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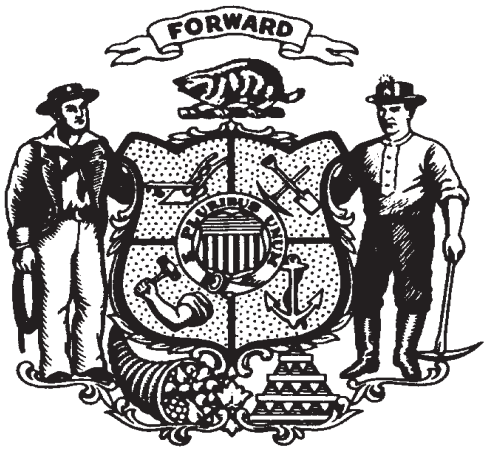

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Emergency rules now in effect

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.

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**
Extension Through:	**August 2, 2001**

Commerce

(Financial Assistance for Businesses and Communities)
(Chs. Comm 105−128)

Rules adopted revising **ch. Comm 113** relating to the allocation of volume cap on tax−exempt private activity bonds.

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.

Pursuant to s. 560.032, Stats., the Department of Commerce (Commerce) is responsible for administering the allocation of volume cap. The emergency rule is being adopted to incorporate in the administrative code recent changes to the Internal Revenue Code (Section CFR 146) which increases state volume cap limits on tax−exempt private activity bonds. The year 2000 limit was $50 per resident of the state. For the year 2001 the limit has been raised to $62.50; for the year 2002, the limit will be $75.00; and thereafter, the limit will be indexed to inflation. The rule identifies a formula for the allocation of volume cap for the year 2001 and future years. This emergency rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and Commerce. The rules are also being revised to provide an allocation process that will allow Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

Publication Date:	**April 26, 2001**
Effective Date:	**April 26, 2001**
Expiration Date:	**September 23, 2001**
Hearing Date:	**July 16, 2001**

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**
Hearing Date:	**May 3, 4 & 9, 2001**
Extension Through:	**August 20, 2001**

Financial Institutions − Corporate and Consumer Services

Rules adopted repealing **ch. SS 3** and creating **chs. DFI−CCS 1 to 6**, relating to the Uniform Commercial Code.

Finding of emergency

2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code ("UCC"), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to operate either a state−wide lien filing system or give effect to the provisions of the UCC before permanent rules can be promulgated. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation−wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, and other notices of liens under the UCC.

Publication Date:	**July 2, 2001**
Effective Date:	**July 2, 2001**
Expiration Date:	**November 29, 2001**

Health & Family Services

(Community Services, Chs. HFS 30−)

A rule was adopted amending **s. HFS 94.20 (3)**, relating to patients' rights.

Finding of emergency

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

The Department operates secure mental facilities for the treatment of ch. 980, Stats., sexually violent patients. Departmental investigations have indicated that a portion of the ch. 980 inpatient population has routinely abused their s. HFS 94.20 telephone rights by making inappropriate calls to members of the public, by fraudulently placing numerous long distance calls that are billed to innocent third−parties or by operating fraudulent schemes. Since the Department has previously had no means of monitoring patient telephone use, the extent of this activity is unknown, but given the experience of investigations triggered by citizen complaints, it is clear that these sorts of activities are not infrequent among this population. In addition, experience with telephone monitoring in other secure institutions indicates that call monitoring can and does help staff detect contraband and other security−related issues and activities. These abuses are clearly contrary to the therapeutic activities conducted at the secure mental health facilities.

Until recently, the Department has been unable to stop these abuses because the Department's facilities lacked secure telephone systems. Previous DHFS efforts to obtain secure telephone systems from the telephone system's vendor used by the Department of Corrections were not successful because the call volume at DHFS's secure mental health facilities were viewed as insufficient to support the telephone system.

In late 2000, the Department of Corrections selected a new vendor for its secure telephone system. In May 2001, the new vendor agreed to also install the system in DHFS's secure mental health facilities. The installation of the system at the facilities will be completed by June 20, 2001. The systems will allow the Department to establish and enforce calling lists for each inpatient and monitor inpatients' calls for counter−therapeutic activity. An inpatient's calling lists is a finite number of telephone numbers associated with persons the inpatient is approved to contact by telephone. Use of calling lists alone, however, is insufficient to discourage and minimize inpatient attempts to subvert the system. The Department must monitor phone calls made by ch. 980 inpatients to discourage and minimize the occurrence of inpatients calling persons on their calling list who, in turn, subvert the secure system by forwarding the inpatient's call for the prohibited purposes and activities previously described. The Department must be able to monitor the phone calls of ch. 980 inpatients both to protect the public and promote therapeutic activities at the secure mental health facilities.

The Department is issuing these rules on an emergency basis to protect the public's safety by minimizing the recurring fraudulent activity associated with telephone use. These rules also ensure the public's safety and welfare by promoting the effective treatment mission of the secure mental health facilities. The recording capability of the telephone system hardware that has been installed at the Wisconsin Resource Center and the Sand Ridge Secure Treatment Center cannot be turned off, i.e., when the system is functional, all features of the system are fully operational. If the secure telephone system is not operational, both the Wisconsin Resource Center and the Sand Ridge facility will lose the therapeutic and safety advantages afforded by the system. Since the Sand Ridge facility is accepting its first patients during the week of June 18th, there is not alternative telephone system for patients.

Publication Date:	**June 22, 2001**
Effective Date:	**June 22, 2001**
Expiration Date:	**November 19, 2001**

Health & Family Services − (2)

(Health, Chs. HFS 110−)

1. 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
Extension Through: August 27, 2001

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

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk−Sharing Plan (HIRSP) Board of Governors on April 25, 2001 on the rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

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

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty−six percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 1 type. Plan 1 has Option A ($1,000 deductible) or Option B ($2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. This increase reflects industry−wide premium increases and takes into account the increase in costs associated with Plan 1 claims. According to state law, HIRSP premiums must fund 60% of plan costs and cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market.

A second type of medical coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a $500 deductible. Fourteen percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry−wide cost increases.

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

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2000. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2001. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is $19,982,024. The total annual contribution to the HIRSP budget provided by an assessment on insurers is $19,617,772. On April 25, 2001, the HIRSP Board of Governors approved the calendar year 2000 reconciliation process and the HIRSP budget for the plan year July 1, 2001 through June 30, 2002.

The fiscal changes contained in this order also reflect the conversion of HIRSP from cash accounting to accrual accounting, as recommended by the Legislative Audit Bureau and the HIRSP Board of Governors. Cash accounting recognizes the costs of claims and expenses when paid. Accrual accounting recognizes the costs of claims and expenses in the time period when first incurred. Basically, HIRSP program liabilities have been understated under the cash accounting methodology. The net effect of the HIRSP conversion to accrual accounting is to provide a more accurate reflection of the program's financial condition.

Publication Date:	**June 29, 2001**
Effective Date:	**July 1, 2001**
Expiration Date:	**November 28, 2001**

Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees.

Finding of emergency

The commissioner of insurance finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule No. 01−035, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2001.

The commissioner expects the permanent rule will be filed with the secretary of state in time to take effect October 1, 2001. Because the fund fee provisions of this rule first apply on July 1, 2001, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 16, 2001.

Publication Date:	**June 12, 2001**
Effective Date:	**July 1, 2001**
Expiration Date:	**November 28, 2001**

Natural Resources
(Fish, Game, etc., Chs. NR 1−)

Rules adopted amending **s. NR 20.20 (73) (j) 1. and 2.**, relating to sport fishing for yellow perch in Green Bay and its tributaries and **s. NR 25.06 (2) (b) 1.**, relating to commercial fishing for yellow perch in Green Bay.

Finding of emergency

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

Yellow perch contribute significantly to the welfare of Wisconsin citizens by supporting popular and economically valuable sport and commercial fisheries. The yellow perch population in Green Bay is rapidly declining. This decline reflects a number of years of very poor reproduction. The only recent year with reasonably good natural reproduction was 1998. The fish spawned that year contributed to the sport harvest in 2001 and will become vulnerable to commercial gear this summer. Sport and commercial harvests of adult yellow perch must be limited immediately in order to protect those fish and maximize the probability of good reproduction in the near future.

Publication Date:	**June 30, 2001**
Effective Date:	**July 1, 2001**
Expiration Date:	**November 28, 2001**
Hearing Date:	**August 13, 2001**

Public Service Commission

Rules adopted amending **s. PSC 116.03 (4)** and creating **s. PSC 116.04 (6)** relating to the definition of fuel and permissible fuel costs.

Finding of emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend ch. PSC 116 Wis. Adm. Code. Amending the definition of "fuel" in s. PSC 116.03 (4) and creating s. PSC 116.04 (6) would allow investor−owned utilities the ability to incorporate the cost of voluntary curtailment into the cost of fuel to increase the reliability of electric service in Wisconsin for the summer of 2001 and beyond. This change would assist in implementing the requirement of 1999 Wis. Act 9, s. 196.192 (2) (a), Stats.

Publication Date:	**May 19, 2001**
Effective Date:	**May 19, 2001**
Expiration Date:	**October 16, 2001**

Scope statements

Controlled Substances Board

Subject

To delete gamma−butyrolactone (GBL) from s. 961.14 (5) (ag), Stats.

GBL is currently classified under state law as a schedule I drug, s. 961.14 (5) (ag), Stats. This chemical is only classified by DEA as a list one chemical. Legitimate uses for gamma−butyrolactone exist for industrial, scientific research, food industry uses and other uses. The Controlled Substances Board has received information that currently the federal Environmental Protection Agency (EPA) has approved the use of GBL as an industrial solvent. The objective of the rule is to delete the schedule I listing of GBL which will obviate the need for obtaining a special use authorization under s. 961.335, Stats.

Policy Analysis

Drugs that are classified as "controlled substances" under federal and state laws are subject to higher civil and criminal penalties for their illicit possession, distribution and use. Currently, persons having otherwise legitimate possession of GBL for legitimate uses are at risk of prosecution under the Wisconsin Controlled Substances Act in Chapter 961, Stats. Distributors of GBL located outside of this state and end users located within this state do not currently have the benefit of a limited industrial use exemption for the possession and use of GBL. With the delisting of GBL, the illicit use of GBL would still be prohibited since it is a violation of federal law as GBL is classified as a list one chemical. However, the mere possession and legitimate use of GBL in the state will no longer be a violation of the Uniform Controlled Substance Act.

Statutory Authority

Sections 961.11, 961.16 and 961.19, Stats.

Staff Time Required

80 hours.

Health and Family Services

Subject

The Department proposes to modify ch. HFS 90, the rules governing early intervention services for children with developmental needs up to age 3. The rule modifications would have two results. First, counties would no longer have the option of electing not to participate in Wisconsin's "Birth to 3 program cost share." County participation in administering the Birth to 3 Program cost share would become mandatory. Second, the method of determining parents' share of the costs of needed services would be simplified and standardized statewide and would be based on the relationship of families' incomes to the federal poverty level.

Application of the Uniform Fee System in ch. HFS 1 and the support payment formula in s. HFS 65.05 in determining the parental cost share would be eliminated in s. HFS 90.06 (2) (h), 90.11 (2) (a) 2., and 90.11 (4). A new section would be added to the rule to define the Birth to 3 Program Cost Share System and the system would be referenced in s. HFS 90.06 (2) (h), 90.11 (2) (a) 2., and 90.11 (4). There is also need for a technical amendment in s. HFS 90.12 (2) (c) so the language parallels s. HFS 90.11 (3) (b).

Policy Analysis

Counties must, under s. 51.44 (3) and (4), Stats., and s. HFS 90.06 (2), provide or contract for the provision of early intervention services. However, s. HFS 90.06 (2) (h) specifies that county administrative agencies must determine the amount of parental liability for the costs of the early intervention services in accordance with ch. HFS 1. Chapter HFS 1 is the Department's cost liability determination and ability to pay standards and guidelines for services purchased or provided by the Department and counties. Section HFS 90.06 (2) (h) also states that parents may satisfy any liability not met by third party payers if parents pay the amount determined in accordance with the family support payment formula in s. HFS 65.05 (7).

The Department's tying of the "Birth to 3 program" to ch. HFS 1 and s. HFS 65.05 (7) has had several undesirable consequences. First, under s. HFS 65.06 (7), counties must perform complex and, in the Department's opinion, inappropriate calculations for the "Birth to 3 program" to determine each families' liabilities for sharing in the cost of providing early intervention services to their children. Specifically, while the calculations are designed to assess a family's ability to pay for services, s. HFS 65.05 (7) (b) 6. allows each families' income to be broadly adjusted for any expenses related to the exceptional needs of the disabled child. Chapter HFS 65 was designed to determine parental cost share for services to children who typically have more severe disabilities than children participating in the Birth to 3 Program. The methodology in s. HFS 65.05 (7), while appropriate for families with children having severe disabilities, is, in the Department's opinion, inappropriate for the "Birth to 3 program" insofar as counties vary too greatly in their adjustment of families' income, and the methodology frequently distorts downward families' true ability to pay part of the cost of their child's early intervention services. Consequently, a family with a lower income in one county may be required to pay more for the same services than a relatively high−income family in another county. In addition, the significantly greater turnover of families in the "Birth to 3 program" versus other programs covered by ch. HFS 65 makes the chapter's complex calculations relatively onerous on counties.

Under state and federal law, counties must provide or purchase early intervention services. While counties receive state and federal funds for services the counties provide under the "Birth to 3 program," funding shortfalls must be made up by each county. Consequently, the relatively high cost of administering the program under the current provisions of ch. HFS 90 combined with relatively low rates of cost−sharing by families permitted by counties' application of s. HFS 65.05 (7), has made the program burdensome on some counties. In fact, as of July 31, 2000 one−third of Wisconsin counties do not participate in the Department's payment system for its "Birth to 3 program." Counties' ability to not participate is a second undesirable consequence of the current ch. HFS 90 rules. Sections HFS 90.06 (2) (h) and 90.11 (2) (a) 2. and 4. cross reference and incorporate ch. HFS 1. Section HFS 1.01 (4) (d) allows counties to exempt themselves from or "opt

out" of participating in the Department's "Birth to 3 program" if the county verifies that its service "will be significantly impaired if the imposition of a ch. HFS 1 family cost sharing charge is administratively unfeasible." As stated, 24 counties have demonstrated to the Department that their cost of administering the payment system amounts to more than the revenues the counties collect. The counties' primary reason for opting out of the program is the administrative burden of the ch. HFS 65 cost−sharing requirements.

The continuance of a dual payment system in the state creates unnecessary inequities for families depending on their county of residence and questionably pertinent income adjustments. Moreover, federal policies require participating states to administer a uniform program statewide. In October 2000, a Wisconsin county ceased funding its "Birth to 3 program" due to insufficient available funds. While illegal under Wisconsin and federal law, months passed (and may pass in the future) before a county continues its participation in the program. In the interim, children forego receiving needed services. Such resultant service gaps are disruptive to families receiving services under the "Birth to 3 program." In addition, ch. HFS 1 requires that a family's insurance benefits be accessed; a contradiction of federal law. While federal regulations are currently being revised, none of the regulations the federal Department of Education have proposed thus far would have any bearing on the Department of Health and Family Service's development and promulgation of these administrative rules.

The Department is proposing to modify the ch. HFS 90 administrative rules to change the "Birth to 3 program" payment system to one that will be independent of the current ch. HFS 65 family support program ability to pay system. Likewise, ties to ch. HFS 1 would also be severed. The proposed rules would simplify the determination of parental cost share, thereby eliminating the current payment system's inequities for families statewide and reducing counties' administrative costs associated with the program. The Department proposes using federal poverty levels, as revised annually, as a benchmark against which families' unadjusted incomes would be compared to determine the parental cost share liabilities. Under such a system, based on a recent survey of county "Birth to 3 programs," the Department projects that the number of families required to share in the early intervention service costs would roughly double. However, each family's share will be based on approximately 1% of their income (minus a standard deduction) versus the existing basis of 3% of income minus a standard deduction and disability−related expenses. Consequently, the cost share of some families may increase because they would not be able to deduct as much as the existing system allows while the cost share of other families may decrease because the proposed system will be based on a lower (1%) of family income. Families with incomes above 200% of the federal poverty level will be billed for part of the services their children receive. Families with incomes below 200% of the federal poverty level plus $3,300 will be exempt from cost sharing. Based on year 2000 child count data, about 2,000 families would be exempt from cost sharing under the formula the Department is likely to propose. Conversely, about 3,100 families are projected to have a liability for a cost share.

Under the simplified payment system the Department intends to propose through these rule changes, counties' costs to administer the payment system are expected to decline. Conversely, the proposed changes would result in many counties aggregately realizing more revenue due to the fact that more families will be participating in the program's costs. However, the additional income from families may not be significant in all counties. The primary reason for the increased revenues however, is that 24 counties would no longer have the option of "opting out" of the program's payment system. County participation would be mandatory. Counties' administration costs are also projected to decline as the number of forms and required calculations would be significantly reduced.

The proposed rule would establish a system for determining a family's cost share for early intervention services that is applied only to the Birth to 3 Program. The proposed rule would eliminate application of the Uniform Fee system in HFS 1 and the Family Support Program payment formula in HFS 65.05.

Statutory authority

Statutory authority to promulgate ch. HFS 90 rules relating to Early Intervention Services is found in s. 51.44 (5) (a), Stats. Under s. 51.44 (1m), Stats., the Department is specified as the lead agency for developing and implementing a statewide system of coordinated, comprehensive multidisciplinary programs to provide early intervention services under the requirements of 20 USC 1476." Under s. 51.44 (3) (a), Stats., the Department is directed to "allocate and distribute funds to counties to provide or contract for the provision of early intervention services to individuals eligible to receive the early intervention services." The federal Individuals with Disabilities Education Act provides for a system of sliding fees in 20 USC 1432(4)(B). Federal regulations at 34 CFR 303.521(a) authorize that "A State may establish, consistent with 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees."

Staff Time Required

The Department previously convened an internal workgroup to review and suggest changes to the current early intervention services payment system. In addition, the "Birth to 3 program" staff presented information about the proposed changes in five regions of the state in Spring 2001 and anticipates doing so again in the Fall (est. 10 hours).

The Department estimates that the development and subsequent revisions of the proposed rule will require about 7 days of Division staff time and about 5 days of Department−level staff time.

Hearings and Appeals

Subject

HA Code—Relating to modification of the procedures governing contested cases now set forth in Wis. Adm. Code ch. HA 1.

Policy Analysis

This rule will modify the existing rules in Wis. Admin. Code ch. HA 1 governing the procedure and practices for contested cases so that they better conform to the requirements of Chapter 227, Wis. Stats. and better describe the procedures for the variety of hearings now conducted by this division since the former Office of Administrative Hearings in the Department of Health and Family Services merged with the Division of Hearings and Appeals..

Statutory authority

Sections 15.03, 227.11 (2) (b) and 227.43 (1) (d), Stats.

Staff Time Required

About 40 hours of state employees' time will be required to draft the rule and comply with all rule−making requirements.

Pharmacy Examining Board

Subject

To allow for board approval a temporary change of location of a pharmacy in response to an emergency or natural or manmade disaster.

To provide a mechanism to allow the board to approve a temporary change of location of a pharmacy in response to an emergency or natural manmade disaster. Currently, no clear direction exists to guide pharmacies regarding the conditions and requirements necessary for the approval of a request to temporarily change the location of a pharmacy.

Policy Analysis

A temporary change of location of a pharmacy may at times be necessary following a catastrophic event such as a fire, flood, earthquake, severe weather or other civil emergency. Currently, the United States Department of Justice, Drug Enforcement Administration requires that any federally approved disaster relocation plan be state approved.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (e), Stats.

Staff Time Required

80 hours.

Regulation and Licensing.

Subject

The Uniform Standards of Professional Appraisal Practice (USPAP), as adopted by the Appraisal Standards Board of the Appraisal Foundation. *Objective of the Rule.* Repeal and recreate Ch. RL 87, Appendix I, the Uniform Standard of Professional Appraisal Practice, to incorporate by reference the 2001 revisions to the Standards.

Policy analysis

These rules will adopt revisions to the Standards that will be published in the 2002 edition of the Uniform Standards of Professional Appraisal Practice.

Statutory authority

Sections 227.11 (2), 458.03, 458.05 and 458.24, Stats.

Staff Time Required

60 hours.

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

Subject

To revise the process by which rule changes are proposed, developed and approved by the three sections of the examining board.

Current rules (s. SFC 1.03) create a rules committee to act for the examining board in rule−making proceedings prior to final approval. This is intended to ensure uniformity across sections, but since the expertise for individual rule changes lies with each section, the responsibility for the earlier stages of the rule−making process (scope statements and initial drafts) should lie with each section.

Policy Analysis

The proposed rule change will modify the rule−making process for the three sections of the examining board.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Staff Time Required

80 hours.

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

Subject

To revise the supervision requirement for persons obtaining supervised clinical practice prior to applying for certification as a marriage and family therapist.

Current rules (s. SFC 16.03) require a minimum annual number of hours of supervision during a period of precertification supervised practice. The minimum number of hours may be excessive if a person is working part−time.

Policy Analysis

The proposed rule change will eliminate a logical inconsistency in the supervision requirement.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Staff Time Required

80 hours.

Submittal of rules to legislative council clearinghouse

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

Administration

Rule Submittal Date

On July 18, 2001, the Department of Administration submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The Wisconsin Land Council is attached to the Department of Administration. The Council is authorized to promulgate rules relating to the methodology of determining preferences in awarding grants.

The purpose of the code is to establish the procedures, methodology and evaluation criteria for planning grants to local governmental units. The proposed rule codifies the application, evaluation and award process used by the department and approved by the Wisconsin Land Council for the FY2001 comprehensive planning and transportation planning grant cycle.

Agency Procedure for Promulgation

The Department will hold a public hearing on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review.

Contact Information

If you have questions regarding the proposed rule, please contact:

Donna Sorenson
Department of Administration
Telephone (608) 266−2887

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On July 26, 2001, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to soil and water resource management.

Agency Procedure for Promulgation

The department will hold public hearings on this rule August 28, 29 and 30, 2001.

Contact Information

The department's Food Safety Division is primarily responsible for this rule. If you have questions regarding the proposed rule, please contact:

Don Houtman
Telephone (608) 224−4625

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Rule Submittal Date

On July 27, 2001, the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to the number of required semester credits in land surveying for an applicant with a bachelor's degree in civil engineering.

Agency Procedure for Promulgation

A public hearing is required.

Contact Information

If you have questions regarding the proposed rule, please contact:

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266−0495

Commerce

Rule Submittal Date

On July 18, 2001, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to flammable and combustible liquids.

Agency Procedure for Promulgation

A public hearing is required. The ERS Division is the agency unit responsible for this rule.

Contact Information

If you have questions regarding the proposed rule, please contact:

Duane Hubeler
Telephone (608) 266−1390

Health and Family Services

Rule Submittal Date

On July 26, 2001, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The Department operates secure mental health facilities for the treatment of ch. 980, Stats., sexually violent patients. Departmental investigations have indicated that a portion of the ch. 980 inpatient population has routinely abused their s. HFS 94.20 telephone rights by making inappropriate calls to members of the public, by fraudulently placing numerous long distance calls that are billed to innocent third−parties or by operating fraudulent schemes. Since the Department has previously had no means of monitoring patient telephone use, the extent of this activity is unknown, but given the

experience of investigations triggered by citizen complaints, it is clear that these sorts of activities are not infrequent among this population. In addition, experience with telephone monitoring in other secure institutions indicates that call monitoring can and does help staff detect contraband and other security−related issues and activities. These abuses are clearly contrary to the therapeutic activities conducted at the secure mental health facilities.

Until recently, the Department has been unable to stop these abuses because the Department's facilities lacked secure telephone systems. Previous DHFS efforts to obtain secure telephone systems from the telephone system's vendor used by the Department of Corrections were not successful because the call volume at DHFS's secure mental health facilities were viewed as insufficient to support the telephone system.

In late 2000, the Department of Corrections selected a new vendor for its secure telephone system. In May, 2001, the new vendor agreed to also install the system in DHFS's secure mental health facilities. On June 22, 2001, the Department issued these proposed permanent rules as emergency rules that became effective as of that date. The telephone systems allow the Department to establish and enforce calling lists for each inpatient and monitor inpatients' calls for counter−therapeutic activity. An inpatient's calling list is a finite number of telephone numbers associated with persons the inpatient is approved to contact by telephone. Use of calling lists alone, however, is insufficient to discourage and minimize inpatient attempts to subvert the system. The Department must monitor phone calls made by ch. 980 inpatients to discourage and minimize the occurrence of inpatients calling persons on their calling list who, in turn, subvert the secure system by forwarding the inpatient's call for the prohibited purposes and activities previously described. The Department must be able to monitor the phone calls of ch. 980 inpatients both to protect the public and promote therapeutic activities at the secure mental health facilities.

The Department is proposing these rules to protect the public's safety by minimizing the recurring fraudulent activity associated with telephone use. Pursuant to an earlier emergency rule promulgated by the Department, the Sand Ridge Secure Treatment Center and the Wisconsin Resource Center have been operating with the secure telephone system since late June and early July, 2001.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Information

If you have questions regarding the proposed rule, please contact:

Steven Watters, Institute Director
Sand Ridge Secure Treatment Center
(608) 847−1720

Pharmacy Examining Board

Rule Submittal Date

On July 27, 2001, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to examinations for original licensure and for persons licensed in another state.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 11, 2001 at 9:15 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions regarding the proposed rule, please contact:

Pamela Haack, Paralegal
Office of Administrative Rules
(608) 266−0495

Revenue

Rule Submittal Date

On July 20, 2001, the Department of Revenue submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule updates and clarifies provisions relating to the sale of lottery products by non−profit retailers.

Agency Procedure for Promulgation

A notice of proposed rulemaking will be published.

Contact Information

If you have questions regarding the proposed rule, please contact:

James Amberson
Telephone (608) 267−4840

Transportation

Rule Submittal Date

On July 30, 2001, the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to multiple trip permits for mobile homes and modular building sections.

Agency Procedure for Promulgation

A public hearing is required. Hearings are scheduled for September 6 and 7, 2001.

Contact Information

The department's Divisions of Motor Vehicles, State Patrol and Transportation Infrastructure Development are responsible for this rule. If you have questions regarding the proposed rule, please contact:

Julie Johnson
Telephone (608) 266−8810

Rule−making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 01−090]

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to amend s. ATCP 3.02 (1), to repeal and recreate ch. ATCP 50, and to create s. ATCP 40.11 Wis. Adm. Code, relating to the soil and water resource management program. The department will hold five hearings at the times and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearing, the hearing record will remain open until September 14, 2001, for additional written comments.

You may obtain a free copy of this rule by contacting Bonnie Shebelski at the Wisconsin Department of Agriculture, Trade and Consumer Protection, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, Wisconsin 53708−8911, telephone: 608/224−4620. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by **August 20, 2001**, by writing Bonnie Shebelski, DATCP, P.O. Box 8911, Madison, WI 53708−8911, telephone 608/224−4620. Alternatively, you may contact the department TDD at 608/224−5058. Handicap access is available at the hearings.

Hearings are scheduled at:

Tuesday, August 28, 2001, 1:00 − 4:30 p.m.
Jefferson County Courthouse, Room 202
320 S. Main Street
Jefferson, Wisconsin

Tuesday, August 28, 2001, 1:00 − 4:30 p.m.
Multipurpose Room
Dunn County Judicial Center
615 Parkway Drive
Menomonie, Wisconsin

Wednesday, August 29, 2001, 1:00−4:30 p.m.
Richland Center Community Center
600 W. Seminary Street
Richland Center, Wisconsin

Wednesday, August 29, 2001, 1:00 − 4:30 p.m.
UWEX Meeting Rooms A and B
County Normal Building
104 S. Eyder Avenue
Phillips, Wisconsin

Thursday, August 30, 2001, 1:00 to 4:30 p.m.
Brown County Agriculture & Extension Center, Room 114
1150 Bellevue Street
Green Bay, Wisconsin

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

Statutory authority: ss. 92.05 (3) (c) and (k), 92.14 (8), 92.15 (3) (b), 92.16, 92.18 (1), 93.07 (1), and 281.16 (3) (b) and (c), Stats.

Statutes interpreted: s. 91.80, ch. 92, and s. 281.16, Stats.

This rule repeals and recreates current rules related to Wisconsin's soil and water resource management program. The department of agriculture, trade and consumer protection ("DATCP") administers this program under ch. 92, Stats. Among other things, this rule:

- Requires farm conservation practices.
- Creates a farm nutrient management program.
- Updates standards for county soil and water conservation programs, including county land and water resource management plans.
- Updates standards and procedures for DATCP grants to counties.
- Updates standards and procedures for county cost−share grants to landowners.
- Establishes technical standards for cost−shared conservation practices.
- Transfers some nonpoint source pollution abatement grant programs from DNR to DATCP, as directed by the Legislature.

Background

General

DATCP administers Wisconsin's soil and water resource management program under ch. 92, Stats. The program is designed to conserve the state's soil and water resources, reduce soil erosion, prevent nonpoint source pollution and enhance water quality. This rule spells out program standards and procedures.

DATCP administers this program in cooperation with county land conservation committees, the state land and water conservation board ("LWCB"), the department of natural resources ("DNR"), the natural resource conservation service of the U.S. department of agriculture ("NRCS") and other agencies. DATCP coordinates soil and water management efforts by these agencies. DATCP funds county soil and water conservation programs, and finances county cost−share grants to landowners to implement conservation practices. DNR administers a related cost−share program aimed at preventing nonpoint source pollution.

In 1997 Wis. Act 27 and 1999 Wis. Act 9, the Legislature mandated a comprehensive redesign of state programs related to nonpoint source pollution. Among other things, the Legislature directed DATCP and DNR to establish conservation standards and practices for farms. The Legislature also directed DATCP to adopt rules related to nutrient management on farms. This rule implements the redesigned nonpoint program.

County Programs

DATCP administers soil and water conservation programs in cooperation with county land conservation committees. Counties adopt land and water resource management plans, administer county ordinances, adopt conservation compliance standards for farmers claiming farmland

preservation tax credits, provide information and technical assistance, and make cost−share grants to landowners installing conservation practices.

DATCP awards soil and water grants to counties. Grants reimburse county staff and support costs, and finance county cost−share grants to landowners. DATCP reviews county grant applications and awards grants according to an annual grant allocation plan reviewed by the LWCB. Counties must ensure that cost−shared practices are installed according to state standards, and must account for all grant funds received.

Soil and Water Conservation on Farms

Farm Conservation Practices

DNR is primarily responsible for adopting farm performance standards to prevent nonpoint source pollution. DATCP must prescribe conservation practices to implement the DNR standards. DATCP must also establish soil conservation and farm nutrient management requirements. Counties will take the lead role in implementing conservation practices on farms. Counties will receive staff funding from DATCP. Counties will receive cost−share funding from DATCP and DNR.

Under this rule, every farm must implement conservation practices that achieve compliance with DNR performance standards. This rule cross−references, but does not restate or duplicate, DNR performance standards. Conservation requirements are contingent on cost sharing (see below).

DATCP (not DNR) is primarily responsible for establishing conservation requirements related to cropland soil erosion and nutrient management. This rule establishes the following soil erosion and nutrient management requirements, which are contingent on cost sharing (see below):

- Soil erosion. A farmer must manage croplands and cropping practices so that soil erosion rates on cropped soils do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 3 to 5 tons of soil loss per acre per year. DNR rules will establish more specific runoff standards for riparian areas and waterways.
- Annual nutrient management plan. A farmer applying manure or commercial fertilizer must have an annual nutrient management plan, and must follow that plan.
- Nutrient management plan; preparation. A qualified nutrient management planner (see below) must prepare each nutrient management plan required under this rule. A farmer may prepare his or her own nutrient management plan if the farmer has, within the previous 4 years, completed a department−approved training course.
- A person selling bulk fertilizer to a farmer must record the name and address of the nutrient management planner who prepared the farmer's nutrient management plan (if the farmer has a plan).
- Nutrient management plan; contents. A nutrient management plan must be based on soil tests, and must comply with standards under this rule. Nutrient applications may not exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin in UWEX publication A−2809, Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998), unless the nutrient management planner documents a special agronomic need for the deviation. Appendix B contains a convenient summary of the UW recommendations for selected crops.

County Implementation

Counties will take the lead role in implementing farm conservation practices under this rule (see below). Counties must adopt land and water resource management plans to implement the conservation practices on farms. DATCP must approve county plans, as provided in ch. 92, Stats. Counties must update conservation standards for farmers claiming farmland preservation tax credits, and may adopt ordinances requiring other farmers to implement conservation practices. With DATCP financial help, counties may also provide cost−share grants, technical assistance and information to farmers.

Installing Conservation Practices; Technical Standards

A farmer may implement the conservation practices under this rule in a variety of different ways. DATCP, UW−extension, NRCS and the counties will provide information and recommendations.

If a landowner receives cost−share funding to install a conservation practice, the practice must comply with technical standards under this rule. The county must also determine that the funded practice is cost−effective. This rule specifies technical standards (including required maintenance periods) for the following cost−shared practices:

- Manure storage systems
- Manure storage system closure
- Barnyard runoff control systems
- Access roads and cattle crossings
- Animal trails and walkways
- Contour farming
- Cover and green manure crop
- Critical area stabilization
- Diversions
- Field windbreaks
- Filter strips
- Grade stabilization structures
- Heavy use area protection
- Livestock fencing
- Livestock watering facilities
- Milking center waste control systems
- Nutrient management
- Pesticide management
- Prescribed grazing
- Relocating or abandoning animal feeding operations
- Residue management
- Riparian buffers
- Roofs
- Roof runoff systems
- Sediment basins
- Sinkhole treatment
- Streambank and shoreline protection
- Strip−cropping
- Subsurface drains
- Terrace systems
- Underground outlets
- Waste transfer systems
- Water and sediment control basins
- Waterway systems
- Well decommissioning
- Wetland development or restoration

This rule does not change or eliminate any current technical standards, or add any new technical standards, except that this rule:

- Adds a standard for cover and green manure crops.
- Adds a standard for riparian buffers (the new standard is similar to the existing standard for filter strips).
- Adds a standard for sinkhole treatments.
- Splits the nutrient and pesticide management standard into 2 separate standards.
- Eliminates the standard for cattle mounds.
- Renames several standards.
- Eliminates restrictions on the length of cost−share contracts for the following practices:
  * Residue management
  * Contour farming
  * Cover and green manure crops (new standard)
  * Prescribed grazing
  * Nutrient management
  * Pesticide management

This rule spells out a procedure by which DATCP may change technical standards in the future. DATCP will adopt future changes, if any, by rule (as it has in the past). The rulemaking process provides opportunity for public review and input. DATCP will make available complete copies of any technical standards that it incorporates by reference in a rule. DATCP will prepare a fiscal estimate and small business analysis on each proposed rule change, and may seek input from a DATCP advisory council.

DATCP will cooperate with the current Standards Oversight Council (SOC) in the development of technical standards. DATCP will consider SOC technical recommendations, but is not bound to adopt SOC recommendations as rules. SOC is a voluntary, multi−agency committee that works to share technical information and coordinate state and federal technical standards. SOC has no rulemaking authority. This rule does not change SOC's current role or operations. DATCP will encourage SOC to seek public input and cost information as SOC develops technical recommendations.

Cost Sharing Required

Many landowners will need to install new conservation practices in order to comply with this rule. This rule clarifies that a landowner is not *required* to do any of the following unless the landowner receives at least 70% cost sharing (90% if the county finds that there is an "economic hardship"):

- Discontinue or modify that part of a facility or practice that exists on the effective date of the rule.
- Obtain or implement an annual nutrient management plan.
- Change annual cropping or tillage practices.

This rule clarifies that the 70% (90% hardship) cost−sharing requirement applies to all of the following:

- The landowner's reasonable and necessary out−of−pocket expenditures to install and maintain the conservation practice.
- Reasonable compensation for necessary labor, equipment and supplies provided by the landowner.
- The value of the landowner's cost to take land out of agricultural production. The rule provides a formula for determining value, authorizing payment for the *greater of:*
- The prevailing agricultural land rental rates in the county (as determined by USDA).
- The payment that would be offered under the state−federal conservation reserve enhancement program (CREP), whether or not the land is eligible for the program.

This rule clarifies that the 70% (90% hardship) cost−sharing requirement does *not* apply to any of the following:

- A conservation practice for which DATCP "technical standards" specify a minimum cost−share contract period (typically 10 years) if the landowner has *already received* a cost−share grant (at the rate required in this rule) for that period. *But a county must continue to provide cost sharing in subsequent years if the county requires the landowner to keep land out of agricultural production.*
- A conservation practice (such as conservation tillage or nutrient management) for which DATCP rules specify no minimum maintenance period if the landowner has *already received* a cost−share grant (at the rate required in this rule) for at least 3 years. For example, if a county has *already paid* a landowner to implement nutrient management for at least 3 years, the county may require the landowner to comply with state nutrient management standards in subsequent years without further cost−sharing.
- Conservation practices or costs for which this rule prohibits cost sharing.

This rule clarifies that:

- Cost−share grants from any public or private source, or combination of sources, may be counted toward the 70% (90% hardship) cost−share payment.
- A loan is not a grant.
- The 70% (90% hardship) cost−sharing requirement also applies to conservation practices required by county and local ordinances.

Cost−Share Funding for Conservation Practices

Under this rule, DATCP will finance county cost−share grants to farmers and rural landowners who install conservation practices – including practices designed to abate nonpoint source pollution. But DATCP will no longer finance cost−share grants to landowners who receive specific pollution discharge notices from DNR. Funding for that purpose is transferred to DNR. DNR will also continue to fund cost−share grants to urban landowners.

DATCP and DNR will jointly review county funding requests to determine the appropriate source of cost−share funding. Each county will determine its cost−share priorities based on the county land and water resource management plan. DATCP will allocate available cost−share dollars among the counties, based on state and county priorities.

DATCP will enter into an annual funding contract with each county receiving cost−share funds. The county, in turn, must enter into cost−share contracts with individual landowners. DATCP must be a party to a landowner cost−share contract if the contract is for more than $50,000. This rule spells out requirements for county cost−share contracts with landowners (see below).

DATCP reimburses cost−share payments after the county certifies that the cost−shared practice has been properly installed and paid for. Some conservation practices must be designed and certified by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient planner (see below).

County Cost−Share Grants to Landowners

This rule spells out standards for county cost−share grants to landowners. The county must enter into a cost−share contract with the landowner. The county may cost−share conservation practices identified in this rule (or other practices specifically approved by DATCP). The cost−shared practice must comply with "technical standards" specified in this rule.

This rule clarifies that a cost−share grant may include a landowner's cost to *maintain* (not just install) a cost−shared practice for the period specified in the cost−share contract. The county and landowner may negotiate the contract

maintenance period, but DATCP "technical standards" require a minimum maintenance period (typically 10 years) for many practices.

Cost−Share Payments for Land Taken Out of Production

If a cost−share contract requires a landowner to take land out of agricultural production, the landowner's cost is calculated as the sum of the annual costs that the landowner will incur over the contract maintenance period.

The landowner's projected annual cost, for each year of the maintenance period, equals the *greater of* the following:

- The number of affected acres multiplied by the per−acre weighted average soil rental rate in the county (as determined by the United States department of agriculture) on the date of the cost−share contract. (That annual cost is then multiplied by the number of years in the maintenance period.)
- The annual value of payments that would be offered under the combined state−federal conservation reserve enhancement program (CREP) if the affected lands were enrolled in that program. (That annual value is then multiplied by the number of years in the maintenance period.)

If a county pays a landowner to take land out of production, the county may require the landowner to grant the county an easement on the land taken out of production. The county must record the easement with the county register of deeds.

Maximum Cost−Share Rates

A cost−share contract reimburses a portion of the landowner's cost to install the cost−shared practice. The county must implement cost−containment procedures (such as competitive bidding or other procedures described in this rule) to ensure that costs are reasonable.

This rule limits cost−share rates as follows:

- Generally speaking, a county may not use DATCP funds to pay more than 70% of the cost of a conservation practice (see s. 92.14 (6) (gm), Stats.).
- A county may pay 90% if the county makes an "economic hardship" finding. A county may do so if it finds that the landowner has inadequate cash flow to make the normal 30% cost−share contribution. This must be verified by a CPA or an accredited financial institution.
- A county land conservation committee may combine DATCP and DNR funds, up to the above limits.
- The cost−share limits in this rule do *not* apply to cost−share funds provided by non−state sources. A county may combine state funds with funds from other sources.
- A county may provide additional cost−share funds to replace a cost−shared practice that is damaged or destroyed by natural causes. The same cost−share limits apply to the replacement funding.
- For installation of the following practices, the county may pay the maximum percentage or the following maximum amount, whichever is higher:
  * For contour farming, $9 per acre.
  * For cover and green manure crop, $25 per acre.
  * For strip−cropping, $13.50 per acre.
  * For field strip−cropping, $7.50 per acre.
  * For high residue management systems, no−till systems, ridge till systems or mulch till systems, $18.50 per acre.
  * For riparian buffers, $100 per acre.
  * For nutrient management or pesticide management, $7.00 per acre.
- No cost−share grant to relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure management system or 70% of eligible relocation costs, whichever is less.

If a county cost−share grant to a landowner exceeds $50,000, DATCP must be a party to the contract (with the county and the landowner). If the cost−share contract exceeds $25,000, the county or landowner must record the contract with the county register of deeds.

Cost−Share Contracts with Landowners

A county land conservation committee must enter into a written contract with every landowner to whom the committee awards a cost−share grant financed by DATCP. The contract must include the following terms, among others:

- The location where the cost−shared practice will be installed, and a specific legal description if the cost−share grant exceeds $25,000.
- Design specifications for the cost−shared practice. Cost−shared practices must be designed and installed according to this rule.
- The estimated cost of the practice.
- The rate and maximum amount of the cost−share grant.
- A construction timetable.
- A required maintenance period. The maintenance requirement runs with the land, and is binding on subsequent owners, if the cost−share grant is for more than $25,000.
- A procedure for pre−approving material construction changes.
- A requirement that the landowner must properly install the cost−shared practice and make all payments for which the landowner is responsible before the county makes any cost−share payment to the landowner. The county may make partial payments for partial installations that have independent conservation benefits. Some cost−shared practices must be reviewed by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient management planner (see below).
- County remedies for breach of contract.

Nutrient Management Program

General

This rule creates a nutrient management program, as required by 1997 Wis. Act 27. The program is designed to reduce excessive nutrient applications and nutrient runoff that may pollute surface water and groundwater. This program includes the following elements:

- Annual nutrient management plan. A farmer applying commercial fertilizer or manure must have an annual nutrient management plan (see above), and must follow that plan. The requirement is contingent on cost−sharing for at least 3 years.
- Nutrient management plan; preparation and contents. A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare his or her own plan if, within the preceding 4 years, the farmer has completed a DATCP−approved training course.
- Nutrient applications may not exceed crop fertility levels recommended by the university of Wisconsin, unless the nutrient management planner documents that the deviation is justified by special agronomic needs (see above).
- Cost−share grants for animal waste and nutrient management. A county may award cost−share grants for animal waste and nutrient management practices installed by farmers. Cost−shared practices must comply with technical standards under this rule.

Soil Testing Laboratories

Soil tests required by this rule must be performed by the university of Wisconsin or another soil testing laboratory certified by DATCP. To be certified, a laboratory must show that it is qualified and equipped to perform accurate soil tests. If a certified laboratory recommends nutrient applications that exceed the amounts needed to achieve applicable crop fertility levels recommended by the university of Wisconsin, the laboratory must make the following disclosure:

IMPORTANT NOTICE

Our recommended nutrient applications exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin. The amounts required to achieve the UW's recommended crop fertility levels are shown for comparison. Excessive nutrient applications may increase your costs, and may cause surface water and groundwater pollution. If you apply nutrients at the rates we recommend, you will not comply with state soil and water conservation standards. You may contact your county land conservation committee for more information.

A certified laboratory must keep, for at least 4 years, copies of all its soil tests and nutrient recommendations. DATCP may deny, suspend or revoke a laboratory certification for cause. The affected laboratory may request a formal hearing under ch. 227, Stats.

Nutrient Management Planners

A qualified nutrient management planner must prepare each nutrient management plan required under this rule. A farmer may prepare his or her own nutrient management plan if the farmer has completed a DATCP−approved training course within the preceding 4 years. A qualified nutrient management planner must prepare plans according to this rule.

A qualified nutrient management planner must be knowledgeable and competent in all of the following areas:

- Using soil tests.
- Calculating nutrient needs.
- Crediting manure and other nutrient sources.
- State and federal standards related to nutrient management.
- Preparing nutrient management plans according to this rule.

A nutrient management planner is presumed to be qualified if at least one of the following applies:

- The planner is recognized as a certified professional crop consultant by the national alliance of independent crop consultants.
- The planner is recognized as a certified crop advisor by the American society of agronomy, Wisconsin certified crop advisors board.
- The planner is registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American registry of certified professionals in agronomy, crops and soils.
- The planner holds equivalent credentials recognized by DATCP. A farmer is presumptively qualified to prepare a nutrient management plan for his or her farm (but not for others) if all of the following apply:

− The farmer has completed a DATCP−approved training course within the preceding 4 years.

− The course instructor or another qualified nutrient management planner approves the farmer's initial plan.

No person may misrepresent that he or she is a qualified nutrient management planner. A nutrient management planner must keep, for at least 4 years, a record of all nutrient management plans that he or she prepares under this rule.

DATCP may issue a written notice disqualifying a nutrient management planner if the planner fails to prepare nutrient management plans according to this rule, or lacks other qualifications required under this rule. A nutrient management planner who receives a disqualification notice may request a formal hearing under ch. 227, Stats.

County Soil and Water Conservation Programs

General

This rule establishes standards for county soil and water resource management programs. Under this rule, a county program must include all of the following:

- A county land and water resource management plan, and a program to implement that plan.
- County conservation standards that implement state soil and water conservation requirements on farms.
- A program to apply for, receive, distribute and account for state soil and water resource management grants.
- A program for distributing cost−share grants to landowners. A county must ensure that cost−shared conservation practices are designed and installed according to this rule.
- A recordkeeping and reporting system. A county must file an annual report with DATCP.

Land and Water Resource Management Plans

Under s. 92.10, Stats., every county must prepare a land and water resource management plan. DATCP must approve the county plan, for up to 5 years, after consulting with the LWCB. DATCP may not award soil and water conservation grants to a county that lacks an approved plan.

A county land and water resource management plan must, at a minimum, describe all of the following in reasonable detail:

- Water quality and soil erosion conditions throughout the county.
- State and local regulations that are relevant to the county plan. The plan must disclose whether local regulations will require farm conservation practices that differ materially from the practices required under this rule.
- Water quality objectives for each water basin, priority watershed and priority lake. The county must consult with DNR when determining water quality objectives.
- Key water quality and soil erosion problem areas. The county must consult with DNR when determining key water quality problem areas.
- Conservation practices needed to address key water quality and soil erosion problems.
- A plan to identify priority farms in the county.
- Compliance procedures, including notice, enforcement and appeal procedures, that may apply if a farmer fails to comply with applicable requirements.
- The county's multi−year workplan to achieve compliance with water quality objectives and implement farm conservation practices. The plan must identify priorities and expected costs.
- How the county will monitor and measure its progress.

- How the county will provide information and education to farmers, including information related to conservation practices and cost−share funding.
- How the county will coordinate its program with other agencies.

When preparing a land and water resource management plan, a county must do all of the following:

- Appoint and consult with a local advisory committee of interested persons.
- Assemble relevant data, including relevant data on land use, natural resources, water quality and soils.
- Consult with DNR.
- Assess resource conditions and identify problem areas.
- Establish and document priorities and objectives.
- Project available funding and resources.
- Establish and document a plan of action.
- Identify roles and responsibilities.

Before a county submits a land and water resource management plan for DATCP approval, the county must hold at least one public hearing on the plan. The county must also make a reasonable effort to notify farmers affected by county findings, and give them an opportunity to contest the findings.

DATCP may review a county's ongoing implementation of a DATCP−approved county plan. DATCP may consider information obtained in its review when it makes its annual grant allocations to counties.

County Ordinances

A county may require farm conservation practices by ordinance. DATCP must review, and may comment on, proposed ordinances that establish farm conservation requirements. DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, Stats., if those ordinances regulate farm conservation practices.

A county need not obtain DATCP approval to adopt an ordinance, except in certain cases prescribed by statute. This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below). Conservation practices required under a county ordinance are subject to the cost−sharing requirements in this rule (see above).

Farmland Preservation; Conservation Standards

Farmers who claim farmland preservation tax credits must currently meet county farm conservation standards. This rule requires every county to incorporate in its standards the farm conservation practices required under this rule (see above). In a county that fails to comply, farmers may be disqualified from claiming tax credits. DATCP may also deny soil and water conservation funding to a noncomplying county.

This rule spells out the procedure by which a county must adopt conservation standards for farms receiving tax credits under the farmland preservation program. The county must hold a public hearing on the proposed standards. The county must also submit the proposed standards for LWCB approval, as required under s. 92.105, Stats.

A farmer must comply with the county conservation standards in order to claim farmland preservation tax credits. A county may ask a farmer to certify compliance on an annual or other periodic basis, and must inspect a farmer's compliance at least once every 6 years. The county must issue a notice of noncompliance if the county finds that a farmer is not complying with the standards. If the farmer fails to comply by a deadline specified in the notice, the farmer may no longer claim farmland preservation tax credits. The farmer may meet with the county land conservation committee to discuss or contest a notice.

A farmer who fails to meet farmland preservation conservation standards may continue to claim tax credits if the farmer complies with a farm conservation plan that will achieve full compliance within 5 years. A farm conservation plan is a written agreement between the farmer and county, in which the farmer agrees to install specified conservation practices by a specified date.

Annual Grant Application

By April 15 of each calendar year, a county must file its funding application with DATCP for the next calendar year. The county may request any of the following:

- An annual staffing grant. A staffing grant is used to finance county staff engaged in soil and water conservation programs (see below). Staff may include county employees and independent contractors who work for the county land conservation committee. A grant may include training and support for county employees. The grant application must identify the activities that the staff will perform, and the amount of funding requested. DATCP will reimburse county staff and employee support costs at the rate specified in s. 92.14, Stats., up to the amount of the annual staffing grant award.
- Cost−share funding for farm conservation practices. The county must identify the amount of cost−share funding requested, and the purposes for which the county will use that funding. DATCP distributes cost−share funding on a reimbursement basis, after the county certifies that the cost−shared practices are properly installed and paid for.

Annual Report

By April 15 of each year, a county must file with DATCP a year−end report for the preceding calendar year. The report must describe the county's activities and accomplishments, including progress toward the objectives identified in the county land and water resource management plan (see above).

Accounting and Recordkeeping

Every county land conservation committee, in consultation with the county's chief financial officer, must establish and maintain an accounting and recordkeeping system that fully and clearly accounts for all soil and water conservation funds. The records must document compliance with applicable rules and contracts.

DATCP Review

DATCP may review county activities under this rule, and may require the county to provide relevant records and information.

Training for County Staff

DATCP may provide training, distribute training funds to counties (see below), make training recommendations, and take other action to ensure adequate training of county staff. Under this rule, DATCP must appoint a training advisory committee to advise DATCP on county staff training activities. The committee must include representatives of all of the following:

- DNR.
- NRCS.
- The university of Wisconsin−extension.
- The statewide association of land conservation committees.
- The statewide association of land conservation committee staff.

Grants to Counties

DATCP awards soil and water conservation grants to counties. These grants finance county staff and support, as well as county cost−share grants to landowners. DATCP does not provide grants to local government. In certain limited cases, DATCP may authorize a county to reallocate county *staffing* grant funds to local governments or tribes.

DATCP may award grants (service contracts) to governmental or non−governmental entities for information, education, training and other services related to DATCP's administration of the soil and water conservation program. Under this rule, DATCP will no longer award cost−share grants directly to individual landowners.

Annual Grant Allocation Plan

This rule requires DATCP to allocate soil and water conservation grants according to an annual grant allocation plan. The DATCP secretary signs the allocation plan after consulting with the LWCB. The plan must specify, for the next calendar year, all of the following:

- The total amount appropriated to DATCP for possible allocation under the plan, including the amounts derived from general purpose revenue (GPR), segregated revenue (SEG) and bond revenue sources.
- The total amount allocated under the plan, including the amounts allocated from GPR, SEG and bond revenue sources.
- The total amount allocated for annual staffing grants to counties, the total and subtotal amounts allocated to each county, and an explanation for any material difference in allocations between counties.
- The total amount allocated to counties for cost−share grants to landowners, the total and subtotal amounts allocated to each county, and an explanation for those allocations.
- The amounts allocated to non−county grant recipients, and an explanation for those allocations.

DATCP must prepare the annual grant allocation plan after reviewing county grant applications. DATCP will normally provide a draft plan to DNR, the LWCB and every county land conservation committee by August 1 of the year preceding the calendar year to which the plan applies.

DATCP must adopt an annual allocation plan by December 31 of the year preceding the calendar year to which the plan applies. The final draft plan may include changes recommended by the LWCB, as well as updated estimates of project costs. DATCP must provide copies of the plan to DNR, the LWCB and every county land conservation committee.

Revising the Allocation Plan

DATCP may make certain revisions to an annual grant allocation plan after it adopts that plan. The DATCP secretary must sign each plan revision. A revision may do any of the following:

- Extend funding for landowner cost−share contracts that were signed by December 1 of the preceding year, but not completed during that year. Counties must apply by December 31 for contract funding extensions.
- Increase the total grant to any county. DATCP must give all counties notice and an equal opportunity to compete for funding increases (other than funding extensions for existing cost−share contracts).
- Reduce a grant award to any county.
- Reallocate a county's annual grant between grant categories, to the extent authorized by law and with the agreement of the county.

Before DATCP revises an annual grant allocation plan, it must do all of the following:

- Provide notice and a draft revision to DNR, the LWCB and every county land conservation committee. The notice must clearly identify and explain the proposed revision.
- Obtain LWCB recommendations on the proposed revision.

Grant Priorities

Under this rule, DATCP must consider all of the following when preparing an annual grant allocation plan:

- County staff and project continuity. DATCP must give high priority to maintaining county staff and project continuity. DATCP must also consider priorities identified in the county grant application and in the county's approved land and water resource management plan.
- Statewide priorities. DATCP may give priority to county projects that address the following statewide priorities:
  * Farms discharging pollutants to waters that DNR has listed as "impaired waters" under 33 USC 1313 (d) (1) (A).
  * Farms whose cropland erosion is more than twice T−value.
  * Farms discharging substantial pollution to waters of the state.
  * Farms claiming tax credits under the farmland preservation program.
- Other factors. DATCP may also consider the following factors, among others, when determining grant allocation priorities:
  * The strength of the county's plan and documentation.
  * A county's demonstrated commitment to adopt and implement the farm conservation practices required under this rule.
  * The likelihood that funded activities will address and resolve high priority problems identified in approved county land and water resource management plans.
  * The relative severity and priority of the water quality and soil erosion problems addressed.
  * The relative cost−effectiveness of funded activities in addressing and resolving high priority problems.
  * The extent to which funded activities are part of a systematic and comprehensive approach to soil erosion and water quality problems.
  * The timeliness of county grant applications and annual reports.
  * The completeness of county grant applications and supporting data.
  * The county's demonstrated ability, cooperation and commitment, including its commitment of staff and financial resources.
  * The degree to which funded projects contribute to a coordinated soil and water resource management program and avoid duplication of effort.
  * The degree to which funded projects meet county needs and state requirements.
  * The degree to which county activities are consistent with the county's approved land and water resource management plan.

Annual Staffing Grants to Counties

DATCP must award an annual staffing grant to each eligible county that makes a required commitment of county funds. DATCP may not use bond revenue funds for county staffing grants. DATCP must distribute an annual staffing

grant according to an annual grant contract with the county. With DATCP permission, the county may reallocate staffing grant funds to a local government or tribe.

A county must use an annual staffing grant in the year for which it is made. The county may use the grant for any of the following purposes, subject to the grant contract:

- Employee salaries, employee fringe benefits and contractor fees for county employees and independent contractors engaged in soil and water resource management activities on behalf of the county land conservation committee.
- Training for county employees and county land conservation committee members.
- Any of the following employee support costs identified in the grant application:
  * Mileage expenses at the state rate. A staffing grant may not be used to lease or purchase a vehicle.
  * Personal computers, software, printers and related devices.
  * A proportionate share of costs for required financial and compliance audits.
  * Other staff support costs that DATCP identifies, in the grant application form, as being reimbursable for all counties.

DATCP may award different staffing grant amounts to different counties, based on statutory requirements and DATCP's assessment of funding needs and priorities. Subject to the availability of funds, DATCP will award at least $50,000 to each county.

A county may redirect unused staffing grant funds for landowner cost−share grants if DATCP approves in writing. The county must use the redirected funds in the year for which they are allocated. (See cost−share reimbursement procedures below.)

To qualify for a staffing grant, a county must maintain its soil and water resource management effort at or above the amounts that the county expended in each of the years 1985 and 1986 (see s. 92.14(7), Stats.) A county may count, as part of its "maintenance of effort" contribution, expenditures for any county staff (employees and independent contractors) engaged in soil or water resource management work for the county land conservation committee. A county may not count capital improvement expenditures, expenditures for county staff not working for the land conservation committee, or the expenditure of grant revenues received from other government sources.

A county land conservation committee must keep records related to annual staffing grants. The records must document that the county used grant funds according to this rule and the grant contract. The county must retain the records for at least 3 years.

Paying Staffing Grants

DATCP will make staffing grant payments on a reimbursement basis. DATCP will pay reimbursement, at the prescribed statutory rate, on costs identified in a valid county reimbursement request. Total payments may not exceed the total annual grant award to the county. DATCP will reimburse costs that the county incurs during the grant year (and pays by January 31 of the following year). Unspent grant funds remain with DATCP, for allocation in future years.

A county may file 2 reimbursement requests for each grant year. A county may file its first reimbursement request on or after July 1 for costs incurred before July 1 of the grant year. A county may file a second reimbursement request for costs incurred on or after July 1 of the grant year. A county must file all of its requests by April 15 of the following year. DATCP will pay reimbursement within 30 days after a county submits a valid request.

The county must file its reimbursement request on a form provided by DATCP. In its reimbursement request, the county must identify the costs for which it seeks reimbursement. The reimbursement rate is based on a statutory formula. The rate depends on the number of staff in the county, and whether those staff are working on the DNR priority watershed program. The county must provide information needed to determine the reimbursement rate.

If a county reallocates part of its staffing grant to a local government or tribe, the county must submit reimbursement requests on behalf of that local government or tribe. DATCP may then pay reimbursement directly to the local government or tribe.

Grants for Conservation Practices

DATCP may award grants to eligible counties to finance cost−share grants to landowners. DATCP must enter into an annual contract with each county receiving cost−share funds. DATCP will pay the county on a reimbursement basis, after the landowner installs the cost−shared practice and the county does all of the following:

- Files with DATCP a copy of the county's cost−share contract with the landowner. The cost−share contract must comply with this rule (see above).
- Certifies the reimbursement amount due.
- Certifies, based on documentation filed in the county, that the cost−shared practice is properly designed, installed and paid for (see above).

Cost−share funds may be used to finance conservation practices identified in this rule (see above), except that bond revenues may not be used to finance any of the following practices:

- Conservation tillage.
- Contour farming.
- Cropland cover (green manure).
- Intensive grazing management.
- Nutrient or pesticide management.
- Strip−cropping.

DATCP may not use cost−share grant funds to reimburse a county for costs incurred after December 31 of the grant year (or paid after January 31 of the following year). Unspent funds remain with DATCP, for distribution under a future year's allocation plan. If a landowner signs a funded cost−share contract by December 1 of the initial grant year, but does not complete that contract in that grant year (e.g., because of bona fide construction delays), DATCP may extend funding to the next year. DATCP will normally extend funding if the county requests the extension by December 31. DATCP will not extend funding for more than one year.

A county land conservation committee must keep all of the following records related to cost−share grant funds received from DATCP:

- Copies of all county cost−share contracts with landowners.
- Documentation to support each county reimbursement request to DATCP (see above).
- Documentation showing all county receipts and disbursements of grant funds.
- Other records needed to document county compliance with this rule and the grant contract.

A county land conservation committee must retain cost−share records for at least 3 years after the committee makes its last cost−share payment to the landowner, or for the

duration of the required maintenance period, whichever is longer. The committee must make the records available to DATCP and grant auditors upon request.

Priority Watershed Program; County Staffing Grants

As part of the legislative restructuring of the state's nonpoint source pollution abatement program, DNR is phasing out its priority watershed program under ch. NR 120. DNR will continue to provide cost−share funding for priority watershed projects established prior to July 1, 1998. But DNR will establish no new priority watershed projects, and has established no new projects since July 1, 1998. DNR will no longer provide funding for county and local government staff engaged in the priority watershed program.

DATCP currently provides grants to pay for county soil and water conservation staff (see above). Under the redesigned nonpoint source pollution abatement program, DATCP will also fund county and local staff who are still engaged in DNR's priority watershed program. Funding for these county staff will be added to, and included in, DATCP's annual staffing grants to counties.

Agricultural Engineering Practitioners; Certification

Under s. 92.18, Stats., DATCP must certify persons who design, review or approve cost−shared agricultural engineering practices. This rule identifies the agricultural engineering practices for which certification is required. This rule continues, without change, the certification program established under current rules. No certification is required for a professional engineer certified under ch. 443, Stats.

Applying for Certification

Under this rule, a person who wishes to be certified as an agricultural engineering practitioner must apply to DATCP or a county land conservation committee. A person may apply orally or in writing. DATCP or the committee must promptly refer the application to a DATCP field engineer. Within 30 days, the DATCP field engineer must rate the applicant and issue a decision granting or denying the application.

Certification Rating

The DATCP field engineer must rate an applicant using the rating form shown in *Appendix E* to this rule. The field engineer must rate the applicant based on the applicant's demonstrated knowledge, training, experience, and record of appropriately seeking assistance. For the purpose of rating an applicant, a field engineer may conduct interviews, perform inspections, and require answers and documentation from the applicant.

For each type of agricultural engineering practice, the rating form identifies 5 job classes requiring progressively more complex planning, design and construction. Under this rule, the field engineer must identify the most complex of the 5 job classes for which the applicant is authorized to certify that the practice is properly designed and installed. A certified practitioner may not certify any agricultural engineering practice in a job class more complex than that for which the practitioner is certified.

Appealing a Certification Decision

A field engineer must issue a certification decision in writing, and must include a complete rating form. An applicant may appeal a certification decision or rating by filing a written appeal with the field engineer. The field engineer must meet with the appellant in person or by telephone to discuss the matters at issue.

If the appeal is not resolved, DATCP must schedule an informal hearing before a qualified DATCP employee other than the field engineer. After the informal hearing, the presiding officer must issue a written decision that affirms, modifies or reverses the field engineer's action. If the applicant disputes the presiding officer's decision, the applicant may request a formal hearing under ch. 227, Stats.

Reviewing Certification Ratings

Under this rule, a DATCP field engineer must review the certification rating of every agricultural engineering practitioner at least once every 3 years. A field engineer must also review a certification rating at the request of the person certified. A field engineer may not reduce a rating without good cause, and all reductions must be in writing.

Suspending or Revoking Certification

Under this rule, DATCP may suspend or revoke a certification for cause. DATCP may summarily suspend a certification, without prior notice or hearing, if DATCP makes a written finding that the summary suspension is necessary to prevent an imminent threat to the public health, safety or welfare. The practitioner may request a formal hearing under ch. 227, Stats.

County and Local Ordinances

General

Farm conservation requirements adopted by a county, city, village, town or local governmental unit must be reasonably consistent with this rule. DATCP must review, and may comment on, proposed county ordinances requiring farm conservation practices. DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, if those ordinances regulate farm conservation practices.

Counties must submit relevant ordinances for review. They need not obtain DATCP approval of their proposed ordinances, except in specific cases provided by statute. This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below).

Manure Storage Ordinances

A county, city, village or town may enact a manure storage ordinance under s. 92.16, Stats. Current rules spell out standards for manure storage ordinances. This rule incorporates those standards without change.

Under this rule, a county or local manure storage ordinance adopted under s. 92.16, Stats., must require persons constructing manure storage systems to obtain a county or local permit. A person constructing a manure storage system must have a nutrient management plan that complies with this rule, and must comply with applicable design and construction standards.

A manure storage ordinance may prohibit any person from abandoning a manure storage system unless that person submits an abandonment plan and obtains an abandonment permit. The rule spells out suggested abandonment requirements for those ordinances that regulate abandonment.

Agricultural Shoreland Management Ordinances

A county, city, village or town may enact an agricultural shoreland management ordinance under s. 92.17, Stats., with DATCP approval. Current rules spell out standards for agricultural shoreland management ordinances. This rule adopts the current rules without change. DATCP must seek DNR and LWCB recommendations before it approves an ordinance or amendment, except that DATCP may summarily

approve an ordinance amendment that presents no significant legal or policy issues.

Local Regulation of Livestock Operations

A local governmental unit may regulate livestock operations under s. 92.15, Stats., and other statutes. Local regulations must comply with s. 92.15, Stats., as applicable.

Waivers

DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has received permission from the attorney general and the revisor of statutes to incorporate by reference in this rule NRCS technical guide standards, ASAE engineering practice standards, DNR construction site erosion control standards, the UW− extension pollution control guide for milking center waste water management, and the UW−extension guide on rotational grazing. Copies of these standards are on file with the department, the secretary of state and the revisor of statutes, but are not reproduced in this rule. Where technical standards have changed, DATCP is seeking permission from the attorney general and the revisor of statutes to incorporate by reference the modified standards.

NRCS technical guide nutrient management standard 590 is attached as *Appendix D* to this rule. *Appendix B* contains a summary of UWEX publication A−2809, *Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998)*, for selected crops. The department is seeking permission from the attorney general and revisor of statutes to incorporate the complete UWEX publication by reference in this rule. The complete publication and the summary are available from UW−extension, and will be on file with the department, the secretary of state and the revisor of statutes.

Fiscal Estimate

The proposed rule establishes procedures and requirements for counties that prepare land and water resource management plans under s. 92.10, Stats. The initial plans were approved for two to three year periods. The next round of plans is expected primarily in 2002 and 2003. The department allocated an average of $2 million per year in 1999, 2000 and 2001 to counties to implement their land and water resource management plans. The department also allocates about $10.2 million annually (final allocation plan for 2001) to counties for annual staffing grants. The county's staff costs for preparing the county plans are eligible activities under these annual staffing grants.

The proposed rule establishes the procedures and standards that counties and other local governments must use to adopt local ordinances for manure storage systems (under s. 92.16, Stats.), shoreland management (under s. 92.17, Stats.), and for local regulation of livestock operations (s. 92.15, Stats.). The authority to adopt local regulations on livestock operations was established in 1997 Wisconsin Act 27. Local governments may adopt local ordinances, at their discretion. The department is required, under s. 92.05(3)(L), Stats., to review and comment on these ordinances and other ordinances adopted by local governments that regulate implementation of conservation practices.

As a result of the proposed rule, the department may be asked to increase the allocation of state funds to some county land conservation committees and some farmers. 1999 Wisconsin Act 9, the budget bill, included $3.575 million in new bond revenue, funding for cost−share grants; and transferred about $6.2 million from the Wisconsin DNR priority watershed program to the department in the second year of the biennium, fiscal year 2000−2001. The budget also directed the department to establish a goal of providing an average of three staff funded 100% for the first, 70% for the second, and 50% for the third staff person. The department is also directed to provide an average of $100,000 grant per year per county for cost−share assistance to implement county land and water resource management plans. The department is revising its allocation process to begin to phase in the new funding strategy for 2002. The proposed rule does not otherwise increase funding for the program; therefore any increases in grants to some counties must result in decreases in grants to other counties.

The department has estimated the cost to counties as a result of implementing the proposed performance standards and prohibitions included in the Department of Natural Resources' NR 151, and ATCP 50. The total staff costs to implement the agricultural performance standards and prohibitions are based on assumptions from the attached fiscal estimate worksheet. The total cost for staff to implement the performance standards and prohibitions are estimated at between about $80 million and $190 million over a ten year implementation period for low cost and high cost alternatives, respectively. Currently, there are about 400 county land conservation department staff, statewide. The department estimates that the average salary and fringe benefit for county staff is about $45,000 per year. For this fiscal estimate, the department assumes that about 75% of the needed staff resources to complete the technical and administrative work related to implementing the performance standards and prohibitions could come from redirecting current staff. Counties currently implement a number of local, state and federal programs that support implementation of the performance standards and prohibitions. Using the 75% assumption, implementing the rule over an assumed ten−year implementation period would result in an unmet need of about 450 staff (45 staff per year), or about $2 million per year for the low cost alternative. Assuming the high cost alternative, the department estimates that about 1,050 staff years would be needed over ten years, or about 105 staff per year, or about $4.7 million per year. The table below illustrates the assumptions used for the fiscal estimate. Please refer to the totals at the bottom of Appendix B for the total staff needs over ten years to implement the agricultural performance standards and prohibitions.

	Low Cost	High Cost
Total Staff Needed Over Ten−year Implementation	1,786	4,218
Annual Staff Needs For Implementation	179	422
75% of Need From Redirecting Current Staff	134	317
Difference Which Estimates Annual Additional Staff Needs	45	105
Estimated Annual Cost (Assuming $45,000 per staff per year)	$ 2.0 million	$ 4.7 million

A workload analysis prepared by the USDA Natural Resources Conservation Service, (with assistance from counties), shows an unmet staff need to implement current programs. If less than 75% of the needed staff to implement the performance standards and prohibitions were available from redirecting current staff, the staff costs would increase proportionately. The result of redirecting these current staff would result in fewer staff available to implement current

programs. The programs affected under this scenario include those that do not directly or indirectly implement the agricultural performance standards and prohibitions. However, the department believes the low cost estimate for this fiscal estimate is more accurate, because these estimates do not include the staffing contributions made by the federal government.

Impact of the Rule Revision to State Government

1999 Wisconsin Act 9, the biennial budget bill transferred $170,000 in fiscal year 1999−2000 and $190,000 in 2000−2001 from the Department of Natural Resources (DNR) to the department for three staff positions. These staff work on the new responsibilities resulting from the budget and the redesign of the state's nonpoint source programs. The department is assuming responsibilities to implement the agricultural component of DNR's nonpoint source program.

The department will have increased work associated with implementing a statewide nutrient management program. The proposed rule includes a process to certify soil−testing laboratories. The increased cost and work to administer the statewide nutrient management program and certify soil test laboratories will be done as a result of the new staff mentioned above and otherwise absorbed by the department.

The department will have increased work associated with reviewing ordinances proposed by local governments. Again, this activity will be included with the responsibilities of the new staff or otherwise absorbed by the department.

The department will have increased work associated with reviewing and approving county land and water resource management plans. The department previously had staff that assisted the Department of Natural Resources by developing portions of the priority watershed plans under DNR's nonpoint source pollution abatement program. The priority watershed program is being phased out and the department's staff that worked on the watershed plans will now be assigned to review and work with counties on land and water resource management plans.

The department also has new responsibility, under s. 281.16, Stats., to develop conservation practices and develop and disseminate technical standards to implement agricultural performance standards and prohibitions. The proposed rule establishes the procedures the department will use to accomplish this task. The department will utilize the new staff, or otherwise absorb this work activity.

Finally, the department will have increased work related to the grants issued to counties to implement land and water resource management plans and the agricultural performance standards and prohibitions in Department of Natural Resources NR 151 and ATCP 50. The department will utilize the new staff, or otherwise absorb this work activity into the current operating budget.

Initial Regulatory Flexibility Analysis

The proposed rule for the soil and water resource management program establishes the standards and requirements for soil erosion control, animal waste management, nonpoint source water pollution abatement, and nutrient management for the soil and water resource management program in Wisconsin. Among other things, the proposed rule: requires farm conservation practices, creates a nutrient management program, sets guidelines for county land and water resource management plans, updates procedures for the allocation of grants, and establishes technical standards for conservation practices.

The proposed rule is closely tied to DNR's proposed rule, NR 151, which establishes seven agricultural performance standards that farmers are required to meet. Existing farming operations will be required to meet the performance standards if at least 70% cost sharing is made available to them. This proposed rule spells out the implementation strategy the department will follow to meet those performance standards. That strategy consists of having the department provide funds to implement county land and water resource management plans. By statute, the department must work toward funding an average of three staff positions in each county and an average of $100,000 per year in cost−share funds.

The small businesses primarily affected by this rule are farmers. Other businesses affected to a lesser degree are private crop consultants, farm cooperatives and farm supply organizations that perform nutrient management planning and that sell fertilizers to farmers. A third type of business affected by the rule are contractors who install conservation practices.

Farmers

The proposed rule and DNR's proposed rule, NR 151, require farmers to meet seven agricultural performance standards. The department has conducted a fiscal estimate of the costs farmers might have to implement practices to come into compliance with the standards. The worksheet for that fiscal estimate is attached to the environmental analysis for this proposed rule.

The proposed rule will affect small to moderate sized livestock operations in Wisconsin. Large livestock operations, those with more than 1000 animal units, are regulated by the Department of Natural Resources and treated as potential point sources of pollution. This proposed rule will also affect all farmers who apply manure, sludge or commercial fertilizers to their fields. This proposed rule will also affect all farmers with cropland eroding at more than tolerable levels.

A summary of the fiscal impact of this rule on farmers is as follows for each proposed performance standard. These costs represent out−of−pocket costs to farmers and associated costs for maintaining practices, and lost opportunity costs. The estimates do not include anticipated financial benefits from the practices.

Proposed performance standard: All farmland must be cropped to achieve a soil erosion rate equal to, or less than, the 'tolerable' (T) rate established for that soil.

	Ten−Year Low Cost	Ten−Year High Cost
Farmers' costs	$ 49,500,000	$ 76,500,000
State's costs	$115,500,000	$178,500,000
Total	$165,000,000	$255,000,000

Proposed performance standard: Grass vegetation shall be established and maintained in concentrated flow channels within cropland areas where runoff would otherwise cause erosion or sediment delivery to navigable surface waters.

	Ten−Year Low Cost	Ten−Year High Cost
Farmers' costs	$2,700,00	$ 4,050,000
State's costs	$6,300,000	$ 9,450,000
Total	$9,000,000	$13,500,000

Proposed performance standard: All cropped fields, pastures or woodlots located within water quality management areas, not including sites defined under s. NR 151.01518) (a) to (f), shall have a minimum water quality corridor that conforms to one of the following options: (1) a ten foot permanent vegetation cover corridor with 90 feet of cropland with at least 50% residual cover; (2) a 20 foot permanent vegetation cover corridor with 30 feet of cropland with 30% residual cover; (3) a 20 foot permanent vegetation

cover corridor with 100 feet of cropland with no residual cover if the slope is less than 2%; and (4) a 35 foot permanent vegetation cover corridor with no residual cover on adjoining cropland.

	Ten−Year Low Cost	Ten−Year High Cost
Farmers' costs	$ 42,000,000	$63,900,000
State's costs	$ 98,000,000	$149,100,000
Total	$140,000,000	$213,000,000

Proposed performance standard: New or substantially altered existing manure storage facilities must be constructed to meet NRCS standard 313. Abandonment of manure storage facilities shall be completed according to NRCS standard 313 requirements.

This proposed standard does not require any farmer to construct or abandon facilities. It merely states that if they are going to construct or abandon manure storage facilities, they must do it safely and according to standards. Those farmers with unexpected costs associated with this standard are those livestock operations with manure storage facilities that are going out of business. Their estimated costs are as follows.

	Ten−Year Low Cost	Ten−Year High Cost
Farmers' costs	$ 300,000	$ 600,000
State's costs	$ 700,000	$1,400,000
Total	$1,000,000	$2,000,000

Proposed performance standard: Runoff shall be diverted away from contacting feedlot and barnyard areas within water quality management areas.

The cost estimates for diverting runoff from barnyards and feedlots are included in the cost estimates for performance standard number seven, the performance standard for the four Animal Waste Advisory Committee prohibitions.

Proposed performance standard: Any application of manure, sludge or commercial nitrogen and phosphorus fertilizer shall be done in conformance with a plan developed in accordance with NRCS standard 590.

Nutrient Management Planning

	Ten−Year Low Cost	Ten−Year High Cost
Farmers' costs	$42,000,000	$ 78,000,000
State's costs at	$98,000,000	$182,000,000
Total	$140,000,000	$260,000,000

Required Manure Storage

	Ten−Year Low Cost	Ten−Year High Cost
Farmers' costs	$ 8,700,000	$13,200,000
State's costs	$20,300,000	$30,800,000
Total	$29,000,000	$44,000,000

Proposed performance standard: A livestock operation shall have no overflow of manure storage facilities." "A livestock operation shall have no unconfined manure pile in a water quality management area." "A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state." A livestock operation shall not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

	Ten−Year Low Cost	Ten−Year High Cost
Farmers' costs	$24,000,000	$ 31,800,000
State's costs	$56,000,000	$ 74,200,000
Total	$80,000,000	$106,000,000

Because the estimated costs are so large, much of the required work may not get done, or at least it may not get done in the immediate future. The law requires that at least 70% cost sharing must be provided before a farmer may be required to do work to meet a performance standard. Therefore, the governing factor determining what a farmer must do is the amount of cost−share dollars the state has available each year. DATCP currently has approximately $3,000,000 to $3,500,000 a year in cost−share funds. Added to the farmers' share, this will install about $4,300,000 to $5,000,000 worth of conservation practices each year. The average grant amount for a contract issued by the department is between $15,000 and $20,000. If the department's cost−share funding stays at approximately $3 to $3.5 million, the total number of farmers that we will be able to work with will be between 150 and 250 each year. In their land and water resource management plans, counties may find different ways to reach more people with the available cost−share dollars. In addition, counties could use money from other programs to help meet the performance standards, where applicable.

This proposed rule does require additional reporting and record−keeping activities from farmers. For farmers who have not been doing conservation or nutrient management work, these reporting and record−keeping activities will be new. It is anticipated that more cost−share dollars will be made available under this new program and, therefore, more farmers will have to do the reporting, record keeping and other requirements associated with receiving grants. The procedures required of these farmers includes preparing and following conservation or erosion control plans for cropland fields, preparing and following nutrient management plans for fields on which nutrients are applied, and agreeing to and following contracts as a condition for receiving cost−share funds. Farmers will have to keep track of plans and be able to document activities to demonstrate compliance with them. These rule requirements will mean that farmers must understand and keep records of soil types, nutrient requirements of various crops, nutrient content of various kinds and amounts of manure and planned schedules for applying nutrients and conservation practices.

Most farmers are aware of conservation and nutrient management plans and the factors that go into determining erosion rates and amounts of nutrients to be applied. County−based conservation professionals are available to assist farmers with making calculations, interpreting plans and reading designs and specifications. The requirement for all farmers to prepare and follow nutrient management plans may require some farmers to become more familiar with crop needs, soil types and nutrient levels in livestock manure. We can assume that most farmers have this knowledge and these skills, but they may have to be increased or refined to meet the nutrient management requirements, depending on the skill of the individual farmer involved.

Crop consultants, farm cooperatives, farm supply organizations, and manure−haulers

Those providing nutrient management planning services to farmers and those selling fertilizers to farmers will be affected by this rule. Nutrient management planners will have to be recognized by the department as being qualified to prepare plans. Their work will be reviewed periodically by the department.

More state and landowner funds will likely be spent on preparing nutrient management plans, thereby increasing business opportunities for this industry. All cropland acres to which nutrients are applied will be required to be following nutrient management plans. As many as nine to ten million

cropland acres could require nutrient management plans at an average cost of between six and ten dollars an acre.

On the other hand, the sale of commercial fertilizers will probably be reduced. In addition, those who sell fertilizers to farmers will have to keep records of who prepared nutrient management plans for those farmers purchasing the fertilizers. Those selling fertilizers will not be required to refuse sales if no nutrient management plan has been prepared, but they must make records available to department inspectors upon request.

Nutrient management planners will have to become familiar with the University of Wisconsin nutrient recommendations in the UW Extension publication number A2809. They will have to become familiar with, and follow, department guidelines and requirements for approvable nutrient management plans.

This proposed rule will result in an increased demand for manure−haulers throughout the state. As part of implementing their nutrient management plans, many farmers will have to rely on commercial manure−haulers to apply their manure on appropriate fields. This industry should see increased revenue and business from many farmers.

Construction contractors

Statewide, the impact of this proposed rule on construction contractors will differ from what it has been in the past. There will be no different professional skills required and no increase in reporting and record−keeping requirements. The main impact of this proposed rule on contractors will be the redistribution of projects across the state. This may not affect large contractors who are more mobile and can set up branch offices, but smaller, less mobile operations may see a negative impact.

Instead of having project concentrated in a relatively few priority areas in the state, under the new program each county will receive some funds for projects. This will result in projects being more evenly distributed across the state. This will benefit those contractors which are more mobile than those which are not. After about a one or two year period of adjustment, this change on the industry will likely stabilize.

Environmental Assessment

The department has prepared a preliminary environmental assessment for this administrative rule. The assessment finds that the proposed repeal and recreation of chapter ATCP 50 would have no significant adverse environmental impact and is not a major state action significantly affecting the quality of the human environment. It is expected that the proposed rule will have a positive impact on protecting soil resources and improving and protecting water quality. Alternatives to this proposed rule, discussed in the assessment, will not reach program goals as effectively as the proposed rule. No environmental impact statement is necessary under S. 1.11 (2), Stats.

You may obtain a free copy of the environmental assessment by contacting Bonnie Shebelski at the Wisconsin Department of Agriculture, Trade and Consumer Protection, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, Wisconsin 53708−8911, telephone: 608/224−4620. Copies will also be available at the hearings.

Notice of Hearing
Pharmacy Examining Board
[CR 01−075]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2) and (3), Stats., and interpreting ss. 450.01 (7) and (16), 450.02 (2) and (3) and 450.09, Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to create s. Phar 7.12, relating to the requirements for an approved central fill system.

Hearing Date, Time and Location

Date:	**September 11, 2001**
Time:	9:15 A.M.
Location:	1400 East Washington Avenue Room 179A Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by September 25, 2001 to be included in the record of rule−making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2) and (3), Stats.

Statutes interpreted: ss. 450.01 (7) and (16) (b), 450.02 (2) and (3) and 450.09, Stats.

The objective of this proposed rule is to specify the requirements for an approved central fill system. Integrated health systems, business entities comprising common ownership of multiple pharmacies and pharmacies desiring to enter contractual relationships with outside vendors have an interest in increasing patient convenience and lowering cost of service based upon the central filling of prescription orders for dispensing. The intent of such rules is to preserve the integrity of the dispensing process by addressing the issues of ownership of inventory, patient confidentiality, consultation, security, accuracy and accountability which must be maintained in any approved central fill system.

A “central fill pharmacy” is defined as a pharmacy licensed in this state acting as an agent of an originating pharmacy to fill or refill a prescription order. The “originating pharmacy” is a pharmacy licensed in this state that uses a central fill pharmacy to fill or refill a prescription order for purposes of dispensing by the originating pharmacy.

The central fill pharmacy and originating pharmacy may only process a request for the filling or refilling of a prescription received by an originating pharmacy when the requirements of this section are met. The central fill pharmacy must either have the same owner as the originating pharmacy or a contract with the originating pharmacy outlining the services, responsibilities and accountabilities of

each pharmacy. Also, both pharmacies must maintain a written protocol delineating each pharmacy's assumption of responsibility for compliance with the prescription drug compounding and dispensing requirements of chs. Phar 7 and 8. The proposed rule provides that the originating pharmacy shall still remain responsible for compliance with the prescription drug compounding and dispensing requirements of chs. Phar 7 and 8 which are not assumed in writing by the central fill pharmacy pursuant to a filling protocol. The originating pharmacy will always remain solely responsible for the patient consultation and transfer requirements of s. Phar 7.01 (1) (e) and (em) where the prescription drug is not delivered by an agent of the pharmacist to a patient's residence. Certain functions in the dispensing process may not be performed by the central fill pharmacy unless it shares a common central processing unit with the originating pharmacy. These functions are the medication profile record review of the patient, drug utilization review, claims adjudication, refill authorizations, interventions, drug interactions and selection of drug product equivalents. The originating pharmacy remains responsible for original recordkeeping of all prescription orders as required by state and federal law. All original and refill requests received by the central fill pharmacy are required to be treated as prescription orders for purposes of filing and recordkeeping as required by state and federal law. Each pharmacy is required to maintain duplicate records to identify each pharmacist responsible for receiving and reviewing prescription orders and compounding and dispensing pursuant to a prescription order and to track the prescription order during each step in the dispensing process. Both pharmacies are required to adopt a joint written quality assurance program to monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, resolve identified problems and insure compliance with this section. The label of any prescription drug container dispensed is also required to contain an additional label encoding either electronically or in printed form the name and address of the central fill pharmacy, the name of the pharmacist who filled the prescription order, and the date of filling.

Text of Rule

SECTION 1. Phar 7.12 is created to read:

Phar 7.12 **Central fill pharmacy.** (1) As used in this section, "central fill pharmacy" means a pharmacy licensed in this state acting as an agent of an originating pharmacy to fill or refill a prescription.

(2) As used in this section, "originating pharmacy" means a pharmacy licensed in this state that uses a central fill pharmacy to fill or refill a prescription order.

(3) A central fill pharmacy and originating pharmacy may process a request for the filling or refilling of a prescription received by an originating pharmacy only pursuant to the following requirements:

(a) The central fill pharmacy either has the same owner as the originating pharmacy or has a contract with the originating pharmacy outlining the services to be provided and the responsibilities and accountabilities of each pharmacy in fulfilling the terms of the contract in compliance with federal and state law.

(b) The central fill pharmacy and originating pharmacy maintain a written filling protocol delineating each pharmacy's assumption of responsibility for compliance with the prescription drug compounding and dispensing requirements of chs. Phar 7 and 8.

(c) The originating pharmacy shall remain responsible for compliance with the prescription drug compounding and dispensing requirements of ch. Phar 7 and which are not assumed in writing by the central fill pharmacy pursuant to such protocol.

(d) The central fill pharmacy shall not assume and the originating pharmacy shall at all times remain solely responsible to perform and comply with the requirements of s. Phar 7.01 (1) (e) and (em) in instances where the prescription is not delivered by an agent of the pharmacist to a patient's residence.

(e) Unless the central fill pharmacy shares a common central processing unit with the originating pharmacy it may not perform processing functions such as, the medication profile record review of the patient, drug utilization review, claims adjudication, refill authorizations, interventions, drug interactions and selection of drug product equivalents.

(f) The originating pharmacy shall maintain the original of all prescription orders received for purposes of filing and recordkeeping as required by state and federal law.

(g) The central fill pharmacy shall maintain all original fill and refill requests received from the originating pharmacy and shall treat them as original and refill prescription orders for purposes of filing and recordkeeping as required by state and federal law.

(h) In addition to meeting the other recordkeeping requirements required by state and federal law, the central fill pharmacy and originating pharmacy shall maintain duplicate records to identify each pharmacist responsible for receiving and reviewing prescription orders and compounding and dispensing pursuant to a prescription order and track the prescription order during each step in the dispensing process.

(i) The central fill pharmacy and originating pharmacy shall adopt a written quality assurance program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, resolve identified problems and insure compliance with this section.

(j) In addition to meeting the requirements of s. 450.11 (4), Stats., every container of a prescription drug dispensed pursuant to this section shall contain an additional label encoding either electronically or in printed form the name and address of the central fill pharmacy, the name of the pharmacist who filled the prescription order, and the date of filling.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearing

Pharmacy Examining Board

[CR 01−091]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2), 450.02 (3) (e), 450.03 (2) and 450.04 (1), Stats and interpreting ss. 450.04 and 450.05, Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Phar 2.01 (1) and 2.04 (1), relating to examinations for original licensure and for persons licensed in another state.

Hearing Date, Time and Location

Date:	**September 11, 2001**
Time:	9:15 A.M.
Location:	1400 East Washington Avenue Room 179A Madison, Wisconsin

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by September 25, 2001 to be included in the record of rule−making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 450.02 (3) (e), 450.03 (2) and 450.04 (1), Stats.

Statutes interpreted: ss. 450.04 and 450.05, Stats.

The objective of this proposed rule−making order is to create consistent licensure requirements with other states that require applicants in certain instances to take and pass the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), the Test of English as a Foreign Language (TOEFL), and the Test of Spoken English (TSE).

Currently, Wisconsin law only requires that an applicant who is a foreign graduate of a school of pharmacy to take and pass the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), offered by the National Association of Boards of Pharmacy, Foreign Pharmacy Graduate Examination Committee (FPGEC). Other states require a foreign graduate of a school of pharmacy to take and pass three examinations, the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), the Test of English as a Foreign Language (TOEFL), and the Test of Spoken English (TSE). Upon successfully taking and passing all three examinations the foreign graduate earns FPGEC Certification. Requiring foreign graduate applicants in Wisconsin to earn FPGEC Certification as a precondition for licensure will allow Wisconsin licensure requirements in this instance to be considered "substantially equivalent" with other states, thus allowing greater mobility for pharmacists with Wisconsin licensure who thereafter seek licensure in other states.

Text of Rule

SECTION 1. Phar 2.01 (1) is amended to read:

Phar 2.01 (1) Has been graduated from a school or college of pharmacy approved by the board or has ~~taken and passed the foreign pharmacy graduate equivalency examination given~~ obtained certification by the foreign pharmacy graduate examination ~~commission~~ committee.

SECTION 2. Phar 2.04 (1) is amended to read:

Phar 2.04 (1) Has been graduated from a school or college of pharmacy approved by the board, or has ~~taken and passed the foreign pharmacy graduate equivalency examination given~~ obtained certification by the foreign pharmacy graduate examination ~~commission~~ committee.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Proposed Rule−Making

Revenue

[CR 01−088]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2), 565.01 (4) to (4g) and 565.10, Stats., and interpreting ss. 565.01 (4), 565.10, 565.12, 565.25 and 565.30, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rule as proposed in this notice, without public hearing unless, within 30 days after publication of this notice, **August 15, 2001**, the Department of Revenue is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality who will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

Analysis prepared by the Department of Revenue

Statutory Authority: ss. 227.11 (2) (a), 565.01 (4) to (4g) and 565.10, Stats.

Statutes Interpreted: ss. 565.01 (4), 565.10, 565.12, 565.25 and 565.30, Stats.

The proposed order is intended to improve chs. Tax 61, 62 and 63 by updating various definitions and terminology, clarifying various provisions, reflecting proper format and providing statutory references throughout the chapters. Additionally, the Wisconsin Lottery is proposing a change in the way in which nonprofit retailer contracts are administered. This change results in a potential for savings to taxpayers in administrative labor and data management activities, as well as allowing for the improvement of Lottery customer service to nonprofit retailers.

SECTIONS 1, 2, 6, 7, 8, 9, 11, 12, 15, AND 25. Tax 61.01, 61.02 (2), 61.04 (1) (intro.), (a) and (e), (3) and (4), 61.05 (1),

61.06(2) and (4), 61.07, 61.09, 61.10, 62.01, 63.01, 63.07 and 63.08 are revised, to update terminology and to reflect proper language and punctuation per Legislative Council Rules Clearinghouse (Clearinghouse) standards.

SECTION 3. Tax 61.02 (3) is repealed, because the term "executive director" is obsolete.

SECTION 4. As a result of the repeal of Tax 61.02 (3), Tax 61.02 (4) to (10) are renumbered Tax 61.02 (3) to (9). As renumbered, subs. (6), (7) and (9) are revised, to update terminology and to reflect proper language and punctuation per Clearinghouse standards.

SECTION 5. Tax 61.03 (1) is revised, to place a mailing address and location in a note rather than in the text of the rule, per Clearinghouse standards.

Tax 61.03 (2) is revised, to update terminology and to provide further clarification of the subsection.

SECTION 10. Tax 61.08 (1), (3), (5), (7), (8), (10), (11) (b) and (e), (13), (14) (b), (bm), (c) and (d), (15), (16), (19), (20) and (21) (intro.) and (a) to (h) are revised, to update terminology and to reflect proper language and punctuation per Clearinghouse standards.

Tax 61.08 (11) (h) is revised, to reflect that it is no longer necessary, but it is permissible, to stamp lottery tickets. Tax 61.08 (15) (c) and (d) are repealed, to remove code that is outdated due to changes in computer−monitored pack return procedures. Tax 61.08 (15) (d) is revised, to eliminate the authority to accept returned packs of tickets for credit after the last date on which it is permitted to sell those tickets.

SECTION 13. Tax 62.02 is repealed and recreated, to add additional definitions relevant to ch. Tax 62.

SECTION 14. Tax 62.20 is revised, to update terminology, to reflect proper punctuation per Clearinghouse standards and to provide further clarification of the subsection.

SECTION 16. Tax 63.02 is repealed and recreated, to add an introduction, to delete obsolete definitions, to add a new definition, to update language and punctuation per Clearinghouse standards, and to revise the definition of "Wisconsin lottery" to reference Tax 61.02 (9).

SECTION 17. Tax 63.03 (1) is revised, to update terminology and to place a mailing address and location in a note rather than in the text of the rule, per Clearinghouse standards.

Tax 63.03 (2) is revised, to update terminology and to provide further clarification of the subsection.

SECTIONS 18, 19 AND 20. Tax 63.04 (1) is revised, Tax 63.04 (2) (intro.) is renumbered Tax 63.04 (2) and revised, and Tax 63.04 (2) (a) and (b) are repealed, to more properly reflect the scope of a certificate of authority, in compliance with s. 565.10 (12), Stats. This significantly improves the method for administering non−profit retailer contracts while generating savings in cost and time for both the lottery and non−profit organizations. The limits of 26 events and 1 special event or of 2 special events per retailer are repealed, and replaced by administrative control on the locations at which a non−profit may conduct events for the 3−year duration of a contract. This proposed change results in operational efficiency for the lottery. It also allows non−profit retailers the opportunity to utilize pre−approved alternative locations in a case where unforeseen circumstances such as weather cause a scheduled event or special event to be canceled or relocated.

SECTION 21. Tax 63.04 (3) is revised, to remove an outdated policy relating to charging a fee for obtaining a duplicate certificate of authority.

Tax 63.04 (4) is revised, to update terminology.

Tax 63.04 (5) is revised, to remove fee statements that are no longer applicable and to update procedures relating to amending a retailer contract.

SECTION 22. Tax 63.06 (1), (3), (5), (7), (8) (b), (c) and (d), (9), (10) and (11) (a) are revised, to update terminology and to reflect proper language and punctuation per Clearinghouse standards.

Tax 63.06 (2) is revised, to provide procedures for amending a list of contract locations.

Tax 63.06 (6) is revised, to update language per Clearinghouse standards and to reflect that a certificate is to be displayed at every event or location, not just at every event.

Tax 63.06 (8) (g) is revised, to reflect that it is no longer necessary, but it is permissible, to stamp lottery tickets.

SECTION 23. Tax 63.06 (11) (c) is repealed and recreated, to reflect a change in position that certain lottery tickets may be returned by a retailer, and to indicate the circumstances under which they may be returned.

SECTION 24. Tax 63.06 (11) (d), (12), (13), (14) and (15) (intro.), (a), (e), (f), (g) and (h) are revised, to update language per Clearinghouse standards and to clarify the manner in which retailers are responsible for redeeming break−open tickets for players.

ALL APPLICABLE SECTIONS. In addition to the revisions described above, notes are added at the end of each section in chs. Tax 61, 62 and 63, to cite the statutes that each section interprets.

SECTION 1. Tax 61.01 is amended to read:

Tax 61.01 **Purpose.** The purpose of this chapter is to provide the ~~executive director~~ administrator with the procedure and criteria for selecting retailers to sell lottery tickets, to establish the retailer's duties and obligations under the contract, to provide the ~~executive director~~ administrator with the procedure and criteria to terminate or suspend the retailer's contract ~~,~~ and to provide the applicant and retailer an appeal procedure if a contract is denied or a contract is terminated or suspended

Note to Revisor: Insert the following note at the end of Tax 61.01:

Note: Section Tax 61.01 interprets ss. 565.10 and 565.12, Stats.

SECTION 2. Tax 61.02 (2) is amended to read:

Tax 61.02 (2) "Commencement of a game" means the date, designated by the ~~executive director~~ administrator, on which lottery tickets for a particular instant scratch lottery game shall go on sale to the general public.

SECTION 3. Tax 61.02 (3) is repealed.

SECTION 4. Tax 61.02 (4) to (10) are renumbered Tax 61.02 (3) to (9). As renumbered, Tax 61.02 (6), (7) and (9) are amended to read:

Tax 61.02 (6) "Selling location" means each cash register at a Wisconsin lottery retail outlet where a lottery ticket is sold.

(7) "Settlement date" means the date, designated by the ~~executive director~~ administrator, by which the retailer is to return unsold instant scratch tickets for a particular game.

(9) "Wisconsin lottery" means the ~~commission, appointees, staff , and employees who administer the state lottery~~ the department of revenue Wisconsin lottery division, the executive assistant, the secretary or the deputy secretary of revenue.

Note to Revisor: Insert the following note at the end of Tax 61.02:

Note: Section Tax 61.02 interprets ss. 565.10 and 565.12, Stats.

SECTION 5. Tax 61.03 is amended to read:

Tax 61.03 **Procedure for selecting and renewing contracting retailers.** (1) Any person may apply for a contract to sell lottery tickets by submitting to the Wisconsin lottery a completed application for a lottery retail sales contract. Applications are available upon request by ~~writing~~contacting the Wisconsin ~~Lottery, 1802 West Beltline Highway, P.O. Box 8941, Madison, WI 53708−8941~~ lottery. A nonrefundable check for $75.00 made payable to the Wisconsin lottery shall accompany each application for a contract. A nonrefundable electronic fund transfer or check for $25.00 made payable to the Wisconsin lottery shall accompany each application for a contract renewal.

Note to Revisor: Insert the following note at the end of sub. (1):

Note: Applications and application fees should be mailed or delivered to Wisconsin Lottery, 2135 Rimrock Road, PO Box 8941, Madison WI 53708−8941.

(2) The ~~executive director~~ administrator shall examine the completed application, and based on criteria under s. 565.10 (2) to (5), Stats., and s. Tax 61.04 (1), shall either grant a contract or deny the application. The ~~executive director~~ administrator shall ~~either~~ grant the contract or deny the ~~applicant a contract~~ application within 35 business days after ~~receipt by~~ the Wisconsin lottery ~~of~~ receives the completed application and application fee under sub. (1) or within 35 business days after the ~~completion of~~ administrator completes a credit check under s. Tax 61.04 (1) (a), whichever is later.

Note to Revisor: Insert the following note at the end of Tax 61.03:

Note: Section Tax 61.03 interprets s. 565.10 (1) to (5), Stats.

SECTION 6. Tax 61.04 (1) (intro.), (a) and (e), (3) and (4) are amended to read:

Tax 61.04 (1) (intro.) In addition to the criteria under s. 565.10 (1) to (5), Stats., the ~~executive director~~ administrator shall determine if the applicant meets all of the following conditions:

(a) The applicant or the applicant's business shall satisfactorily pass a credit check by the ~~executive director~~ administrator.

(e) The applicant may not be an employee ~~or member of the commission or reside in the same household with a member or employee of the commission~~ of the department of revenue Wisconsin lottery division, or the executive assistant, the secretary or the deputy secretary of revenue, per s.565.05 (1) (b).

(3) If the ~~executive director~~ administrator finds that there are so many qualified applicants in a given geographic area of the state that, if all those applicants would be granted contracts to sell lottery tickets, there would be an undue concentration of ~~such~~ retailers selling lottery tickets in that area, the ~~executive director will~~ administrator shall perform market evaluations on the retail establishments seeking a contract. Contracts shall only be granted to those retailers achieving the highest marketing evaluation score until the undue concentration is eliminated. The ~~executive director~~ administrator shall, however, grant a sufficient number of contracts in a given area to serve public convenience.

(4) (intro.) Any applicant ~~or group of applicants,~~ who has a physical or mental disability ~~which~~ that constitutes or results in a substantial handicap to the applicant's employment ~~,~~ may be awarded a contract exclusively to sell lottery tickets if ~~each such applicant or group of applicants each meet~~ the applicant meets all of the following conditions:

(a) Each applicant ~~shall include~~ includes with the retailer application a letter from the Wisconsin division of vocational rehabilitation verifying that the applicant's disability is a substantial handicap to employment ~~;~~ .

(b) Each applicant meets all other criteria under subs. (1) ~~through (3); and~~ to (3).

(c) ~~The commission approves the~~ Each applicant's ~~or the group's~~ contract is approved by the Wisconsin lottery.

Note to Revisor: Insert the following note at the end of Tax 61.04:

Note: Section Tax 61.04 interprets s. 565.10(1) to (5), Stats.

SECTION 7. Tax 61.05 (1) is amended to read:

Tax 61.05 (1) The ~~commission~~ Wisconsin lottery may require from each retailer a fidelity bond in the amount determined by the ~~executive director~~ administrator and based upon the applicant's projected lottery ticket sales.

Note to Revisor: Insert the following note at the end of Tax 61.05:

Note: Section Tax 61.05 interprets s. 565.10 (13), Stats.

SECTION 8. Tax 61.06 (2) and (4) are amended to read:

Tax 61.06 (2) The retailer ~~will~~ shall be issued a year−round certificate of authority if the retailer intends to sell lottery tickets all 12 months of the year. If the retailer intends to sell lottery tickets less than 12 months a year, the retailer may be issued a seasonal certificate of authority. If the retailer intends to sell lottery tickets throughout the year but only at selected times and places, such as at weekly events or at fairs and festivals, the retailer may be issued a temporary certificate of authority.

(4) A mutilated certificate shall be surrendered to the ~~executive director~~ administrator upon issuance of a duplicate. A lost certificate, when found, shall be surrendered to the ~~executive director~~ administrator within 15 calendar days of its recovery.

Note to Revisor: Insert the following note at the end of Tax 61.06:

Note: Section Tax 61.06 interprets s. 565.10(8) to (12), Stats.

SECTION 9. Tax 61.07 is amended to read:

Tax 61.07 **Contract denial appeal procedure.** (1) If the applicant was denied a contract, the ~~executive director~~ administrator shall notify the applicant, in writing, of the denial along with a brief statement why the applicant was denied a contract. The applicant shall also be notified that a request for ~~a~~ reconsideration must be made by the applicant within 30 calendar days and that the request ~~must~~shall contain the information in sub. (2).

(2) Within 30 calendar days of the mailing of the denial, the applicant may request a reconsideration by filing with the ~~executive director,~~ administrator a written statement setting forth the applicant's legal, factual~~,~~ or equitable arguments and submitting any supporting documents. The request for reconsideration shall be deemed filed on the date it is received by the ~~executive director~~ administrator.

(3) Within 20 calendar days of receipt of the ~~filing~~ request for reconsideration, the ~~executive director~~ administrator may, in writing, request the applicant to submit any additional facts,

legal and equitable arguments ~~,~~ or documents ~~which the executive director~~ that the administrator deems necessary to make a determination.

(4) The Wisconsin lottery's legal counsel shall compile a file containing all the material submitted by the applicant and any relevant material the ~~executive director~~ administrator may have, including but not limited to, the completed application and credit check report. Legal counsel shall then review the file, research ~~,~~ if necessary, the applicable laws and rules ~~,~~ and prepare an analysis and recommendation for the ~~executive director's~~ administrator's consideration.

(5) The ~~executive director~~ administrator, after considering all the facts and arguments submitted by the applicant, and legal counsel's recommendation, shall independently evaluate whether to grant or deny the applicant a contract. Within 45 calendar days of the ~~executive director's~~ administrator's receipt of the ~~filing~~ request for reconsideration or any supplemental information and documentation requested, the ~~executive director~~ administrator shall notify the applicant, in writing, of the determination. If the applicant is denied a contract, the notice shall include a written statement setting forth the reasons for the denial and notifying the applicant of the right to a hearing on the denial under s. 227.42, Stats. The applicant shall be notified that a request for a hearing must be made by the applicant within 20 calendar days and that the request must contain the information in sub. (6).

(6) (intro.) Within 20 calendar days of the administrator's mailing of the final determination ~~by executive director~~, the applicant may ~~in writing~~ request ~~,~~ in writing, a hearing under s. 227.42, Stats. A request for a hearing shall be deemed filed on the date it is received by the ~~executive director~~ administrator. A request shall contain all of the following:

(a) The applicant's name and address ~~;~~ .

(b) The reasons why the applicant requests a hearing ~~;~~ .

(c) The facts ~~which~~ that the applicant intends to prove at the hearing ~~;~~ .

(d) A description of the mistake the applicant believes was made, if the applicant claims that the denial of contract is based on a mistake in fact or in law ~~; and~~ .

(e) Any supporting documents not previously submitted to the ~~executive director~~ administrator.

(7) Within 20 calendar days of receipt of a request for hearing, the ~~executive director~~ administrator shall ~~in writing~~ grant or deny the request for a hearing ~~,~~ in writing. A hearing shall be granted if the criteria in s. 227.42 (1), Stats., are met, and the ~~executive director~~ administrator shall reasonably notify the applicant of the time and place of the hearing. A hearing shall be denied if criteria ~~in~~ under s. 227.42 (1), Stats., are not met, and the ~~executive director~~ administrator shall ~~in writing~~ inform the applicant ~~,~~ in writing, of the reason for denial.

(8) In the event that neither the applicant nor the applicant's representative appears at the time and place designated for the hearing, the ~~executive director~~ administrator may take action based upon the record as submitted. By failing to appear, an applicant waives any further right to appeal before the Wisconsin lottery.

Note to Revisor: Insert the following note at the end of Tax 61.07:

Note: Section Tax 61.07 interprets s. 565.10 (1) to (5), Stats.

SECTION 10. Tax 61.08 (1), (3), (5), (7), (8), (10), (11) (b), (e) and (h), (13), (14) (b), (bm), (c) and (d), (15), (16), (19), (20) and (21) (intro.) and (a) to (h) are amended to read:

Tax 61.08 (1) CONTRACT PERIOD AND SALES AUTHORIZATION. The retailer's contract shall remain in effect for at least one year and shall expire on the date shown on the certificate of authority. The ~~executive director~~ administrator may renew the contract. However, the retailer does not have a substantial interest in, or a vested legal or equitable right to ~~,~~a contract renewal.

(3) RETAILER IS NOT AN EMPLOYEE OR AGENT OF THE STATE. The retailer is not an employee or agent of the state of Wisconsin ~~,~~ and is not entitled to any right, privilege ~~,~~ or benefit ~~which~~ that would accrue to an employee or agent of the state of Wisconsin.

(5) COMPLIANCE WITH STATE LAW AND RULES. During the term of the retailer contract, the retailer shall comply with ch. 565, Stats., the ~~commission's~~ Wisconsin lottery's administrative rules ~~,~~ and any other applicable state law and administrative rules.

(7) CERTIFICATE OF AUTHORITY. The certificate of authority is not assignable ~~and not~~ or transferable and ~~must~~ shall be conspicuously displayed at the point of sale.

(8) NOTIFICATION OF CHANGES IN THE RETAILER'S APPLICATION. (a) The retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, within 15 calendar days of every change of its organizational structure, including but not limited to changes from a sole proprietorship to a partnership or to a corporation.

(b) The retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, at least 30 calendar days in advance of any change of the retailer's business address.

(c) The retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, within 15 calendar days if the retailer, or any of the retailer's partners, officers, directors ~~,~~ or owners, as described under s. 565.10(3), Stats., have been convicted of or pleaded guilty or no contest to a felony, a gambling related offense, or fraud or misrepresentation in any connection.

(10) INSURANCE REQUIREMENT. (a)(intro.) During the term of the retailer's contract ~~,~~ the retailer shall do all of the following:

1. Maintain worker's compensation insurance, if required to do so under ch. 102, Stats. ~~; and~~

2. Maintain public liability and property damage insurance against any claim ~~which might~~ that may occur in carrying out the retailer's contract. Minimum coverages are $300,000 single limit liability or $100,000 bodily injury per person and $300,000 per occurrence and $100,000 property damage.

(b) The insurance ~~requirement~~ requirements under par. (a) 1. and 2. do not apply to a state agency or a local unit of government.

(c) The retailer, by signing and executing the contract, warrants and represents to the Wisconsin lottery that the retailer has in place and will maintain during the contract period the insurance set forth under par. (a) 1. and 2. and at the minimum levels set forth under par. (a) 2.

(d) During the term of the retailer's contract, the ~~executive director~~ administrator reserves the right to request from the retailer verification that the retailer has complied with the insurance ~~requirement~~ requirements under par. (a) 1. and 2.

(11) (b) The retailer may not intentionally sell a lottery ticket to ~~persons~~ a person under 18 years of age.

(e) The retailer may not sell any lottery tickets at a price different from the price authorized by the Wisconsin lottery, condition the sale of a lottery ticket upon purchase of any other item or service ~~,~~ or impose any restriction upon the sale of a lottery ticket unless specifically authorized by the ~~executive director~~ administrator.

(h) The retailer ~~shall~~ may stamp each ticket with the retailer's identification number assigned by the Wisconsin lottery.

(13) RETAILER RESPONSIBILITY FOR TICKETS. (a) The retailer shall be responsible for the condition and security of lottery tickets received. If the retailer's lottery tickets are lost, stolen, mutilated, damaged, unaccountable or otherwise unsalable, the retailer shall be solely responsible for those tickets. The ~~executive director~~ administrator may not reimburse the retailer for ~~such~~ those losses or for instant scratch tickets not returned by the retailer in the proper sequentially numbered order.

(b) The retailer shall report by telephone within 24 hours any stolen tickets to the ~~director of security~~ Wisconsin lottery ~~in Madison, Wisconsin~~, consistent with the instructions for reporting stolen tickets as idicated in the retailer contract.

(14) (b) The retailer's accounting records and correspondence under par. (a) shall be available to the ~~executive director~~ administrator for examination and copying during the retailer's regular business hours. All ~~such~~ of those records and correspondence are subject to seizure and audit without prior notice.

(bm) The retailer's electronic fund transfer account shall be debited once a week by the Wisconsin lottery for tickets received the previous week.

(c) If the retailer failed to place sufficient funds in the electronic fund transfer account for the tickets received the previous week, the retailer ~~shall~~ may not receive more tickets until the Wisconsin lottery is paid in full.

(d) The ~~executive director~~ administrator may assess the retailer a ~~$20.00~~ surcharge for each dishonored retailer's check or electronic fund transfer.

(15) UNSOLD INSTANT SCRATCH TICKETS RETURNED FOR CREDIT. (a) On or before the settlement date, the retailer may return ~~to the lottery~~ unsold instant scratch tickets to the Wisconsin lottery and receive credit. Credit shall be the retailer's purchase price.

(b) The Wisconsin lottery shall credit the retailer's electronic fund transfer account for all returned unopened packs of tickets ~~,~~ and for one opened, partial pack of tickets per selling location.

(c) For tickets returned up to 90 calendar days after the settlement date, the lottery shall credit the retailer's account with what the credit would have been if timely returned ~~,~~ minus a 20% late penalty.

(d) The ~~executive director~~ administrator may not accept unsold tickets ~~which~~ for credit that are returned ~~more than 90 calendar days~~ after the settlement date.

(16) INSTANT SCRATCH TICKET REDEMPTION. (a) The retailer shall redeem low tier prizes for tickets sold at the retailer's outlet and presented to the retailer by the customer. If the customer elects to redeem the low tier prize from the Wisconsin lottery's office, the Wisconsin lottery shall debit the retailer's account in that amount.

(b) The retailer may not redeem winning lottery tickets for prizes in amounts different from the amounts authorized by the ~~executive director~~ administrator or condition redemption of a lottery prize upon the purchase of any other item or service, or impose any restriction upon the redemption of a lottery prize unless specifically authorized in writing by the ~~executive director~~ administrator.

(19) RIGHT TO APPEAL SUSPENSION OR TERMINATION. In the event the ~~executive director~~ administrator suspends or terminates the retailer's contract, the retailer is entitled to an appeal in accordance with the provisions set forth under s. Tax 61.10.

(20) SUSPENSION OR TERMINATION PROCEDURE. The retailer ~~,~~ upon notice of the suspension or termination, shall immediately stop selling lottery tickets. Within 2 weeks of the suspension or termination, the retailer shall make payment on any money owed ~~for tickets for unsold tickets~~ to the Wisconsin lottery and surrender all unsold tickets and all state owned lottery property.

(21) (intro.) GROUNDS FOR SUSPENSION OR TERMINATION. The retailer's contract may be suspended or terminated without prior notice by the Wisconsin lottery for any one of the following reasons:

(a) The retailer failed to meet ~~any~~ one or more of the qualifications for being a retailer under s. 565.10, Stats., or under the ~~commission's~~ Wisconsin lottery's administrative rules ~~;~~ .

(b) The retailer violated a provision under ch. 565, Stats., or ~~any rule promulgated under~~ of this chapter ~~;~~ .

(c) The retailer failed to sell a monthly minimum of $400 worth of instant scratch tickets each month, under s. Tax 61.04 (1) (d) ~~;~~ .

(d) The retailer intentionally sold a lottery ticket to a person under 18 ~~;~~ years of age.

(e) The retailer endangered the security of the Wisconsin lottery ~~;~~ .

(f) The retailer engaged in fraud, deceit, misrepresentation or other conduct prejudicial to public confidence in the Wisconsin lottery ~~;~~ .

(g) The retailer failed to remit money owed to the Wisconsin lottery or failed at least 3 times to make payment on or before the settlement date ~~;~~ .

(h) The retailer engaged in ~~telecommunication or printed~~ advertising of lottery products or services, or both, that in the ~~executive director's~~ administrator's determination was false, deceptive ~~,~~ or misleading ~~; or~~ .

Note to Revisor: Insert the following note at the end of Tax 61.08:

Note: Section Tax 61.08 interprets ss. 565.10 (7) to (15) and 565.12, Stats.

SECTION 11. Tax 61.09 and 61.10 are amended to read:

Tax 61.09 **Limitation on length of suspension.** A suspension shall be limited to a maximum of 45 calendar days, during which time the ~~executive director~~ administrator shall consider the appropriate permanent action to be taken, including, but not limited to, termination of the retailer contract.

Note to Revisor: Insert the following note at the end of Tax 61.09:

Note: Section Tax 61.09 interprets s. 565.12, Stats.

61.10 **Appeal procedure for a contract termination.** (1) The ~~executive director~~ administrator shall give the retailer written notice of the retailer's terminated contract and state the grounds for the termination. The retailer shall also be notified that a request for a reconsideration must be made by the retailer within 30 calendar days and that the request must contain the information in sub. (2).

(2) Within 30 calendar days of the mailing of the notice of ~~the~~ termination, the retailer may request a reconsideration by filing with the ~~executive director~~ administrator a written statement setting forth the retailer's legal, factual ~~,~~ or equitable arguments and submitting any supporting documents. The request for reconsideration shall be deemed filed on the date it is received by the ~~executive director~~ administrator.

(3) Within 20 calendar days of receipt of the ~~filing~~ request for reconsideration, the ~~executive director may~~ administrator may, in writing, request the retailer to submit any additional facts, legal and equitable arguments ~~,~~ or documents ~~which the executive director~~ that the administrator deems necessary to make a determination.

(4) The Wisconsin lottery's legal counsel shall compile all relevant correspondence, lottery accounting records ~~,~~ and all materials submitted to the ~~executive director~~ administrator by the retailer for reconsideration. Legal counsel shall then review the file, research, if necessary, the applicable laws and rules ~~,~~ and prepare an analysis and recommendation for the ~~executive director's~~ administrator's consideration.

(5) The ~~executive director~~ administrator, after considering all the facts and arguments submitted by the retailer, and legal counsel's recommendation, shall independently evaluate whether to either reinstate or terminate the contract. Within 45 calendar days of the ~~executive director's~~ administrator's receipt of the ~~filing~~ request for reconsideration or any supplemental information and documentation requested, the ~~executive director~~ administrator shall notify the retailer, in writing, of the determination. If the contract is terminated, the notification shall include a statement setting forth the reasons for the termination and notifying the retailer of the right to a hearing under s. 227.42, Stats. The retailer shall also be notified that a request for a hearing must be made by the retailer within 20 calendar days and that the request must contain the information in sub. (6).

Note to Revisor: Remove the note at the end of sub. (5).

(6) (intro.) Within 20 calendar days of the administrator's mailing of the final determination ~~by the executive director~~, the retailer may ~~in writing~~ request, in writing, a hearing under s. 227.42, Stats. A request shall be deemed filed on the date it is received by the ~~executive director~~ administrator. A request for a hearing under s. 227.42 Stats., shall contain all of the following:

(a) The retailer's name and address ~~;~~ .

(b) The reasons why a retailer requests a hearing ~~;~~ .

(c) The facts ~~which~~ that the retailer intends to prove at the hearing ~~;~~ .

(d) A description of the mistake the retailer believes was made, if the retailer claims that the termination of contract is based on a mistake in fact or in law ~~; and~~ .

(e) Any supporting documents not previously submitted to the ~~executive director~~ administrator.

(7) Within 20 calendar days of receipt of a request for hearing, the ~~executive director~~ administrator shall ~~in writing~~ grant or deny the request for a hearing, in writing, under s. 227.42, Stats. A hearing shall be granted if the criteria under s. 227.42 (1), Stats., are met. The ~~executive director~~ administrator shall reasonably notify the retailer of the time and place of the hearing. The ~~executive director~~ administrator shall inform the retailer , in writing , of the reason for denying a hearing.

(8) In the event that neither the retailer nor the retailer's representative appears at the time and place designated for the hearing, the ~~executive director~~ administrator may take action based upon the record as submitted. By failing to appear, the retailer waives any further right to appeal before the Wisconsin lottery.

Note to Revisor: Insert the following note at the end of Tax 61.10:

Note: Section Tax 61.10 interprets s. 565.12, Stats.

SECTION 12. Tax 62.01 is amended to read:

Tax 62.01 **Purpose.** The purpose of this chapter is to provide the ~~executive director~~ administrator with procedures regarding the Wisconsin lottery's major procurements.

Note to Revisor: Insert the following note at the end of Tax 62.01:

Note: Section Tax 62.01 interprets s. 565.01 (4), Stats.

SECTION 13. Tax 62.02 is repealed and recreated to read:

Tax 62.02 **Definitions.** In this chapter:

(1) "Administrator" has the meaning specified in s. Tax 61.02 (1).

(2) "Major procurement" has the meaning specified in s. 565.01 (4), Stats.

(3) "Wisconsin lottery" has the meaning specified in s. Tax 61.02 (9).

Note: Section Tax 62.02 interprets s. 565.01 (4), Stats.

SECTION 14. Tax 62.20 is amended to read:

Tax 62.20 **Appeal.** (1) RIGHT TO APPEAL. (a) Any vendor ~~,~~ who submitted a competitive bid in response to a request for proposal or request for bid for a major procurement, and who is aggrieved by the ~~executive director's~~ administrator's notice of intent to contract with another vendor, may appeal the ~~executive director's~~ administrator's decision.

(b) The vendor shall file a written notice of the intent to appeal with the ~~executive director~~ administrator no later than 5 working days after the issuance of the ~~executive director's~~ administrator's notice of intent to contract with another vendor. The notice of appeal shall be deemed to be filed on the day it is received by the ~~executive director~~ administrator.

(c) The vendor shall file the written appeal, fully identifying the contested issues , with the ~~executive director~~ administrator no later than 10 working days after the issuance of the ~~executive director's~~ administrator's intent to contract with another vendor. The appeal shall allege a violation of a state statute or the Wisconsin administrative code. The written appeal shall be deemed to be filed on the day it is received by the ~~executive director~~ administrator.

(2) AUTHORITY TO RESOLVE AN APPEAL. The ~~executive director~~ administrator may settle and resolve an appeal. A settlement or resolution under this subsection may include the issuance of a new request for proposal or request for bid.

(3) DECISION. Unless more time is required to conduct an investigation, the ~~executive director~~ administrator shall issue a written decision on the appeal to the vendor within 10 working days of receipt of the appeal. The ~~executive director's~~ administrator's decision may include the issuance of a new request for proposal or request for bid.

(4) STATE OF PROCUREMENTS DURING AN APPEAL. During the appeal process, the ~~executive director~~ administrator may not proceed further with the award of the contested contract until a decision is rendered on the appeal,

unless the ~~executive director~~ administrator determines that the award of the contract without delay is necessary to protect substantial interests of the state.

Note to Revisor: Insert the following note at the end of Tax 62.20:

Note: Section Tax 62.20 interprets ss. 565.01 (4) and 565.25, Stats.

SECTION 15. Tax 63.01 is amended to read:

Tax 63.01 **Purpose.** The purpose of this chapter is to provide the ~~executive director~~ administrator with the procedures and criteria for contracting with nonprofit organizations to sell break−open lottery tickets for a higher rate of compensation, to establish the nonprofit organization retailer's duties and obligations under the contract, to provide the ~~executive director~~ administrator with the procedures and criteria to terminate or suspend the retailer's contract ~~,~~ and to provide the applicant and nonprofit organization retailer an appeal procedure if a contract is denied or a contract is terminated or suspended.

Note to Revisor: Insert the following note at the end of Tax 63.01:

Note: Section Tax 63.01 interprets ss. 565.10 (14) and 565.12, Stats.

SECTION 16. Tax 63.02 is repealed and recreated to read:

Tax 63.02 **Definitions**. In this chapter:

(1) "Administrator" has the meaning specified in s. Tax 61.02 (1).

(2) "Break−open ticket" means a ticket issued by the Wisconsin lottery that is made of laminated paper, partially perforated to permit strips to be torn from one side to reveal play symbols beneath, from which it can be immediately determined whether the ticket is a winner.

(3) "Location" means the place at which the nonprofit organization has been granted the authority to sell lottery tickets or shares by the administrator.

(4) "Nonprofit organization" has the meaning specified in s. 565.10 (14), Stats.

(5) "Wisconsin lottery" has the meaning specified in s. Tax 61.02 (9).

Note to Revisor: Insert the following note at the end of Tax 63.02:

Note: Section Tax 63.02 interprets ss. 565.10 and s. 565.12, Stats.

SECTION 17. Tax 63.03 is amended to read:

Tax 63.03 **Application to become a nonprofit organization retailer.** (1) Any nonprofit organization may apply for a contract to sell break−open tickets by completing the application for a nonprofit organization retailer sales contract prescribed by the ~~director~~ administrator and submitting it to the Wisconsin lottery. Applications are available upon request by ~~writing~~contacting the Wisconsin ~~Lottery, 1802 West Beltline Highway, P.O. Box 8941, Madison, WI 53708−8941~~ lottery. A nonrefundable check for $25.00 made payable to the Wisconsin lottery shall accompany each application for a contract.

Note to Revisor: Insert the following note at the end of sub. (1):

Note: Applications and application fees should be mailed or delivered to Wisconsin Lottery, 2135 Rimrock Road, PO Box 8941, Madison WI 53708−8941.

(2) The ~~executive director~~ administrator shall examine the completed application, and based on criteria under s. 565.10 (2) to (5) and (14), Stats., shall either grant a contract or deny the application. The ~~executive director~~ administrator shall ~~either~~ grant the contract or deny the ~~applicant a contract~~ application within 35 business days after ~~receipt by~~ the Wisconsin lottery ~~of~~ receives the completed application and application fee under sub. (1).

Note to Revisor: Insert the following note at the end of Tax 63.03:

Note: Section Tax 63.03 interprets s. 565.10 (2) to (5) and (14), Stats.

SECTION 18. Tax 63.04 (1) is amended to read:

Tax 63.04 (1) When a nonprofit organization is awarded a contract or a contract renewal under this chapter, the organization shall pay $10.00 to the Wisconsin lottery for a nonassignable and nontransferable certificate of authority. Included as an addendum to the certificate shall be a list from the contract document, specifying the ~~date, times , and location for each event~~locations at which the nonprofit organization retailer is authorized to sell break−open tickets. Except as otherwise provided in this section, a certificate of authority may authorize sales at more than one ~~event~~ location.

SECTION 19. Tax 63.04 (2) (intro.) is renumbered Tax 63.04 (2) and amended to read:

Tax 63.04 (2) The certificate of authority shall be temporary, limiting nonprofit organization retailer sales to specified ~~events~~ locations. A certificate of authority and any amendment of it may authorize a nonprofit organization retailer to sell Wisconsin lottery break−open tickets at ~~either:~~ more than one location, provided the contract document and certificate indicate a single permanent primary location from which the contract and certificate may not be transferred, in accordance with s. 565.10(10) and (12), Stats. Any other locations that are subsequently amended to the contract and certificate may not be considered as permanent primary locations.

SECTION 20. Tax 63.04 (2) (a) and (b) are repealed.

SECTION 21. Tax 63.04 (3), (4) and (5) are amended to read:

Tax 63.04 (3) If the certificate is lost, mutilated or destroyed, the nonprofit organization retailer shall within 15 calendar days request in writing and submit a completed application for a duplicate certificate. ~~The retailer shall pay $10.00 by check to the Wisconsin lottery for a duplicate certificate of authority.~~

(4) A mutilated certificate shall be surrendered to the ~~executive director~~ administrator upon issuance of a duplicate. A lost certificate, when found, shall be surrendered to the ~~executive director~~ administrator within 15 calendar days of its recovery.

(5) If an organization wishes to sell Wisconsin lottery break−open tickets at ~~an event~~ a location not specified in its retailer contract, it shall apply to the Wisconsin lottery for an amendment to its retailer contract ~~and to its certificate of authority and pay a fee of $10.00~~. The application for an amendment ~~and a check for $10.00~~ must be ~~received~~ approved by the Wisconsin lottery at least 15 calendar days before the ~~subject event~~ nonprofit organization begins selling break−open tickets at the new location.

Note to Revisor: 1) Insert the following note at the end of Tax 63.04:

Note: Section Tax 63.04 interprets s. 565.10 (8) to (12), Stats.

2) Insert the following note at the end of Tax 63.05:

Note: Section Tax 63.05 interprets s. 565.10 (1) to (5), Stats.

SECTION 22. Tax 63.06 (1), (2), (3), (5), (6), (7), (8) (b), (c), (d) and (g), (9), (10) and (11) (a) are amended to read:

Tax 63.06 (1) CONTRACT PERIOD AND SALES AUTHORIZATION. The contract shall remain in effect for ~~at least~~ no less than one year and shall expire on the date shown on the certificate of authority. The retailer does not have a substantial interest in, or a vested or equitable right to ~~,~~ a contract renewal.

(2) CONTRACT NOT ASSIGNABLE OR TRANSFERABLE. The contract may not be assigned or transferred from one organization or permanent primary location to another. The list of contract locations may be amended by the administrator using the amendment process under s. Tax 63.04(5), provided that any amendment is consistent specifically with s. Tax 63.04(2) and all other applicable administrative rules.

(3) NONPROFIT ORGANIZATION RETAILER IS NOT AN EMPLOYEE OR AGENT OF THE STATE. The nonprofit organization retailer is not an employee or agent of the state of Wisconsin ~~,~~ and is not entitled to any right, privilege ~~,~~ or benefit ~~which~~ that would accrue to an employee or agent of the state of Wisconsin.

(5) COMPLIANCE WITH STATE LAW AND RULES. During the term of the nonprofit organization retailer contract, the retailer shall comply with ch. 565, Stats., the ~~commission's~~ Wisconsin lottery's administrative rules ~~,~~ and any other applicable state law and administrative rules.

(6) CERTIFICATE OF AUTHORITY. The certificate of authority is not assignable ~~and not~~ or transferable and ~~must~~ shall be conspicuously displayed at every ~~event~~ location where there are sales authorized by the certificate.

(7) NOTIFICATION OF CHANGES IN THE NONPROFIT ORGANIZATION RETAILER'S APPLICATION. (a) The nonprofit organization retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, within 15 calendar days of every change of its ~~organization~~ organizational structure, including but not limited to changes from unincorporated to incorporated status.

(b) The nonprofit organization retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, at least 30 calendar days in advance of any change in the nonprofit organization retailer's official mailing address.

(c) The nonprofit organization retailer shall ~~in writing~~ notify the ~~executive director~~ administrator, in writing, within 15 calendar days if the retailer, or any of the retailer's officers or directors, as described under s. 565.10 (3), Stats., has been convicted of or pleaded guilty or no contest to a felony, a gambling related offense , or fraud or misrepresentation in any connection.

(8) (b) May not intentionally sell a break−open ticket to ~~persons~~ a person under 18 years of age.

(c) May not exchange break−open tickets with any other person or organization, including other Wisconsin lottery retailers.

(d) May not sell any break−open ticket at a price different than the price authorized by the Wisconsin lottery, condition the sale of a ticket upon the purchase of any other item or service ~~,~~ or impose any restriction upon the sale of a ticket unless specifically authorized by the ~~executive director~~ administrator.

(g) ~~Shall~~ May stamp each ticket with the retailer's identification number assigned by the Wisconsin lottery.

(9) (title) SALES AT UNAUTHORIZED LOCATIONS~~, OR BEFORE COMMENCEMENT OR AFTER CONCLUSION OF EVENT. The nonprofit organization retailer may not sell any break−open tickets purchased from the lottery under this chapter before the commencement or after the conclusion of any event specified in its retailer contract and certificate of authority~~. The retailer may not sell tickets purchased from the Wisconsin lottery under this chapter at locations ~~which~~ that are not specified in its contract ~~and certificate of authority~~, consistent with s. Tax 63.04 (1).

(10) RESPONSIBILITY FOR TICKETS. (a) The nonprofit organization retailer shall be responsible for the condition and security of lottery tickets received. If the retailer's lottery tickets are lost, stolen, mutilated, damaged, unaccountable or otherwise unsalable, the retailer shall be solely responsible for those tickets. The ~~executive director~~ administrator may not reimburse the retailer for ~~such~~ those losses.

(b) The nonprofit organization retailer shall report by telephone within 24 hours any stolen tickets to the ~~director~~ administrator of security in Madison, Wisconsin.

(11) (a) (intro.) The nonprofit organization retailer shall elect ~~one of~~ either of the following 2 payment options in its contract:

1. ~~payment~~ Payment by check or money order upon delivery of tickets to the retailer ~~; or~~ .

2. ~~payment~~ Payment through an electronic ~~funds~~ fund transfer account ~~which~~ that shall be debited once a week by the Wisconsin lottery for tickets received the previous week.

SECTION 23. Tax 63.06 (11) (c) is repealed and recreated to read:

Tax 63.06 (11) (c) The administrator may accept returned tickets for credit only under the following circumstances:

1. If the tickets are defective, the administrator may allow the nonprofit organization retailer to make a return. The retailer shall return as many of the suspected defective tickets as is possible, using the original packaging materials if possible.

2. If the order was filled incorrectly by the Wisconsin lottery, the administrator may allow the nonprofit organization retailer to make a return. The retailer shall return any incorrectly shipped break−open tickets, using the original packaging materials if possible.

3. If the shipment of tickets is unopened by the nonprofit organization retailer, the administrator may allow the retailer to make a return. To be considered unopened, the package shall contain all the tickets that it contained when delivered to the retailer and have the original packaging and shipping seals intact and unopened.

SECTION 24. Tax 63.06 (11) (d), (12), (13), (14) and (15) (intro.), (a), (e), (f), (g) and (h) are amended to read:

Tax 63.06 (11) (d) The ~~executive director~~ administrator may assess the retailer a $20.00 surcharge for each dishonored check or electronic fund transfer.

(12) PRIZE REDEMPTION. The nonprofit organization retailer shall redeem all prizes from break−open tickets purchased ~~at the event~~from that retailer, on the day of sale and at the ~~place~~location of sale.

(13) RIGHT TO APPEAL SUSPENSION OR TERMINATION. In the event the ~~executive director~~

administrator suspends or terminates the nonprofit organization retailer's contract, the retailer is entitled to an appeal in ~~accord~~ accordance with the provisions ~~in~~ set forth under s. Tax 61.10.

(14) SUSPENSION OR TERMINATION PROCEDURE. The nonprofit organization retailer, upon notice of suspension or termination, shall immediately stop selling lottery tickets. Within 2 weeks of the suspension or termination, the retailer shall make payment on any money owed to the Wisconsin lottery and surrender all unsold tickets and all state owned lottery property.

(15) (intro.) GROUNDS FOR SUSPENSION OR TERMINATION. The nonprofit organization retailer's contract may be suspended or terminated without prior notice by the Wisconsin lottery for any of the following reasons:

(a) The retailer fails to meet ~~any~~ one or more of the qualifications for being a retailer under s. 565.10, Stats., or under the ~~commission~~ Wisconsin lottery's administrative rules.

(e) The retailer endangers the security of the Wisconsin lottery.

(f) The retailer engages in fraud, deceit, misrepresentation ~~,~~ or other conduct prejudicial to public confidence in the Wisconsin lottery.

(g) The retailer fails to remit money owed to the Wisconsin lottery or fails at least 3 times to have sufficient funds available resulting in the electronic ~~funds~~ fund transfer, check or money order not clearing the bank.

(h) The retailer engages in telecommunication or printed advertising that in the ~~executive director's~~ administrator's determination is false, deceptive or misleading ~~; or~~ .

Note to Revisor: Insert the following note at the end of Tax 63.06:

Note: Section Tax 63.06 interprets ss. 565.10 (7) to (15) and 565.12, Stats.

SECTION 25. Tax 63.07 and 63.08 are amended to read:

Tax 63.07 **Limitation on length of suspension.** A suspension shall be limited to a maximum of 45 calendar days, during which time the ~~executive director~~ administrator shall consider the appropriate permanent action to be taken, including, but not limited to, termination of the nonprofit organization retailer contract.

Note to Revisor: Insert the following note at the end of Tax 63.07:

Note: Section Tax 63.07 interprets s. 565.12, Stats.

Tax 63.08 **Prize structure of nonprofit organization retailer break−open ticket games.** The ~~executive director~~ administrator shall offer nonprofit organization retailers under this chapter a selection of at least 2 break−open ticket games with prize structures ranging from not less than 50% of sales to not more than 80% of sales.

Note to Revisor: 1) Insert the following note at the end of Tax 63.08:

Note: Section Tax 63.08 interprets s. 565.30, Stats.

2) Insert the following note at the end of Tax 63.09:

Note: Section Tax 63.09 interprets s. 565.10 (14) and (15), Stats.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Initial Regulatory Flexibility Analysis

This proposed order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Effect

The proposed rule revises the administration of nonprofit retailer contracts, and updates definitions and terminology and makes other changes to reflect current policies and to conform with Legislative Council Rules Clearinghouse standards. It has no effect on lottery sales or operating costs.

Notice of Hearings

Transportation

[CR 01−093]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1), 227.11 (2) (a), and 348.25 (3), Stats., and interpreting ss. 348.26 (4) and 348.27 (7), Stats., the Department of Transportation will hold a public hearing at the following locations to consider the amendment of chs. Trans 260 and 261, Wis. Adm. Code, relating to single and multiple trip permits for mobile homes and modular building sections:

Thursday, September 6, 2001
Hill Farms State Transportation Building
4802 Sheboygan Avenue, Room 144−B
Madison, Wisconsin
9:00 a.m.

Friday, September 7, 2001
City Council Chambers
City Hall Plaza
Marshfield, Wisconsin
10:00 a.m.

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

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

The public record on this proposed rule making will be held open until close of business on Monday, September 17, 2001, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Kathleen Nichols, Department of Transportation, Motor Carrier Services Section, Room 151, P. O. Box 7981, Madison, WI 53707−7981.

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

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16 (1), 227.11 (2) (a), and 348.25 (3), Stats.

STATUTES INTERPRETED: ss. 348.26 (4) and 348.27 (7), Stats.

General Summary of Proposed Rule

This proposed rule amends ss. Trans 260.09 and 261.09, which establish the dimensions for single and multiple trip permits for oversize mobile homes or modular building

sections. The proposed rule will allow a maximum width of 15 feet, and a maximum height of 15 feet for multiple trip permits. The proposed rule will also provide a uniform method for measuring the dimensions of single and multiple trip oversize mobile home or modular building sections. This proposed change was requested by the Wisconsin Manufactured Housing Association.

Fiscal Effect

The Department estimates that there will be no fiscal impact from the promulgation of this proposed rule on the liabilities or revenues of any county, city, village, town, school district, technical college district, or sewerage district.

Initial Regulatory Flexibility Analysis

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

Copies of Proposed Rule

Copies of this proposed rule may be obtained upon request, without cost, by writing to Kathleen Nichols, Wisconsin Department of Transportation, Division of Motor Vehicles, Motor Carrier Services Section, Room 151, P. O. Box 7981, Madison, WI 53707−7981, or by calling (608) 266−6648. Hearing−impaired individuals may contact the Department using TDD (608) 266−0396. Alternate formats of the proposed rule will be provided to individuals at their request.

Submittal of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection
(CR 01−004)
Ch. ATCP 48 − Relating to grants to drainage boards.

Insurance
(CR 01−050)
Ch. Ins 50 − Relating to the required footnotes in the financial statements of insurance companies.

Natural Resources
(CR 00−164)
Ch. NR 103 − Relating to wetland compensatory mitigation.

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board
(CR 01−026)
Chs. SFC 7, 12, 13, 14 and 20 − Relating to conforming existing rules to present practices and to other rules.

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board
(CR 01−027)
Ch. SFC 11 − Relating to professional counselors training certificates.

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board
(CR 01−064)
Ch. SFC 1 − Relating to the state jurisprudence examination.

Transportation
(CR 01−065)
Ch. Trans 276 − Relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Rule orders filed with the revisor of statutes bureau

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.

Elections Board
(CR 00−153)
An order affecting ch. ElBd 2, relating to the filing of and challenges to nomination papers.
Effective 10−1−01

Health and Family Services
(CR 00−056)
An order affecting ch. HFS 73, relating to criteria for county agency determination under the long−term support community options (COP) and community integration (CIP) programs.
Effective 9−1−01

Insurance
(CR 01−035)
An order affecting ch. Ins 17, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2001.
Effective 10−1−01

Natural Resources
(CR 01−006)
An order affecting chs. NR 10, 12 and 19, relating to hunting, trapping and nuisance wildlife control.
Effective 9−1−01

Nursing
(CR 00−167)
An order affecting ch. N 6, relating to defining the practice of nursing to include acting under the direction of optometrists.
Effective 9−1−01

Nursing
(CR 00−168)
An order affecting ch. N 8, relating to continuing education.
Effective 9−1−01

Pharmacy Examining Board
(CR 01−023)
An order affecting ch. Phar 6, relating to minimum equipment.
Effective 9−1−01

Public Service Commission
(CR 00−138)
An order affecting ch. PSC 167, relating to extended area telephone service.
Effective 10−1−01

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board
(CR 00−147)
An order affecting ch. SFC 2, relating to clinical social work concentration and supervised clinical field training.
Effective 9−1−01

Action by the joint committee for review of administrative rules

The Joint Committee for the Review of Administrative Rules (JCRAR) met in Executive Session on July 18, 2001 and adopted the following motion:

Chapter PSC 167 **Relating to extended−service area.**

Moved by Representative Grothman, seconded by Representative Seratti that, pursuant to ss. 227.19 (4) (d) 6 and 227.27 (2) (d), Stats., the Joint Committee for Review of Administrative Rules suspends s. PSC 167.08 (2) and that portion of s. PSC 167.09 (1) beginning with the word "If" and ending with the word "increment,".

Motion Carried: 10 Ayes, 0 Noes

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