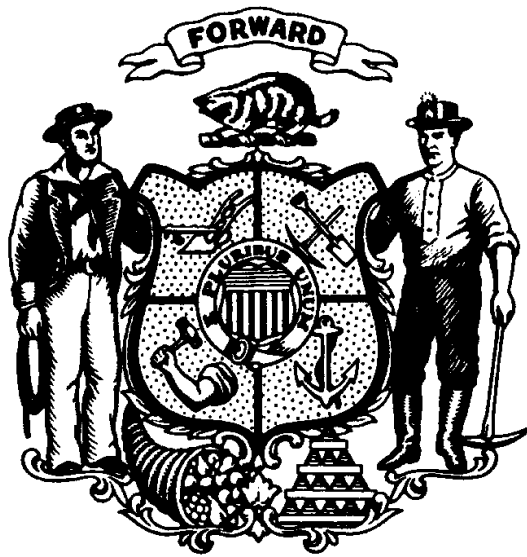


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 519**



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## EMERGENCY RULES NOW IN EFFECT

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

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

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

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

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### EMERGENCY RULES NOW IN EFFECT (2)

#### *Agriculture, Trade & Consumer Protection*

1. Rules adopted amending ss. **ATCP 81.50 (2), 81.51 (2), and 81.52 (2)**, relating to grade standards for colby and monterey (jack) cheese.

#### Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as

Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

**Publication Date:** August 8, 1998  
**Effective Date:** August 8, 1998  
**Expiration Date:** January 4, 1999  
**Hearing Date:** September 14, 1998  
**Extension Through:** May 3, 1999

2. Rules were adopted creating ss. **ATCP 10.68 and 11.58**, relating to fish farms and imports of live fish.

#### Finding of Emergency

(1) This emergency rule implements s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Under s. 95.60, Stats., a person who operates a fish farm must register annually with the Wisconsin department of agriculture, trade and consumer protection (DATCP). A person who imports live fish or fish eggs into Wisconsin must meet fish health requirements and obtain an import permit from DATCP. DATCP must establish registration and import permit standards by rule.

(3) On December 9, 1998, the Board of Agriculture, Trade and Consumer Protection (DATCP Board) approved final draft "permanent" rules to implement s. 95.60, Stats. Among other things, the rules establish fish farm registration standards and fish import standards. Before DATCP may adopt these final draft "permanent" rules, it must submit them for legislative committee review under s. 227.19, Stats. DATCP must then adopt and file the rules under s. 227.20, Stats., and publish them under s. 227.21, Stats. As a result, the final draft "permanent" rules will not take effect for several months.

(4) Current fish farm registration certificates will expire on December 31, 1998, before the final draft "permanent" rules take effect. The department must adopt a temporary emergency rule so it can process registration renewals pending the effective date of the final draft "permanent" rules. This emergency rule adopts, on a temporary basis, registration provisions contained in the department's proposed final draft "permanent" rules.

(5) This emergency rule also adopts, on a temporary basis, rules to prevent imports of diseased live fish and fish eggs that threaten the health of fish in Wisconsin fish farms and the Wisconsin natural environment. These temporary import requirements are based on requirements previously administered by the Wisconsin department of natural resources (DNR). The final draft "permanent" rules, when adopted, will expand upon these interim requirements.

(6) This emergency rule is needed to protect the public peace, health safety and welfare. Without this rule, DATCP would not be able to process fish farm registrations for 1999, or issue permits for live fish imports. Without the protections afforded by this emergency rule, Wisconsin fish farms and wild fisheries would also be exposed to an unnecessary risk of disease.

**Publication Date:** December 28, 1998  
**Effective Date:** December 28, 1998  
**Expiration Date:** May 27, 1999  
**Hearing Date:** February 3, 1999

## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (Flammable & Combustible Liquids, Ch. Comm10)

Rules adopted revising **ch. Comm 10**, relating to regulation of flammable and combustible liquids.

#### Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, welfare and the environment.

The facts constituting the emergency are as follows. Under ss. 101.09, 101.142 and 101.144, Stats., the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

**Publication Date:** December 11, 1998  
**Effective Date:** December 11, 1998  
**Expiration Date:** May 10, 1999  
**Hearing Date:** March 3, 1999

## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (Uniform Dwelling, Chs. Comm 20-25)

Rules adopted revising **Chs. Comm 20, 21, 22 and 23**, relating to energy efficiency in one- and 2-family dwellings.

#### 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:

The rule change that was to go into effect on February 1, 1999 consists of a complete rewrite of chapter Comm 22, which relates to energy efficiency in one- and 2-family dwellings, as well as miscellaneous changes to chapters Comm 20, 21 and 23. The department planned for a lead time of approximately 2 months between the time the code was made available and the code effective date. Because of difficulties in preparing and printing the code, the anticipated lead time could not be achieved. Several constituent groups, including builders, inspectors, and the Uniform Dwelling Code Council have asked for extra time to become familiar with the changes, once the complete code is made available. If this is not done, a great deal of confusion and economic hardship could result for builders, as well as homeowners. Enforcement of the new requirements could vary greatly from one municipality to the next.

This emergency rule delays the effective date of the proposed changes to chs. Comm 20, 21, 22 and 23 from February 1, 1999 to May 1, 1999.

**Publication Date:** January 23, 1999  
**Effective Date:** February 1, 1999  
**Expiration Date:** July 1, 1999

## EMERGENCY RULES NOW IN EFFECT (2)

### Commerce & Natural Resources

#### (Petroleum Environmental Cleanup Fund Interagency Responsibilities, Ch. Comm 46)

1. Rules were adopted creating **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

#### Finding of Emergency

The Departments of Commerce and Natural Resources find that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department of Commerce protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directs the Department and the Department of Natural



Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. The rule included with this order is in response to that directive.

**Publication Dates:** January 1 & February 5, 1999

**Effective Date:** January 1, 1999

**Expiration Date:** May 31, 1999

**Hearing Dates:** March 11 and 25, 1999

- Rules adopted revising **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

### Finding of Emergency

The Departments of Commerce and Natural Resources find that an emergency exists and that adoption of a rule included in this order is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under sections 101.143 and 101.144, Wisconsin Statutes, the Department of Commerce protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directed the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. An emergency rule in response to that directive was adopted by the Department and became effective on January 1, 1999. Since that date, further improvements for jointly administering the PECFA fund have been developed, which are consistent with the JCRAR directive and which are expected to significantly mitigate the backlog of claims to this oversubscribed fund.

**Publication Dates:** February 23 & March 1, 1999

**Effective Date:** February 23, 1999

**Expiration Date:** May 31, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### Commerce

#### (Financial Resources for Communities, Chs. Comm 105 to 128)

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

### Finding of Emergency & Rule Analysis

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.

Several areas in the State of Wisconsin have recently experienced severe economic distress due to large plant closings which have put hundreds of Wisconsin residents out of work. As a result of two large paper mills being shut down a year ago, 1997 Wisconsin Act 237

created s. 560.147, Stats., authorizing the Rapid Response Fund within the Wisconsin Development Fund. The fund is part of the Rapid Response Initiative, which assists areas affected by these and future closings. Commerce is now proposing as part of this initiative a Rapid Response Set Aside within the volume cap allocation process which will enable businesses in these distressed areas to obtain the financing they need to make the necessary capital investments to create and retain jobs. Several projects are pending in that need this change in order to move forward with their plans. Allocation of volume cap is in highest demand in the spring and summer due to the construction cycle. The Rapid Response set-aside must be in place as soon as possible in order for projects to receive allocation and begin construction as soon as possible. Jobs cannot be created or retained until projects go forward.

**Publication Date:** January 15, 1999

**Effective Date:** January 15, 1999

**Expiration Date:** June 14, 1999

- Rules adopted creating **ch. Comm 112**, relating to the Wisconsin Development Zone Program.

### 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 ss. 560.70 to 560.797, Stats., the Department of Commerce is responsible for administering Wisconsin Development Zone Program. These rules are being adopted to incorporate in the administrative code the recent amendments contained in 1997 Wis. Act 27 that entirely changed the eligibility and the criteria for certified development zone businesses and the process for the verification and the claiming of tax credits. Section 560.785, Stats., directs the Department of Commerce to develop rules and exceptions to those rules concerning the eligibility for tax benefits. After a review and evaluation of all the certified businesses and their projects a number of exceptions have been identified in order to meet the needs of different areas of the state and to fulfill our commitments to businesses that were made prior to this legislation. In order to process claims for tax years beginning on or after January 1, 1998, these rules must be made available immediately.

**Publication Date:** February 25, 1999

**Effective Date:** February 25, 1999

**Expiration Date:** July 25, 1999

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## EMERGENCY RULES NOW IN EFFECT (3)

### Department of Corrections

- Rules were adopted amending **s. DOC 328.21**, relating to absconders.

### Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: A recent legislative enactment providing funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to

search an offenders residence only for contraband. This rule amendment allows a search of an offender's residence for contraband or an offender.

**Publication Date:** December 3, 1998  
**Effective Date:** December 3, 1998  
**Expiration Date:** May 2, 1999  
**Hearing Dates:** March 1 and 3, 1999

- Rules were adopted revising **ch. DOC 349**, relating to holding juveniles in municipal lockup facilities.

### Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more than six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to establish an approval process and operational standards for the safety of the public and juveniles while permanent rules are being developed.

This order:

- Adopts the statutory definitions of adult, delinquent, and juvenile.
- Defines the term secure custody status.
- Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.
- Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.
- Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.
- Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.
- Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.
- Provides that the lockup administrator shall develop and implement policies and procedure to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.
- Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the observations. If the juvenile is identified by the facility staff as being at risk (for example, suicidal tendency, under the influence of drugs or alcohol, or mental disturbance) the observations shall be at least once every 15 minutes at irregular intervals.

10. Requires that juvenile records be maintained in a confidential manner and kept separate from adult records, in accordance with s. 938.396, Stats.

The order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

**Publication Date:** December 10, 1998  
**Effective Date:** December 10, 1998  
**Expiration Date:** May 9, 1999  
**Hearing Date:** February 15, 1999

- Rules adopted creating **ch. DOC 330**, relating to pharmacological treatment of serious child sex offenders.

### Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created s. 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

**Publication Date:** January 1, 1999  
**Effective Date:** January 1, 1999  
**Expiration Date:** May 31, 1999  
**Hearing Dates:** March 1, 2 and 3, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Emergency Response Board*

Rules adopted revising **s. ERB 1.04**, relating to reporting requirements for gasoline and diesel fuel present at 10,000 pounds or more at retail gas stations.

### Finding of Emergency and Rule Analysis

The Wisconsin Division of Emergency Management finds that an emergency exists and that adoption of this rule is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows:

The U.S. Environmental Protection Agency has stated in writing, its intent to implement a rule change effective March 1, 1999. The rule change will increase the 42 USC 11021 and 11022 reporting threshold for gasoline to 75,000 gallons and for diesel fuel to 100,000 gallons, when stored in below ground tanks at retail gas stations. This change will have the effect of exempting most gasoline stations from EPCRA reporting requirements. It will also mean that gasoline and diesel fuel that is present in 10,000 pounds or more will not be uniformly reported under EPCRA. If implemented, this rule change will occur during a reporting period and will take effect on the deadline for submission of 1999 reporting information, which applies to chemicals that were present in 1998. This will create a situation where facilities reporting prior to the rule change would be reporting under one requirement and those reporting after the March 1, 1999 deadline would be reporting under a different requirement. It is not clear which requirement would affect those facilities that submit documentation prior to the intended rule change, that is, by the reporting deadline, and whether these facilities would have to amend their submissions to be in compliance with the law.

The most commonly spilled substances in Wisconsin are petroleum products, gasoline and diesel fuel. This information is important to fire departments as well as Local Emergency Planning Committees as an emergency response planning tool. The Tier Two chemical information is provided to the local fire department with jurisdiction over the facility and to the appropriate Local Emergency Planning Committee. This is the only comprehensive list of hazardous materials that is available to fire departments and Local Emergency Planning Committees.

Further, in Wisconsin, individual preprinted forms are printed in mid December and mailed out by the first week of January to assist facilities in meeting reporting requirements. This is well before the time when U.S. EPA has stated that they intend to implement a rule change. Because EPA intends to implement the change on the March 1, 1999 reporting deadline, it is not possible to mail forms out at that time and have facilities make the necessary submissions by the March 1, 1999 deadline. Wisconsin facilities have come to expect that inventory reporting materials will be mailed out in a time frame that will allow adequate time for the facility to meet the March 1, 1999 reporting deadline. Facilities that fail to submit the necessary reporting materials by the March 1, 1999 reporting deadline would be in non-compliance with federal and state EPCRA reporting requirements.

Individual states do not have the authority to implement requirements under EPCRA which are less stringent than the federal requirements. This emergency rule would maintain the existing reporting requirements that have been in place since the inception of the program in 1986. Specifically, this rule states that the reporting thresholds for gasoline and diesel fuel would be maintained at 10,000 pounds for retail gas stations. This emergency rule will allow Wisconsin Emergency Management the ability to distribute reporting materials in a timely manner and will permit the facilities to submit the necessary paperwork prior to the March 1, 1999 deadline. By allowing facilities sufficient time prior to the March 1, 1999 deadline, they will have the opportunity to make the necessary submissions under EPCRA and to remain in compliance with federal and state law. This will also insure that all gasoline and diesel fuel stored in amounts of 10,000 pounds or more in the state is reported under EPCRA. This in turn will insure that all fire departments and Local Emergency Planning Committees will continue to have access to a comprehensive listing of hazardous materials under the Emergency Planning and Community Right-to-Know Act.

**Publication Date:** January 20, 1999  
**Effective Date:** January 20, 1999  
**Expiration Date:** June 19, 1999  
**Hearing Dates:** March 16 & 19, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Financial Institutions* (Division of Banking)

Rules adopted renumbering and revising **ch. RL 41** to be **ch. DFI-Bkg 41**, relating to mortgage banking.

### Exemption From Finding of Emergency

Statutory Authority: ss. 224.72 (8) and 224.73 (3); and 1997 Wis. Act 145, Section 72.

This emergency rule sets forth the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the

registration periods for all registrations and renewals of registrations.

**Publication Date:** December 4, 1998  
**Effective Date:** December 4, 1998  
**Expiration Date:** May 3, 1999  
**Hearing Date:** March 3, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Financial Institutions* (Division of Securities)

Rules adopted creating **s. DFI-Sec 2.01(1)(c)6 and (d)6.**, relating to designating alternative accounting guidelines for the preparation of financial statements for certain governmental issuers of securities.

### Finding of Emergency

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

These emergency rules are necessitated by a new accounting guideline relating to disclosures about Year 2000\* issues applicable to the preparation of financial statements for governmental issuers of securities as required by Governmental Accounting Standards Board Technical Bulletin 98-1, *Disclosures about Year 2000 Issues* ("GASB TB 98-1", or "Guideline"). The existence of this issue and the need for emergency rule treatment to assist governmental issuers was brought to the attention of the Division by representatives of Wisconsin public accounting groups and Wisconsin bond attorneys who recently learned about a Report by the American Institute of Certified Public Accountants regarding GASB TB 98-1.

As a result of that Report (and as particularized below) many Wisconsin governmental issuers would have the audit opinions for their financial statements for years ending after October, 1998, qualified with respect to disclosures about Year 2000 issues. Thus beginning in approximately March and April of 1999 and continuing through the accounting period ending 12/31/99, that new accounting Guideline will adversely impact the ability of Wisconsin and other state and local governmental securities issuers to continue to use on an "automatic"/self-executing basis, the existing securities registration exemption in s. 551.22(1)(a) of the Wisconsin Securities Law to offer and sell their debt securities to public investors in Wisconsin.

Over the years and to date, Wisconsin and other state and local governmental securities issuers having "full-GAAP" financial statements (e.g. prepared in accordance with generally accepted accounting principles) have been able to sell their debt securities to Wisconsin public investors in reliance on automatic use of the registration exemption in s. 551.22(1)(a), Wis. Stats., without the need for any exemption or other filing with the Division.

GASB TB 98-1 requires footnote disclosure of Year 2000 information regarding a governmental issuer's preparedness in terms of making its systems and equipment Year 2000 compliant. GASB TB 98-1 applies to financial statements dated October 31, 1998, and terminates for financial statements issued for purposes of the accounting period ending December 31, 1999, unless systems and equipment are not Year 2000 compliant as of the balance sheet date. In response to GASB TB 98-1, members of the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) issued a Report under the title "AICPA Illustrative Reporting Guidance on Year 2000 Disclosures Made Under GASB TB 98-1, Issued October 22, 1998." That Report raised the concern that in light of the unprecedented nature of the Year 2000 issue, the required disclosures will be neither

ascertainable by management nor verifiable by auditors. As a result, the AICPA strongly recommended that auditors issue qualified opinions (scope limitations) with respect to such Year 2000 issue disclosures.

Consequently, all Wisconsin and other governmental securities issuers whose financial statements would contain such qualified opinions, would not meet (in the absence of the emergency rules) the "full-GAAP" financial statement requirement for automatic use of the registration exemption in 551.22(1)(a), Wis. Stats. Thus, such issuers would either have to go through a regulatory filing and review procedure with the Division prior to each offering, or would have to restrict the initial offering to securities law provisions that would preclude underwriters from reoffering those securities to investors in the primary and secondary markets.

In the absence of the emergency rules, governmental securities issuers would be adversely affected by the costs of making securities filings with their attendant delays. Also, even though Year 2000 issues equivalently affect private corporate issuers of securities, because there is no counterpart to GASB TB 98-1 within the standards promulgated by the Financial Accounting Standards Board applicable to private corporate securities issuers, the additional costs and filing delays would be singularly borne by *governmental* securities issuers (if the emergency rules were not adopted).

Finally, having a filing requirement under the Wisconsin Securities Law be triggered for Wisconsin and other state and local governmental securities offerings solely because of an auditor's qualification in an audit report on the Year 2000 issue, would result in added regulatory filing and review processes and procedures under the Wisconsin Securities Law that would not provide any "value added" investor protection benefits.

Therefore, in similar fashion to emergency rule-making action taken by the Division in 1994 and 1996 regarding specific accounting issues which occurred at those times, and for the purpose of alleviating the disruption that would occur in the borrowing/bonding plans of Wisconsin and other state and local governmental issuers that regularly claim exemption status under sec. 551.22(1)(a), Wis. Stats., for the offer and sale of their debt securities in Wisconsin, the Division, in consultation with representatives of Wisconsin accounting groups and Wisconsin bond attorneys, is adopting these emergency rules designating an alternative-to-full-GAAP financial statement requirement (when the governmental issuer's financial statements are full-GAAP) where the auditor's opinion is qualified in accordance with GASB TB 98-1 with respect to disclosures concerning Year 2000 issues. As a result of such emergency rules, those Wisconsin and other state and local governmental securities issuers affected by GASB TB 98-1 will be able to continue to rely on the "automatic" registration exemption under 551.22(1)(a), Wis. Stats., for their securities offerings.

[Because this issue which has been triggered by GASB TB 98-1 has a limited "shelf life" such that no permanent rules relating to it will be needed after December 31, 2000, when action is taken by the Division to promulgate identical permanent rules to become effective upon expiration of the emergency rules, the permanent rules will provide for a December 31, 2000 "sunset" date, after which the permanent rules on the issue will no longer be effective.]

\*The Year 2000 problem is the result of shortcomings in electronic data-processing systems and equipment that may adversely affect operations in the year 2000 and beyond. The problem stems from the use within electronic systems and equipment of two-digit storage for calendar years. Affected and uncorrected systems and equipment may be unable to distinguish

the year 2000 from the year 1900; as a result, such systems may process inaccurately or stop processing altogether.

**Publication Date:** February 25, 1999  
**Effective Date:** March 1, 1999  
**Expiration Date:** July 29, 1999

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## EMERGENCY RULES NOW IN EFFECT (3)

### *Health & Family Services* **(Management, Technology & Finance,** **Chs. HFS 1--)** **(Health, Chs. HFS 110--)**

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129**, relating to reporting and investigating caregiver misconduct.

### Finding of Emergency

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

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department-regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999  
**Hearing Dates:** January 12, 20 & 26, 1999  
**Extension Through:** March 29, 1999

2. Rules adopted creating **ch. HFS 12**, relating to caregiver background checks.

### Finding of Emergency

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

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employes or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or

children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employes and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employe or prospective employe having or expected to have access to any of its clients. If the background information form returned to an entity by an employe or prospective employe indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999  
**Hearing Dates:** January 12, 20 & 26, 1999  
**Extension Through:** March 29, 1999

3. Rules adopted amending **chs. HFS 12**, relating to background checks.

### 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:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform

procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently** bar a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes temporarily bar a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose special precautionary measures to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11(5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts, Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

**Publication Date:** December 12, 1998  
**Effective Date:** December 12, 1998  
**Expiration Date:** May 11, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Health and Family Services* (Community Services, Chs. 30--)

Rule was adopted amending s. HFS 94.24 (2)(e), relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

### Finding of Emergency

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

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats.,

commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront criminogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

**Publication Date:** August 15, 1998  
**Effective Date:** August 15, 1998  
**Expiration Date:** January 11, 1999  
**Hearing Date:** December 17, 1998  
**Extension Through:** April 30, 1999

## EMERGENCY RULES NOW IN EFFECT (2)

### Health and Family Services (Health, Chs. HSS/HFS 110--)

1. Rules adopted amending ss. **HFS 119.07 (6) (b) and 119.15**, relating to the Health Insurance Risk-Sharing Plan.

#### Exemption From Finding of Emergency

Section 149.143 (4), Stats., as affected by 1997 Wisconsin Act 27, permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats., as affected by Act 27, 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 rules. Department staff consulted with the HIRSP Board of Governors on December 11, 1998 on the proposed 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. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,123 HIRSP policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates by just over 10% 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 and the 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., as affected by Act 27.

**Publication Date:** December 31, 1998  
**Effective Date:** January 1, 1999  
**Expiration Date:** May 31, 1999  
**Hearing Date:** March 11, 1999

2. Rules adopted creating **ch. HFS 114**, relating to neonatal intensive care unit training grants.

#### Exemption From Finding of Emergency

The Legislature in s. 9122 (3tz) of 1997 Wisconsin Act 237 directed the Department to promulgate rules required under s. 9122 (3ty) of 1997 Wisconsin Act 237 by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency. These are the rules.

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

Section 9122 (3ty) (b) of 1997 Wisconsin Act 237 directs the Department to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 to provide up to 10 grants to public or private hospitals to pay for specialized training and on-site consultation and support of medical personnel of neonatal intensive care units in the principles and practice of developmentally supportive and family-centered care for high-risk infants and their families.

Section 9122 (3ty) (c) of Act 237 directs the Department to promulgate rules that establish criteria and procedures for awarding grants. The rules are to define "specialized training and on-site consultation and support," which must include a minimum of 40 hours of formal training and 160 hours of practice work.

This order creates ch. HFS 114 relating to distribution of grants to applicant public or private hospitals' neonatal intensive care units to pay for training of staff in the principles and practice of developmentally supportive and family-centered care. The rules include a process by which hospitals may apply for training funds, requirements relating to the training and requirements relating to training center record-keeping and reporting.

**Publication Date:** January 21, 1999

**Effective Date:** January 21, 1999

**Expiration Date:** June 20, 1999

**Hearing Date:** April 7, 1999

[See Notices this Register]

## EMERGENCY RULES NOW IN EFFECT (2)

### Insurance

1. Rule adopted amending s. **Ins 2.80 (2) (intro.) and (a)**, relating to delaying effective date for NAIC valuation of life insurance policies model regulation, ("XXX"), from January 1, 1999 to July 1, 1999.

### Finding of Emergency

Statutory authority: ss. 601.41 (3), 227.24

Statute interpreted: none

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

On December 16, 1997 the Commissioner created Ins 2.80, Wis. Adm. Code in order to adopt the 1995 National Association of Insurance Commissioners ("NAIC") valuation of life insurance policies model regulation, or "XXX". This new rule concerning requirements for determining the valuation of reserve liabilities for life insurance policies is currently to take effect on January 1, 1999. Recently the NAIC agreed to consider a revised model regulation and the NAIC is expected to formally approve such a model early in 1999. Wisconsin is the only state that has set January 1, 1999 as an effective date for the 1995 model regulation. This emergency order is necessary to allow time to consider implementation of the revised model regulation once it is adopted by the NAIC.

**Publication Date:** December 23, 1998

**Effective Date:** January 1, 1999

**Expiration Date:** May 31, 1999

**Hearing Date:** March 12, 1999

2. Rules adopted amending s. **Ins 3.39 (34)(b)1. and 2., 3.b., and 6.**, relating to guarantee issue eligibility for Medicare Supplement insurance.

### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance commissioners) model Medicare Supplement regulations. In order

to provide more certainty and provide guarantee issue to the appropriate persons in Wisconsin, it is necessary that the change be put into effect as soon as possible. In addition, other permanent changes to the Medicare Supplement requirements are effective February 1, 1999 and this change effective the same date will allow insurers to modify their policies one time rather than two.

**Publication Date:** January 28, 1999

**Effective Date:** February 1, 1999

**Expiration Date:** July 1, 1999

**Hearing Date:** March 3, 1999

## EMERGENCY RULES NOW IN EFFECT (3)

### Natural Resources

#### (Fish, Game, etc., Chs. NR 1--)

1. A rule was adopted revising s. **NR 45.10 (3) and (4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

### Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.
2. Establishes time frame for making reservations.

**Publication Date:** December 15, 1997

**Effective Date:** April 1, 1998

**Expiration Date:** April 1, 1999

**Hearing Date:** January 12, 1998

2. Rules adopted revising **chs. NR 10 and 11**, relating to deer hunting in Deer Management Unit 67A.

### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

**Publication Date:** June 24, 1998

**Effective Date:** October 1, 1998

**Expiration Date:** February 28, 1999

3. Rules adopted creating s. **NR 20.33 (5)**, relating to special closure of the sturgeon spearing season if harvest reaches or exceeds 80% of the total allowable harvest.

### Finding of Emergency

The department of natural resources finds that an emergency exists and rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter water clarity in Lake Winnebago has been improving steadily over the last decade at a rate faster than anticipated, which has substantially increased the potential for overharvest of sturgeon by spearers. Even with the new harvest restrictions passed in 1996, exceptionally clear water during the 1998 spearing season resulted in a total harvest of 2,051 fish, which was in excess of our total allowable harvest goals. An emergency order is needed to prevent



overharvest of sturgeon during the 1999 season while permanent rules are being developed for implementation in the year 2000.

**Publication Date:** February 5, 1999  
**Effective Date:** February 5, 1999  
**Expiration Date:** July 5, 1999  
**Hearing Date:** March 16, 1999

## **EMERGENCY RULES NOW IN EFFECT**

### **Public Instruction**

Rule adopted revising s. PI 3.03 (6) (b) 3., relating to alternate teaching permits.

### **Finding of Emergency**

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Dates:** January 4, 5, 6 & 7, 1999

## **EMERGENCY RULES NOW IN EFFECT (2)**

### **Public Service Commission**

1. Rules adopted creating ch. PSC 187, relating to Sewer Main Extension: Cost Recovery.

### **Exemption From Finding of Emergency**

Pursuant to the legislature's instruction in s. 66.076 (1) (b), Stats., as created by 1997 Wis. Act 213, and section 5 of that Act, the Public Service Commission is adopting emergency rules, establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer.

Section 5 (1)(b) of 1997 Wis. Act 213, the legislature specifically exempted the commission from finding of emergency required by s. 227.24, Stats.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Dates:** January 13 & 14, 1999

2. Rules adopted revising ch. PSC 4, relating to small generating plants.

### **Finding of Emergency**

In order to preserve the health, safety, and welfare of Wisconsin ratepayers by ensuring a reliable energy supply in 2000 and beyond, the Commission's review process of proposed new generating plants that are less than 100 MW in size must be amended. A revision is needed so the review process for such projects can be completed in time to allow construction of necessary projects, if approved, by June 1, 2000. Permanent rules cannot be adopted in time to affect the Commission's review period. An emergency rule is necessary to change the Commission's review process immediately.

**Publication Date:** January 19, 1999  
**Effective Date:** January 19, 1999  
**Expiration Date:** June 18, 1999

## **EMERGENCY RULES NOW IN EFFECT (2)**

### **Regulation & Licensing**

1. Rules were adopted creating chs. RL 131 to 135, relating to the registration and regulation of home inspectors.

### **Exemption From Finding of Emergency**

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

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to develop administrative rules which must be in effect on the effective date of the new regulation.

**Publication Date:** November 1, 1998  
**Effective Date:** November 1, 1998  
**Expiration Date:** March 31, 1999  
**Hearing Date:** December 17, 1998

2. Rules adopted creating chs. RL 140 to 142, relating to the registration of music, art and dance therapists.

### **Finding of Emergency**

The proposed rules interpret the provisions contained in s. 440.03 (14), Stats., as created by 1997 Wis. Act 261, which governs the registration of music, art and dance therapists. Section 440.03 (14)(d), Stats., states that the department shall promulgate rules that specify the services within the scope of practice of music, art and dance therapy that a registrant is qualified to perform. Section 440.03 (14)(d), Stats., gives authority to the department to make investigations and conduct hearings to determine whether a violation of that subsection or any rule promulgated under s. 440.03 (14)(d), Stats., has occurred and to reprimand a person who is registered under par. (a) or deny, limit, suspend or revoke a certification of registration if it finds that an applicant or certificate holder has violated that subsection or any rule promulgated under par. (d). These provisions will become effect on December 1, 1998.

Under the normal rule-making process, the proposed rules would not take effect until the spring of 1999. The department is requesting that this rule be put into effect before 1999 for the following reasons:

(1) The emergency rules will enable the department to adopt application which would be implemented on December 1, 1998.

(2) The emergency rules will enable the department to provide immediate guidance to the various professions regarding their scope of practice.

(3) Without the adoption of the emergency rules, the department will not be able to discipline registrants until the spring of 1999. The emergency rules will enable the department to immediately determine what constitutes grounds for discipline and to take appropriate action based upon that determination.

**Publication Date:** November 29, 1998

**Effective Date:** December 1, 1998

**Expiration Date:** April 30, 1999

**Hearing Date:** January 12, 1999

## **EMERGENCY RULES NOW IN EFFECT**

### **Revenue**

Rules adopted amending s. **Tax 2.39** and creating s. **Tax 2.395**, relating to the use of an alternative apportionment method.

### **Finding of Emergency**

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

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment methods, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25 (14), Stats. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative methods of apportionment on or before January 1, 2000.

**Publication Date:** September 29, 1998

**Effective Date:** September 29, 1998

**Expiration Date:** February 26, 1999

**Hearing Date:** December 28, 1998

## **EMERGENCY RULES NOW IN EFFECT**

### **Veterans Affairs**

Rules adopted amending s. **VA 2.01 (2) (b)2.**, relating to the expenditure limitation for dentures under the health care aid grant program.

### **Finding of Emergency**

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

The Department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2) (b) 2., Wis. Adm. Code., the Department is restricted to a \$50,000 cap per fiscal year for the

payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap. The Department was required to terminate denture coverage within the first two weeks of the most recent fiscal year. A significant number of applications were returned to veterans who were thus unable to receive coverage for dentures.

The treatment plans submitted with the applications typically encompass the removal of teeth with a resulting need for dentures. Failure to provide dentures could have a negative impact upon an individual's health. It is necessary that the Department has sufficient expenditure authority to meet the significant demand for this health care benefit. The emergency rule cap will accomplish this goal.

**Publication Date:** October 12, 1998

**Effective Date:** October 12, 1998

**Expiration Date:** March 11, 1999

**Hearing Date:** December 11, 1998

**Extension Through:** May 10, 1999

## **EMERGENCY RULES NOW IN EFFECT (2)**

### **Workforce Development**

**(Economic Support, Chs. DWD 11-59)**

1. Rules adopted renumbering ss. **HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

### **Finding of Emergency**

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

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

**Publication Date:** October 1, 1998

**Effective Date:** October 1, 1998

**Expiration Date:** February 28, 1999

**Extension Through:** March 29, 1999

2. Rules adopted renumbering **chs. HSS 80 to 82** as **chs. DWD 40 to 42**, and creating **ch. DWD 43**, relating to child support administrative enforcement.

### **Finding of Emergency**

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

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the

permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999  
**Hearing Dates:** October 13, 20 & 27, 1998  
**Extension Through:** March 29, 1999

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## **EMERGENCY RULES NOW IN EFFECT**

### ***Workforce Development***

#### **(Prevailing Wage Rates, Chs. DWD 290-294)**

Rules adopted amending s. DWD 290.155, relating to the annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

#### **Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate

preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between November 1997 and December 1998 requires that the threshold limits for prevailing wage rate determinations be raised from \$32,000 to \$33,000 for single-trade projects and from \$160,000 to \$164,000 for multi-trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/99, a single-trade project costing more than \$32,000 but less than \$33,000, or a multi-trade project costing more than \$160,000 but less than \$164,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added complication of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is proceeding with this emergency rule to avoid imposing this additional administrative burden on local governments and state agencies.

**Publication Date:** January 4, 1999  
**Effective Date:** January 4, 1999  
**Expiration Date:** June 3, 1999  
**Hearing Date:** February 11, 1999

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Agriculture, Trade & Consumer Protection*

**Subject:**

Ch. ATCP 35 – Relating to the Agricultural Chemical Cleanup Program.

**Description of policy issues:**

*Preliminary objectives:*

- Revisions to assure responsible parties and consultants follow appropriate corrective action procedures and provisions to address reimbursements when a responsible person or their contractor does not comply with certain costs control provisions of the code.
- Revisions to address reimbursement of certain costs that may be necessary to improve the effectiveness of a corrective action.
- Revisions to address reimbursements that are for both agricultural chemical discharges and other chemical contaminants, such as petroleum.

*Preliminary policy analysis:*

Current statutes provide for the Department to serve as the lead agency for directing corrective actions at most agricultural chemical discharge sites, and to reimburse a portion of the reasonable and necessary cleanup costs. The Department implements the agricultural chemical cleanup program under ch. ATCP 35, Wis. Adm. Code, and follows the investigative procedure outlined in chs. NR 700–726, Wis. Adm. Code.

Under current rules, the process to assure compliance with the chs. NR 700 rule series is unclear within ch. ATCP 35, Wis. Adm. Code. The Department can clearly deny reimbursement if the chs. NR 700 rules are violated, but the Department wishes to clarify other compliance options for circumstances such as violations of the chs. NR 700 rules by a consultant or other contractor.

Current rules establish what costs are eligible and what costs are ineligible. The Department wishes to review certain costs that are currently ineligible, but which may be necessarily incurred to provide a more complete cleanup of soils at contaminated sites.

Under current rules, a site that is contaminated by both agricultural chemicals and other contaminants such as petroleum must provide a cost allocation between the contaminants. This rule does not specify when this cost allocation formula must be prepared and the Department cannot dictate how or when other programs may decide on a cost allocation. The Department wishes to assure that the responsible person provides a cost allocation for at least the agricultural chemical contaminant portion of the work as the work is done, rather than well after the fact.

Current rules also establish certain costs control provisions and other provisions to assure a cost effective and thorough cleanup of agricultural chemical discharge sites. The Department has encountered a number of cases where certain rule provisions were not followed, but where the cleanup was still completed effectively. The Department would like to consider reimbursement options on those situations where the work was done and was done correctly, but would not be reimbursable under the current rule because certain rule provisions, such as bidding, were not followed.

*Policy alternatives:*

The Department could do nothing. Current rules are functioning and most persons are satisfied with program direction, performance and reimbursement decisions. There are, however, circumstances under the current rules where it seems the wrong person may be punished by not being reimbursed for decisions made by their consultant or other contractors. Revisions could provide a greater sense of “fairness” to those persons involved in the cleanup process. These revisions may also reduce appeals on reimbursement decisions.

**Statutory authority:**

The Department proposes to develop the revisions to the Agricultural Chemical Cleanup Program under s. 94.73 (11), Stats., and other applicable laws administered by the Department.

**Staff time required:**

The Department estimates that it will require 0.5 FTE (Full-Time Equivalent) staff time to develop the rule revisions. This time includes meetings with persons impacted by the rule, research, preparation of documents and public hearings. The Department believes that implementation of this rule will be off-set by long term time savings, through a reduction in reimbursement denial hearings.

### *Natural Resources*

#### *(Water Regulation, Chs. NR 300--)*

**Subject:**

Ch. NR 303 – Relating to procedures to be used when determining when farm drainage ditches are not considered navigable waters of the state.

**Description of policy issues:**

Chapter NR 303 is created to codify the Department’s procedures to be used when determining when farm drainage ditches are not considered navigable waters of the state pursuant to s. 30.10 (4) (c), Stats. The code essentially codifies existing program guidance as directed by the Joint Committee for Review of Administrative Rules (JCRAR) on December 8, 1998.

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

In December 1998 the JCRAR unanimously passed a motion pursuant to s. 227.26 (2) (b), Stats., requiring the Department to promulgate an emergency rule that provides direction to Department staff when making navigability determinations for farm drainage ditches. The proposed rule codifies existing Department guidance that is presently used to make navigability determinations for farm drainage ditches.

Although the rule does not change the Department’s historic operating procedures with farm drainage ditches, it applies to farmers that construct and maintain farm drainage ditches.

This action does not represent a change from past policy.

The proposed rule codifies existing Department policies.

**Statutory authority for the rule:**

Sections 30.10 (4) (c) and 227.26 (2) (b), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 46 hours. Two hearings are proposed to be held on May 26 and 27, 1999 at Stevens Point and Madison.

***Natural Resources******(Air Pollution Control, Chs. NR 400--)*****Subject:**

Ch. NR 445 – Relating to control of hazardous air pollutants.

**Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

This proposed rule revision would update the list of regulated hazardous air pollutants to reflect changes in their classifications made by the American Conference of Governmental Industrial Hygienists, the U.S. Environmental Protection Agency, the International Agency for Research on Cancer, and the National Toxicology Program.

This proposed rule revision is the first comprehensive updating of ch. NR 445 since it went into effect eleven years ago. The rule will also be reformatted for greater clarity and ease of use. Several policy issues will be considered for possible inclusion in the proposed revision, such as formalizing guidance documents, examining emission inventory reporting thresholds and de-listing perchloroethylene as a volatile organic compound.

Impacted or interested groups include stationary sources that emit one or more of the chemicals proposed for revision and environmental groups.

This action does not represent a change from past policy.

*Explain the facts that necessitate the proposed change:*

The Hazardous Air Pollutant rules were written with the express intent that they be periodically updated (for example, see s. NR 445.06 (3)). The vast majority of the rule changes are consistent with past policy; however, staff propose to add some policy items to the rule that in the past were agency guidance.

This action represents an opportunity for pollution prevention and/or waste minimization in that, by examining hazardous pollutant emissions, sources will have opportunities to explore pollution prevention.

**Statutory authority for the rule:**

Sections 285.11, 285.13, 285.17 and 285.27, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 1,494 hours. Four hearings were proposed to be held at locations and dates yet to be determined.

***Natural Resources******(Solid Waste Management,  
Chs. NR 500--)******(Hazardous Waste Management,  
Chs. NR 600--)*****Subject:**

Ch. NR 590 – Relating to technical corrections in the rules for used oil management standards.

Chs. NR 600– series — Relating to technical corrections in the hazardous waste management rules.

**Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

The revisions will correct minor problems with the rules such as incorrect cross–references, incorporation by reference errors, and other changes of a minor nature. Anyone who generates, transports, treats, stores, or disposes of hazardous waste or used oil is likely to be affected.

This action does not represent a change from past policy.

*Explain the facts that necessitate the proposed change:*

During revisions of the chs. NR 600— series and ch. NR 590 rules that became effective June 1, 1998, a number of incorrect cross–references and other textual errors were introduced. In addition, administrative procedures were not consistently followed for incorporation by reference.

**Statutory authority for the rule:**

Sections 227.11 and 289.06 (5) and chapter 291, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 198 hours. One hearing is proposed to be held in September, 1999 at Madison.

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## SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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### Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

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

#### **Health and Family Services**

##### *Rule Submittal Date*

On February 15, 1999, the Department of Health and Family Services referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### *Analysis*

Statutory authority: s. 51.42 (7) (b)

The proposed rule affects ch. HFS 41, Wis. Adm. Code, relating to in-home mental health services for children.

##### *Agency Procedure for Promulgation*

*Reason for rules, intended effects, requirements:*

The Department certifies community mental health programs pursuant to s. 51.42 (7), Stats. A Program Certification Unit in the Division of Supportive Living does the inspection, certification and enforcement based on the Department's rules. Department certification of a program is a condition for county purchase of services from the program with community aid funds.

Although the in-home rules are part of a project undertaken to update community mental health program rules, they are not themselves being updated. There are no rules now for in-home programs for children. These are all-new rules.

Medical Assistance (MA) has been paying for in-home mental health services for children, with prior authorization, since 1991, after the federal government made changes in EPSDT (Healthcheck in Wisconsin). If the EPSDT screening indicated that a child needed mental health services, those services had to be paid for by MA. They could be provided on an inpatient basis, in a clinic setting or in the child's home. Mental health clinics had been providing intensive in-home services paid by counties. Now MA began to pay for those services for MA-eligible children who were found to be severely emotionally disturbed (SED). In-home services were reimbursed as outpatient psychotherapy clinic services. Department mental health staff developed guidelines for in-home service providers. The guidelines are used by both providers and MA staff. The rules will replace the guidelines.

The new rules cover qualifications of program personnel; eligibility for services; intake and assessment procedures; enrollment of a child and family; development of a family services plan; services; limits on service intensity and duration; and areas common to all of the revised and to-be revised community mental health program rules, such as certification procedures.

##### *Forms*

HFS 41.04 (1) Application for Certification (to be developed)

HFS 41.09 (3) (b) 4. b. Request for Re-Enrollment Approval (to be developed)

##### *Agency Procedure for Promulgation*

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

#### *Contact Information*

Eleanor McLean  
Division of Supportive Living  
(608) 266-6838

#### **Insurance, Commissioner of**

##### *Rule Submittal Date*

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on February 17, 1999.

##### *Analysis*

These changes will affect s. Ins 16.01, Wis. Adm. Code, relating to annual billings for the examination of domestic insurers.

##### *Agency Procedure for Promulgation*

The date for the public hearing is April 2, 1999.

##### *Contact Information*

To obtain a copy of the proposed rule, contact:

Tammi Kuhl  
Telephone (608) 266-0110  
OCI Central Files

For additional information, please contact:

Stephen Mueller  
Telephone (608) 267-2833  
or e-mail at  
[smueller@mail.state.wi.us](mailto:smueller@mail.state.wi.us)  
OCI Legal Unit

#### **Podiatrists Affiliated Credentialing Board**

##### *Rule Submittal Date*

On February 26, 1999, the Podiatrists Affiliated Credentialing Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### *Analysis*

Statutory Authority: ss. 15.085 (5) (b) and 227.11 (2), Stats., and s. 448.695, Stats., as created by 1997 Wis. Act 175.

The proposed rule-making order relates to the regulation and licensure of podiatrists.

##### *Agency Procedure for Promulgation*

A public hearing is required and will be held on May 17, 1999 at 9:30 a.m. in Room 179A at 1400 East Washington Ave., Madison, Wisconsin.

##### *Contact Information*

Pamela Haack  
Administrative Rules Coordinator  
Telephone (608) 266-0495

**Regulation and Licensing****Rule Submittal Date**

On February 22, 1999, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

Statutory Authority: ss. 227.11 (2), 452.06 (2) and 452.07, Stats., and s. 452.05, Stats., as amended by 1997 Wis. Act 27.

The proposed rule-making order revises chs. RL 12 and 25, relating to education, pre-license and continuing education programs and courses of real estate brokers and salespersons.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on March 25, 1999 at 10:30 a.m. in Room 291 at 1400 East Washington Avenue, Madison, Wisconsin.

**Contact Information**

Pamela Haack  
Administrative Rules Coordinator  
Telephone (608) 266-0495

**Revenue****Rule Submittal Date**

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on February 16, 1999, the Department of Revenue submitted a proposed rule order to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule order creates s. Tax 1.12, relating to the electronic funds transfer or "EFT" method for paying or depositing certain taxes or fees.

**Agency Procedure for Promulgation**

The Department intends to hold a public hearing on the proposed rule order. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

**Contact Information**

If you have questions regarding this rule, you may contact:

Mark Wipperfurth  
Income, Sales and Excise Tax Division  
Telephone (608) 266-8253

**Revenue****Rule Submittal Date**

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on February 16, 1999, the Department of Revenue submitted a proposed rule order to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule order amends s. Tax 11.33 (4) (a) and (g), relating to exempt auction sales of personal farm property or household goods, and exempt sales by persons not otherwise required to hold a seller's permit.

**Agency Procedure for Promulgation**

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

**Contact Information**

If you have questions regarding this rule, you may contact:

Mark Wipperfurth  
Income, Sales and Excise Tax Division  
Telephone (608) 266-8253

**Transportation****Rule Submittal Date**

In accordance with s. 227.14 (4m), Stats., on February 25, 1999, the Department of Transportation submitted a proposed rule order to the joint Legislative Council staff.

**Analysis**

The proposed rule order affects ch. Trans 212, relating to standards for the inspection of bridges in Wisconsin.

**Agency Procedure for Promulgation**

A public hearing is required, and a public hearing is scheduled for April 12, 1999. The organizational unit responsible for the promulgation of the proposed rule is the Division of Infrastructure Development, Bureau of Highway Development.

**Contact Information**

If you have questions regarding this rule, you may contact:

Julie A. Johnson  
Paralegal  
Telephone (608) 266-8810

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## NOTICE SECTION

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### Notice of Hearings

#### *Agriculture, Trade and Consumer Protection*

► (Reprinted from February 28, 1999 *Wis. Adm. Register*)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed Department rule related to paratuberculosis (Johne's disease) which affects all breeds of cattle (beef and dairy) and goats (proposed chs. ATCP 10 and 11, Wis. Adm. Code).

#### **Written Comments**

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until April 9, 1999, for additional written comments.

Preceding each public hearing, the Department's Division of Animal Health along with the Wisconsin Veterinary Medical Association will provide a presentation on Johne's disease, including a review of the proposed rule and a question and answer period.

#### **Copies of Rule and Contact Information**

A copy of the proposed rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, P. O. Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4872. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by March 5, 1999, either by writing to Lynn Jarzombek, P. O. Box 8911, Madison, WI 53708-8911, or by calling 608-224-4883. TTY users call 608-224-5058. Handicap access is available at the hearings.

#### **Hearing Information**

Eleven hearings are scheduled:

<p><b>March 16, 1999</b> Tuesday Johne's Disease Presentation, 10:30 a.m. – 11:30 a.m. Public Hearing, 11:30 a.m. – 1:00 p.m.</p>	<p>Holiday Inn (Junction Hwys. 41 and 151) 625 West Rolling Meadows Dr. Fond du Lac, WI</p>	<p><b>March 17, 1999</b> Wednesday Johne's Disease Presentation, 10:30 a.m. – 11:30 a.m. Public Hearing, 11:30 a.m. – 1:00 p.m.</p>	<p>Craig Center Rock County 4H Fairgrounds Randall St. Janesville, WI</p>
<p><b>March 16, 1999</b> Tuesday Johne's Disease Presentation, 7:30 p.m. – 8:30 p.m. Public Hearing, 8:30 p.m. – 10:00 p.m.</p>	<p>Sister Bay Room Holiday Inn -- Airport (Junction Hwys. 41 and 172) 2580 Ashland Ave. Green Bay, WI</p>	<p><b>March 17, 1999</b> Wednesday Johne's Disease Presentation, 7:30 p.m. – 8:30 p.m. Public Hearing, 8:30 p.m. – 10:00 p.m.</p>	<p>Board Room Dept. of Agriculture, Trade and Consumer Protection 2811 Agriculture Dr. Madison, WI</p>
<p><b>March 23, 1999</b> Tuesday Johne's Disease Presentation, 10:30 a.m. – 11:30 a.m. Public Hearing, 11:30 a.m. – 1:00 p.m.</p>	<p><b>March 23, 1999</b> Tuesday Johne's Disease Presentation, 8:00 p.m. – 9:00 p.m. Public Hearing, 9:00 p.m. – 10:00 p.m.</p>	<p><b>March 23, 1999</b> Tuesday Johne's Disease Presentation, 10:30 a.m. – 11:30 a.m. Public Hearing, 11:30 a.m. – 1:00 p.m.</p>	<p>Blue Top Restaurant 3425 Church St. (Hwy Bus 51) Stevens Point, WI</p>
<p><b>March 24, 1999</b> Wednesday Johne's Disease Presentation, 10:30 a.m. – 11:30 a.m. Public Hearing, 11:30 a.m. – 1:00 p.m.</p>	<p><b>March 24, 1999</b> Wednesday Johne's Disease Presentation, 8:00 p.m. – 9:00 p.m. Public Hearing, 9:00 p.m. – 10:00 p.m.</p>	<p><b>March 24, 1999</b> Wednesday Johne's Disease Presentation, 8:00 p.m. – 9:00 p.m. Public Hearing, 9:00 p.m. – 10:00 p.m.</p>	<p>Best Western Midway Hotel (Hwy 51, Exit 190) 2901 Martin Ave. Wausau, WI</p>
<p><b>March 24, 1999</b> Wednesday Johne's Disease Presentation, 10:30 a.m. – 11:30 a.m. Public Hearing, 11:30 a.m. – 1:00 p.m.</p>	<p>Department of Agriculture, Trade and Consumer Protection 3610 Oakwood Hills Parkway Eau Claire, WI</p>	<p><b>March 24, 1999</b> Wednesday Johne's Disease Presentation, 8:00 p.m. – 9:00 p.m. Public Hearing, 9:00 p.m. – 10:00 p.m.</p>	<p>Auditorium First Floor Barron Co. Courthouse 330 E. LaSalle Barron, WI</p>



March 30, 1999  
Tuesday  
Johne's Disease  
Presentation,  
10:30 a.m. –  
11:30 a.m.  
Public Hearing,  
11:30 a.m. –  
1:00 p.m.

County Board  
Meeting Room  
Monroe Co.  
Courthouse  
112 South Court St.  
Sparta, WI

March 30, 1999  
Tuesday  
Johne's Disease  
Presentation,  
7:30 p.m. –  
8:30 p.m.  
Public Hearing,  
8:30 p.m. –  
10:00 p.m.

Pippin Conference Ctr.  
Melvill Hall  
(formerly the  
Administration Bldg.)  
UW–Richland Campus  
1200 Hwy 14 West  
Richland Center, WI

March 31, 1999  
Wednesday  
Johne's Disease  
Presentation,  
10:30 a.m. –  
11:30 a.m.  
Public Hearing,  
11:30 a.m. –  
1:00 p.m.

Youth and Ag. Ctr.  
Grant Co.  
Fairgrounds  
916 E. Elm St.  
Lancaster, WI

Written comments will be accepted until **April 9, 1999**.

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

Statutory authority: ss. 93.07 (1) and 95.195 (2)

Statute interpreted: s. 95.195

This rule repeals and recreates current rules related to paratuberculosis in cattle and goats. Paratuberculosis is commonly known as Johne's disease.

#### Background

Johne's disease is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

There is, at the present time, no test which can definitively rule out Johne's disease in an individual animal or herd of animals. However, annual herd test results can help buyers and sellers assess the risk that symptom-free animals may be infected with Johne's disease. Herd testing can also help herd owners manage or eliminate the disease in their herds.

Currently, under s. 95.195, Stats., there is in every contract for the sale of cattle and goats an "implied warranty" that the animals are free of Johne's disease. If an animal is infected with Johne's disease at the time of sale, the buyer may hold the seller liable under this "implied warranty" (even if the seller did not know that the animal was infected) unless the seller does one of the following prior to sale:

- Complies with testing and disclosure requirements prescribed by the Department. (Under current Department of Agriculture, Trade and Consumer Protection (DATCP) rules, the seller must conduct annual herd tests and disclose test results to the buyer.)

- Gives the buyer a written disclaimer that the animals are being sold "as is," without any Johne's disease warranty.

In practice, few sellers have chosen the test and disclosure alternative. Instead, many herd owners have sold their cattle with the "as is" disclaimer (which provides no meaningful herd information to buyers). The current law and rules have thus failed to achieve their goal of promoting Johne's disease testing. Current

DATCP rules also discourage testing by prohibiting the sale of confirmed Johne's disease reactors, even when the seller discloses that the animals are reactors.

Herd testing is critical for the control of Johne's disease. If herd owners do not test, this serious disease will continue to spread. The Department does not propose to mandate statewide herd testing for Johne's disease (no other state has taken that step). However, the Department proposes the following steps to encourage more voluntary herd testing by sellers who wish to avoid liability under the "implied warranty" law:

- First, the Department proposes to change its current testing and disclosure rules. This rule establishes simpler, more realistic testing and disclosure standards, based on the concept of herd risk. This rule also permits the sale of confirmed Johne's disease reactors, provided that the animals are permanently identified as reactors and the seller discloses that the animals are reactors.

- Second, the Department proposes legislation to eliminate the "as is" disclaimer option under s. 95.195, Stats. Such legislation would give herd owners more incentive to test and disclose. Sellers would face a clear choice between the "implied warranty" on one hand, and testing and disclosure on the other.

#### Rule Contents: General

Under this rule, a sale of cattle or goats is exempt from the "implied warranty" under s. 95.195, Stats., if the seller discloses all of the following to the buyer, in writing:

- The current Johne's disease classification of the herd from which the animals are sold. Herd classifications (see below) are based on annual herd tests. If the source herd is not tested annually, the herd is automatically classified "Maximum risk for Johne's disease."

- That the animals are confirmed Johne's disease reactors, if that is the case.

Under this rule, a sale of cattle or goats is also exempt from the "implied warranty" under s. 95.195, Stats., if the animals are being sold directly to slaughter. (No testing or disclosure is required; however, if an animal has been tested and is a reactor, it must be permanently marked.)

#### Test Eligible Animals

Under this rule, all bulls over 3 years old are considered "test eligible" animals. All other cattle over the average age of second lactation in the herd are considered test eligible. All goats over the age of 18 months are considered test eligible.

#### Annual Herd Test

An annual herd test may be a "whole herd test" or a "random herd test." A "whole herd test" must include every test eligible animal in the herd. In a "random herd test," an accredited veterinarian randomly selects a test group from the whole herd. The test group must include at least 30 test eligible animals, or at least 10 percent of the test eligible animals in the herd, whichever group is larger.

The date of the first annual herd test under this rule establishes an "anniversary date" for each subsequent annual herd test. Each year's test must be conducted on the "anniversary date," or within 2 months before or after the "anniversary date."

#### Herd Classifications

Under this rule, every herd of cattle and goats is classified in one of the following categories, in ascending order of risk for Johne's disease (herd owners who manage for Johne's disease can improve their classification over time):

- *Johne's preventive management level A.* The Department will classify a herd as "Johne's preventive management level A" if an annual herd test (random or whole herd) reveals no Johne's disease reactors. The Department will add a star to a herd's "Johne's disease preventive management level A" classification for each consecutive year the herd maintains that classification.

- *Johne's preventive management level B.* The Department will classify a herd as "Johne's preventive management level B" if fewer than 5% of the animals in a whole herd test are Johne's disease reactors.

- *Johne's preventive management level C.* The Department will classify a herd as "Johne's preventive management level C" if at

least 5% but not more than 15% of the animals in a whole herd test are Johne's disease reactors.

- *Johne's preventive management level D.* The Department will classify a herd as "Johne's preventive management level D" if any of the following apply:

- A random herd test reveals one or more Johne's disease reactors, unless the Department classifies the herd as "Johne's preventive management level B" or "C" based on a follow-up whole herd test.

- A whole herd test reveals more than 15% Johne's disease reactors.

- *Maximum risk for Johne's disease.* A herd is automatically classified "Maximum risk for Johne's disease," without any action by the Department, if the herd owner fails to complete a timely annual herd test. "Maximum risk for Johne's disease" is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying cattle from such a herd faces an unknown, but substantial, risk that the cattle are infected with Johne's disease.

This rule does not require a herd owner to have an annual herd test, or to have the herd classified based on herd testing. But if a herd owner does **not** have the herd classified based on annual herd tests that comply with this rule, the herd is automatically classified "Maximum risk for Johne's disease."

A herd owner is not required to disclose the herd classification when selling animals from the herd. But if the herd owner does **not** disclose the herd classification, the owner sells the animals subject to an "implied warranty." If it turns out that the animals were infected with Johne's disease at the time of sale, the seller may then be liable to the buyer for any damages which result. There is no "implied warranty" if the herd owner discloses the herd classification at the time of sale, or sells the animals directly to slaughter.

A herd owner may elect to test (and cull) animals without having the test results used for herd classification purposes. However, all Johne's disease test results must be reported to the Department, and all confirmed Johne's disease reactors must be permanently identified as such. No confirmed reactors may be moved or sold (even to slaughter) unless they are identified as reactors.

#### Commingled Animals: Classification

Animals added to a herd from a herd with a less desirable classification retain that less desirable herd classification for 120 days but do not affect the classification of the herd to which they are added. However, if animals from herds with different classifications are temporarily assembled for sale or shipment (other than for a consignment sale), the least desirable herd classification applies to all of the temporarily assembled animals.

#### Notice to Herd Owner

Whenever the Department classifies a herd based on an annual herd test, the Department must promptly provide the herd owner with all of the following information in writing:

- The individual test results for each animal included in the herd test. Test results must be identified with each animal's official individual identification.

- The herd classification. A herd classification takes effect when the Department issues the classification notice, and immediately supersedes any prior classification.

#### Test Procedure

The person conducting an annual herd test must be an accredited veterinarian, or an employe of the Department or USDA-APHIS. The person must select the test group, determine the type of test to be performed, collect an appropriate sample from each test animal, identify each sample with the animal's official individual identification and sample collection date, and transmit the samples to the testing laboratory.

Annual herd test samples must be tested by the Department, the federal bureau, or a laboratory approved by the Department or the federal bureau. The laboratory must use one of the following tests:

- The enzyme linked immunosorbent assay (ELISA), except that the ELISA test may not be used for goats.

- The fecal culture test.

- Another test approved by the Department.

#### Test Results

A laboratory performing Johne's disease tests must report the test results to the Department within 10 days. The Department will not use the test results to classify a herd unless the herd owner asks the Department to do so. If the herd owner asks the Department to classify the herd based on the test results (and if the test procedure complies with this rule), the Department will classify the herd within 30 days.

#### Johne's Disease Reactors

Under this rule, an animal is a Johne's disease reactor if any of the following applies:

- It tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test. (The ELISA test applies only to cattle, not goats.)

- It tests positive on the fecal culture test.

- It tests positive on any other test which the Department approves.

Current rules prohibit the sale of Johne's disease reactors (except to slaughter). This rule permits the sale of Johne's disease reactors if all of the following apply:

- ✓ The seller discloses to the prospective buyer in writing, prior to sale, that the animals are reactors.

- ✓ The animals are permanently identified as reactors.

Under this rule, an accredited veterinarian must permanently identify a confirmed Johne's disease reactor, even if the herd owner does not sell the animal or sells it only to slaughter. The veterinarian must identify the animal within 30 days after the animal tests positive on an ELISA or fecal culture test. If the herd owner wishes to confirm a positive ELISA test with a fecal culture, the veterinarian must collect the fecal sample within 30 days. If the fecal culture also tests positive, the veterinarian must then identify the animal as a Johne's disease reactor within 30 days.

#### Herd Vaccination

Under this rule, no person may vaccinate cattle for Johne's disease except under a herd agreement with the Department. The Department may not authorize vaccination in any herd in which the percentage of reactors in the last annual whole herd test was less than 7%, unless special circumstances warrant vaccination in that herd.

#### Misrepresenting Herd Classification

Under this rule, no person may misrepresent the classification of the herd from which cattle or goats are being sold. A seller who misrepresents a herd classification is not exempt from the implied warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats. The Department may investigate alleged misrepresentations.

#### Department Disclosure of Herd Classification

Under this rule, the Department may disclose a herd classification to a 3rd party with the written authorization of the herd owner.

#### Interstate Sales

Wisconsin's implied warranty law and this rule apply to cattle and goats from outside Wisconsin that are sold in this state (subject to Wisconsin contract law). Wisconsin's implied warranty law and this rule do not apply to sales of cattle and goats that occur outside this state (subject to another state's contract law).

#### Delayed Effective Date

This rule has a delayed effective date of July 1, 2000. The delayed effective date is intended to give producers time to complete testing and receive classifications before the new disclosure provisions take effect.

### **Fiscal Estimate**

See page 27 of the February 28, 1999 *Wis. Adm. Register*.

**Initial Regulatory Flexibility Analysis**

See page 27 of the February 28, 1999 *Wis. Adm. Register*.

**Notice to Dept. of Commerce**

Notice of the proposed rule has been delivered to the Department of Commerce, as required by s. 227.114 (5), Stats.

**Notice of Hearing****Health and Family Services  
(Health, Chs. HFS 110--)**

Notice is hereby given that, pursuant to s. 227.11 (2), Stats., and s. 9122 (3ty) (c) of 1997 Wis. Act 237, the Department of Health and Family Services will hold a public hearing to consider the creation of ch. HFS 114, Wis. Adm. Code, relating to criteria and procedures for awarding neonatal intensive care unit training grants, and the emergency rules now in effect on the same subject.

**Hearing Information**

The public hearing will be held:

<b>April 7, 1999</b>	<b>Room 291</b>
<b>Wednesday</b>	<b>Washington Square Bldg.</b>
<b>Beginning at</b>	<b>1414 E. Washington Ave.</b>
<b>9:30 a.m.</b>	<b>MADISON, WI</b>

The hearing site is fully accessible to people with disabilities.

**Analysis Prepared by the Dept. of Health & Family Services**

Section 9122 (3ty) (b) of 1997 Wis. Act 237 directs the Department to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 to provide up to 10 grants to public or private hospitals to pay for specialized training and on-site consultation and support of medical personnel of neonatal intensive care units in the principles and practice of developmentally supportive and family-centered care for high-risk infants and their families. Section 9122 (3ty) (c) of 1997 Wis. Act 237 directs the Department to promulgate rules that establish criteria and procedures for awarding grants. The rules are to define "specialized training and on-site consultation and support," which must include a minimum of 40 hours of formal training and 160 hours of practice work.

This order creates ch. HFS 114, relating to distribution of grants to applicant public or private hospitals' neonatal intensive care units to pay for training of staff in the principles and practice of developmentally supportive and family-centered care. The rules include a process by which hospitals may apply for training funds, requirements relating to the training and requirements relating to training center record-keeping and reporting.

Identical emergency rules were published on January 21, 1999.

**Copies of Rule and Contact Information**

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

Laurie Tellier  
Bureau of Family & Community Health  
1414 E. Washington Ave., Rm. 294B  
Madison, WI 53703-3044  
Telephone (608) 267-9662 or,  
if you are hearing-impaired, (608) 266-1511 (TTY)

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

hearing. With less than 10 days notice, an interpreter may not be available.

**Written Comments**

Written comments on the proposed rules received at the above address no later than **April 14, 1999** will be given the same consideration as testimony presented at the hearing.

**Fiscal Estimate**

This order establishes criteria and procedures for implementation of the neonatal intensive care unit training grant program established by s. 9122 (3ty) (c) of 1997 Wis. Act 237. The Department is to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 in the form of up to 10 grants each year to applicant hospitals to pay for specialized training and on-site consultation and support of medical personnel in the principles and practice of developmentally supportive and family-centered care for high-risk infants.

The rules will not affect the expenditures or revenues of state government or local governments. The Department will administer this new program with existing staff. Local governments are not involved in program administration. A local government could operate an applicant hospital that is awarded a training grant, but the training grant is specific for a type of training and consultation and covers the cost of that training and consultation.

**Initial Regulatory Flexibility Analysis**

The rules apply to hospitals that have neonatal intensive care units, a hospital-based training center certified to provide the kind of training and support which is financed by the grants made available under the rules, and the Department. The rules do not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. No hospital in Wisconsin is a small business by that definition.

**Notice of Hearing****Insurance**

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 16.01, Wis. Adm. Code, relating to annual billings for the examination of domestic insurers.

**Hearing Information**

<b>April 2, 1999</b>	<b>Room 6, OCI</b>
<b>Friday</b>	<b>121 E. Wilson St.</b>
<b>10:00 a.m., or as soon</b>	<b>Madison, WI</b>
<b>thereafter as the matter</b>	
<b>may be reached</b>	

**Written Comments**

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Stephen Mueller, OCI, PO Box 7873, Madison WI 53707

**Fiscal Estimate**

There will be no state or local government fiscal effect.

**Initial Regulatory Flexibility Analysis**

This rule does not impose any additional requirements on small businesses.

**Contact Person**

A copy of the full text of the proposed rule and fiscal estimate may be obtained from Tammi Kuhl, Services Section, Office of the Commissioner of Insurance, at (608) 266-0110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707-7873.

## **Analysis Prepared by the Office of the Commissioner of Insurance**

Statutory authority: ss. 601.41(3), 601.43, 601.44 & 601.45

Statute interpreted: s. 601.45 (1)

Under current rule structure, each year OCI bills domestic insurers for a proportion of the estimated total cost of administering that year's examinations program in an amount generally determined by comparing each insurer's premium volume. Today approximately 50 "domestic" insurers maintain headquarters and records outside of the State of Wisconsin. Examination of these insurers requires out of state travel and additional expenses that are not currently factored into the billing structure for each individual domestic insurer. S. 601.45 (1) Stats. requires that examinees pay the reasonable costs of examinations and allows the commissioner to determine the system of billing, actual expenses, shared expenses or both. This change in the rule will retain the concept of domestic insurers proportionally sharing examination expenses and add a factor to recognize the added costs associated with domestic insurers which require out of state examinations. Those insurers will pay higher assessments to offset those added costs. This will more equitably distribute the examination costs among insurers. The proposed amendments to the rule will not result in an increase to the aggregate amount charged the domestic insurance industry for administering OCI's examinations program.

### **Text of Rule**

**SECTION 1.** Section Ins 16.01 (6) (b) is created to read:

Ins 16.01 (6) (b) Domestic insurers located primarily out of state for examination purposes shall be billed according to the formula in par. (a) adjusted for the additional expense associated with the out of state examinations. However, the total billings to all domestic insurers shall not exceed the estimated cost of administering the insurer examinations program, as determined according to sub. (4), in any one year.

**SECTION 2.** Section Ins 16.01 (7) (a) is amended to read:

Ins 16.01 (7) (a) The maximum annual billing for any insurer shall be 1% of Net Premiums Earned or Premiums & Annuity Considerations reported in the applicable annual statement listed in Ins 7.02, for business of the second calendar year preceding the year of billing, subject to a requirement that the minimum bill for any insurer be \$1000 for domestic insurers located primarily out of state for examination purposes and \$300 for all other domestic insurers.

**SECTION 3.** The note located after Ins 16.01 (9) is replaced with the following:

**Note:** Any method for yearly billing of all domestic insurers for examination costs will be somewhat imprecise and arbitrary. This rule attempts to spread those costs in an equitable manner by adjusting billings according to insurers' premiums and the additional costs associated with performing examinations of domestic insurers located primarily out of state.

## **Notice of Hearing**

### **Public Service Commission**

Notice is given that the Commission will hold a public hearing to obtain public comment about the proposed rules to revise ch. PSC 100, Wis. Adm. Code, on **April 8, 1999, 9:00 a.m., in the Amnicon Falls Hearing Room at the Public Service Commission Office Building, 610 North Whitney Way, Madison, Wisconsin.** This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the case coordinator listed below.

This docket proposes to create a new subchapter of ch. PSC 100, Wis. Adm. Code, which establishes requirements and procedures to be applied to the ownership, control, or operation of an affiliated wholesale merchant plant.

Rules promulgated as a result of this docket are expected to: (1) describe the conditions that an applicant is required to meet for the Commission to grant approval to own, control, or operate a wholesale merchant plant; (2) establish screening tests and safe harbors for proposed wholesale merchant plant projects, including projects in which an affiliated interest is a passive investor and over which the affiliated interest is not able to exercise control or influence, and projects in which the affiliated interest's ownership interest is less than 5 percent; (3) describe the Commission's analytical process in making its determination and the factors it uses in making its finding; and (4) allow an interested person to request a hearing on an application under s. 227.42, Stats.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact the case coordinator listed below.

Anyone having questions regarding the hearing schedule in this notice may call Jeffrey Patzke, Hearing Examiner, at (608) 266-7165.

Other questions regarding this matter may be directed to Lois Hubert, Case Coordinator, at (608) 267-2210.

## **Analysis Prepared by the Public Service Commission of Wisconsin**

Statutory authority: ss. 196.02(3), 196.491(3m), and 227.11

Statutes interpreted: ss.196.52, 196.491, and 196.795

### **History**

1997 Wisconsin Act 204, generally effective May 12, 1998, created statutes governing the building and operating of non-regulated wholesale merchant plants in the State of Wisconsin. Under the newly created statutes, the Commission must make a finding that the ownership, control, or operation of a wholesale merchant plant affiliated with a public utility will not have a substantial anti-competitive effect on the electricity markets for any classes of customers, prior to approval of the plant. The proposed rules address the approval process. Newly created s. 196.491(3m)(b), Stats., provides:

(b) Duty to promulgate rules.

1. The commission shall promulgate rules that establish requirements and procedures for an affiliated interest to apply for an approval under par. (a). The rules shall do each of the following:

a. Describe the showing that an applicant is required to make for the commission to grant an approval under par. (a).am. Establish screening tests and safe harbors for proposed wholesale merchant plant projects, including projects in which an affiliated interest is a passive investor and over which the affiliated interest is not able to exercise control or influence and projects in which an affiliated interest's ownership interest is less than 5%.

b. Describe the analytical process that the commission shall use in determining whether to make a finding under par. (a) 2. and describe the factors specified in subd. 3.

c. Allow an interested person to request a hearing on an application under s. 227.42.

2. The analytical process specified in subd. 1.b. shall, to the extent practicable, be consistent with the analytical process described in the enforcement policy of the federal department of justice and the federal trade commission regarding horizontal acquisitions and mergers that are subject to 15 USC 1, 18 or 45.

3. The commission shall use the following factors in determining whether to make a finding under par. (a) 2.:

a. The degree of market concentration resulting from the affiliated interest's proposed ownership, operation or control.

b. The extent of control that the affiliated interest proposes to exercise over the wholesale merchant plant.

d. Any other factor that the commission determines is necessary to determine whether to make a finding under par. (a) 2.

On June 2, 1998, the Commission approved and submitted its Statement of Scope, in compliance with s. 227.135, Stats., and its

notice of intent to initiate rulemaking to revise ch. PSC 100, Wis. Adm. Code, to the Department of Administration (DOA) and Revisor of Statutes. The Statement of Scope was published in the June 30, 1998, Wisconsin Administrative Register.

On September 1, 1998, the Commission issued its Notice of Investigation and Request for Comments on Commission staff draft rules. The Commission requested interested parties to provide written comments on the draft language by September 22, 1998. Comments were received from the following parties: Municipal Electric Utilities of Wisconsin, Wisconsin Public Power Inc., Madison Gas and Electric Company, and Dairyland Power Cooperative; National Federation of Independent Business-Wisconsin Chapter and Citizens' Utility Board; Northern States Power Company; NRG Energy, Inc.; Wisconsin Electric Power Company; Wisconsin Industrial Energy Group; Wisconsin Power and Light Company; and WPS Resources Corporation.

At its open meeting of October 29, 1998, the Commission considered the written comments of interested parties and a Commission staff memorandum summarizing the comments received. After considering such information, the Commission approved proposed rules to revise ch. PSC 100, Wis. Adm. Code.

On October 30, 1998, pursuant to s. 227.15(1), Stats., the Commission submitted the proposed rules to Legislative Council Staff. The Commission also submitted copies of the proposed rules to the Revisor of Statutes, and the DOA.

On December 2, 1998, the Commission received the Wisconsin Legislative Council Staff's Clearinghouse Report to Agency regarding the Commission's proposed rules. The Commission intends to address the comments of the Wisconsin Legislative Council Staff before submitting the proposed rules to the Wisconsin Legislature.

Anyone wishing to receive a copy of the proposed rules, as amended to incorporate the comments contained in the Legislative Council Staff's Clearinghouse Report to Agency should contact Lois Hubert, Case Coordinator, at (608) 267-2210.

### **Fiscal Estimate**

The Commission anticipates that there will be no fiscal impact of the proposed rules on state or local units of government.

### **Initial Regulatory Flexibility Analysis**

The proposed rules would apply to public utilities as defined in s. 196.01(5), Stats., and affiliated interests of public utilities as defined in s. 196.52(1), Stats. It is unlikely that the affiliated interest of a public utility will be a small business as defined in s. 227.114, Stats. The proposed rules do not affect small businesses as defined in s. 227.114, Stats.

### **Environmental Analysis**

This is a Type III action under s. PSC 4.10(3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

## **Notice of Hearing Regulation and Licensing**

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 452.06 (2) and 452.07, Stats., and s. 452.05, Stats., as amended by 1997 Wis. Act 27, and interpreting ss. 452.05, 452.09 (2) and 452.12 (5), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to revise chs. RL 12 and 25, relating to education, pre-license and continuing education programs and courses of real estate brokers and salespersons.

## **Hearing Information**

March 25, 1999  
Thursday  
10:30 A.M.

Room 291  
1400 E. Washington Ave.  
MADISON, WI

## **Written Comments**

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 **April 8, 1999** to be included in the record of rule-making proceedings.

## **Analysis prepared by the Dept. of Regulation & Licensing**

Statutes authorizing promulgation: ss. 227.11 (2), 452.06 (2) and 452.07, Stats., and s. 452.05, Stats., as amended by 1997 Wis. Act 27.

Statutes interpreted: ss. 452.05, 452.09 (2) and 452.12 (5)

This proposed rule-making order was prepared with the assistance, review and recommendation of the Council of Real Estate Curriculum and Examinations and the Real Estate Board. These proposed rules make two substantive changes and many minor amendments relating to the primary changes. First, this proposal defines "distance education" and provides criteria for the Department to approve educational programs and courses presented by distance education. "Distance education" is distinguished from "classroom education." The definition of "classroom education" focuses on the fact that an instructor is physically present in the classroom for the purpose of providing instruction in person, or a proctor is physically present in the classroom for the purpose of taking attendance and supervising the presentation of instruction by an instructor who is present by an electronic, audio or audiovisual medium. The definition of "distance learning" focuses on the fact that neither an instructor nor a proctor is physically present with the student. The student may undertake instruction by using a paper, electronic or audiovisual medium by himself or herself without an instructor or proctor present to take attendance or supervise the presentation of the instruction.

Secondly, this proposal creates criteria for the approval of pre-license and continuing education programs and courses presented by distance education. These criteria do not require an approved school to present distance education programs and courses for a specific number of hours. However, the specific number of hours are still required for "classroom education." Many minor amendments occur throughout the proposal, in order to clarify these primary changes.

The criteria for approval of distance education programs and courses have been added to ss. RL 25.06 and RL 25.066, relating to the approval of pre-license and continuing education noncredit programs and instructors. The criteria address the need for a school to ascertain that instructors are available to students at reasonable times and by reasonable means, that there will be a reasonable level of examination security for the examination given at the end of continuing education courses, that the courses will sufficiently cover the subjects specified for courses, that the school will provide reasonable oversight to ensure that the students who take the examination are the enrolled students, and that the school will provide a reasonable opportunity for student self-evaluation of mastery.

This proposal modifies some of the contents of the pre-license broker's and salesperson's courses in order to stay current with statutory changes, rule changes, and changes in the practices of the industry.

A few policies are amended because they are no longer needed. One example is the need for an approved school to submit a reapproval application every year. The requirement that a school

must inform the department of changes in its structure or programming within 10 days after a change is made remains in the rules. Some forms have been eliminated by these changes and the notes at the end of certain sections have been changed accordingly.

### Text of Rule

**SECTION 1.** RL 12.04 (1) (a) is amended to read:

RL 12.04 (1) (a) The applicant shall either provide proof of having successfully completed the classroom education which was required during the biennium preceding the date of renewal of the applicant's license, provide proof of having successfully passed the test-out examination which was administered during the biennium preceding the date of renewal of the applicant's license, or provide proof of having successfully completed any 8 of the 15 hours of education in s. RL 25.03 (3) (h) and the 4 hours of education in s. RL 25.03 (3) (m), or of having successfully completed the educational program in s. RL 25.035 (2). In this paragraph "successfully completed" means passing an examination pursuant to s. RL 25.066 (6) (d).

**SECTION 2.** RL 12.04 (1) (b) is repealed.

**SECTION 3.** RL 25.01 (2m) is created to read:

RL 25.01 (2m) "Classroom education" means the provision of educational programs or courses to one or more students in a setting in which either an instructor is physically present with the students or a representative of an approved school is physically present with the students for the purpose of taking attendance and providing instruction by audiotape, cable television, satellite line or other similar method and the instructor is available for student questions by telephone or E-mail, or by a continuous 2-way audio or audiovisual connection.

**SECTION 4.** RL 25.01 (3) and (4) are amended to read:

RL 25.01 (3) "Continuing education course" means an approved segment of the total number of a continuing education hours program required by the department pursuant to s. 452.05 (1) (d), Stats.

(4) "Continuing education program" means the total number of continuing education hours or subjects required by the department pursuant to s. 452.05 (1) (d), Stats.

**SECTION 5.** RL 25.01 (5m) is created to read:

RL 25.01 (5m) "Distance education" means the provision of educational programs or courses without an instructor or a representative of an approved school physically present with the students. "Distance education" includes, but is not limited to, the delivery of educational programs and courses on CD-ROM, computer disk, or the Internet.

**SECTION 6.** RL 25.01 (7) is amended to read:

RL 25.01 (7) "Hour" means a period of 50 minutes of actual classroom instruction and shall not include time spent in writing tests or examinations given by the school.

**SECTION 7.** RL 25.02 (1) (intro.), (a), (2) (title), (2) (intro.) and (a) are amended to read:

RL 25.02 (1) EDUCATIONAL REQUIREMENTS. Each applicant for an original real estate broker's license shall ~~do~~ satisfy any one of the following requirements:

(a) Present evidence satisfactory to the department of successful completion, within 5 years before application for a license, of the ~~36-hour~~ educational program in sub. (2), which has been approved in accordance with this chapter, and either satisfy the salesperson's educational requirements in s. RL 25.03 (3) or present evidence satisfactory to the department of licensure as a salesperson;

(2) ~~BROKER'S 36-HOUR PRE-LICENSE PROGRAM.~~ The ~~36-hour~~ educational programs program for applicants for an original real estate broker's license shall cover all of the following topics under each paragraph title, be presented during and, if presented as classroom education, shall be presented in no less than the number of 36 hours stated after each paragraph title, and include:

(a) Contracts. ~~2 hours.~~

**SECTION 8.** RL 25.02 (2) (a) 7. is created to read:

RL 25.02 (2) (a) 7. Commercial real estate commission lien – s. 779.32, Stats.

**SECTION 9.** RL 25.02 (2) (b) to (f), (g) (intro.) and 2. to 5., (h) and (i) are amended to read:

RL 25.02 (2) (b) Approved forms. ~~4 hours.~~

(c) Trust accounts, escrow, closing statement. ~~5 hours.~~

(d) Business management and marketing. ~~5 hours.~~

(e) Financial and office management. ~~4 hours.~~

(f) Personnel. ~~4 hours.~~

(g) Business ethics. ~~4 hours.~~

2. ~~Advertising – s<sup>2</sup> RL 24.04.~~

3. ~~Offers – ss<sup>2</sup>. RL 24.12, 24.13.~~

4. ~~Self-dealing – s<sup>2</sup>. RL 24.05.~~

5. ~~Disclosure – s<sup>2</sup> RL 24.07.~~

(h) Consumer protection. ~~5 hours.~~

(i) Specialty areas. ~~3 hours.~~

**SECTION 10.** RL 25.025 (title), (1) (intro.), (a), (b), (2) (intro.) and (a) are amended to read:

**RL 25.025 Satisfaction of broker's 36-hour program educational requirements by out-of-state applicants.** (1) An applicant who has held an active real estate broker's license in another licensing jurisdiction within the 2 year period prior to filing an application for an original real estate broker's license in Wisconsin may satisfy the broker's educational requirements of s. RL 25.02 (2) (1) if the applicant submits by submitting evidence of all one of the following:

(a) Attendance at ~~3 hours of the education educational programs~~ under sub. (2) and s. RL 25.035 (2) at a school approved by the department under s. RL 25.05 or 25.06; ~~or~~

(b) Attendance at ~~33 hours of education on some or all contents of Satisfaction of the requirements in~~ s. RL 25.02 (2), completed at any school (1) (b) or (c).

(2) The ~~content contents~~ of the ~~3-hour course educational program~~ shall include all of the following and, if presented as classroom education, shall be presented in no less than 3 hours:

(a) Broker-only contracts and contract issues. ~~Minimum of 5 hours.~~

**SECTION 11.** RL 25.025 (2) (a) 7. is created to read:

RL 25.025 (2) (a) 7. Commercial real estate broker's commission lien – s. 779.32, Stats.

**SECTION 12.** RL 25.025 (2) (b) and (c) are amended to read:

RL 25.025 (2) (b) Miscellaneous Wisconsin laws. ~~Minimum of 5 hours.~~

(c) Review, update or more in-depth coverage of any of the contents of the ~~13-hour salesperson's educational~~ course in s. RL 25.035 (2).

**SECTION 13.** RL 25.03 (1), (2) (title), (3) (title), (3) (intro.), (a) (intro.) and 6., (b) to (k), (L) (intro.) and 4. and (m) to (r) are amended to read:

RL 25.03 (1) GENERAL REQUIREMENTS. Each applicant for an original real estate salesperson's license shall present evidence of attendance, within 5 years before application for a license, at the ~~72-hour~~ educational program in sub. (3), which has been approved by the department in accordance with this chapter s. RL 25.05 or 25.06.

(2) ~~TEN-HOUR TEN SEMESTER-HOUR WAIVER.~~

(3) SALESPERSON'S ~~72-HOUR PRE-LICENSE PROGRAM.~~ The ~~72-hour~~ educational program for applicants for an original real estate salesperson's license shall include cover all of the following topics and, if presented as classroom education, shall be presented in no less than 72 hours:

(a) Real property. ~~4 hours.~~

6. Types of housing Mobile homes – s. 70.043, Stats.

(b) The real estate business. ~~4 hour.~~

(c) Real estate brokerage. ~~3 hours.~~

- (d) Listing agreements. ~~5 hours.~~
- (e) Interests in real estate. ~~5 hours.~~
- (f) Legal descriptions. ~~3 hours.~~
- (g) Taxes and other liens. ~~2 hours.~~
- (h) Real estate contracts. ~~15 hours.~~
- (i) Title records and transfers of title. ~~2 hours.~~
- (j) Real estate finance and basic math. ~~7 hours.~~
- (k) Appraisal – market analysis. ~~5 hours.~~
- (L) Fair housing laws. ~~2 hours.~~
- 4. Equal rights – s. ~~401.22~~ 106.04, Stats.
- (m) Ethical real estate practices. ~~4 hours.~~
- (n) Leases. ~~2 hours.~~
- (o) Property management. ~~1 hour.~~
- (p) Land use control and development. ~~3 hours.~~
- (q) Environmental concerns. ~~3 hours.~~
- (r) Miscellaneous Wisconsin license laws. ~~5 hours.~~

**SECTION 14.** RL 25.035 (title), (1) (intro.), (a), (b), (2) (intro.) and (a) to (h) are amended to read:

**RL 25.035 Satisfaction of salesperson's 72-hour program educational requirements by out-of-state applicants.** (1) An applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original real estate salesperson's license in Wisconsin may satisfy the educational requirements of s. RL 25.03 (3) if the applicant submits evidence of all having completed one of the following:

(a) Attendance at ~~no less than 13 hours of education~~ the educational program in sub. (2) at a school approved by the department under s. RL 25.05 or 25.06.

(b) Attendance at ~~59 hours of education on some or all contents of Satisfaction of the 10 semester-hour waiver in~~ s. RL 25.03 (3) ~~(2), completed at any school.~~

(2) The ~~content~~ contents of the ~~13-hour course~~ educational program shall include all of the following and, if presented as classroom education, shall be presented in no less than 13 hours:

- (a) Contracts. ~~Minimum of 3.5 hours.~~
- (b) Agency. ~~Minimum of 2 hours.~~
- (c) Business conduct. ~~Minimum of 1 hour.~~
- (d) Consumer protection. ~~Minimum of 2 hours.~~
- (e) Fair housing. ~~Minimum of 5 hours.~~ Wisconsin law – s. RL 24.03 (1), ss. 66.432, 106.04, Stats.
- (f) Environmental factors. ~~Minimum of 1 hour.~~
- (g) Trust accounts and escrows. ~~Minimum of 1.5 hours.~~
- (h) Miscellaneous issues. ~~Minimum of 1.5 hours.~~

**SECTION 15.** The Note following s. RL 25.05 (1) (e) is amended to read:

**Note:** An applicant may obtain a copy of the Application for Approval of Pre-license Credit Courses which satisfy the 72-hour and 36-hour requirement, Form #828, from the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Room 281, P.O. Box 8935, Madison, Wisconsin 53708.

**SECTION 16.** RL 25.05 (3) is amended to read:

RL 25.05 (3) When approving one or more pre-license credit courses, the department shall specify the single course or combination of courses which satisfy cover either the ~~36 hours~~ topics in s. RL 25.02 (2) or the ~~72 hours~~ topics in s. RL 25.03 (3).

**SECTION 17.** RL 25.05 (6) and the Note following (6) are repealed.

**SECTION 18.** RL 25.06 (title), (1) (a), the Note following (1) (a), and (b) are amended to read:

**RL 25.06 Requirements for approval of pre-license noncredit programs and instructors.** (1) APPROVAL OF PROGRAMS. (a) A school seeking initial approval from the

department of pre-license educational noncredit programs or courses shall submit its application on a form provided by the department. ~~The approval of programs shall expire on August 15 following the date of initial approval and every August 15 thereafter. A school shall obtain approval of credit courses before the school conducts courses in the year following August 15.~~

**Note:** An applicant may obtain a copy of the Application for Approval of Pre-license Non-credit 72-hour and 36-Hour Noncredit Programs, Form #830, and the Application for Reapproval of Programs and Courses, Form #829, from the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Room 281, P.O. Box 8935, Madison, Wisconsin 53708.

(b) The department may require a school seeking initial approval and reapproval of pre-license educational noncredit programs or courses to describe or furnish its organizational structure, registration policies, fee schedules, promotional materials, detailed outlines of each program or course with specific allocations of classroom hours to each topic presented as classroom education, student records system, the names and qualifications of instructors, the method of instruction, the method for evaluating instructors and a summary of evaluations conducted, and the time, date and location of each program.

**SECTION 19.** RL 25.06 (1) (e) is repealed and recreated to read:

RL 25.06 (1) (e) A school seeking the approval of pre-license noncredit programs or courses presented as distance education is not required to designate the number of hours of instruction; however, it shall certify to the department that it will not do all of the following:

1. Ensure that instructors approved by the department under sub. (2) are available to the students at reasonable times and by reasonable means.

2. Ensure that the distance education programs and courses will sufficiently cover the required subjects.

3. Provide reasonable oversight to ensure that students who complete the distance education program are the enrolled students.

4. Ensure that the school's distance education program and courses will provide a reasonable opportunity for student self-evaluation of mastery.

**SECTION 20.** RL 25.065 (5) is amended to read:

RL 25.065 (5) A person who receives an original salesperson's or broker's license during a licensing biennium, ~~and who was not licensed as either a salesperson or broker on the first day of the biennium~~ is not required to satisfy the continuing education requirement during the biennium in which the person becomes a licensee receives that license. ~~However, a person who held a salesperson's license before the first day of a biennium and subsequently receives a broker's license must satisfy the continuing education requirement during the biennium in which the person receives a broker's license.~~

**SECTION 21.** RL 25.066 (1) and (4) are amended to read:

RL 25.066 (1) A school seeking ~~initial~~ approval from the department of ~~the~~ a continuing education program or a course shall submit its application on a form provided by the department. A school shall submit ~~applications~~ an application for approval of a continuing education ~~programs and~~ program or course to the department before conducting ~~any~~ the continuing education program or course which the department has prescribed for a licensing biennium.

(4) The department may require a school seeking initial approval and reapproval of continuing education programs and courses to describe or furnish its organizational structure, registration policies, fee schedules, promotional materials, detailed outlines of each program with specific allocations of ~~classroom~~ hours to each topic presented as classroom instruction, student records system, the names and qualifications of administrators and instructors, the method of instruction, a summary of evaluations conducted, information about the school's response to complaints concerning an instructor, ~~and the time, date and location of each continuing education program.~~

**SECTION 22.** RL 25.066 (6) (b) is repealed.

**SECTION 23.** RL 25.066 (6) (c) to (f) are amended to read:

RL 25.066 (6) (c) A school shall submit to the department with the application for approval at least 5 ~~15~~ multiple-choice questions for each hour of instruction course. The school shall clearly indicate the answer to each question and the portion of the course outline to which the question relates. The questions shall comply with reasonable standards of test development and shall relate to the substantive contents of the continuing education program or course. The questions shall be the original work of the writer and not be published. A school may only make questions available to school personnel.

(d) A school shall agree to conduct an examination at the end of each continuing education program or course. The examination shall contain at least 5 ~~15~~ multiple-choice questions for each hour of instruction course. The In courses presented by classroom education, the examination shall be closed-book and the passing score shall be no less than 70%, unless the school provides substantial justification to the department for a lower score and the department approves the lower passing score.

(e) A school shall agree not to make available to students before the students take a specific examination the questions or answers to the questions. A school shall keep tests and answer sheets in a secure location at all times before and after administration of the examination, ~~including during construction and printing.~~

(f) A school shall agree to inform students about the number of points of credit for each question in the examination and the passing score. It shall also provide clear instructions to students for recording their responses ~~on the examination booklet to the questions.~~

**SECTION 24.** RL 25.066 (6) (i) is repealed.

**SECTION 25.** RL 25.066 (6) (j) is amended to read:

RL 25.066 (6) (j) A school may not count examination time as part of the required classroom hours required in a classroom education course.

**SECTION 26.** RL 25.066 (6) (k) is created to read:

RL 25.066 (6) (k) A school seeking the approval of continuing education programs and courses presented as distance education is not required to designate the number of hours of instruction; however, it shall certify to the department that it will do all of the following:

1. Ensure that instructors approved by the department under sub. (2) are available to the students at reasonable times and by reasonable means.
2. Provide a reasonable level of examination security for the examination given at the end of each distance education continuing education course.
3. Sufficiently cover the subjects specified for continuing education courses.
4. Provide reasonable oversight to ensure that the students who take the examination are the enrolled students.
5. Provide a reasonable opportunity for student self-evaluation of mastery.

**SECTION 27.** RL 25.07 (1) and (2) (c) 4. are amended to read:

RL 25.07 (1) ATTENDANCE REQUIREMENTS. A student shall attend all the required hours of a classroom education course and receive cover all the required contents of a classroom education course or a distance education course before a school may give a certificate of attendance to the student. In addition, for continuing education programs and courses, a student shall also satisfactorily complete the course examination administered by the school, as provided in s. RL 25.066 (6) ~~(g) to (i)~~ (d).

(2) (c) 4. Clearly state the number of hours the student has successfully completed ~~both by attending the complete program or course or by passing the program or course examination in an educational program presented as classroom education.~~

**SECTION 28.** RL 25.075 (3) is amended to read:

RL 25.075 (3) The continuing education examination shall cover the subjects required for continuing education approved by the department under s. 452.05 (1) (d) and (g), Stats., and shall have no less than 5 questions for each hour of instruction required of classroom education courses in the approved continuing education program or courses.

**SECTION 29.** RL 25.075 (4) is repealed.

**SECTION 30.** RL 25.076 is repealed.

### **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, WI 53708  
Telephone (608) 266-0495

### **Notice of Hearing** *Transportation*

Notice is hereby given that pursuant to s. 85.16 (1), Stats., and interpreting s. 84.17 (3), Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider the amendment of ch. Trans 212, Wis. Adm. Code, relating to standards for the inspection of bridges in Wisconsin.

### **Hearing Information**

April 12, 1999  
Monday  
9:00 a.m.

Room 639  
Hill Farms State  
Transportation Bldg.  
4802 Sheboygan Ave.  
MADISON, WI

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

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.

### **Written Comments**

The public record on this proposed rule-making will be held open until close of business on **April 19, 1999**, 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:

Bruce Karow  
Department of Transportation  
Bureau of Highway Development, Room 601  
P. O. Box 7916  
Madison, WI 53707-7916



**Analysis Prepared by the Wis. Dept. of Transportation**

Statutory authority: s. 85.16 (1)

Statute interpreted: s. 84.17 (3)

**General Summary of Proposed Rule.** Under s. 84.17 (3), Stats., the Department of Transportation has been directed to establish standards for a continuing highway bridge inspection program. An initial rule was adopted in 1982 and revised in 1992. This rule making will bring the rule into conformance with federal bridge inspection standards and allow for a more appropriate inspection interval for some bridges.

Related statutes and rules include s. 84.18, Stats., which establishes a program to accelerate the reconstruction or rehabilitation of seriously deteriorating local bridges identified by the inventory of bridges required under s. 84.17, Stats. Chapter Trans 213 implements the bridge reconstruction and rehabilitation program. In addition, some deteriorated bridges may be eligible for state aid in reconstruction under s. 84.11, Stats. Chapter Trans 215 establishes criteria for determining eligibility under this program for replacing or constructing local high cost bridges.

The first section of this rule amends the definition of the "AASHTO" manual to reflect the fact that a more recent edition has been published. It also changes the name of the appropriate division in the Department of Transportation to reflect the current organizational structure. Finally, it changes the names of the report forms to reflect current practice. The second section allows bridge inspections on a two year interval rather than annually. It also allows certain types of bridges to be inspected at up to four year intervals upon agreement with FHWA. The third section changes reporting

dates slightly to allow more time for computer data entry of inspection information by Department personnel.

**Initial Regulatory Flexibility Analysis**

The proposed amendments to ch. Trans 212 will have no effect on any small business as the rule only applies to the state while performing the governmental function of highway bridge inspection.

**Fiscal Estimate**

The proposed amendments to ch. Trans 212 will have no effect on the fiscal liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, or sewerage district. The proposed amendments have no effect on state liabilities or revenues. This estimate is based on the fact that the changes merely brings Wisconsin into conformance with what FHWA already allows.

**Copies of Rule and Contact Information**

Copies of the proposed rule may be obtained upon request, without cost, by writing to:

Bruce Karow  
Department of Transportation  
Bureau of Highway Development, Room 601  
P. O. Box 7916  
Madison, WI 53707-7916  
Telephone (608) 266-3722

Alternate formats of the proposed rule will be provided to individuals at their request.

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**NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,  
UNDER S. 227.19, STATS.**

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

**Natural Resources (CR 98-195):**

S. NR 25.06 (2) (e) 2. – Relating to commercial fishing for whitefish in Green Bay and Lake Michigan.

**Social Workers, Marriage & Family Therapists and Professional Counselors Examining Board (CR 98-53):**

S. SFC 1.02 (intro.) and ch. SFC 8 – Relating to continuing education requirements for renewal of social worker certificates.

**Workforce Development (CR 98-201):**

Ch. DWD 14 – Relating to the administration of an electronic benefit transfer system for the delivery of food stamp benefits.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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*The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.*

**Natural Resources (CR 98-55):**

An order affecting ch. NR 16, relating to the development of fees, criteria and procedures to use when permitting the use of natural waters as fish farms.

Effective 05-01-99.

**Revenue (CR 98-184):**

An order affecting ss. Tax 2.39 and 2.395, relating to the use of an alternative apportionment method.

Effective 04-01-99.

**Technical College System Board (CR 98-104):**

An order affecting chs. TCS 6 to 9, relating to:

- 1) Procurement policies and procedures;
- 2) District budget, audit and finance;
- 3) Contracts for services; and
- 4) District reporting of student participation in compulsory school attendance, post-secondary options and technical preparation programs.

Effective 05-01-99.

**Transportation (CR 98-143):**

An order amending s. Trans 510.05, relating to eligibility of Transportation Facilities Economic Assistance and Development program (TEA) projects.

Effective 04-01-99.

**Transportation (CR 98-185):**

An order affecting s. Trans 101.02 (1) (c) and (d), relating to demerit point assessment for operating after suspension and revocation offenses.

Effective 04-01-99.

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## *PUBLIC NOTICE*

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### **Public Notice**

*Dept. of Revenue*

#### **(One-Time Increase in the School Property Tax Credit for Tax Year 1998)**

1997 Wis. Act 237 directed the Department of Revenue to design a one-time increase in the school property tax credit for tax year 1998 that utilizes the general fund balance existing at the end of FY98 (Fiscal Year 1998) and to publish notice of the credit in the Wisconsin Administrative Register. In his veto message, the Governor limited the tax relief to be provided by the credit increase to \$125 million.

The one-time credit designed by the Department raises the credit rate to 14% from the statutory rate of 10% and raises the maximum property tax, or rent constituting property tax, eligible for the credit to \$2,500 from \$2,000. Individual income taxpayers receive the one-time credit by filing a 1998 tax return.

#### **Contact Information**

More information about the credit may be obtained from Department of Revenue offices or by calling:

(608) 266-2772

or

(608) 266-2486



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BUREAU OF INTEGRATED DOCUMENT SERVICES  
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