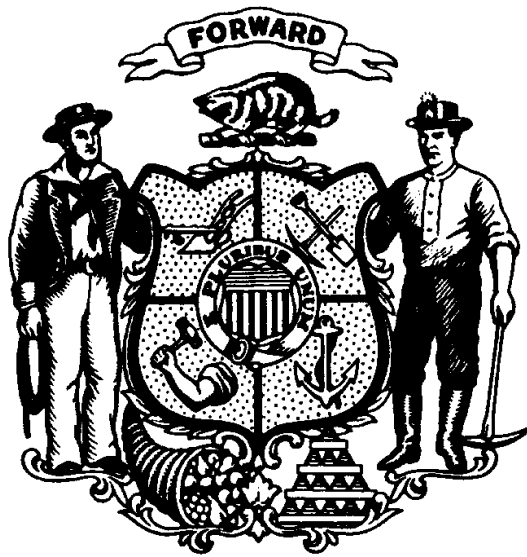


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 522**



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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 were adopted amending s. ATPC 60.19 (3) and (4), relating to drug residues in raw milk.

#### Finding of Emergency

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

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATPC 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

<b>Publication Date:</b>	<b>April 30, 1999</b>
<b>Effective Date:</b>	<b>April 30, 1999</b>
<b>Expiration Date:</b>	<b>September 27, 1999</b>
<b>Hearing Date:</b>	<b>June 18, 1999</b>

2. Rules adopted revising s. ATPC 10.45, relating to security of dairy plant payments to milk producers.

#### Finding of Emergency

(1) Section 100.06, Stats., is designed to provide "reasonable assurance" that dairy farmers will be paid for the milk they produce. Under ss. 97.20(2)(d)2. and 100.06, Stats., a dairy plant must, as a condition to licensing, comply with applicable security requirements under s. 100.06, Stats., and department rules under ch. ATPC 100, Wis. Adm. Code. Since dairy plant licenses expire on April 30 annually, dairy plants must comply with applicable security requirements in order to qualify for license renewal on May 1 of each year.

(2) Under s. 100.06, Stats., and ch. ATPC 100, a dairy plant operator who purchases milk from producers must do one of the following:

(a) File with the department of agriculture, trade and consumer protection ("department") audited financial statements which show that the operator meets minimum financial standards established by s. 100.06, Stats.

(b) File security with the department in an amount equal to at least 75% of the operator's "maximum liability to producers," as calculated under s. ATPC 100.45(5).

(c) Enter into a dairy plant trusteeship under ch. ATPC 100, Subch. V.

(3) Under s. ATPC 100.45(5), a dairy plant operator's "maximum liability to producers" is based on the plant operator's largest monthly purchase of milk during the *preceding* license year. Milk prices hit all time record highs in 1998, dramatically increasing monthly dairy plant payrolls. Security requirements for the 1999

license year are currently based on these inflated 1998 monthly payrolls, even though 1999 monthly payrolls have dropped dramatically in response to price changes.

(4) Since December 1998, the average market price for raw milk has fallen by approximately 40%. Dairy economists expect BFP average prices to remain at least 12% to 16.2% below last year's average during 1999. Because of the dramatic decline in milk prices, dairy plants have smaller producer payroll obligations than they had in 1998.

(5) Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since December. This has created serious financial hardships for some dairy plants.

(6) Current security requirements, based on 1998 producer prices and payrolls, are excessive in relation to current payroll obligations and impose an added financial burden on dairy plants. Current security requirements under s. ATCP 100.45(5), based on last year's prices, are at least 31 to 48% higher than they would be if calculated at current prices.

(7) Because of the dramatic decline in dairy prices, some dairy plant operators are required to file large amounts of additional security, often amounting to millions of dollars. This is a major expense for affected operators. Operators may find it difficult, financially, to obtain and file the required security. If a dairy plant is unable to file the required security in connection with the May 1, 1999 license renewal, the department will be forced to take action against the dairy plant's license. This could result in the forced closing of some unsecured dairy plants. The forced closing of an unsecured plant may, in turn, result in serious financial losses to producer patrons.

(8) By requiring excessive security based on last year's prices, current rules are making it unnecessarily difficult and expensive for dairy plants to obtain and file security. This could contribute to the financial failure of some dairy plants, or to the forced closing of some unsecured plants. Dairy plant financial failures or closings, if they occur, may cause serious and widespread financial injury to milk producers in this state. This constitutes a serious and imminent threat to the public welfare.

(9) In order to reduce the risk of dairy plant financial failures or forced closings, rule amendments are urgently needed to adjust dairy plant security requirements to appropriate levels based on current milk prices. The rule amendments will relieve financially stressed dairy plants from unnecessary financial burdens and will make it easier for those dairy plants to file security with the department. That, in turn, will reduce the risk of dairy plant financial failures, or the forced closing of unsecured plants, which may adversely affect milk producers.

(10) Rule amendments, to be effective, must be promulgated prior to the dairy plant license year beginning May 1, 1999. That is not possible under normal rulemaking procedures. Therefore, the following emergency rule is needed to protect the public welfare.

(11) Should milk prices rise beyond the levels currently anticipated for the license year beginning May 1, 1999, so that security filed under this emergency rule is less than 75% of a dairy plant operator's current monthly producer payroll, the operator is required to notify the department of that fact under s. 100.06, Stats., and s. ATCP 100.20(3). The department may demand additional security at that time.

**Publication Date:** April 20, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999

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## 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  
**Extension Through:** July 8, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Commerce & Natural Resources

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

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:** July 23, 1999

**Extension Through:** August 21, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### Commerce

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

1. 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:** February 17, 1999

**Effective Date:** February 17, 1999

**Expiration Date:** July 17, 1999

**Hearing Date:** April 12, 1999

2. 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

1. 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

**Extension Through:** June 30, 1999

2. 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:

1. Adopts the statutory definitions of adult, delinquent, and juvenile.
2. Defines the term secure custody status.
3. Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.
4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.
5. 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.
6. Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.
7. 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.
8. 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.
9. 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  
**Extension Through:** July 7, 1999

3. 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  
**Extension Through:** July 29, 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  
**Extension Through:** July 1, 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

### *Professional Geologists, Hydrologists and Soil Scientists*

Rules adopted creating **chs. GHSS 1 to 5**, relating to the registration and regulation of professional geologists, hydrologists and soil scientists.

### Exemption From Finding of Emergency

The Examining Board of Geologists, Hydrologists and Soil Scientists finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, safety or welfare. A statement of the facts constituting the emergency is:

Section 64 of 1997 Wis. Act 300 states that the board is not required to make a finding of emergency. However, the board offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of professional geologists, hydrologists and soil scientists was created in 1997 Wis. Act 300. The Act was published on June 30, 1998; however the Act created an effective date for the new regulation as being the first day of the 6th month beginning after the effective date of this subsection.

**Publication Date:** May 15, 1999  
**Effective Date:** May 15, 1999  
**Expiration Date:** October 12, 1999  
**Hearing Date:** June 23, 1999

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## EMERGENCY RULES NOW IN EFFECT (4)

### *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:** June 27, 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 employees 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 employees 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 employee or prospective employee having or expected to have access to any of its clients. If the background information form returned to an entity by an employee or prospective employee 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:** June 27, 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 4, 1999  
**Extension Through:** June 27, 1999

### 4. Rules adopted revising **chs. HFS 12 and 13**, created as an emergency rules relating to caregivers background checks and reporting of caregiver misconduct.

#### 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** included an appendix which consisted of a list of crimes. That Crimes List was modified by emergency order published on December 12, 1998. This order, which is being published following the Department's public hearings on the emergency rules and the proposed replacement permanent rules, makes further significant changes in the Crimes List and other parts of the **ch. HFS 12** emergency rules.

The Crimes List appended to **ch. HFS 12** is modified by this order to move several crimes from "permanent bar" status to "bar with rehabilitation" status, to place time limits on having to demonstrate rehabilitation for certain other crimes, and to remove some crimes altogether from the Crimes List. Also in **ch. HFS 12**, definitions have been added for "access" and "Department-designated tribe" and have been significantly revised for "caregiver" and "under the entity's control." Indian tribes designated by the Department are permitted to conduct rehabilitation reviews for bar with rehabilitation crimes.

This order also makes changes in **ch. HFS 13**, emergency rules for reporting caregiver misconduct and for maintenance of a caregiver misconduct registry. Those emergency rules were also published on October 1, 1998. Changes made in **ch. HFS 13** by this order include addition of definitions for "access" and "course of conduct" and significantly revised definitions for "abuse," "caretaker," and "under the entity's control," and permission is

given for the subject of a report to have a representative present when the subject has any contact with Department investigators.

The Department is modifying the chs. HFS 12 and 13 emergency rules by emergency order at this time because of their critical importance for proper implementation of the statutory caregiver background check and caregiver misconduct reporting requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The rule changes, including revision of the Crimes List, have been incorporated in the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until June 1, 1999 at the earliest.

**Publication Date:** February 27, 1999  
**Effective Date:** February 27, 1999  
**Expiration Date:** May 4, 1999  
**Extension Through:** June 27, 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  
**Extension Through:** July 29, 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  
**Extension Through:** July 31, 1999

## **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  
**Extension Through:** July 29, 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

### *Natural Resources*

(Fish, Game, etc., Chs. NR 1—)

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

### *Natural Resources*

(Environmental Protection—Water Regulation, Chs. NR 300—)

Rules adopted creating **ch. NR 303**, relating to department determinations of navigability for farm drainage ditches.

## Exemption From Finding of Emergency

The Department was directed by the JCRAR under s. 227.26 (2) (b), Stats., to promulgate emergency rules regarding navigability

## Analysis prepared by the Department of Natural Resources

Statutory authority: s. 227.26 (2)(b)

Statute interpreted: s. 30.10 (4)(c)

This order codifies present department program guidance for staff making navigability determinations for farm drainage ditches, identifying various methods and information to be relied on when making such determinations.

**Publication Date:** May 1, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999  
**Hearing Dates:** June 16 and 17, 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  
**Extension Through:** May 29, 1999



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## EMERGENCY RULES NOW IN EFFECT (2)

### Public Service Commission

1. 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  
**Hearing Date:** February 22, 1999  
**Extension Through:** August 16, 1999

2. Rules adopted creating **ch. PSC 186**, relating to standards for water and sewer service in mobile home parks.

### Exemption From Finding of Emergency

These rules are now being adopted as emergency rules effective May 1, 1999, as directed by section 22(2) of 1997 Wis. Act 229.

**Publication Date:** May 1, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Regulation & Licensing

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  
**Extension Through:** May 29, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Revenue

A rule was adopted creating **s. Tax 11.20**, relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

### Exemption From Finding of Emergency

On February 25, 1999, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26, (2) (b), Stats., directed the Department of Revenue to use the emergency rule making process to promulgate as an emergency rule, within 30 days, its policies interpreting s. 77.54 (26m), Stats.

### Analysis by the Department of Revenue

Statutory authority: ss. 227.11 (2) (a) & 227.26 (2) (b)

Statute interpreted: s. 77.54 (26m)

Section Tax 11.20 is created to address the sales and use tax exemptions for waste reduction and recycling activities.

**Publication Date:** March 27, 1999  
**Effective Date:** March 27, 1999  
**Expiration Date:** August 24, 1999

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## 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:** June 27, 1999

2. Rules adopted renumbering **ch. HFS 55** and revising **DWD 55**, relating to criminal background checks in daycare.

### 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:

This represents the most recent amended version of this emergency rule which was first adopted on October 1, 1998. Beginning on October 1, 1998, recently enacted provisions 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 those 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 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:** March 26, 1999  
**Effective Date:** March 26, 1999  
**Expiration Date:** August 23, 1999

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Nursing, Board of*

#### **Subject:**

N Code – Relating to clarifying the scope of practice for advanced practice nurse prescribers in their prescribing practice.

#### **Description of policy issues:**

##### *Objective of the rule:*

A registered nurse who is certified as an Advanced Practice Nurse Prescriber may independently issue a prescription order for a drug or device for a particular patient. The objective of the proposed rule is to specify diagnostic testing that may be ordered by the advanced practice nurse prescriber as a necessary concomitant to the prescribing process.

##### *Policy analysis:*

Section 441.16, Stats., requires that the Board promulgate rules “defining the scope of practice within which an advanced practice nurse may issue prescription orders.” The rules created by the Board in response to this mandate establish a number of prescribing limitations specifying that the advanced practice nurse prescriber “may issue only those prescription orders appropriate to the advanced practice nurse prescriber’s areas of competence, as established by his or her education, training or experience.” Not included within these rules, however, is any specification as to those practices and procedures which are an integral and necessary part of the independent preparation of a prescription order, including the physical assessment of the patient necessary to make an intelligent prescribing judgment. Assessment is defined as “the systematic and continual collection and analysis of data about the health status of a patient culminating in the formulation of a nursing diagnosis.” It seems clear that the collection and analysis of data about the health care status of a patient must, to the extent they are consistent with the advanced practice nurse’s areas of practice, include basic diagnostic tests, including laboratory testing, x-rays and EKG’s. The proposed rule would confirm that the advanced practice nurse prescriber may independently order and utilize diagnostic testing consistent with his or her area of competence.

#### **Statutory authority:**

SS. 15.08 (5) (b), 227.11 (2) and 441.16 (3) (b), Stats.

#### **Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:**

80 hours.

### *Public Instruction*

#### **Subject:**

Ch. PI 17 – Relating to defining academic purposes to determine summer school aid reimbursement eligibility.

#### **Description of policy issues:**

##### *Rationale for proposed rule development:*

1997 Wis. Act 240 specifies that state aid shall be paid to each district or county handicapped children’s education board only for those academic summer classes or laboratory periods that are for necessary academic purposes, as defined by the state superintendent

by rule. In accordance with the Act, the rules define academic purposes to determine summer school aid reimbursement eligibility.

*Describe any existing relevant policies to be included in the administrative rule:*

The proposed rules define academic purposes as summer school learning experiences that are related or similar to instruction that is offered during the rest of the school year or for which credit toward graduation is given. The rules also specify:

- That a school district may operate a summer school program in cooperation with a CESA or another school district under a 66:30 agreement.
- That a summer school program report must be submitted annually to the Department for approval.
- How summer school aid is to be calculated.
- What fees may or may not be charged as part of a summer school program.

*Describe any new policies to be included in the proposed rule:*

None.

*Describe policy alternatives:*

The Department will review and consider any proposed policy alternatives offered during the administrative rule-making process.

#### **Statutory authority:**

SS. 121.14 (1) and 227.11 (2) (a), Stats.

#### **Estimate of the amount of time/staff resources necessary to develop rule:**

The amount of time needed for rule development by Department staff and the amount of other resources necessary is indeterminable. The time needed in creating the rule language, itself, will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than 6 months to complete.

### *Revenue*

#### **Subject:**

S. Tax 11.67 – Relating to service enterprises.

#### **Description of policy issues:**

##### *Objective of the proposed rule:*

The objectives of the proposed rule are to:

- Clarify that the taxability of materials used in constructing a prototype depends on the primary objective of the customer, and that determining whether a transaction is a purchase and sale of a prototype, or a research and development service with the prototype being incidental, is done on a case-by-case basis.
- Conform language and style to Legislative Council Rules Clearinghouse standards.

##### *Policy analysis:*

Existing policies are as set forth in the rules. No new policies are being proposed. If the rules are not changed, they will be incorrect in that they will not reflect current law or current department policy relating to the taxability of materials used in constructing a prototype.

#### **Statutory authority:**

S. 227.11 (2) (a), Stats.

#### **Estimate of staff time required:**

The Department estimates it will take approximately 30 hours to develop this rule order.

**Workforce Development****Subject:**

Ch. DWD 15 – Relating to cooperating with child support enforcement as a condition of eligibility for W-2 and food stamps.

**Description of policy issues:***Objective of the rule:*

In compliance with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), 1997 Wis. Act 191 applies child support enforcement requirements to W-2 participants and food stamp recipients. This rule will implement these requirements and update obsolete AFDC references to current W-2 references.

*Existing policies and new policies included in the proposed rule:*

The definition of cooperation will be changed to include

providing the name of the father, if known, and clarified to include cooperation with child support on behalf of noncustodial children. Food stamp recipients will be added to those who must cooperate with child support enforcement or be eligible for good cause for noncooperation.

**Statutory authority:**

SS. 49.124 (1g) and 49.145 (2) (f), Stats.

**Estimate of the amount of time employees will spend developing the proposed rule and of other resources needed to develop the rule:**

15 hours.

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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.*

#### **Law Enforcement Standards Board**

##### **Rule Submittal Date**

On June 2, 1999, the Law Enforcement Standards Board submitted a proposed rule to the Legislative Council Staff.

##### **Analysis**

The Law Enforcement Standards Board proposes revisions to its administrative rules pertaining to its certification of instructors for law enforcement, jail and secure detention officer training.

Proposed rules revise certification requirements for instructors who teach basic and advanced training. Revised requirements pertain to new instructors and to experienced instructors who seek to renew their certification. They restrict certification to qualified persons who instruct basic training, instructor training or who employ training guides approved by the Board. They also establish a new, single term of certification and a single anniversary date for multiple certifications.

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

A public hearing is not required, as the proposed rules will be published under a 30-day notice procedure. Proposed rules have been prepared by the Training and Standards Bureau, Wisconsin Department of Justice (the staff of the Law Enforcement Standards Board). This notice was approved by the Board at its June 1, 1999 meeting.

##### **Contact Information**

Dennis Hanson, Director  
Training and Standards Bureau  
Telephone (608) 266-7864

#### **Pharmacy Examining Board**

##### **Rule Submittal Date**

On June 1, 1999, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2) and 450.02 (2g) (a), Stats.

The proposed rule-making order relates to the approval of continuing education courses for pharmacists.

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

A public hearing is required and will be held on July 13, 1999 at 9:30 a.m. in Room 179A at 1400 East Washington Avenue, Madison, Wisconsin.

##### **Contact Information**

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

#### **Transportation**

##### **Rule Submittal Date**

On June 1, 1999, the Wisconsin Department of Transportation referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule affects ch. Trans 213, Wis. Adm. Code, relating to the local bridge program.

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

A public hearing is required and is scheduled for June 29, 1999. The Division of Investment Management, Bureau of Transit and Local Roads is the organizational unit responsible for the promulgation of the proposed rule.

##### **Contact Information**

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

Julie A. Johnson, Paralegal  
Department of Transportation  
Telephone (608) 266-8810

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## NOTICE SECTION

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### Notice of Hearings

*Agriculture, Trade and Consumer Protection*  
[CR 99-85]

► Reprinted from the May 31, 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 the certification and training of humane officers (proposed chapter ATPC 15, Wis. Adm. Code).

### Written Comments

The hearings will be held at the times and places shown below. Preceding each public hearing, the Department will hold a question and answer session on the proposed rule. The public is invited to attend the sessions and hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **June 30, 1999**, for additional written comments.

### 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 **June 4, 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

Three hearings are scheduled:

<u>Date and Time</u>	<u>Location</u>
June 15, 1999 Tuesday Question and Answer Session, 1:00 p.m. to 1:30 p.m. Public Hearing, 1:30 p.m. to 2:30 p.m.	Board Room State Agriculture Bldg. 2811 Agriculture Dr. MADISON, WI
June 16, 1999 Wednesday Question and Answer Session, 1:00 p.m. to 1:30 p.m. Public Hearing, 1:30 p.m. to 2:30 p.m.	Dept. of Agriculture, Trade & Consumer Protection 3610 Oakwood Hills Pkwy. EAU CLAIRE, WI
June 17, 1999 Thursday Question and Answer Session, 1:00 p.m. to 1:30 p.m. Public Hearing, 1:30 p.m. to 2:30 p.m.	Room 152B District State Office Bldg. 200 North Jefferson St. GREEN BAY, WI

Written comments will be accepted until **June 30, 1999**.

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

Statutory authority: s. 173.27

Statutes interpreted: ss. 173.03 (1), 173.05, and 173.27

This rule establishes minimum training and certification requirements for humane officers, as required by s. 173.27, Stats. The Department developed this rule in consultation with an advisory committee that included representatives of the livestock industry, the equine industry, dog interests, law enforcement agencies, current humane officers, public health agencies, humane societies, veterinarians, and livestock truckers.

#### Humane Officer Certification

1997 Wis. Act 192 modernized the administration of Wisconsin's animal welfare laws. The legislation clarified the authority of humane officers, provided a wider range of options for dealing with animal welfare problems, and assured "due process" for affected animal owners. The legislation also required the Department to certify humane officers. To be certified, humane officers must complete an examination and meet training requirements established by the Department.

This rule requires a humane officer to be certified within one year after the humane officer is appointed, or by December 1, 2000, whichever is later. A humane officer must satisfy applicable training requirements and pass an examination before the humane officer is initially certified. A certified humane officer must satisfy continuing education requirements and must renew his or her certification every 2 years. No examination is required to renew a certification.

#### Initial Certification

A person wishing to be certified as a humane officer must do all the following:

- Complete an initial training program sponsored or approved by the Department. (There are some exceptions.)
- Pass an examination.
- Submit an application that includes all the following:
  - \* The applicant's name, address and telephone number.
  - \* The identity of the applicant's employer if the applicant is currently employed as a humane officer.
  - \* The date on which the applicant passed the examination required for initial certification.
  - \* A fee of \$25.

The Department must grant or deny a certification application within 30 days after the Department receives a complete application form.

#### Certification Renewal

A certification expires on December 31 of each odd-numbered year. A humane officer wishing to renew his or her certification must submit a renewal application on a form provided by the Department. The renewal application must include all the following:

- The applicant's name, address and telephone number.
- The identity of the applicant's employer if the applicant is currently employed as a humane officer.
- A renewal fee of \$25.
- Information showing that the applicant has satisfied applicable continuing education requirements. The information must identify and describe the continuing education programs attended.

A humane officer must complete 32 hours of continuing education during each biennium for which the humane officer is

certified. (This requirement does not apply during the biennium for which the person is initially certified.) The Department does not pre-approve continuing education programs. However, the Department may refuse to accept a continuing education program that is unrelated to a humane officer's duties.

#### Examination

Under this rule, a person who wishes to be certified as a humane officer must pass an examination administered by the Department. (No examination is required for certification renewal.) The examination will test applicants on animal husbandry and care practices, as well as applicable laws and investigative procedures. To pass the examination, an applicant must achieve a passing score on each part of the examination.

A person wishing to take the examination must provide his or her name, address and telephone number, pay a \$25 examination fee, and show that he or she is eligible to take the examination. A person is eligible to take the examination if one of the following applies:

- The person has completed an initial training program (see below). The applicant must identify the training program attended, including the program title, sponsor and dates.
- The person is exempt from initial training (see below).

A person who is exempt from initial training, but who fails the examination, must complete the initial training program before retaking the exam. A person who twice fails the examination may not retake it.

#### Initial Training

A person must complete an initial training program before taking the humane officer examination, except that the following persons are exempt if they pass the examination on the first attempt:

- A person employed as a humane officer in Wisconsin before December 1, 1999.
- A veterinarian.
- A person who has served as a humane officer in another state.

An initial training program must be sponsored or pre-approved by the Department. The Department will charge a fee to cover the cost of the initial training program which it sponsors. Other sponsors may apply for approval of their training programs (see below).

An initial training program must provide at least 40 hours of training in the following areas:

- At least 16 hours of training in animal husbandry and care practices including the following:
  - \* At least 10 hours of training related to farm animals. A portion of this training must be practical on-site training at a farm location.
  - \* At least 4 hours of training related to domestic non-farm animals.
  - \* At least 2 hours of training related to exotic animals, pet stores, animal collectors or other relevant animal care issues.
- At least 24 hours of legal and investigative training including:
  - \* At least 4 hours of training related to the legal system, the role of the animal cruelty investigator, Wisconsin laws related to animals, and other applicable laws.
  - \* At least 4 hours of training related to the rules of evidence, and the collection and preservation of evidence.
  - \* At least 4 hours of training related to interview and interrogation techniques, stages of the investigation and courtroom testimony.
  - \* At least 4 hours of training on search and seizure law, and on photographing, video taping or sketching the scene of the investigation.
  - \* At least 4 hours of training related to report writing.
  - \* At least 4 hours of training related to crisis intervention, humane officer safety and civil liability.

#### Initial Training Programs: Approval

The sponsor of an initial training program may apply to the Department for approval of that training program. The application must include the following information:

- A detailed outline showing the topics covered, the number of hours devoted to each topic, and the content of each topic.
- The identity and credentials of program instructors.
- The training location, including the location of any on-site farm training.
- A copy of the certificate that the sponsor will provide to persons who successfully complete the course, and the identity of each person authorized to sign certificates for the sponsor.

The Department must approve or disapprove a training program within 30 days after the Department receives a complete application from the program sponsor.

#### Humane Officer Appointments: Reporting

Under s. 173.27 (4), Stats., the Department must keep a current registry of all persons serving as humane officers. Under s. 173.03 (1), Stats., a county, city, village or town must report to the Department whenever that local entity appoints or terminates a humane officer. This rule requires the local entity to file the report in writing within 30 days after it appoints or terminates the humane officer. The report must include all the following.

- The identity of the local entity.
- The name and address of the humane officer.
- The humane officer's certification number if the humane officer is currently certified by the Department.
- The date of the humane officer's appointment or termination.

#### **Fiscal Estimate**

See page 25 of the May 31, 1999 *Wis. Adm. Register*.

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

See page 25 of the May 31, 1999 *Wis. Adm. Register*.

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

## **Notice of Hearings**

### *Agriculture, Trade and Consumer Protection* [CR 99-87]

► Reprinted from the May 31, 1999 *Wis. Adm. Register*.

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rule amendments to ch. ATPC 34, Wis. Adm. Code, relating to the collection of unwanted agricultural chemicals and containers (Agricultural Clean Sweep).

#### **Written Comments**

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. The Department also invites comments on the draft environmental impact statement which accompanies the rule. Following the public hearings, the hearing record will remain open until **July 2, 1999** for additional written comments.

#### **Hearing Information**

Two hearings are scheduled:

<u>Date and Time</u>	<u>Location</u>
June 23, 1999 Wednesday afternoon session: 1:00 – 5:00 p.m.	Prairie Oak State Office Bldg. Wis. DATCP 2811 Agriculture Dr. MADISON, WI 53708
June 24, 1999 Thursday afternoon session: 1:00 – 5:00 p.m.	Portage County Courthouse Annex 1462 Strongs Ave. STEVENS POINT, WI 54481

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **June 11, 1999** either by writing to Paula Noel, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708, (608) 224-4505 or by contacting the message relay system (TTY) at (608) 224-5058. Handicap access is available at the hearings.

### **Copies of Rule**

A copy of the rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade, and Consumer Protection, Agricultural Resource Management Division, 2811 Agricultural Drive, Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4505. Copies will also be available at public meetings.

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

Statutory Authority: S. 93.55

Statute Interpreted: S. 93.55

This rule modifies current rules related to the Department's agricultural "clean sweep" program. The agricultural "clean sweep" program is designed to collect and safely dispose of unused agricultural chemicals and containers that might otherwise pose a threat to public health and the environment. Current agricultural "clean sweep" rules are contained in ch. ATCP 34, Wis. Adm. Code.

Under the agricultural "clean sweep" program, the Department awards grants to counties that sponsor agricultural "clean sweep" events, including temporary and permanent events. Counties contract with licensed hazardous waste contractors to collect, pack, transport and dispose of collected materials.

#### Grant Recipients

This rule reiterates (per s. 93.55, Stats.) that the Department may award "clean sweep" grants only to counties (or to an association of counties formed to conduct a "clean sweep" project). But under this rule, a county (or association of counties) may enter into an agreement with another person or entity to administer a "clean sweep" grant on behalf of the county (or association).

#### County Contribution

Under this rule, a county must contribute at least \$3,000 to each county project for which a "clean sweep" grant is awarded. The Department may require counties to contribute a larger amount specified in the Department's announcement soliciting grant applications. Counties that jointly sponsor a "clean sweep" project may prorate the required contribution among them. A county's contribution for a "permanent collection event" may include county staff, building rent, facilities and equipment provided for waste chemical collection and handling at that event.

#### Temporary and Permanent Collection Events

This rule clarifies that the Department may fund "temporary collection events" (not more than 7 days at a temporary collection site) or "permanent collection events" (more than 7 days at a permanent hazardous waste collection facility).

#### Grant Purposes

This rule reiterates that agricultural "clean sweep" projects are intended to collect waste agricultural chemicals from farmers. However, this rule authorizes the department to fund the collection of waste agricultural pesticides from "very small quantity generators" (VSQG's) who are not farmers. This might include, for example, hardware stores, farm supply stores, cooperatives, municipalities and commercial pesticide applicators who accumulate no more than 220 pounds of waste pesticides per month.

#### Use of Grant Funds

Under this rule, as under the current rules, a "clean sweep" grant may be used to reimburse a county's direct costs to collect and dispose of waste agricultural chemicals and containers, including the cost to hire a licensed hazardous waste contractor. This rule clarifies that grant funds may also be used to reimburse a county's direct costs for any of the following:

- Equipment rentals, supplies and services used to operate the collection site and handle collected chemicals.
- County staff to receive and pack waste chemicals at a permanent collection event.
- Local educational and promotional activities related to the "clean sweep" project.

This rule clarifies that an agricultural "clean sweep" grant may not fund the disposal of any of the following:

- Oil that is not contaminated with chemicals.
- Batteries.
- Contaminated soil or debris.
- Fluorescent tubes.
- Triple-rinsed plastic pesticide containers (since those containers may be recycled through the Wisconsin fertilizer and chemical association's recycling program).
- Materials that may be readily handled under other waste disposal or recycling programs.
- Chemicals from persons other than farmers (except agricultural pesticides received from VSQG's according to this rule).
- Chemicals for which there are no federally-approved or state-approved disposal methods. (This rule, like the current rule, spells out procedures which the county and its contractor must follow when they encounter these materials.)

#### Collecting Waste Agricultural Pesticides from Nonfarmers

Under this rule, the Department will pay no more than 50% of a county's cost to collect and dispose of waste agricultural pesticides from VSQG's who are not farmers. The Department will specify the reimbursement rate in its announcement soliciting county grant applications. The Department may authorize a higher reimbursement rate in certain special cases. A county may charge the remaining costs to participating VSQG's.

VSQG's who are not farmers must pre-register to participate in an agricultural "clean sweep" project. A county must report the amounts and kinds of waste agricultural pesticides collected from VSQG's, the county's costs to collect and dispose of those waste pesticides, and the payments received from participating VSQG's.

#### County May Not Charge Participating Farmers

This rule prohibits a county from charging a farmer for the first 200 pounds of agricultural chemicals collected from that farmer. A county may charge fees for amounts over 200 pounds if the Department approves the fees. Fees may depend, in part, on the amount of "clean sweep" grant funds and county funds committed to the project.

#### Hazardous Waste Contractors

Under current rules, a county receiving an agricultural "clean sweep" grant must contract with a licensed hazardous waste contractor to receive, pack, transport and dispose of hazardous wastes collected during the county project. Under the current rules, the Department must approve the hazardous waste contractor and assist the county in preparing the contract. Under the current rules, a copy of the contract must also be incorporated as part of the Department's grant contract with the county.

This rule modifies the current rules related to hazardous waste contractors. Under this rule, a county receiving an agricultural "clean sweep" grant must contract with a licensed hazardous waste contractor to receive, pack, transport and dispose of hazardous wastes collected during the county project. The Department's grant contract with the county must include a copy of the county's contract with the hazardous waste contractor. The contract must include a schedule of the contractor's charges to receive, transport and dispose of relevant categories of chemicals.

The contractor must attend training provided by the Department, and must comply with applicable requirements under this rule. The county must select the contractor by a specified date so the Department can train the contractor before the "clean sweep" project begins.

Under this rule, a hazardous waste contractor must be capable of all the following:



- Assisting counties and “clean sweep” participants to identify and segregate hazardous and solid wastes.
- Providing essential waste handling services including drum packing, testing for unknown chemicals, containing loose chemicals, and approving cylinders for disposal.
- Collecting, packing, and transporting poison–solids, poison–liquids and poison–flammables to waste management sites licensed by federal and state governments.
- Providing waste collection and disposal services for mercury–bearing and dioxin–bearing chemicals, acids, bases, and low–pressure gas cylinders and canisters, unless there are no federally–approved or state approved disposal options available.
- Properly handling chemicals for which no federally approved or state approved disposal options are available.
- Collecting and reporting information related to banned and target chemicals.
- Administering registration, recordkeeping and reporting requirements related to VSQG’s who are not farmers.
- Meeting other requirements specified by the Department in its announcement soliciting county grant applications. (Among other things, the Department may specify grant terms and conditions that are reasonably designed to advance the Department’s statewide “clean sweep” goals, and facilitate statewide administration of the “clean sweep” program.)

This rule does not require Department approval of a hazardous waste contractor. Nor does it require a county to use the state’s hazardous waste contractor. However, the Department may require a county to submit proof that the hazardous waste contractor selected by the county meets applicable requirements under this rule. The Department may disapprove a hazardous waste contractor selected by a county if the Department finds that the contractor does not meet applicable requirements under this rule. The state of Wisconsin’s hazardous waste contractor is an approved contractor for purposes of this rule.

#### Grant Applications and Awards

This rule clarifies the standards and procedures which the Department uses to invite county grant applications, establish grant conditions, evaluate grant applications, and award “clean sweep” grants to counties. Like the current rule, this rule requires the Department to enter into a grant contract with each county receiving a “clean sweep” grant, and spells out the required contents of that contract.

#### Reports and Payments

Like the current rule, this rule requires a county to file a final report with the Department before the Department pays any grant funds to the county. The county must file the report within 90 days after the “clean sweep” project is completed, and must include relevant information about the project. This rule authorizes the Department to make partial payments for “permanent collection events” while those events are ongoing. A county must file an interim report prior to each partial payment.

### **Fiscal Estimate**

See page 27 of the May 31, 1999 *Wis. Adm. Register*.

### **Initial Regulatory Flexibility Analysis**

See page 27 of the May 31, 1999 *Wis. Adm. Register*.

## **Notice of Hearings**

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

► Reprinted from the May 31, 1999 *Wis. Adm. Register*.

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on its emergency rule (ss. ATCP 60.19(3) and (4), Wis. Adm Code) relating to drug residues in raw milk. The hearings will be held at the times and places shown below.

### **Written Comments**

Pursuant to s. 227.24 (4), Stats., public comment is being sought on the Department’s emergency rule. The public is invited to attend the hearings and make comments on the emergency rule. Following the public hearings, the hearing record will remain open until **June 30, 1999**, for additional written comments.

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

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 15, 1999** either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608-224-4712), or by contacting the message relay system (TTY) at 608-266-4399 to forward your call to the Department at 608-224-5058. Handicap access is available at the hearings.

### **Hearing Information**

Three (3) hearings are scheduled. The hearings will be held simultaneously by videoconferencing at the following locations on **Friday, June 18, 1999, from 10:30 a.m. – 12:00 p.m.** These hearings are being held in conjunction with hearings on a proposed permanent rule which is identical to the emergency rule.

#### Locations:

Wis. Dept. of Agriculture, Trade &  
Consumer Protection  
Room 472  
2811 Agriculture Drive  
Madison, WI 53704  
Handicapped accessible

State of Wis. Office Building  
Room 618  
200 North Jefferson St.  
Green Bay, WI 54301  
Handicapped accessible

State of Wis. Office Building  
Room 139  
718 West Clairemont Ave.  
Eau Claire, WI 54701  
Handicapped accessible

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

Statutory authority: ss. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8) and 97.23

Statutes interpreted: ss. 97.20, 97.22 and 97.23

This emergency rule modifies current rules under ch. ATCP 60, Wis. Adm. Code, related to follow–up testing of producer milk samples when a bulk tanker load of milk tests positive for a drug residue. This emergency rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue.

#### Follow–up Testing of Producer Milk Samples

Under current rules, a milk hauler must collect a sample of milk from every dairy farm milk shipment before loading that shipment onto a bulk milk tanker. The dairy plant operator receiving the bulk milk tanker load must perform a drug residue screening test on that tanker load. If the tanker load tests positive for any drug residue, the dairy plant operator must perform a drug residue test on each of the milk samples drawn from the producer milk shipments comprising the tanker load. If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. Current rules do not

require confirmatory tests on producer samples that test positive for drug residues.

This emergency rule requires a dairy plant operator to perform a confirmatory test in duplicate on each producer milk sample that tests positive for any drug residue. Under this emergency rule, the dairy plant operator must perform a confirmatory test using the same test method and producer sample. The operator must perform the confirmatory test in duplicate, with single positive and negative controls. If one or both confirmatory test results are positive for a drug residue, the milk producer's sample is considered positive for that drug residue.

#### Disposing of Contaminated Milk

This emergency rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue. Current rules require a dairy plant operator to reject a bulk tanker load of milk that tests positive for drug residue. A rejected bulk load may not be used for human food. This emergency rule clarifies that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.

### **Finding of Emergency**

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

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATCP 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The Department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads

of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

### **Fiscal Estimate**

See page 29 of the May 31, 1999 Wis. Adm. Register.

### **Initial Regulatory Flexibility Analysis**

See page 29 of the May 31, 1999 Wis. Adm. Register.

## **Notice of Hearings**

### **Agriculture, Trade and Consumer Protection** **[CR 99-78]**

► Reprinted from the May 31, 1999 Wis. Adm. Register.

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on its proposed permanent rule (ss. ATCP 60.19 (3) and (4), Wis. Adm Code) relating to drug residues in raw milk. This proposed rule is identical to the Department's emergency rule relating to drug residues in raw milk. The hearings will be held at the times and places shown below.

### **Written Comments**

The public is invited to attend the hearings and make comments on the rule. Following the public hearings, the hearing record will remain open until **June 30, 1999**, for additional written comments.

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

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 15, 1999** either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608-224-4712), or by contacting the message relay system (TTY) at 608-266-4399 to forward your call to the Department at 608-224-5058. Handicap access is available at the hearings.

### **Hearing Information**

Three (3) hearings are scheduled. The hearings will be held simultaneously by videoconferencing at the following locations on **Friday, June 18, 1999, from 10:30 a.m. – 12:00 p.m.** These hearings are being held in conjunction with hearings on the

Department's emergency rule, which is identical to the proposed rule.

**Locations:**

Wis. Dept. of Agriculture, Trade &  
Consumer Protection  
Room 472  
2811 Agriculture Drive  
Madison, WI 53704  
Handicapped accessible

State of Wis. Office Building  
Room 618  
200 North Jefferson St.  
Green Bay, WI 54301  
Handicapped accessible

State of Wis. Office Building  
Room 139  
718 West Clairemont Ave.  
Eau Claire, WI 54701  
Handicapped accessible

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

Statutory authority: ss. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8) and 97.23

Statutes interpreted: ss. 97.20, 97.22 and 97.23

This rule modifies current rules under ch. ATPC 60, Wis. Adm. Code, related to follow-up testing of producer milk samples when a bulk tanker load of milk tests positive for a drug residue. This rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue.

**Follow-up Testing of Producer Milk Samples**

Under current rules, a milk hauler must collect a sample of milk from every dairy farm milk shipment before loading that shipment onto a bulk milk tanker. The dairy plant operator receiving the bulk milk tanker load must perform a drug residue screening test on that tanker load. If the tanker load tests positive for any drug residue, the dairy plant operator must perform a drug residue test on each of the milk samples drawn from the producer milk shipments comprising the tanker load. If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. Current rules do not require confirmatory tests on producer samples that test positive for drug residues.

This rule requires a dairy plant operator to perform a confirmatory test in duplicate on each producer milk sample that tests positive for any drug residue. Under this rule, the dairy plant operator must perform a confirmatory test using the same test method and producer sample. The operator must perform the confirmatory test in duplicate, with single positive and negative controls. If one or both confirmatory test results are positive for a drug residue, the milk producer's sample is considered positive for that drug residue.

**Disposing of Contaminated Milk**

This rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue. Current rules require a dairy plant operator to reject a bulk tanker load of milk that tests positive for drug residue. A rejected bulk load may not be used for human food. This rule clarifies that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.

***Fiscal Estimate***

See page 30 of the May 31, 1999 Wis. Adm. Register.

***Initial Regulatory Flexibility Analysis***

See page 30 of the May 31, 1999 Wis. Adm. Register.

***Notice of Hearings***

***Agriculture, Trade and Consumer Protection  
[CR 99-79]***

► Reprinted from the May 31, 1999 *Wis. Adm. Register*.

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATPC 77, Wis. Adm. Code, relating to certification fees for laboratories engaged in public health testing of milk, water and food.

***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 **June 30, 1999**, for additional written comments.

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

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **July 15, 1999** either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608-224-4712), or by contacting the message relay system (TTY) at 608-266-4399 to forward your call to the Department at 608-224-5058. Handicap access is available at the hearings.

***Hearing Information***

Three (3) hearings are scheduled. The hearings will be held simultaneously by videoconferencing at the following locations on **Friday, June 18, 1999, from 9:00 a.m. – 10:30 a.m.**

**Locations:**

Wis. Dept. of Agriculture, Trade &  
Consumer Protection  
Room 472  
2811 Agriculture Drive  
Madison, WI 53704  
Handicapped accessible

State of Wis. Office Building  
Room 618  
200 North Jefferson St.  
Green Bay, WI 54301  
Handicapped accessible

State of Wis. Office Building  
Room 139  
718 West Clairemont Ave.  
Eau Claire, WI 54701  
Handicapped accessible

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

Statutory authority: ss. 93.07 (1) and 93.12 (4) and (7)

Statute interpreted: s. 93.12 (4) and (7)

The 1995-97 biennial budget act, 1995 Wis. Act. 27, transferred administration of Wisconsin's laboratory certification program for milk, food and water laboratories from the Department of Health and Family Services to the Department of Agriculture, Trade and Consumer Protection ("Department"), effective July 1, 1996.

Under this program, the Department is now responsible for certifying laboratories that test milk, food or water for compliance with public health standards prescribed by federal, state or local laws. Under 1995 Wis. Act 27, the Department's public health lab certification program must be funded by certification fees paid by the certified laboratories. The Department must establish these fees by rule.

The Department adopted the current fees in 1996. Under current rules, a laboratory operator must pay an annual certification fee of \$216 for each test at each laboratory for which the operator is certified. If a laboratory operator performs a test for less than a full calendar year, the annual certification fee is prorated at \$18 per month for each full month of certification for that test. Under current rules, milk and food laboratories pay the same fees as water laboratories.

This rule amends the current fee structure to account for cost differences between different types of laboratories. Certification of milk and food laboratories requires more time than certification of water laboratories. In a milk or food laboratory, the Department must also certify each individual analyst who performs any milk or food test. In a water laboratory, the Department is only required to certify one analyst who performs the water test for which the Department is certifying the laboratory.

This rule increases lab certification fees to provide sufficient program revenue to fund the lab certification program. It also creates a variable fee schedule that more closely reflects the time required to conduct on-site certification visits in different types of labs and, when required, determine the competency of individual analysts to conduct specific tests.

Under the proposed rule, a certified laboratory must pay the following applicable fees:

- Water tests. An annual certification fee of \$276 for each test which detects microbiological contaminants in drinking water. If the Department certifies a water laboratory to perform a test for less than a full calendar year, the lab operator must pay a fee of \$23 for each full month of certification.
- Milk or food tests. An annual certification fee of \$336 for each milk or food test. If the Department certifies a milk or food laboratory to perform a test for less than a full calendar year, the lab operator must pay a fee of \$28 for each full month of certification.
- Certified analysts who perform milk or food tests. An annual certification fee of \$25 for each analyst who performs one or more milk or food tests. An analyst's certification is valid for an entire year, even if the analyst is no longer employed at the laboratory where the analyst was employed when the Department last granted or renewed the analyst's certification.

*Additional analyst certification.* A supplemental fee of \$150 for each requested certification of one or more analysts to conduct any milk or food test, if the certification occurs at any time other than during a mandatory inspection.

## **Fiscal Estimate**

See page 31 of the May 31, 1999 *Wis. Adm. Register*.

## **Initial Regulatory Flexibility Analysis**

See page 31 of the May 31, 1999 *Wis. Adm. Register*.

## **Notice of Proposed Rule**

### **Gaming Division**

[CR 99-69]

Notice is hereby given that pursuant to ss. 16.004(1), 562.02(1), 563.04(2), 563.05(4), 227.46(3) and 227.47(1), Stats., and interpreting ss. 562.02(2)(f), 562.04(1)(b)6., 562.05(8)(a), 563.04(2), 563.05(4), 563.17, 563.95, 227.42(1) and 227.43 to 227.46, Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Administration will adopt the following rule as proposed in this notice without a public hearing unless, within 30 days after publication of this notice, **June 15, 1999**, the Department of Administration is petitioned for a public

hearing by 25 persons who will be affected by the rule, a municipality which will be affected by the rule, or by an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

## **Analysis Prepared by the Department of Administration, Division of Gaming**

The Department of Administration, Division of Gaming, proposes an order to repeal ss. WGC 3.01(1), (2), (3) and (4) and 3.05(1)(a) 1. and (c), (2)(a), (b) and (c) and (3)(a), (b) and (c); to renumber and amend WGC s. 3.05(1)(a) 2. and 3., and (b); to amend ss. WGC 3.01, 3.02, 3.03(1)(b) and (c), (2), (3) and (4), 3.04(1)(a) and (b), (2)(b) and (3)(b), 3.05(intro.) and (1)(a) and 3.06(1)(a) and (b) and (2), relating to contested case hearings arising out of the regulatory activities of the Division of Gaming.

Statutory authority: ss. 562.02(1), 563.04(2), 563.05(4), 227.46(3), 227.47(1)

Statutes interpreted: ss. 562.02(2)(f), 562.04(1)(b)6., 562.05(8)(a), 563.04(2), 563.05(4), 563.17, 563.95, 227.42(1), 227.43 to 227.46

**NOTE:** The Department is requesting the Revisor of Statutes to make corrections to WGC Chapters under to s. 13.93(2m)(b)6, Stats. As a result of the statutory changes in 1997 Wisconsin Act 27, (repealing Chapter 561, Gaming Board, and creating s. 15.103(1m), Division of Gaming in the Department of Administration) we are requesting the Revisor to replace obsolete references to "Commission," "Director," and "Chairperson" with the following: "Department of Administration (Department)," "Division of Gaming (Division)," or "Administrator of the Division of Gaming (Administrator)."

**SECTION 1.** WGC 3.01 is amended to reflect that the Division is responsible for hearings arising under ch. 563 (charitable gaming) Stats., and Indian gaming compacts, rather than just ch. 562 (pari-mutuel racing) Stats.

**SECTION 2.** WGC 3.01(1) through (4) are repealed to reflect that the hearings conducted are no longer limited to those arising under ch. 562 (pari-mutuel wagering) Stats.

**SECTION 3.** WGC 3.02 is amended to reflect the Division has taken over the responsibilities of the former Wisconsin Gaming Commission.

**SECTION 4.** WGC 3.03(1)(b) is amended to require a person requesting a hearing include an address for service of documents relative to the hearing. WGC 3.03(1)(c) is amended to reflect that requests for hearing are not limited to appeals of steward's inquiries. WGC 3.03(2) is amended to reflect the statutory time frame for filing an appeal of a stewards ruling, as set out in 562.04(1)(b)6., Stats, is 7 days, and the administrator of the division now decides whether to grant a request for stay of a stewards ruling. WGC 3.03(3) increases to 30 days, from 15, the time in which an aggrieved person may request a hearing, and changes a reference from Commission to Department. WGC 3.03(4) changes a reference from Commission to Division, and adds the new address of the Division.

**SECTION 5.** WGC 3.04(1)(a) is amended to change references from Commission to Division. WGC 3.04(1)(b), (2)(b), and (3)(b) are amended to change references from Commission to Department.

**SECTION 6.** WGC 3.05 (title) and (intro) are amended to delete references to Commission, and specifies that in cases of conflicts with the rules and ch. 227 Stats., ch. 227 controls. WGC 3.05(1)(a) is amended to add a reference to s. 227.43 as authorization for appointment of a hearing officer.

**SECTION 7.** WGC 3.05(1)(a)1. Is repealed because this authority is already provided in s. 227.45(1) Stats.

**SECTION 8.** WGC 3.05(1)(a)2. and 3. are renumbered to reflect the repeal of WGC 3.05(1)(a)1.

**SECTION 9.** WGC 3.05(1)(b) is renumbered and amended to reflect the repeal of WGC 3.05(2) and (3), and change a reference to Commission to Department.

**SECTION 10.** WGC 3.05(1)(c) is repealed to eliminate the policy reflected by this language. WGC 3.05(2) and (3) are repealed

to maintain consistency with the provisions of s. 227.45(7) Stats., which allows discovery consistent with that in Wisconsin civil judicial proceedings.

SECTION 11. WGC 3.06(1)(a), (b) and (2) are amended to change references from Commission to Department.

## Text of Rules

SECTION 1. WGC 3.01(intro.) is amended to read.

WGC 3.01 Purpose. These rules shall apply to all hearings conducted by the commission pursuant to ch. 562, Stats., by the department pursuant to ch. 227, 562, or 563, Stats., or Indian gaming compacts entered into pursuant to s. 14.035 Stats.

SECTION 2. WGC 3.01(1), (2), (3) and (4) are repealed.

SECTION 3. WGC 3.02 is amended to read.

WGC 3.02 Computation of time. The computation of time in computing any period of time prescribed in this chapter, including acts of default, shall be governed by s. 990.001 (4), Stats. Papers received by the commission division for filing after 5:00 4:30 p.m. shall be considered as filed the following day.

SECTION 4. WGC 3.03(1)(b) and (c), and (2) to (4) are amended to read:

WGC 3.03(1)(b) Shall contain an address and telephone number where the person requesting the hearing may be notified of the time and place of the hearings receive service of documents relative to the hearing; and

(c) Shall set forth the reasons why the decision of the stewards should be reversed or modified, or why the relief requested should be granted, which support the request for hearing. The documents should take the form of a pleading in a civil case, where practicable.

(2) Requests for hearing from orders of the stewards suspending an occupation licensee, recommending denial or revocation of an occupation licensee, imposing a forfeiture on an occupation licensee or from orders of the stewards excluding an occupation licensee shall be instituted by filing a written request for a hearing no later than 45 7 days after notice of the suspension, forfeiture or exclusion has been communicated to the licensee. A request for hearing shall not stay enforcement of the decision of the stewards. If the party requesting the appeal desires that the director administrator stay the decision of the stewards, the party shall specify in the request for hearing stay the reasons supporting the issuance of the stay. The director administrator shall decide whether to grant the stay within 48 hours of receipt of the request.

(3) All other requests for hearing shall be instituted by filing a written request for hearing no later than 45 30 days after receipt of notice of the action of the commission or stewards department which gives rise to the right to a hearing.

(4) Requests for hearing may be filed in person or by certified mail to the commission's division's administrative office at 450 E. Gilman, P.O. Box 7975, Madison, WI 53707-7975 2001 W. Beltline Hwy., Suite 201, P.O. Box 8979, Madison, WI, 53708-8979. Requests submitted by certified mail shall be deemed timely if they are postmarked within the applicable time frame for filing an appeal.

SECTION 5. WGC 3.04(1)(a) and (b), (2)(b), and (3)(b) are amended to read.

WGC 3.04 Determination of parties and appearances. (1) PARTIES. (a) The commission division, any person requesting a hearing pursuant to s. WGC 3.03, and any person against whom a proceeding is initiated by the commission division shall be considered parties to the hearing for purposes of s. 227.53, Stats.

(b) Any other person may petition the commission department to be admitted as a party to the hearing. The commission department shall grant such a motion upon a determination that the movant has substantial interests to which the order of the commission department in the contested case will apply and affect.

(2)(b) Except as provided in pars. (c) and (d) no one may appear before the commission department in a representative capacity except those licensed to practice law in Wisconsin or any other state.

(3)(b) No documents or exhibits shall be accepted or considered by the hearing officer or commission department unless they are admitted into evidence and served on all parties.

SECTION 6. WGC 3.05(title)(intro.) and (1)(a) are amended to read.

WGC 3.05 (title) Conduct of hearings of the commission. Commission hearings Hearings shall be conducted in conformance with this chapter and, as to all aspects not specified in this chapter, or in conflict with ch. 227 Stats., in conformance with ch. 227, Stats.;

(1) (a) Powers and duties. Hearing officer shall be appointed pursuant to s ss. 227.43 or 227.46 (1), Stats. The hearing officer shall have all the powers and duties enumerated in ch. 227, Stats. In addition, a hearing officer appointed pursuant to this section may:

SECTION 7. WGC 3.05(1)(a)1. is repealed.

SECTION 8. WGC 3.05(1)(a) 2. and 3. are renumbered WGC 3.05(1)(a) 1. and 2. and amended to read.

WGC 3.05(1)(a) 1. Upon objection to the admissibility of evidence, receive the disputed evidence subject to a subsequent ruling by the commission department;

2. Exclude evidence upon the hearing officer's motion or motion of either party, but a party offering evidence that is ruled inadmissible shall be permitted to make a brief offer of proof with such ruling being subject to subsequent ratification by the commission department. Unless expressly overruled, such decision by the hearing officer shall be deemed ratified.

SECTION 9. WGC 3.05(1)(b) is renumbered WGC 3.05(2) and amended to read.

(2) Official notice **OFFICIAL NOTICE**. The commission department and hearing officer may take official notice of:

SECTION 10. WGC 3.05(1)(c), (2)(a), (b), (c), and (3)(a), (b), (c) are repealed.

SECTION 11. WGC 3.06(1)(a), (b) and (2) are amended to read.

WGC 3.06(1) PROPOSED DECISIONS. (a) In all cases in which a proposed decision is required by s. 227.46(2), Stats., the hearing officer shall within 7 working days of the close of the presentation of evidence and arguments by the parties, prepare and submit to the commission department a proposed decision meeting the requirements of s. 227.46(2), Stats. Within 24 hours of receipt of the decision, the commission department shall serve on all parties a copy of the proposed decision. Each party adversely affected by the proposed decision shall, within 7 working days of receipt of the proposed decision, file any objections to the proposed decision in writing.

(b) In all other cases, unless otherwise directed by the chairperson administrator pursuant to written order upon appointment of a hearing officer, the commission department shall base its decision on the record certified to it by the hearing officer without a proposed decision as set forth in s. 227.46(3)(b), Stats., subject to any rulings on motions or objections.

(2) FINAL DECISION. The commission department shall review the record in its entirety before rendering a decision.

## Fiscal Estimate

There will be no fiscal impact.

## Initial Regulatory Flexibility Analysis

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

## Agency Contact Person

Donna Sorenson  
Department of Administration  
101 East Wilson Street, 10<sup>th</sup> Floor  
P.O. Box 7864  
Madison, WI 53707-7864



## Notice of Proposed Rule

### Law Enforcement Standards Bureau

[CR 99-93]

Notice is hereby given that pursuant to s. 165.85(3)(a), Stats., and interpreting s. 165.85(5)(a), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Law Enforcement Standards Board will adopt the following rules as proposed in this notice, without public hearing unless, within 30 days after publication of this notice, on **June 15, 1999**, the Law Enforcement Standards Board is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rules.

### Analysis Prepared by the Training and Standards Bureau, Wisconsin Department of Justice

The following proposed rules revise certification requirements of the Law Enforcement Standards Board for instructors who teach basic and advanced training for law enforcement, jail and secure detention officers. Revised requirements pertain to new instructors and to experienced instructors who seek to renew their certification. They restrict certification to qualified persons who instruct basic training, instructor training or who employ training guides approved by the Board. They also establish a new, single term of certification and a single anniversary date for multiple certifications.

### Text Rules

**SECTION 1.** LES 4.01 (intro.), (2)(a), (c) and (d) are amended to read:

**LES 4.01 Certifications.** The following certifications shall be made by the board on the basis of information to be acquired on forms designed by the bureau and approved by the board. Where necessary or deemed advisable, additional information may be acquired through personal inquiry, ~~at the direction of the board.~~ All board decisions are subject to appeal by any interested party.

(2) **INSTRUCTORS.** (a) Any person who participates as an instructor in ~~training which has been a preparatory course, instructor course or who employs a training guide approved by the board or bureau or for which reimbursement is sought from the bureau,~~ shall be certified by the board.

(c) The board shall certify persons to be ~~general new~~ new instructors as outlined in s. LES 4.02. ~~It shall certify persons to be specific skills instructors as outlined in s. LES 4.03. It shall certify~~ authorize persons to be professional instructors as outlined in s. LES 4.04. Instructor certifications shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this section.

(d) (intro.) The board may deny, suspend, or revoke an instructor's certification or authorization when the board finds that the person:

1. Has failed to meet the board's requirements for certification or professional authorization;
2. Has failed to remain knowledgeable and current in the person's instructional area of expertise;
3. Has failed to meet reasonable instructional standards and practices.

**SECTION 2.** LES 4.01(2)(b) is repealed and recreated to read:

LES 4.01(2)(b) All existing instructor certificates shall expire on March 1, June 1, September 1, or December 1, 2001 based on the month of first certification. All certifications held by an instructor shall expire on the same date. Rules of recertification adopted as of September 1, 1999 shall apply to instructor recertifications in the year 2001.

**SECTION 3.** LES 4.02 (title), (1) (intro.), (a), (b), 1 and 2 are amended to read:

LES 4.02 (title) **General New instructor.** (1) (intro.) **GENERAL NEW INSTRUCTOR CERTIFICATION.** Certificates Certification

issued in this category on or after January 1, 1990, September 1, 1999, shall be limited to those topics which have not been incorporated by the ~~under its specific instructor certifications.~~ Persons certified as general instructors are not authorized to teach subjects which have been identified by the board as specific skills. ~~or as requiring professional certification.~~ approved for qualified persons who instruct a preparatory course, an instructor course or who employ training guides approved by the board. To qualify for ~~general new~~ new instructor certification, an applicant shall demonstrate to the satisfaction of the board, a combination of education, occupational experience and proficiency in the instructional process. Applicants shall meet the following minimum qualifications for ~~general new~~ new instructor certification:

(a) Any person who has been certified as an instructor by the Wisconsin technical college system under ch. TCS 3, administrative rules of the Wisconsin technical college system, and has completed an approved teaching methods course and other specialized instructor training designated by the board shall be certified by the board. ~~Complete copies of records which have been submitted to the state technical college system in compliance with requirements of ch. TCS 3, in addition to copies of any~~ A copy of the instructor certificates issued by the state technical college system, along with evidence of completion of an approved teaching methods course and other specialized instructor training designated by the board, shall be forwarded by the applicant to the board; and upon receipt of the documents, the board shall certify the applicant.

(b) Any applicant who has not been certified as an instructor by the Wisconsin ~~state board of vocational, technical and adult education~~ technical college system shall present documentary evidence showing that the applicant: has successfully completed a teaching methods course approved by the board and any other specialized instructor training designated by the board.

1. Is a high school graduate or has obtained In addition, any applicant requesting certification to teach any portion of the jail or secure detention preparatory course or to employ board approved training guides, shall at a minimum, show evidence of obtaining a high school degree or of obtaining a high school equivalency diploma from the state of Wisconsin or its equivalent from another state and has acquired 4 3 years of practical-occupational experience as a criminal justice certified jail officer or as an administrator or specialist in a field directly related to the subject for which he or she requests certification to teach instruct; or,

2. Has been Any applicant requesting certification to teach any portion of the board approved law enforcement and tribal law enforcement preparatory course, instructor course or from board approved training guides, shall at a minimum, show evidence of being awarded an associate degree or 60 college credits and has acquired 3 years of practical-occupational experience as a criminal justice certified law enforcement officer or as an administrator or specialist in a field directly related to the subject for which he or she requests certification.

**SECTION 4.** LES 4.02(1)(b)3 is repealed.

**SECTION 5.** LES 4.02(2) is repealed and recreated.

LES 4.02(2) **TERM OF CERTIFICATION.** The term of certification of an instructor is 3 years from the date of board approval. If a certified instructor receives additional board certification, the term of subsequent certification will be for the balance of the initial certification period.

**SECTION 6.** LES 4.02(3) is repealed.

**SECTION 7.** LES 4.02(4)(intro.) and (a) and (b) are renumbered LES 4.02(3)(intro.) and (a) and (b) and amended to read:

LES 4.02(3)(intro.) **TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION. RENEWAL OF INSTRUCTOR CERTIFICATION.** The term of certification as a general instructor is 5 years from the date the board issues a certificate. A certificate may subsequently be renewed by the board for 5 3 year periods. The application for renewal shall contain, in addition to the requirements listed in s. LES 4.01, shall provide documentary evidence indicating the applicant has remained active as an instructional or occupational practitioner or both continued occupational or related educational experience in the field(s) of

practice for which recertification is sought during the previous 5 year period. At a minimum such evidence shall include the following:

(a) ~~Proof that the applicant has within the 5-year period preceding application for renewal, instructed a minimum of eight hours in a bureau or board approved training course; and evidence of continued occupational competency as demonstrated by experience or current, relevant coursework. Occupational experience shall be of such recency and relevance as to add to the applicants preparedness for recertification. Occupational experience shall represent current practices. Instructed each course for which recertification is sought at least twice within the 3 year period preceding the application for renewal.~~

(b) A favorable written recommendation from a director of a certified or approved school for whom the applicant has taught or from the chief law enforcement officer of a department for whom the applicant has taught; or a favorable evaluation by a board or bureau member based on on-site classroom evaluation of a presentation by the applicant during the 5 previous 3 year period of general instructor certification.

**SECTION 8.** LES 4.02(3)(c) is created to read:

LES 4.02(3)(c) Proof the applicant has completed all specialized training requirements related to the subject(s) for which recertification is sought as required by the board and published in its policy and procedure manual.

**SECTION 9.** LES 4.03 is repealed.

**SECTION 10.** LES 4.04 is renumbered LES 4.03 and amended to read:

LES 4.04 **Professional instructor.** (1) ~~PROFESSIONAL INSTRUCTOR CERTIFICATION. The board may certify persons to be professional instructors when such persons Persons holding a are required to be licensed valid licensed issued by the state of Wisconsin or to hold an equivalent license in other states or, if approved by the board, a comparable license issued by another state and are currently in good standing, and hold a valid license. shall be authorized to instruct subjects in the general professional area covered by the license. To be eligible for professional certification, a qualified instructor must receive: The board shall determine which subjects shall be taught by a licensed professional instructor.~~

(a) ~~Submit written The endorsement of a chief administrator of a law enforcement agency,~~

(b) ~~The endorsement of the law enforcement coordinator of a board-certified school, or~~

(c) ~~Approval of the bureau.~~

(2) **TERMS AND CONDITIONS OF PROFESSIONAL CERTIFICATION AUTHORIZATION** ~~The term of certification authorization as professional instructor is 5-years from the date of certification. A certification may subsequently be renewed for 5 year periods. For renewal, a person shall receive a favorable recommendation from the director of a certified or approved school or the bureau or a favorable evaluation by a board or bureau member based on on-site classroom evaluation of a presentation by the instructor during the 5 year period of professional authorization valid for the period of the professional state license provided the person is in good standing with the board.~~

**SECTION 11.** LES 4.05 and 4.06 are renumbered LES 4.04 and 4.05.

**SECTION 12.** LES 4.07 is repealed.

**SECTION 13.** LES 4.08, 4.09 and 4.10 are renumbered LES 4.06, 4.07 and 4.08 and amended to read:

LES 4.06. Schools may use guest instructors with unique qualifications otherwise not available from certified instructors. Those guest instructors shall have generally accepted credentials, statewide or nationally, in the specific subject of their instruction. Schools shall receive prior approval for guest instructors from the bureau. Schools may also use licensed professional instructors, as defined in LES 4.03, for subjects specific to the licensed professional as recognized by the board.

LES 4.07. In an emergency, based on illness or unavailability of the scheduled instructor, schools may substitute instructors they feel to be competent in the area of instruction without prior approval. ~~In the event an instructor is substituted, on an emergency basis, the bureau shall, within 30 days of completion of said instruction, be advised by the school or agency conducting the training of the name and qualifications of the substitute instructor used and the portions of the curriculum the instructor taught.~~

LES 4.08. The board may accept as satisfactory, without further training a current certification in cardiopulmonary resuscitation or emergency medical technician to instruct in courses for which those certifications are appropriate the qualifications of any person currently meeting Wisconsin Technical College System certification requirements to instruct cardiopulmonary resuscitation or other medical-related subjects in a preparatory course, instructor course or from training guides approved by the board.

### **Initial Regulatory Flexibility Analysis**

Proposed rules of the Law Enforcement Standards Board do not affect small businesses.

### **Fiscal Estimate**

There is no fiscal effect.

### **Contact Person**

Dennis Hanson, Director  
Training and Standards Bureau  
Wisconsin Department of Justice  
123 West Washington Avenue  
P.O. Box 7070  
Madison, WI 53707-7070  
Telephone: 608/266-7864

## **Notice of Hearing**

### **Pharmacy Examining Board** **[CR 99-92]**

Notice is hereby given that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 450.02 (2g) (a), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to create ch. Phar 16, relating to the approval of continuing education courses for pharmacists.

### **Hearing Information**

The public hearing will be held as follows:

#### **Date and Time:**

July 13, 1999  
Tuesday  
9:30 a.m.

#### **Location:**

Room 179A  
1400 East 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 **July 27, 1999** to be included in the record of rule-making proceedings.

### **Analysis Prepared by the Dept. of Regulation and Licensing**

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

Statute interpreted: s. 450.085 (1)

This proposed rule-making order of the Pharmacy Examining Board creates rules to implement the continuing education requirements for pharmacists to biennially renew their licenses, beginning on June 1, 2000. This continuing education requirement of pharmacists as a condition for license renewal was created by 1997 Wis. Act 68.

The rules provide that beginning with the June 1, 2000 renewal deadline, licensees shall be required to "certify" on their renewal applications that they have obtained the statutorily required 30 hours of continuing education during the previous biennium. The continuing education must consist of educational programs approved by the American Council on Pharmaceutical Education ("ACPE"), or other programs that may be approved by the Board itself.

The rules provide that pharmacists must retain evidence from the educational program providers of ACPE of attendance and completion of continuing education programs for a period of 5 years following the renewal date for the biennium in which the education was required. For example, as set forth in a note to the rules, a pharmacist who renews his or her license on June 1, 2000, must retain proof of having obtained 30 hours of continuing education in the 2 years preceding renewal until June 1, 2005.

The continuing education requirement has 2 primary exceptions. First, it does not apply to an applicant for renewal of a license that expires on the first renewal date after the date on which the Board originally granted the license. Second, it will not apply to individuals who have applied for and received waivers of the requirements from the Board for reasons such as prolonged illness, disability, or other similar circumstances.

## Text of Rule

SECTION 1. Chapter Phar 16 is created to read:

### Chapter Phar 16

#### CONTINUING EDUCATION FOR PHARMACISTS

**Phar 16.01 Authority and purpose.** The rules in this chapter are adopted by the pharmacy examining board pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2g) (a), Stats.

**Phar 16.02 Continuing education required; waiver.** (1) Each pharmacist required to complete the continuing education requirement provided under s. 450.085, Stats., shall, in each second year at the time of making application for renewal of a license under s. 450.08 (2) (a), Stats., sign a statement on the application for renewal certifying that the pharmacist has completed at least 30 hours of acceptable continuing education programs within the 2-year period immediately preceding the date of his or her application for renewal. The 30 hours of continuing education for pharmacists first applies to applications that are submitted to the department to renew a license to practice pharmacy that expires on June 1, 2000. This subsection does not apply to an application for renewal of a license that expires on the first renewal date after the date on which the board initially granted the license.

(2) A pharmacist may apply to the board for waiver of the requirements of this chapter on grounds of exceptional circumstances such as prolonged illness, disability or other similar circumstances that the pharmacist indicates have prevented him or her from meeting the requirements. The board will consider each application for waiver individually on its merits.

**Phar 16.03 Acceptable continuing educational programs.** The board recognizes only those educational programs approved at the time of the pharmacist's attendance by the American council on pharmaceutical education, or other board approved programs.

**Phar 16.04 Evidence of compliance.** The board will accept as evidence of compliance by pharmacists with the requirements of this chapter, certification by either original documents or verified copies thereof, by either the providing institution or organization or the American council on pharmaceutical education, or components thereof, of attendance at and completion of continuing education programs approved under the provisions of s. Phar 16.03.

**Phar 16.05 Retention requirement.** Evidence of compliance shall be retained by each pharmacist for 5 years following the renewal date for the biennium for which 30 hours of credit are required for renewal of a license.

**Note:** For example, a pharmacist who renews his or her license on June 1, 2000, must retain proof of having obtained 30 hours of continuing education in the 2 years preceding renewal until June 1, 2005.

**Phar 16.06 Audit.** The board may require any pharmacist to submit his or her evidence of compliance with the continuing education requirements to audit compliance.

## 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: \$15,000. These rules would increase agency costs due to printing and postage costs for mailings for approximately 6,000 pharmacists. A copy of the rules and a cover letter would need to be mailed and this mailing would be approximately \$15,000. The cost to print and mail each rule is estimated at \$2.50 multiplied by 6,000 pharmacists.

## 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 Information

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 Proposed Rule

### Revenue

[CR 97-128]

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting s. 77.54(4) and (26), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **June 15, 1999**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

## Contact Person

Please contact Mark Wipperfurth at (608) 266-8253, if you have any questions regarding this proposed rule order.

## Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a)

Statute interpreted: s. 77.54(4) and (26)

SECTION 1. Tax 11.03(title) is amended, to reflect that the section pertains to schools and school-related organizations other than elementary and secondary.

SECTION 2. Tax 11.03(1)(a)2. and 3. are renumbered, to list the definitions in alphabetical order, per Legislative Council Rules Clearinghouse standards.



SECTION 3. Tax 11.03(1)(b) is amended, to reflect the renumbering of Tax 11.03(1)(a)2. as described in SECTION 2.

Tax 11.03(3)(c) is amended, to remove the terms “vocational and adult education schools” and replace them with “technical college districts,” to reflect current terminology.

Tax 11.03(4)(a) is amended, to:

- Remove the term “vocational schools” and replace it with “technical colleges,” to reflect current terminology.
- Reflect the requirement that the schools must be located in Wisconsin to qualify for the sales and use tax exemption.
- Permit the exemption from sales and use tax to be claimed by schools by providing either an exemption certificate or a purchase order from the school.

Tax 11.03(4)(c) is amended, to clarify that related organizations of public and private schools which are not subject to the control and supervision of school officials may still be exempt from Wisconsin sales and use tax if they have their own certificate of exempt status.

SECTION 4. Tax 11.03(4)(d) is created, to clarify that related organizations of public and private schools which are subject to the control and supervision of school officials may claim exemption from Wisconsin sales and use tax by providing an exemption certificate or purchase order from the school.

The second note at the end of Tax 11.03 is repealed, because it is obsolete.

SECTIONS 5 AND 6. Tax 11.11(2)(b) is amended and Tax 11.11(2)(c) is repealed, to reflect the department’s position that utilities consumed in operating waste treatment facilities qualify as supplies and are exempt from Wisconsin sales and use tax.

The term “supply” is not defined in Ch. 77, Stats. Therefore, when determining what items fall within the definition of “supplies,” the common definition of the term as found in a standard dictionary is to be used.

“Supply” is defined in *Webster’s Ninth New Collegiate Dictionary* (1991 Edition) to mean “...the quantity or amount (as of a commodity) needed or available...PROVISIONS, STORES...the quantities of goods or services offered for sale at a particular time or at one price...something that maintains or constitutes a supply.”

“Provision” is defined in *Webster’s Ninth New Collegiate Dictionary* (1991 Edition) to mean “...a measure taken beforehand to deal with a need or contingency...a stock of needed materials or supplies...”

Upon examining the dictionary definition of “supply” and the recent decision in *Cherney Microbiological Services, Ltd. v. Wisconsin Department of Revenue* (April 23, 1996), the department has determined that electricity is a supply that is exempt pursuant to s. 77.54(26), Stats.

The term “utilities” clearly fits within the definition of the word “supply,” which includes “...the quantity or amount (as of a commodity) needed or available...” Utilities are clearly an item needed to operate a waste treatment facility.

SECTION 7. Tax 11.11(3)(intro.) is created, to provide a general explanation of the exemption provided in s. 77.54(26), Stats., for waste treatment facilities.

SECTION 8. Tax 11.11(3)(a), (b) and (c) are renumbered Tax 11.11(3)(a)1., 2. and 3. respectively, since they all apply to the title of par.(a) as created in SECTION 9.

Tax 11.11(3)(d) is renumbered Tax 11.11(4) and amended, to:

- Add a title identifying to what the subsection applies.
- Provide that the exemption for the repair, service, alteration, cleaning, painting and maintaining applies to both municipal and certain industrial waste treatment facilities.
- Provide that utilities purchased for municipal and certain industrial waste treatment facilities are exempt from Wisconsin sales and use tax, to reflect the department’s position as explained in the analysis for SECTIONS 5 AND 6.

Tax 11.11(4) is renumbered Tax 11.11(5) and Tax 11.11(5)(c) as renumbered is amended, to reflect correct punctuation per Legislative Council Rules Clearinghouse Standards.

The note at the end of Tax 11.11(5)(a) as renumbered is revised, to provide the proper zip code for the mailing address of the Department of Revenue.

SECTION 9. Tax 11.11(3)(a)(title) is created, to identify the type of waste treatment facility to which this paragraph applies.

Tax 11.11(3)(b), (c) and (d) are created, to provide explanations of other types of waste treatment facilities which qualify for the exemption provided in s. 77.54(26), Stats.

The first note at the end of Tax 11.11 is moved to follow the third note, to conform with Legislative Council Rules Clearinghouse standards.

The second note at the end of Tax 11.11 is revised, to reflect proper mailing addresses.

## Text of Rule

SECTION 1. Tax 11.03(title) is amended to read:

Tax 11.03(title) **Elementary and secondary schools Schools and related organizations.**

SECTION 2. Tax 11.03(1)(a)2. and 3. are renumbered Tax 11.03(1)(a)3. and 2.

SECTION 3. Tax 11.03(1)(b), (3)(c) and (4)(a) and (c) are amended to read:

Tax 11.03(1)(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in par.(a) 1. and 2. 3. and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year. Elementary and secondary schools also include school districts for purposes of exemption under s. 77.54(4), Stats.

(3)(c) Sales of tangible personal property or taxable services by vocational, technical and adult education schools college districts.

(4)(a) All public Public schools, vocational schools technical colleges, state colleges and universities and public school districts, located in Wisconsin. ~~This exemption may be claimed without use of an An exemption certificate. A or a purchase order shall be acceptable evidence of a sale’s exempt status.~~

(c) Related organizations of private or public schools having which have certificates of exempt status, such as parent-teacher associations and student organizations which are not subject to the control and supervision of school officials.

SECTION 4. Tax 11.03(4)(d) is created to read:

Tax 11.03(4)(d) Related organizations of private or public schools, such as parent-teacher associations and student organizations which are subject to the control and supervision of school officials. An exemption certificate completed by the school or a school purchase order shall be acceptable evidence of a sale’s exempt status.

Note to Revisor: Remove the second note at the end of Tax 11.03.

SECTION 5. Tax 11.11(2)(b) is amended to read:

Tax 11.11(2)(b) When any plant or equipment has been approved as exempt from the property tax on January 1, the repair, service, alteration, cleaning, painting and maintenance of the exempt property and the repair parts and replacements related to that property are also exempt through the following December 31. The sales and use tax exemption applies to chemicals and supplies and utilities used or consumed in operating a waste treatment facility; except as provided in par. (e).

SECTION 6. Tax 11.11(2)(c) is repealed.

SECTION 7. Tax 11.11(3)(intro.) is created to read:

Tax 11.11(3)(intro.) Tangible personal property which becomes a component or ingredient part of the following municipal facilities that treat waste qualifies for exemption from Wisconsin sales and use tax under s. 77.54(26), Stats.:

SECTION 8. Tax 11.11(3)(a), (b), (c) and (d) and (4) are renumbered Tax 11.11(3)(a)1., 2. and 3., (4) and (5), and as renumbered, Tax 11.11(4) and (5)(c) are amended to read:

Tax 11.11(4)(title) REPAIR, SERVICE AND OPERATION. The repair, service, alteration, cleaning, painting and maintenance of an industrial waste treatment facility described in sub.(2) and a municipal central waste treatment facility described in sub.(3), the repair parts and replacements therefor, for those types of facilities and chemicals and supplies and utilities used or consumed in operating a waste treatment facility those types of facilities are exempt from the sales and use tax.

(5)(c) *Determining exemptions.* Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department for a property tax exemption under s. 70.11(21), Stats. If there has been no "approval," the contractor or subcontractor may be liable for the sales or use tax on its purchases. Approvals are not required for municipal waste treatment facilities and, therefore, contractors may purchase without tax construction materials which become a component part of the exempt facility.

Note to Revisor: Change the note following Tax 11.11(5)(a) to read as follows:

Note: Form S-207 may be obtained by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

**SECTION 9.** Tax 11.11(3)(a)(title), (b), (c) and (d) are created to read:

Tax 11.11(3)(a)(title) *Wastewater treatment facility.*

(b) *Material recovery facility.* 1. A facility constructed by a municipality to meet mandates of ch. 287, Stats., regarding the reuse, recycling and recovery of waste material to reduce the need for waste disposal is exempt if the activities include all of the following:

- a. Sorting recyclable materials delivered from municipalities.
  - b. Processing recyclable materials which may include removing contaminants, baling paper, shredding paper, pelletizing plastics and crushing glass.
  - c. Storing processed recyclable materials for sale to others.
2. The exemption does not apply if the only activities performed are sorting and storing and no processing of the materials takes place.

(c) *Sanitary landfill.* A sanitary landfill, including the treatment equipment, such as the collection and burner system, laboratory equipment, maintenance buildings, garages, office buildings, fences and gates, qualifies for exemption.

(d) *Groundwater facilities.* 1. A municipal facility constructed to treat hazardous or contaminated groundwater, including oil and water separators, air strippers, aerators, blowers, filters, carbon units, controls, thermal oxidizers and pumps, qualifies for exemption.

2. The collection system used to bring the hazardous or contaminated water to the facility and the distribution system used to carry the treated water away from the facility are not exempt.

Note to Revisor: Move the first note at the end of Tax 11.11, to follow the third note.

Note to Revisor: Replace the second note at the end of Tax 11.11 with the following:

Note: Contractors and others may determine whether an industrial waste treatment facility has been approved by the department as follows:

- a. Public utility facilities, including railroads, airlines and pipelines: Write or call Wisconsin Department of Revenue, Bureau of Utility and Special Taxes, P.O. Box 8933, Madison, WI 53708-8933; telephone (608) 266-8162.
- b. Other commercial and industrial facilities: Write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, P.O. Box 8933, Madison, WI 53708-8933; telephone (608) 266-1147.

## **Initial Regulatory Flexibility Analysis**

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

## **Fiscal Estimate**

There is no fiscal effect.

## **Notice of Proposed Rule**

### **Revenue**

**[CR 99-76]**

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting ss. 77.51 (4) (cm), 77.52 (1) and 77.54 (15) and (20), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing, unless, within 30 days after publication of this notice on **June 15, 1999**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

## **Analysis by the Dept. of Revenue**

Statutory authority: s. 227.11 (2) (a)

Statutes interpreted: ss. 77.51 (4) (cm), 77.52 (1) and 77.54 (15) and (20)

SECTION 1. Tax 11.51 (1) is revised, to reflect the renumbering of sub. (2) (c), as explained below.

Tax 11.51 (2) (a) and (b) are revised, to list additional items of taxable and exempt sales by grocery stores, to reflect current Department policy relating to fruit juices, to reflect the treatment of "sandwiches" and to reference each of the paragraphs in sub. (3), as renumbered from sub. (2) (c) or as newly created.

SECTIONS 2 TO 5 AND 7. Tax 11.51 (2) (c) (title) and 1. to 5. are renumbered Tax 11.51 (3) (title) and (a), (b), (c), (d) and (g) 1., Tax 11.51 (2) (c) (intro.) is repealed and Tax 11.51 (3) (intro.) is created, to place the contents of the paragraph in a separate subsection. The material in sub. (2) (c) is not a guidelist, as the title to sub. (2) suggests.

Tax 11.51 (3) (c) as renumbered is revised, to reflect current Department policy relating to fruit juices.

Tax 11.51 (3) (d) as renumbered is revised, to conform style to Legislative Council Rules Clearinghouse standards.

Tax 11.51 (3) (g) 1. as renumbered is revised and sub. (3) (g) 2. is created, to provide separate subdivisions for taxable and exempt deli sales and to remove language relating to sandwiches and meals, due to the creation of sub. (3) (e) and (f) as explained below.

Tax 11.51 (3) (e) and (f) are created, to provide definitions of "meal" and "sandwich," respectively, as a result of the creation of s. 77.54 (20) (bg) 1. and 2., Stats., by 1997 Wis. Act 237.

Tax 11.51 (3) (h) is created, to provide that gross receipts from sales of certain prepackaged food combinations are not taxable, as a result of the creation of s. 77.51 (4) (cm), Stats., by 1997 Wis. Act 237.

SECTION 6. Tax 11.51 (3) is renumbered Tax 11.51 (4), due to the renumbering of Tax 11.51 (2) (c) to Tax 11.51 (3).

## **Text of Rule**

**SECTION 1.** Tax 11.51 (1) and (2) (a) and (b) are amended to read:

Tax 11.51 (1) **GENERAL.** All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages," which generally exempts all basic food items for human consumption off the premises of the grocer. This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages, including bases or concentrates to produce soft drinks and fruit drinks, beer, intoxicating liquors, candy, paper products and detergents. The lists in sub. (2)(a) and (b)

shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

**Note to Revisor:** Amend only the following portions of the alphabetical lists in sub. (2)(a) and (b):

(2) (a) ...

Deli items, ~~see par. (c) 5. as explained in sub. (3) (g) 2.~~

...

Fruit drinks, ~~liquid and powdered, see par. (c) 2. if not pure fruit juice, as explained in sub. (3) (b).~~

...

Greeting cards.

Grilling supplies.

Grooming aids.

...

Heated foods and beverages, ~~see par. (c) 1. as explained in sub. (3) (a).~~

...

Household equipment and supplies.

Hygiene products.

Ice, cube and block.

...

Matches.

Meals, as explained in sub. (3) (e).

Medicinal preparations.

...

Powdered fruit drinks, ~~see par. (c) 2. as explained in sub. (3) (b).~~

...

Sandwiches, hot or cold, ~~but not frozen, as explained in sub. (3) (f).~~

...

Soaps.

Soda fountain items.

Soda water beverages, ~~see par. (c) 2. as explained in sub. (3) (b).~~

Soft drinks, ~~see par. (c) 2. as explained in sub. (3) (b).~~

...

(b) ...

Cream.

Deli items, as explained in sub. (3) (g) 1.

Desserts and toppings.

Dietary foods, ~~see par. (c) 4. as explained in sub. (3) (d).~~

...

Frozen fruit juices, ~~see par. (c) 3. as explained in sub. (3) (c).~~

...

Juices, pure fruit, ~~see par. (c) 3. as explained in sub. (3) (c).~~

...

Potato salad, ~~see par. (c) 5. as explained in sub. (3) (g) 1.~~

Poultry and poultry products.

Prepackaged food combinations, as explained sub. (3) (h).

Preserves.

...

**SECTION 2.** Tax 11.51 (2) (c) (title) is renumbered Tax 11.51 (3) (title) and amended to read:

Tax 11.51(3) EXPLANATIONS OF SOME ITEMS NOTED ABOVE TAXABLE AND EXEMPT SALES BY GROCERS.

**SECTION 3.** Tax 11.51 (2) (c) (intro.) is repealed.

**SECTION 4.** Tax 11.51 (2) (c) 1. to 4. are renumbered Tax 11.51 (3) (a) to (d) and, as renumbered, Tax 11.51 (3) (c) and (d) are amended to read:

Tax 11.51 (3) (c) Sales of pure fruit juices as defined in ch. 97, 1967 Stats., are not taxable. Fruit juices are the clean, unfermented liquid product obtained by the first pressing of fresh ripe fruits. The only permissible additives are sugar and one of the preservatives such as sodium benzoate, sorbic acid or sodium sorbate. Frozen concentrates conforming to the above description are also tax exempt. To be exempt, the title of the fruit juice on the label shall generally will contain the word juice to the exclusion of all other words such as cocktail, drink, punch, ade or nectar ~~in compliance with requirements set by the United States food and drug administration. However, if a fruit juice label also contains the word cocktail, drink, punch, ade or nectar but is 100% pure fruit juice, the juice is not subject to Wisconsin sales tax.~~

**Note to Revisor:** In examples 2 and 3 at the end of sub. (3) (c) as renumbered, add the words "if it does not contain 100% pure fruit juice" at the end of each example.

(d) "Dietary foods" include products intended to substitute in whole or in part for the ordinary diet such as Metrecal, Slimfast ~~Powder Drinks and Bars~~ powder drinks and bars and meat base formula. It also includes those products which supplement the ordinary diet, such as Ovaltine, and Ensure and Enrich nutrition supplements, and compressed or concentrated foods taken in wafer form which can be identified as food because of higher concentrated food values of carbohydrates and proteins. Dietary foods do not include patent medicines, tonics, vitamins and medical-type preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form used for medicinal or remedial purposes. The sales of these items are taxable.

**Note to Revisor:** Move the examples at the end of sub. (2) (c) 4. before renumbering to the end of sub. (3) (d) as renumbered.

**SECTION 5.** Tax 11.51 (2) (c) 5. is renumbered Tax 11.51 (3) (g) 1. and amended to read:

Tax 11.51(3)(g)1. Deli sales for ~~off-premise~~ off-premise consumption sold by a weight or measure such as by the pound or the dozen, and not at a stated price for any particular combination of the separate ingredients which can be designated as either a meal or sandwich, are exempt. ~~Deli sales for off-premise consumption sold in a heated state or sold at a stated price for a combination of the separate ingredients designated as either a meal or sandwich are taxable. Sales of sandwiches are taxable. A meal usually consists of a diversified selection of foods which are not susceptible of consumption in the absence of at least some articles of tableware and which are not conveniently consumed while one is standing or walking.~~

**SECTION 6.** Tax 11.51 (3) is renumbered Tax 11.51 (4).

**SECTION 7.** Tax 11.51 (3) (intro.), (e), (f), (g) 2. and (h) are created to read:

Tax 11.51(3) For purposes of sub. (2):

(e) 1. "Meals" include, but are not limited to, a diversified selection of food, food products or beverages that are customarily consumed as a breakfast, lunch or dinner, that may not easily be consumed without an article of tableware and that may not conveniently be consumed while standing or walking.

2. "Meals" do not include:

a. Frozen items that are sold to a consumer.

b. Items that are customarily heated or cooked after the retail sale and before they are consumed.

c. A diversified selection of food, food products and beverages that is packaged together by a person other than the grocer before the sale to the consumer.

(f) 1. "Sandwiches" means a food that consists of a filling, such as meat, cheese or a savory mixture, that is placed on a slice, or between two slices, of bread or something that takes the place of bread, such as a roll, croissant or bagel.

2. "Sandwiches" include, but are not limited to:

a. Burritos, tacos, enchiladas or chimichangas.

b. Pita sandwiches, gyros and pocket sandwiches.

3. "Sandwiches" do not include:

a. Hors d'oeuvres or canapes.

- b. Egg rolls.
- c. Cookies, cakes, pies and similar desserts and pastries.
- d. Food that is sold frozen.

(g) 2. Deli sales for off-premise consumption sold in a heated state or sold at a stated price for a combination of the separate ingredients designated as either a meal or sandwich are taxable.

**Note to Revisor:** Move examples 1 and 3 at the end of sub. (2) (c) 5. before renumbering to the end of sub. (3) (g) as renumbered, and replace example 2 with the following:

2) A grocer's deli sells a serving of each of the following for \$3.59: potato salad, fruit salad, cheese, ham, coleslaw, corned beef and fresh rolls. Because the sale is at a stated price for a particular combination of ingredients, packaged together by the grocer, which can be considered a meal, the sale is taxable.

(h) 1. A combination of food, food products and beverages packaged together with other goods by a person other than the grocer before the grocer makes the sale to the final consumer is a "prepackaged food combination."

2. If 50% or more of the sales price of a prepackaged food combination is attributable to goods that are exempt from Wisconsin sales and use tax, the total selling price of the combined package is exempt from Wisconsin sales and use tax.

**Example:** A grocery store sells to a consumer a package that contains crackers, meat, cheese, candy and a fruit drink that is not 100% pure fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$2 selling price, \$1.50 is attributable to the meat, cheese and crackers, which are exempt items, and \$0.50 is attributable to the candy and fruit drink, which are taxable items. Since 50% or more of the selling price of the package is attributable to food that is exempt from Wisconsin sales and use tax, the entire \$2 selling price is exempt from Wisconsin sales and use tax.

3. If less than 50% of the sales price of a prepackaged food combination is attributable to goods that are exempt from Wisconsin sales and use tax, that portion of the selling price attributable to the taxable items is subject to Wisconsin sales or use tax.

**Example:** A grocery store sells to a consumer a package that contains a sandwich, pretzels, cookies and a fruit drink that is not 100% pure fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$2 selling price, \$1.50 is attributable to the sandwich and fruit drink, which are taxable items, and \$0.50 is attributable to the pretzels and cookies, which are exempt items. Since less than 50% of the selling price of the package is attributable to food that is exempt from Wisconsin sales and use tax, \$1.50 of the \$2 selling price attributable to taxable items is subject to Wisconsin sales or use tax.

**Note to Revisor:** Replace the two notes at the end of Tax 11.51 with the following:

**Note:** Section Tax 11.51 interprets ss. 77.51 (4) (cm), 77.52 (1) and 77.54 (15) and (20), Stats.

**Note:** The interpretations in s. Tax 11.51 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of cigarettes became taxable on September 1, 1975, pursuant to Chapter 39, Laws of 1975; (b) Magazines and periodicals sold over-the-counter became taxable on September 1, 1983, pursuant to 1983 Wis. Act 27; and (c) The definitions of "meals" and "sandwiches" and the tax treatment of prepackaged food combinations became effective August 1, 1997, pursuant to 1997 Wis. Act 237.

### **Initial Regulatory Flexibility Analysis**

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

### **Contact Information**

Please contact Mark Wipperfurth at (608) 266-8253, if you have any questions regarding this proposed rule order.

## **Notice of Hearing**

### **Transportation**

**[CR 99-91]**

Notice is hereby given that pursuant to ss. 84.18(7) and 85.16(1), Stats., and interpreting s. 84.18, Stats., the Department of Transportation will hold a public hearing in **Room 951 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 29th day of June, 1999, at 1:30 PM**, to consider the amendment of ch. Trans 213, Wisconsin Administrative Code, relating to the local bridge program.

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

The public record on this proposed rule making will be held open until close of business **July 2, 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 Alex Zanello, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913.

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

### **Analysis Prepared by the Wisconsin Department of Transportation**

Statutory authority: ss. 84.18(7) and 85.16(1)

Statute interpreted: s. 84.18

**General Summary of Proposed Rule.** This proposed rule making will modify the current Wisconsin requirements for replacement of eligible structures under the Local Bridge Improvement Assistance Program. The sufficiency rating for replacement is raised from less than 40 to the federal standard of less than 50. At the same time, minor changes in this proposed rule will eliminate any discrepancies between federal requirements and the current rule, and update outdated references.

### **Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

### **Initial Regulatory Flexibility Analysis**

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

### **Copies of Proposed Rule**

Copies of the proposed rule may be obtained upon request, without cost, by writing to Alex Zanello, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-1535. 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.*

**Elections Board (CR 99–77):**

S. ElBd 6.05 – Relating to filing campaign finance reports in electronic format.

**Insurance, Commissioner of (CR 99–70):**

SS. Ins 17.01, 17.275 and 17.28 – Relating to annual compensation fund and mediation fund fees, open records law applicable to fund records and late fee for late filing of certificates of insurance.

**Public Defender (CR 99–74):**

S. PD 1.04 (10) – Relating to certification criteria.

**Social Workers, Marriage and Family Therapists and  
Professional Counselors Examining Board (CR 99–39):**

Chs. SFC 3, 11, 14, 16 and 18 – Relating to repeal of outdated provisions, and academic equivalency requirements for certification as a professional counselor.

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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.*

**Chiropractic Examining Board (CR 98-141):**

An order amending s. Chir 4.05 (2) (f), (g) and (h), relating to techniques, ancillary procedures or instruments prohibited in the practice of chiropractic.

Effective 08-01-99.

**Commerce (CR 98-207):**

An order affecting ch. Comm 90, relating to the design and construction of public swimming pools.

Effective 07-01-99.

**Corrections (CR 99-15):**

An order creating ch. DOC 330, relating to pharmacological treatment of certain child sex offenders.

Effective 08-01-99.

**Health and Family Services (CR 98-188):**

An order affecting ch. HSS 129 and creating ch. HFS 13, relating to reporting and investigation of caregiver misconduct and operation of the caregiver misconduct registry.

Effective 07-01-99.

**Health and Family Services (CR 98-191):**

An 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 people who need that care or treatment, and for barring persons (because of specified convictions, charges or findings 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.

Effective 07-01-99.

**Natural Resources (CR 98-177):**

An order affecting ss. NR 25.05, 25.07 and 25.08, relating to commercial fishing on Lake Michigan and Lake Superior.

Effective 08-01-99.

**Regulation and Licensing (CR 98-135):**

An order affecting chs. RL 120 to 126, relating to the registration and regulation of auctioneers and auction companies.

Effective 08-01-99.

**Regulation and Licensing (CR 98-175):**

An order creating chs. RL 131 to 135, relating to the registration and regulation of home inspectors.

Effective 08-01-99.



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DEPARTMENT OF ADMINISTRATION  
BUREAU OF INTEGRATED DOCUMENT SERVICES  
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