

# Wisconsin Administrative Register

No. 622



Publication Date: October 31, 2007

Effective Date: November 1, 2007



Revisor of Statutes Bureau  
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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.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*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 or a statement of exemption from a 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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### Commerce

#### (Licenses, Certifications, etc., Ch. Comm 5)

Rules adopted revising **ch. Comm 5**, relating to licensing of elevator contractors and installers.

#### Exemption From Finding of Emergency

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection."

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

**Publication Date:** June 1, 2007  
**Effective Date:** June 1, 2007  
**Expiration Date:** See section 7 (2), 2005 Wis. Act 456  
**Hearing Date:** June 27, 2007

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### Commerce

#### (Amusement Rides, Ch. Comm 34)

Rule adopted creating **s. Comm 34.22 (5m)**, relating to amusement ride safety.

#### Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007. The ride involved the field attachment of passengers who don harnesses and then are elevated off the ground.

2. Although no mechanical or equipment failure contributed to the incident, attachment and connection practices of the operators did not incorporate safety practices used on some similar rides in the industry.

3. The department recognizes that without promulgating this emergency rule, there could be confusion in what constitutes a recognized safe practice for the field attachment or connection of harnessed passengers on similar amusement rides. The department believes clarifying the code will promote safety.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes.

**Publication Date:** August 13, 2007  
**Effective Date:** August 13, 2007  
**Expiration Date:** January 10, 2008  
**Hearing Date:** October 15, 2007

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### Commerce

#### (Financial Resources for Businesses and Communities, Chs. Comm 104-131)

Rules adopted creating **ch. Comm 135**, relating to tax credits and exemptions for internet equipment used in the broadband market.

#### Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily

eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time-specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow-up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

**Publication Date:** February 20, 2007  
**Effective Date:** February 20, 2007  
**Expiration Date:** See section 17 (1) (d) 2005 Wis. Act 479  
**Hearing Date:** March 26, 2007

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### Dentistry Examining Board

Rule adopted amending the effective date of CR 04-095, by amending the emergency rule that took effect on December 29, 2006, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

#### Finding of Emergency

The board has made a finding of emergency. The board finds that failure to delay the effective date of CR04-095, from July 1, 2007 to November 1, 2007 will create a danger to the public health, safety and welfare. The extra four months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients. The rules created a course requirement for receiving a conscious sedation permit that did not exist. Courses have and are being developed to meet this requirement. By November 1, 2007, the course will have been available to enough dentists to ensure the continuation of the use of conscious sedation.

**Publication Date:** June 24, 2007  
**Effective Date:** July 1, 2007  
**Expiration Date:** November 28, 2007  
**Hearing Date:** July 11, 2007

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### Elections Board

Rules adopted creating s. EIBd 3.50, relating to pricing of voter information available from the Statewide Voter Registration System.

#### Exemption From Finding of Emergency

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under subsection (4).

This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: “the actual, necessary, and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components required by the new statute.

**Publication Date:** May 12, 2007  
**Effective Date:** May 12, 2007  
**Expiration Date:** See section 180 (4), 2005 Wis. Act 451  
**Hearing Date:** June 11, 2007

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### Natural Resources (2) (Fish and Game, etc., Chs. NR 1—)

1. Rules adopted amending s. NR 20.20, relating to the hook and line harvest of lake sturgeon.

#### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary to prevent excessive harvest of lake sturgeon from the inland waters of Wisconsin during the 2007 hook and line season.

**Publication Date:** July 23, 2007  
**Effective Date:** July 23, 2007  
**Expiration Date:** December 20, 2007  
**Hearing Date:** August 13, 2007

2. Rules adopted amending ss. NR 10.01 (1) (v), 10.12 (5) (d) and 10.15 (6); and to repeal and recreate s. NR 10.01 (1)

(b), (g) and (u), relating to the 2007 migratory game bird seasons and waterfowl hunting zones.

#### **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 to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Publication Date:** August 30, 2007  
**Effective Date:** August 30, 2007  
**Expiration Date:** January 27, 2008  
**Hearing Date:** October 19, 2007

### **Natural Resources (2)** **(Environmental Protection – Water Regulation, Chs. NR 300–)**

1. Rules adopted revising **ch. NR 345**, relating to general permits for dredging in Great Lakes navigable waterways.

#### **Finding of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits. Without emergency rules to create general permits, all dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2007 summer season, with specific standards for operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits.

**Publication Date:** June 10, 2007  
**Effective Date:** June 10, 2007  
**Expiration Date:** November 7, 2007  
**Hearing Date:** July 10, 2007

2. Rules adopted revising **chs. NR 320, 323, 328, 329, 341, 343 and 345**, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

#### **Finding of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a “notifiable” disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

**Publication Date:** July 12, 2007  
**Effective Date:** July 12, 2007  
**Expiration Date:** December 9, 2007  
**Hearing Date:** August 13, 2007

### **Natural Resources** **(Environmental Protection – Air Pollution Control, Chs. NR 400–)**

Rules adopted creating **s. NR 462.015**, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

### 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. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court-ordered vacatur of the federal regulations. Normal rule-making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

**Publication Date:** September 13, 2007  
**Effective Date:** September 13, 2007  
**Expiration Date:** February 10, 2008  
**Hearing Date:** October 26, 2007

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### Regulation and Licensing

Rules adopted creating **chs. RL 160, 161, 162, 163, 166, 167, and 168**, relating to substance abuse professionals.

#### Exemption From Finding of Emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: "Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection".

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and Other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval, and professional liability insurance for substance abuse professionals. Please refer to the "Summary of factual data and analytical methodologies" section and the section on "Analysis and supporting documentation used to determine effect on small business or in preparation of economic impact report."

Chapter RL 160 is being created to include definitions of terms that are used in subch. VII of ch. 440, Stats., and in chs. RL 160 to 167. The proposed rules include definitions for "accredited," "assessment," "behavioral science field," "CEH," "clinical substance abuse counselor," "clinical supervision," "clinical supervisor," "clinical supervisor-in-training," "comprehensive program," "core functions," "credential," "department," "DSM," "hour," "independent clinical supervisor," "intermediate clinical supervisor," "patient," "practice dimensions," "prevention," "prevention domains," "prevention specialist," "prevention specialist-in-training," "substance," "substance abuse counselor," "substance abuse counselor-in-training," "substance use disorder" and "transdisciplinary foundations."

Chapter RL 161 is being created to identify the requirements and procedures for submitting applications for licenses.

Chapter RL 162 is being created to identify the restrictions and minimum requirements for supervision of counselors by clinical supervisors.

Chapter 163 is being created to identify the scope and restrictions on the practice of the credential holders.

Chapter RL 166 is being created to identify the approval process and educational requirements for educational coursework and continuing education opportunities.

Chapter RL 167 is being created to require credential holders to have liability insurance in effect.

Chapter RL 168 is being created to identify the requirements for continuing education.

**Publication Date:** September 8, 2007  
**Effective Date:** September 10, 2007  
**Expiration Date:** February 7, 2008

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### Revenue

Rules adopted amending **s. Tax 2.505**, relating to the computation of the apportionment fraction by multistate professional sports clubs.

#### Finding of Emergency

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

The emergency rule is to prescribe the method to be used for apportioning the apportionable income of interstate professional sports clubs.

It is necessary to promulgate this rule order to provide the method of apportionment to be used by interstate professional sports clubs.

**Publication Date:** October 12, 2007  
**Effective Date:** October 12, 2007  
**Expiration Date:** March 10, 2008

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### Workforce Development (Workforce Solutions, Chs. DWD 11 to 59)

Rules adopted revising **ch. DWD 56**, relating to child care enrollment underutilization.

#### Finding of Emergency

The Department of Workforce Development finds that an emergency exists and 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 child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006-07. While many factors will have an impact on the program's final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06-07 budget authorization by approximately \$46 million. This rule will provide for more efficient use of the program's limited funding.

**Publication Date:** April 1, 2007  
**Effective Date:** April 1, 2007  
**Expiration Date:** August 29, 2007  
**Hearing Date:** June 20, 2007  
**Extension Through:** October 27, 2007

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## Scope Statements

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### Administration

#### Subject

The Department of Administration proposes to create a rule identifying the discretion the agency will use in the enforcement of any rules and guidelines against a small business.

#### Policy Analysis

None of the Department's current Wis. Adm. Code chapters relate to enforcements against small businesses as compared to other businesses. Section 895.59 (2), Wis. Stats., created in 2003 Wisconsin Act 145, effective July 1, 2004, requires each state agency to adopt a rule regarding the advance disclosure of any discretion the agency will use in the enforcement of rules and guidelines against a small business. The Department proposes to create a rule consistent with the requirements of s. 895.59, Wis. Stats.

#### Statutory Authority

Section 895.59 (2), Stats., as created by 2003 Wisconsin Act 145.

#### Entities Affected by the Rule

Small businesses, as defined under s. 227.114 (1), Stats., but not including any entity defined in s. 48.685 (1) (b) or 50.065 (1) (c), Stats.

#### Comparison with Federal Regulations

16 CFR, Part 1020 created by the Consumer Product Safety Commission to assure the Commission continues fair treatment of small businesses and to assure that small businesses do not bear a disproportionate share of any burden or cost created by a Commission regulatory, enforcement or other action. Section 1020.5 provides that, when appropriate, the Commission will waive or reduce civil penalties for violations of a statutory regulatory requirement by a small business and will consider a small business' ability to pay in determining a penalty assessment against the small business. In addition, the Commission may decline to waive civil penalties under certain circumstances such as for violations that pose a serious health or safety threat, willful or criminal conduct or whether the small business is subject to multiple enforcement actions or failure to make a good effort to correct violations within a reasonable time.

#### Estimate of Time Needed to Develop the Rule

The Department estimates that it will take approximately 40 hours to develop the proposed rule.

### Administration

#### Subject

The creation of a new rule relating to plat review fees.

#### Objective of the Rule

The rules will replace ch. Tax 53 with an administration rule that will cover all of the current costs of the services provided by the program under ss. 70.27 and 236.12, Wis.

Stats. The new rule will allow the program to accept credit card and electronic payments for required fees.

#### Policy Analysis

The Plat Review program has been 100% program revenue supported since 1980. All reviews are conducted on a fee for service basis. The last fee increase for the Plat Review program was in 1997. Operating costs have out paced the revenue the program receives for the services they provide. Increases in staff salaries, fringe benefits, and supplies and services since 1997 warrant a fee increase. The Plat Review program was transferred from the Department of Revenue to the Department of Administration in 1997.

Many surveyors and developers submit their subdivision plats to the program electronically and would like to pay the required fee with a credit card or make an electronic payment. Adding these payment options to the rule would simplify payments and benefit the customers.

#### Policy Alternatives

If the department does not change ch. Tax 53, the current fee structure will remain in effect. Significant cut-backs in service to customers, the public, other state agency programs, and local units of government will be necessary. With such cut-backs, state certified plats with saleable but not buildable lots could result.

#### Statutory Authority

The rule is promulgated under authority of s. 236.12 (7), Wis. Stats.

#### Entities Affected by the Rule

Developers and surveyors who divide land with a subdivision plat will be affected by this rule because they pay for the services the program provides.

#### Comparison with Federal Regulations

This rule is specific to the State of Wisconsin laws and is completely separate from, and unaffected by, federal regulations.

#### Estimate of Time Needed to Develop the Rule

Staff and management of the Division of Intergovernmental Relations are expected to spend approximately 40 hours over the course of the drafting and approval process. Department of Administration legal staff is expected to spend approximately 12 hours.

### Agriculture, Trade and Consumer Protection

#### Subject

The rule affects ch. ATCP 30, relating to atrazine pesticide applications.

#### Objective of the Rule

Regulate the use of atrazine pesticides to protect groundwater and assure compliance with Wisconsin's Groundwater Law. Update current rule to reflect groundwater-sampling results related to atrazine obtained during the past year. Reorganize current rule to accommodate any new or expanded prohibition area (PA) and to make it

easier to identify the Lower Wisconsin River Valley Atrazine PA. Renumber Appendix A in the current rule to simplify the numbering system.

### **Policy Analysis**

DATCP must regulate the use of pesticides to assure compliance with groundwater standards under ch. 160, Stats. Groundwater standards are established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 µg/liter for atrazine and its chlorinated metabolites.

DATCP must prohibit atrazine uses that result in groundwater contamination levels that exceed the DNR enforcement standard under s. 160.25, Stats. DATCP must prohibit atrazine use in the area where groundwater contamination has occurred unless DATCP determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Currently, under ch. ATCP 30, Wis. Adm. Code, the use of atrazine is prohibited in 102 PAs (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices, including the timing of applications on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the next year, DATCP may identify additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with ch. 160, Stats., DATCP must take further action to prohibit or regulate atrazine use in the areas where these wells are located. DATCP proposes to amend ch. ATCP 30, Wis. Adm. Code to add PAs or take other appropriate regulatory action in response to any new groundwater findings.

### **Policy Alternatives**

If DATCP takes no action, current rules will remain in effect. However, DATCP would take no new regulatory action in response to new groundwater findings obtained this year. This would not adequately protect groundwater in the newly discovered contaminated areas, nor would it meet DATCP's statutory obligations.

### **Statutory Authority**

Sections 93.07, 94.69, and 160.19 through 160.25, Stats.

### **Entities Affected by the Rule**

Residents whose private wells are located in the proposed or expanded PA would be affected by the proposed rule. Atrazine users in a new or expanded PA would be affected by the proposed rule. Dealers, distributors and manufacturers of atrazine who service areas of proposed expanded PAs would be affected by a reduction in the sales of atrazine. Commercial application services would be required to know where all the atrazine PAs are located to avoid illegal applications. The proposed action is not expected to have a measurable effect on consumer food costs, specifically on corn-derived products.

### **Comparison with Federal Regulations**

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency ("EPA"). Persons may not use pesticides in a manner inconsistent with the federal label. The current federal label for atrazine advises that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clearer,

more definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to create pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin's current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

### **Estimate of Time Needed to Develop the Rule**

DATCP estimates that it will use approximately 0.5 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.

## **Employment Relations Commission**

### **Subject**

The rule affects ch. ERC 10, relating to increasing filing fees.

### **Objective of the Rule**

Increasing the existing filing fees for Commission services so the Commission can retain employees necessary to avoid significant harm to the Commission's ability to provide timely dispute resolution services.

### **Policy Analysis**

Increased filing fees paid by users of Commission services provide program revenue support for employees who provide users with dispute resolution services that preserve labor peace in Wisconsin.

### **Statutory Authority**

Sections 111.09, 111.71, 111.94 and 227.11, Stats.

### **Entities Affected by the Rule**

The proposed rule increasing filing fees affects all users of Commission mediation, grievance arbitration and unfair labor practice services. A substantial majority of the affected entities are public sector employers and the unions representing their employees. Private sector employers, the unions representing their employees and individual employees are much less significant users of Commission services as to which filing fees apply.

### **Comparison with Federal Regulations**

Given the exclusively fiscal and non-regulatory nature of this proposed rule, there are no applicable comparative federal regulations.

### **Estimate of Time Needed to Develop the Rule**

25 hours

## **Revenue**

### **Subject**

The rule affects s. Tax 8.63, relating to liquor wholesaler warehouse facilities.

### **Policy Analysis**

The objective of the proposed rule is to lessen the minimum requirements for warehouse facilities on premises described in liquor wholesalers' permits issued by the Department under s. 125.54, Stats.

If the rules are not changed, current rules will impact small business adversely.

**Statutory Authority**

Section 125.54 (7) (d), Stats.

**Entities Affected by the Rule**

Those applying for or holding a liquor wholesalers' permit under s. 125.54, Stats., and those liquor wholesalers applying for a warehouse permit under s. 125.19, Stats.

**Comparison with Federal Regulations**

The department is not aware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Estimate of Time Needed to Develop the Rule**

The department estimates it will take approximately 100 hours to develop this rule order.

## **Voluntary Fire Fighter—Emergency Medical Technician Service Award Board**

**Subject**

The Wisconsin Department of Administration is amending Ch. VFF-EMT 1 to incorporate statutory changes made in 2005 Wisconsin Act 142 relating to the Volunteer Fire Fighter and Emergency Medical Technician Service Award Program.

**Policy Analysis**

The Service Award Board (SAB) was created by 1999 Wisconsin Act 105 and consists of an eight-member board appointed by the Governor. The Service Award Program assists qualified departments to recruit and retain volunteer fire fighters and emergency medical technicians. The state annually matches municipal contributions up to \$2 million. Currently there are 203 volunteer departments participating in the program covering 5,773 fire fighters and emergency medical technicians.

2005 Wis. Act 142 made changes to various statutes governing the program. They consist of:

- Renaming the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board to the Service Award Board;
- Extending the benefits of the program so first responders are eligible participants;
- Adding that a county may participate under the definition of a municipality;
- Eliminating the requirement that a volunteer have at least 5 years of experience before prior year service can be purchased;
- A volunteer who has not met all of the vesting requirements shall have their account closed, not forfeited;
- Include the provision that the beneficiary of a volunteer who is killed while actively engaged in the rendering of volunteer fire fighting, first responder, or emergency medical technical service be paid the service lump sum; and
- Adds the provision that the volunteer must meet any other program requirements established by the municipality.

The purpose of the proposed rule promulgation is to reflect and implement these new statutory changes.

**Statutory Authority**

Sections 16.004 (1), 16.25 (2), (3), (4) and (5), and 227.11, Stats.

**Entities Affected by the Rule**

Local units of governments, counties and first responders are now eligible to participate under the changes of Wis. Act 142 to allow for additional volunteers to participate.

**Comparison with Federal Regulations**

This proposed rule changes are specific to the State of Wisconsin Service Award Program law and completely separate from and unaffected by federal regulations.

**Estimate of Time Needed to Develop the Rule**

Approximately 40 hours of staff time to develop and implement changes.

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# Submittal of Rules to Legislative Council Clearinghouse

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

## Agriculture, Trade and Consumer Protection

On October 12, 2007, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The rule affects ch. ATCP 74, relating to local governments licensing retail food establishments for DATCP.

### Agency Procedure for Promulgation

Public hearings are scheduled for November 14 and 15, 2007. The Department's Food Safety Division is primarily responsible for this rule.

### Contact Person

Wayne Kopp  
(608) 224-4718

## Employment Relations Commission

On October 12, 2007, the Wisconsin Employment Relations Commission submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The rule affects ch. ERC 10, relating to increasing the filing fees for the Commission's mediation, grievance arbitration and unfair labor practice services.

### Agency Procedure for Promulgation

A public hearing on the proposed rule is required and will be conducted at 1:00 pm on November 12, 2007 in the Commission's Madison, Wisconsin offices located at 18 South Thornton Avenue and at 1:00 p.m. on November 13, 2007 in the Marathon County Public Library, Wausau Room, 300 North First Street, Wausau, Wisconsin.

### Contact Person

Peter Davis  
(608) 266-2993

## Health and Family Services

On October 4, 2007, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The rule affects ch. HFS 145, relating to student immunizations, communicable disease list revision and reporting of communicable diseases.

### Agency Procedure for Promulgation

Public hearings are scheduled for November 12 and 13, 2007.

### Contact Person

For substantive questions on rules, contact:

Marjorie Hurie

Department of Health and Family Services

Division of Public Health

Bureau of Communicable Diseases and Preparedness

1 W. Wilson St., RM 318

PO Box 2659

Madison, WI 53701-2659

[huriemb@dhfs.state.wi.us](mailto:huriemb@dhfs.state.wi.us)

(608) 264-9892

1-888-701-1253 (TTY)

For small business considerations and rules processing information, contact:

Rosie Greer

(608) 266-1279

[greerj@dhfs.state.wi.us](mailto:greerj@dhfs.state.wi.us)

## Natural Resources

On September 27, 2007, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The rule affects s. NR 462.015, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

### Agency Procedure for Promulgation

A public hearing is scheduled for October 26, 2007.

### Contact Person

Roger Fritz

Bureau of Air Management

(608) 266-1201

## Revenue

On October 10, 2007, the Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### Analysis

The proposed rule amends s. Tax 2.505, relating to the apportionment of apportionable income of interstate professional sports clubs.

### Agency Procedure for Promulgation

A public hearing on the proposed rule will be scheduled. The Office of the Secretary is primarily responsible for the promulgation of the rule.

### Contact Person

Dale Kleven

Income, Sales and Excise Tax Division

(608) 266-8253

[dale.kleven@revenue.wi.gov](mailto:dale.kleven@revenue.wi.gov)

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## Rule-Making Notices

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### Notice of Hearings

#### Agriculture, Trade and Consumer Protection

[CR 07-093]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed amendments to chapter ATCP 74, Wis. Adm. Code, relating to the procedures that DATCP uses to evaluate agents and the amount of reimbursement paid annually to DATCP.

DATCP will hold two public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, November 30, 2007, for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to [wayne.kopp@datcp.state.wi.us](mailto:wayne.kopp@datcp.state.wi.us), or online by using the State of Wisconsin's Administrative Rules website at:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4718 or emailing [wayne.kopp@datcp.state.wi.us](mailto:wayne.kopp@datcp.state.wi.us). Copies will also be available at the hearings. To view the proposed rule online, go to the State of Wisconsin's Administrative Rules website at: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to [Keeley.Moll@datcp.state.wi.us](mailto:Keeley.Moll@datcp.state.wi.us) or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by November 7, 2007, by writing to Wayne Kopp, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4718. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

#### Hearing Information

##### Wednesday, November 14, 2007

10:00 a.m. to 12:00 p.m.

Marathon County Government –

Conservation Planning & Zoning Conference Room

210 River Drive

Wausau, WI 54403

##### Thursday, November 15, 2007

10:00 a.m. to 12:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Room 172

Madison, Wisconsin 53718-6777

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

This rule modifies current rules related to cities and counties ("local agents") that license and inspect retail food establishments for the department of agriculture, trade and consumer protection ("DATCP"). This rule increases fees paid by local agents, to compensate DATCP for its costs to train, evaluate and assist local agents. This rule also changes the procedures that DATCP uses to evaluate local agents.

#### Statutory authority

Sections 93.07 (1), 97.30 (5), 97.41 (2) and (5), Stats.

#### Statute interpreted

Section 97.41, Stats.

#### Explanation of agency authority

DATCP has broad general authority under s. 93.07 (1), Stats., to adopt rules needed to interpret and implement laws under its jurisdiction. Under s. 97.41, Stats., DATCP may contract with local agents to license retail food establishments for DATCP. DATCP may set standards for local agents, and may spell out procedures for evaluating local agents. Subject to statutory limits, DATCP may require local agents to pay fees to compensate DATCP for training, evaluation and other services provided to local agents.

#### Background

DATCP licenses and inspects retail food establishments such as groceries, convenience stores and retail bakeries. DATCP may contract with local agents to license and inspect retail food establishments for DATCP. Local participation is voluntary. A local agent may set its own license fees, which may be higher (and typically are higher) than state fees. A retail food establishment licensed by a local agent does not need to be licensed by DATCP.

The local agent program is growing. DATCP currently contracts with 37 local agents (there were 21 local agents in 2000). DATCP trains, monitors and assists local agent staff, establishes performance standards, and evaluates the consistency and adequacy of local performance.

Local agents must pay an annual fee to compensate DATCP for its costs to train, evaluate and assist local agents. The fee is based on the number of retail food licenses issued by the local agent. The per-license fee is calculated as a percentage of the state retail food license fee, even if the local agent chooses to charge a higher license fee. The statutes authorize DATCP to charge up to 20% of the state license fee. DATCP originally charged a 20% fee, but in 2000 reduced the fee to 10%.

The current 10% fee is not adequate to cover DATCP costs. At the current rate, DATCP recovers only about half of its costs to train, evaluate and assist local agents. The current inadequate fee, combined with growing local participation, has produced a substantial DATCP budget deficit. In FY 2006-07, DATCP collected only \$58,800 in fees from local agents, but incurred local agent costs of \$117,800.

#### Rule contents

Local Agent Fees. This rule increases fees paid by local agents, to compensate DATCP for services provided to local agents. This rule increases the fee to 20% (currently 10%) of

the state license fee amount. DATCP projects that the higher fee will generate adequate revenue to cover (but not exceed) DATCP's actual and reasonable costs as allowed by statute. Local agents may adjust their license fees to pass on the increased cost, if they wish to do so. Local agents may also opt out of the program at any time.

**Local Agent Personnel; Credentials.** Under current rules, local retail food inspections must be performed or supervised by public health sanitarians registered by the Wisconsin department of regulation and licensing. Under this rule, inspections may alternatively be performed or supervised by environmental health specialists registered by the national environmental health association.

**Evaluation of Local Agents.** Under current rules, DATCP must annually evaluate local agent performance. This rule changes the standards that DATCP uses, so that the standards more nearly conform to federal guidelines established by the United States food and drug administration (FDA). Under this rule, an annual evaluation may be based in part on a local agent self-assessment. The self-assessment must be conducted according to procedures spelled out in the agent agreement (procedures are generally based on the FDA guidelines).

At least once every 3 years, DATCP must conduct an on-site evaluation to determine local compliance with applicable laws and rules. Under current rules, the 3-year evaluation must include a survey inspection of randomly selected retail food establishments. Under this rule, a 3-year evaluation may include, but is not required to include, a survey inspection of retail food establishments.

Under this rule, in lieu of performing its own 3-year evaluation, DATCP may accept an equivalent evaluation performed by the Wisconsin department of health and family services (DHFS) pursuant to a cooperative agreement with DATCP (DHFS currently evaluates local agents that license and inspect restaurants for DHFS). An agreement could also provide for reciprocal DATCP evaluation of DHFS local agents, so that the 2 agencies could minimize duplication and maximize evaluation efficiency. There is no cooperative agreement at this time.

#### **Comparison with adjacent states**

**Michigan.** Michigan does not contract with local governments to conduct inspections.

**Minnesota.** Minnesota contracts with a few local health agencies to conduct retail food inspections. There is no fee to cover state oversight costs (oversight activities are covered by state general purpose revenue appropriations). Minnesota evaluates local agents according to FDA standards.

**Illinois.** Illinois delegates all retail food licensing and inspection authority to local government. There is no fee to cover state oversight costs (oversight activities are covered by state general purpose revenue appropriations). Illinois evaluates local agents according to FDA standards.

**Iowa.** Iowa contracts with local government to license and inspect retail food establishments. Iowa does not routinely evaluate local performance, but does occasional audits. There is no fee to cover state oversight costs (oversight activities, such as they are, are covered by state general purpose revenue appropriations). When Iowa does review local performance, it does so according to FDA standards.

#### **Business Impact**

This rule increases the fee that *local governments* must pay for services received from DATCP. Local governments may increase retail food license fees to cover the increased cost, but they are not required to do so. If a local agent passes on

the full amount of its increased cost to retail license holders, the added cost allocated to each license holder may range from \$4 to \$56 per year per license holder. The actual amount will depend on the license holder's annual sales and food processing activities. This rule does not impose any additional recordkeeping or other requirements on retail food establishments.

#### **Fiscal Estimate**

This rule will increase DATCP revenues to cover (but not exceed) DATCP's actual and reasonable costs to administer the local agent program. Under current rules, DATCP annually collects \$58,800 per year from all of its local agents. Under this rule, revenues will increase by \$58,800 per year so that DATCP will receive approximately \$117,600 per year. That is the approximate amount needed to cover DATCP's current annual cost of \$117,800.

Under this rule, the 37 local agents will incur combined added costs of \$58,800 per year, or an average of just under \$1,600 per local agent. The local agent program is voluntary, so local governments may opt out of the program at any time. Local agents may also recover the increased cost by increasing retail food license fees, but they are not required to do so.

### **Notice of Hearing Employment Relations Commission [CR 07-092]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 111.09, 111.71, 111.94, 227.11 and 227.24, Stats., and interpreting ss. 111.09, 111.71, and 111.94, Stats., the Wisconsin Employment Relations Commission will hold a public hearing in the Commission's Conference Room at 18 South Thornton Avenue in the City of Madison, Wisconsin on the **12<sup>th</sup> day of November, 2007** at 1:00 p.m. and in the Wausau Room, Marathon County Public Library, 300 North First Street, in the City of Wausau, Wisconsin on the **13<sup>th</sup> day of November, 2007** regarding the Commission's promulgation of the following emergency rules increasing filing fees and the Commission's proposed promulgation of the following permanent administrative rules increasing filing fees.

The Commission invites the public to attend the hearings and to present verbal and/or written comments regarding the emergency rules and the proposed permanent rules. In addition to or instead of verbal testimony, written comments can also be sent directly to the Commission at [werc@werc.state.wi.us](mailto:werc@werc.state.wi.us) or at Wisconsin Employment Relations Commission, P.O. Box 7870, Madison, Wisconsin 53707-7870. Written comments should be received by the Commission on or before November 30, 2007.

#### **Text of Rule**

**ERC 10.08 Fee schedule.** (1) **COMPLAINTS.** For a complaint alleging that a prohibited practice has been committed under s. 111.70 (3), Stats., the complaining party or parties shall pay the commission a filing fee of \$80. ~~\$100.~~

(2) **GRIEVANCE ARBITRATION.** For a request that the commission or its staff act as a grievance arbitrator under s. 111.70 (4) (c) 2., or (cm) 4., Stats., the parties to the dispute shall each pay the commission a filing fee of \$250. ~~\$400.~~

(3) **MEDIATION.** For a request that the commission or its staff act as a mediator under s. 111.70 (4) (c) 1. or (cm) 3., Stats., the parties to the dispute shall each pay the commission a filing fee of \$250. ~~\$400.~~

(4) **FACT-FINDING.** For a request that the commission initiate fact-finding under s. 111.70 (4) (c) 3., Stats., the

parties to the dispute shall each pay the commission a filing fee of \$250, ~~\$400~~, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid for the fact-finding.

(5) INTEREST ARBITRATION. For a request that the commission initiate interest arbitration under s. 111.70 (4) (cm) 6., (4) (jm) or 111.77 (3), Stats., the parties to the dispute shall each pay the commission a filing fee of \$250, ~~\$400~~, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid for the arbitration.

#### **Analysis Prepared by the Wisconsin Employment Relations Commission**

The emergency rules and the proposed permanent rules provide the increased filing fee program revenue needed to support 5.0 Program Revenue attorney positions.

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

Small businesses rarely use those Commission services (grievance arbitration, mediation, and unfair labor practice complaints) impacted by the increase in filing fees. The occasional impact on small business of the fee increase will be limited to payment of the employer share of the increased fees for grievance arbitration and mediation (increase of \$150 for total of \$400) or the payment of the increased fee for filing an unfair labor practice complaint (increase of \$20 for total of \$100). Compliance with the emergency rules and the proposed permanent rules does not require any reporting, bookkeeping or professional skills.

#### **Fiscal Estimate**

During the last four fiscal years, WERC has averaged \$381,400 in filing fee revenue.

WERC estimates that increasing the existing filing fee levels will produce some reduction in the requests for WERC fee-related services but produce an additional \$167,800 in fee revenues annually.

Because the vast majority of filing fee revenue is derived from services for which the union and employer each pay 50% of the fee and because the vast majority of the WERC's fee-related services are provided to public sector employers and the unions representing their employees, WERC anticipates that doubling the existing fees will increase the aggregate costs of public sector employers by \$84,000 annually and will have a negligible cost impact on private sector employers.

#### **Contact Persons**

Judith Neumann, Chair  
 WERC  
 P.O. Box 7870  
 Madison, WI 53707-7870  
 (608) 266-0166  
 Judy.Neumann@werc.state.wi.us

Peter G. Davis, General Counsel  
 WERC  
 P.O. Box 7870  
 Madison, WI 53707-7870  
 (608) 266-2993  
 Peter.Davis@werc.state.wi.us

## **Notice of Hearings Health and Family Services (Health, Chs. HFS 110—) [CR 07-090]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11, 252.02 (4) and (7), 254.51 (3), and 900.01 (5g), Stats., and interpreting Ch. 252 and ss. 254.04 and 254.51, Stats., the Wisconsin Department of Health and Family Services proposes to revise ch. HFS 145, relating to communicable disease list revisions and reporting communicable diseases, and affecting small businesses.

#### **Hearing Information**

<u>Date and Time</u>	<u>Location</u>
<b>November 12, 2007</b> 3:00 to 5:00 PM	Dept. of Health and Family Services 1 W. Wilson St., Rm B155 Madison, WI
<b>November 13, 2007</b> 2:00 to 4:00 PM	Lakeview Professional Plaza 1200 Lake View Drive First Floor Dining Room Wausau, WI

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

#### **Submission of Written Comments**

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>. The deadline for submitting comments to the Department is 4:30 p.m. on **November 20, 2007**.

#### **Copies of Rules and Fiscal Estimate**

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting the person listed below.

#### **Contact Person**

Marjorie Hurie  
 Department of Health and Family Services  
 Division of Public Health  
 Bureau of Communicable Diseases and Preparedness  
 1 W. Wilson St., RM 318  
 PO Box 2659  
 Madison, WI 53701-2659  
[huriemb@dhfs.state.wi.us](mailto:huriemb@dhfs.state.wi.us)  
 608-264-9892  
 1-888-701-1253 (TTY)

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

The Department is authorized by s. 990.01 (5g), Stats., to define communicable diseases by rule and by s. 252.02 (1),

Stats., to establish surveillance systems for communicable diseases. The Department's surveillance system requires medical providers, health care facilities and laboratories to report the communicable diseases listed in ch. HFS 145 Appendix A to the local health officer or the state epidemiologist. At the national level, the Council of State and Territorial Epidemiologists (CSTE) recommends reportable diseases by adding them to the list of Nationally Notifiable Infectious Diseases (NNID). The diseases CSTE places under surveillance are typically novel pathogens or those with severe manifestations whose transmission is amenable to control by public health measures. States are encouraged to establish parallel reporting requirements. Accordingly, the Department proposes to add the following six NNID listed diseases to ch. HFS 145 Appendix A:

1. Influenza-associated pediatric deaths
2. Influenza A virus infection, novel subtypes
3. Poliovirus infection, nonparalytic
4. Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV)
5. Vancomycin-intermediate *Staphylococcus aureus* (VISA) infections and Vancomycin-resistant *Staphylococcus aureus* (VRSA) infections
6. Vibriosis

Additionally, the Department proposes to add the following three diseases which are not on the NNID list to ch. HFS 145 Appendix A:

1. Any illness caused by an agent that is foreign, exotic or unusual to Wisconsin, and that has public health implications. Section 250.02, Stats., authorizes the Department to take action to ascertain the presence of any communicable disease. This generic reporting requirement is in lieu of a long listing of individual exotic diseases that are rare but have major public ramifications. It also takes into account the possible emergence of important diseases that are as yet unknown. Each state adjacent to Wisconsin requires that unusual illnesses be reported.

2. Lymphocytic Choriomeningitis Virus (LCMV) infections. In 2003, LCMV was transmitted in organs from an infected Wisconsin donor to four organ recipients. Implementation of public health measures upon identification of a case could potentially limit further exposures.

3. Transmissible spongiform encephalitis (TSE, human). Approximately 50% of states currently mandate reporting of human TSEs and the Division of Public Health already maintains surveillance for human TSEs. Mandatory reporting will simplify the process of obtaining clinical information, especially from out-of-state providers, and will permit the Department to describe more accurately the burden of endemic TSEs of humans.

Additionally, the Department proposes to delete eight diseases, none of which are on the NNID list, from ch. HFS 145 Appendix A. The Department does not anticipate that there will be any adverse impact on the public from deletion of the eight diseases from mandatory reporting:

1. Amebiasis
2. Cat scratch disease (infection caused by *Bartonella* species)
3. Encephalitis, viral (other than arboviral)
4. Genital herpes infection (first episode identified by health care provider)
5. Hepatitis non-A, non-B, (acute)
6. Meningitis, viral (other than arboviral)

7. Reye syndrome
8. Typhus fever

Additionally, the Department proposes to change the way the following five diseases are listed in ch. HFS 145 Appendix A:

1. Change Arboviral infection (encephalitis/meningitis) to Arboviral Disease. The proposed change in terminology makes reporting requirements consistent with current Wisconsin public health practice. This group of diseases is currently on the NNID list.

2. Change *E. coli* 0157:H7, and other enterohemorrhagic *E. coli*, enteropathogenic *E. coli*, enteroinvasive *E. coli*, enterotoxigenic *E. coli* to *E. coli* 0157:H7 and other Shiga toxin-producing *E. coli* (STEC), enteropathogenic *E. coli*, enteroinvasive *E. coli*, and enterotoxigenic *E. coli*. In 2005, CSTE recommended that the enterohemorrhagic *Escherichia coli* (EHEC) condition name be revised to Shiga toxin-producing *Escherichia coli* (STEC) to more accurately describe the condition under surveillance.

3. Change Hepatitis E from a category I disease to a category II disease because this disease does not occur often in the United States and person-to-person transmission is uncommon.

4. Change Suspected Outbreaks of Other Acute or Occupational-related diseases from category II to category I because a possible outbreak requires immediate attention.

5. Change Varicella (chickenpox) – report by number of cases only to Varicella (chickenpox). In 2003, CDC encouraged all states to establish individual case reporting systems to monitor the impact of the varicella vaccination program on varicella morbidity. This level of surveillance is now operationally feasible because the number of cases is far fewer than in the pre-vaccination era. Varicella is on the NNID list.

Lastly, the Department proposes to:

- 1) Alphabetize the diseases in ch. HFS 145 Appendix A to make the list easier for persons reporting communicable diseases to use.

- 2) Allow reports of communicable diseases to be submitted electronically. Electronic transmission of reports currently occurs and is expected to increase.

- 3) Cite the most recent editions of the *Sexually Transmitted Diseases Treatment Guidelines* and the *Control of Communicable Diseases Manual* to make the references current.

- 4) Require laboratories to forward specimens to the State Laboratory of Hygiene for confirmatory or investigation purposes if requested by the State Epidemiologist.

- 5) Require laboratories and health care facilities to report a negative test result on a case or a suspected case to justify release from isolation or quarantine if requested by the State Epidemiologist or Local Health Officer.

- 6) Remove language requiring a person, laboratory or health care facility to report the total number of cases of other communicable diseases listed in ch. HFS 145 Appendix A to the local health officer on a weekly basis because varicella, the only disease reported in this manner, will now be reported as individual cases.

The intended goals of the proposed rulemaking are to make communicable disease reporting requirements in Wisconsin current, consistent with CSTE recommendations and supportive of Wisconsin public health practice. Instead of regulatory action, medical providers, health care facilities and laboratories could be asked to submit reports voluntarily. However, such reporting would be incomplete and more staff

time would be required to solicit the reports. Without this proposed rulemaking, disease reporters would continue to complete and submit reports of some communicable diseases unnecessarily, national communicable disease data would not reflect diseases occurring in Wisconsin, and the rule language would be outdated.

Members of the public who may be affected by the proposed rulemaking are those who acquire one of the communicable diseases the proposed rulemaking adds. Other members of the public who may be affected are the individual's family members or other contacts who were spared infection because public health measures were applied.

### Initial Regulatory Flexibility Analysis

Chapter HFS 145 requires medical providers, health care facilities and laboratories to report communicable diseases listed in Appendix A to the Local Health Officer or the State Epidemiologist. This rulemaking proposes adding 9 diseases to, and subtracting 8 diseases from, ch. HFS 145 Appendix A. The rulemaking includes no fees and failure to comply with the rulemaking carries no penalties. Costs to the private sector include completing and mailing communicable disease case report forms, or keying-in and transmitting data electronically, to local health departments or the Department. Communicable disease reporting is frequently performed by the infection control practitioner or clerical staff.

This rulemaking is unlikely to have a significant economic impact on the private sector generally, and any health care facilities or laboratories that may meet the definition of small business in 227.114 (1), Stats., in particular. It includes no fees, failure to comply with the rulemaking carries no penalties and communicable disease reporting mechanisms are already in place. Usual costs to the private sector include completing and mailing communicable disease case reports forms, or keying-in and transmitting data electronically, to local health departments or the Department. These tasks are frequently performed by the infection control practitioner or clerical staff. Since the largest laboratories will be reporting automatically through electronic laboratory reporting, there will be minimal impact on these laboratories. Requests from the State Epidemiologist or the Local Health Officer for negative test results to justify release from isolation or quarantine are anticipated to be infrequent, as are requests from the State Epidemiologist that specimens to be forwarded to a public health laboratory for confirmatory or investigation purposes.

### Small business regulatory coordinator

Rosie Greer

[Greerj@dhfs.state.wi.us](mailto:Greerj@dhfs.state.wi.us)

608-266-1279

### Fiscal Estimate

Anticipated costs to the Department include layout and printing costs associated with revising and reprinting the Division of Public Health's Communicable Disease Case Report form (DPH 4151); staff time to inform the mandated reporting agencies of the rule revisions through educational forums, e.g., Communicable Disease Spring Seminars, and scheduled meetings, e.g., regional Association of Practitioners of Infection Control chapter meetings and the State Laboratory of Hygiene's Laboratory Reporting Network; and staff time to prepare notices of the rule revisions for publication in the Wisconsin State Medical Journal, on the Department's web site and the Health Alert Network. These costs are insignificant and will be absorbed within the Bureau

of Communicable Diseases and Preparedness budget and staff responsibilities.

The rule changes will not affect the expenditures or revenues of Local Health Departments. Local Health Officers are responsible under s. 252.03 (1), Stats., for investigating, preventing and controlling communicable diseases. Most of the diseases being added to Appendix A have been balanced by deletions from it and, with the exception of varicella (chickenpox), occur so rarely that few if any cases are expected annually. The addition of varicella reporting by individual case report to Appendix A (summary data on approximately 1,000 cases were reported in 2006) has been more than balanced by the deletion of genital herpes (more than 3,000 cases were reported in 2005).

## Notice of Hearings

### Natural Resources

#### (Environmental Protection— Water Management, Chs. NR 300—) [CR 07-094]

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 30.12 (1g) and (3), 30.123 (6) and (7), 30.19 (1m) and (3r), 30.20 (1r) and (1t) and 30.206, Stats., interpreting ss. 30.12 (1g) and (3), 30.123 (6) and (7), 30.19 (1m) and (3r), 30.20 (1r) and (1t) and 30.206, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 320, 323, 328, 329, 341, 343 and 345, Wis. Adm. Code, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses. This rule will modify the existing rules to establish a new exemption and general permit criteria requiring decontamination of equipment for invasive species and viruses (including but not limited to Viral Hemorrhagic Septicemia(VHS)). The new exemption and general permit standard require any person conducting an exempt or general permit activity to:

1. Inspect and remove aquatic plants, animals and mud from equipment.
2. Drain all water from equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps.
3. Dispose of aquatic plants and animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
4. Wash equipment with hot (>140° F) or high pressure water or allow equipment to dry thoroughly for 5 days.

### Hearing Information

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

#### November 12, 2007

Monday at 2:00 p.m.

DNR Northeast Region Hdqrs.

2984 Shawano Avenue

Green Bay

#### November 16, 2007

Friday at 2:00 p.m.

Room G09

GEF #2 Building

101 S. Webster Street

Madison

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 Martin Griffin at (608) 266-2997 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Copy of Rule and Submission of Written Comments**

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Martin Griffin, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until November 19, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Griffin.

#### **Environmental Analysis**

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.

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

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

#### **Fiscal Estimate**

This rule package will increase operational costs for the state or for counties and municipalities to the extent that these precautionary practices are not already being implemented by these entities or by contractors acting on their behalf. However, since insufficient information is available to accurately estimate these costs, the Department is characterizing the state and local fiscal impact as "indeterminate" until more detailed cost information becomes available.

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## Submittal of Proposed Rules to the Legislature

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

### **Agriculture, Trade and Consumer Protection (CR 07-004)**

Ch. ATCP 106, relating to price gouging during emergencies.

### **Cemetery Board (CR 07-050)**

Chs. CB 1 and 2 and chs. RL 50 and 51, relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers.

### **Funeral Directors Examining Board (CR 07-049)**

Ch. FD 4, relating to continuing education requirements.

### **Health and Family Services (CR 06-081)**

Ch. HFS 43, relating to training for child protective services caseworkers and supervisors.

### **Health and Family Services (CR 07-041)**

Ch. HFS 107, relating to benefits covered by the Wisconsin medical assistance program, and affecting small businesses.

### **Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 07-047)**

Ch. MPSW 17, relating to training licenses for marriage and family therapists.

### **Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (CR 07-048)**

Chs. MPSW 10 and 11, relating to training licenses for professional counselors.

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## Rule Orders Filed with the Revisor of Statutes Bureau

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*The following administrative rule orders 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 date of these rules could be changed. Contact the Revisor of Statutes Bureau at [gary.poulson@legis.wisconsin.gov](mailto:gary.poulson@legis.wisconsin.gov) or (608) 266-7275 for updated information on the effective dates for the listed rule orders.*

### **Health and Family Services**

#### **(CR 07-060)**

An order affecting ch. HFS 133, relating to home health care agencies and affecting small businesses.  
Effective 12-1-07.

### **Transportation**

#### **(CR 07-064)**

An order affecting ch. Trans 195, relating to fees and procedures for searches and documentation of division of motor vehicle records.  
Effective 12-1-07.

### **Transportation**

#### **(CR 07-072)**

An order affecting ch. Trans 130, relating to special identification cards and special registration plates for physically disabled.  
Effective 12-1-07.

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## Rules Published with this Register and Final Regulatory Flexibility Analyses

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*The following administrative rule orders have been adopted and published in the **October 31, 2007**, 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.*

### **Commerce (CR 07-032)**

An order affecting ch. Comm 47, relating to the usual and customary cost schedule for petroleum environmental cleanup fund awards (PECFA). Effective 11-1-07.

#### **Summary of Final Regulatory Flexibility Analysis**

Section 101.143 (4) (cm) of the Statutes requires the Department to utilize and maintain a usual-and-customary-cost schedule for items that are commonly associated with claims for reimbursement from the Petroleum Environmental Cleanup Fund Award program. Under that section, small businesses are not exempt from these reimbursement limits.

Although a public Hearing was neither required nor held, the Department solicited input during training sessions that were conducted in 2007 in Wausau, Eau Claire, Neenah, Brookfield, and Madison, for 135 PECFA consultants, commodity service providers, lenders, and site owners. Input was also received via requests for variances relating to the current cost schedule, and through telephone and e-mail inquiries from PECFA consultants and commodity service providers. The subject changes in the cost schedule will discontinue needing the referenced variances, some of which may have been requested by small businesses.

No increases in costs are expected to result from the included, minor changes to the invoice form that is currently used with the schedule of usual and customary costs. The changes are not expected to impose any other significant costs on small businesses.

#### **Summary of Comments by Legislative Review Committees**

No comments were received, although a hearing was held on July 18, 2007, by the Assembly Committee on Natural Resources.

### **Health and Family Services (CR 07-042)**

An order affecting chs. HFS 83, 88, 89, 132, and 134, relating to facility reporting of involuntary administration of psychotropic medication and affecting small businesses. Effective 11-1-07.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rules will affect a substantial number of small businesses, but the rules will not have a significant economic impact on those businesses.

#### **Summary of Comments by Legislative Review Committees**

The Department submitted the final proposed rule and legislative report to the Presiding Officers on July 20, 2007.

On August 16, 2007, the Department submitted, to the Senate Committee on Health and Human Services and the Assembly Committee on Aging and Long Term Care, germane modifications to the final proposed rule. No comments were received on the July 20, 2007 submittal or the August 16, 2007 submittal.

### **Natural Resources (CR 07-011)**

An order affecting ch. NR 1, relating to educational requirements for cooperating foresters and to contracting for timber sale establishment services on state land. Effective 11-1-07.

#### **Summary of Final Regulatory Flexibility Analysis**

The proposed rule does have a significant economic impact on a substantial number of small businesses. The rule will create an opportunity for private consulting forestry firms to expand into providing more services on state-owned land, but the rule does not impose any new regulatory or reporting requirements on small businesses. The proposed change in the educational requirements for cooperating foresters is more flexible than the previous definition.

#### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Campaign Finance Reform, Rural Issues and Information Technology and the Assembly Committee on Forestry. The Assembly Committee on Forestry held a public hearing on August 21, 2007. The Committee's review period was waived after the public hearing.

### **Natural Resources (CR 07-024)**

An order affecting ch. NR 46, relating to the administration of the Forest Crop Law and the Managed Forest Law. Effective 11-1-07.

#### **Summary of Final Regulatory Flexibility Analysis**

The rule does affect small business. Small private forest landowners and forest industries voluntarily enrolled under the Forest Crop Law and the Managed Forest Law are required to pay 10% and 5% respectively of the stumpage value adopted in the zone for the species and wood product volume cut from their land.

#### **Summary of Comments by Legislative Review Committees**

The rules were reviewed by the Senate Committee on Campaign Finance Reform, Rural Issues and Information Technology and the Assembly Committee on Forestry. The Assembly Committee on Forestry held a public hearing on August 21, 2007. The Committee's review period was waived after the public hearing.

**Public Service Commission  
(CR 07-020)**

An order affecting ch. PSC 133, relating to construction, installation, and placing in operation natural gas facilities, and the authorization of natural gas service territory. Effective 11-1-07.

**Summary of Final Regulatory Flexibility Analysis**

An analysis is not required since the rule will not have a significant economic impact on a substantial number of small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Revenue  
(CR 07-027)**

An order affecting ch. Tax 1, relating to electronic funds transfer. Effective 11-1-07.

**Summary of Final Regulatory Flexibility Analysis**

This rule order does not have a significant effect on small business.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Workforce Development  
(CR 07-019)**

An order affecting chs. DWD 80 and 81, relating to worker's compensation. Effective 11-1-07.

**Summary of Final Regulatory Flexibility Analysis**

The rule affects small businesses, as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Workforce Development  
(CR 07-030)**

An order affecting ch. DWD 56, relating to child care rates. Effective 11-1-07.

**Summary of Final Regulatory Flexibility Analysis**

The rule affects small businesses, as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Workforce Development  
(CR 07-038)**

An order affecting chs. DWD 111 and 123, relating to unemployment insurance benefit reports filed by employers. Effective 11-1-07.

**Summary of Final Regulatory Flexibility Analysis**

The rule affects small businesses, as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

**Summary of Comments by Legislative Review Committees**

No comments were received.

**Workforce Development  
(CR 07-039)**

An order affecting ch. DWD 130, relating to wages for unemployment insurance benefit purposes. Effective 11-1-07.

**Summary of Final Regulatory Flexibility Analysis**

The rule does not affect small businesses as defined in s. 227.114 (1), Stats.

**Summary of Comments by Legislative Review Committees**

No comments were received.

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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 **October 2007**, 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

#### Commerce

##### Ch. Comm 47

S. Comm 47.325

S. PSC 133.03 (1) (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j), (2) (a), (b), (c) and (d) and (3)  
 S. PSC 133.04 (1) (a) to (d), (2) to (5), (6), (7), (8), (9), (10), (11), (12), (13) and (14)  
 Ss. PSC 133.05 to 133.08

#### Health and Family Services

##### Ch. HFS 83

S. HFS 83.04 (33m), (49m), (50)

S. HFS 83.07 (7m)

##### Ch. HFS 88

S. HFS 88.02 (14m), (27g), (27r)

S. HFS 88.03 (4) (c)

##### Ch. HFS 89

S. HFS 89.13 (17m), (25g), (25r)

S. HFS 89.53 (4) (c)

##### Ch. HFS 132

S. HFS 132.13 (10m), (25g), (25r)

S. HFS 132.14 (9)

##### Ch. HFS 134

S. HFS 134.13 (18m), (38g), (38r)

S. HFS 134.14 (5r)

#### Revenue

##### Ch. Tax 1

S. Tax 1.12 (1), (2), (3) (g), (4) (a), (b), (7) (intro.)

#### Workforce Development

##### Ch. DWD 56

S. DWD 56.06 (1) (a)

##### Ch. DWD 80

S. DWD 80.02 (2) (e)

S. DWD 80.03 (1) (d) and (g)

S. DWD 80.15

S. DWD 80.32 (11)

S. DWD 80.39 (1)

S. DWD 80.49 (2) (7) (b), and (8)

S. DWD 80.50 (1) (a), (2) and (3)

S. DWD 80.51 (4)

S. DWD 80.68 (1) and (3)

S. DWD 80.72 (2) (i) and (L)

S. DWD 80.73 (2) (d)

##### Ch. DWD 81 (Entire Chapter)

##### Ch. DWD 111

S. DWD 111.07 (4)

##### Ch. DWD 123

S. DWD 123.01

S. DWD 123.02

S. DWD 123.03

##### Ch. DWD 130

S. DWD 130.01

S. DWD 130.03

S. DWD 130.05

S. DWD 130.07

#### Natural Resources

##### Ch. NR 1

S. NR 1.21 (2) (e)

S. NR 1.26

##### Ch. NR 46

S. NR 46.15 (25)

S. NR 46.16 (1) (e) and (5)

S. NR 46.23 (5)

S. NR 46.30 (1) (a), (b), (c), (d), (e), (f) and (g) and (2) (a) to (d)

#### Public Service Commission

##### Ch. PSC 133

S. PSC 133.01 (1), (2) to (4) and (5)

S. PSC 133.02 (1), (2), (3), (4), (5), (6), (7), (8), (10), (12), (13) and (14)

**Editorial corrections**

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing.

**Commerce**

**Ch. Comm 47**  
S. NR 47.325

**Health and Family Services**

**Ch. HFS 83**  
S. HFS 83.04 (31)  
S. HFS 83.06 (5)  
S. HFS 83.11 (3) (f)  
S. HFS 83.20 (2) (a)  
S. HFS 83.21 (1) (a) and (4) (t)  
S. HFS 83.33 (3) (b) and (d)  
S. HFS 83.52 (2) (f), (g) and (h)

**Ch. HFS 88**

S. HFS 88.04 (2) (e)  
S. HFS 88.10 (1) and (3) (d)

**Ch. HFS 89**

S. HFS 89.29 (1) (a), (2) (b) and (3) (a)

**Ch. HFS 132**

S. HFS 132.33 (3) (a) and (b)

**Ch. HFS 134**

S. HFS 134.12 (2)  
S. HFS 134.31 (2) (a)  
S. HFS 134.33 (3) (a) and (b)  
S. HFS 134.60 (4) (a)  
S. HFS 134.83 (5) (e) and (6) (a)

**Natural Resources****Ch. NR 668**

S. NR 668.49 (5) (b)

**Workforce Development****Ch. DWD 82**

S. DWD 82.08 (1)

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## Executive Orders

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**The following are recent Executive Orders issued by the Governor.**

**Executive Order 219.** Relating to a Special Session of the Legislature.

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