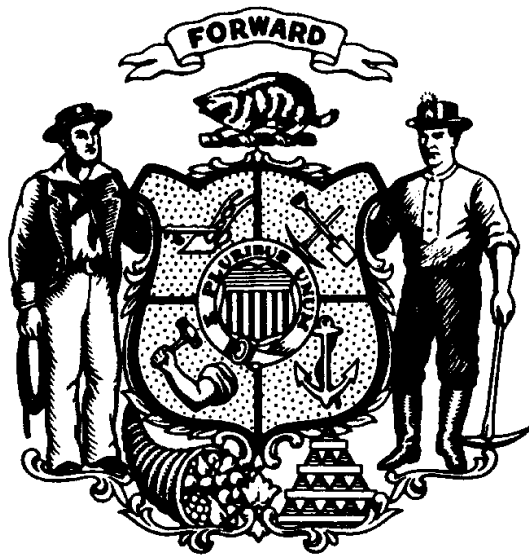


WISCONSIN ADMINISTRATIVE REGISTER

No. 525



Publication Date: September 30, 1999
Effective Date: October 1, 1999



REVISOR OF STATUTES BUREAU
SUITE 800, 131 WEST WILSON STREET
MADISON, WISCONSIN 53703-3233

The 1997–98 Wisconsin Statutes and Annotations can be ordered now in bound volumes or on the *WisLaw*® CD-ROM

Bound Volumes:

Prices for the 1997–98 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

| <i>Hard Cover</i> | <i>Hard Cover</i> | <i>Soft Cover</i> | <i>Soft Cover</i> |
|---------------------|------------------------|---------------------|------------------------|
| <i>With Postage</i> | <i>Without Postage</i> | <i>With Postage</i> | <i>Without Postage</i> |
| \$124.00 | \$117.00 | \$102.00 | \$96.00 |

Send orders to the Document Sales and Distribution Section at the address indicated below, or **call (608) 266–3358**. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to *WI Department of Administration*. Credit card orders using either VISA or Mastercard may be placed by calling 1–800–DOC–SALE. Local customers may call 264–9419 to place an order. The bound volumes of the statutes were made available January 4, 1999.

WisLaw® CD-ROM:

Up-to-date *WisLaw*® CD-ROM's are released by the Revisor of Statutes Bureau, as appropriate, sometimes several times a year. *WisLaw*® contains the *continuously–updated Wisconsin Statutes and Annotations* with Index, Table of Cross–References, and Table of Sections Affected by Acts, the **Wisconsin Acts with Index**, the **Supreme Court Rules and Internal Operating Procedures**, recent **Opinions of the Attorney General** with Index, the **Wisconsin Constitution**, the **U.S. Constitution**, the **Administrative Register** (from January 1996 through CD release date), the **Town Law Forms**, and the **Wisconsin Code of Military Justice**. The **Wisconsin Administrative Code** will be the newest addition to *WisLaw*®.

All of the above *WisLaw*® Infobases are substantially integrated with hypertext links. *WisLaw*® utilizes the Windows versions of Folio PreViews search and retrieval software. Folio is used today by the Legislative Branch, by several state agencies, and by 75 of the top 80 legal publishers.

WisLaw® is only available by subscription for 12–month periods; the number of updated CD's to be released in any 12–month period is indeterminate. *WisLaw*® End–user license and subscription order forms are available at Document Sales; CD's will only be delivered upon receipt of a signed license and subscription form and full payment. *WisLaw*® is distributed by DOA's Document Sales Unit to requesting state agencies on a complimentary basis.

A 12–month subscription plus a license for no more than one simultaneous user costs \$99. A 12–month subscription plus a license for no more than 4 simultaneous users costs \$149. A 12–month subscription plus a license for no more than 10 simultaneous users costs \$199. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

To obtain a *WisLaw*® Subscription Order Form call (608) 266–3358 or write to:

**The State of Wisconsin
Department of Administration
Bureau of Integrated Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, WI 53707–7840**

No orders will be accepted by FAX. For more information, **call (608) 266–3358**, TTY (608) 264–8499.

TABLE OF CONTENTS

Emergency Rules Now In Effect.

Agriculture, Trade and Consumer Protection:

Commerce:

Commerce:

Employment Relations Commission:

Geologists, Hydrologists & Soil Scientists Examining Board:

Health & Family Services:

Health & Family Services:

Higher Educational Aids Board:

Natural Resources:

Natural Resources:

Natural Resources:

Pages 5 to 10.

Rule relating to drug residues in raw milk.

Rules relating to security of dairy plant payments to milk producers.

PECFA Interagency Responsibilities, Ch. Comm 46

Rules relating to interagency responsibilities with PECFA.

Resources for Communities, etc., Chs. Comm 105–128

Rules relating to the Wisconsin Development Zone Program.

Rules relating to certified capital companies.

Rules relating to calculation of minimum qualified economic offers for school district employees.

Rules relating to registration and regulation of geologists, hydrologists and soil scientists.

Medical Assistance, Chs. HFS 100–108

Rules relating to operation of the BadgerCare health insurance program.

Rule relating to certification of specialized medical vehicle providers.

Health, Chs. HFS 110–

Rules relating to the Health Insurance Risk-Sharing Plan (HIRSP).

Rules relating to distribution of closed nursing home beds to a veterans' nursing home.

Rules relating to the Minority Teacher Loan Program.

See emergency rules relating to Comm 46.Fish, Game, etc., Chs. NR 1–Rules adopted revising **ch. NR 10**, relating to the 1999 migratory game bird season. **[FIRST APPEARANCE]**Environmental Protection–Water Regulation.Chs. NR 300–

Rules relating to determination of navigability in farm ditches.

Rules relating to ski jumps and platforms.

Scope Statements.

Financial Institutions —Credit Unions:

Financial Institutions —Credit Unions:

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

Revenue:

Pages 11 to 12.

Ch. DFI–CU 52 – Relating to credit union examinations.

Ch. DFI–CU 64 – Relating to public inspection and copying of records of the Office of Credit Unions.

NR Code – Relating to Department review of local hunting, fishing and trapping ordinances .

Ch. NR 29 – Relating to the funding for the Natural Heritage Inventory Program (NIH).

Ch. Tax 20 – Relating to the administration of the lottery and gaming property tax credit.

***Notices of Submittal of Proposed Rules to
Wisconsin Legislative Council Rules Clearinghouse.***

Elections Board:

Notices of Hearings or of Proposed Rules.

Agriculture, Trade and Consumer Protection:

Elections Board:

Higher Educational Aids Board:

Medical Examining Board:

Natural Resources:

Nursing, Board of:

***Notice of Submission of Proposed Rules to the
Presiding Officer of Each House of the Legislature,
Under S. 227.19, Stats.***

Commerce:

Employment Relations:

Employment Relations—Merit Recruitment and Selection:

Health and Family Services:

Natural Resources:

Natural Resources:

Natural Resources:

Natural Resources:

Natural Resources:

Natural Resources:

Natural Resources:

Natural Resources:

Pharmacy Examining Board:

Transportation:

***Administrative Rules Filed with the Revisor of
Statutes Bureau.***

Commerce:

Commerce:

Dentistry Examining Board:

Natural Resources:

Natural Resources:

Page 13.

SS. ElBd 7.01 to 7.03 – Relating to approval, testing and revocation of approval of electronic voting systems.

Pages 14 to 18.

Hearings to consider revision to ch. ATPC 105, relating to motor fuel sales below cost.

Proposed revision to ch. ElBd 7, relating to electronic voting systems.

Hearing to consider both the emergency rule and permanent rule revision to s. HEA 11.03, relating to the eligibility criteria for participation in the Minority Teacher Loan Program.

Hearing to consider revision to chs. Med 1 & 2, relating to computer-based examinations.

Fish, Game, etc., Chs. NR 1–

Hearing to consider emergency rules revising ch. NR 10, relating to the 1999 migratory game bird season.

Hearing to consider s. N 8.06 (1), relating to prescribing limitations for advanced practice nurse prescribers.

Page 19.

(CR 99–80) – Ch. Comm 83

(CR 99–110) – S. ER 1.02 and chs. ER 18 and 29

(CR 99–111) – SS. ER–MRS 1.02, 11.03, 22.11 and 34.08 and ch. ER–MRS 16

(CR 99–81) – Ch. HFS 115

(CR 98–180) – SS. NR 200.03 and 206.03

(CR 98–196) – Chs. NR 105, 106 and 211 and s. NR 215.06

(CR 99–25) – Ch. NR 169

(CR 99–44) – S. NR 20.09 (2)

(CR 99–47) – Chs. NR 6, 8, 50, 60 and 64

(CR 99–82) – S. NR 45.10

(CR 99–83) – Chs. NR 40, 41 and 45

(CR 99–97) – S. NR 10.01

(CR 98–187) – S. Phar 7.10

(CR 99–91) – SS. Trans 213.02 and 213.03

Page 20.

(CR 99–48) – Ch. Comm 14

(CR 99–65) – Chs. Comm 11, 12, 13, 40 and 43

(CR 99–16) – Ch. DE 7

(CR 98–197) – Ch. NR 200

(CR 99–46) – S. NR 485.04

| | |
|--------------------|---------------------------------------|
| Natural Resources: | (CR 99-84) – SS. NR 46.15 and 46.30 |
| Revenue: | (CR 97-128) – SS. Tax 11.03 and 11.11 |
| Revenue: | (CR 99-76) – S. Tax 11.51 |
| Transportation: | (CR 99-63) – Ch. Trans 2 |

Rules Published in this Wis. Adm. Register.***Page 21.***

| | |
|---|--|
| Agriculture, Trade and Consumer Protection: | (CR 98-142) – Chs. HSS 165 and ATCP 77 |
| Agriculture, Trade and Consumer Protection: | (CR 99-18) – Chs. ATCP 10 and 11 |
| Chiropractic Examining Board: | (CR 98-192) – Chs. Chir 1 to 4 and 7 and ss. Chir 6.02 and 9.04 |
| Commerce: | (CR 97-117) – Ch. Comm 1 |
| Commerce: | (CR 99-50) – Chs. Comm 16 and 17 |
| Health and Family Services: | (CR 98-71) – Ch. HFS 90 |
| Insurance, Commissioner of: | (CR 99-70) – SS. Ins 17.01, 17.275 and 17.28 |
| Natural Resources: | (CR 98-41) – S. NR 25.06 (2) (c) 1. |
| Natural Resources: | (CR 99-24) – SS. NR 10.01, 10.145, 10.31, 15.022, 15.024, 15.03 and 27.03 |
| Natural Resources: | (CR 99-42) – SS. NR 10.01, 10.106, 10.13, 10.24, 15.03 and 19.07 |
| Revenue: | (CR 99-35) – S. Tax 1.12 |

Sections Affected by Rule Revisions and Corrections.***Pages 22 to 25.*****REVISIONS**

| | |
|--|-------------------------------|
| Agriculture, Trade and Consumer Protection: | Chs. ATCP 10, 11 and 77 |
| Chiropractic Examining Board: | Chs. Chir 1 to 4, 6, 7 and 9 |
| Commerce (<u>Environmental Analysis and Review Procedures for Department Actions, Ch. Comm 1</u>): | Ch. Comm 1 |
| Commerce (<u>Electrical Code, Ch. Comm 16</u>): | Ch. Comm 16 |
| Commerce (<u>Electrical Inspection, Ch. Comm 17</u>): | Ch. Comm 17 |
| Commerce (<u>Financial Resources for Businesses and Communities, Chs. Comm 105 to 128</u>): | Ch. Comm 107 |
| Health and Family Services (<u>Community Services, Chs. HFS 30---</u>): | Ch. HFS 90 |
| Health and Family Services (<u>Health, Chs. HFS/HSS 110---</u>): | Ch. HSS 165 |
| Insurance, Commissioner of: | Ch. Ins 17 |
| Natural Resources (<u>Fish, Game, etc., Chs. NR 1---</u>): | Chs. NR 10, 15, 19, 25 and 27 |
| Revenue: | Ch. Tax 1 |

EDITORIAL CORRECTIONS

| | |
|--|--------------|
| Administration: | Ch. Adm 65 |
| Agriculture, Trade and Consumer Protection: | Ch. ATCP 151 |
| Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors Examining Board: | Ch. A-E 9 |
| Commerce (<u>Electrical Code, Ch. Comm 16</u>): | Ch. Comm 16 |
| Commerce (<u>Rental Unit Energy Efficiency, Ch. Comm 67</u>): | Ch. Comm 67 |
| Commerce (<u>Financial Resources for Businesses and Communities, Chs. Comm 105 to 128</u>): | Ch. Comm 114 |

Financial Institutions—Banking:

Chs. DFI-Bkg 40, 42 and 43

Health and Family Services (Community Services, Chs. HFS 30—):

Chs. HFS 90, 92 and 96

Health and Family Services (Health, Chs. HFS/HSS 110—):

Chs. HFS 122, 133, 152 to 154, 158 to 160 and HSS 165

Insurance, Commissioner of:

Chs. Ins 17 and 22

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

Chs. NR 1, 10, 19 and 27

Revenue:

Ch. Tax 1

Technical College System:

Chs. TCS 4 and 10

ERRATA

Agriculture, Trade and Consumer Protection:

Ch. ATCP 31

Final Regulatory Flexibility Analyses.

1. Agriculture, Trade and Consumer Protection:
2. Agriculture, Trade and Consumer Protection:
3. Chiropractic Examining Board:
4. Commerce:
5. Commerce:
6. Health and Family Services:
7. Insurance, Commissioner of:
8. Natural Resources:
9. Natural Resources:
10. Natural Resources:
11. Revenue:

Pages 26 to 30.

- (CR 98-142) – Chs. HSS 165 and ATCP 77
- (CR 99-18) – Chs. ATCP 10 and 11
- (CR 98-192) – Chs. Chir 1 to 4 and 7 and
ss. Chir 6.02 and 9.04
- (CR 97-117) – Ch. Comm 1
- (CR 99-50) – Chs. Comm 16 and 17
- (CR 98-71) – Ch. HFS 90
- (CR 99-70) – Ch. Ins 17
- (CR 99-24) – SS. NR 10.01, 10.145, 10.31, 15.022,
15.024, 15.03 and 27.03
- (CR 99-42) – SS. NR 10.01, 10.106, 10.13, 10.24, 15.03
and 19.07
- (CR 98-41) – S. NR 25.06 (2) (c) 1.
- (CR 99-35) – S. Tax 1.12

Executive Orders.

Executive Order No. 377:

Relating to the Creation of the Governor's Film and Video Industry Advisory Council.

Executive Order No. 378:

Relating to the Creation of the Position of Special Assistant to the Governor for Globalization.

Executive Order No. 379:

Relating to the Amendment of Executive Order No. 373.

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

Finding of Emergency

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

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

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

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

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

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

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

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

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

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

| | |
|--------------------------|---------------------------|
| 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. ATPC 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. ATPC 100, Wis. Adm. Code. Since dairy plant licenses expire on April 30 annually, dairy plants must comply with applicable security requirements in order to qualify for license renewal on May 1 of each year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Publication Date: April 20, 1999

Effective Date: May 1, 1999

Expiration Date: September 28, 1999

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 Dates: June 8 & July 10, 1999
Effective Date: June 8, 1999
Expiration Date: August 28, 1999
Hearing Dates: July 12, 13, 14 & 15, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Commerce

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

1. 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

2. Rules adopted creating **ch. Comm 111**, relating to certified capital companies.

Finding of Emergency

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

Analysis of Rules

Statutory Authority: ss. 560.31, 560.34 (1m) (b), and 227.24

Statutes Interpreted: ss 560.31, 560.34 (1m) (b), and 227.24

On June 17, 1999, the Department of Commerce (Commerce) held a public hearing on proposed rules in response to 1997 Wis. Act 215. That act provides tax credits to persons that make certain investments in certified capital companies that are certified by Commerce. Legislators and persons interested in the rules testified at the hearing and requested that Commerce adopt an emergency rule that would (1) allow persons to apply for certification to become certified as capital companies, (2) allow persons to apply to make a certified capital investment in a certified capital company, and (3) set forth the operational and reporting requirements of certified

capital companies required under the law. Since then, articles in the newspaper as well as business journals have pointed out the lack of venture capital in the state hinders high-tech growth and making that capital available will benefit Wisconsin as it has done in other states. This emergency rule is necessary to begin implementation of the law and to place Wisconsin in a better position to make capital available to draw high-tech industries, create new businesses, and expand existing businesses that will ultimately create new jobs and benefit all its citizens.

Publication Date: July 23, 1999
Effective Date: July 23, 1999
Expiration Date: December, 19, 1999
Hearing Date: August 17, 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

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
Hearing Dates: August 26, 27, 30 & 31, 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
Hearing Date: September 1, 1999

EMERGENCY RULES NOW IN EFFECT (2)**Health and Family Services****(Health, Chs. HSS/HFS 110—)**

1. 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
Hearing Date: September 9, 1999

- Rules adopted creating s. HSS 122.10, relating to distribution of 3 closed nursing home beds to a nursing home that serves only veterans.

Finding of Emergency

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

These rules are for the one-time distribution of 3 closed nursing home beds to a nursing home or nursing homes that serve only veterans. Following distribution of the 3 beds, the rules will be allowed to lapse.

Section 150.31, Stats., establishes a statewide bed limit for nursing homes as one means of controlling nursing home costs and Medical Assistance program expenditures. Within that bed limit a facility may close or its bed capacity may be reduced, in which case beds are freed up and may be redistributed by the Department under s. HSS 122.05(1)(c).

The Wisconsin Veterans Home at King has 4 separately licensed nursing home buildings on its grounds, and a total licensed capacity of 718 beds. It is operating at 99.9 percent of capacity with a long waiting list for admission. Managers of the Wisconsin Veterans Home have decided to close their underutilized 3 bed hospital operation at King. The 3 hospital beds are currently located in Stordock Hall. The 3 nursing home beds will replace the hospital beds. Because of the burgeoning population of older veterans, whose active service was during World War II, the Korean War, and the Vietnam War, and the immediate pressure on admissions to the facility, and the desirability of having flexibility when moving residents, Wisconsin Veterans Home managers have asked that the space previously used for hospital beds be converted to nursing home space and that 3 closed nursing home beds be transferred to the Veterans Home. These beds could be put on line immediately and provide some relief to those awaiting admission.

This rulemaking order establishes a process for considering applications for 3 closed nursing home beds to be made available to a nursing home or nursing homes that serve only veterans, that ask for no more than 3 beds and that do not require space to be added to the building in which the beds will be located to accommodate those beds.

Publication Date: August 3, 1999
Effective Date: August 3, 1999
Expiration Date: December 31, 1999

EMERGENCY RULES NOW IN EFFECT

Higher Educational Aids Board

Rules adopted amending s. HEA 11.03 (3) and creating s. HEA 11.03 (5), relating to the Minority Teacher Loan Program.

Finding of Emergency

The 1989 Wis. Act 31 created s. 39.40, Stats., which provides for loans to minority students enrolled in programs of study leading to licensure as a teacher. The Wisconsin Higher Educational Aids Board (HEAB) administers this loan program under s. 39.40 and under ch. HEA 11. Current rules require that a student be enrolled full time and show financial need to be considered for participation

in the Minority Teacher Loan Program. Students who did not enroll full time and did not show financial need were allowed to participate in the program in the past when part of the program was administered by another administrative body. These students are enrolled in teacher education programs that train teachers specifically for the school districts named in the statutes that outline the intent of the Minority Teacher Loan Program. Unless the Board changes its rules, many participating students will lose their eligibility in the program. This will cause a hardship to those students who relied on the interpretation of the prior system administration. Revising the rules would allow students who participated in the program in the past to continue to participate. The proposed revision will not affect expenditures of State funds for the Minority Teacher Loan Program.

Publication Date: August 6, 1999
Effective Date: August 6, 1999
Expiration Date: January 3, 2000
Hearing Date: October 28, 1999
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Fish, Game, etc., Chs. NR 1–)

Rules adopted revising **ch. NR 10**, relating to the 1999 migratory game bird season.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulation in the establishment of migratory bird hunting seasons and conditions. General regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations into conformity with federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 10, 1999
Effective Date: September 10, 1999
Expiration Date: February 7, 2000
Hearing Date: October 14, 1999
 [See Notice this Register]

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.

STATEMENTS OF SCOPE OF PROPOSED RULES

Financial Institutions--Credit Unions

Subject:

Ch. DFI-CU 52 – Relating to credit union examinations.

Description of policy issues:

Description of the objective of the rule:

The objective is to repeal ch. DFI-CU 52.

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

Ch. DFI-CU 52 outlined procedures for conducting credit union examinations, collecting examination fees, special examinations and issues regarding credit union books and records.

As ch. 186, Stats., has been updated and amended throughout the years, certain provisions of the existing Administrative Code have been incorporated into ch. 186, Stats. The provisions of existing ch. DFI-CU 52 are incorporated into s. 186.235 (14), (16), (17) and (18), Stats.

Section DFI-CU 52.03 (2) references s. 186.26, Stats., which has been repealed. This section of the rule is no longer applicable.

Statutory authority for the rule:

SS. 186.235 (8) and 227.11 (2), Stats.

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

Estimated time to be spent by state employees — 40 hours.
Review/approval by the Credit Union Review Board – 5 hours.

Financial Institutions--Credit Unions

Subject:

Ch. DFI-CU 64 – Relating to public inspection and copying of records of the Office of Credit Unions.

Description of policy issues:

Description of the objective of the rule:

The objective is to repeal ch. DFI-CU 64.

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

Ch. DFI-CU 64 outlined the procedures for the public inspection and copying of “public records” of the Office of Credit Unions.

1995 Wis. Act 27 created the Department of Financial Institutions (DFI) on July 1, 1996 and the Office of Credit Unions was attached for administrative efficiency. The General Counsel of the Office of the Secretary serves as the custodian for the public records of the Department of Financial Institutions and the Office of Credit Unions.

The disclosure of confidential information and records referred to in s. DFI-CU 64.02 is addressed in s. 186.235 (7), Stats.

Chapter 19, Stats., Subchapter II Public Records and Property, outlines procedures and requirements for accessing public records. An Open Records Notice posted in areas accessible by the public provides guidance for accessing the records of the Department of Financial Institutions and the Office of Credit Unions.

Statutory authority for the rule:

SS. 186.235 (8) and 227.11 (2), Stats.

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

Estimated time to be spent by state employees — 40 hours.
Review/approval by the Credit Union Review Board – 5 hours.

Natural Resources

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

Subject:

NR Code – Relating to Department review of local hunting, fishing and trapping ordinances.

Description of policy issues:

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

With the enactment of s. 29.038, Stats., the Department has received an ever-increasing number of requests to use its authority to rescind local hunting, fishing and trapping ordinances. In response, the Department has met with the Wisconsin Towns Association, and an article will be published in their newsletter. In addition, Department staff will participate in a workshop at the Towns Association's annual meeting in October of 1999. The Bureau of Law Enforcement has created a committee to investigate how and when it should use the authority under s. 29.038, Stats. The committee strongly recommends creating standards by rule before initiating any action.

This rule/Board action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

The Department has long advocated the strongest possible range of hunting, fishing and trapping opportunities. These activities should be limited only when a legitimate safety problem exists. The increasing number of local ordinances, which include blanket prohibitions on the discharge of firearms, unreasonable acreage restrictions and fees for the discharge of firearms permits, and bans on fishing in marinas, are often of a questionable safety basis.

This rule will have no impact on pollution prevention or waste minimization.

Statutory authority:

Section 29.038, Stats.

Anticipated time commitment:

The anticipated time commitment is 162 hours. Three or four hearings will be held in the spring of 2000 (after inservice commitment) at Madison, Appleton, Waukesha and Sheboygan.

Natural Resources

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

Subject:

Ch. NR 29 – Relating to the revision of ch. NR 29, ENDANGERED RESOURCES INFORMATION FEES, to comply with the changes made to s. 23.27 (3) (b), Stats., Natural Heritage Inventory Program – Access to information fees.

Description of policy issues:

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

The proposed changes will update the amount the DNR charges for Natural Heritage Inventory information and data, and will reflect the current costs of the technology used to manage and distribute this information. These changes will affect persons outside of the Wisconsin DNR interested in obtaining Natural Heritage Inventory (NHI) information from the Endangered Resources Bureau.

This rule/Board action represents a change from past policy.

Explain the facts that necessitate the proposed change:

The proposed rule change will reflect the current costs of information management, including the development and use of Geographical Information Systems (GIS) software and the distribution of information via the Internet. The changes would allow the DNR to charge for more than just compiling and providing information (which the DNR is already granted the authority to do by the original version of s. 23.27 (3) (b), Stats.) and would include the time and resources needed to collect, sort, and manage information and data. In addition, the changes would expand the DNR's ability to charge for large datasets, as well as provide more latitude in determining for whom the DNR chooses to reduce or waive these fees, or when.

This rule/Board action represents an opportunity for pollution prevention and/or waste minimization.

Statutory authority:

Section 23.27 (3) (b), Stats.

Anticipated time commitment:

The anticipated time commitment is 144 hours. One hearing will be held in April of 2000 at Madison (before the hearing, 3 to 4 Listening Sessions will be held).

Revenue

Subject:

Ch. Tax 20 – Relating to the administration of the lottery and gaming property tax credit.

Description of policy issues:

Objective of the rule:

Clarify administration of the lottery and gaming property tax credit with respect to claim procedures and reporting requirements under a 5-year claim cycle.

Description of policies:

Chapter Tax 20 was created to guide the administration of the lottery credit targeted to primary residences; under the existing rule, homeowners claim the credit through an annual application procedure.

Under 1997 Wis. Act 27 lottery credits in 1997 and 1998 were extended to all taxable properties with no application procedure required; as a result, the guidelines in ch. Tax 20 were unnecessary but remained in force.

Under 1999 Wis. Act 5, the lottery and gaming credit is distributed to owners of primary residences under a 5-year application procedure, so ch. Tax 20 will again be required to guide the administration of the program. However, several provisions in 1999 Wis. Act 5 require that ch. Tax 20 be amended in the following respects:

1) To change the name of the lottery credit to the lottery and gaming credit;

2) To provide for a 5-year certification process rather than the annual certification process under the existing rule;

3) To authorize only counties and the City of Milwaukee to administer the lottery credit as opposed to allowing the credit to be administered by "authorized" cities under the existing rule;

4) To specify when counties must apply for Department of Revenue approval to use a certification process other than that prescribed by statute;

5) To specify the new administrative cost reimbursement of \$.70 per claim as opposed to the \$.50 per claim reimbursement under the existing rule; and

6) The reporting requirements for treasurers need to be changed as a result of the change from an annual to a 5-year claim procedure.

Statutory authority:

Section 227.11(2), Stats.

Estimate of time and other resources:

The total anticipated time commitment to the development of the rule is 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.

Elections Board

Rule Submittal Date

On September 10, 1999, the State Elections Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule creates ss. ElBd 7.01 to 7.03, relating to approval, testing and revocation of approval of electronic voting systems.

Agency Procedure for Promulgation

The Elections Board intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats.

Contact Information

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

George A. Dunst, Legal Counsel
State Elections Board
132 East Wilson St.
P.O. Box 2973
Madison, WI 53701-2973

Telephone (608) 266-0136

NOTICE SECTION

Notice of Hearings *Agriculture, Trade & Consumer Protection*

[CR 99-133]

► (Reprinted from Mid-September, 1999 *Wis. Adm. Register*.)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATPC 105, Wis. Adm. Code, relating to sales below cost. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **November 5, 1999**, for additional written comments.

A copy of this rule and the proposed amendments may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708, or by calling (608)224-4928. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by September 30, 1999 either by writing to Kevin LeRoy, 2811 Agriculture Drive, PO Box 8911, Madison WI 53708-8911, (608/224-4928), or by contacting the message relay system (TDD) at 608/224-5058. Handicap access is available at the hearings.

Hearing Information

| | |
|---|---|
| October 11, 1999 Monday 1:00 pm until 4:00 pm | Marathon Co. Public Library 300 North 1 st St. Wausau, WI |
| October 12, 1999 Tuesday 1:00 pm until 4:00 pm | Wisconsin Department of Agriculture, Trade & Consumer Protection Board Room 2811 Agriculture Drive Madison, WI |
| October 14, 1999 Thursday 1:00 pm until 4:00 pm | Department of Corrections Room 129 State Office Building 141 Northwest Barstow St. Waukesha, WI |

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

Statutory Authority: s. 93.07(1)

Statute Interpreted: s. 100.30

This rule interprets s. 100.30, Stats., which prohibits sales of motor fuel and other merchandise below cost. The term "cost" is extensively defined in s. 100.30, Stats., and DATCP rules under ch. ATPC 105, Wis. Adm. Code. But neither the statute nor the current rules define "selling price."

Under s. 100.18(8), Stats., persons selling motor vehicle fuel at retail must post the retail sale price on the motor fuel pump. But many sellers now offer discounts such as customer loyalty discounts, fleet discounts, volume discounts, preferred payment method discounts and other incentives that may affect the ultimate sale price.

This rule clarifies how a seller's retail motor fuel "selling price" is calculated, for purposes of s. 100.30, Stats. Under this rule, the retail "selling price" of motor vehicle fuel is the selling price which the seller is required to post under s. 100.18(8), Stats., less any discounts offered by the seller that are fully earned and determinable at the time of sale, except that discounts based solely on the purchaser's method of payment or receipt of credit do not reduce the "selling price" of motor vehicle fuel for purposes of s. 100.30, Stats.

Fiscal Estimate

The department does not expect this rule to have any fiscal impact on the department or local governments.

Initial Regulatory Flexibility Analysis

The proposed additions to ATPC 105, Wis. Adm. Code do not have a significant effect on small business. The proposed rule is a presentation of the department's interpretation of how preferred payment method discounts effect whether or not gasoline was sold below cost.

Chapter ATPC 105 interprets s. 100.30, Stats. (sometimes referred to as "The Unfair Sales Act" or "The Minimum Markup Law"). This statute prohibits retailers, wholesalers and refiners of motor vehicle fuel from selling products below cost. The term "cost" is substantially defined in both the statute and the current rule. However, there are no provisions in either the statute or current rule that provide interpretations on how businesses are to determine the selling price of their products.

This rule specifies that discounts, credits or rebates that are tied to the payment method do not reduce the selling price of motor vehicle fuel. The rule also specifies that discounts, credit or rebates offered to the customer that are not tied to the payment method must be considered as a reduction in the selling price of motor vehicle fuel.

Notice of Proposed Rule

State Elections Board

[CR 99-137]

Notice is hereby given that pursuant to ss.5.05(1)(f), 5.93, and 227.11(2)(a), Stats., and interpreting ss.5.76, 5.77(2), 5.90, 5.91, 5.92, and 7.23, Stats., and according to the procedure set forth in s.227.16(2)(e), Stats., the State of Wisconsin Elections Board will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, on **October 1, 1999**, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

Analysis Prepared By State Elections Board

Statutory authority: ss.5.05(1)(f), s.5.93 and 227.11(2)(a)

Statutes interpreted: ss.5.76, 5.77(2), 5.90, 5.91, 5.92, and 7.23

The rule interprets ss.5.76, 5.77(2), 5.90, 5.91, 5.92, and 7.23, Stats. The rule establishes a procedure for approval of electronic voting systems for use in Wisconsin elections under s.5.91, Stats.; and a procedure for revocation of approval of electronic voting equipment if the system ceases to comply with s.5.91, Stats., or with this chapter. The rule also codifies the method used to test electronic equipment for compliance with s.5.91, Stats.

Section 5.91 of the Wisconsin Statutes prohibits the use of any electronic voting system in a Wisconsin election until that system has been approved by the Elections Board. The Board has determined that the procedure for approval of voting equipment should be codified in a rule. The Board will now require an application for approval and that application must be accompanied by allied documentation. The voting equipment will have to follow a prescribed testing procedure demonstrating that the equipment complies with the criteria of s.5.91, Stats. The rule also provides that approval may be revoked if the equipment ceases to meet the criteria of s.5.91, Stats., or to meet other requirements set forth in the rule. The rule applies to any electronic voting system that has not been approved by the Board as of the effective date of the rule.

Text of Rule

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f), 5.93, and 227.11(2)(a), Stats., the Elections Board hereby creates Rule EIBd 7.01, 7.02 and 7.03 interpreting ss.5.76, 5.77(2), 5.90, 5.91, 5.92, and 7.23, Stats., as follows:

SECTION 1. EIBd 7.01, 7.02 and 7.03 are created to read:

ELBD 7.01 APPLICATION FOR APPROVAL OF ELECTRONIC VOTING SYSTEM

(1) An application for approval of an electronic voting system shall be accompanied by the following:

- (a) A signed agreement that the vendor shall pay all costs incurred by the Board, its designees and the vendor related to approval of the system;
- (b) Complete specifications for all hardware, firmware and software;
- (c) All technical manuals and documentation related to the system;
- (d) Complete instruction materials necessary for the operation of the equipment and a description of training available to users and purchasers;
- (e) Reports from an independent testing authority accredited by the National Association of State Election Directors (NASD) demonstrating that the voting system conforms to all the standards recommended

by the Federal Elections Commission;

- (f) A signed agreement that the vendor shall immediately notify the Board of any modification to the voting system and the vendor will not offer for use, sale or lease any modified voting system if the Board notifies the vendor the modifications require that the system be approved again.
- (g) A list of all the states and municipalities in which the system has been approved for use and how long the equipment has been in use in those jurisdictions.
- (2) The Board shall determine if the application is complete and notify the vendor in writing that the application is complete or detailing any insufficiencies.
- (3) If the application is complete the vendor shall prepare the voting system for three mock elections using offices, referenda questions and candidates provided by the Board.
- ELBD 7.02 AGENCY TESTING OF ELECTRONIC VOTING SYSTEM
- (1) The Board shall conduct a test of the voting system to ensure that it meets the criteria set out in s.5.91 Stats.
- (2) The test shall be conducted using a mock election for the partisan primary, the general election with both a presidential and gubernatorial vote and the nonpartisan election combined with a presidential preference vote.
- (3) The Board may use a panel of local election officials and electors to assist in its review of the voting system.
- (4) The Board may require that the voting system be used in an actual election as a condition of approval.
- ELBD 7.03 CONTINUING APPROVAL OF ELECTRONIC VOTING SYSTEM
- (1) The Board may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter.
- (2) The vendor must keep the Board informed of all hardware, firmware and software changes and all jurisdictions using the voting system as a condition of maintaining the Board's approval for the use of the voting system.
- (3) The vendor must, at its expense, escrow a copy of the programs, documentation and source code used for any election in the state with an agent approved by the Board.
- (4) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium pursuant to the provisions of s.7.23 Stats.
- (5) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the Board.
- (6) The Board may provide for the exemption of any electronic voting system.

Initial Regulatory Flexibility Analysis

The creation of this rule does not affect business.

Fiscal Estimate

The creation of this rule has no fiscal effect.

Contact Person

George A. Dunst
Legal Counsel, State Elections Board
132 E. Wilson St.
P. O. Box 2973
Madison, WI 53701-2973
Phone 266-0136

Notice of Hearing
Higher Educational Aids Board
[CR 99-132]

Notice is hereby given that pursuant to ss. 39.28 (1) and 227.11, Stats., the Higher Educational Aids Board will hold a public hearing to consider the amendment of s. HEA 11.03 (3) and creation of s. HEA 11.03 (5), Wis. Adm. Code, relating to the eligibility criteria for participation in the Minority Teacher Loan Program, and the emergency rules now in effect on the same subject.

Hearing Information

The public hearing will be held:

| <u>Date and Time</u> | <u>Location</u> |
|--|---|
| October 28, 1999 Thursday 9:00AM to 9:30AM | Senate Hearing Room Room #201 SE State Capitol Madison, WI |

The hearing site is fully accessible to people with disabilities.

Analysis Prepared by the Higher Educational Aids Board

Statutory Authority: ss. 39.28 (1) and 227.11 (2)

Statute Interpreted: s. 39.40

The 1989 Wis. Act 31 created s. 39.40, Stats., which provides for loans to minority students enrolled in programs of study leading to licensure as a teacher. The Wisconsin Higher Educational Aids Board (HEAB) administers this loan program under s. 39.40, Stats., and under ch. HEA 11. This rulemaking order expands program eligibility to allow students who were eligible to participate under this program in the past, when it was administered by a different system, to continue to be eligible to participate in the future. Students who are enrolled at least half time and students who do not show financial need will be able to participate in this program. Current rules require that a student be enrolled full time and show financial need to be considered for participation. The proposed revision will not affect expenditures of State funds for the Minority Teacher Loan Program.

Contact Information

To find out more about the hearing or to request copies of the proposed rules, write or call:

Jane Hojan–Clark
Higher Educational Aids Board
131 West Wilson St., 9th Floor
P. O. Box 7885
Madison, WI 53707–7885

Telephone (608) 264–6181

Email: jane.hojan-clark@heab.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than **October 21, 1999** will be given the same consideration as testimony presented at a hearing.

Initial Regulatory Flexibility Analysis

The proposed rules concern a student financial aid program and have no effect upon small business in the state of Wisconsin.

Fiscal Estimate

The proposed changes cause no alterations in the present allocation of funds, so there is no fiscal impact.

Notice of Hearing

Medical Examining Board

[CR 99–128]

Notice is hereby given that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats., and interpreting s. 448.05 (6), Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend ss. Med 1.06 (1) (a) (intro.), (d), (3) (a), (b), (d), (e), (f) (intro.) and (g), 1.08 (2), 2.02 and 2.04, relating to computer–based examinations.

Hearing Information

October 20, 1999
Wednesday
8:45 A.M.

Room 179A
1400 E. Washington Ave.
Madison, WI

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **October 27, 1999** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1)

Statute interpreted: s. 448.05 (6)

In this proposed rule-making order, the Medical Examining Board amends its rules relating to the change from a paper and pencil examination to a computer-based examination. This amendment will allow for the computer-based examination administration of the USMLE (United States Medical Licensing Examination) beginning in 1999.

After December 31, 1993, the FLEX examination was no longer the licensing examination administered by the Board. Therefore, the last sentence of s. Med 10.06 (3) (a) is repealed in that the examination does not consist of the 2-component FLEX; but, rather, the Board now accepts the 3-step USMLE sequence. In s. Med 2.02 the word "such" is changed to the word "he" to comply with the *Administrative Rules Procedures Manual*.

In s. Med 2.04 language is repealed relating to temporary licenses expiring on the first day the Board begins its examination. The Board at one time administered the examinations in June and December. The Medical Examining Board does not schedule examinations any longer. An applicant can take the examination any day of the week because of the computer-based examination.

Text of Rule

SECTION 1. Med 1.06 (1) (a) (intro.), (d) and (3) (a), (b), (d), (e), (f) (intro.) and (g) are amended to read:

Med 1.06 (1) (a) All applicants shall complete the ~~written~~ computer-based examination under sub. (3), and an open book examination on statutes and rules governing the practice of medicine and surgery in Wisconsin. In addition, an applicant may be required to complete an oral examination if the applicant:

(d) ~~Where both written~~ Written computer-based and oral examinations ~~are~~ as required ~~they~~ shall be scored separately and the applicant shall achieve a passing grade on all examinations to qualify for a license.

(3) (a) The board accepts the FLEX examination administered on or before December 31, 1993, as its written examination and requires a score of not less than 75.0 on each component of the 2-component FLEX examination administered on or after January 1, 1985. Every applicant shall take have taken the complete 2-component examination the first time the applicant ~~is~~ was admitted to the FLEX examination. If the applicant fails to achieve a passing grade on one of the 2 components, the applicant ~~may apply for and be reexamined on only the 2 components, the applicant failed according to the reexamination provisions of s. Med 1.08 (4) and~~

(b) Commencing January 1, 1994, the board accepts the 3-step USMLE sequence as its written or computer-based examination and administers step 3 of the sequence. Minimum standard passing scores for each step shall be not less than 75.0. Applicants shall complete all 3 steps of the examination sequence within 7 years from the date upon which the applicant first passes a step, either step 1 or step 2. Applicants who have passed a step may not repeat the step unless required to do so in order to comply with the 7-year time limit. If the applicant fails to achieve a passing grade on any step, the applicant may apply for and be reexamined on only the step failed according to the reexamination provisions of s. Med 1.08 (1).

(d) The board may waive the requirement for written or computer-based examinations required in this section for any applicant who has achieved a weighted average score of no less than 75.0 on all 3 components of the FLEX examination taken prior to January 1, 1985 in a single session in another licensing jurisdiction in the United States or Canada, in no more than 3 attempts. If the applicant had been examined 4 or more times before achieving a weighted average score of no less than 75.0 on all 3 components, the applicant shall meet requirements specified in s. Med 1.08 (2).

(e) The board may waive the requirement for written or computer-based examinations required in this section for any applicant who has achieved a score of no less than 75.0 on each of the 2 components of the FLEX examination administered on or after January 1, 1985 in another licensing jurisdiction in the United States or Canada, if the applicant achieved a score of no less than 75.0 on each of the 2 components in no more than 3 attempts. If the applicant has been examined 4 or more times before achieving a score of 75.0 on either or both components of the FLEX examination, the applicant shall meet requirements specified in s. Med 1.08 (2).

(f) An applicant who has passed all 3 components of the examinations of the following boards and councils may submit to the board verified documentary evidence thereof, and the board will accept this in lieu of requiring further written or computer-based examination of the applicant.

(g) An applicant who has received passing grades in written or computer-based examinations for a license to practice medicine and surgery conducted by another licensing jurisdiction of the United States or Canada may submit to the board verified documentary evidence thereof. The board will review such documentary evidence to determine whether the scope and passing grades of such examinations are substantially equivalent to those of this state at the time of the applicant's examination, and if the board finds such equivalence, the board will accept this in lieu of requiring further written or computer-based examination of the candidate. The burden of proof of such equivalence shall lie upon the applicant.

SECTION 2. Med 1.08 (2) is amended to read:

Med 1.08 (2) If an applicant has been examined 4 or more times in another licensing jurisdiction in the United States or Canada before achieving a passing grade in written or computer-based examinations also required under this chapter, the board may require the applicant to submit evidence satisfactory to the board of further professional training or education in examination areas in which the applicant had previously demonstrated deficiencies. If the evidence provided by the applicant is not satisfactory to the board, the board may require the applicant to obtain further professional training or education as the board deems necessary to establish the applicant's fitness to practice medicine and surgery in this state. In order to determine any further professional training or education requirement, the board shall consider any information available relating to the quality of the applicant's previous practice, including the results of the applicant's performance on the oral examination required under s. 448.05 (6), Stats., and s. Med 1.06.

SECTION 3. Med 2.02 is amended to read:

Med 2.02 Applications, credentials, eligibility, and issuance. An applicant who is a graduate of a medical school in this state, or of whom the board will require no further examination under the provisions of s. Med 1.06 (3), may make application to the board for temporary license prior to regular license to practice medicine and surgery. In either case, ~~such~~ the applicant shall have submitted to the board the application and documents required under ch. Med 1 for regular license to practice medicine and surgery, and shall in addition submit to the board an application for temporary license prior to regular license on forms provided for that purpose by the board. ~~Such~~ The application shall be made not less than 30 days prior to the date set by the board for the holding of its next scheduled examinations for regular license. The application and required documents for regular license to practice medicine and surgery and the application for temporary license prior to regular license will be reviewed by 2 officers of the board. In the case of an applicant of

whom the board will require no further written or computer-based examination, upon the finding of ~~such the~~ 2 officers of the board that ~~such the~~ applicant is qualified for regular license except for having taken and passed the oral examination required under s. Med 1.06, the board, acting through ~~such the~~ 2 officers, may issue a temporary license prior to regular license to practice medicine and surgery to ~~such the~~ applicant. In the case of an applicant who is a graduate of a medical school in this state, upon the finding of ~~such the~~ 2 officers of the board that ~~such the~~ applicant is eligible for admission to examination for regular license under s. Med 1.06, the board, acting through ~~such the~~ 2 officers, may issue a temporary license prior to regular license to practice medicine and surgery to ~~such the~~ applicant.

SECTION 4. Med 2.04 is amended to read:

Med 2.04 Expiration. A temporary license prior to regular license to practice medicine and surgery granted under this chapter shall expire by its terms 60 days after the next scheduled examination for regular license is given by the board, or on the date following the examination of an applicant on which the board grants or denies ~~such the~~ applicant a regular license to practice medicine and surgery, whichever occurs first; or ~~such temporary license prior to regular license to practice medicine and surgery and shall automatically expire on the first day the board begins its examination of applicants for regular license to practice medicine and surgery after issuing such license, unless its holder submits to examination on such date if the applicant fails to appear for the examination.~~ A regular license to practice medicine and surgery is deemed denied by the board on the date the applicant is sent notice from the board that he or she has failed the examination for regular license to practice medicine and surgery.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Information

Copies of this proposed rule are available without cost upon request to:

Pamela Haack
Department of Regulation and Licensing
Office of Administrative Rules
1400 East Washington Avenue, Room 171
P.O. Box 8935
Madison, WI 53708

Telephone (608) 266-0495

Notice of Hearing

Natural Resources

(Fish, Game, etc., Chs. NR 1 –)
[CR 99-97]

Notice is hereby given that pursuant to ss. 29.014, 29.197, 29.041, 227.11(2)(a) and 227.24, Stats., interpreting ss. 29.014, 29.197, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-4-99(E) pertaining to the 1999 migratory game bird season. This emergency order took effect on September 10, 1999. The significant regulations are:

Ducks – The state is divided into two zones each with a 60-day season. The season in both zones begins at noon October 2 and continues for 60 days, closing November 30. The daily bag limit in both zones is 6 ducks, including 4 mallards, of which only one may be a hen, and one canvasback for the entire 60 days in both zones.

Canada geese – The state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, New Auburn, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone – 69 days; Horicon Zone – 95 days; Exterior Zone – 94 days; and Mississippi River Subzone – 80 days. The Burnett County and New Auburn subzones are closed to Canada goose hunting.

Youth hunt – The rule has been amended to allow nonresident youth to participate in the special youth waterfowl hunt.

Hours – Migratory game bird hunting hours are amended to include the open and closing hours for the month of January.

Baiting – The rule has been amended to be consistent with U.S. Fish and Wildlife Service baiting rules.

Mississippi River subzone – The map of the Mississippi River subzone has been revised to show the new name of the railroad that serves as the eastern border.

Hearing Information

October 14, 1999 Room 611A, GEF #2,
Thursday 101 South Webster Street
at 1:00 p.m. 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 Jon Bergquist at (608) 266-8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the emergency rule may be submitted to Mr. Jon Bergquist, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **October 18, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [WM-4-99(E)] may be obtained from Mr. Bergquist.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearing

Board of Nursing
[CR 99-126]

Notice is hereby given that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b), 227.11 (2) and 441.16 (3) (b), Stats., and interpreting s. 441.16 (3) (b), Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to create s. N 8.06 (1m), relating to prescribing limitations for advanced practice nurse prescribers.

Hearing Information

November 4, 1999 Room 179A
Thursday 1400 E. Washington Ave.
2:00 P.M. Madison, WI

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **November 19, 1999** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 441.16 (3) (b)

Statute interpreted: s. 441.16 (3) (b)

Section 441.16, Stats., requires that the Board of Nursing promulgate rules “defining the scope of practice within which an advanced practice nurse may issue prescription orders.” The rules created by the Board in response to this mandate establish a number of prescribing limitations specifying that the advanced practice nurse prescriber “may issue only those prescription orders appropriate to the advanced practice nurse prescriber’s areas of competence, as established by his or her education, training or experience.”

Not included within these rules, however, is any specification as to those practices and procedures which are an integral and necessary part of the independent preparation of a prescription order, including the physical assessment of the patient necessary to make an intelligent prescribing judgment. Assessment is defined as “the systematic and continued collection and analysis of data about the health status of a patient culminating in the formulation of a nursing diagnosis.” It seems clear that the collection and analysis of data about the health care status of a patient must, to the extent they are consistent with the advanced practice nurse’s areas of practice, include basic diagnostic tests, including laboratory testing, x-rays and EKG’s. The proposed rule would confirm that the advanced practice nurse prescriber may independently order and utilize diagnostic testing consistent with his or her area of competence.

Text of Rule

SECTION 1. N 8.06 (1m) is created to read:

N 8.06 (1m) May not independently order laboratory testing, radiographs or electrocardiograms, except to assist the advanced practice nurse prescriber in issuing a prescription order appropriate to the advanced practice nurse prescriber’s areas of competence, as established by his or her education, training or experience.

Fiscal Estimate

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

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact 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 Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Telephone (608) 266-0495

***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 99-80):

Ch. Comm 83 – Relating to private sewage systems.

Employment Relations (CR 99-110):

S. ER 1.02 and chs. ER 18 and 29 – Relating 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.

Employment Relations—Merit Recruitment and Selection (CR 99-111):

SS. ER-MRS 1.02, 11.03, 22.11 and 34.08 and ch. ER-MRS 16 – Relating to reinstatement eligibility and employment register expiration for state employment and minor and technical rule changes.

Health and Family Services (CR 99-81):

Ch. HFS 115 – Relating to screening of newborn children for congenital and metabolic disorders.

Natural Resources (CR 98-180):

SS. NR 200.03 and 206.03 – Relating to WPDES permit exemptions for private sewage systems with a design capacity of less than 12,000 gallons per day.

Natural Resources (CR 98-196):

Chs. NR 105, 106 and 211 and s. NR 215.06 – Relating to regulating the discharge of chloride to surface waters of the state.

Natural Resources (CR 99-25):

Ch. NR 169 – Relating to the reimbursement of response action costs for response actions taken at eligible dry cleaning facilities.

Natural Resources (CR 99-44):

S. NR 20.09 (2) – Relating to bow fishing hours on inland lakes during the rough fish spearing season.

Natural Resources (CR 99-47):

Chs. NR 6, 8, 50, 60 and 64 – Relating to snowmobiles.

Natural Resources (CR 99-82):

S. NR 45.10 – Relating to camping and reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Natural Resources (CR 99-83):

Chs. NR 40, 41 and 45 – Relating to public use of Department lands.

Natural Resources (CR 99-97):

S. NR 10.01 – Relating to the 1999 migratory game bird season.

Pharmacy Examining Board (CR 98-187):

S. Phar 7.10 – Relating to pharmacists administering by injection a drug product or device in the course of teaching a patient self-administration techniques.

Transportation (CR 99-91):

SS. Trans 213.02 and 213.03 – Relating to the local bridge program.

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.

Commerce (CR 99-48):

An order affecting ch. Comm 14, relating to fire department dues entitlement.

Effective 11-01-99.

Commerce (CR 99-65):

An order affecting chs. Comm 11, 12, 13, 40 and 43, relating to gas systems and anhydrous ammonia.

Effective 11-01-99.

Dentistry Examining Board (CR 99-16):

An order creating ch. DE 7, relating to the education required of licensed dental hygienists to receive a certificate to administer local anesthesia to patients.

Effective 11-01-99.

Natural Resources (CR 98-197):

An order affecting ch. NR 200, relating to applications for discharge permits and water quality standards variances.

Effective 11-01-99.

Natural Resources (CR 99-46):

An order affecting s. NR 485.04, relating to emission limitations for motor vehicles.

Effective 12-01-99.

Natural Resources (CR 99-84):

An order affecting ss. NR 46.15 and 46.30, relating to the administration of the Forest Crop Law and the Managed Forest Law.

Effective 11-01-99.

Revenue (CR 97-128):

An order affecting ss. Tax 11.03 and 11.11, relating to schools and related organizations, and industrial and governmental waste treatment facilities.

Effective 11-01-99.

Revenue (CR 99-76):

An order affecting s. Tax 11.51, relating to taxable and exempt sales by grocers.

Effective 11-01-99.

Transportation (CR 99-63):

An order affecting ch. Trans 2, relating to the elderly and disabled transportation capital assistance program.

Effective 11-01-99.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **September 30, 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 98-142):

An order affecting chs. HSS 165 and ATP 77, relating to certification of laboratories engaged in public health testing of milk, water and food.

Effective 10-01-99.

Agriculture, Trade and Consumer Protection
(CR 99-18):

An order affecting chs. ATP 10 and 11, relating to paratuberculosis (Johne's disease).

Effective 07-01-00.

Chiropractic Examining Board (CR 98-192):

An order affecting chs. Chir 1 to 4 and 7 and ss. Chir 6.02 and 9.04, relating to definitions, applications, examinations, temporary permits and renewal.

Effective 10-01-99.

Commerce (CR 97-117):

An order creating ch. Comm 1, relating to environmental analysis and review procedures for Department actions.

Effective 10-01-99.

Commerce (CR 99-50):

An order affecting chs. Comm 16 and 17, relating to electrical construction and inspection.

Effective 10-01-99.

Health and Family Services (CR 98-71):

An order affecting ch. HFS 90, relating to early intervention services for children with developmental needs in the age group from birth up to 3.

Effective 10-01-99.

Insurance, Commissioner of (CR 99-70):

An order affecting ss. Ins 17.01, 17.275 and 17.28, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1999, to affirm open records law and exceptions apply to fund records, and to impose a late fee on insurers and self-insurers who are late in filing certificates of insurance.

Effective 10-01-99.

Natural Resources (CR 98-41):

An order creating s. NR 25.06 (2) (c) 1., relating to commercial fishing for smelt on Lake Michigan and Green Bay.

Effective 10-01-99.

Natural Resources (CR 99-24):

An order affecting ss. NR 10.01, 10.145, 10.31, 15.022, 15.024, 15.03 and 27.03, relating to hunting and trapping.

Part effective 10-01-99.

Part effective 11-01-99.

Part effective 03-01-00.

Natural Resources (CR 99-42):

An order affecting ss. NR 10.01, 10.106, 10.13, 10.24, 15.03 and 19.07, relating to hunting and trapping.

Effective 10-01-99.

Revenue (CR 99-35):

An order creating s. Tax 1.12, relating to electronic funds transfer.

Effective 10-01-99.

SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

The following administrative rule revisions and corrections have taken place in September, 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 10

- S. ATCP 10.01 (50) to (54)
- S. ATCP 10.21 (entire section)
- S. ATCP 10.215 (entire section)
- S. ATCP 10.216 (entire section)
- S. ATCP 10.63 (entire section)

Ch. ATCP 11

- S. ATCP 11.01 (60)
- S. ATCP 11.10 (3) (c)
- S. ATCP 11.17 (entire section)
- S. ATCP 11.60 (2) and (4)

Ch. ATCP 77 (entire chapter)

Chiropractic Examining Board:

Ch. Chir 1

- S. Chir 1.01 (entire section)
- S. Chir 1.02 (intro.)

Ch. Chir 2

- S. Chir 2.02 (entire section)
- S. Chir 2.025 (entire section)
- S. Chir 2.03 (1), (2) (intro.) and (b)
- S. Chir 2.04 (entire section)
- S. Chir 2.05 (entire section)
- S. Chir 2.07 (2) and (3)
- S. Chir 2.08 (entire section)
- S. Chir 2.09 (1)
- S. Chir 2.10 (1) (intro.) to (c) and (3)
- S. Chir 2.11 (2) and (3)

Ch. Chir 3

- S. Chir 3.01 (entire section)
- S. Chir 3.02 (1) (b)
- S. Chir 3.03 (1) (e), (f), (2) (intro.), (b), (c), (e) to (h) and (k)
- S. Chir 3.035 (1) (intro.), (b) and (3)

Ch. Chir 4

- S. Chir 4.05 (1) (a), (b) and (c) and (2) (a) and (b)

Ch. Chir 6

- S. Chir 6.02 (18) and (30)

Ch. Chir 7 (entire chapter)

Ch. Chir 9

- S. Chir 9.04 (6)

Commerce:

(Environmental Analysis and Review Procedures for Department Actions, Ch. Comm 1)

Ch. Comm 1 (entire chapter)

(Electrical Code, Ch. Comm 16)

Ch. Comm 16

- S. Comm 16.02 (1) (f)
- S. Comm 16.04 (2) and (3)
- S. Comm 16.05 (entire section)
- S. Comm 16.06 (entire section)
- S. Comm 16.065 (entire section)
- S. Comm 16.10 (entire section)
- S. Comm 16.12 (entire section)
- S. Comm 16.17 (1) (c)
- S. Comm 16.20 (entire section)
- S. Comm 16.21 (entire section)
- S. Comm 16.225 (entire section)
- S. Comm 16.24 (3) and (4)
- S. Comm 16.25 (1) (b) and (c), (3), (4) (intro.) and (a) and (7) (intro.) and (a)
- S. Comm 16.26 (entire section)
- S. Comm 16.27 (entire section)
- S. Comm 16.28 (2) and (3)
- S. Comm 16.30 (entire section)
- S. Comm 16.325 (entire section)
- S. Comm 16.355 (entire section)
- S. Comm 16.37 (entire section)
- S. Comm 16.40 (entire section)
- S. Comm 16.42 (entire section)
- S. Comm 16.435 (entire section)
- S. Comm 16.437 (entire section)
- S. Comm 16.44 (entire section)
- S. Comm 16.45 (1) and (2) (c)
- S. Comm 16.46 Table
- S. Comm 16.47 (entire section)
- S. Comm 16.60 to 16.67 (entire sections)

(Electrical Inspection, Ch. Comm 17)

Ch. Comm 17 (entire chapter)

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

Ch. Comm 107 (entire chapter)

Health and Family Services*(Community Services, Chs. HFS 30--)***Ch. HFS 90**

- S. HFS 90.03 (28)
- S. HFS 90.05 (4) (a)
- S. HFS 90.07 (1) and (3)
- S. HFS 90.08 (7) (k)
- S. HFS 90.10 (5) (d) and (f)
- S. HFS 90.11 (1) (c), (2) (a) and (b), (4) (b), (c), (g),
(i) to (m) and (o) and (5) (a)
- S. HFS 90.12 (5) and (6)
- S. HFS 90.13 (2) (b) to (i)

*(Health, Chs. HFS/HSS 110--)***Ch. HSS 165**

- S. HSS 165.01 (1) and (2)
- S. HSS 165.02 (4), (8), (9), (12) (intro.) and (b),
(13), (14) and (17)
- S. HSS 165.03 (entire section)
- S. HSS 165.04 (1) (intro.)
- S. HSS 165.14 (2) (a) and (3) (g)
- S. HSS 165.20 (2)
- S. HSS 165.23 (1) (g)

Insurance, Commissioner of:**Ch. Ins 17**

- S. Ins 17.01 (3) (intro.)
- S. Ins 17.275 (entire section)
- S. Ins 17.28 (5) (c), (6) and (6a)

Natural Resources:*(Fish, Game, etc., Chs. NR 1--)***Ch. NR 10**

- S. NR 10.01 (2) (f), (3) (e) and (g), (4) (d) and (dm)
- S. NR 10.106 (1)
- S. NR 10.13 (1) (b) and (4)
- S. NR 10.145 (2) (c) and (7)
- S. NR 10.24 (8)
- S. NR 10.31 (11)

Ch. NR 15

- S. NR 15.022 (intro.)
- S. NR 15.024 (intro.) and (1)
- S. NR 15.03 (intro.) and (9)

Ch. NR 19

- S. NR 19.07 (intro.)

Ch. NR 25

- S. NR 25.06 (2) (c)

Ch. NR 27

- S. NR 27.03 (2) (a) and (3) (a)

Revenue:**Ch. Tax 1**

- S. Tax 1.12 (entire section)

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 65**

- S. Adm 65.11 (1) had a correction made under
s. 13.93 (2m) (b) 7., Stats.
- S. Adm 65.12 (1) had a correction made under
s. 13.93 (2m) (b) 7., Stats.
- S. Adm 65.13 (entire section) had a correction made
under s. 13.93 (2m) (b) 7., Stats.

Agriculture, Trade and Consumer Protection:**Ch. ATCP 151**

- S. ATCP 151.08 (5) had a correction made under
s. 13.93 (2m) (b) 1., Stats.

Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors Examining Board:**Ch. A-E 9**

- S. A-E 9.04 (entire section) had corrections made
under s. 13.93 (2m) (b) 7., Stats.

Commerce:*(Electrical Code, Ch. Comm 16)***Ch. Comm 16**

- S. Comm 16.23 (entire section) had a correction
made under s. 13.93
(2m) (b) 7., Stats.
- S. Comm 16.33 (entire section) had a correction
made under s. 13.93
(2m) (b) 7., Stats.

*(Rental Unit Energy Efficiency, Ch. Comm 67)***Ch. Comm 67**

- S. Comm 67.05 (4) (b) had a correction made
under s. 13.93 (2m) (b) 7., Stats.
- S. Comm 67.055 (table) had a correction made
under s. 13.93 (2m) (b) 7., Stats.

*(Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)***Ch. Comm 114**

- S. Comm 114.02 (13) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

Financial Institutions—Banking:

Ch. DFI—Bkg 40 (entire chapter) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. DFI—Bkg 42 (entire chapter) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. DFI—Bkg 43 (entire chapter) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Health and Family Services

(*Community Services, Chs. HFS 30—*)

Ch. HFS 90

S. HFS 90.06 (2) (h) and (n) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. HFS 90.11 (2) (a) and (4) (intro.) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. HFS 90.12 (6) had corrections made under s. 13.93 (2m) (b) 1., Stats.

Ch. HFS 92 (entire chapter) was renumbered from ch. HSS 92 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 96 (entire chapter) was renumbered from ch. HSS 96 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

(*Health, Chs. HFS/HSS 110—*)

Ch. HFS 122 (entire chapter) was renumbered from ch. HSS 122 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 (entire chapter) was renumbered from ch. HSS 133 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 152 (entire chapter) was renumbered from ch. HSS 152 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 153 (entire chapter) was renumbered from ch. HSS 153 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 154 (entire chapter) was renumbered from ch. HSS 154 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 158 (entire chapter) was renumbered from ch. HSS 158 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 159 (entire chapter) was renumbered from ch. HSS 159 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HFS 160 (entire chapter) was renumbered from ch. HSS 160 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.

Ch. HSS 165

S. HSS 165.02 (3) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. HSS 165.15 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. HSS 165.20 (3) (a) and (c) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. HSS 165.22 (entire section) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Insurance, Commissioner of:**Ch. Ins 17**

S. Ins 17.25 (12) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. Ins 17.28 (6a) had a correction made under s. 13.93 (2m) (b) 1., Stats.

Ch. Ins 22

S. Ins 22.01 (4) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Natural Resources:

(*Fish, Game, etc., Chs. NR 1—*)

Ch. NR 1

S. NR 1.01 (3) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 1.02 (7) (b) had a correction made under s. 13.93 (2m) (b) 1., Stats.

S. NR 1.12 (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 1.15 (2) (d) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 1.16 (4) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 1.17 (2) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. NR 1.18 (7) and (8) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. NR 1.52 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 1.91 (6) (a) and (8) (intro.) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. NR 1.95 (2) (b) and (d) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. NR 10

S. NR 10.001 (5r) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. NR 19

S. NR 19.27 (4) (a) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

Ch. NR 27

S. NR 27.01 (3), (5), (6), (7) and (9) had corrections
made under s. 13.93 (2m) (b) 7., Stats.

S. NR 27.02 (entire section) had a correction made
under s. 13.93 (2m) (b) 7., Stats.

S. NR 27.05 (1) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

S. NR 27.07 (1) (a) and (c) and (3) had corrections
made under s. 13.93 (2m) (b) 7., Stats.

Revenue:**Ch. Tax 1**

S. Tax 1.11 (3) (e) had a correction made under
s. 13.93 (2m) (b) 7., Stats.

Technical College System:**Ch. TCS 4**

S. TCS 4.15 (entire section) had a correction made
under s. 13.93 (2m) (b) 7., Stats.

S. TCS 4.23 (entire section) had a correction made
under s. 13.93 (2m) (b) 7., Stats.

Ch. TCS 10

S. TCS 10.06 (3) had a correction made under
under s. 13.93 (2m) (b) 7., Stats.

ERRATA

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

Agriculture, Trade and Consumer Protection**Ch. ATCP 31**

S. ATCP 31.07 reprinted to correct note.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Agriculture, Trade & Consumer Protection

(CR 98-142)

Ch. ATPC 77 – Certification of laboratories engaged in public health testing of milk, water and food

Summary of Final Regulatory Flexibility Analysis:

The repeal and recreation of ch. ATPC 77, Wis. Adm. Code, Laboratory Certification will have a small fiscal impact on small businesses as defined in s. 227.114 (1)(a), Stats. Approximately 200 laboratories are currently licensed and inspected by the department. The laboratories range from small establishments that are only certified for one test to large dairy cooperatives that have a full service milk testing laboratory at one or more locations.

The laboratory certification rule replaces the existing rule (HSS 165). The standards are based on established federal (FDA and EPA) guidelines and are designed to be consistent with other state and local requirements. The changes from HSS 165 are designed to replace the clinical language with language that is more applicable to milk, water, and food testing laboratories. The fee structure outlined in the current ATPC 77 is unchanged.

Key issues in the proposed rule include:

- modifying all language that refers to clinical laboratory testing and substitute language that is applicable to milk, water, and food laboratories;
- application requirements;
- procedures for suspending or revoking a laboratory's certification;
- basic requirements for laboratory facilities and equipment;
- responsibilities of a laboratory administrator;
- record keeping and reporting requirements, including the reporting of changes in laboratory facilities, equipment and personnel;
- adding the requirement for proficiency testing for water laboratories and identification of acceptable levels of performance; and
- certification of individual analysts for performing milk and food tests.

The addition of the required proficiency testing for water laboratories will have a fiscal impact on municipal water plants. These water labs will pay approximately \$300 per year for proficiency samples and the cost of testing those samples. The proposed laboratory certification rules will have a negligible fiscal impact on private water labs and milk and food laboratories. It should not be necessary for any type of certified laboratory to retain additional professional services to comply with this rule.

Summary of Comments of Legislative Committees:

On June 16, 1999, the department transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform on June 17, 1999, and the Assembly Committee on Public Health on July 8, 1999. No action was taken during the review period by either committee.

2. Agriculture, Trade & Consumer Protection

(CR 99-18)

Chs. ATPC 10 and 11 – Johne's Disease.

Summary of Final Regulatory Flexibility Analysis:

This rule has no adverse effect on small business. By itself, this rule will simply make it easier for sellers to participate in the voluntary Johne's disease testing and disclosure program. This rule protects buyers to the same degree as the current rule. The department has proposed legislation to eliminate the "as is" disclaimer option under the "implied warranty" law. This legislative change would give herd owners far more incentive to participate in the voluntary Johne's disease testing and disclosure program.

Background

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

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

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

- Complies with testing and disclosure requirements prescribed by the department. (Under current department rules, the seller must conduct annual herd tests and disclose test results to the buyer.)
- Gives the buyer a written disclaimer that the animals are being sold "as is," without any Johne's disease warranty.

In practice, few sellers have chosen the test and disclosure alternative. Instead, many herd owners have sold their cattle with the "as is" disclaimer (which provides no meaningful herd information to buyers). The current law and rules have thus failed to achieve their goal of promoting Johne's disease testing. Current DATCP rules also discourage testing by prohibiting the sale of confirmed Johne's disease reactors, even when the animals are identified as reactors. (Reactors may be sold to slaughter under a department permit.)

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

- First, the department proposes to change its current testing and disclosure rules. This rule establishes simpler, more realistic testing and disclosure standards, based on the concept of herd risk. This rule also permits the sale of confirmed Johne's disease reactors, provided that the animals are permanently identified as reactors and the seller discloses that the animals are reactors.
- Second, the department proposes legislation to eliminate the "as is" disclaimer option under s. 95.195, Stats. Such legislation would give herd owners more incentive to test and disclose. Sellers would face a clear choice between the "implied warranty" on one hand, and testing and disclosure on the other.

Rule Contents

General

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

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

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

Annual Herd Test

An annual herd test may be a "whole herd test", a "random herd test" or a "split herd test:"

- A "whole herd test" must include every test eligible animal in the herd, and the samples must be collected on the same day or consecutive days.
- In a "random herd test," an accredited veterinarian randomly selects a test group from the whole herd. The test group must include at least 30 test eligible animals, or at least 10 percent of the test eligible animals, whichever group is larger. The samples must be collected on the same day.
- A "split herd test" allows the owner to test groups of animals at different times during the year, provided that all test eligible animals are tested in a 12 month period, the department approves the testing plan before samples are collected, and the herd owner tests the herd according to the approved plan.

"Test eligible animals" include all cattle in a herd that are 36 months of age or more, and all bulls 24 months of age or more. All goats 18 months of age or more are test eligible animals.

The date of the first annual herd test under this rule establishes an "anniversary date" for each subsequent annual herd test. If the first annual herd test is a "split herd test," the "anniversary date" is the date on which the last group of animals is tested. Each year's test must be conducted on the "anniversary date," or within 2 months before or after the "anniversary date," except that a "split herd test" must be completed prior to the "anniversary date."

Herd Classifications

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

- *Johne's preventive management level A.* This is the most desirable herd classification. The department will classify a herd as "Johne's preventive management level A" if an annual herd test reveals no Johne's reactors.
- *Johne's preventive management level B.* The department will classify a herd as "Johne's preventive management level B" if fewer than 5% of the animals in a whole herd test or split herd test are Johne's reactors.
- *Johne's preventive management level C.* The department will classify a herd as "Johne's preventive management level C" if at least 5% but not more than 15% of the animals in a whole herd test or split herd test are Johne's reactors.
- *Johne's preventive management level D.* The department will classify a herd as "Johne's preventive management level D" if any of the following apply:
 - * A random herd test reveals one or more Johne's reactors, unless the department classifies the herd as "Johne's preventive management level B" or "C" based on a follow-up whole herd test.
 - * A whole herd or split herd test reveals more than 15% Johne's reactors.
- *Maximum risk for Johne's disease.* A herd is automatically classified "Maximum risk for Johne's disease," without any action by the department, if the herd owner fails to complete a timely annual herd test. "Maximum risk for Johne's disease" is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying cattle from such a herd faces an unknown, but substantial, risk that the cattle are infected with Johne's disease.

A Johne's preventive management level A, B, C or D classification will also indicate the first year from which the herd has continuously held that classification.

Voluntary Participation

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

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

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

Commingled Animals; Classification

Animals added to a herd from a herd with a less desirable classification retain that less desirable herd classification for 120 days but do not affect the classification of the herd to which they are added. Animals from a herd with a more desirable classification immediately lose that classification when they are added to a herd with a less desirable classification.

If animals from herds with different classifications are temporarily assembled for sale or shipment (other than for a consignment sale), the least desirable herd classification applies to all of the temporarily assembled animals. Animals sent by their owners to a consignment sale retain the herd status of the herd of origin, except that if the animals are allowed to have direct contact with other animals for more than 24 hours, the least desirable herd classification applies to all the animals.

Notice to Herd Owner

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

- The individual test results for each animal included in the herd test. Test results will be identified with each animal's official individual identification.
- The herd classification including the effective date and expiration date of the classification. A herd classification takes effect on the effective date and immediately supersedes any prior classification.

Test Procedure

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

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

- The enzyme linked immunosorbent assay (ELISA), except that the ELISA test may not be used for goats.
- The fecal culture test.
- Another test approved by the department.

Test Results

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

Johne's Disease Reactors

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

- It tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test. (The ELISA test applies only to cattle, not goats.)
- It tests positive on the fecal culture test.
- It tests positive on any other test which the department approves and deems conclusive.

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

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

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

Herd Vaccination

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

Misrepresenting Herd Classification

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

Department Disclosure of Herd Classification

Under this rule, the department may disclose a herd classification to a 3rd party with the written authorization of the herd owner. Under s. 95.232, Stats., information that identifies herds infected, or suspected of being infected, with Johne's disease is not open to inspection under the Public Records Law unless the department determines that disclosure is necessary to protect the public health, safety or welfare.

Summary of Comments from Legislative Committees:

On July 1, 1999, this department transmitted the above rule for legislative review. On July 6 the rule was referred to the Senate Agriculture & Environmental Resources & Campaign Finance Reform Committee. On July 8, 1999, the rule was referred to the Assembly Agriculture Committee. Neither committee took any action during the review period.

3. Chiropractic Examining Board (CR 98-192)

Chir Code – Definitions, applications, examinations, temporary permits and renewal.

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.

4. Commerce (CR 97-117)

Ch. Comm 1 – Environmental analysis and review procedures for department actions.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules create a new commerce chapter for the environmental analysis and review procedures for department actions, Wisconsin Environmental Policy Act (WEPA).

The proposed rules of Clearinghouse Rule No. 97-117, address the Department's responsibilities for analyzing environmental impacts for the department actions with regard for the need for an environmental impact statement, including a classification of those actions identified by department activity and associated jurisdiction. The rule also establishes the processes and procedures for creating environmental documents and the opportunity for public input. The rules follow the guidelines issued by the U.S. Council on Environmental Quality.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee, Committee on the Environment and the Senate Committee on Business, Economic Development and Urban Affairs Committee. No comments were received.

5. Commerce (CR 99-50)

Chs. Comm 16 and 17 – Electrical Construction and Inspection.

Summary of Final Regulatory Flexibility Analysis:

Sections 101.63(1), 101.73(1) and 101.82(1), Stats., direct the Department to promulgate rules for the construction and inspection of electrical construction in dwellings, public buildings and places of employment. The proposed rules of Clearinghouse Rule No. 99-050 are minimum requirements to meet the directives of the Statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Labor and Employment and the Senate Committee on Economic Development, Housing and Government Operations. No comments were received.

6. Health & Family Services (CR 98-71)

Ch. HFS 90 – Early intervention services for children with developmental needs in the age group from birth up to age 3.

Summary of Final Regulatory Flexibility Analysis:

The rules will not directly affect small businesses as "small business" is defined in s. 227.114(1) (a), Stats. They apply to the Department and to county agencies administering the Birth to 3 Program.

Summary of Comments:

No comments were reported.

7. Insurance (CR 99-70)

Ch. Ins 17 – Annual patients compensation fund and mediation fund fees, open records law applicable to fund records and late fee.

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 Standing Committees:

The legislative standing committees had no comments on this rule.

8. Natural Resources (CR 99-24)

Ch. NR 10 – Hunting and trapping.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules relate to hunting, trapping and shooting preserves. The rules are applicable to individual sportspersons. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by 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. On July 9, 1999, the Assembly Committee on Natural Resources extended the review period. No comments or recommendations were made during this period.

9. Natural Resources (CR 99-42)

Ch. NR 10 – Hunting and trapping.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules relate to hunting. The rules are applicable to individual sportspersons. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by 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. On August 4, 1999, the Assembly Committee on Natural Resources held a public hearing. No comments or recommendations were made as a result of this hearing.

10. Natural Resources (CR 98-41)

Ch. NR 25 – Commercial fishing for smelt on Lake Michigan and Green Bay.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule would directly affect commercial fishing businesses engaged in trawling. Reductions in the total allowable commercial harvest would not immediately affect commercial fishing businesses because the proposed harvest limits exceed recently reported harvests.

Summary of Comments by 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. On March 16, 1999, the Assembly Committee on Natural Resources held a public hearing. The Assembly Committee on Natural Resources requested that the harvest limit be lowered to 1,000,000 pounds rather than 713,340 pounds. The Natural Resources Board adopted the revised harvest limit.

11. Revenue (CR 99-35)

S. Tax 1.12 – Electronic funds transfer.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

EXECUTIVE ORDERS

The following is a listing of recent Executive Orders issued by the Governor.

Executive Order 377. Relating to the Creation of the Governor's Film and Video Industry Advisory Council.

Executive Order 378. Relating to the Creation of the Position of Special Assistant to the Governor for Globalization.

Executive Order 379. Relating to the Amendment of Executive Order No. 373.

THE STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
BUREAU OF INTEGRATED DOCUMENT SERVICES
DOCUMENT SALES AND DISTRIBUTION SECTION
P.O. BOX 7840
MADISON, WISCONSIN 53707-7840

First Class
U.S. POSTAGE PAID
Madison, Wisconsin
Permit Number 1369

First Class Mail

*Wisconsin
Administrative
Registrar*

DATED MATERIAL. PLEASE DO NOT DELAY!