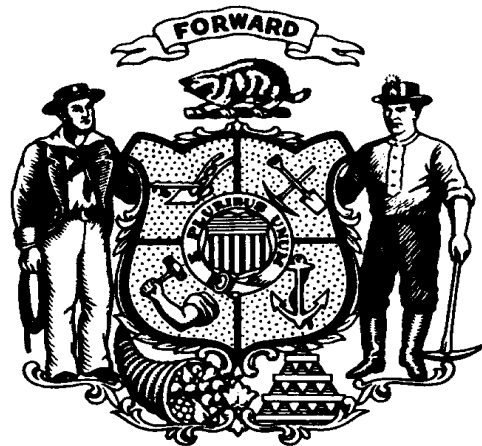


# Wisconsin Administrative Register

No. 544



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## Emergency rules now in effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule–making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule–making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

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

### Agriculture, Trade & Consumer Protection – (4)

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

#### Exemption from finding of emergency

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

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

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

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

**Publication Date:** July 20, 2000  
**Effective Date:** July 20, 2000  
**Expiration Date:** December 18, 2000  
**Extension Through:** April 16, 2001

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

#### Finding of emergency

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

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

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

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

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

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

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

**Publication Date:** August 11, 2000  
**Effective Date:** August 11, 2000  
**Expiration Date:** January 8, 2001  
**Hearing Date:** September 19, 2000  
**Extension Through:** May 7, 2001

3. Rules adopted creating s. ATCP 10.21 (10) (c) and (15) relating to reimbursement of Johne’s disease testing costs.

#### Finding of emergency

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

1. 1999 Wisconsin Act 9 was published on October 28, 1999. It appropriates \$100,000 for financial assistance to owners of livestock herds for conducting testing for Johne’s disease (paratuberculosis) for FY 2000–01. It requires the department to provide the financial assistance.

2. 1999 Wisconsin Act 9 requires the department to promulgate rules for implementing the financial assistance program.

3. Permanent rules establishing the program will not take effect before June 1, 2001. This emergency rule establishes an interim procedure which will allow owners of livestock herds to apply for grants under this program. Without this rule, no person would be able to apply for a grant in FY 2000–01 until at least June 1, 2001, and the department would

have insufficient time to review and process the grant requests before the end of the fiscal year.

**Publication Date:** January 1, 2001  
**Effective Date:** January 1, 2001  
**Expiration Date:** May 31, 2001  
**Hearing Date:** February 13, 2002

4. Rules adopted revising **ch. ATCP 80**, relating to pathogen-tests on ready-to-eat dairy products.

#### Finding of emergency

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

(1) DATCP licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules, under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product.

(2) There has been a nationwide increase in food borne disease outbreaks associated with food and dairy products. Such outbreaks can occur when ready-to-eat foods enter food distribution channels without being tested for pathogenic bacteria.

(3) There is no national or state law requiring dairy plant operators to test ready-to-eat dairy products for pathogens prior to sale or distribution. Dairy plant operators have a natural incentive to test, in order to avoid liability and meet their customers' product safety demands. But the current test reporting requirement under s. ATCP 80.56(4) discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from distribution.

(4) There is an urgent need to repeal this counterproductive reporting requirement, and to create alternative rules that will encourage pathogen testing and provide stronger public health protection. This emergency rule will encourage more pathogen testing, and provide stronger public health protection, pending the adoption of "permanent" rule changes.

**Publication Date:** March 2, 2001  
**Effective Date:** March 2, 2001  
**Expiration Date:** July 30, 2001

### Commerce

#### (Flammable and Combustible Liquids – Ch. Comm 10)

Rules adopted revising **s. Comm 10.345**, relating to the effective date of required upgrades to aboveground bulk tanks that were in existence on May 1, 1991.

#### Finding of emergency

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

Wisconsin Administrative Code ch. Comm 10, Flammable and Combustible Liquids Code, became effective on 5/1/91. Section Comm 10.345 (2) contains requirements for bulk tanks in existence on that date to be provided with specific containment or leak detection upgrades within 10 years of that date. Some concerns have been expressed on the impact that compliance date could have on heating oil supplies and prices this winter. Construction requirements could result in a

substantial number of tanks storing heating oil to be closed during the winter heating season in preparation for the required upgrades.

Based on these concerns, the department has agreed to extend the compliance deadline for 3 months until 8/1/01 if approvable tank system upgrade plans have been submitted to the department by 2/1/01.

**Publication Date:** January 6, 2001  
**Effective Date:** January 6, 2001  
**Expiration Date:** June 4, 2001  
**Hearing Date:** February 27, 2001

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### Corrections

Rules adopted revising **ch. DOC 309**, relating to sexually explicit material at adult correctional institutions.

#### Finding of emergency

The Department of Corrections finds that an emergency exists and that rules are necessary for preservation of the public welfare. A statement of the facts constituting the emergency is: Effective December 1, 1998, the Department implemented rules restricting inmates' access to sexually explicit material. These rules were challenged in federal court in a class action suit brought by several inmates (*Aiello v. Litscher*, Case No. 98-C-791-C, Western District of Wisconsin). The defendants filed a motion for summary judgment, but it was denied by the court in language that suggested the rules were unconstitutional in their present form based on a number of federal appellate court decisions that were reported after the rules were implemented.

In light of these developments, the parties negotiated a settlement which includes an immediate revision of the present rules to conform to the latest decisional law regarding the extent to which inmates' access to sexually explicit material can be restricted for legitimate penological objectives. Adoption of the revised rules no later than February 23, 2001, is necessary to avoid a lapse of the settlement agreement and lengthy trial with the attendant possibility of having to pay a considerable amount in attorneys' fees.

This order:

- Revises the present rules restricting inmates' access to sexually explicit material by prohibiting access to published material that depicts nudity on a routine or regular basis or promotes itself based on nudity in the case of individual one-time issues.

- Revises the present rules by prohibiting access to written material when it meets the legal definition of obscenity.

**Publication Date:** February 23, 2001  
**Effective Date:** February 23, 2001  
**Expiration Date:** July 23, 2001

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### Employment Relations Commission

Rules were adopted amending **ch. ERC 33, Appendices A, B and C** relating to the calculation of a qualified economic offer in collective bargaining with professional school district employees.

#### Finding of emergency

As required by s. 227.24 (1), Stats., we find that it is necessary to promulgate the amendment to ch. ERC 33, Appendices A, B, and C as an emergency rule to preserve the public peace, health, safety and welfare. Absent promulgation of this emergency rule, the timely and peaceful

resolution of collective bargaining disputes in Wisconsin will be endangered.

The amendment of ch. ERC 33, Appendices A, B and C is required by 1999 Wisconsin Act 9's amendment of the statutory definition of a qualified economic offer in s. 111.70 (1) (nc) 1. c., Stats., and the ruling of the Wisconsin Court of Appeals in *Racine Education Ass'n v. WERC*, 238, Wis.2d 33 (2000). The amended statutory definition of qualified economic offer first applies to school district professional employee bargaining agreements covering the period of July 1, 2001 through June 30, 2003.

As amended, ch. ERC 33, Appendices A, B and C allow a school district to accurately calculate the level of salary increase, if any, which the district must offer to the labor organization representing the district's professional employees as part of a qualified economic offer. As amended, ch. ERC 33, Appendices A, B and C implement (1) the statutory requirement that salary increases due to a promotion or the attainment of increased professional qualifications are not part of a qualified economic offer; and (2) the ruling of the Court in *Racine Education Ass'n v. WERC* that a qualified economic offer cannot exceed a 3.8% increase in salary and fringe benefit costs.

**Publication Date:** January 22, 2001

**Effective Date:** January 22, 2001

**Expiration Date:** June 20, 2001

## Financial Institutions – Division of Securities

Rules adopted revising **ch. DFI–Sec 5**, relating to adopting for use in Wisconsin the Investment Adviser Registration Depository.

### Finding of emergency

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

The U.S. Securities and Exchange Commission ("SEC"), in conjunction with the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has developed an electronic filing system for licensure of investment advisers to replace the paper filing system which heretofore has been used in all states. The system, the Investment Adviser Registration Depository (IARD), will permit investment advisers to satisfy their initial and renewal filing obligations to obtain licensure under the federal and state securities laws with a single electronic filing made over the Internet, instead of having to make separate paper filings with the SEC and with each state in which the investment adviser seeks to do business.

After several years in development and a pilot phase in the fall of 2000 that the Division participated in, the commencement date for states and the SEC to accept filings under the IARD has been set for January 1, 2001. Consequently, NASAA member states, including Wisconsin, need to take the necessary rule-making or other regulatory action by January 1, 2001 to enable investment advisers to make their licensing filings electronically. The Emergency Rules make the necessary changes to the Division's investment adviser license filing provisions that are immediately needed to adopt the IARD for use in Wisconsin by investment advisers.

The IARD will be operated by NASD Regulation, Inc., a self-regulatory organization that for 20 years has operated an

equivalent electronic filing system (the Central Registration Depository or "CRD") for federal and state licensure of securities broker-dealers and their sales agents. As with the CRD, the IARD will provide the advantages of: (1) elimination of paper filings; (2) a single filing will satisfy federal and state filing requirements; and (3) automatic payment of state licensing fees to the states where the investment adviser does business. Additionally and importantly, the IARD will provide the investing public with immediate, real-time access to information about investment advisers and their representatives.

Congress in its passage of the National Securities Markets Improvement Act in 1996 provided for the development of this electronic filing system for investment advisers, and the SEC has adopted rules mandating such. The SEC and the states have been working together to develop both the necessary changes to the filing form (Form ADV), and to the filing procedures to achieve uniformity in the filing processes and procedures. Additionally, to achieve uniformity among the states in the adoption of rules implementing the IARD, a NASAA Working Group has developed Model Rules (with commentary) to coordinate with the SEC requirements. The Wisconsin Emergency Rules adopted herein follow the NASAA Model Rules.

The Emergency Rules provide for: (1) a revised Licensing Procedure section in s. DFI–Sec 5.01 (1) and (2); (2) temporary and permanent hardship exemption provisions in s. DFI–Sec 5.01 (11); (3) a revised brochure rule in s. DFI–Sec 5.05(8); (4) revised filing periods and license expiration dates for licenses of investment advisers and investment adviser representatives, as well as for license withdrawals in ss. DFI–Sec 5.07 and 5.08; (5) a revised procedure for filings by federal covered advisers in s. DFI–Sec 5.11; and (6) a specific section in s. DFI–Sec 5.12 dealing with transition filings. Separate from these Emergency Rules, the Division will be issuing General Orders to further implement timing for various categories of filers, and which will provide partial fee rebates for 2001 for the smaller, state-only licensed advisers to help defray the initial one-time fee (of \$150) they must pay for their initial participation in the IARD.

**Publication Date:** December 29, 2000

**Effective Date:** January 1, 2001

**Expiration Date:** May 31, 2001

**Hearing Date:** April 18, 2001

## Health & Family Services

(Health, Chs. HFS 110–)

Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

### Finding of emergency

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

### Summary

September 2000 regulations issued by the U.S. Department of Housing and Urban Development (HUD) assume states' commencing lead abatement activities compliant with the federal regulations beginning March 15, 2001. The Department estimates that about 5,000 structures in the state require lead abatement activities. About 300 persons need to be trained to conduct lead abatement activities on these 5,000 structures. Without DHFS issuance of revised training

program requirements, Wisconsin's lead training programs will not alter their courses to HUD standards or receive state accreditation in time for sufficient personnel to be trained by the time high demands for lead abatement commences. To sanction ill-trained lead abatement personnel by March 15, 2001, the Department would needlessly endanger the health of both untrained lead abatement personnel and the public whose residences are affected.

### **Lead Abatement Activities**

Residences built before 1978 have a high likelihood of containing lead-based paint. When lead-based paint is in poor condition or when it is disturbed through activities such as sanding or scraping, the paint can break down into chips and dust that become a potential source of lead poisoning for occupants. Wisconsin has nearly 500,000 rental units and 1 million owner-occupied units built before 1978 and presumed to contain lead-based paint.

Exposure to lead in paint, dust or soil has both short-term and long-term adverse health effects on children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. When not fatal, these effects on the body last a lifetime. Of 63,400 Wisconsin children under the age of 6 screened for lead poisoning in 1999, 3,744 were identified as having lead poisoning. However, the number of children affected by lead poisoning is probably much greater, since the 63,400 screened represented only 16% of the state's children under the age of 6. Many of these children would not become lead poisoned if pre-1978 dwellings did not have deteriorated paint or lead-based paint on friction or impact surfaces and if lead-safe techniques were used when disturbing lead-based paint.

Lead poisoning can also affect older children and adults. In 1999, a 40-year old man employed to remove paint from windows of a rental dwelling was severely lead poisoned. He was hospitalized with complaints of headaches and joint pain. He underwent multiple sessions of chelation therapy to remove some of the lead from his blood, but still suffered serious neurological damage, which affected his speech and balance. This man's lead poisoning could have been avoided if he had been trained to use lead-safe techniques and personal protection equipment.

### **Existing Wisconsin Law**

Chapter 254, Stats., provides for a comprehensive lead hazard reduction program, including lead exposure screening, medical case management and reporting requirements, and the development of lead training accreditation and certification programs. Under the authority of Chapter 254, Stats., the Department promulgated Chapter HFS 163, Wis. Adm. Code, in 1988 to provide rules for the certification of individuals performing lead hazard reduction and for the accreditation of the courses that prepare individuals for certification. These rules have been revised over time to meet requirements of the U.S. Environmental Protection Agency (EPA).

Wisconsin met federal standards for a state-administered lead training accreditation and certification program and received EPA authorization effective January 27, 1999. The Department's Asbestos and Lead Section of the Bureau of Occupational Health administers and enforces lead-based paint training, certification and work practice provisions of Chapter HFS 163, Wis. Adm. Code. The Section operates on a combination of program revenue and lead program development grants from the EPA.

Under Chapter HFS 163, Wis. Adm. Code, a person offering, providing or supervising lead-based paint activities

for which certification is required must be certified as a lead company and may only employ or contract with appropriately certified individuals to perform these activities. An individual may apply for certification in the following disciplines: lead (Pb) worker, supervisor, inspector, risk assessor and project designer. For initial certification, the individual must be 18 years of age or older, must meet applicable education and experience qualifications, must successfully complete certification training requirements and, to be certified as a lead (Pb) inspector, risk assessor or supervisor, must pass a certification examination. All individuals must have completed worker safety training required by the U.S. Occupational Health and Safety Administration for lead in construction. In addition, a lead (Pb) worker, supervisor, or project designer must complete a 16-hour lead (Pb) worker course, a lead (Pb) supervisor or project designer also must complete a 16-hour lead (Pb) supervisor course, and a lead (Pb) project designer must complete an 8-hour lead (Pb) project designer course. A lead (Pb) inspector or risk assessor must complete a 24-hour lead (Pb) inspector course and a lead (Pb) risk assessor must also complete a 16-hour lead (Pb) risk assessor course.

### **New Federal Regulations**

The U.S. Department of Housing and Urban Development (HUD) revised 24 CFR Part 35 effective September 15, 2000. The regulations require most properties owned by the federal government or receiving federal assistance to conduct specified activities to make the property lead-safe. Specifically, these regulations affect property owners receiving federal rehabilitation funds and landlords whose tenants receive federal rental assistance. To meet HUD's lead-safe standards, most affected properties must have a risk assessment completed and must use certified persons to reduce or eliminate the lead-based paint hazards identified in the risk assessment report. Property owners must also use trained people to perform maintenance or renovation activities and must have clearance conducted after completing activities that disturb lead-based paint. Clearance is a visual inspection and dust-lead sampling to verify that lead-based paint hazards are not left behind. The HUD regulations also establish a new, research-based standard for clearance that is more protective than HUD's previously recommended standard.

The EPA has issued a memorandum urging States to implement a lead sampling technician discipline for which a 1-day training course would be required. Addition of this discipline would help to meet the increased demand for clearance under both the HUD regulations and renovation and remodeling regulations being considered by EPA.

The EPA is preparing to promulgate lead renovation and remodeling regulations under 40 CFR Part 745. Under these training and certification regulations for renovators, any person who disturbs paint in a pre-1978 dwelling, other than a homeowner performing activities in an owner-occupied dwelling, will have to complete lead-safe training. EPA is also considering requiring clearance after any activity that disturbs paint in a pre-1978 dwelling, except when work on owner-occupied property was done by the property owner.

### **New Wisconsin Law**

1999 Wisconsin Act 113 requires the Department to establish a process for issuing certificates of lead-free or lead-safe status and registering the properties for which certificates are issued. If a dwelling unit has a valid certificate of lead-free or lead-safe status when a person who resides in or visits the unit is lead poisoned, the property owner, and his or her agents and employees are generally immune from civil and criminal liability for their acts or omissions related to the lead poisoning or lead exposure. Act 113 also requires the



Department to establish the requirements for a training course of up to 16 hours that property owners, their agents and employees may complete in order to receive certification. The Department must also specify the scope of the lead investigation and lead hazard reduction activities that may be performed following certification. Act 113 specifies that administrative rules to implement Act 113 must be submitted to the Legislative Council Rules Clearinghouse by December 1, 2000. The rules providing the standards for lead-free and lead-safe property, and the procedures for issuing certificates of lead-free status and lead-safe status, are being promulgated separately and are not expected to be published for several months.

### Result of Changing Federal and State Requirements

New HUD regulations create an urgent need for appropriately trained and certified workers to conduct activities that reduce or identify lead-based paint hazards. Due to a lack of trained and certified individuals to perform the activities required by the HUD regulations, housing agencies in Wisconsin have been forced to ask HUD for a 6-month extension before beginning enforcement of the regulations. To be granted the extension, the agencies must provide a plan for increasing the number of certified persons to meet the demand by March 15, 2001. If HUD does not grant an extension, millions of dollars in federal funding for rehabilitation and lead hazard reduction may be lost.

In addition to the demand for certified persons generated by the HUD regulations, Act 113 is generating its own demand for certified persons. Many property owners want to begin reducing lead-based paint hazards on their properties in order to meet the standards for lead-free or lead-safe property when the standards take effect. Although property owners and their employees may be certified now under Chapter HFS 163, Wis. Adm. Code, some property owners feel 5 days of training is too extensive for the work they will be performing. Act 113 requires the Department to establish the requirements for a training course of up to 16 hours that property owners, their agents and employees may complete in order to receive certification. This emergency rule meets the requirement of Act 113 by providing for certification as a lead (Pb) low-risk supervisor to independently perform limited lead hazard reduction activities after only 2 days of training.

### Department Response

The Department is gravely concerned that a lack of properly trained and certified individuals to meet the increased demand may lead to an increase in lead poisoning due to work being performed by untrained individuals. The new disciplines in this emergency order will help meet the demand for certified individuals because the rules reduce the training hours required for certification by targeting training to specific activities. With more individuals becoming certified, housing authorities and property owners will be able to comply with HUD regulations and property owners will be able to reduce lead-based paint hazards in preparation for the implementation of Act 113 lead-free and lead-safe property standards.

In promulgating these revisions to the certification and training accreditation requirements under chapter HFS 163, the Department seeks to meet the needs of all the parties affected by training or certification requirements under State, federal or local lead regulations. For each revision made by these rules, the Department considered the impact of the cost, the ease with which persons could comply, the ability to easily move to a higher level of certification, and the consistency with other regulations. In developing the low-risk worker and low-risk supervisor disciplines, the Department also considered

potential requirements of EPA's renovation and remodeling regulations.

The Department divided required training into smaller independent modules to allow individuals to complete the least amount of training necessary to safely and accurately perform the lead-based paint activities for which the individual becomes certified. In addition, the Department:

- Divided lead hazard reduction activities into those that are low-risk and high-risk.
- Divided site management activities into project design and supervision of low-risk versus high-risk activities.
- Divided lead investigation activities conducted by lead risk assessors into sampling, inspection, and hazard investigation.
- Revised the definitions, training and certification requirements and accreditation standards to reflect these categories of activities.

**Publication Date: December 1, 2000**

**Effective Date: December 1, 2000**

**Expiration Date: April 30, 2001**

**Hearing Date: January 12, 16, 17, 18 and 19, 2001**

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## Natural Resources – (3) (Fish, Game, etc., Chs. NR 1–)

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

### Exemption from finding of emergency

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

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

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

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

The emergency rule:

- Implements a statutory change that requires the department to obtain county approval for acquisitions in counties where greater than 66% of the land is publicly owned.
- Moves three stewardship grant programs (local park aids, urban green space, and urban rivers) from ch. NR 50 to ch. NR 51. Improves grant administration by combining all stewardship grant programs into one chapter.
- Revises and expands program definitions, including definitions for nature-based outdoor recreation and middle kettle moraine, to clarify terms, reflect statutory changes and improve grant administration.
- Implements a statutory change that expands grant eligibility to include non 501 (c) (3) organizations.
- Reorganizes the structure of chapter 51 to incorporate new programs and local government programs.
- Implements statutory changes that identify priorities and expand the purposes for which nonprofit conservation organizations can receive grants. Makes minor revisions to improve grant administration.
- Makes minor revisions to bring the natural areas program in line with statutory changes.

- Establishes the administrative framework for the new bluff protection program. Defines “bluff” and sets program priorities.
- Makes minor revisions in the habitat areas and fisheries program to bring the program in line with statutory changes and improve grant administration.
- Establishes the administrative framework for acquisition of property by the department and nonprofit conservation organizations to preserve wild lakes. Defines “wild lake.”
- Makes minor revisions to the stream bank program to bring the program in line with statutory changes.
- Makes minor revisions to the state trails program to improve grant administration.
- Implements a statutory change that makes nonprofit conservation organizations eligible for grants for state property development. Revises grant priorities and makes minor revisions to improve administration of the state property development grant program.
- Establishes the administrative framework and sets priorities for the new Baraboo Hills subprogram.
- Clarifies and streamlines the administration of local assistance grants to governmental units.
- Clarifies and streamlines the administration of the local park aids, urban green space, and urban rivers grant programs which provide grant funds for governmental units and nonprofit conservation organizations. Implements statutory changes that require that all grants issued under these programs be for nature–based outdoor recreation. Lists eligible nature–based projects and sets grant priorities. Also implements a statutory change that allows “shoreline enhancements” to be funded under the urban rivers program and provides a list of typical shorelines enhancements that will qualify for the program.
- Establishes the administrative framework for the new acquisition of development rights program that provides grant funds to local governments and nonprofit conservation organizations. Sets priorities and identifies other factors that will be considered in awarding grants.
- Makes minor revisions to improve administration of the Heritage state park and forest trust program.

**Publication Date:** September 1, 2000

**Effective Date:** September 1, 2000

**Expiration Date:** See section 9136 (10g), 1999 Wis. Act 9

**Hearing Dates:** November 1 & 2, 2000

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

#### **Finding of emergency**

An emergency rule is necessary in order to make the cost shared gypsy moth suppression program available for aerial treatments in May 2001. Given the survival of caterpillars this summer, the department expects that populations of gypsy moth will be high enough in some localities in 2001 to necessitate suppression to protect tree health. In order to offer participation in the aerial treatment project and cost sharing from the U.S. Forest Service, it is necessary that preparatory work be done this fall and winter to define treatment blocks. When gypsy moth outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner and others when pesticides are not used according to directions. The Department organized suppression program

will provide the public with a safe, effective and affordable means to prevent damage to their trees.

**Publication Date:** November 10, 2000

**Effective Date:** November 10, 2000

**Expiration Date:** April 9, 2001

**Hearing Date:** January 17, 2001

**Extension Through:** June 7, 2001

3. Rules adopted revising **ch. NR 6** relating to defining unreasonable and improper speed to include operating a snowmobile at speeds greater than 50 MPH during the hours of darkness.

#### **Finding of emergency**

During the 1999–2000 snowmobile season conservation wardens investigated 38 fatal snowmobile accidents. Of these accidents, 10 deaths could be directly attributed to operation at excessive speed during the hours of darkness. Fourteen other deaths could have been avoided if the operators had observed more prudent speeds, allowing them to avoid nighttime hazards. Potentially 24 of the 38 fatalities could have been avoided if the snowmobiler had been operating at slower speeds during the hours of darkness. Unless an immediate change is made in the snowmobile laws similar number of avoidable fatalities will occur during the 2000–2001 snowmobile season. Even greater numbers could occur if the early snows seen in November of 2000 remain, thereby extending the snowmobile season beyond that experienced in 1999–2000.

**Publication Date:** December 15, 2000

**Effective Date:** December 15, 2000

**Expiration Date:** May 14, 2001

**Hearing Date:** January 17, 2001

## **Natural Resources**

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

Rules adopted creating **ch. NR 754** relating to environmental insurance requirements for liability exemptions for voluntary remediation.

#### **Exemption from finding of emergency**

This rule is being promulgated as an emergency rule because 1999 Wis. Act 9 (Section 9136 (3)) required the adoption of this rule as an emergency rule (following the procedures in s. 227.24, Stats.). 1999 Wis. Act 9 stated that the department is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety or welfare and without having to provide a finding of emergency.

#### **Analysis prepared by the Dept. of Natural Resources**

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

Statute interpreted: s. 292.15, Stats.

Section 292.15 (2) (ae) 3m., Stats., directs the department to promulgate rules to describe the requirements that must be met by a voluntary party seeking a Certificate of Completion, where natural attenuation is employed as the remedial action. The 1999–2001 State Budget (1999 Wisconsin Act 9) created s. 292.15 (2) (ae), Stats., which allows parties to use natural attenuation as a remedy to obtain the voluntary party liability exemption. This section includes a provision where the DNR may require a voluntary party to obtain environmental

insurance if the voluntary party wants to receive a Certificate of Completion before the groundwater enforcement standards are met through natural attenuation. This rule requires that all voluntary parties who apply for the liability exemption under this section obtain environmental insurance to cover the cost to cleanup the environment if natural attenuation fails.

**Publication Date:** March 6, 2001  
**Effective Date:** March 6, 2001  
**Expiration Date:** August 3, 2001  
**Hearing Date:** April 16, 2001

### Public Service Commission (2)

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

#### Exemption from finding of emergency

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

#### Analysis by the Public Service Commission

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

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

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

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

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

The Commission will give the applicant written notice of its determination. The Commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice. If an applicant is authorized to file

information confidentially in the context of a Commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for that proceeding.

**Publication Date:** October 23, 2000  
**Effective Date:** October 23, 2000  
**Expiration Date:** March 22, 2001  
**Extension Through:** May 20, 2001

2. Rules adopted amending **s. PSC 116.06 (1) and (2)**, relating to the triggering mechanism and the period of time in which fuel costs are estimated for purposes of seeking an emergency or extraordinary rate increase under s. PSC 116.06.

#### Finding of emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend s. PSC 116.06 (1) and (2), which would allow the Commission to grant a rate increase to an applicable Class A electric public utility based on estimated fuel cost for the year in which it is reasonably anticipated that the rate increase would go into effect. In granting the rate change the Commission must find, after a hearing confined solely to fuel costs, that the utility is eligible to seek an emergency or extraordinary rate increase under the current rule, an emergency or extraordinary increase in the cost of fuel exists, and the fuel cost increase will affect the utility's average yearly fuel costs for the year in which it is reasonably anticipated that the rate increase would go into effect so as to fall outside the established annual range for that year. This change would assist in implementing the rule at a time of volatile fuel costs.

**Publication Date:** December 28, 2000  
**Effective Date:** December 28, 2000  
**Expiration Date:** May 27, 2001  
**Hearing Date:** January 23, 2001

### Tobacco Control Board

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

#### Finding of emergency

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

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

While tobacco's effects are in individuals' futures, immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been a 19 percent increase in high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking

before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease and stroke.

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

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

The Board, through this order, is creating chapter TCB 1

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

**Publication Date:** November 7, 2000  
**Effective Date:** November 7, 2000  
**Expiration Date:** April 6, 2001  
**Hearing Date:** January 10, 2001  
**Extension Through:** June 4, 2001

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## Scope statements

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### Accounting Examining Board

#### Subject

*Objective of the Rule.* The objective of the rule is to codify the requirement of an applicant fulfilling the educational requirement prior to earning senior level experience. The board believes it is essential for a candidate for licensure to have a theoretical foundation necessary to perform the duties required in senior level practice.

#### Policy analysis

Create rule in chapter Accy 5.

#### Statutory Authority

Sections 15.08 (5) (b), 15.405 (1), 227.11 (2) and ch. 442, Stats.

#### Staff Time Required

100 hours.

### Accounting Examining Board

#### Subject

*Objective of the Rule.* The objective of the rule is to revise rules relating to ethics in order for them to be more consistent with current practices, reflect the policies of the board, the ethical standards espoused by the National Association of State Boards of Accountancy, and the American Institute of Certified Public Accountants, as appropriate.

#### Policy analysis

Revise chapter Accy 1 and other chapters as appropriate.

#### Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and ch. 442, Stats.

#### Staff Time Required

100 hours.

### Commerce

#### Subject

*Objective of the Rule.* The objective of the revision of ch. Comm 35 is to update the provisions of the Department's administrative rules relating to infectious agents.

#### Description of Policy Issues

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

The current rules of chapter Comm 35 identify those infectious agents relevant to the Employees' Right to Know Law. The rules contain lists of bacterial, mycoplasmal, fungal, parasitic and viral agents and arboviruses that are designated as infectious agents. Because it has been 15 years since chapter Comm 35 was revised, it is anticipated that the review will result in adding several new agents to the lists to bring the rules into conformance with current practice. In conducting the review, the Department will look at information from various sources, including the Centers for Disease Control, the UW Environmental/Occupational Health and Safety Department, and the state Division of Public Health. Avoiding this update will result in continuing

to have rules that are not consistent with current nationally recognized practices relating to employee exposure to infectious agents.

#### Statutory Authority

Section 101.598 (1), Stats.

#### Staff Time Required

The Department estimates that it will take approximately 100 hours to develop this rule. This time includes obtaining and reviewing relevant information, then drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

### Commerce

#### Subject

*Objectives of the Rule.* The Department of Commerce issues Community Development Block Grants (CDBG) it receives from the federal government under the rules in chapter Comm 108. Currently, the department awards grants to eligible local governments for public facilities on an annual basis. The proposed rule will open the granting of awards throughout the year, rather than just on an annual basis. In addition, the rules are being expanded to issue grants to eligible communities for planning up to \$12,500. Commerce awards grants based on a point ranking system. Currently, awards are issued based on a maximum number of points. Under the proposed rule, public facility grants will be awarded based a minimum number of points rather than a maximum number of points. Grants for planning will be awarded on the basis of other criteria, rather than a point system. In addition, the numerical value of points for utility rates and distress communities are subsequently being reduced. The proposed rules will also allow issuing grants to eligible communities for blight elimination and for projects that may reuse the cleaned site for uses other than for economic development. Also, the rule changes will make it easier for governments to apply for a wider variety of projects.

#### Description of Policy Issues

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

Currently, public facility grants to eligible communities are awarded once annually. Under this proposal, grants can be awarded throughout the year making it easier for communities to prepare and submit their proposals. Also, it is anticipated that by substituting a minimum point system for a maximum point more communities will become eligible for grants. Also, allowing communities to receive planning grants will help communities to better plan future projects for CBDG requests and find other funding for these projects.

#### Statutory Authority

Sections 560.04 and 560.045, Stats.

#### Staff Time Required

The Department estimates that it will take approximately 107 hours to develop this rule.

## Corrections

### Subject

Rule promulgation and amendment of chs. DOC 303, 309, and 316 to establish policies, procedures, and standards for probation and parole holding facilities under s. 311.16 (1q), Stats. These holding facilities are classified as prisons and will generally operate under the same administrative code provisions as other Department of Corrections institutions. However, in many respects these facilities are more similar to jails than prisons and these rule amendments will reflect that reality.

*Objectives of the Rule.* The objective of these rule amendments is to establish procedures for administration, maintenance, and supervision for the holding facilities to provide a safe and secure environment. The rule will delineate the responsibilities of both the Department and inmate. These rules are intended to provide humane and respectful treatment of inmates, while assuring both staff and inmates are safe while in these institutions. In addition, the objective of the rule is to establish policies and procedures, which provide levels of control consistent with the length of stay and environment presented within a holding facility.

### Statutory authority

General corrections authority, State prisons named and defined, and Construction and establishment of certain institutions, ss. 301.03, 302.01, and 301.16 (1q).

### Staff Time Required

The Department estimates that it will take approximately 150 hours to develop the rule and amendments for the probation and parole holding facilities, including workgroup meetings, drafting, cost estimates, public hearings, and complying with rulemaking requirements.

## Insurance

### Subject

*Objectives of the Rule.* The proposed revision of ch. Ins 15 would consider changes in the financial requirements, the applicable statutes and other requirements for warranty plans issued in Wisconsin and warranty plan administrators.

### Policy analysis

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

The current rule requires independent audits for the financial statement submitted by a warranty plan. This is difficult for entities that are part of a larger organization and requires a separate statement from the consolidated statement. In addition, the actual or alternative financial requirements will be reviewed. The entire rule will be reviewed to determine if other changes in the regulation would be appropriate such as subjecting these plans to additional insurance statutes that are currently not listed in the rule.

### Statutory authority

Sections 600.01 (1) (b) 5., 601.04 (2), (3) and (4), and 600.03 (25) (a), Stats.

### Staff Time Required

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule is 100 hours.

## Natural Resources

### Subject

*Objectives of the Rule.* The creation of a new Administrative Code chapter on current fish passage issues.

### Policy analysis

A Fish Passage Work Group continues to deliberate and is working toward the completion of a fish passage policy/guidance document. Issues that must be addressed include:

- factors to consider and the decision process on when to order fish passage,
- public rights that affect the placement of fishways in navigable waters that are dammed, and
- cost-share grant opportunities for fishway construction.

Groups that are likely to be impacted or interested include county and local governments, private dam owners, and environmental consultants.

Prior to the 1999 Budget Bill, s. 31.02 (4) (c) Wis. Stats. gave the state authority to “order or require any dam heretofore or hereafter constructed to be equipped and operated with good and sufficient fishways...” Recently s. 31.02 (4) (g) was created to read “the department may not impose the requirement under sub. (4) (c) on an owner of a dam unless all of the following apply: 1) rules promulgated under (4r) are in effect. Section 31.02 (4r) was created to read “the department shall promulgate rules specifying the rights held by the public in navigable waters that are dammed. The rules shall include provisions on the rights held by the public that affect the placement of fishways or fish ladders in navigable waters that are dammed and 2) the federal government or the state implements a program to provide cost-sharing grants to owners of dams for equipping dams with fishways or fish ladders and a grant is available to the dam owner under the program

At the same time, increased understanding of the impacts of dams on river fisheries and overall biodiversity, plus advances in technology for providing fish passage, led to a renewed interest in applying the passage requirement of s. 31.02 and the development of the policy guidance that we now seek to codify.

### Statutory authority

Section 31.02 (4) (g).

### Staff Time Required

244 hours.

## Pharmacy Examining Board

### Subject

Modification of the definition of “active practice” of pharmacy.

### Policy analysis

*Objectives of the Rule.* A redefinition of the active practice of pharmacy is intended to define more precisely the prerequisite for when a person licensed in another state may be tested to demonstrate the equivalent minimum pharmacy practice skills required for licensure in this state.

### Statutory authority

Sections. 15.08 (5) (b), 227.11 (2), 450.00 (3) (e), 450.03 (2), 450.04 (1) and 450.02 (2), Stats.

### Staff Time Required

80 hours.

## Regulation and Licensing

### Subject

Amend rules relating to the employment and supervision of licensed employees by real estate broker–employers.

### Policy analysis

*Objectives of the Rule.* Clarify issues relating to the supervision of employees.

Current rules contain provisions relating to the supervision of licensed employees, the supervision of principal offices, the supervision of branch offices, limitations on employees of a broker and other related matters.

Current provisions are in need of clarification or amendment to bring them into tune with changes in the industry and the technical resources available to real estate licensees for supervising their employees and otherwise

doing business. In view of the current use of technology by real estate licensees, much supervision can be accomplished by the use of computers, fax and other communication devices. The rules would clarify what activities in a real estate office require supervision by a broker–employer and the level of supervision that is required. The rules would also clarify the responsibilities of the business representatives of a business entity to designate the activities for which specific business representatives are responsible. The rules may, possibly, amend the limitations placed on licensed employees of employer–brokers.

### Statutory authority

Sections. 227.11 (2), 452.03, 452.04, 452.05, 452.07, 452.10, 452.12 and 452.14, Stats.

### Staff Time Required

80 hours.

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## Submittal of rules to legislative council clearinghouse

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

### **Natural Resources**

#### **Rule Submittal Date**

On March 13, 2001, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### **Analysis**

The proposed rule affects ss. NR 1.212 and 1.213, relating to private forestry priorities for assistance.

#### **Contact Information**

If you have questions, please contact:  
Paul Pingrey  
Bureau of Forestry

### **Public Instruction**

#### **Rule Submittal Date**

On March 12, 2001, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

### **Analysis**

The proposed rule amends s. PI 35.045, relating to building usage code under the Milwaukee Parental Choice Program.

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

Public hearings will be scheduled.

#### **Contact Information**

If you have any questions regarding this rule, please contact:

Tricia Collins  
Milwaukee Parental School Choice Consultant  
Telephone (608) 267-9248



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## Rule–making notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

[CR 01–28]

(reprinted from 3/3/01 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules relating to minor remedial drafting changes to department rules. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the proposed rules. Following the public hearing, the hearing record will remain open until April 30, 2001, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224–5023. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **April 18, 2001**, by writing to Roxy Capelle, Division of Legal Counsel, P.O. Box 8911, Madison WI 53708–8911, telephone (608) 224–5023. Alternatively, you may contact the Department TDD at (608) 224–5058. Handicap access is available at the hearings.

One hearing is scheduled:

**Wednesday, April 25, 2001**

1:30 p.m. until 3:30 p.m.

Dept. of Agriculture, Trade and Consumer Protection  
Board Room

2811 Agriculture Drive

Madison, WI 53704

Handicapped accessible

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

Statutory Authority: s. 93.07 (1)

Statutes Interpreted: s. 93.07(10), 95.20 and 95.25

This rule makes the following minor remedial drafting changes to current DATCP rules:

Modifies ch. ATCP 1 (administrative orders and contested cases) to be consistent with s. 227.485, Stats., and the Wisconsin Court of Appeals decision in *Gordon v. State Medical Examining Board*, 225 Wis. 2d 552 (Ct. App. 1999). This rule clarifies that a prevailing party filing a motion for costs and attorneys fees in an administrative contested case must file that motion within 30 days after the department issues its proposed (not final) decision in the case. If the department issues its final decision without first issuing a proposed decision, the prevailing party may file the motion within 30 days after the department issues its final decision. Under current law, the administrative law judge who hears the case must issue a proposed decision if the administrative law judge is not the final decisionmaker. This rule clarifies (per current law) that if the administrative law judge is the final decisionmaker, the administrative law judge may issue a final decision without first issuing a proposed decision.

Clarifies the license expiration dates for bulk milk weigher and sampler licenses. This rule clarifies (per current law) that the license is a 2–year, not a 3–year license. A license normally expires on September 30. But if the department issues an original license prior to September 30 of any year, based on an application received after August 15 of that year, the license expires on the 3<sup>rd</sup> September 30 after the department issues the license.

Clarifies current rules related to home improvement contracts. Under current rules (ch. ATCP 110), some home improvement contracts must be in writing. A home improvement contract must contain certain disclosures if (1) current rules require a written contract or (2) *the contract is prepared on the seller's "pre–printed contract form."* This rule clarifies the second condition, which has been somewhat difficult to interpret. Under this rule, a home improvement contract must contain certain disclosures if (1) current rules require a written contract or (2) *the buyer signs a written contract.* This rule makes parallel modifications to other rule provisions dealing with contract changes.

Repeals obsolete rule provisions related to motor fuel price posting, including provisions authorizing the temporary use of so–called “pennywheel conversion devices.” These temporary provisions had a stated “sunset” date of December 31, 1998, and are no longer in effect.

Clarifies current prohibitions related to “referral selling plans” (ATCP 121). Under current rules, a “referral selling plan” means “any method of sale where the seller or lessor, as an inducement for a consumer sale, offers compensation to a prospective buyer or lessee either for (a) names of other prospective buyers or lessees, or (b) otherwise aiding the seller or lessor in making consumer sales.” A referral selling plan operates like a pyramid scheme or lottery. Each buyer purchases in reliance upon promised future payments that *may* result if the buyer refers other sales prospects who purchase in turn. But the payments may never occur, and the “chain” of prospects inevitably breaks. In 1968, the department prohibited referral selling plans unless the seller compensates the buyer *before* making any sale to *that* buyer (thus eliminating the element of “chance”). This rule clarifies but does not change the current prohibition.

Eliminates obsolete references to statutes or rule provisions that no longer exist, and corrects obsolete references to statutes or rule provisions that have been changed. Amends several rule titles, to shorten or clarify those titles. Corrects a number of erroneous cross–references in current rules. Makes non–substantive drafting and organizational changes.

#### Fiscal Estimate

This rule will have no fiscal effect on the department or local units of government.

#### Initial Regulatory Flexibility Analysis

This rule makes minor remedial drafting changes to a variety of DATCP rules. This rule merely clarifies rule provisions, conforms current rule provisions to current law, or makes non–substantive organizational or drafting changes.

## Notice of Hearings

### Corrections [CR 01-22]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 227.17 and 227.24 (4), 301.02, and 301.03 (1) and (2) Stats., and interpreting ss. 46.07, and 302.32 (1), Stats., the department of corrections will hold public hearings in the following locations to consider the emergency rule published on February 23, 2001 and the proposed permanent rule amending and creating rules relating to resources for inmates.

#### Hearing Information:

<u>Date &amp; Time</u>	<u>Location</u>
<u>May 3, 2001</u> Thursday 10:00 a.m.	Room 120 State Office Building 141 N.W. Barstow Street Waukesha, Wisconsin
<u>May 4, 2001</u> Friday 11:00 a.m.	Room 136 State Office Building 1681 2nd Avenue South Wisconsin Rapids, Wisconsin
<u>May 9, 2001</u> Wednesday 11:00 a.m.	Room 041 State Office Building, GEF III 125 S. Webster Madison, Wisconsin

The public hearing sites are accessible to people with disabilities.

#### Proposed Order of the Department of Corrections Amending and Creating Rules

The Wisconsin department of corrections proposes an order to amend ss. DOC 309.02 (14) and 309.02 (16), and create DOC 309.02 (7m) and 309.02 (16) (b) and (c), relating to resources for inmates.

Statutory authority: ss. 301.02, 301.03 (1) and (2), and 227.11 (2).

Statutes interpreted: ss. 46.07, and 302.32 (1).

#### Analysis Prepared by the Department of Corrections

Effective December 1, 1998, the Department implemented rules restricting inmates' access to sexually explicit material. These rules were challenged in federal court in a class action suit brought by several inmates (Aiello v. Litscher, Case No. 98-C-791-C, Western District of Wisconsin). The defendants filed a motion for summary judgment, but it was denied by the court in language that suggested the rules were unconstitutional in their present form based on a number of federal appellate court decisions that were reported after the rules were implemented.

In light of these developments, the parties negotiated a settlement which includes an immediate revision of the present rules to conform to the latest decisional law regarding the extent to which inmates' access to sexually explicit material can be restricted for legitimate penological objectives. The emergency rule, adopted February 23, 2001, was necessary to avoid a lapse of the settlement agreement and lengthy trial with the attendant possibility of having to pay a considerable amount in attorneys' fees.

This order:

- Revises the present rules restricting inmates' access to sexually explicit material by prohibiting access to published

material that depicts nudity on a routine or regular basis or promotes itself based on nudity in the case of individual one-time issues.

- Revises the present rules by prohibiting access to written material when it meets the legal definition of obscenity.

SECTION 1. DOC 309.02 (7m) is created to read:

DOC 309.02 (7m) "Features" means the publication contains depictions of nudity on a routine or regular basis or promotes itself based upon depictions of nudity in the case of individual one-time issues. The department will not prohibit a publication solely because it contains nudity that has a medical, educational or anthropological purpose.

SECTION 2. DOC 309.02 (14) is amended to read:

DOC 309.02 (14) "Nudity" for commercially published material means the showing of the human male or female genitals, or pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion below the top of the areola or nipple, or the depiction of covered male genitals in a discernibly turgid state. "Nudity" for purposes of a personal photograph means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of the areola or nipple, or the depiction of covered male genitals in a discernibly turgid state.

SECTION 3. DOC 309.02 (16) is amended to read:

DOC 309.02 (16) "Pornography" means any of the following:

(a) Any material, whether written, visual, video, or audio representation or reproduction, other than written material, that depicts any of the following:

(a)1. Human sexual behavior.

(b)2. Sodomasochistic abuse, including but not limited to flagellation, bondage, brutality to or mutilation or physical torture of a human being.

(c)3. Unnatural preoccupation with human excretion.

(d) Nudity which appeals to the prurient interest in sex.

(e)4. Nudity which is not part of any published photograph or printed material, such as a personal nude photograph.

(f)5. Nudity of any person who has not attained the age of 18.

SECTION 4. DOC 309.02 (16) (b) and (c) are created to read:

DOC 309.02(16) (b) A publication that features nudity.

(c) Written material which the average person, applying state contemporary community standards, would find, when taken as a whole does all of the following:

1. Appeals to the prurient interest.

2. Describes human sexual behavior in a patently offensive way.

3. Lacks serious literary, artistic, political, educational, or scientific value.

SECTION 5. DOC 309.04 (4) (c) 8. a. is amended to read:

a. Is, in whole or in part, pornography.

#### Initial Regulatory Flexibility Analysis

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

#### Fiscal Estimate

Effective December 1, 1998, the Department of Corrections (DOC) implemented rules restricting inmates'

access to sexually explicit material. These rules were challenged in federal court in a class action suit brought by several inmates (*Aiello v. Litscher*). The defendants filed a motion for summary judgment, but it was denied by the court in language that suggested the rules were unconstitutional in their present form based on a number of federal court decisions that were reported after the rules were implemented.

In light of these developments, the parties negotiated a settlement which includes an immediate revision off the present rules to conform to the latest case law regarding the extent to which inmates' access to sexually explicit material can be restricted for legitimate penological objectives. There is no fiscal impact expected as a result of these changes.

**Contact Person:**

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Office of Legal Counsel

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Madison, Wisconsin 53707-7925

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

**Written Comments:**

Written comments on the proposed rules received at the above address no later than May 18, 2001 will be given the same consideration as testimony presented at the hearing.

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## Submission of proposed rules to the legislature

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

**Agriculture, Trade and Consumer Protection**  
(CR 99-151)

Ch. ATCP 81 – Relating to cheese grading, packaging and labeling.

**Commerce** (CR 00-132)

Ch. Comm 33 – Relating to tramways, lifts and tows.

**Insurance** (CR 00-010)

Chs. Ins 13 and 50 – Relating to town mutual insurance.

**Insurance** (CR 00-189)

Ch. Ins 25 – Relating to privacy of personal information.

**Law Enforcement Standards Board** (CR 99-115)

SS. LES 1.03 and 3.07 – Relating to model standards for law enforcement vehicular pursuits and for related training.

**Natural Resources** (CR 00-176)

Ch. NR 754 -- Relating to environmental insurance requirements for liability exemptions for voluntary remediation.

**Natural Resources** (CR 00-135)

Ch. NR 51 -- Relating to the stewardship program.

**Regulation and Licensing** (CR 01-003)

Chs. RL 110-114 -- Relating to the regulation of professional boxing.

**Transportation** (CR 00-122)

Ch. Trans 158 – Relating to placement of Wisconsin-issued motor vehicle identification numbers (VINs).

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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 (608) 266–7275 for updated information on the effective dates for the listed rule orders.*

**Health and Family Services (CR 00–151)**

An order to amend, repeal, recreate and create ch. HFS 133, relating to home health agency licensing.  
Effective 5–1–01

**Natural Resources (CR 98–198)**

An order to amend, repeal, recreate and create ch. NR 233, relating to effluent limitations and pretreatment standards for the pesticide chemicals industry.  
Effective 6–1–01

**Natural Resources (CR 98–199)**

An order to amend, repeal, recreate and create ch. NR 252, relating to effluent limitations and pretreatment standards for the leather tanning and finishing industry.  
Effective 6–1–01

**Natural Resources (CR 00–88)**

An order to create s. NR 19.40, to implement the department’s authority to void local hunting, fishing, and trapping ordinances.  
Effective 6–1–01

**Pharmacy Examining Board (CR 00–48)**

An order to create s. Phar 7.015, relating to delegation of duties by a pharmacist.  
Effective 5–1–01

**Pharmacy Examining Board (CR 00–156)**

An order to amend s. Phar 7.01 (3), relating to supervising pharmacy interns.  
Effective 5–1–01

**Regulation and Licensing (CR 00–142)**

An order to amend ch. RL 133, relating to home inspector examination and continuing education requirements.  
Effective 5–1–01

# Public notice

## Department of Workforce Development

### 2001 Child Care Copay Schedule - effective April 29, 2001

FAMILY SIZE	Child Care Co-Payment Schedule for Licensed and Certified Care									
	Look down the column of the appropriate family size until you find the gross family monthly income level at or just less than the family income. Look to the right to find the appropriate co-payment by family and type of care.									
	1	2	3	4	5	6	7	8	9	10 or more
70% FPL	\$677	\$853	\$1,030	\$1,206	\$1,382	\$1,558	\$1,734	\$1,910	\$2,087	\$2,263
75% FPL	\$726	\$914	\$1,103	\$1,292	\$1,481	\$1,669	\$1,858	\$2,047	\$2,236	\$2,425
80% FPL	\$774	\$975	\$1,177	\$1,378	\$1,579	\$1,781	\$1,982	\$2,183	\$2,385	\$2,586
85% FPL	\$822	\$1,036	\$1,250	\$1,464	\$1,678	\$1,892	\$2,106	\$2,320	\$2,534	\$2,748
90% FPL	\$871	\$1,097	\$1,324	\$1,550	\$1,777	\$2,003	\$2,230	\$2,456	\$2,683	\$2,910
95% FPL	\$919	\$1,158	\$1,397	\$1,636	\$1,875	\$2,115	\$2,354	\$2,593	\$2,832	\$3,071
100% FPL	\$968	\$1,219	\$1,471	\$1,723	\$1,974	\$2,226	\$2,478	\$2,729	\$2,981	\$3,232
105% FPL	\$1,016	\$1,280	\$1,544	\$1,809	\$2,073	\$2,337	\$2,601	\$2,866	\$3,130	\$3,394
110% FPL	\$1,064	\$1,341	\$1,618	\$1,895	\$2,172	\$2,448	\$2,725	\$3,002	\$3,279	\$3,556
115% FPL	\$1,113	\$1,402	\$1,691	\$1,981	\$2,270	\$2,560	\$2,849	\$3,139	\$3,428	\$3,717
120% FPL	\$1,161	\$1,463	\$1,765	\$2,067	\$2,369	\$2,671	\$2,973	\$3,275	\$3,577	\$3,879
125% FPL	\$1,209	\$1,524	\$1,839	\$2,153	\$2,468	\$2,782	\$3,097	\$3,411	\$3,726	\$4,040
130% FPL	\$1,258	\$1,585	\$1,912	\$2,239	\$2,566	\$2,894	\$3,221	\$3,548	\$3,875	\$4,202
135% FPL	\$1,306	\$1,646	\$1,986	\$2,325	\$2,665	\$3,005	\$3,345	\$3,684	\$4,024	\$4,364
140% FPL	\$1,355	\$1,707	\$2,059	\$2,412	\$2,764	\$3,116	\$3,469	\$3,821	\$4,173	\$4,525
145% FPL	\$1,403	\$1,768	\$2,133	\$2,488	\$2,843	\$3,197	\$3,552	\$3,907	\$4,262	\$4,617
150% FPL	\$1,451	\$1,829	\$2,206	\$2,564	\$2,921	\$3,281	\$3,636	\$4,004	\$4,359	\$4,714
155% FPL	\$1,500	\$1,890	\$2,280	\$2,670	\$3,060	\$3,450	\$3,840	\$4,230	\$4,620	\$5,010
160% FPL	\$1,548	\$1,951	\$2,353	\$2,756	\$3,159	\$3,561	\$3,964	\$4,367	\$4,769	\$5,171
165% FPL	\$1,596	\$2,012	\$2,427	\$2,842	\$3,257	\$3,673	\$4,088	\$4,503	\$4,918	\$5,330
170% FPL	\$1,645	\$2,073	\$2,500	\$2,928	\$3,356	\$3,784	\$4,212	\$4,640	\$5,067	\$5,494
175% FPL	\$1,693	\$2,134	\$2,574	\$3,014	\$3,455	\$3,895	\$4,336	\$4,776	\$5,216	\$5,656
180% FPL	\$1,742	\$2,195	\$2,648	\$3,101	\$3,554	\$4,007	\$4,450	\$4,913	\$5,366	\$5,819
185% FPL	\$1,790	\$2,255	\$2,721	\$3,187	\$3,652	\$4,118	\$4,583	\$5,049	\$5,515	\$5,981
-----185% of the Federal Poverty Level-----										
-----200% of the Federal Poverty Level-----										
190% FPL	\$1,838	\$2,316	\$2,795	\$3,273	\$3,751	\$4,229	\$4,707	\$5,185	\$5,664	\$6,142
195% FPL	\$1,887	\$2,377	\$2,868	\$3,359	\$3,850	\$4,340	\$4,831	\$5,322	\$5,813	\$6,304
200% FPL	\$1,935	\$2,438	\$2,942	\$3,445	\$3,948	\$4,452	\$4,955	\$5,458	\$5,962	\$6,465

FAMILY SIZE	CHILDREN IN SUBSIDIZED CARE:					WEEKLY LICENSED CARE CO-PAY AMOUNT					WEEKLY CERTIFIED CARE CO-PAY AMOUNT				
	1	2	3	4	5 or more	1	2	3	4	5 or more	1	2	3	4	5 or more
70% FPL	\$4	\$7	\$11	\$14	\$19	\$2	\$3	\$4	\$5	\$7	\$2	\$3	\$4	\$5	\$7
75% FPL	\$5	\$9	\$13	\$17	\$22	\$3	\$4	\$5	\$6	\$9	\$3	\$4	\$5	\$6	\$9
80% FPL	\$6	\$10	\$14	\$18	\$24	\$4	\$5	\$6	\$7	\$10	\$4	\$5	\$6	\$7	\$10
85% FPL	\$9	\$13	\$18	\$22	\$27	\$6	\$8	\$10	\$12	\$15	\$6	\$8	\$10	\$12	\$15
90% FPL	\$11	\$17	\$22	\$27	\$33	\$8	\$11	\$14	\$17	\$21	\$8	\$11	\$14	\$17	\$21
95% FPL	\$13	\$20	\$27	\$32	\$39	\$10	\$13	\$17	\$20	\$25	\$10	\$13	\$17	\$20	\$25
100% FPL	\$14	\$22	\$28	\$35	\$41	\$11	\$14	\$18	\$22	\$27	\$11	\$14	\$18	\$22	\$27
105% FPL	\$17	\$24	\$30	\$37	\$43	\$14	\$17	\$22	\$27	\$33	\$14	\$17	\$22	\$27	\$33
110% FPL	\$20	\$27	\$32	\$39	\$46	\$16	\$20	\$25	\$30	\$36	\$16	\$20	\$25	\$30	\$36
115% FPL	\$22	\$28	\$35	\$41	\$48	\$18	\$22	\$28	\$33	\$40	\$18	\$22	\$28	\$33	\$40
120% FPL	\$24	\$30	\$37	\$43	\$50	\$20	\$24	\$30	\$36	\$43	\$20	\$24	\$30	\$36	\$43
125% FPL	\$27	\$32	\$39	\$46	\$52	\$22	\$27	\$33	\$39	\$46	\$22	\$27	\$33	\$39	\$46
130% FPL	\$28	\$36	\$43	\$52	\$59	\$23	\$28	\$35	\$41	\$48	\$23	\$28	\$35	\$41	\$48
135% FPL	\$30	\$39	\$47	\$56	\$64	\$25	\$30	\$37	\$43	\$50	\$25	\$30	\$37	\$43	\$50
140% FPL	\$32	\$41	\$51	\$59	\$68	\$26	\$32	\$39	\$46	\$53	\$26	\$32	\$39	\$46	\$53
145% FPL	\$35	\$43	\$52	\$61	\$69	\$28	\$34	\$41	\$48	\$55	\$28	\$34	\$41	\$48	\$55
150% FPL	\$37	\$45	\$55	\$63	\$72	\$29	\$35	\$42	\$49	\$56	\$29	\$35	\$42	\$49	\$56
155% FPL	\$39	\$48	\$57	\$65	\$75	\$30	\$36	\$43	\$50	\$57	\$30	\$36	\$43	\$50	\$57
160% FPL	\$41	\$51	\$59	\$68	\$77	\$31	\$37	\$44	\$51	\$58	\$31	\$37	\$44	\$51	\$58
165% FPL	\$42	\$52	\$61	\$70	\$79	\$32	\$38	\$45	\$52	\$59	\$32	\$38	\$45	\$52	\$59
170% FPL	\$43	\$55	\$63	\$72	\$81	\$33	\$39	\$46	\$53	\$60	\$33	\$39	\$46	\$53	\$60
175% FPL	\$44	\$56	\$65	\$75	\$83	\$33	\$39	\$46	\$53	\$60	\$33	\$39	\$46	\$53	\$60
180% FPL	\$46	\$58	\$67	\$77	\$85	\$34	\$40	\$47	\$54	\$61	\$34	\$40	\$47	\$54	\$61
185% FPL	\$47	\$60	\$69	\$79	\$87	\$34	\$40	\$47	\$54	\$61	\$34	\$40	\$47	\$54	\$61
190% FPL	\$48	\$61	\$72	\$81	\$89	\$34	\$40	\$47	\$54	\$61	\$34	\$40	\$47	\$54	\$61
195% FPL	\$50	\$63	\$74	\$83	\$91	\$35	\$41	\$48	\$55	\$62	\$35	\$41	\$48	\$55	\$62
200% FPL	\$52	\$64	\$77	\$85	\$93	\$36	\$42	\$49	\$56	\$63	\$36	\$42	\$49	\$56	\$63

NOTE: The copayment rate for teen parents who are not Learnfare participants is found by selecting the lowest income line (70%) FPL and then finding the copayment listed, under either licensed care or certified care, for the appropriate number of children. Parents who have left a W-2 employment position for unsubsidized work also qualify for the minimum copay for one month. Families with children who are authorized for 20 hours or less are subject to on half of their share of the family copay listed above for those children. No copay is required for parents who participate in Learnfare or Food Stamp Employment and Training. Foster parents do not have a copayment responsibility for the foster children in their care. Kinship care relatives caring for a child under a court order do not have a copayment responsibility. Kinship care relatives caring for a child without a court order pay the minimum copay, unless they are receiving a child care subsidy for another child who is subject to a copayment greater than the minimum copay.



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