

State Senator - 1 -

Cathy Stepp

JUL 18 2003

WISCONSIN'S 21ST DISTRICT

July 18, 2003

Representative Glenn Grothman, Co-Chair
Joint Committee for Review of
Administrative Rules
Room 15 North
State Capitol
Madison, WI 53701

Senator Joseph Leibham, Co-Chair
Joint Committee for Review of
Administrative Rules
Room 409 South
State Capitol
Madison, WI 53701

Dear Co-Chair Grothman and Co-Chair Leibham:

I would like to call to your attention to a critical problem with the administrative rules regarding drainage districts.

One of the functions of county drainage boards is to calculate the benefits of drainage to each property that is located within a drainage district in the county. The calculation of benefits is used to determine the proportion of the costs of construction and maintenance of drains that is assessed to each property owner.

From time to time, the benefits to property within the drainage district must be reassessed to reflect changed circumstances. The Department of Agriculture, Trade and Consumer Protection (DATCP) has standards in its administrative rules for assessing and reassessing drainage district benefits. [See subch. II, ch. ATCP 48, Wis. Adm. Code.]

The Racine County drainage board recently undertook a reassessment of benefits. The reassessment is costly, however, state funds are available to help defray these costs under s. ATCP 48.60. The Racine County Drainage Board has a contract with DATCP for one of these grants, contingent upon DATCP approval of the reassessment.

The Racine County Drainage Board encountered a problem upon seeking DATCP approval of its reassessment. The engineers hired by the Racine County Drainage Board assessed the benefits to each parcel of land. This is apparently the long-standing practice for assessments and reassessments in drainage districts. Unfortunately, rules promulgated by DATCP in June 1995 require that benefits to agriculture lands be assessed to parcels in increments of 40 acres. [s. ATCP 48.02 (2).] In other words, a farm that is 320 acres would be assessed in eight separate 40-acre parcels. I believe this arbitrary requirement is costly, cumbersome and inefficient.

DATCP will not approve Racine County's reassessment until the reassessment is recalculated on a 40-acre parcel basis. The Racine County Drainage Board is very reluctant to spend the additional money necessary to do this, and feels that there will be no significant

benefit gained by reassessing the benefits on 40-acre parcels. In fact, for assessment in Racine County, the 40-acre parcel would have to be recalculated to the actual acres covered by each landowner before the assessment could be levied.

I have tried to discern a reason for this rule, and have found that there is no rationale for the 40 acre requirement as a matter of public policy. DATCP staff indicates that this issue was discussed thoroughly in the advisory committee that helped draft the rules. However, the strongest argument advanced by DATCP staff is that a "figure" printed in the statutes following s. 88.35 (6), Stats. (copy enclosed with this letter), shows benefits assessed to a 40-acre parcel (Range SE 1/4 NE 1/4) in one of the examples.

I find it hard to believe that the "example" set forth in the statutes was meant by the Legislature to mandate assessment and reassessment of benefits in a drainage district on a 40-acre parcel basis. The preceding statutory text in s. 88.35 (6) states as follows: "The assessment of benefits and awards of damages shall be set forth in substantially the following *form*:". (Emphasis added.) My opinion is that this is not a statutory mandate for the rule, and that the rule creates an arbitrary and unreasonable burden for any drainage board.

I respectfully request that the Joint Committee for Review of Administrative Rules hold a hearing on s. ATCP 48.08 (2), Wis. Adm. Code, as soon as possible and to suspend this rule. The suspension will allow the Racine County Drainage Board to obtain its grant, and avoid the unnecessary expense of a recalculation of the reassessment.

Thank you very much for your attention to this matter. If I can provide further information, please feel free to contact me.

Sincerely,

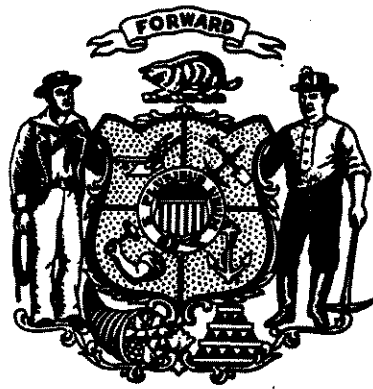


CATHY STEPP
State Senator
21st Senate District

Enclosure

cc: Matt Quinn, Attorney
Racine County Drainage Board
932 Lake Avenue
Racine, WI 53403

END



END



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection

Rod Nilsestuen, Secretary

June 7, 2004

The Honorable Judy Robson, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 South State Capitol
Madison, WI 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 North State Capitol
Madison, WI 53702

Dear Representatives Robson and Grothman:

Re: **Emergency Rule Extension – Agricultural Producer Security – Assessment Credits**

The Department of Agriculture, Trade and Consumer Protection asks the Joint Committee for the Review of Administrative Rules (JCRAR) to extend the above emergency rule, which is scheduled to expire on June 27, 2004. The department asks JCRAR to extend the emergency rule for 60 days, until August 26, 2004.

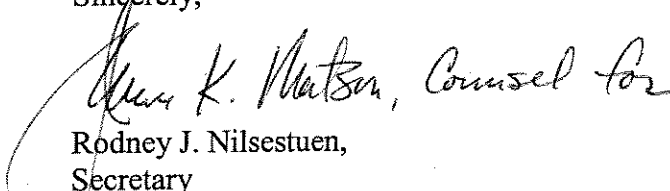
This emergency rule modifies the producer security fund assessments required under ch. 126, stats., for certain grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.

We are enclosing copies of the emergency rule, fiscal estimate and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. The department has started "permanent" rulemaking proceedings, but will not be able to complete those proceedings before the emergency rule expires. The department is therefore asking JCRAR to extend the emergency rule.

The department held public hearings on the emergency rule and nearly identical permanent rule on April 26 and 27, 2004. We have submitted the final draft of the permanent rule to the DATCP Board for consideration at its June 9 meeting. If the DATCP Board approves the final draft rule, we will refer it to the Legislature for review. We expect that the permanent rule will go into effect a few days before the end the 60-day extension on the emergency rule.

The department will have staff available to answer questions at the JCRAR meeting on this matter.

Sincerely,


Rodney J. Nilsestuen,
Secretary

Enclosures

Wisconsin Food and Agricultural Products - \$40 Billion for Wisconsin's Economy

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**EMERGENCY ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby
2 adopts the following emergency rule to create ss. ATCP 99.13, 99.25, 100.13 and 101.25,
3 relating to the partial refund of certain agricultural producer security assessments
4 required of grain dealers, grain warehouse keepers, milk contractors and vegetable
5 contractors.

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

Statutory Authority: ss. 126.15(1)(intro.), 126.30(1)(intro.),
126.46(1)(intro.), 126.60(1)(intro.), 126.81 and
126.88(intro.), Stats.

Statutes Interpreted: ch. 126, Stats.

This emergency rule authorizes a partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") under ch. 126, Stats.

This rule authorizes a partial refund of an annual assessment that is drastically inflated by a *temporary* change in financial condition caused by a merger or acquisition. This rule defines the specific circumstances under which the refund is authorized. This rule does not authorize a refund if the change in the contractor's financial condition lasts more than one fiscal year.

Background

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

Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. A contractor's annual fund assessment is based on the contractor's size, financial condition and risk practices.

Financial condition is determined on the basis of an annual financial statement filed by the contractor. Other things being equal, contractors with weaker financial statements pay higher annual fund assessments. Fund assessments are calculated according to a formula spelled out in the producer security law. However, DATCP may modify fund assessments by rule.

In some cases, a merger or acquisition may temporarily affect a contractor's financial statement. This temporary change may in some cases cause a disproportionate increase in annual fund assessments (based on the current statutory assessment formula). In such cases, this rule authorizes DATCP to refund part of a contractor's assessment if certain conditions apply. The refund is paid as a credit against the next year's assessment.

Rule Contents

Partial Refund of Assessment

Under this rule, DATCP may refund part of an annual fund assessment paid by a contributing contractor if all of the following apply:

- The contractor paid the full amount of the assessment including any late penalties.
- The contractor is the surviving entity in a merger under ss. 179.77, 180.1101, 183.1201, or 185.61, Stats., or has acquired property pursuant to a sale of assets under s. 180.1202, Stats.
- The assessment was based on the contractor's financial statement for the fiscal year in which the merger or acquisition took effect.
- The contractor's financial statement, for the fiscal year in which the merger or acquisition took effect, caused the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) to increase by at least 100% compared to the preceding license year.
- The contractor's annual financial statements, for the fiscal years immediately preceding and immediately following the fiscal year in which the merger or acquisition took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

- In the license year immediately following the license year for which the contractor paid the assessment, the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) declines by at least 50% compared to the license year for which the contractor paid the assessment.
- The contractor requests the refund in writing, by the first day of the next license year.

Refund Amount

- The amount of the refund under this rule will equal 75% of the difference between the assessment amount paid by the contractor and the assessment amount required of the contractor in the next license year.

Refund Paid as Credit Against Next Year's Assessment

Whenever DATCP pays a refund under this rule, DATCP must pay the refund as a credit against the contractor's assessment for the next license year. DATCP must apportion the credit, pro rata, against the quarterly assessment installments required of the contractor in that next license year. If the credit exceeds the total assessment required of the contractor in that next license year, DATCP must credit the balance in the same fashion against assessments required of the contractor in subsequent license years.

DATCP may not pay refunds except as credits against future assessments (there is no cash refund). DATCP may not pay a refund (grant a credit) to any person other than the contractor who paid the original assessment on which the refund is given.

FINDING OF EMERGENCY

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

(2) Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, the department may compensate producers from the fund. A contractor's

annual fund assessment is based, in large part, on the contractor's annual financial statement. The producer security law spells out a formula for calculating assessments. However, the department may modify assessments by rule.

(3) The fund assessment formula is designed to require higher assessments of contractors who have weak financial statements (and may thus present greater default risks). But the statutory formula may generate unexpectedly high assessments in some cases, where a contractor's strong financial condition is *temporarily* affected by financial transactions related to a merger or acquisition. This may cause unfair hardship, and may unfairly penalize some mergers or acquisitions that actually strengthen security for agricultural producers. This may have an unnecessarily adverse impact on contractors, producers and Wisconsin economic development.

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

EMERGENCY RULE

1 SECTION 1. ATCP 99.13 is created to read:

2 **ATCP 99.13 Fund assessment temporarily affected by merger or**

3 **acquisition; partial refund.** (1) PARTIAL REFUND OF ASSESSMENT. The department
4 may refund part of an annual fund assessment paid by a contributing grain dealer under
5 s. 126.15, Stats., if all of the following apply:

6 (a) The grain dealer paid the full amount of the assessment including any late
7 payment penalties under s. 126.15(7)(d), Stats.

1 (b) The grain dealer is the surviving entity in a merger under ss. 179.77,
2 180.1101, 183.1201, or 185.61, Stats., or has acquired property pursuant to a sale of
3 assets under s. 180.1202, Stats.

4 (c) The assessment was based on the grain dealer's financial statement for the
5 fiscal year in which the merger or acquisition under par. (b) took effect.

6 (d) The grain dealer's financial statement, for the fiscal year in which the merger
7 or acquisition under par. (b) took effect, caused the sum of the grain dealer's current ratio
8 assessment rate under s. 126.15(2), Stats., and debt to equity assessment rate under s.
9 126.15(4), Stats., to increase by at least 100% compared to the preceding license year.

10 (e) The grain dealer's annual financial statements, for the fiscal years
11 immediately preceding and immediately following the fiscal year in which the merger or
12 acquisition under par. (b) took effect, show positive equity, a current ratio of at least 1.25
13 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

14 (f) In the license year immediately following the license year for which the grain
15 dealer paid the assessment, the sum of the grain dealer's current ratio assessment rate
16 under s. 126.15(2), Stats., and debt to equity assessment rate under s. 126.15(4), Stats.,
17 declines by at least 50% compared to the license year for which the grain dealer paid the
18 assessment.

19 (g) The grain dealer requests the refund in writing, by September 1st of the grain
20 dealer's next license year.

21 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75%
22 of the difference between the assessment amount paid by the grain dealer and the
23 assessment amount required of the grain dealer in the next license year.

1 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The
2 department shall pay the refund under sub. (1) as a credit against the grain dealer's
3 assessment for the next license year. The department shall apportion the credit, pro rata,
4 against the quarterly assessment installments required of the grain dealer under s.
5 126.15(7), Stats., in that next license year. If the credit exceeds the total assessment
6 required of the grain dealer in that next license year, the department shall credit the
7 balance in the same fashion against assessments required of the grain dealer in
8 subsequent license years.

9 (b) The department may not pay any refund under sub. (1), except in the manner
10 prescribed in par. (a). The department may not pay the refund to any person other than
11 the grain dealer who paid the original assessment on which the refund is given.

12 SECTION 2. ATCP 99.25 is created to read:

13 **ATCP 99.25 Fund assessment temporarily affected by merger or**
14 **acquisition; partial refund.** (1) PARTIAL REFUND OF ASSESSMENT. The department
15 may refund part of an annual fund assessment paid by a contributing grain warehouse
16 keeper under s. 126.30, Stats., if all of the following apply:

17 (a) The grain warehouse keeper paid the full amount of the assessment including
18 any late payment penalties under s. 126.30(6)(d), Stats.

19 (b) The grain warehouse keeper is the surviving entity in a merger under ss.
20 179.77, 180.1101, 183.1201, or 185.61, Stats., or has acquired property pursuant to a sale
21 of assets under s. 180.1202, Stats.

22 (c) The assessment was based on the grain warehouse keeper's financial
23 statement for the fiscal year in which the merger or acquisition under par. (b) took effect.

1 (d) The grain warehouse keeper's financial statement, for the fiscal year in which
2 the merger or acquisition under par. (b) took effect, caused the sum of the grain
3 warehouse keeper's current ratio assessment rate under s. 126.30(2), Stats., and debt to
4 equity assessment rate under s. 126.30(4), Stats., to increase by at least 100% compared
5 to the preceding license year.

6 (e) The grain warehouse keeper's annual financial statements, for the fiscal years
7 immediately preceding and immediately following the fiscal year in which the merger or
8 acquisition under par. (b) took effect, show positive equity, a current ratio of at least 1.25
9 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

10 (f) In the license year immediately following the license year for which the grain
11 warehouse keeper paid the assessment, the sum of the grain warehouse keeper's current
12 ratio assessment rate under s. 126.30(2), Stats., and debt to equity assessment rate under
13 s. 126.30(4), Stats., declines by at least 50% compared to the license year for which the
14 grain warehouse keeper paid the assessment.

15 (g) The grain warehouse keeper requests the refund in writing, by September 1st
16 of the grain warehouse keeper's next license year.

17 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75%
18 of the difference between the assessment amount paid by the grain warehouse keeper and
19 the assessment amount required of the grain warehouse keeper in the next license year.

20 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The
21 department shall pay the refund under sub. (1) as a credit against the grain warehouse
22 keeper's assessment for the next license year. The department shall apportion the credit,
23 pro rata, against the quarterly assessment installments required of the grain warehouse

1 keeper under s. 126.30(6), Stats., in that next license year. If the credit exceeds the total
2 assessment required of the grain warehouse keeper in that next license year, the
3 department shall credit the balance in the same fashion against assessments required of
4 the grain warehouse keeper in subsequent license years.

5 (b) The department may not pay any refund under sub. (1), except in the manner
6 prescribed in par. (a). The department may not pay the refund to any person other than
7 the grain warehouse keeper who paid the original assessment on which the refund is
8 given.

9 SECTION 3. ATCP 100.13 is created to read:

10 **ATCP 100.13 Fund assessment temporarily affected by merger or**

11 **acquisition; partial refund.** (1) PARTIAL REFUND OF ASSESSMENT. The department
12 may refund part of an annual fund assessment paid by a contributing milk contractor
13 under s. 126.46, Stats., if all of the following apply:

14 (a) The milk contractor paid the full amount of the assessment including any late
15 payment penalties under s. 126.46(6)(e).

16 (b) The milk contractor is the surviving entity in a merger under ss. 179.77,
17 180.1101, 183.1201, Or 185.61, Stats., or has acquired property pursuant to a sale of
18 assets under s. 180.1202, Stats.

19 (c) The assessment was based on the milk contractor's financial statement for the
20 fiscal year in which the merger or acquisition under par. (b) took effect.

21 (d) The milk contractor's financial statement, for the fiscal year in which the
22 merger or acquisition under par. (b) took effect, caused the sum of the milk contractor's
23 current ratio assessment rate under s. 126.46(2), Stats., and debt to equity assessment rate

1 under s. 126.46(4), Stats., to increase by at least 100% compared to the preceding license
2 year.

3 (e) The milk contractor's annual financial statements, for the fiscal years
4 immediately preceding and immediately following the fiscal year in which the merger or
5 acquisition under par. (b) took effect, show positive equity, a current ratio of at least 1.25
6 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

7 (f) In the license year immediately following the license year for which the milk
8 contractor paid the assessment, the sum of the milk contractor's current ratio assessment
9 rate under s. 126.46(2), Stats., and debt to equity assessment rate under s. 126.46(4),
10 Stats., declines by at least 50% compared to the license year for which the milk
11 contractor paid the assessment.

12 (g) The milk contractor requests the refund in writing, by May 1st of the milk
13 contractor's next license year.

14 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75%
15 of the difference between the assessment amount paid by the milk contractor and the
16 assessment amount required of the milk contractor in the next license year.

17 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The
18 department shall pay the refund under sub. (1) as a credit against the milk contractor's
19 assessment for the next license year. The department shall apportion the credit, pro rata,
20 against the quarterly assessment installments required of the milk contractor under s.
21 126.46(6), Stats., in that next license year. If the credit exceeds the total assessment
22 required of the grain dealer in that next license year, the department shall credit the

1 balance in the same fashion against assessments required of the milk contractor in
2 subsequent license years.

3 (b) The department may not pay any refund under sub. (1), except in the manner
4 prescribed in par. (a). The department may not pay the refund to any person other than
5 the milk contractor who paid the original assessment on which the refund is given.

6 **SECTION 4.** ATCP 101.25 is created to read:

7 **ATCP 101.25 Fund assessment temporarily affected by merger or**

8 **acquisition; partial refund.** (1) PARTIAL REFUND OF ASSESSMENT. The department
9 may refund part of an annual fund assessment paid by a contributing vegetable contractor
10 under s. 126.60, Stats., if all of the following apply:

11 (a) The contractor paid the full amount of the assessment including any late
12 payment penalties under s. 126.60(6)(d), Stats.

13 (b) The contractor is the surviving entity in a merger under ss. 179.77, 180.1101,
14 183.1201, or 185.61, Stats., or has acquired property pursuant to a sale of assets under s.
15 180.1202, Stats.

16 (c) The assessment was based on the contractor's financial statement for the fiscal
17 year in which the merger or acquisition under par. (b) took effect.

18 (d) The contractor's financial statement, for the fiscal year in which the merger or
19 acquisition under par. (b) took effect, caused the sum of the contractor's current ratio
20 assessment rate under s. 126.60(2), Stats., and debt to equity assessment rate under s.
21 126.60(4), Stats., to increase by at least 100% compared to the preceding license year.

22 (e) The contractor's annual financial statements, for the fiscal years immediately
23 preceding and immediately following the fiscal year in which the merger or acquisition

1 under par. (b) took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and
2 a debt to equity ratio of no more than 3.0 to 1.0.

3 (f) In the license year immediately following the license year for which the
4 contractor paid the assessment, the sum of the contractor's current ratio assessment rate
5 under s. 126.60(2), Stats., and debt to equity assessment rate under s. 126.60(4), Stats.,
6 declines by at least 50% compared to the license year for which the contractor paid the
7 assessment.

8 (g) The contractor requests the refund in writing, by February 1st of the
9 contractor's next license year.

10 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75%
11 of the difference between the assessment amount paid by the contractor and the
12 assessment amount required of the contractor in the next license year.

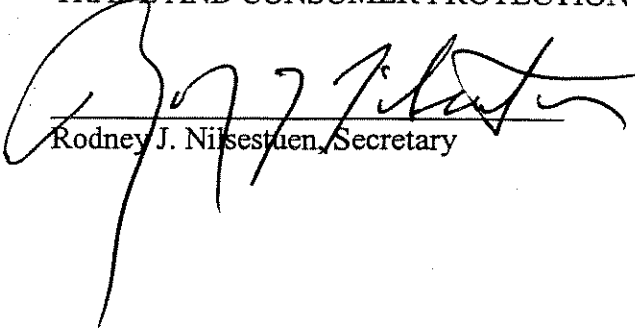
13 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The
14 department shall pay the refund under sub. (1) as a credit against the contractor's
15 assessment for the next license year. The department shall apportion the credit, pro rata,
16 against the quarterly assessment installments required of the contractor under s.
17 126.60(6), Stats., in that next license year. If the credit exceeds the total assessment
18 required of the contractor in that next license year, the department shall credit the balance
19 in the same fashion against assessments required of the contractor in subsequent license
20 years.

21 (b) The department may not pay any refund under sub. (1), except in the manner
22 prescribed in par. (a). The department may not pay the refund to any person other than
23 the contractor who paid the original assessment on which the refund is given.

1 **EFFECTIVE DATE:** This emergency rule takes effect upon publication, and
2 remains in effect for 150 days. The department may seek to extend this emergency rule
3 as provided in s. 227.24, Stats.

Dated this 14 day of January, 2004.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION



Rodney J. Nilsestuen, Secretary

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

NOTICE OF HEARING

Agricultural Producer Security Rules

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed permanent rule and two emergency rules relating to the agricultural producer security program under ch. 126, Stats. These rules modify chs. ATCP 99, 100 and 101, Wis. Adm. Code.

The department will hold two hearings at the time and places shown below. The department invites public comments on these rules. The department also seeks comments on other issues related to the producer security program, including possible overlap between the Wisconsin producer security program and the federal Perishable Agricultural Commodities Act (vegetables).

Following the public hearing, the hearing record will remain open until May 14, 2004, for additional written comments. You may obtain a free copy of these rules by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Bureau of Trade Practices, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4928. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by April 19, 2004, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4928. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearings are scheduled as follows:

Monday, April 26, 2004, 1:30 p.m. until 4:00 p.m.
Wisconsin Department of Agriculture, Trade and Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI 53718
Handicapped accessible

Tuesday, April 27, 2004, 10:00 a.m. until 12:30 p.m.
Marathon County Public Library
300 N. First Street
Wausau, WI 54403
Handicapped accessible

PROPOSED RULE

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

Statutory Authority: ss. 126.15(1)(intro.), 126.30(1)(intro.),
126.46(1)(intro.), 126.60(1)(intro.), 126.81 and
126.88(intro.), Stats.

Statutes Interpreted: ch. 126, Stats.

The Wisconsin department of agriculture, trade and consumer protection ("DATCP") currently administers an agricultural producer security program under ch. 126, Stats. ("producer security law"). This program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors ("contractors") who procure agricultural commodities from producers. Among other things, the law requires most contractors to pay assessments to an agricultural producer security fund.

DATCP may adopt rules to implement the program (see statutory authority above). Among other things, DATCP may revise contractor assessment rates, require contractor disclosures to producers, and interpret other requirements under the producer security law. This rule does all of the following:

- Authorizes a partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") under ch. 126, Stats. This rule authorizes a partial refund of an annual assessment that is drastically inflated by a temporary change in financial condition caused by a merger or acquisition. This rule defines the specific circumstances under which the refund is authorized. This rule does not authorize a refund if the change in the contractor's financial condition lasts more than one fiscal year.
- Updates the disclosures that contractors must give agricultural producers under current rules. The updates are needed to accommodate recent law changes under 2003 Wis. Act 38.
- Clarifies that grain dealers and warehouse keepers may provide grain purchase and deposit receipts (required by current law) in electronic form, provided that the recipient can retrieve, store and print the receipt for future reference.

Assessment Refunds

Background

Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. A contractor's annual fund assessment is based on the contractor's size, financial condition and risk practices. DATCP may modify fund assessments by rule.

Financial condition is determined on the basis of an annual financial statement filed by the contractor. Other things being equal, contractors with weaker financial statements pay higher annual fund assessments. Fund assessments are calculated according to a formula spelled out in the producer security law. However, DATCP may modify fund assessments by rule.

Refunds Authorized

In some cases, a merger or acquisition may temporarily affect a contractor's financial statement. This temporary change may in some cases cause a disproportionate increase in annual fund assessments (based on the current statutory assessment formula). In such cases, this rule authorizes DATCP to refund part of a contractor's assessment if certain conditions apply. The refund is paid as a credit against the next year's assessment.

Under this rule, DATCP may refund part of an annual fund assessment paid by a contributing contractor if all of the following apply:

- The contractor paid the full amount of the assessment, including any late penalties that may apply.
- The contractor is the surviving entity in a merger under s. 179.77, 180.1101, 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s. 180.1202, Stats.
- The assessment was based on the contractor's financial statement for the fiscal year in which the merger or acquisition took effect.
- The contractor's financial statement, for the fiscal year in which the merger or acquisition took effect, caused the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) to increase by at least 100% compared to the preceding license year.
- The contractor's annual financial statements, for the fiscal years immediately preceding and immediately following the fiscal year in which the merger or acquisition took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

- In the license year immediately following the license year for which the contractor paid the assessment, the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) declines by at least 50% compared to the license year for which the contractor paid the assessment.
- The contractor requests the refund in writing, by the first day of the next license year.

Refund Amount

The amount of the refund under this rule will equal 75% of the difference between the assessment amount paid by the contractor and the assessment amount required of the contractor in the next license year.

Refund Paid as Credit Against Next Year's Assessment

Whenever DATCP pays a refund under this rule, DATCP must pay the refund as a credit against the contractor's assessment for the next license year. DATCP must apportion the credit, pro rata, against the quarterly assessment installments required of the contractor in that next license year. If the credit exceeds the total assessment required of the contractor in that next license year, DATCP must credit the balance in the same fashion against assessments required of the contractor in subsequent license years (up to 2 years).

DATCP may not pay refunds except as credits against future assessments (there is no cash refund). DATCP may not pay a refund (grant a credit) to any person other than the contractor who paid the original assessment on which the refund is given.

Disclosures to Producers

Under current rules, a contractor must provide an annual written "notice to producers." The notice must disclose whether the contractor participates in the fund, or has filed security with DATCP, to secure the contractor's payment obligations to producers. The notice may take different forms, depending on the basis on which the contractor is licensed by DATCP. Current rules spell out the type of notice that each contractor must give, and exact wording that the notice must include.

2003 Wis. Act 38 modified fund assessments and security filing requirements for some contractors. This rule modifies current disclosure requirements for some contractors, so that the disclosures accurately reflect current law.

Electronic Receipts for Grain

Chapter 126, Stats. requires grain dealers and grain warehouse keepers to provide written receipts for grain received from producers and depositors. This rule authorizes grain dealers and warehouse keepers to provide those receipts in electronic form, provided that the producer or depositor can readily retrieve, view, store and print the receipt for future reference.

Federal and Surrounding State Regulations

Wisconsin's Security Program

Wisconsin has an agricultural producer security program for grain, milk and vegetables. The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). Contractors must be licensed by DATCP, and most contractors must contribute to an agricultural producer security fund administered by DATCP. A few contractors must also file security with DATCP.

DATCP cannot alter current statutory requirements, but can interpret and implement those requirements by rule. This rule makes limited changes to current rules. This rule will benefit contractors by authorizing assessment refunds and electronic grain receipts, without reducing producer security. This rule also modifies contractor disclosure requirements to implement recent statutory changes.

Federal Programs

There are no federal producer security programs related to milk. The United States department of agriculture (USDA) administers a producer security program for federally licensed grain warehouses that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program currently provides little or no protection against financial defaults by grain dealers. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also hold a state grain dealer license if they engage in grain dealing.

USDA proposes to regulate grain dealer activities of federally licensed warehouses, to the exclusion of state regulation. But USDA has not yet finalized its regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to grain dealers who do not operate a warehouse.

There is a federal security program for fresh market vegetables, but not for processing vegetables. Wisconsin's vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations).

Surrounding States

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume and financial condition.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin's vegetable security program includes, but is not limited to, potatoes.)
- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.

Fiscal Estimate

This rule will have little or no fiscal impact on the agricultural producer security fund, and no fiscal impact on the department. This rule authorizes partial refunds of fund assessments in certain cases, but the department does not anticipate many such cases. Refunds, when made, would merely eliminate unanticipated "windfalls" to the fund, and would not affect overall revenue projections for the fund. The rule will not have a significant impact on the department's operating costs.

Business Impact Analysis

This rule will have a minimal impact on regulated businesses. The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). DATCP has limited authority to change these requirements by rule.

This rule will make minor changes to current rules. This rule will have a positive impact on some businesses, by authorizing assessment refunds and electronic receipts. This rule updates current disclosure requirements (per recent law changes), but the updated disclosure requirements will have a minimal impact on regulated businesses.

This rule does not impose any new regulatory requirements. This rule does not add business costs, and will reduce costs for some businesses. This rule will have little, if any, impact on small business.

EMERGENCY RULE

Refund of Contractor Assessments (Mergers and Acquisitions)

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

Statutory Authority:	ss. 126.15(1)(intro.), 126.30(1)(intro.), 126.46(1)(intro.), 126.60(1)(intro.), 126.81 and 126.88(intro.), Stats.
Statutes Interpreted:	ch. 126, Stats.

This temporary emergency rule took effect on January 30, 2004. The contents of this rule are incorporated, with minor changes, into the proposed "permanent" rule (see above).

This emergency rule authorizes a partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") under ch. 126, Stats.

This rule authorizes a partial refund of an annual assessment that is drastically inflated by a temporary change in financial condition caused by a merger or acquisition. This rule defines the specific circumstances under which the refund is authorized. This rule does not authorize a refund if the change in the contractor's financial condition lasts more than one fiscal year.

Background

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

Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. A contractor's annual fund assessment is based on the contractor's size, financial condition and risk practices.

Financial condition is determined on the basis of an annual financial statement filed by the contractor. Other things being equal, contractors with weaker financial statements pay higher annual fund assessments. Fund assessments are calculated according to a formula spelled out in the producer security law. However, DATCP may modify fund assessments by rule.

In some cases, a merger or acquisition may temporarily affect a contractor's financial statement. This temporary change may in some cases cause a disproportionate increase

in annual fund assessments (based on the current statutory assessment formula). In such cases, this rule authorizes DATCP to refund part of a contractor's assessment if certain conditions apply. The refund is paid as a credit against the next year's assessment.

Rule Contents

Partial Refund of Assessment

Under this rule, DATCP must refund part of an annual fund assessment paid by a contributing contractor if all of the following apply:

- The contractor paid the full amount of the assessment including any late penalties.
- The contractor is the surviving entity in a merger under ss. 179.77, 180.1101, 183.1201, or 185.61, Stats., or has acquired property pursuant to a sale of assets under s. 180.1202, Stats.
- The assessment was based on the contractor's financial statement for the fiscal year in which the merger or acquisition took effect.
- The contractor's financial statement, for the fiscal year in which the merger or acquisition took effect, caused the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) to increase by at least 100% compared to the preceding license year.
- The contractor's annual financial statements, for the fiscal years immediately preceding and immediately following the fiscal year in which the merger or acquisition took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

In the license year immediately following the license year for which the contractor paid the assessment, the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) declines by at least 50% compared to the license year for which the contractor paid the assessment.

- The contractor requests the refund in writing, by the first day of the next license year.

Refund Amount

The amount of the refund under this rule will equal 75% of the difference between the assessment amount paid by the contractor and the assessment amount required of the contractor in the next license year.

Refund Paid as Credit Against Next Year's Assessment

Whenever DATCP pays a refund under this rule, DATCP must pay the refund as a credit against the contractor's assessment for the next license year. DATCP must apportion the

credit, pro rata, against the quarterly assessment installments required of the contractor in that next license year. If the credit exceeds the total assessment required of the contractor in that next license year, DATCP must credit the balance in the same fashion against assessments required of the contractor in subsequent license years.

DATCP may not pay refunds except as credits against future assessments (there is no cash refund). DATCP may not pay a refund (grant a credit) to any person other than the contractor who paid the original assessment on which the refund is given.

Finding of Emergency

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

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

The fund assessment formula is designed to require higher assessments of contractors who have weak financial statements (and may thus present greater default risks). But the statutory formula may generate unexpectedly high assessments in some cases, where a contractor's strong financial condition is temporarily affected by financial transactions related to a merger or acquisition. This may cause unfair hardship, and may unfairly penalize some mergers or acquisitions that actually strengthen security for agricultural producers. This may have an unnecessarily adverse impact on contractors, producers and Wisconsin economic development.

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

EMERGENCY RULE

Reduced Contractor Assessments (Contractors Filing Security)

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

Statutory Authority: ss. 126.15(1)(intro.), 126.30(1)(intro.),
126.46(1)(intro.), 126.60(1)(intro.), 126.81 and
126.88(intro.), Stats.

Statutes Interpreted: ch. 126, Stats.

The department proposes to adopt this temporary emergency rule and add the emergency rule provisions to the final draft "permanent" rule (see above).

This emergency rule reduces agricultural producer security assessments required under ch. 126, Stats., for certain grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors").

Background

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

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

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

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

order to protect agricultural producers against large contractor defaults that might exceed the capacity of the fund.

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

Rule Contents

Under this rule, if DATCP still holds pre-fund security from a contractor that now also contributes to the fund, the contractor's annual fund assessment is reduced by an amount determined as follows:

(a) Divide the maximum amount payable from the fund (in the event of a default) by the contractor's "estimated default exposure." "Estimated default exposure" is currently defined by statute, based on the size of the contractor's producer obligations.

(b) Subtract the result in par. (a) from 1.0.

(c) Multiply the result in par. (b) by the amount of the contractor's annual fund assessment.

(d) Subtract, from the result in par. (c), other assessment reductions that may currently apply (a contractor may not claim duplicate deductions).

Finding of Emergency

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

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

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

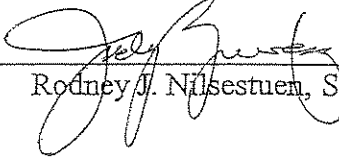
Before the fund was created in 2002, contractors who failed to meet minimum financial standards were required to file individual security (typically a bond or letter of credit) with DATCP. The amount of security was based on the size of the contractor's producer payroll (potential default exposure).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

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

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

Dated this 30th day of March, 2004

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By: 
Rodney J. Nilsestuen, Secretary

Preliminary FISCAL ESTIMATE DOA-2048 (R 10/94) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No. / Adm. Rule No. ATCP 99, 100 & 101 Amendment No. (If Applicable)
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Subject:
Agricultural Producer Security

Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs -- May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local : <input type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Gov. Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other: _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Source Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations:
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Assumptions Used in Arriving at Fiscal Estimate

This rule authorizes a partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") under ch. 126, Stats.

This rule authorizes a partial refund of an annual assessment that is drastically inflated by a *temporary* change in financial condition caused by a merger or acquisition. This rule defines the specific circumstances under which the refund is authorized. This rule does not authorize a refund if the change in the contractor's financial condition lasts more than one fiscal year.

This rule is currently in effect as an Emergency Rule. Under the emergency rule, there has been one contractor who successfully applied for the credit. That credit will result in a roughly \$60,000 reduction in assessment collections over the next two years. The reduction is not reflected in this fiscal estimate because it was granted under the emergency rule, not this proposed rulemaking order. DATCP is not aware of any contractors that are currently in a position to take advantage of the credit on assessments.

Furthermore, in order to qualify for the assessment credit, the contractor must have had a large, temporary increase in its assessment rate during the previous year. This means that any reduction in revenues do to the credit would be accompanied by an unexpected increase in assessment revenues during the previous year.

Long - Range Fiscal Implications

It is impossible to predict how many contractors may qualify for this credit in the future. However, any future credits would have to be proceeded by a large and unexpected increase in the contractors annual assessment. Therefore, any future reductions in assessment collections would be countered with it increased revenues.

Agency/prepared by: (Name & Phone No.) DATCP Kevin LeRoy ph. 608-224-4928	Authorized Signature/Telephone No. Barbara Knapp, ph. 608-224-4746	Date Feb. 16, 2004
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FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual
Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm. Rule No.
ATCP 99, 100 & 101

Amendment No.

SUBJECT

Agricultural Producer Security

I. One-time Cost or Impacts for State and/or Local Government (do not include in annualized fiscal effect):
Costs are recurring; see below.

II. Annualized Cost:	Annualized Fiscal Impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
	\$	\$ - 0
		- 0
		- 0
	0	- 0
TOTAL State Costs by Category		\$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
1. GPR	\$	\$ - 0
2. FED	0	- 0
3. PRO/PRS	0	- 0
4. SEG/SEG-S	0	- 0
III. State Revenues -	Increased Revenue	Decreased Revenue
<small>Complete this section only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees)</small>		
• GPR Taxes	\$ 0	\$ - 0
• GPR Earned	0	- 0
• FED	0	- 0
• PRO/PRS	0	- 0
• SEG/SEG-S	0	- 0
TOTAL State Revenues	\$ 0	\$ - 0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>0</u>	\$ <u>0</u>
NET CHANGE IN REVENUES	\$ <u>0</u>	\$ <u>0</u>

Agency Prepared by: (Name & Phone No.) DATCP Kevin LeRoy, ph. 608-224-4928	Authorized Signature/Telephone No. Barbara Knapp (608) 224-4746	Date April 16, 2001
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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

June 16, 2004

JUN 16 2004

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on June 15, 2004 and adopted the following motion:

**ATCP 99.13, 99.25, 100.13,
and 101.25**


**Relating to Agricultural Producer Security -
Assessment Credits.**

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ATCP 99.13, et. al. at the request of Department of Agriculture, Trade and Consumer Protection by 60 days.

Motion Carried 10 Ayes, 0 Noes

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,


Senator Joseph Leibham
Senate Co-Chair


Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd



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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

June 16, 2004

Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade, and Consumer Protection
2811 Agriculture Drive
Madison, WI 53704

Dear Secretary Nilsestuen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on June 15, 2004 and adopted the following motion:

**ATCP 99.13, 99.25, 100.13,
and 101.25**

**Relating to Agricultural Producer Security -
Assessment Credits.**

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ATCP 99.13, et. al. at the request of Department of Agriculture, Trade and Consumer Protection by 60 days.

Motion Carried 10 Ayes, 0 Noes

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


JOSEPH LEIBHAM
Senate Co-Chair


GLENN GROTHMAN
Assembly Co-Chair

JKL:GSG:mjd

Cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Emergency Rule Extension Motion Form

July 21, 2004
State Capitol

Moved by Grothman, Seconded by Gunderson

THAT, pursuant to s. 227.24(2)(a), stats. the Joint Committee for Review of Administrative Rules extends the effective period of emergency rule ATCP 99.13, et. al. for 36 days at the request of the Department of Agriculture, Trade and Consumer Protection.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator LEIBHAM	✓		
2. Senator KEDZIE	✓		
3. Senator LAZICH	✓		
4. Senator ROBSON			
5. Senator COGGS			
6. Representative GROTHMAN	✓		
7. Representative SERATTI			
8. Representative GUNDERSON	✓		
9. Representative BLACK	✓		
10. Representative HEBL	✓		
Totals			

Motion Carried

Motion Failed



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

July 22, 2004

Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade, and Consumer Protection
2811 Agriculture Drive
Madison, WI 53704

Dear Secretary Nilsestuen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on July 21, 2004 and adopted the following motion:

**ATCP 99.13, 99.25, 100.13,
and 101.25** **Relating to Agricultural Producer Security -
Assessment Credits.**


That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ATCP 99.13, et. al. at the request of Department of Agriculture, Trade and Consumer Protection by 36 days.

Motion Carried 10 Ayes, 0 Noes

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


JOSEPH LEIBHAM
Senate Co-Chair


GLENN GROTHMAN
Assembly Co-Chair

JKL:GSG:mjd

Cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

July 22, 2004

Scott Hassett, Secretary
Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921

Dear Secretary Hassett:

The Joint Committee for the Review of Administrative Rules met in Executive Session on July 21, 2004 and adopted the following motions:

Emergency Rule NR 1.016,
1.05, 1.06, and 1.07

Relating to Natural Resources Board policies on
protection and management of public waters.

1. That, the Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 1., 3., and 6. and 227.26 (2) (d), Stats., suspends s. NR 1.016.

Motion Carried 9 Ayes, 1 Noes

2. That, the Joint Committee for Review of Administrative Rules modifies its June 24, 2004 motion relating to emergency rule ch. NR 1 by: (a) removing s. NR 1.016 for separate consideration and (b) providing that the suspension of emergency rule ch. NR 1, except for the provisions of s. NR 1.016, will take effect on August 20, 2004.

Motion Carried 10 Ayes, 0 Noes

LRB 4611 & 4626 Relating to the placement of riprap, biological shore erosion control structures, seawalls, piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waters and the effective date for the issuance of individual permits for activities in navigable waters.

That, pursuant to s. 227.19(5)(e), Stats., the Joint Committee for Review of Administrative Rules introduces LRB 4611 and 4626.

Motion Carried 9 Ayes, 1 Noes

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

Cc: Secretary of State Doug LaFollette
Revisor of Statutes Garv Poulson



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

July 22, 2004

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on July 21, 2004 and adopted the following motions:

**Emergency Rule NR 1. 016,
1.05, 1.06, and 1.07**

**Relating to Natural Resources Board policies on
protection and management of public waters.**

1. That, the Joint Committee for Review of Administrative Rules, pursuant to ss. 227.19 (4) (d) 1., 3., and 6. and 227.26 (2) (d), Stats., suspends s. NR 1.016.

Motion Carried 9 Ayes, 1 Noes

2. That, the Joint Committee for Review of Administrative Rules modifies its June 24, 2004 motion relating to emergency rule ch. NR 1 by: (a) removing s. NR 1.016 for separate consideration and (b) providing that the suspension of emergency rule ch. NR 1, except for the provisions of s. NR 1.016, will take effect on August 20, 2004.

Motion Carried 10 Ayes, 0 Noes

**ATCP 99.13, 99.25, 100.13,
and 101.25**

**Relating to Agricultural Producer Security -
Assessment Credits.**

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ATCP 99.13, et. al. at the request of Department of Agriculture, Trade and Consumer Protection by 36 days. Motion Carried 10 Ayes, 0 Noes

LRB 4611 & 4626 **Relating to the placement of riprap, biological shore
erosion control structures, seawalls, piers, wharves,
boat shelters, boat hoists, boat lifts and swim rafts in
navigable waters and the effective date for the
issuance of individual permits for activities in navigable waters.**


That, pursuant to s. 227.19(5)(e), Stats., the Joint Committee for Review of Administrative Rules introduces LRB 4611 and 4626.

Motion Carried 9 Ayes, 1 Noes

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

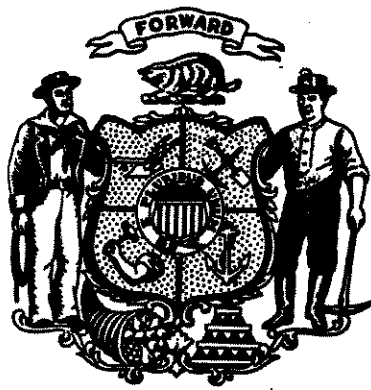
Sincerely,


Senator Joseph Leibham
Senate Co-Chair


Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

END



END

Chir
2

Emergency Rule Chir 2

Relating to passing and retaking the practical examination.

The Department of Regulation and Licensing on behalf of the Chiropractic Examining Board requests an extension of this emergency rule for 60 days. First Consideration.

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : ORDER ADOPTING
CHIROPRACTIC EXAMINING BOARD : EMERGENCY RULES

ORDER

An order of the Chiropractic Examining Board to repeal Chir 2.09; and to amend Chir 2.03 (2) (intro.), 2.07 (3) and 2.11 (2) and (3), relating to passing and retaking the practical examination.

Analysis prepared by the Department of Regulation.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 446.02 (2) and (3g), Stats.

Statutes interpreted: s. 446.02 (1) (b), (2) (a) and (3), Stats.

These rule changes will conform the terminology in the current rules with the textual description of the national practical examination conducted by the National Board of Chiropractic Examiners, adopted in December 2002 by the Chiropractic Examining Board, and resolve doubts about the examination scores issued to applicants who complete the national practical examination.

TEXT OF RULE

SECTION 1. Chir 2.03 (2) (intro.) is amended to read:

Chir 2.03 (2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. (intro.) An applicant shall pass ~~each part of~~ a practical examination demonstrating clinical competence which includes the following ~~parts~~:

SECTION 2. Chir 2.07 (3) is amended to read:

Chir 2.07 (3) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. To pass the practical examination demonstrating clinical competence, an applicant shall receive a grade determined by the board to represent minimum competence to practice ~~on each part of the examination~~.

SECTION 3. Chir 2.09 is repealed.

SECTION 4. Chir 2.11 (2) and (3) are amended to read:

Chir 2.11 (2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. An applicant who fails the practical examination demonstrating clinical competence ~~due to the failure of one part of examination may retake the failed part only. An applicant who fails the practical examination demonstrating clinical competence due to the failure of 2 or more parts of the practical examination~~ shall be required to retake the entire practical examination demonstrating clinical competence.

(3) LIMITATION ON REEXAMINATION. If an applicant does not pass ~~all parts of~~ the examination under subs. (1) and (2) within 2 years of the first attempt, the applicant shall retake and pass the entire practical examination demonstrating clinical competence and state law examination in order to be licensed.

FINDING OF EMERGENCY

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The

board is proceeding with promulgating these rule changes through a proposed permanent rule-making order.

The emergency rules adopted in this order shall take effect on June 28, 2003.

Dated _____

Agency _____

Chairperson
Chiropractic Examining Board

g:\chiremergency6-25-03

Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935
Email: web@drl.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

Donsia Strong Hill
Secretary



January 9, 2003

Senator Joseph Leibham, Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 409 South, State Capital
Madison, Wisconsin 53702

Representative Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
15 North, State Capital
Madison, WI 53702

RE: Emergency Rules Extension for the Chiropractic Examining Board

Dear Senator Leibham and Representative Grothman:

I am writing on behalf of the Chiropractic Examining Board to request an extension of the emergency rule relating to the passing and retaking of the practical examination. An order of the Chiropractic Examining Board to repeal Chir 2.09, and to amend Chir 2.03 (2) (into.), 2.07 (3) and 2.11 (2) and (3), was enacted by emergency rule adoption June 28, 2003. The Joint Committee for Review of Administrative Rules extended the date of the emergency rule for 60 days on November 19, 2003. The emergency rule will expire January 24, 2004, unless an extension is granted by the Committee.

The background of the proposed rule as identified in previous correspondence to the Committee is as follows:

This rule conforms the terminology in the current rule with the textual description of the national practical examination conducted by the National Board of Chiropractic Examiners.

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence of chiropractic candidates in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately.

The rule changes herein conform the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This rule deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order.

The Chiropractic Examining Board has received numerous comments on its rule and did not complete its review of the rule and the comments at its December meeting, as anticipated. The Board meets again on January 22, 2004. The proposed rule as finally approved will then proceed to the legislature for consideration, a process which usually takes at least 37 days. The proposed rule must then be adopted by the Chiropractic Examining Board and properly published. Without an extension of the emergency rule a gap will exist between the expiration of the emergency rule and the effective date of the proposed rule.

Please find attached a copy of the emergency rule. On behalf of the Chiropractic Examining Board I am requesting that the Joint Committee for Review of Administrative Rules extend the emergency rule for a period of 60 days.

Sincerely,



William Dusso, General Counsel
Offices of Legal Counsel

cc: Chiropractic Examining Board
Bruce Olsen, Assistant Attorney General

Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935
Email: web@drl.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

Donsia Strong Hill
Secretary



October 21, 2003

Senator Joseph Leibham, Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 409 South, State Capital
Madison, Wisconsin 53702

Representative Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
15 North, State Capital
Madison, WI 53702

Re: Request for Extension of an Emergency Rule of the
Chiropractic Examining Board (Wis. Stat. § 227.24(2))

Dear Senator Leibham and Representative Grothman:

I am writing on behalf of the Chiropractic Examining Board (Board) to request extension of an emergency rule relating to the passing and retaking of the practical chiropractic examination. The rule repeals Chir 2.09 and amends Chir 2.03 (2) (into.), 2.07 (3) and 2.11 (2) and (3) and was effective June 28, 2003.

Extension of the emergency rule is necessary to avoid threats to public peace, health, safety and welfare. On December 19, 2002, the Board approved the national practical examination conducted by the National Board of Chiropractic Examiners (NBCE) as the Board's practical examination for determining clinical competence of chiropractic candidates in Wisconsin. The Board determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. Currently, forty-four states accept or require the NBCE practical examination in lieu of their own practical examination. The Board was authorized to approve the NBCE practical examination under Wis. Stat. § 440.07 (2) and Wis. Stat. § 446.02. The Board's decision to adopt the (NBCE) practical examination was contrary to the opinions of some practitioners who have challenged the Board's decision and questioned the validity of the grades issued by the Board. The rule changes herein conform the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who have completed the national practical examination.

The Board has begun to promulgate a permanent rule to replace the emergency rule. Under Wis. Stat. § 227.24 (1) (c), the emergency rule is in effect until November

25, 2003. A proposed rule, Clearinghouse Rule 03-082, includes the emergency rule modifications along with other housekeeping changes. A hearing on CR 03-082 was held by the Chiropractic Examining Board on October 16, 2003. The Chiropractic Examining Board will review the testimony and all of the written comments received from the public at its December 18, 2003 meeting and the Board's final draft will then be submitted for legislative review. Without an extension of the emergency rule, it is not possible for the Board to complete the process of promulgating the permanent rule prior to the expiration date of the emergency rule.

Please find attached a copy of the emergency rule. On behalf of the Chiropractic Examining Board I am requesting that the Joint Committee for Review of Administrative Rules extend the emergency rule for a period of 60 days under its authority in Wis. Stat. § 227.24 (2).

Thank you for your consideration of this request.

Sincerely,



William Dusso, General Counsel
Department of Regulation and Licensing

cc: Chiropractic Examining Board
Donsia Strong Hill, Secretary, DRL



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2056

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

November 19, 2003
417 North, GAR
State Capitol

Moved by Seratti, Seconded by Gunderson

THAT, pursuant to s. 227.24(2)(a), stats. the Joint Committee for Review of Administrative Rules extends the effective period of emergency rule Chir 2 for 60 days at the request of the Department of Regulation and Licensing on behalf of the Chiropractic Examining Board.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator LEIBHAM	✓		
2. Senator WELCH			
3. Senator LAZICH	✓		
4. Senator ROBSON	✓		
5. Senator LASSA	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative BLACK			
10. Representative HEBL			
Totals			

Motion Carried

Motion Failed



P.O. Box 7882
MADISON, WI 53707-7882
608) 266-2056

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

November 21, 2003

Department of Regulation and Licensing
Attn: William Dusso
1400 East Washington Avenue
Madison, WI 53708-8935

Dear Mr. Dusso:

The Joint Committee for the Review of Administrative Rules met in Executive Session on November 19, 2003 and adopted the following motion:

Moved by JCRAR, that pursuant to §227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of Emergency Rule Chir 2 for 60 days at the request of the Chiropractic Examining Board.

Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



P.O. Box 7882
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

November 21, 2003

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on November 19, 2003 and adopted the following motion:

That, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends Chir 2 at the request of Department of Regulation and Licensing and on behalf of the Chiropractic Examining Board by 60 days.

Motion Carried

10 Ayes, 0 Noes, 1 Absent.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd