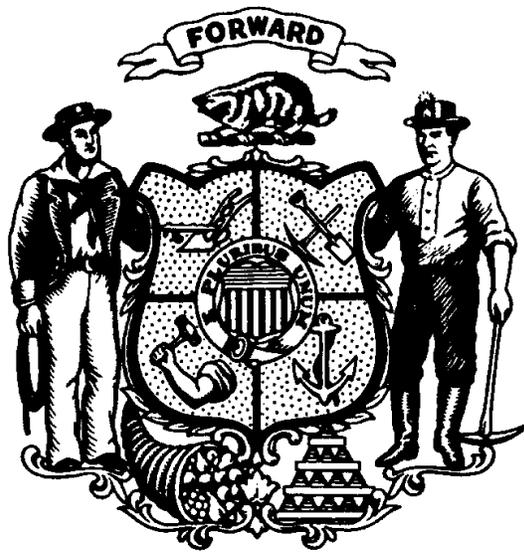


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Carried unanimously, pursuant to s. 227.19 (1) (b) 4., Stats., the Joint Committee for Review of Administrative Rules (JCRAR) suspend ch. NR 328, effective July 5, 1999.

EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (2)

Agriculture, Trade & Consumer Protection

1. Rules were adopted amending s. ATCP 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. 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.

Publication Date: April 30, 1999
Effective Date: April 30, 1999
Expiration Date: September 27, 1999
Hearing Date: June 18, 1999

2. Rules adopted revising s. ATCP 100.45, 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. ATCP 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. ATCP 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. ATCP 100.45(5).

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

(3) Under s. ATCP 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

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: September 6, 1999

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 Department of Commerce finds that an emergency exists and that adoption of the 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 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 then adopted by the two Departments and became effective on January 1, 1999. Subsequently, further improvements for jointly administering the PECFA fund were developed that were consistent with the JCRAR directive, and were adopted by the two Departments in an emergency rule which replaced the initial emergency rule. That second emergency rule became effective on February 23, 1999. Now, significant additional changes have again been developed, which are also consistent with the JCRAR directive.

Chapter Comm 46 defines "high priority site," "medium priority site," and "low priority site," and provides that the Department of Natural Resources has authority for high priority sites and that the Department of Commerce has authority for low and medium priority sites. The rule requires transfer of authority for sites with petroleum contamination in the groundwater below the enforcement standard in ch. NR 140 from the Department of Natural Resources to the Department of Commerce. The rule also establishes procedures for transferring sites from one agency to the other when information relevant to the site classification becomes available.

Chapter Comm 46 requires the two agencies to work cooperatively to develop the following:

1. A system of joint decision-making for the selection of remedial bids and the setting of remediation targets for sites which are competitively bid or bundled with another site or sites.

2. An agreed-upon methodology for determining if there is evidence of an expanding plume and the actions to take if the data provided through the site investigation is not adequate.

3. A process for taking into account the impact of error of measurement, repeatability of results and statistical significance, when determining whether a site is above or below the enforcement standard or any other contaminant level or target.

4. A system for electronically tracking the achievement of remediation targets.

5. A reconciled list of sites in remediation.

Publication Date: July 10, 1999
Effective Date: July 10, 1999
Expiration Date: December 7, 1999

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
Extension Through: September 14, 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
Hearing Date: May 12, 1999
Extension Through: September 22, 1999

EMERGENCY RULES NOW IN EFFECT

Employment Relations Commission

Rules adopted revising **ch. ERC 33, Appendix C**, relating to the calculation of a minimum qualified economic offer in collective bargaining with professional school district employees.

Finding of Emergency

We find that it is necessary to promulgate the amendment to ch. ERC 33, Appendix C as an emergency rule to preserve the public

peace, health, safety and welfare. Without the amendment, the timely and peaceful resolution of collective bargaining disputes in Wisconsin will be endangered.

Publication Date: June 12, 1999
Effective Date: June 12, 1999
Expiration Date: November 9, 1999

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
Extension Through: August 3, 1999

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

EMERGENCY RULES NOW IN EFFECT (2)

Health & Family Services

(Medical Assistance, Chs. HFS 101–108)

1. Rules were adopted revising **chs. HFS 101 to 103, and 108**, relating to operation of BadgerCare health insurance program.

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:

This order creates rules that specify how a new program called BadgerCare, established under s. 49.665, Stats., will work. Under BadgerCare, families with incomes up to 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance (MA) coverage of their health care costs, and that lack access to group health insurance, are eligible to have BadgerCare pay for their health care costs. The order incorporates the rules for operation of BadgerCare into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the MA program.

BadgerCare is projected to cover over 40,000 currently uninsured Wisconsin residents, including more than 23,000 children, by the end of 1999.

Benefits under BadgerCare will be identical to the comprehensive package of benefits provided by Medical Assistance. The existing Wisconsin Medicaid HMO managed care system, including mechanisms for assuring the quality of services, improving health outcomes and settling grievances, will be used also for BadgerCare.

Department rules for the operation of BadgerCare must be in effect before BadgerCare may begin. The program statute, s. 49.665, Stats., was effective on October 14, 1997. It directed the

Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement BadgerCare not later than July 1, 1998, or the effective date of the waiver, whichever date was later. The federal waiver letter approving BadgerCare was received on January 22, 1999. It specified that BadgerCare was not to be implemented prior to July 1, 1999. Once the letter was received, the Department began developing the rules. They are now ready. The Department is publishing the rules by emergency order so that they will go into effect on July 1, 1999, rather than at least 9 months later, which is about how long the process of making permanent rules takes, and thereby provide already authorized health care coverage as quickly as possible to families currently not covered by health insurance and unable to pay for needed health care.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate BadgerCare and in the process provide more specificity than s. 49.665, Stats., about the nonfinancial and financial conditions of eligibility for BadgerCare; state who is included in a BadgerCare group and whose income is taken into consideration when determining the eligibility of a BadgerCare group; expand on statutory conditions for continuing to be eligible for BadgerCare; exempt a BadgerCare group with monthly income at or below 150% of the federal poverty level from being obliged to contribute toward the cost of the health care coverage; and set forth how the Department, as an alternative to providing Medical Assistance coverage, will go about purchasing family coverage offered by the employer of a member of a family eligible for BadgerCare if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

Publication Date: July 1, 1999
Effective Date: July 1, 1999
Expiration Date: November 28, 1999

2. Rule adopted amending **s. HFS 105.39 (4) (b) 3.**, relating to certification of specialized medical vehicle providers.

Finding of Emergency

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

The Department's rules for certification of specialized motor vehicle (SMV) providers under the Medical Assistance (MA) program include requirements for SMV drivers. Among current requirements is that each driver must receive training in first aid and cardiopulmonary resuscitation (CPR) before driving a vehicle or serving as an attendant and must receive refresher training in first aid every 2 years and refresher training in CPR annually. The specific requirements for refresher training date from December 1, 1994. When revising its rules for SMV providers earlier in 1994 the Department proposed to require refresher training every 2 years for both first aid and CPR, but at the public hearings on the proposed rules 5 SMV providers said the CPR refresher training should take place annually and the Department agreed and made that its requirement.

Although the American Red Cross CPR training and certification that the person is trained continue to be annual, the equivalent American Heart Association CPR training and certification (the American Heart Association prefers "recognition" to "certification") is now every 2 years. This means that to comply with the Department's current MA rule for SMV drivers, s. HFS 105.39 (4) (b) 3., drivers who receive their training from the American Heart Association must repeat the training each year. That is unnecessary for maintenance of American Heart Association certification (recognition) and the time and expense involved is a burden on SMV providers and drivers. The Department is modifying the rule through this order to simply require that drivers maintain CPR certification.

The Department through this order is also changing the requirement for refresher training in first aid from every 2 years to

at least every 3 years. That is because the American Red Cross certification in first aid is now for 3 years. A requirement for more frequent refresher training in first aid is a burden in time and expense involved for SMV providers and drivers.

Publication Date: July 3, 1999
Effective Date: July 3, 1999
Expiration Date: November 30, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services

(Health, Chs. HSS/HFS 110--)

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

Exemption From Finding of Emergency

Section 149.143 (4), Stats., as affected by 1997 Wisconsin Act 27, permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on December 11, 1998 on the proposed rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,123 HIRSP policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates by just over 10% in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule and the rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2)(a)3. and 4., Stats., as affected by Act 27.

Publication Date: December 31, 1998
Effective Date: January 1, 1999
Expiration Date: May 31, 1999
Hearing Date: March 11, 1999
Extension Through: July 29, 1999

2. Rules were adopted revising **ch. HFS 119**, relating to the Health Insurance Risk-Sharing Plan.

Exemption From Finding of Emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats. by using emergency rulemaking procedures, except that the

Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on April 30, 1999 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 7,291 HIRSP policies in effect on March 31, 1999 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 in accordance with the authority and requirements set out in s. 149.143 (2) (a) 2., Stats. The Department is required to set premium rates by rule. These rates must be calculated in accordance with generally accepted actuarial principles. Policyholders are to pay 60% of the costs of HIRSP.

There are separate sets of tables in ch. HFS 119 that show unsubsidized and subsidized Plan 2 premium rates. Both sets of tables are amended by this order to increase the premium rates because Plan 2 costs, which historically have been running about 50% less than Plan 1 costs, began to increase several years ago and now are running at about 67% of Plan 1 costs. The Plan 2 premium rates need to be increased to cover increased costs of treatment for individuals enrolled under Plan 2. The order increases these premium rates by about 18%.

In January 1999, the Department published an emergency rule order to increase HIRSP unsubsidized Plan 2 premium rates by about 10%, with the intention of increasing those rates again in July 1999 to the level provided for in this order. However, in May 1999 the Legislature's Joint Committee for the Review of Administrative Rules (JCRAR) refused to extend the effective period of that part of the January 1999 emergency rule order relating to premium rate increases, with the result that effective May 31, 1999, the rates reverted back to the rates in effect before January 1, 1999. Consequently, to increase rates effective July 1, 1999, the Department through this rulemaking order has based the increased rates on the rates in effect prior to January 1, 1999.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2)(a)3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 1998. The Board of Governors approved a reconciliation methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula. By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 1999.

The result of this reconciliation process for calendar year 1998 indicated that insurance assessments collected were greater than the 20% of costs (net of the GPR contribution from appropriation s. 20.435(5)(af), Stats.), required of insurers. Also, the calendar year 1998 reconciliation process showed that an insufficient amount was collected from health care providers. As a result of this reconciliation, the insurer assessments for the time periods July 1, 1999 through December 31, 1999 and January 1, 2000 through June 30, 2000, are reduced to offset the overpayment in 1998. The total adjustments to the provider payment rates for the same time periods are sharply increased in order to recoup the provider contribution that was not collected in calendar year 1998. The budget for the plan year ending June 30, 2000 and the calendar year 1998 reconciliation

process were approved by the HIRSP Board of Governors in April 1999.

Publication Date: June 30, 1999
Effective Date: July 1, 1999
Expiration Date: November 28, 1999

EMERGENCY RULES NOW IN EFFECT

Insurance

Rules adopted amending **ss. Ins 17.01 (3) (intro.) and 17.28 (6a)** repealing and recreating **s. Ins 17.28 (6)**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1999.

Finding of Emergency

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

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule No. 99-70, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1999.

The commissioner expects that the permanent rule will be filled with the secretary of state in time to take effect September 1, 1999. Because the fund fee provisions of this rule first apply on July 1, 1999, it is necessary to promulgate the fee portion of the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 17, 1999.

Publication Date: June 4, 1999
Effective Date: July 1, 1999
Expiration Date: November 28, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

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

1. 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

2. Rules adopted creating **ch. NR 328**, relating to regulation of water ski platforms and water ski jumps.

Analysis by the Department of Natural Resources

Statutory authority: ss. 30.135, 227.11 (2) (a) and 227.24
 Statutes interpreted: ss. 30.66, 30.69 and 30.135

Chapter NR 328 describes the conditions where a water ski jump or platform will require a permit. It explains what constitutes a substantive written objection to a water ski jump or platform and provides a list of reasons that support a substantive written objection. It specifies the contents of a public notice and the process for making a substantive written objection. It details how the department will respond to complaints about an existing water ski jump or platform.

These rules were promulgated as emergency rules at the direction of the joint committee for review of administrative rules.

Publication Date: July 9, 1999
Effective Date: July 9, 1999*
Expiration Date: December 6, 1999

***Rule suspended by Joint Committee for Review of Administrative Rules on July 5, 1999.**

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

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

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Economic Support, Chs. DWD 11–59)

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

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Ch. Comm 30 – Relating to fire department safety and health.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to update the provisions of the Department's administrative rules relating to the occupational safety and health standards for public sector fire department employees. This update will include a comparison of the recently-updated ch. Comm 32, Public Employe Safety and Health, to maximize consistency between chs. Comm 30 and 32. This update will also include a review of the incorporation by reference of several nationally-recognized standards.

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

Section 101.055, Stats., requires the Department to provide public sector employees with safety and health protection at least equivalent to that afforded to private sector employees under standards adopted by the federal Occupational Safety and Health Administration. Chapter Comm 30 establishes and further delineates safety and health standards for public sector fire department employees and specifies the minimum requirements for an occupational safety program for a fire department, including safety procedures for those individuals involved in fire suppression, rescue, and related activities. The alternative of not updating ch. Comm 30 would result in public sector fire department employees not being provided with safety and health protection equivalent to that afforded to private sector employees.

Statutory authority:

Section 101.055 (3), Stats.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The Department estimates that it will take approximately 500 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Transportation

Subject:

Ch. Trans 252 – Relating to escort vehicles.

Description of policy issues:

Description of the objective of the rule:

This rulemaking will amend ch. Trans 252, relating to escort vehicles, to update some requirements reflecting changes in vehicle manufacturing and industry practices.

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

Currently, the rule requires escort vehicles to be either "passenger vehicle or light truck." The Department proposes to expand allowable vehicles to include single-unit motor trucks up to 32,000 pounds, measured as the highest of actual gross weight, gross vehicle weight rating, or registered weight. This will allow transporters to use as escort vehicles larger trucks which would already be accompanying the oversize load. The Department proposes the following:

- To clarify that "passenger automobile" in state law is defined as "Type 1 automobile," and to clarify that any escort vehicle must meet the "overhang" requirements of s. 348.09, Stats., when carrying the required sign. This will reduce confusion as to exactly what size and type of vehicle may be used as an escort vehicle.

- To allow either the currently required sign which is 6 feet long and says "oversize load" or a 5 foot long sign which says "oversize." Allowing a smaller sign will enable transporters more flexibility in the type and size of vehicle they may use as an escort vehicle.

- To eliminate the requirement that escort vehicles display flags on the vehicle bumpers but, instead, require flashing lights which are visible all around (360 degrees) and have a minimum required visibility. This change accommodates changes in the way vehicles are manufactured – often a bumper is molded, rounded, and unable to securely hold a flag.

Statutory authority for the rule:

Section 348.25 (3), Stats.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 200 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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.

Employment Relations

Rule Submittal Date

On July 12, 1999, the Department of Employment Relations submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to reinstatement eligibility and restoration of sick leave for state employees, other related time periods for state personnel transactions, and minor and technical rule changes.

Agency Procedure for Promulgation

A public hearing is required and will be held from 9:00 a.m. to 10:00 a.m. on August 25, 1999 in the 3rd floor training room at the Department of Employment Relations, 345 West Washington Ave., Madison, Wisconsin.

The Division of Compensation and Labor Relations in the Department of Employment Relations is responsible for developing this rule.

Contact Information

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

Bob Van Hoesen
Division of Administrative Services
Telephone (608) 267-1003
FAX (608) 267-1020
Email at Bob.VanHoesen@der.state.wi.us

Employment Relations--Division of Merit Recruitment and Selection

Rule Submittal Date

On July 12, 1999, the Division of Merit Recruitment and Selection in the Department of Employment Relations submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to reinstatement eligibility and employment register expiration for state employment and minor and technical rule changes.

Agency Procedure for Promulgation

A public hearing is required and will be held from 9:00 a.m. to 10:00 a.m. on August 25, 1999 in the 3rd floor training room at the Department of Employment Relations, 345 West Washington Ave., Madison, Wisconsin.

The Division of Merit Recruitment and Selection in the Department of Employment Relations is responsible for developing this rule.

Contact Information

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

Bob Van Hoesen
Division of Administrative Services
Telephone (608) 267-1003
FAX (608) 267-1020
Email at Bob.VanHoesen@der.state.wi.us

Health and Family Services

Rule Submittal Date

On July 9, 1999, the Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 49.45 (10) and 49.665 (3), (4) and (5), Stats.

The proposed rules affect chs. HFS 101-103 and 108, relating to the BadgerCare health insurance program.

Reason for rules, intended effects, requirements:

These are rules for operation of the BadgerCare program established under s. 49.665, Stats., pending approval of a federal government waiver of certain requirements of the Medicaid program which would permit the Department to implement BadgerCare. The federal waiver letter approving BadgerCare was received on January 22, 1999. The Department on July 1, 1999 published rules for operation of BadgerCare by emergency order. These are the replacement permanent rules.

The rules for operation of BadgerCare have been in part incorporated into 4 of the 8 chapters of rules for the Medical Assistance program and in part are the same as the rules for the Medical Assistance program. The BadgerCare-specific rules concern mainly:

- Eligibility for BadgerCare;
- The requirement for an eligible group with budgetable income over 150% of the federal poverty line to contribute toward the cost of health care coverage, and the amount of that contribution, which depends on monthly income of the group; and
- How the Department, as an alternative to providing MA coverage, can purchase family coverage offered by the employer of a member of a family eligible for BadgerCare.

Agency Procedure for Promulgation

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

Contact Information

Alfred Matano
Division of Health Care Financing
Telephone (608) 267-6848

Health and Family Services

Rule Submittal Date

On July 15, 1999, the Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

Section 49.45 (10), Stats.

The proposed rules affect s. HFS 105.39 (4) (b) 3., relating to refresher training in cardiopulmonary resuscitation and first aid for drivers of specialized medical vehicles under the Medical Assistance program.

Reason for rules, intended effects, requirements:

This is an updating of a Medical Assistance program requirement.

Under s. HFS 105.39, a condition for certification of specialized medical vehicle (SMV) providers is that each driver of an SMV, before driving a vehicle or serving as an attendant, is to receive basic Red Cross or equivalent training in cardiopulmonary resuscitation (CPR) and first aid, and after that is to receive periodic refresher training in CPR and first aid. Before the Department published rule changes by emergency order effective July 3, 1999, s. HFS 105.39 (4) (b) 3. provided that first aid refresher training be every 2 years and CPR refresher training be annual. However, the American Heart Association's certification for CPR is now for 2 years before refresher training must be taken to maintain certification, and the American Red Cross certification for first aid is now for 3 years before refresher training must be taken to maintain certification. Once the change in the period of certification for CPR was brought to the attention of the Department and the Department, in confirming that change, learned of the change in the period of certification for first aid, the Department updated its rule by emergency order. This is the permanent rulemaking order.

Agency Procedure for Promulgation

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

Contact Information

Alfred Matano
Division of Health Care Financing
Telephone (608) 267-6848

Health and Family Services

Rule Submittal Date

On July 14, 1999, the Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

Section 149.143 (2) (a) 2., 3. and 4. and (3), Stats.

The proposed rules affect ss. HFS 119.07 (6) and 119.15, relating to operation of the Health Insurance Risk-Sharing Plan (HIRSP).

Reason for rules, intended effects, requirements:

This order updates premium rates for HIRSP policies for the Plan year beginning July 1, 1999; sets total insurer assessments under HIRSP for the 6-month period July 1, 1999 through December 31, 1999, and for the 6-month period January 1, 2000 through June 30, 2000; and adjusts the provider payment rate under HIRSP for the 6-month period July 1, 1999 through December 31, 1999, and for the 6-month period January 1, 2000 through June 30, 2000. The Department is required under s. 149.143 (2) (a) 2., 3. and 4., Stats.,

to set premium rates, set total insurer assessments and adjust the provider payment rate for each Plan year by rule.

Under the authority of s. 149.143 (4), Stats., the Department published the identical rules by emergency order effective July 1, 1999.

Only the Plan 2 premium rates are being raised by this order, both the unsubsidized and subsidized premium rates. The increase is about 18% overall. Plan 2 is supplemental coverage for persons eligible for Medicare. About 17% of the HIRSP policies in effect are Plan 2-type policies. The increase is to cover increased costs for treatment for individuals enrolled under Plan 2.

Agency Procedure for Promulgation

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

Contact Information

Randy McElhose
Division of Health Care Financing
Telephone (608) 267-7127

Natural Resources

Rule Submittal Date

On July 13, 1999, the Department of Natural Resources submitted a proposed rule (Board Order No. [DG-27-99]) to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rule affecting ch. NR 140 relates to groundwater standards for toluene and xylene.

Agency Procedure for Promulgation

A public hearing is required and hearings will be held on August 12, 13, 16 and 17, 1999.

Contact Information

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

Mike Lemcke
Bureau of Drinking Water and Groundwater
Telephone (608) 266-2104

Natural Resources

Rule Submittal Date

On July 13, 1999, the Department of Natural Resources submitted a proposed rule (Board Order No. [AM-30-99]) to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rule affecting chs. NR 216, 300, 400, 405, 406, 408 and 411 relates to the fee refund or permit guarantee program required by s. 299.05, Stats.

Agency Procedure for Promulgation

A public hearing is required and will be held in September, 1999.

Contact Information

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

Kyle Kreigh
Bureau of Air Management
Telephone (608) 267-7689

Nursing Home Administrator Examining Board

Rule Submittal Date

On July 15, 1999, the Nursing Home Administrator Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2), 456.02, 456.04 and 456.08, Stats.

The proposed rule relates to experience and reciprocity.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 19, 1999 at 10:00 a.m. in Room 180 at 1400 East Washington Ave., Madison.

Contact Information

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

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

Transportation***Rule Submittal Date***

On July 9, 1999, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The subject matter of the proposed rule creating ch. Trans 134 relates to registration plates for authorized special groups.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 15, 1999 at 1:00 p.m. in Room 451, Hill Farms State Office Building, 4802 Sheboygan Ave., Madison, Wisconsin.

The Division of Motor Vehicles, Bureau of Driver Services, is the organizational unit primarily responsible for 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
FAX (608) 267-6734

NOTICE SECTION

Notice of Hearing

Dept. of Employment Relations [CR 99-110]

Notice is hereby given that pursuant to s. 230.04 (5), Stats., and interpreting s. 230.04 (1), Stats., the Department of Employment Relations will hold a public hearing at the time and place shown below to consider the creation of permanent rules relating to reinstatement eligibility and restoration of sick leave for state employes, other related time periods for state personnel transactions, and minor and technical rule changes.

Hearing Information

August 25, 1999
Wednesday
9:00 a.m. to
10:00 a.m.

3rd Floor Training Room
Employment Relations
345 West Washington Ave.
MADISON, WI 53703

The hearing will be held jointly with a hearing by the Division of Merit Recruitment and Selection in the Department of Employment Relations, which has separate rule-making authority and is simultaneously promulgating rules relating to reinstatement eligibility and employment register eligibility. Please see the separate hearing notice for an analysis of the proposed rule order of the Division of Merit Recruitment and Selection.

The hearing site is accessible to persons with disabilities. If you need an interpreter, materials in alternate format or other accommodations for this meeting, please inform the contact person listed at the end of this notice before the hearing.

Written Comments

Written comments on the rules may be sent to the contact person by **August 27, 1999**. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

Analysis Prepared by Dept. of Employment Relations

This rule order is intended to bring the Department's administrative rules into conformity with statutory changes made by 1997 Wis. Act 307 regarding the eligibility period for reinstatement and the determination of continuous service. The rule order also amends time periods for restoration of unused sick leave and makes minor policy and technical changes in the rules.

Act 307 increased the eligibility period for reinstatement for state employes from three to five years. This rule order amends references to reinstatement in the administrative rules to conform to this statutory change.

("Reinstatement" is currently defined in the rules to mean the act of permissive reappointment without competition of an employe or former employe under specified statutes to a position: (a) in the same class in which the person was previously employed; (b) in another classification to which the person would have been eligible to transfer had there been no break in employment; or (c) in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to newly hired workers in the position. There is no change in the definition.)

Act 307 amended the determination of continuous service by increasing from three to five years the time period during which a former employe's years of prior service would be restored if the person is reemployed in state service. This rule order amends the rules to conform to this statutory change.

The amount of sick leave earned and provisions regarding restoration of unused sick leave upon return to state service are not set by statute, but are set forth in the rules of the Secretary of the Department. Current rules provide that unused sick leave shall be restored if a person is reemployed in state service within 3 years, which is the same as the previous reinstatement eligibility period. This rule order increases the restoration period for unused sick leave to five years to maintain the parallel treatment with the newer, longer reinstatement period.

There are also other references to "three years" in the rules which were established, in part, to correspond to the three-year reinstatement period. These references are increased to five years where appropriate.

The increased eligibility periods explained above apply to employes who are initially eligible for reinstatement on or after July 5, 1998, which is the same effective date as Act 307.

Act 307 did not increase the three-year restoration period; thus, provisions relating to the three-year period for restoration rights in the administrative rules are retained.

Minor technical changes are also made in the rule order, including:

- References to termination or separation for "cause" are replaced by "misconduct or delinquency" to conform to s. 230.31, Stats., which uses the term "misconduct or delinquency" in reference to reinstatement eligibility.
- More precise words are substituted to describe the different ways of leaving a position which trigger restoration rights or reinstatement eligibility.
- A reference to the maximum number of personal holidays in a calendar year for employes who move between types of appointments is changed from three to three and one-half days, to conform to the amount of personal holidays specified in s. 230.35 (4) (d), Stats.
- The list of types of leave in ch. ER 18 is expanded to include paid leaves for providing certain disaster relief services, which was newly authorized in s. 230.35 (3) (e), Stats., by 1997 Wis. Act 118.

The statutory authority for these rule changes is found in the following:

1. S. 230.04 (5), Stats., grants the Secretary general authority to promulgate rules on all matters related to the Department (except those reserved to the Administrator of the Department's Division of Merit Recruitment and Selection.)

2. The specific statutory authority to increase the reinstatement eligibility period is found in ss. 230.31 (1) (a), 230.33 (1) and 230.40 (3), Stats., which were amended by Act 307 to increase the eligibility period from three to five years.

3. S. 230.35 (1) (g) 2, Stats., was amended by Act 307 to increase from three to five years the time period in which a former state employe may return to state service and not have his/her continuous service interrupted.

4. S. 230.35 (2), Stats., provides that restoration of unused sick leave upon reemployment of state employes shall be regulated by the administrative rules of the Secretary of the Department of Employment Relations.

5. S. 230.35 (4) (d), Stats., provides for three and one-half personal holidays.

6. S. 230.35 (3) (e), Stats., permits paid leaves for providing certain disaster relief services.

Fiscal Estimate

The lengthened permissive reinstatement period may result in lower agency expenditures for filling vacancies because agencies

will be able to appoint former employes instead of recruiting new applicants. Additionally, individuals reinstating may be eligible for higher pay than if they would have to start over again, or if an individual not having reinstatement eligibility were hired instead. However, it is impossible to estimate any cost impact.

The rule gives former employes a longer time period in which to return to state service and be eligible for restoration of unused sick leave and years of prior service. The vacation earning rate is based on length of service. Thus, these employes will more quickly reach the earning level at which unused vacation may be converted to termination leave or cash payments. Furthermore, they may accumulate larger amounts of unused sick leave which may be converted at retirement age to pay post-retirement health insurance premiums. These two effects could increase state costs, but it is impossible to determine the amount.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business; therefore, an initial regulatory flexibility analysis is not required.

Copies of Rule and Contact Information

A copy of the rule is available from the contact person listed:

Bob Van Hoesen
Department of Employment Relations
345 West Washington Ave.
Madison, WI 53703

Telephone (608)267-1003

Notice of Hearing

*Dept. of Employment Relations
(Div. of Merit Recruitment &
Selection)
[CR 99-111]*

Notice is hereby given that pursuant to s. 230.05 (5), Stats., and interpreting s. 230.05 (1), Stats., the Division of Merit Recruitment and Selection in the Department of Employment Relations will hold a public hearing at the time and place shown below to consider the creation of permanent rules relating to reinstatement eligibility and employment register expiration for state employment and minor and technical rule changes.

Hearing Information

August 25, 1999
Wednesday
9:00 a.m. to
10:00 a.m.

3rd Floor Training Room
Employment Relations
345 West Washington Ave.
MADISON, WI 53703

The hearing will be held jointly with a hearing by the Department of Employment Relations, which is simultaneously promulgating rules relating to reinstatement eligibility and restoration of sick leave for state employes and other related time periods for state personnel transactions. Please see the separate hearing notice for an analysis of the proposed rule order of the Department of Employment Relations.

The hearing site is accessible to persons with disabilities. If you need an interpreter, materials in alternate format or other accommodations for this meeting, please inform the contact person listed at the end of this notice before the hearing.

Written Comments

Written comments on the rules may be sent to the contact person by **August 27, 1999**. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

Analysis Prepared by the Division of Merit Recruitment & Selection

This rule order is intended to bring the Administrator's administrative rules into conformity with statutory changes made by 1997 Wis. Act 307 regarding the eligibility period for reinstatement and the life of employment registers. The rule order also makes minor policy and technical changes in the rules.

Act 307 increased the eligibility period for reinstatement for state employes from three to five years. This rule order amends references to reinstatement in the administrative rules to conform to this statutory change.

("Reinstatement" is currently defined in the rules to mean the act of permissive reappointment without competition of an employe or former employe under specified statutes to a position: (a) in the same class in which the person was previously employed; (b) in another class to which the person would have been eligible to transfer had there been no break in employment; or (c) in a class having a lower pay rate or pay range maximum for which the person is qualified to perform the work after the customary orientation provided to newly hired workers in the position. There is no change in the definition.)

The increased reinstatement eligibility applies to employes who are initially eligible for reinstatement on or after July 5, 1998, which is the same effective date as Act 307.

Act 307 also permits the Administrator to allow an employment register to expire after three months. The normal life of a register will remain at six months. This rule order amends the administrative rules to reflect this new option, which may be exercised only after considering the impact on equal employment opportunity and affirmative action policies.

Act 307 did not increase the three-year restoration period; thus, provisions relating to the three-year period for restoration rights in the administrative rules are retained.

Minor technical changes are also made in the rule order, including:

- The rules are clarified to provide that a reinstatement is valid if the employe or former employe submitted a specific request or application for a specific vacancy during the eligibility period. This change codifies a court ruling on this subject.
- More precise words are substituted to describe the different ways of leaving a position which trigger restoration rights or reinstatement eligibility.

The statutory authority for these rule changes is found in the following:

1. S. 230.05 (5), Stats., grants the Administrator of the Division of Merit Recruitment and Selection general authority to promulgate rules on provisions for which the administrator has statutory responsibility.

2. The specific statutory authority to increase the reinstatement eligibility period is found in ss. 230.31 (1) (a), 230.33 (1) and 230.40 (3), Stats., which were amended by Act 307 to increase the eligibility period from three to five years.

3. S. 230.31 (2), Stats., permits the Administrator to provide for the reinstatement of persons who separate from a position while serving a probationary period.

4. S. 230.25 (3) (b), Stats., as created by Act 307, states that the Administrator of the Division of Merit Recruitment and Selection may allow a register to expire after 3 months, but only after considering the impact of such an action on the policy of this state to provide for equal employment opportunity and to take affirmative action.

Fiscal Estimate

The lengthened permissive reinstatement period may result in lower agency expenditures for filling vacancies because agencies will be able to appoint former employes instead of recruiting new applicants. Additionally, individuals reinstating may be eligible for higher pay than if they would have to start over again, or if an individual not having reinstatement eligibility were hired instead. However, it is impossible to estimate any cost impact.

Allowing employment registers to expire in 3 months, instead of 6 months, may result in slightly higher expenditures if examinations are administered more frequently. However, these costs can be accommodated within existing agency resources.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business; therefore, an initial regulatory flexibility analysis is not required.

Copies of Rule and Contact Information

A copy of the rule is available from the contact person listed:

Bob Van Hoesen
Department of Employment Relations
345 West Washington Avenue
Madison, WI 53703

Telephone (608) 267-1003

Notice of Hearing

Financial Institutions--Securities

Notice is hereby given that pursuant to ss. 551.63 (1), (2) and (3), 551.22 (7), 551.23 (11) (b) and (18), 551.29 (1), 551.32 (4), (5) and (7), and 551.33 (1), (2) and (6), Stats., the Division of Securities of the Department of Financial Institutions will hold a public hearing at the time and place indicated below to consider the adoption, amendment and repeal of rules in connection with its annual review of the administrative rules of the Division of Securities relating to the operation of ch. 551, Stats., the Wisconsin Uniform Securities Law.

Hearing Information

September 7, 1999
Tuesday
10:00 a.m.

4th Floor Conference Room
DFI--Securities
345 West Washington Ave.
MADISON, WI 53703

Written Comments

Written comments in lieu of public hearing testimony may be submitted which must be received no later than the hearing date and should be addressed to the Administrator of the Division of Securities, 345 West Washington Avenue, P.O. Box 1768, Madison WI 53701.

Analysis

Statutory Authority: ss. 551.63 (1), (2) and (3), 551.22 (7), 551.23 (11) (b) and (18), 551.29 (1), 551.32 (4), (5) and (7), and 551.33 (1), (2) and (6)

Statutes Interpreted: ss. 551.22 (7), 551.23 (11) (b) and (18), 551.29 (1), 551.32 (4), (5) and (7), 551.33 (1), (2) and (6), and 551.53

Summary Analysis Prepared by the Division of Securities

The rulemaking procedures under Chapter 227 of the Wisconsin Statutes are being implemented for the purpose of effectuating the Division's annual review of the Rules of the Division of Securities. The Division's annual rule revision process is conducted for the following purposes: (1) revising several securities law definitional rules to clarify language; (2) developing new securities registration exemptions and making modifications to several existing securities registration exemptions to reflect new legal or interpretive issues under the federal and state securities laws; and (3) adopting new rules, or amending existing rules, relating to the securities broker-dealer, agent, investment adviser, and investment adviser representative licensing procedures, examination and examination waiver requirements, net capital requirements, securities agent customer record requirements, and rules of conduct provisions for broker-dealers and investment advisers, to effectively regulate new securities licensing developments that have occurred in the

securities industry and marketplace that require regulatory treatment.

Proposed revisions are being made in a total of over 25 different Sections. A summary of the subject matter and nature of the more significant rule revisions follows:

(1) Addition of a reference to the Internet in definitional rule s. DFI--Sec 1.02(1)(a)1. relating to the use of media advertising;

(2) Deletion of "sunset dates" for use of the registration exemptions in s. DFI--Sec 2.02(9)(a) and (9)(L) and the notice filing provision in s. DFI--Sec 2.04(1)(a);

(3) Designation under current rule s. DFI--Sec 2.01(3) [relating to securities traded on certain exchanges] of warrants and rights for securities traded on the major stock exchanges;

(4) Adding to the existing rule in s. DFI--Sec 2.02(5)(d) that limits use of the "10 offeree" securities registration exemption in s. 551.23(11), Wis. Stats., in certain circumstances, a provision that would impose a 10-day-prior-to-first-offer, notice filing requirement for use of the exemption in offerings made for federal purposes pursuant to Rule 504 under Regulation D of the Securities Act of 1933;

(5) Addition of the NASD Series number to the examination description of all of the prescribed securities agent examinations and securities principal examinations listed in s. DFI--Sec 4.01(3), (4) and (5), and adopting three new limited activity agent examinations and one new principal examination;

(6) Repeal of existing rule s. DFI--Sec 4.035 that requires securities agents to keep certain customer records and provides that agents receive copies thereof from the agent's employing broker-dealer;

(7) Adoption of the North American Securities Administrator's Association Model Rules applicable to securities broker-dealers providing securities services on the premises of financial institutions, which Model Rules follow both equivalent rules adopted by the National Association of Securities Dealers (applicable to securities broker-dealers), and regulatory Guidelines in an Interagency Statement jointly developed by federal financial institution regulatory authorities (the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation);

(8) Creation of a rule requiring licensed investment advisers to create and maintain a record of customer information that would facilitate determining suitability of investment recommendations.

(9) Creation of rules requiring a broker-dealer or investment adviser to notify the Division if they open an office in a financial institution in Wisconsin.

(10) Adoption of the NASAA Investment Adviser Competency Examination.

(11) Adoption of the recent amendments to the NASAA Model Rules regarding investment adviser net capital and custody-of-customer-funds-and-securities requirements.

Each Section that adopts, amends or repeals a rule is followed by a separate Analysis which discusses the nature of the revision as well as the reason for it.

Copies of Rule

A copy of the entirety of the proposed rule revisions to be considered may be obtained upon request to the Division of Securities, Department of Financial Institutions, 345 West Washington Avenue, 4th Floor, P.O. Box 1768, Madison, Wisconsin 53701.

Fiscal Estimate

A summary of the fiscal effects of the proposed rule revisions is as follows:

(i) No one-time revenue fluctuations;

(ii) An estimated increase of \$9,600 in annual securities registration exemption fee revenue as a result of the rule establishing a filing requirement for use of the registration exemption in s. 551.23 (11), Wis. Stats., for securities offerings under Rule 504 of Regulation D under the federal Securities Act of 1933;

- (iii) No long-range fiscal implications;
- (iv) No fiscal effect on local units of government.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that could be affected by certain of the rule revisions are:

(i) Any small business looking to raise capital in a securities offering pursuant to Regulation A under the federal Securities Act of 1933 will be able to use the amended prospectus/disclosure document rule in s. DFI–Sec 3.03 (3) allowing use of the Form U–7 disclosure document.

(ii) Any small business that would be selling securities in an offering pursuant to Rule 504 under Regulation D of the federal Securities Act of 1933 who would seek to use the limited offering exemption in s. 551.23(11), Wis. Stats., would be subject to a notice filing requirement with the Division contained in new rule s. DFI–Sec 2.02 (5) (d) 3.

(iii) Broker–dealer and investment adviser licensees under the Wisconsin Uniform Securities Law with fewer than 25 full-time employees who meet the other criteria of s. 227.114 (1) (a), Wis. Stats. The proposed revisions to the securities broker–dealer and investment adviser licensing or notice filing provisions are applicable equally to all broker–dealers and investment advisers because the requirements involved are for the protection and benefit of Wisconsin customers of those firms. All Wisconsin customers of securities broker–dealers and investment advisers are entitled to the public investor protection benefits of the licensing or filing requirements, irrespective of the size of the firm providing the securities services. Under the rule revision procedure of the Division of Securities, a copy of the proposed rule revisions is mailed to each broker–dealer licensed in Wisconsin, as well as to each investment adviser licensed or notice–filed in Wisconsin, notifying them of the proposed revisions and soliciting written comments or attendance at the public hearing regarding the proposed rules.

2. Reporting, bookkeeping and other procedures required for compliance with the rules:

(i) Rules applicable to securities broker–dealer and investment adviser licensees were added to provide for notification to the Division of the opening or change of address of an office of a broker–dealer or investment adviser on the premises of a financial institution.

(ii) Revisions were made to existing rules applicable to securities broker–dealers providing services on the premises of financial institutions that require providing certain disclosures to customers in advertisements and account–related documents, and requires reports by a broker–dealer to the financial institution if any securities agent of the broker–dealer that also is employed by the financial institution is terminated for cause.

Contact Information

A copy of the full text of the proposed rule revisions and fiscal estimate may be obtained from:

Randall E. Schumann
Telephone (608) 266–3414
Legal Counsel for the Division of Securities
Department of Financial Institutions
345 West Washington Avenue, 4th Floor
P. O. Box 1768
Madison, WI 53701

Notice of Hearings

Law Enforcement Standards Board [CR 99–115]

Notice is hereby given that pursuant to s. 165.85(4)(cm)2., Stats., and interpreting s. 165.85(4)(cm)2 a. and b., Stats., the Law Enforcement Standards Board will hold two public hearings at the following dates, times and locations to consider the creation of

administrative rules pertaining to model, voluntary standards for law enforcement vehicular pursuits:

An initial hearing will be conducted at the **Holiday Inn Motel, 625 West Rolling Meddows Drive, Fond du Lac, on Tuesday, August 17, 1999, from 1 – 4 pm.**

An additional hearing will be conducted at the **Best Western–Midway Motel, 2851 Hendrickson Drive, Eau Claire, on Wednesday, August 18, 1999, from 1 – 4 pm.**

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

The following proposed rules create model, voluntary standards for law enforcement vehicular pursuits. They define pursuits; create advisory standards that could be used by any law enforcement agency to determine whether to initiate or continue pursuits; establish law enforcement pursuit driving techniques; and, establish requirements for informing officers of their department's guidelines under s. 346.03(6), Stats.

In addition, they establish curricula for basic and annual recertification training of law enforcement officers related to police pursuit standards, guidelines and driving techniques.

Text of Rule

SECTION 1. Create LES 1.03(18m) to read:

LES 1.03(18m) "Police pursuit" Means an active attempt by a traffic officer in a police vehicle to apprehend one or more occupants of a moving motor vehicle, the operator of which is resisting apprehension by disregarding the officer's visual or audible signal to stop his or her vehicle, increasing the speed of the vehicle or extinguishing the lights of the vehicle.

SECTION 2. Create LES 3.03(7)(a) (intro.) 1. (intro.) a. and b., 2. (intro.) a and b. and 3(intro.) a. through e. to read:

LES 3.03(7)(a)(intro.) A training guide entitled "Use Pursuit Guidelines" shall be approved by the board for subsection (7) and shall include student performance objectives. It shall also include the following model, advisory standards that could be used by any law enforcement agency to determine whether to initiate or continue police pursuit:

1. 'Initiation of pursuits.' (intro.) Any law enforcement officer in an authorized vehicle may initiate a pursuit when the subject is attempting to avoid apprehension and any of the following situations are present:

a. The subject has committed or is attempting to commit a crime which involves an actual or threatened action which an officer reasonably believes resulted in or could result in death or great bodily harm to a person or persons; or,

b. The subject, if allowed to escape, is likely to cause injury or death to a person or persons.

2. 'Continuation of pursuits.' (intro.) In determining whether or not to continue a pursuit that has been justifiably initiated, officers should consider the following factors:

a. Whether continuation of the pursuit would likely create a danger to the public, officer(s) or subject(s) which is apparently greater than the value of apprehending the subject(s), due to such factors as, but not limited to, road conditions, weather conditions, density of population, severity of the crime and necessity of pursuit by vehicle; and,

b. Whether the vehicle's registration or violator's identification has been established so that later apprehension may be accomplished, and, in the officer's opinion, there is no apparent continuing need for immediate apprehension (per provisions of s. 346.175, Stats.).

3. 'Termination of pursuits.' (intro.) Law enforcement officers will terminate vehicle pursuits under any of the following conditions:

a. At any time a supervisor orders termination;

b. When the continuing distance between the pursuing and fleeing vehicles is such that further pursuit is futile;

- c. When the pursued vehicle's location is unknown;
- d. When the officer's vehicle or emergency equipment malfunctions; or
- e. When it is necessary to stop to render aid to an injured person or persons, and no other unit is available to do so.

SECTION 3. Create LES 3.03(7)(b) to read:

LES 3.03(7)(b) A training guide entitled "Use Emergency Vehicle Driving Techniques" shall be approved by the board for subsection (7) and shall include student performance objectives for police pursuit driving techniques.

SECTION 4. Create LES 3.07 (title) (1) to read:

LES 3.07 **Minimum standards for recertification training.** (1) Minimum standards for recertification training for law enforcement and tribal law enforcement officers shall require that law enforcement and tribal law enforcement officers with exception of those who serve on a temporary or probationary basis shall biennially complete at least 4 hours of training the curriculum of which shall include reference to employer's guidelines provided under s. 346.03(6) Stats. Training may also include achievement of student performance objectives from board approved training guides entitled "Use Pursuit Guidelines" and "Use Emergency Vehicle Driving Techniques" and/or review, for policy development, or applicable research and new technology and/or training to employ new technology.

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

Notice of Hearings

Natural Resources

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

Notice is hereby given that pursuant to ss. 29.014(1) and 227.11(2)(a), Stats., interpreting ss. 29.011(1) and 29.014(1), Stats., the Department of Natural Resources will hold public hearings the amendment of s. NR 20.12(1), Wis. Adm. Code, relating to the marking and tagging of set or bank poles in inland waters. Current law does not require the marking of any inland set or bank poles. The Department proposes to require each set and bank pole to be marked with a marker staff banded horizontally with alternating black and white markings identical to the way setlines currently must be marked.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Commercial fishers who use set and bank poles.
- b. Description of reporting and bookkeeping procedures required: None
- c. Description of professional skills required: None

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

August 12, 1999
Thursday
7:00 p.m.

Washington Jr. High School
500 W. Washington Street
New London

August 13, 1999
Friday
Center
at 1:00 p.m.

Room 365
Southwest Technical Conference
1800 Bronson Blvd.
Fennimore

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Gary R. Homuth at (608) 266-3244 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments may be submitted to Mr. Gary Homuth, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than August 20, 1999. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [LE-22-99] and fiscal estimate may be obtained from Mr. Homuth.

Notice of Hearings

Natural Resources

(Environmental Protection- General, Chs. NR 100-)

[CR 99-108]

Notice is hereby given that pursuant to ss. 281.12(1), 281.15, 281.19(1), 299.11 and ch. 160, Stats., interpreting ss. 281.12(1), 281.15, 281.19(1), 299.11 and ch. 160, Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 140.10 Table 1 and 140.28(2), Wis. Adm. Code, relating to groundwater quality standards and preventive action limits for toluene and xylene. The proposed amendments would revise the enforcement standards to conform with federal drinking water standards and would revise the preventive action limits for these substances to account for taste and odor concerns. Changes are also proposed to clarify exemption criteria for health and welfare standard exceedances.

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

August 12, 1999 Thursday at 9:00 a.m.	Room 207 Green Bay City Hall 100 N. Jefferson Green Bay
August 13, 1999 Friday at 9:00 a.m.	Public Library, 106 N. Stevens Rhinelander
August 16, 1999 Monday at 9:00 a.m.	Room 185 DNR West Central Region Hdqrs. 1300 W. Clairmont, Eau Claire
August 17, 1999 Tuesday at 12:00 noon	Room 511 GEF #2 101 S. Webster St. Madison

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Steve Karklins at (608) 266-5240 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no fiscal effect.

Written Comments

Written comments on the proposed rule may be submitted to Mr. Steve Karklins, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 no later than **August 27, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [DG-27-99] and fiscal estimate may be obtained from Mr. Karklins.

Notice of Hearing

Nursing Home Administrator Examining Board [CR 99-114]

Notice is hereby given that pursuant to authority vested in the Nursing Home Administrator Examining Board in ss. 15.08 (5) (b), 227.11 (2), 456.02, 456.04 and 456.08, Stats., and interpreting ss. 456.04 and 456.08, Stats., the Nursing Home Administrator Examining Board will hold a public hearing at the time and place indicated below to consider an order to renumber s. NHA 1.02 (1); to amend ss. NHA 4.01 (1) (c), 4.03 (intro.), (2), (3) and (4); to repeal and recreate s. NHA 4.03 (1); and to create s. NHA 1.02 (1), relating to experience and reciprocity.

Hearing Information

August 19, 1999 Thursday 10:00 a.m.	Room 180 1400 East Washington Ave. MADISON, WI
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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 **August 16, 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), 456.02, 456.04 and 456.08

Statutes interpreted: ss. 456.04 and 456.08

In this proposed rule-making order the Nursing Home Administrator Examining Board amends s. NHA 4.01 (1) (c), to clarify that an individual who has completed a "program of study" or "specialized courses", as defined in s. NHA 1.02, is required to submit evidence of successful completion of one year of experience in the field of institutional administration; however, an individual who has completed a "regular course of study" is not required to submit evidence of successful completion of one year of experience in the field of institutional administration, because a regular course of study includes a supervised clinical practicum.

Section NHA 4.03 (1) is being repealed and recreated and s. NHA 4.03 (2), (3) and (4) are amended to state that individuals applying for reciprocity must have a bachelor's degree in any field or hold a current certification as a nursing home administrator granted by the American College of Health Care Administrators in order to qualify for a license.

Text of Rule

SECTION 1. NHA 1.02 (1) is renumbered NHA 1.02 (2).

SECTION 2. NHA 1.02 (1) is created to read:

NHA 1.02 (1) "Accredited college or university" means an educational institution that is accredited by a regional or national accrediting agency recognized by the U.S. department of education.

SECTION 3. NHA 4.01 (1) (c) is amended to read:

NHA 4.01 (1) (c) Submit If the applicant has completed a program of study or specialized courses, submit evidence of successful completion of one year of experience in the field of institutional administration.

SECTION 4. NHA 4.03 (intro.) is amended to read:

NHA 4.03 Reciprocity. The board at its discretion and otherwise subject to laws pertaining to licensure of nursing home administrators may grant a license as a nursing home administrator to an applicant who holds a current license issued by the proper authorities in any other jurisdiction, which has not been revoked or suspended, upon payment of the fee required under s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that the applicant has satisfied all of the following:

SECTION 5. NHA 4.03 (1) is repealed and recreated to read:

NHA 4.03 (1) Has a bachelor's degree in any field that was obtained from an accredited college or university or holds a current certification as a nursing home administrator granted by the American college of health care administrators.

Note: The American College of Health Care Administrators may be contacted at 325 South Patrick Street, Alexandria, VA 22314.

SECTION 6. NHA 4.03 (2), (3) and (4) are amended to read:

NHA 4.03 (2) The applicant has been engaged in practice Has practiced as a nursing home administrator for fewer than at least 2,000 hours in any consecutive ~~36-month~~ 3-year period within the 5-year period immediately preceding the date of application for licensure; and,

(3) The applicant has Has passed the state law examination on Wisconsin law governing nursing homes required for licensure under s. NHA 2.01 (3) (b).

(4) The applicant does Does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats. An applicant who has a pending criminal charge or has a conviction record shall provide the board with all related information necessary for the board to determine whether the circumstances of the pending charge or conviction substantially relate to the practice of nursing home administration.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

The 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, Wisconsin 53708 Telephone (608) 266-0495.

Notice of Hearing

Transportation

[CR 99-107]

Notice is hereby given that pursuant to s. 341.14 (6r) (fm) 6., Stats., as created by 1997 Wis. Act 255, and interpreting ss. 341.14 (6r) and 341.145, Stats., the Department of Transportation will hold a public hearing to consider the creation of ch. Trans 134, Wis. Adm. Code, relating to authorized special groups.

Hearing Information

September 15, 1999
Wednesday
1:00 p.m.

Room 451
Hill Farms State Office Bldg.
4802 Sheboygan Ave.
MADISON, WI

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

Written Comments

The public record on this proposed rule-making will be held open until **September 22, 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 Carson Frazier, Department of Transportation, Bureau of Vehicles Services, Room 253, P. O. Box 7909, Madison, WI 53707-7909.

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.

Analysis Prepared by the Dept. of Transportation

Statutory authority: s. 341.14 (6r) (fm) 6.

Statutes interpreted: ss. 341.14 (6r) and 341.145

General Summary of Proposed Rule. Ch. Trans 134 implements 1997 Wis. Act 255. Act 255 creates an administrative, instead of a legislative, procedure under which groups may apply to be recognized by a special group license plate. This rule-making will do the following:

- Outline the procedure that a group follows to apply for designation as an authorized group, including the statutorily-specified eligibility criteria and deposit required.
- Address the procedure that DOT follows to review the group's application.
 - State basic plate design requirements.
 - Address requirements and procedure for an individual to apply to purchase license plates of the authorized special group.
 - State general requirements related to plate sales and describe the procedure for any refund which DOT might make to the authorized special group. In addition, it will lay out the reasons for which DOT will discontinue plate sales, and the procedure that DOT follows to discontinue plate sales.

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. The proposed rule will have no fiscal effect on state funds independent of the fiscal impact of 1997 Wis. Act 255. It is estimated that the fiscal effect in the current biennium will be \$28,700.00 and that there will be an annualized cost of \$25,100.00. The estimated fiscal effect is based on the assumption that the program will require half of an FTE (Full-Time Equivalent) position to administer it and that there will be a one-time cost of \$3,600.00 to provide equipment for the administrative position.

Initial Regulatory Flexibility Analysis

This proposed rule will have no direct effect on small businesses.

Copies of Proposed Rule and Contact Information

Copies of the proposed rule may be obtained upon request, without cost, by writing to Carson Frazier, Department of Transportation, Bureau of Vehicles Services, Room 253, P. O. Box 7909, Madison, WI 53707-7909, or by calling (608) 266-7857. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

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

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

Commerce (CR 98-83):

Chs. Comm 83, 85 and 91 – Relating to private onsite wastewater treatment systems.

Commerce (CR 99-48):

Ch. Comm 14 – Relating to fire department dues entitlement.

Commerce (CR 99-65):

Chs. Comm 11, 12, 13 and 43 – Relating to gas systems and anhydrous ammonia.

Dentistry Examining Board (CR 99-16):

Ch. DE 7 – Relating to the education required of licensed dental hygienists to receive a certificate to administer local anesthesia to patients.

Pharmacy Examining Board (CR 98-90):

SS. Phar 7.01, 7.08, 8.06, 8.07 and 8.09 – Relating to the transmission and receipt of electronic prescription orders.

Workforce Development (CR 98-205):

Ch. DWD 56 – Relating to the administration of day care funds.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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.

Agriculture, Trade and Consumer Protection**(CR 98-159):**

An order affecting ch. ATCP 139, relating to safety standards for children's bicycle helmets and drawstrings in children's clothing.

Effective 09-01-99.

Financial Institutions--Banking (CR 99-58):

An order repealing ch. DFI-Bkg 4, relating to investments in time deposits and certificates of deposits.

Effective 09-01-99.

Financial Institutions--Banking (CR 99-59):

An order repealing ch. DFI-Bkg 6, relating to aggregate investments in bonds and certain other securities.

Effective 09-01-99.

Financial Institutions--Banking (CR 99-60):

An order repealing ch. DFI-Bkg 7, relating to real estate mortgage loans.

Effective 09-01-99.

Financial Institutions--Securities (CR 99-61):

An order creating s. DFI-Sec 2.01 (1) (c) 6. and (d) 6., relating to designating an alternative accounting guideline for the preparation of financial statements for Wisconsin and other state and local governmental issuers of securities utilizing the securities registration exemption in s. 551.22 (1) (a), Stats.

Effective 09-01-99.

Health and Family Services (CR 99-4):

An order affecting ss. HFS 119.07 and 119.15, relating to operation of the Health Insurance Risk-Sharing Plan (HIRSP).

Effective 09-01-99.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **July 31, 1999 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Agriculture, Trade and Consumer Protection

(CR 98-117):

An order repealing and recreating ch. ATCP 127, relating to direct marketing (home solicitation selling).

Effective 08-01-99.

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.

Corrections (CR 99-15):

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

Effective 08-01-99.

Employe Trust Funds (CR 99-27):

An order affecting ss. ETF 10.01, 10.03, 11.02, 20.35 and 50.30, relating to dividing Wisconsin Retirement System (WRS) accounts or annuities per a qualified domestic relations order (QDRO).

Effective 08-01-99.

Funeral Directors Examining Board (CR 99-8):

An order affecting s. FD 6.10, relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Effective 08-01-99.

Health and Family Services (CR 99-20):

An order creating ch. HFS 114, relating to neonatal intensive care unit training grants.

Effective 08-01-99.

Insurance, Commissioner of (CR 99-13):

An order affecting s. Ins 3.39 (34) (b), relating to guarantee issue eligibility for Medicare Supplement insurance.

Effective 08-01-99.

Insurance, Commissioner of (CR 99-34):

An order affecting s. Ins 16.01, relating to annual billings for the examination of domestic insurers.

Effective 08-01-99.

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.

Public Service Commission (CR 99-53):

An order amending s. PSC 132.02 (3), relating to the ch. PSC 132 definition of "public utility" and cable operators' access to railroad rights-of-way.

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.

Transportation (CR 99-37):

An order amending ch. Trans 212, relating to standards for the inspection of bridges in Wisconsin.

Effective 08-01-99.

Transportation (CR 99-49):

An order amending ss. Trans 276.07 and 276.09, relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.

Effective 08-01-99.

Workforce Development (CR 98-130):

An order renumbering chs. HSS 80 to 81 as DWD 40 to 41, and creating ch. DWD 43, relating to child support administrative enforcement.

Effective 08-01-99.

Workforce Development (CR 98-204):

An order affecting chs. HFS 55 and DWD 55, relating to criminal record background checks for certified day care operators, employes and contractors of certified day care operators, and nonclient residents at certified day care locations.

Effective 08-01-99.

SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

The following administrative rule revisions and corrections have taken place in July, 1999, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

REVISIONS

Agriculture, Trade and Consumer Protection:

Ch. ATCP 127 (entire chapter)

Chiropractic Examining Board:

Ch. Chir 4

S. Chir 4.05 (2) (f) to (h)

Corrections:

Ch. DOC 330 (entire chapter)

Employe Trust Funds:

Ch. ETF 10

S. ETF 10.01 (1h), (8) and (9)

Ch. ETF 11

S. ETF 11.02 (1)

Ch. ETF 20

S. ETF 20.35 (entire section)

Ch. ETF 50

S. ETF 50.30 (3)

Funeral Directors Examining Board:

Ch. FD 6

S. FD 6.10 (entire section)

Health and Family Services

(Community Services, Chs. HFS 30--)

Ch. HFS 55

SS. HFS 55.55 to 55.62 were renumbered to
ss. DWD 55.01 to 55.09

S. HFS 55.80 (entire section)

S. HFS 55.81 (entire section)

Ch. HSS 80 (entire chapter) was renumbered to
be ch. DWD 40.

Ch. HSS 81 (entire chapter) was renumbered to
be ch. DWD 41.

(Health, Chs. HFS 110--)

Ch. HFS 114 (entire chapter)

Insurance, Commissioner of:

Ch. Ins 3

S. Ins 3.39 (34) (b)

Ch. Ins 16

S. Ins 16.01 (6) and (7) (a)

Natural Resources:

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

Ch. NR 25

S. NR 25.05 (3)

S. NR 25.07 (1) (intro.) and (2) (intro.),
(b), (bg) and (br)

S. NR 25.08 (5)

Public Service Commission:

Ch. PSC 132

S. PSC 132.02 (3)

Regulation and Licensing:

Ch. RL 120

S. RL 120.02 (4) and (12)

Ch. RL 121

S. RL 121.04 (1) (c)

S. RL 121.07 (entire section)

Ch. RL 122

S. RL 122.04 (entire section)

Ch. RL 123

S. RL 123.03 (entire section)

Ch. RL 124

S. RL 124.02 (5)

Ch. RL 125

S. RL 125.02 (entire section)

S. RL 125.025 renumbered from s. RL 125.12 and
amended (intro.)

S. RL 125.03 (entire section)

S. RL 125.035 (entire section)

S. RL 125.08 (3) and (4)

S. RL 125.12 renumbered from s. RL 125.11,
amended (intro.) and cr. (1) to (4)

Ch. RL 126

S. RL 126.02 (11), (12) and (13)

Chs. RL 131 to 135 (entire chapters)

Transportation:

Ch. Trans 212

S. Trans 212.02 (1) and (3)

S. Trans 212.06 (1), (3) and (4)

S. Trans 212.07 (entire section)

S. Trans 212.08 (entire section)

S. Trans 212.10 (entire section)

S. Trans 212.11 (1) and (3)

Ch. Trans 276

S. Trans 276.07 (7), (10), (10m), (11), (15), (17),
(24), (25m) and (39)
S. Trans 276.09 (3)

Workforce Development:

**Ch. DWD 40 (entire chapter) was renumbered from
ch. HSS 80.**

**Ch. DWD 41 (entire chapter) was renumbered from
ch. HSS 81.**

Ch. DWD 43 (entire chapter)

Ch. DWD 55 (entire chapter)

EDITORIAL CORRECTIONS

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

Administration:

**Ch. Adm 35 (entire chapter) had corrections made
under s. 13.93 (2m) (b) 7., Stats.**

Ch. Adm 50

S. Adm 50.04 (1) and (7) had corrections made
under s. 13.93 (2m) (b) 7., Stats.

Dietitians Affiliated Credentialing Board:**Ch. DI 5**

S. DI 5.01 (27) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

Employe Trust Funds:**Ch. ETF 10**

S. ETF 10.01 (3s) had corrections made under
s. 13.93 (2m) (b) 6. and 7., Stats.
S. ETF 10.633 (1) (c) had a correction made
under s. 13.93 (2m) (b) 7., Stats.

Ch. ETF 20

S. ETF 20.02 (3) (a) had a correction made under
s. 13.93 (2m) (b) 7., Stats.
S. ETF 20.07 (2) (a) had a correction made under
s. 13.93 (2m) (b) 4. and 7., Stats.
S. ETF 20.12 (6) had a correction made under
s. 13.93 (2m) (b) 7., Stats.
S. ETF 20.18 (6) (e) had a correction made under
s. 13.93 (2m) (b) 7., Stats.
S. ETF 20.20 (3) (intro.) had a correction made
under s. 13.93 (2m) (b) 7., Stats.

Ch. ETF 60

S. ETF 60.53 (2) (b) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

Health and Family Services:

(Community Services, Chs. HFS 30--)

Ch. HFS 55

S. HFS 55.01 (entire section) had a correction made
under s. 13.93 (2m) (b) 7., Stats.
S. HFS 55.02 (1) had a correction made under
s. 13.93 (2m) (b) 7., Stats.
S. HFS 55.03 (intro.) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

S. HFS 55.04 (intro.), (15) and (19) had corrections
made under s. 13.93 (2m) (b) 7., Stats.

S. HFS 55.10 (1) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

S. HFS 55.43 (1) (d) and (3) (e) had corrections
made under s. 13.93 (2m) (b) 7., Stats.

S. HFS 55.44 (7) (a) had corrections made under
s. 13.93 (2m) (b) 7., Stats.

S. HFS 55.51 (1) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

(Health, Chs. HFS/HSS 110--)

**Ch. HFS 113 was renumbered from ch. HSS 113
under s. 13.93 (2m) (b) 1., Stats., and corrections
were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. HFS 133 was renumbered from ch. HSS 133
under s. 13.93 (2m) (b) 1., Stats.**

Insurance, Commissioner of:**Ch. Ins 3**

S. Ins 3.08 (3) (a)
S. Ins 3.09 (3) (b) and (j) and (19)
S. Ins 3.28 (6) (a)
S. Ins 3.31 (3) (a) and (4)
S. Ins 3.50 (4) and (8) (c)
S. Ins 3.65 (4) (a)

Natural Resources:

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

Ch. NR 25

S. NR 25.08 (2t) had a correction made
under s. 13.93 (2m) (b) 1., Stats.

Workforce Development:**Ch. DWD 41**

S. DWD 41.01 (2) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Agriculture, Trade & Consumer Protection (CR 98–117)

Ch. ATCP 127 – Direct marketing.

Summary of Final Regulatory Flexibility Analysis:

Direct Marketing

This rule regulates businesses that solicit and sell consumer goods by mail, telephone, other electronic means such as e-mail or facsimile, or in face-to-face transactions away from the seller's regular place of business. The rule provides methods whereby buyers can be informed of the conditions of their agreements in a manner that is meaningful and available to the consumer after the transaction is done and the seller no longer available.

These requirements should have little if any impact on small business. It is general business practice to inform potential customers who you are and the product you are selling in to produce invoices following the sale. It is also general practice to retain business records for a period of time for tax and other purposes. The practices regulated by the prize promotion, unauthorized payment, telephone solicitation, and credit card laundering sections have been identified at federal rules hearings as practices which have led to abuse of consumers and are already in effect for any business that solicits on an interstate scale. Businesses' recordkeeping requirements are necessary for meaningful enforcement of the rules and should already be the norm for most businesses.

Scope

This rule modernizes the restrictions on small business created by the current ch. ATCP 127, Wis. Adm. Code, which was promulgated in 1972./ This rule also incorporates the provisions of the Federal trade Commission telemarketing rules, and clarifies and expands its scope to include other electronic communications such as e-mail and telefax, and direct mail.

This rule does not apply to sales at the sellers' regular place of business, catalog sales, mass advertising, an established public market such as a farmers' market, or business-to-business sales. This rule does not apply to financial institutions, insurance companies, utilities, or real estate sales (other than cemetery lots and "time shares").

Opening Disclosures

This rule requires initial disclosures such as the seller's correct name, other name of the individual making the solicitation, the fact that the seller is offering or promoting a sale of goods or services, and the kind of goods or services the seller is offering or promoting.

These disclosures must be made orally, if the direct marketing involves an oral or face-to-face communication and in writing, if the direct marketing involves a written or face-to-face solicitation.

These requirements should have no significant impact on small business. Most sellers, as a matter of preference, leave written information about their company and products with the consumer whenever engaged in a home solicitation.

Disclosures Prior to Sale

Before the sale or acceptance of payment, a seller must disclose the material terms and conditions of sale. These requirements add no additional cost to legitimate small business who already provide this information to consumers.

Unauthorized Payment

Under this rule, no seller may obtain or submit any negotiable instrument drawn on a consumer's account without express, verifiable authorization. Authorizations may be written or oral, and must be verifiable by writing or tape recording. Honest businesses should have no objection to these provisions. Businesses that wish to tape record oral authorizations may find it necessary to make a one-time purchase of equipment.

Credit Card Laundering

This rule prohibits "credit card laundering" schemes by which unscrupulous sellers gain access to the credit card system by processing credit card transactions under the name of another merchant. This section targets only those sellers engaged in unscrupulous practices and should have no impact on legitimate small businesses.

Misrepresentations

This rule prohibits the seller from misrepresenting any of the following:

- The seller's identity, affiliation, location or characteristics or the nature, purpose or intended length of a home solicitation.
- The cost, nature or terms of purchase, including restrictions, limitations or conditions on the receipt, use or return of goods or services. This rule requires affirmative disclosure of key sales terms.
- The nature, quantity, or material characteristics of the goods or services.
- That the seller has specifically chosen the consumer or is making a special sales promotion limited to a few individuals, unless this is true and the basis for the representation is revealed.
- That the seller is participating in a contest or conducting a survey unless it is true and the seller describes the contest or survey.
- That a seller is affiliated with, or endorsed by, any government or 3rd-party organization or has specially selected the consumer.
- Any material aspect of an investment opportunity, including risk, liquidity, earnings potential or profitability.

These prohibitions should pose no problem for honest businesses, and should place no additional burden on small businesses. For the most part, they merely continue prohibitions contained in current rules.

Prohibited Practices; General

This rule prohibits a seller from doing any of the following in a direct marketing transaction:

- Threatening, intimidating, or harassing a consumer.
- Failing to leave a consumer's premises upon request.

- Requesting or receiving payment for “loan finder” services until the consumer actually receives the promised loan.

These prohibitions should pose no problem for honest businesses, and should place no additional burden on small businesses. For the most part, they merely continue prohibitions contained in current rules.

Prohibited Telephone Solicitation Practices

This rule prohibits a direct marketing seller from doing any of the following:

- Initiating a telephone solicitation to a consumer who has previously stated that he or she does not wish to receive telephone solicitations from the seller.
- Repeatedly causing a consumer’s telephone to ring, or repeatedly engaging a consumer in telephone conversation, with intent to annoy, abuse or harass a consumer.
- Initiating a telephone solicitation before 8:00 am or after 9:00 PM without the prior consent of the consumer.

These prohibitions are consistent with FTC rule provisions, and should pose no problem for legitimate telemarketers.

Recordkeeping

This rule requires a direct marketing seller to keep copies of all solicitation scripts and documents, transaction receipts, a description of each prize offered and the name and address of every consumer who received a prize. The rule also requires a seller to keep the real names, any fictitious name(s) used, address and telephone number, and job title or titles of individual solicitors acting on the seller’s behalf.

This section is similar to the federal telemarketing rule requirements. Additionally, the records to be kept are generally held by small business for other purposes. Therefore, there should be no fiscal impact to most small businesses. There will be some limited fiscal impact to small businesses who do not otherwise come under the federal rules and do not otherwise keep the required documentation.

Small Business Impact; Summary

The impact on small business should be limited to those who are not already covered by federal telemarketing rules or current DATCP rules under ch. ATCP 127, Wis. Adm. Code. Some small businesses may need to purchase equipment to tape record telephone authorizations from consumers. Most other requirements can be met by adhering to normal good business and recordkeeping practices. This rule will not ordinarily require small businesses to retain additional professional services.

Summary of Comments from Legislative Committees:

On March 17, 1999, this department transmitted the above rule for legislative committee review.

The rule was assigned to the Senate Committee on Judiciary and Consumer Affairs on March 25, 1999, and to the Assembly Committee on Consumer Affairs on March 30, 1999.

On May 6, 1999, a hearing was held on the rule by the Assembly Committee on Consumer Affairs. Both committees recommended a modification to the proposed rule which would exempt credit unions from the definition of “seller.”

On May 19, 1999, the department submitted a letter to both legislative committees informing them that the department agreed to make the following modification to the rule:

- On page 20, at line 24, add the words “credit union” as follows:

“association, credit union, insurance company, public utility or telecommunications carrier

The department also informed the committees on May 19, 1999, that it was adding the two following notes to the rule:

- On page 21, after line 19:

NOTE: Paragraph (b) does not except a face-to-face communication.

- On page 22, after line 9:

NOTE: A “solicitation under sub. (22) is covered by this rule even though it is not the first communication between the seller and the consumer.

Neither legislative committee took any action on the rule during its review period.

2. Chiropractic Examining Board (CR 98–141)

S. Chir 4.05 – Techniques, ancillary procedures or instruments prohibited in the practice of chiropractic.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

Summary of Comments:

No comments were reported.

3. Corrections (CR 99–15)

Ch. DOC 330 – Pharmacological treatment of certain child sex offenders.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not require small business to perform any duties and will have no impact on small businesses as defined in s. 227.114 (1)(a), Stats.

Summary of Comments:

No comments were reported.

4. Employee Trust Funds (CR 99–27)

S. ETF 20.35 – Dividing WRS accounts and annuities per qualified domestic relations orders (QDROs).

Summary of Final Regulatory Flexibility Analysis:

This rule concerns a retirement program open exclusively to qualifying employees of the state., counties (except Milwaukee County) and municipalities which have elected to participate in the Wisconsin Retirement System, as provided in s. 40.21, Stats. The Department therefore anticipates that the provisions of this proposed rule will have no direct adverse impact on small business.

Summary of Comments:

No comments were reported.

5. Funeral Directors Examining Board (CR 99–8)

S. FD 6.10 – Solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

Summary of Comments:

No comments were reported.

6. Health & Family Services (CR 99–20)

Ch. HFS 114 – Neonatal intensive care unit training grants.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

7. Insurance (CR 99–13)

S. Ins 3.39 – Guarantee issue for Medicare Supplement Insurance.

Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments:

The legislative standing committees had no comments on this rule.

8. Insurance (CR 99–34)

S. Ins 16.01 – Annual billings for the examination of domestic insurers.

Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Review Committees:

The legislative standing committees had no comments on this rule.

9. Natural Resources (CR 98–177)

Ch. NR 25 – Commercial fishing on lake Michigan and Lake Superior.

Summary of Final Regulatory Flexibility Analysis:

This rule will not affect small businesses. No additional compliance or reporting requirements will be imposed as a result of these proposed changes.

Summary of Comments of Legislative Review Committees:

The rules were reviewed by the Assembly committee on Natural Resources and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. There were no comments.

10. Public Service Commission (CR 99–53)

Ch. PSC 132 – Definition of “public utility” and cable operators’ access to railroad rights-of-way.

Summary of Final Regulatory Flexibility Analysis:

This rule will have no effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. It merely extends coverage of this rule to include cable operators. The only effect on cable operators that are small businesses will be to clarify and possibly speed up negotiations with railroads regarding rights-of-way. There are no reporting, bookkeeping, or other procedures required for compliance with the rule. The notice of rulemaking and proposed rules were sent to the secretary of the Department of Development and the small business ombudsman clearinghouse at the same time they were submitted to the Legislative Council. No issues regarding small business were raised.

Summary of Comments:

No comments were reported.

11. Regulation and Licensing (CR 98–135)

Chs. RL 121 to 126 – Registration and regulation of auctioneer and auction companies.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

Summary of Comments:

No comments were reported.

12. Regulation & Licensing (CR 98–175)

Chs. RL 131 to 135 – Registration and regulation of home inspectors.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules were reviewed by the department’s Small Business Review Advisory Committee. The Committee stated that these proposed rules are necessary, regardless of their economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

14. Transportation (CR 98–37)

Ch. Trans 212 – Standards for the inspection of bridges in Wisconsin.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

15. Transportation (CR 99–49)

Ch. Trans 276 – Allowing the operation of double bottoms and certain other vehicles on certain specified highways.

Summary of Final Regulatory Flexibility Analysis:

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

Summary of Comments:

No comments were reported.

16. Workforce Development (CR 98–130)

Ch. DWD 43 – Child support administrative enforcement.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

Summary of Comments:

No comments were reported.

17. Workforce Development (CR 98–204)

Ch. DWD 55 – Criminal record background checks for certified day care operators, employees and contractors of certified day care operators and nonclient residents at certified day care locations.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

Summary of Comments:

No comments were reported.

*ACTION BY THE JOINT COMMITTEE FOR REVIEW OF
ADMINISTRATIVE RULES*

**Action by the Joint Committee for
Review of Administrative Rules**

*Dept. of Natural Resources
(Environmental Protection--Water Regulation, Chs. NR 300--)*

On May 27, 1999, the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing. At that meeting, JCRAR received public testimony regarding ch. NR 328, relating to water ski jumps.

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 27, 1999 and adopted the following motion:

Carried unanimously, pursuant to s. 227.19 (1) (b) 4., Stats., the Joint Committee for Review of Administrative Rules suspend ch. NR 328, effective July 5, 1999.

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