  
**Milwaukee**

**Room 3, DNR Regional Headquarters,**  
**107 Sutliff Avenue**  
**Rhineland**

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Don Swailes at (608) 266-7093 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rules may be submitted by mail to Mr. Don Swailes, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 or by FAX to Mr. Swailes at (608) 267-7650 no later than January 15, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rules [DG 45-00] and [DG 46-00] and fiscal estimates may be obtained from Mr. Swailes.

#### **Fiscal Estimate**

There is no state fiscal impact associated with these rule changes. However, the Environmental Protection Agency estimates that these changes will reduce the reporting burden for each public water system an average of 0.5 hrs. per year. The Department estimates the cost of administrative and recordkeeping activities for public water systems at approximately \$25.00 per hour. There are about 2200 public water systems impacted by these rule changes. Therefore the total annual cost for all affected public water systems will be - \$27,500. (2200 systems x \$25.00 per hour x 0.5 hours).

### **Notice of Hearing** **Pharmacy Examining Board** **[CR 00-156]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a) and (e), Stats., and interpreting s. 450.02 (3) (a) and (e), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Phar 7.01 (3), relating to supervising pharmacy interns.

#### **Hearing Date, Time and Location**

**Date:** December 12, 2000  
**Time:** 9:15 A.M.  
**Location:** 1400 East Washington Avenue  
**Room 179A**  
**Madison, Wisconsin**

#### **Appearances at the Hearing**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by December 28, 2000 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), 227.11 (2) and 450.02 (3) (a) and (e)

Statute interpreted: s. 450.02 (3) (a) and (e)

Current requirements of s. Phar 7.01 (3) state that a pharmacist may supervise no more than one pharmacy intern and 2 non-pharmacists engaged in compounding and dispensing activities as described in s. Phar 7.01 (1) (c), except that a higher ratio may be authorized by the board upon request to and approval by the board of a specific plan describing the manner in which additional interns or non-pharmacists shall be supervised. Proposed rule, s. Phar 7.015, sets forth the allowable delegation of duties to a pharmacy technician. The objective of modifying s. Phar 7.01 (3) is to delete the reference to non-pharmacists since under proposed s. Phar 7.015, a pharmacist may delegate delineated acts to pharmacy technicians, limited not to a predetermined pharmacist/technician ratio, but by the pharmacist's duty to generally supervise those technicians to which acts are delegated.

### Text of Rule

SECTION 1. Phar 7.01 (3) is amended to read:

Phar 7.01 (3) A pharmacist may supervise no more than one pharmacy intern and 2 non-pharmacists engaged in compounding and dispensing activities as described in sub. (1) (e), except a higher ratio may be authorized by the board upon request to and approval by the board of a specific plan describing the manner in which additional interns or non-pharmacists shall be supervised.

### Fiscal Estimate

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

### Initial Regulatory Flexibility Analysis

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

### Copies of Rule and Contact Person

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

## Notice of Hearing Pharmacy Examining Board [CR 00-157]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2), 450.02 (2g) (a) and (3) (e), 450.03 (2) and 450.04 (1), Stats., and interpreting ss. 450.02 (3) (e), 450.03 (2), 450.05 (1) and 450.02 (2g) (a), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. Phar 2.06 (1) (title), (2) and (3) and 4.02 (3) and (4); and to amend ss. Phar 2.03 (1), 2.06 (1), 12.03 (2) (d) and (e), 13.05 (2) and 16.02 (1), relating to consultation programs and licensure requirements.

### Hearing Date, Time and Location

**Date:** December 12, 2000  
**Time:** 9:15 A.M.  
**Location:** 1400 East Washington Avenue  
 Room 179A  
 Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department

of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by December 28, 2000 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), 227.11 (2), 450.02 (2g) (a) and (3) (e), 450.03 (2) and 450.04 (1)

Statutes interpreted: ss. 450.02 (2g) (a), (3) (e), 450.03 (2) and 450.04 (1)

The objective of the proposed amendment of ss. Phar 2.03 (1), 2.06 (1) and (4), 4.02 (5) and (6) and 16.02 is to remove the consultation requirement from the examination for licensure for all applicants and to instead require consultation programs as a part of continuing education. Currently, an applicant for original licensure in this state and pharmacists licensed in another state seeking licensure in this state must successfully pass an examination pertaining to the consultation of patients.

The object of the proposed repeal of ss. Phar 2.06 (2) and (3) and 4.02 (3) and (4), relating to the active practice of pharmacy, equivalency examinations, practice of pharmacy examination, and laboratory practical examination is to provide consistent licensure requirements between applicants licensed in another state and residents of this state seeking original licensure.

The object of amending ss. Phar 12.03 (2) (d) and (e) and 13.05 (2) is to remove a federal citation date which no longer applies.

Section Phar 2.03 (1) is amended to remove a reference to an examination that is no longer required.

### Text of Rule

SECTION 1. Phar 2.03 (1) is amended to read:

Phar 2.03 (1) An applicant for original licensure as a pharmacist is required to pass the examinations identified in s. Phar 4.02 (1), (4) and (5) (2).

SECTION 2. Phar 2.06 (1) (title) is repealed.

SECTION 3. Phar 2.06 (1) is amended to read:

Phar 2.06 Examinations for persons licensed in another state. (1) An applicant licensed as a pharmacist in another state who is engaged in the active practice of pharmacy, shall take the multi-state pharmacy jurisprudence examination described in s. Phar 4.02 (1), and the patient consultation portion of the laboratory practical examination described in s. Phar 4.02 (4). The applicant shall submit, on forms furnished by the board, information describing his or her practice experience preceding the filing of the application. The board shall may review requests for reciprocity.

SECTION 4. Phar 2.06 (2) and (3) are repealed.

SECTION 5. Phar 4.02 (3) and (4) are repealed.

SECTION 6. Phar 12.03 (2) (d) and (e) are amended to read:

Phar 12.03 (2) (d) Register with the food and drug administration and comply with all applicable requirements of 21 CFR 200, 201, 202, 207, 210 and 211 (1985).

(e) If applicable, register with the drug enforcement administration and comply with all appropriate requirements of 21 CFR 1301, 1302, 1303, 1304, 1305, 1307, 1311 and 1312 (1985).

SECTION 7. Phar 13.05 (2) is amended to read:

Phar 13.05 (2) Pass an inspection of the facility conducted by the board or its representative to determine if the location meets standards specified in Phar 13.08 to 13.11, 21 USC 351 and 352 (1990) and 21 CFR 211.142 (b) (1994).

SECTION 8. Phar 16.02 (1) is amended to read:

Phar 16.02 (1) Each pharmacist required to complete the continuing education requirement provided under s. 450.085, Stats., shall, at the time of making application for renewal of a license under s. 450.08 (2) (a), Stats., sign a statement on the application for renewal certifying that the pharmacist has completed at least 30 hours of acceptable continuing education programs within the 2-year period immediately preceding the date of his or her application for renewal. The board may require that not more than 15 continuing education hours in each 2-year period immediately



preceding the date of the application for renewal be acquired within specified topic areas, such requirement to first apply to applications that are submitted to the department to renew a license to practice pharmacy that expires on June 1, 2004. The 30 hours of continuing education for pharmacists first applies to applications that are submitted to the department to renew a license to practice pharmacy that expires on June 1, 2000. This subsection does not apply to an application for renewal of a license that expires on the first renewal date after the date on which the board initially granted the license.

### Fiscal Estimate

This rule would have revenue and expense impact if passed. There would be revenue decreased by \$72,352, which is based on 272 candidates at \$266 per patient consultant examination. The annual budgeted expenses for the pharmacy practical is \$5870. These lost revenues would be recovered by increasing the written test fees for the pharmacy examination. There is no local fiscal impact.

### Initial Regulatory Flexibility Analysis

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

### Copies of Rule and Contact Person

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

## Notice of Hearing

### Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board

[CR 00-147]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats., and interpreting s. 457.08, Stats., the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors will hold a public hearing at the time and place indicated below to consider an order to renumber s. SFC 2.01 (11), (12), (13), (14) and (15); to repeal and recreate s. SFC 2.01 (9); and to create s. SFC 2.01 (11), (12) and (16), relating to clinical social work concentration and supervised clinical field training.

### Hearing Date, Time and Location

**Date:** January 11, 2001  
**Time:** 8:30 A.M.  
**Location:** 1400 East Washington Avenue  
 Room 179A  
 Madison, Wisconsin

### Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by January 19, 2001 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), 227.11 (2) and 457.03 (1)

Statute interpreted: s. 457.08

In this proposed rule-making order the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors creates definitions of "clinical social work concentration" and "supervised clinical field training." These definitions are necessary in reviewing the qualifications of applicants for certification.

### Text of Rule

SECTION 1. SFC 2.01 (9) is repealed and recreated to read:

SFC 2.01 (9) "Clinical social work concentration" means social work courses with a primary focus on resolving intrapsychic and interpersonal problems by means of direct contact with clients at the individual, small group and family level. Clinical social work concentration courses do not include those aspects of social work which focus on community or organizational problems, social planning or policy development. Clinical courses must comprise at least 40% of non-field placement credits in the master's degree program. Core courses for a clinical social work concentration must include theory and practice courses from among the following:

- (a) Case management.
- (b) Psychopathology in social work.
- (c) Clinical assessment and treatment of specific populations and problems, such as children, adolescent, elderly, alcohol and drug abuse, family or couples relationships.
- (d) Psychopharmacology.
- (e) Psychotherapeutic interventions.
- (f) Electives such as family therapy, social work with groups, sex-related issues and topics.

SECTION 2. SFC 2.01 (11) and (12) are renumbered SFC 2.01 (13) and (14).

SECTION 3. SFC 2.01 (11) and (12) are created to read:

SFC 2.01 (11) "Interpersonal" means between or among 2 or more individuals or groups.

(12) "Intrapsychic" means occurring within one's personality or psyche.

SECTION 4. SFC 2.01 (13), (14) and (15) are renumbered SFC 2.01 (15), (17) and (18).

SECTION 5. SFC 2.01 (16) is created to read:

SFC 2.01 (16) "Supervised clinical field training" means training in a primary clinical setting which must include at least 2 semesters of field placement where more than 50% of the practice is to assess and treat interpersonal and intrapsychic issues in direct contact with individuals, families or small groups.

### Fiscal Estimate

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

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

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

### Initial Regulatory Flexibility Analysis

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

### Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington

Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708  
(608) 266-0495.

### **Notice of Hearing**

#### **Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board**

**[CR 00-158]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (3), Stats., and interpreting s. 457.08 ((1) (b), (2) (b), (3) (d) and (4) (d), Stats., the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors will hold a public hearing at the time and place indicated below to consider an order to create s. SFC 1.05 (7), relating to the state jurisprudence examination.

#### **Hearing Date, Time and Location**

**Date:** January 11, 2001  
**Time:** 8:30 A.M.  
**Location:** 1400 East Washington Avenue  
Room 179A  
Madison, Wisconsin

#### **Appearances at the Hearing**

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by January 19, 2001 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), 227.11 (2) and 457.03 (3)

Statute interpreted: s. 457.08 (1) (b), (2) (b), (3) (d) and (4) (d)

The Social Worker Section of the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors issues four different types of social work certification, based on an applicant's education and experience. An individual who has received one type of certification may later apply for another type. All applicants are currently required to take and pass a state jurisprudence examination. The proposed change would eliminate the need to retake the state jurisprudence examination if the applicant passed the examination within the previous five years.

#### **Text of Rule**

SECTION 1. SFC 1.05 (7) is created to read:

SFC 1.05 (7) An applicant for certification as a social worker, advanced practice social worker, independent social worker, independent clinical social worker, marriage and family therapist, or professional counselor need not take part II of the examination if within the 5 years preceding the date of application, the applicant took and passed part II in the process of applying for and receiving another certification from the board.

#### **Fiscal Estimate**

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

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

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

#### **Copies of Rule and Contact Person**

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

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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.*

**Commerce (CR 00-86)**

An order affecting Ch. Comm 18, relating to inspection of elevators and other mechanical lifting devices.  
Effective 1-1-01

**Corrections (CR 97-13)**

An order to repeal and recreate ch. DOC 303, relating to inmate conduct, inmate discipline, and procedures for the imposition of discipline.  
Effective 1-1-01

**Employee Trust Funds (CR 00-116)**

An order affecting ch. ETF 10, relating to election procedures for the Employee Trust Funds Board.  
Effective 1-1-01

**Health and Family Services (CR 00-114)**

An order affecting ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).  
Effective 1-1-01

**Natural Resources (CR 00-76)**

An order to repeal and recreate ch. NR 190, relating to lake planning grants.  
Effective 1-1-01

**Natural Resources (CR 00-103)**

An order affecting ch. NR 10, relating to the 2000 migratory game bird season.  
Effective 1-1-01

**Public Instruction (CR 98-138)**

An order affecting ch. PI 11, relating to eligibility criteria for children with disabilities.  
Effective 7-1-01

**Revenue (CR 00-123)**

An order affecting ch. Tax 9, relating to the master settlement agreement between the state of Wisconsin and tobacco product manufacturers.  
Effective 1-1-01

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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*The following administrative rule orders have been adopted and published in the November 30, 2000 Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

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

**Administration (CR 00-42)**

An order repealing and recreating ch. Adm 12, relating to electronic records management storage and requirements.  
Effective 5-01-01

**Administration (CR 00-80)**

An order creating ch. Adm 43, relating to non-municipal electric utility public benefits fees.  
Effective 12-01-00

**Administration (CR 00-81)**

An order creating ch. Adm 44, relating to energy conservation and efficiency and renewable resource programs.  
Effective 12-01-00

**Administration (CR 00-82)**

An order creating ch. Adm 45, relating to low-income assistance public benefits.  
Effective 12-01-00

**Agriculture, Trade and Consumer Protection (CR 99-72)**

An order affecting ch. ATPC 160, relating to county and district fairs.  
Effective 12-01-00

**Agriculture, Trade and Consumer Protection (CR 99-168)**

An order affecting s. ATPC 1.03 and chs. ATPC 10 to 12, relating to animal diseases, animal movement, and livestock markets, dealers and truckers.  
Effective 12-01-00

**Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board (CR 00-50)**

An order affecting ss. A-E 2.02, 4.05, 6.04 and 6.05, relating to registration seals, experience requirements for professional engineers, and educational requirements for land surveyors.  
Effective 12-01-00

**Commerce (CR 99-122)**

An order affecting s. Comm 2.68 and ch. Comm 90, relating to the design and construction of public swimming pools.  
Effective 12-01-00

**Corrections (CR 97-27)**

An order repealing and recreating ch. DOC 314, relating to mental health treatment for inmates.  
Effective 12-01-00

**Professional Geologists, Hydrologists, and Soil Scientists Examining Board (CR 00-64)**

An order affecting ss. GHSS 2.06, 3.05 and 4.05, relating to experience requirements prior to sitting for the fundamentals examination.  
Effective 12-01-00

**Health and Family Services (CR 00-84)**

An order affecting chs. HFS 101 to 103 and 108, relating to the medicaid purchase plan.  
Effective 12-01-00

**Transportation (CR 00-15)**

An order affecting chs. Trans 4 and 8, relating to the state public transit operating assistance program; to the use of fully-allocated costs in the competitive bid process; and to allocation of federal public transit assistance program funds to urbanized areas under 200,000 population.  
Effective 12-01-00

**Workforce Development (CR 00-67)**

An order repealing ch. HSS 245 and creating ch. DWD 18, relating to public assistance record retention.  
Effective 12-01-00



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## SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

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The following administrative rule revisions and corrections have taken place in November 2000, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### REVISIONS

#### Administration:

**Ch. Adm 12 (entire chapter)**

**Ch. Adm 43 (entire chapter)**

**Ch. Adm 44 (entire chapter)**

**Ch. Adm 45 (entire chapter)**

#### Agriculture, Trade and Consumer Protection:

##### Ch. ATCP 1

S. ATCP 1.03 (1) (a) and (2) (b)

##### Ch. ATCP 10

S. ATCP 10.01 (1) (intro.) and (b), (3) to (5), (6m), (13m) to (16), (17m), (20m), (22m), (25), (25m), (26), (26m), (29), (31), (34), (39), (40), (43), (44), (45) (f), (i) and (j), (55), (59m), (60), (60m), (61m), (66), (69m), (69r), (70) (b) and (c), (71), (71m), (72), (72m) and (74)

S. ATCP 10.02 (entire section)

SS. ATCP 10.05 to 10.20 (entire sections)

S. ATCP 10.21 (1) (br), (1m), (6) (intro.) and (11)

SS. ATCP 10.30 to 10.38 (entire sections)

S. ATCP 10.40 (1)

S. ATCP 10.41 (1) and (2)

S. ATCP 10.50 (2) (b) and (c) and (4) (c)

S. ATCP 10.60 (entire section)

S. ATCP 10.61 (4) and (5)

S. ATCP 10.62 (entire section)

S. ATCP 10.63 (1) (br), (1m), (6) (intro.) and (11)

S. ATCP 10.65 (1) (intro.)

S. ATCP 10.651 (entire section)

S. ATCP 10.652 (7) and (8) (b)

SS. ATCP 10.66 to 10.675 (entire sections)

S. ATCP 10.68 (1) (am) and (k), (13) (a) and (14) (a) and (c)

S. ATCP 10.705 (entire section)

S. ATCP 10.71 (1) (a)

S. ATCP 10.72 (1) (d), (g) and (h)

##### Ch. ATCP 11

S. ATCP 11.01 (1) (intro.), (3) to (5), (7), (8), (11m), (12m), (13m), (17) to (18m), (20m), (24), (27), (29m), (30m), (32) to (33m), (35), (37), (39), (47), (49), (50), (52), (53), (54) (e), (f), (i) and (j), (61), (62), (63), (67m), (68), (70g), (71), (80m), (80r), (81) (b), (82m), (83), (84m) and (85)

SS. ATCP 11.02 to 11.04 (entire sections)

S. ATCP 11.10 (1) (a), (2), (3) and (4) (d)

SS. ATCP 11.11 to 11.13 (entire sections)

S. ATCP 11.14 (1), (3) (c) and (d), (4), (5) (intro.) and (b)

SS. ATCP 11.16 to 11.31 (entire sections)

S. ATCP 11.32 (3) (c) and (d), (5) and (6) (b)

S. ATCP 11.34 (entire section)

SS. ATCP 11.50 to 11.52 (entire sections)

S. ATCP 11.53 (1), (2) (a) to (c) and (e)

S. ATCP 11.54 (1) (intro.), (2), (3) and (4)

S. ATCP 11.545 (2) (a), (b) and (c) and (3)

S. ATCP 11.55 (1), (2) (b) and (c), (3) and (4)

S. ATCP 11.56 (1), (2) (f) and (g), (3) and (4) (a)

S. ATCP 11.57 (entire section)

S. ATCP 11.58 (1) (k) and (2) (intro.)

S. ATCP 11.59 (1) (am) and (e), (2) (a) and (3)

S. ATCP 11.60 (2), (3) (dm) and (mm) and (5) (b) and (c)

S. ATCP 11.62 (2), (4) (b), (5) and (6)

S. ATCP 11.705 (entire section)

S. ATCP 11.71 (1) (a)

S. ATCP 11.72 (2), (4), (13) and (14)

S. ATCP 11.73 (entire section)

##### Ch. ATCP 12

S. ATCP 12.01 (8x), (10), (18), (19), (20) (f), (i) and (j), (21), (22), (24) and (27)

S. ATCP 12.02 (2) (e) and (f), (2m) (a) and (2r) (b) and (c)

S. ATCP 12.04 (2) (c) and (2r) (b) and (c)

S. ATCP 12.045 (1) (c)

S. ATCP 12.05 (1) (a), (2) (a), (4) and (5) (b)

S. ATCP 12.06 (entire section)

S. ATCP 12.08 (2), (10), (11), (12) and (24)

**Ch. ATCP 160**

- S. ATCP 160.02 (4)
- S. ATCP 160.04 (1)
- S. ATCP 160.15 (1) (intro.) and (2)
- S. ATCP 160.16 (5)
- S. ATCP 160.17 (entire section)
- S. ATCP 160.18 (entire section)
- S. ATCP 160.24 (entire section)
- SS. ATCP 160.27 to 160.31 (entire sections)
- S. ATCP 160.51 (entire section)
- S. ATCP 160.52 (2) (c), (d) and (e), (3), (4) and (5)
- S. ATCP 160.53 (2) (intro.) and (3)
- S. ATCP 160.54 (3) and (6)
- S. ATCP 160.55 (entire section)
- S. ATCP 160.56 (1) (a), (b), (c), (e) and (f)
- S. ATCP 160.57 (entire section)
- S. ATCP 160.58 (3)
- S. ATCP 160.59 (1) (intro.) and (a)
- S. ATCP 160.61 (6)
- SS. ATCP 160.62 to 160.79 (entire sections)
- S. ATCP 160.92 (3) (c) and (d)

**Architects, Engineers, etc., Examining Board:****Ch. A-E 2**

- S. A-E 2.02 (8)

**Ch. A-E 4**

- S. A-E 4.05 (1) (b), (2) (a), (3) (a) and (4) (b)

**Ch. A-E 6**

- S. A-E 6.04 (entire section)
- S. A-E 6.05 (1) and (3)

**Commerce:***(Fee Schedule, Ch. Comm 2)***Ch. Comm 2**

- S. Comm 2.68 (entire section)

*(Public Swimming Pools, Ch. Comm 90)***Ch. Comm 90**

- S. Comm 90.01 (entire section)
- S. Comm 90.02 (2)
- S. Comm 90.03 (18w)
- S. Comm 90.04 (1) to (3)
- S. Comm 90.06 (2)
- S. Comm 90.08 (8), (10) (d), (12) and (14)
- S. Comm 90.09 (1) (a)
- S. Comm 90.10 (1)
- S. Comm 90.19 (2), (6) (a) and (8) (c)

**Corrections:****Ch. DOC 314 (entire chapter)****Professional Geologists, Hydrologists and Soil Scientists Examining Board:****Ch. GHSS 2**

- S. GHSS 2.06 (7) (b) and (d)

**Ch. GHSS 3**

- S. GHSS 3.05 (2) (b) and (7) (b)

**Ch. GHSS 4**

- S. GHSS 4.05 (2) (c) and (7) (b) and (d)

**Health and Family Services:***(Medical Assistance, Chs. HFS 100--)***Ch. HFS 101**

- S. HFS 101.03 (17x), (34m), (36m), (42m), (51m), (52g), (52r), (52s), (69g), (78u), (80m), (94m), (94p), (94r), (101m), (114q), (115m), (152m), (160m), (160r), (170s), (172s), (180m) and (183)

**Ch. HFS 102**

- S. HFS 102.04 (3) (d)

**Ch. HFS 103**

- S. HFS 103.01 (1) (a)
- S. HFS 103.03 (1) (g) and (h)
- S. HFS 103.04 (8) and (9)
- S. HFS 103.06 (15)
- S. HFS 103.087 (entire section)

**Ch. HFS 108**

- S. HFS 108.02 (14) and (15)

*(Economic Support, Chs. HSS 200--)***Ch. HSS 245 (entire chapter)****Transportation:****Ch. Trans 4**

- S. Trans 4.02 (1), (1m), (1r), (5m), (6m) and (8m)
- S. Trans 4.04 (1), (3), (4) (b), (5) (a), (c), (d), (f), (L), (s), (t), (y) and (z)
- S. Trans 4.05 (1) (b) and (2)
- S. Trans 4.06 (entire section)
- S. Trans 4.07 (5) and (6)
- S. Trans 4.08 (4) (b)
- S. Trans 4.09 (2) (intro.), (a) to (c), (e) and (f)
- S. Trans 4.10 (entire section)

**Ch. Trans 8**

- S. Trans 8.01 (entire section)
- S. Trans 8.02 (2), (2m), (2r), (4), (7), (10) and (11m)
- S. Trans 8.03 (intro.), (1) (b), (2) and (3)
- S. Trans 8.04 (entire section)
- S. Trans 8.05 (entire section)

**Workforce Development:***(Economic Support, Chs. DWD 11-59)***Ch. DWD 18 (entire chapter)**

## EDITORIAL CORRECTIONS

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

### Agriculture, Trade and Consumer Protection:

#### Ch. ATCP 10

- S. ATCP 10.41 (6) had a correction made under s.13.93 (2m) (b) 7., Stats.
- S. ATCP 10.652 (7) (f) had a correction made under s.13.93 (2m) (b) 7., Stats.

#### Ch. ATCP 11

- S. ATCP 11.11 (1) (a) had a correction made under s.13.93 (2m) (b) 7., Stats.

#### Ch. ATCP 160

- S. ATCP 160.02 (2) (a) had a correction made under s.13.93 (2m) (b) 7., Stats.
- S. ATCP 160.56 (3) had a correction made under s.13.93 (2m) (b) 7., Stats.

### Health and Family Services:

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

**Ch. HFS 58 (entire chapter) was renumbered from ch. HSS 58 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

### Transportation:

#### Ch. Trans 405

- S. Trans 405.03 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

## ERRATA

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

### Health and Family Services:

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

**Ch. HFS 58 (entire chapter) was reprinted to correct a previous erroneous instruction to remove the chapter.**

### Transportation:

#### Ch. Trans 405

- S. Trans 405.04 was reprinted to correct an error in Table 1.

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## FINAL REGULATORY FLEXIBILITY ANALYSES

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### 1. Administration (CR 00-42)

Ch. Adm 12 – Electronic records management storage and requirements.

#### Summary of Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule is not expected to negatively impact on small businesses.

#### Summary of Comments from Legislative Committees:

No comments were reported.

### 2. Administration (CR 00-80)

Ch. Adm 43 – Non-municipal electric utility public benefits fees.

#### Summary of Final Regulatory Flexibility Analysis:

*Types of small businesses that will be affected by the rule.*

Small businesses that receive metered electric service from one of the 12 listed electric providers will be obligated to pay a public benefits fee. The public benefits fee will be included in each electric bill, and shall not exceed the lesser of 3% of the charges for electric service of \$750 per company per month.

Consolidated Water Power Company  
Madison Gas and Electric Company  
Northern States Power Company  
Pioneer Power and Light Company  
Wisconsin Electric Power Company  
Wisconsin Public Service Corporation  
Dahlberg Light and Power Company  
North Central Power Company, Inc.  
Northwestern Wisconsin Electric Company  
Superior Water Light and Power Company  
Wisconsin Power and Light Company  
Westfield Milling and Electric Light Company

The U.S. Small Business Administration (SBA) estimated in 1998 that about 98% of the 120,000 businesses with employees in Wisconsin were small businesses (defined for the purpose of this rule as fewer than 500 employees) and about 220,000 persons were self-employed. Accounting for some overlap, the SBA estimated there were 337,600 small businesses in Wisconsin in 1998. About 85% of Wisconsin small businesses were served by the 12 electric providers in 1998 according to the Energy Information Administration. Therefore, nearly 287,000 small businesses will be affected by this rule.

*Reasons for failing to include in the rule any of the methods specified in s. 227.114 (2), Stats.*

The rule will have no specific affect on small businesses. The public benefits fee will appear as a fixed charge on the electric bill but the fee itself is imposed on all electric utility customers by s. 16.957 (4), Stats. The rule does not establish any compliance or reporting requirements, or performance standards for small businesses.

#### Summary of Comments:

**Issue.** The public benefits rule will not be uniform for some companies if separately metered billboards are assessed the fee.

**Response.** Equating one meter with one customer is the standard electric utility practice in Wisconsin, and is even utilized by the Public Service Commission. Fees are subject to a 3% or \$750 maximum bill increase restriction by statute. Industry figures indicate that the average monthly billboard electric bill is between \$20 and \$46, so that the cap will translate to a fee of between \$0.60 and \$1.38 per month. The rule treats companies with multiple billboards the same as companies owning multiple sites such as restaurants or gas station chains. However, the rule does provide for waiving or rebating of fees paid in excess of \$750 when aggregating multiple meters owned by a small business in a utility's service area. [Section Adm 43.08 (3) (c)]

### 3. Administration (CR 00-81)

Ch. Adm 44 – Energy conservation and efficiency and renewable resource programs.

#### Summary of Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

#### Summary of Comments:

No comments were reported.

### 4. Administration (CR 00-82)

Ch. Adm 45 – Low-income assistance public benefits

#### Summary of Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

#### Summary of Comments:

No comments were reported.

### 5. Agriculture, Trade and Consumer Protection (CR 99-72)

Ch. ATPC 160 – County and district fairs

#### Summary of Final Regulatory Flexibility Analysis:

This rule updates and revises uniform premium lists for first place to fourth place premium awards and specifies entry classes for county and district fair exhibits. The department updates its county and district fair rules every 5 years, based on recommendations from the Wisconsin association of fairs. The rule has been reviewed pursuant to s. 227.114, Stats., and the department concluded the rule would not have a significant economic impact on a substantial number of small businesses.

#### Summary of Comments:

No comments were reported.

### 6. Agriculture, Trade and Consumer Protection (CR 99-168)

Chs. ATPC 10, 11 and 12 – Animal diseases, animal movement, and livestock markets, dealers and truckers.

**Summary of Final Regulatory Flexibility Analysis:**

This rule updates and expands current rules relating to animal disease, animal movement and livestock markets, dealers and truckers. It brings state requirements for disease control into conformity with federal requirements as delineated in the uniform methods and rules, with some exceptions. For instance, the uniform methods and rules permit use of the blood tuberculosis test (BTB) for cervids (deer, moose, elk, etc.) This rule prohibits use of the BTB because the test has consistently failed to identify animals as suspects or reactors when the animals were confirmed infected by culture positive results.

This rule will affect small businesses in Wisconsin. Small businesses which will be affected include farmers/producers; veterinarians; livestock market operators; livestock dealers; livestock truckers; and sponsors of horse shows, exhibitions or fairs.

Except for the swine import requirements, the overall impact on small businesses is negligible. In some instances requirements have been reduced. In other instances requirements have been increased. It is not anticipated that any of the changes will have a large impact on small businesses. The most significant impact, the cost of some post import pseudorabies testing of swine is insignificant if compared to the costs that will be incurred by the industry and individual producers if pseudorabies is imported and regains a foothold in Wisconsin.

**Summary of Comments:**

On July 5, 2000, this department transmitted the above rule for legislative committee review. On July 12, 2000 the rule was referred to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. On August 11, 2000, the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform scheduled a public hearing to be held on September 6, 2000. On September 1, 2000, the Senate Committee cancelled the hearing. The review period expired without further action on September 11, 2000.

On July 19, 2000 the rule was referred to the Assembly Agriculture Committee. The review period expired on August 19, 2000 without action by the committee.

**7. Architects, Landscape Architects, Engineers, Designers and Land Surveyors (CR 00-50)**

Chs. A-E 2, 4 and 6 – Registration seals, experience requirements for professional engineers, and educational requirements for land surveyors.

**Summary of Final Regulatory Flexibility Analysis:**

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

**Summary of Comments:**

No comments were reported.

**8. Commerce (99-122)**

Chs. Comm 90 – Design and installation of public swimming pools.

**Summary of Final Regulatory Flexibility Analysis:**

The proposed rules provide additional flexibility for installation in existing structures without compromising health or safety.

The rule revisions better clarify how pools and whirlpools may be installed in existing spaces with respect to obstructions and access. These changes should reduce some remodeling costs associated with indoor installations of pools and whirlpools.

**Summary of Comments:**

No comments were reported.

**9. Corrections (CR 97-27)**

Ch. DOC 314 – Mental health treatment for inmates.

**Summary of Final Regulatory Flexibility Analysis:**

No affect on small business is anticipated from promulgation of this rule.

**Summary of Comments:**

No comments were reported.

**10. Geologists, Hydrologists and Soil Scientists (CR 00-64)**

Chs. GHSS 2, 3 and 4 – Experience requirements prior to the fundamentals examination.

**Summary of Final Regulatory Flexibility Analysis:**

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

**Summary of Comments:**

No comments were reported.

**11. Health and Family Services (CR 00-84)**

Chs. HFS 101 to 103 and 108 – Medicaid purchase plan

**Summary of Final Regulatory Flexibility Analysis:**

The rule changes will not affect small businesses as defined in s. 227.114 (1) (a), Stats.

**Summary of Comments:**

No comments were reported.

**12. Transportation (CR 00-15)**

Chs. Trans 4 and 8 – Public transit operating assistance program; fully-allocated costs in the competitive bid process; allocation of federal public transit assistance program funds to urbanized areas under 200,000 population.

**Summary of Final Regulatory Flexibility Analysis:**

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

**Summary of Comments:**

No comments were reported.

**13. Workforce Development (CR 00-67)**

Ch. DWD 18 – Public assistance record retention.

**Summary of Final Regulatory Flexibility Analysis:**

No affect on small business is anticipated by the promulgation of this rule.

**Summary of Comments:**

No comments were reported.

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## EXECUTIVE ORDERS

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*The following is a listing of recent Executive Orders issued by the Governor.*

**Executive Order 410.** Relating to a proclamation that the flags of the United States and the state of Wisconsin be flown at half-staff as a mark of respect for United States soldiers who recently died in Yemen.

**Executive Order 411.** Relating to the Governor's Advisory Task Force on the proposed federal "Roadless Initiative".





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