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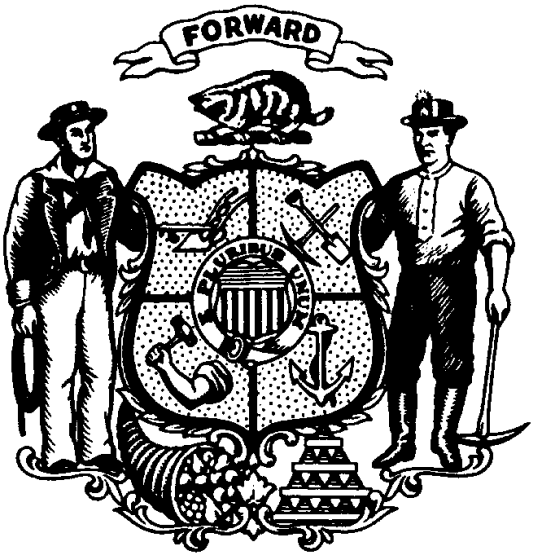

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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (2)

Commerce

(PECFA – Chs. Comm 46–47)

1. Rules adopted creating **ch. Comm 46**, relating to "Petroleum Environmental Cleanup Fund Interagency Responsibilities," and relating to site contaminated with petroleum products from petroleum storage tanks.

Exemption From Finding of Emergency

On September 22, 1999, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26 (2) (b), Stats., that directs the Departments Commerce and Natural Resources to promulgate as an emergency rule, no later than October 22, 1999, the policies and interpretations under which they intend to administer and implement the shared elements of the petroleum environmental cleanup fund program.

In administering the fund, the Departments had previously relied upon a Memorandum of Understanding for classifying contaminated sites and addressing other statements of policy that affect the two Departments. The rule that is being promulgated details the policies and interpretations under which the agencies intend to administer and guide the remedial decision making for sites with petroleum product contamination from petroleum product storage tank systems.

The rule 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.

Publication Date: October 20, 1999
Effective Date: October 20, 1999
Expiration Date: March 18, 2000
Hearing Date: November 18, 1999

2. Rules adopted amending **s. Comm 47.53**, relating to appeals of decisions issued under the Petroleum Environmental Cleanup Act (PECFA) program.

Finding of Emergency

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

The department is receiving funds from a bonding initiative to enable it to issue approximately 3,500 decisions on applications for PECFA funding which had been awaiting the availability of funding. Because these decisions will be issued over a very short time frame, parties receiving decisions and law firms representing them, will be required to review and analyze a large volume of decisions to determine whether they wish to appeal specific departmental decisions. Given the large number of decisions and the normal rate of appeals, it is reasonable to expect that the public will be required to prepare and file a large volume of appeals within a short time period. Attorneys, lenders and consultants representing multiple claimants have expressed concern about the workload associated with having to review decisions and draft appeals on the higher volume of decisions issued by the department within the current 30 day window. The emergency rule temporarily expands the filing period from 30 days to 90 days to provide additional time to evaluate decisions and determine whether an appeal should be filed. The rule covers the time period when the highest volume of decisions are to be issued.

Publication Date: February 15, 2000
Effective Date: February 15, 2000
Expiration Date: July 14, 2000

EMERGENCY RULES NOW IN EFFECT

Crime Victims Rights Board

Rules adopted creating **ch. CVRB 1**, relating to the rights of crime victims.

Finding of Emergency

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

The Crime Victims Rights Board was created by 1997 Wis. Act 181, effective December 1, 1998, to enforce victims' rights established by Wis. Const. Art. I, s. 9m, adopted in 1993. The Wisconsin Constitution states that the Legislature shall provide remedies for the violation of victims' constitutional rights. The Board's process represents the only means of enforcing the remedies available to victims of crime who are not provided with the rights guaranteed to them by the Wisconsin Constitution and the Wisconsin statutes. The Board can issue reprimands to correct

violations of victims' rights, seek forfeitures in egregious cases, and seek equitable relief to enforce victims' rights. The Board can also work to prevent future violations of victims' rights by issuing reports and recommendations on crime victims' rights and services.

Complaints must be presented to the Department of Justice before they can be presented to the Board. The Department estimates that it receives 200 complaints annually involving the treatment of crime victims. The Department has no authority to enforce victims' rights; the Department can only seek to mediate disputes. Of those complaints, approximately 25 per year cannot be resolved to the parties' satisfaction, and are therefore ripe for the Board's consideration. There are presently 5 complaints that could be referred to the Board if the Board were able to receive and act on complaints.

Until the Board establishes its complaint process by administrative rule, it is unable to provide the remedies constitutionally guaranteed to crime victims.

Publication Date: **September 17, 1999**
Effective Date: **September 17, 1999**
Expiration Date: **February 14, 1999**
Hearing Date: **November 9, 1999**
Extension Through: **April 13, 2000**

EMERGENCY RULES NOW IN EFFECT

Employe Trust Funds

Rules adopted revising **s. ETF 20.25 (1)**, relating to the distribution to annuitants from the transaction amortization account to the annuity reserve under 1999 Wis. Act 11.

Finding of Emergency

The Department of Employe Trust Funds, Employe Trust Fund Board, Teacher Retirement Board and Wisconsin Retirement Board find that an emergency exists and that administrative rules are necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

The Public Employe Trust Fund was created for the purpose of helping public employes to protect themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident. The Trust Fund thus promotes economy and efficiency in public service by facilitating the attraction and retention of competent employes, by enhancing employe morale, by providing for the orderly and humane departure from service of employes no longer able to perform their duties effectively, and by establishing equitable benefit standards throughout public employment. There are approximately 102,000 annuitants of the Wisconsin Retirement System, of whom about 80% reside throughout the State of Wisconsin. The Department of Employe Trust Funds estimates that up to 7,000 public employes covered by the Wisconsin Retirement System will retire and take annuity benefits effective during 1999.

WRS participants who retire during 1999 are not eligible to have their retirement benefits calculated using the higher formula factors for pre–2000 service which are provided by the treatment of Wis. Stats. 40.23 (2m) (e) 1. through 4. by 1999 Wis. Act 11. Section 27 (b) 2. of the Act directs that any funds allocated to the employer reserve in the Trust Fund as a result of the $4 billion transfer mandated by the Act, which exceed $200,000,000 shall be applied towards funding any liabilities created by using the higher formula factors with respect to pre–2000 service.

If the existing administrative rule mandating proration is not revised, then the distribution of the funds transferred into the annuity reserve by Act s. 27 (1) (a) of 1999 Wis. Act 11 will be prorated with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The extraordinary transfer of funds from the Transaction Amortization Account (TAA) mandated by 1999 Wis. 11 causes funds, which would otherwise have remained in the TAA to be recognized and fund annuity dividends in later years, to instead be transferred into the annuity reserve in 1999 and paid out as an annuity dividend effective April 1, 2000. Normally, annuities effective during 1999 would receive only a prorated dividend. If this occurred with respect to this extraordinary distribution, then annuitants with annuity effective dates in 1999 would be deprived of a portion of the earnings of the Public Employe Trust Fund that would otherwise have affected their annuities as of April 1, 2001 and in subsequent years.

Promulgation of an emergency rule is the only available option for revising the effect of Wis. Adm. Code s. ETF 20.25 (1) before December 31, 1999. Accordingly, the Department of Employe Trust Funds, Employe Trust Funds Board, Teacher Retirement Board and Wisconsin Retirement Board conclude that preservation of the public welfare requires placing this administrative rule into effect before the time it could be effective if the Department and Boards were to comply with the scope statement, notice, hearing, legislative review and publication requirements of the statutes.

Publication Date: **December 27, 1999**
Effective Date: **December 31, 1999**
Expiration Date: **May 29, 2000**
Hearing Date: **February 11, 2000**

EMERGENCY RULES NOW IN EFFECT

Department of Financial Institutions
Division of Securities

Rules adopted revising **s. DFI–Sec 5.01 (4),** relating to investment adviser representative competency examination grandfathering provisions.

Finding of Emergency and Analysis

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

The Division recently adopted for January 1, 2000 effectiveness as part of its annual rule revision process for 1999, a new administrative rule in s. DFI–Sec 5.01(3) that prescribes a new examination requirement for investment advisers and investment adviser representatives seeking licensure in Wisconsin on or after January 1, 2000. That new examination requirement, which includes completely revised Series 65 and Series 66 examinations, was developed over a 3–year period by a Project Group of the North American Securities Administrators Association ("NASAA").

The new NASAA examination requirement (which also included certain "grandfathering"/examination–waiver provisions) was approved by vote of NASAA member states (including Wisconsin) at the NASAA 1999 Spring Conference to become effective on December 31, 1999. The NASAA membership vote was accompanied by a recommendation that for uniformity purposes, each NASAA member state complete the necessary steps to adopt and have effective by January 1, 2000, the new examination requirement conforming to the NASAA format in all respects.

Following the adoption on November 18, 1999 by the Division of the new investment adviser examination requirement in s. DFI–Sec 5.01(3) as part of the Division's annual rule revision process, it was noted that the "grandfathering"/examination waiver provisions that had been included in s. DFI–Sec 5.01(4) did not track the NASAA Model language in two respects.

Because it is critical that the grandfathering provisions for the new Wisconsin investment adviser examination requirement be

uniform with those of the other NASAA member states as of the coordinated January 1, 2000 date so that applicants for licensing in Wisconsin receive equivalent treatment to that accorded them by other states in which they may be seeking licensure, this emergency rulemaking for January 1, 2000 effectiveness is necessary.

The emergency rulemaking action is comprised of two provisions which do the following: (1) provide an examination waiver in new section DFI–Sec 5.01(4)(e) for any applicant licensed as an investment adviser or investment adviser representative in any jurisdiction in the U.S. on January 1, 2000; and (2) provide an examination waiver in amended section DFI–Sec 5.01(4)(b) for any applicant that has been licensed as an investment adviser or investment adviser representative in any jurisdiction in the U.S. within two years prior to the date the application is filed.

Publication Date: December 28, 1999
Effective Date: January 1, 2000
Expiration Date: May 30, 2000
Hearing Date: March 13, 2000

EMERGENCY RULES NOW IN EFFECT (2)

Gaming Division

1. Rules adopted creating **ch. Game 27**, relating to the conduct of pari–mutuel snowmobile racing.

Finding of Emergency

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

In January of 2000 a snowmobile promoter proposes to offer pari–mutuel wagering on snowmobile races conducted in Wisconsin. Section 562.124, Stats., allows for pari–mutuel snowmobile racing with the requirement that the Division of Gaming regulate the racing and promulgate all rules necessary to administer the statutory provision in the statutes.

Since this will be the first occasion within the United States that there will be pari–mutuel wagering on a motor sport or mechanical event, the Division of Gaming took extra time in preparing and reviewing the proposed rules with emphasis and attention directed toward the health, welfare and safety of the participants, workers and the public. Additionally, the Division of Gaming is incorporating standards by reference, specifically the Oval Sprint Racing Rules; Sno–Cross Racing Rules; and the General Competition Rules, excluding Enforcement, Discipline and Violation, of International Snowmobile Racing, Incorporated as identified in the *1999–2000 ISR Snowmobile Racing Yearbook.* These rules, which were made public in October of 1999 were reviewed extensively, once again with an emphasis on the health, welfare and safety of the prior noted individuals.

The conduct of pari–mutuel snowmobile racing will create additional jobs, increase tourism within the State of Wisconsin and generate revenues for the Division of Gaming.

Publication Date: December 23, 1999
Effective Date: December 23, 1999
Expiration Date: May 21, 2000

2. Rule adopted repealing **ch. Game 27,** relating to the conduct of pari–mutuel snowmobile racing, which was created by emergency rule on December 23, 1999.

Finding of Emergency

Based upon the public opposition to this emergency rule, the Department has reconsidered its creation of ch. Game 27 as an emergency rule. The Department will instead pursue creation of the proposed rule under the permanent rulemaking procedures.

Publication Date: January 15, 2000
Effective Date: January 15, 2000
Expiration Date: May 21, 2000

EMERGENCY RULES NOW IN EFFECT (2)

Health & Family Services
(Management, Technology, etc., Chs. HFS 1–)

1. A rule was adopted revising **chapter HFS 12 and Appendix A,** relating to caregiver background checks.

Finding of Emergency

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

Since October 1, 1998, the Department has been implementing ss. 48.685 and 50.065, Stats., effective on that date, that require use of uniform procedures to check the backgrounds of persons who apply to the Department for regulatory approval, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child–placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non–client at the entity. The statutes direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction or finding, who have in their backgrounds a specified conviction or finding substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or from otherwise having contact with the clients of a service provider.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. On September 12, 1999, the Department issued another emergency order again modifying ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes was reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being crimes that permanently barred persons for all programs. The change to the ch. HFS 12 Crimes List was made at that time because the 1999–2001 Budget Bill, subsequently passed by the Legislature as 1999 Wisconsin Act 9, was expected to provide for a more modest list of crimes than the one that was appended to ch. HFS 12. The more modest crimes list published by an emergency rulemaking order on September 12, 1999 reflected the Legislature's intent that some persons who under the previous rules would lose their jobs effective October 1, 1999, were able to keep their jobs.

The 1999–2001 Biennial Budget Act, 1999 Wisconsin Act 9, made several changes to ss. 48.685 and 50.065, Stats., the Caregiver Law. These changes were effective on October 29, 1999. The Department's current rules, effective July 1, 1999, as amended on September 16, 1999, have been in large part made obsolete by those statutory changes. Consequently, the Department through this order is repealing and recreating ch. HFS 12 to bring its rules for operation of the Caregiver Law into conformity with the revised statutes. This is being done as quickly as possible by emergency order to remove public confusion resulting from administrative rules, which have been widely relied upon by the public for understanding the operation of the Caregiver Law, that are now in conflict with current statutes.

The revised rules minimize repetition of ss. 48.685 and 50.065, Stats., and are designed to supplement those statutes by providing guidance on:

• Sanctions associated with the acts committed under the Caregiver Law;

• Determining whether an offense is substantially related to client care;

• Reporting responsibilities; and

• The conduct of rehabilitation review.

Publication Date: **February 12, 2000**
Effective Date: **February 13, 2000**
Expiration Date: **July 12, 2000**

2. Rules adopted creating **ch. HFS 10**, relating to family care.

Exemption From Finding of Emergency

The Legislature in s. 9123 (1) of 1999 Wis. Act 9 directed the Department to promulgate rules required under ss. 46.286 (4) to (7), 46.288 (1) to (3) and 50.02 (2) (d), Stats., as created by 1999 Wis. Act 9, but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

Legislation establishing a flexible Family Care benefit to help arrange or finance long–term care services to older people and adults with physical or developmental disabilities was enacted as part of 1999 Wis. Act 9. The benefit is an entitlement for those who meet established criteria. It may be accessed only through enrollment in Care Management Organizations (CMOs) that meet requirements specified in the legislation.

The Act also authorizes the Department of Health and Family Services to contract with Aging and Disability Resource Centers to provide broad information and assistance services, long–term care counseling, determinations of functional and financial eligibility for the Family Care benefit, assistance in enrolling in a Care Management Organization if the person chooses to do so, and eligibility determination for certain other benefits, including Medicaid, and other services.

Until July 1, 2001, the Department of Health and Family Services is authorized to contract with CMOs and Resource Centers in pilot counties to serve up to 29% of the state's eligible population. Further expansion is possible only with the explicit authorization of the Governor and the Legislature.

When Aging and Disability Resource Centers become available in a county, the legislation requires nursing homes, community–based residential facilities, adult family homes and residential care apartment complexes to provide certain information to prospective residents and to refer them to the Resource Center. Penalties are provided for non–compliance.

These proposed rules interpret this new legislation, the main body of which is in newly enacted ss. 46.2805 to 46.2895, Stats. The Department of Health and Family Services is specifically directed to promulgate rules by ss. 46.286 (4) to (7), 46.288 (1) to (3), 50.02 (2) (d) and 50.36 (2) (c), Stats. Non–statutory provisions in section 9123 of 1999 Wis. Act 9 require that the rules are to be promulgated using emergency rulemaking procedures and exempts the Department from the requirements under s. 227.24 (1) (a), (2) (b) and (3) of the Stats., to make a finding of emergency. These are the rules required under the provisions cited above, together with related rules intended to clarify and implement other provisions of the Family Care legislation that are within the scope of the Department's authority. The rules address the following:

• Contracting procedures and performance standards for Aging and Disability Resource Centers.

• Application procedures and eligibility and entitlement criteria for the Family Care benefit.

• Description of the Family Care benefit that provides a wide range of long–term care services.

• Certification and contracting procedures for Care Management Organizations.

• Certification and performance standards and operational requirements for CMOs.

• Protection of client rights, including notification and due process requirements, complaint, grievance, Department review, and fair hearing processes.

• Recovery of incorrectly and correctly paid benefits.

• Requirements of hospitals, long–term care facilities and Resource Centers related to referral and counseling about long–term care options.

Publication Date: **February 1, 2000**
Effective Date: **February 1, 2000**
Expiration Date: **June 30, 2000**

EMERGENCY RULES NOW IN EFFECT

Health & Family Services
(Community Services, Chs. HFS 30–)

Rules adopted revising **ch. HFS 50**, relating to adoption assistance programs.

Finding of Emergency

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

This rulemaking order amends ch. HFS 50, the Department's rules for facilitating the adoption of children with special needs, to implement changes to the adoption assistance program statute, s. 48.975, Stats., made by 1997 Wisconsin Act 308. Those changes include permitting a written agreement for adoption assistance to be made following an adoption, but only in "extenuating circumstances;" permitting the amendment of an adoption assistance agreement for up to one year to increase the amount of adoption assistance for maintenance when there is a "substantial change in circumstances;" and requiring the Department to annually review the circumstances of the child when the original agreement has been amended because of a substantial change in circumstances, with the object of amending the agreement again to either continue the increase or to decrease the amount of adoption assistance if the substantial change in circumstances no longer exists. The monthly adoption assistance payment cannot be less than the amount in the original agreement, unless agreed to by all parties.

The amended rules are being published by emergency order so that adoption assistance or the higher adoption assistance payments, to which adoptive parents are entitled because of "extenuating circumstances" or a "substantial change in circumstances" under the statutory changes that were effective on January 1, 1999, may be made available to them at this time, now that the rules have been developed, rather than 7 to 9 months later which is how long the promulgation process takes for permanent rules. Act 308 directs the Department to promulgate rules that, among other things, define extenuating circumstances, a child with special needs and substantial change in circumstances.

Publication Date: **November 16, 1999**
Effective Date: **November 16, 1999**
Expiration Date: **April 13, 2000**
Hearing Dates: **February 24, & 28, 2000**

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**
Extension Through: **March 26, 2000**

2. Rules adopted creating **ss. HFS 106.12 (9) and 108.02 (9)(f),** relating to discovery rights in contested case proceeding involving health care providers under the MA program.

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:

In Wisconsin, contested case proceedings for which state agencies must hold administrative hearings are by statute divided into three categories. Class 1 cases involve situations in which the agency has substantial discretionary authority (such as rate setting or the grant or denial of a license) but no imposition of a sanction or penalty is involved; Class 2 contested cases involve the imposition of a sanction or penalty; and Class 3 cases are those not included in Class 1 or Class 2. Under s. 227.45(7), Stats., in a Class 2 proceeding the parties have an automatic right to take and preserve evidence prior to the hearing by using discovery procedures such as depositions and interrogatories, but in a Class 1 or Class 3 proceeding the parties generally do not have the right to use discovery unless rules of the agency specifically provide for that right.

The Department of Health and Family Services does not have rules providing for discovery in a Class 1 or Class 3 contested case. Accordingly, discovery has not been available for Class 1 or Class 3 cases except with respect to certain witnesses identified in s. 227.45 (7), Stats. The Department of Administration's Division of Hearings and Appeals handles cases delegated from this Department. Recently, a hearing examiner in the Division of Hearings and Appeals issued an order in a Class 3 case which held that, because the Division of Hearings and Appeals has its own rules allowing discovery in all cases, those rules override the absence of any mention of discovery in the Department of Health and Family Services' rules concerning hearing rights and procedures.

This Department believes that an emergency exists. If other hearing examiners issue similar rulings, the Department of Health and Family Services would be subject to discovery in all cases. This means that in the absence of Department rules that provide otherwise, the process of litigation for Class 1 and Class 3 cases would be significantly prolonged for all parties and the additional administrative costs to the Department associated with that process (including the need to hire additional program staff, attorneys, and support staff to handle the depositions, interrogatories, and other discovery procedures) would be considerable.

There is a particularly high volume of Class 1 and Class 3 cases involving Medical Assistance program providers. Accordingly, these rules are issued to make clear that discovery remains unavailable in Class 1 and Class 3 Medical Assistance contested case proceedings involving providers.

Publication Date: **December 23, 1999**
Effective Date: **December 23, 1999***
Expiration Date: **May 21, 2000**
Hearing Date: **March 8, 2000**

***On January 20, 2000, the Joint Committee for Review for Administrative Rules suspended these emergency rules under s. 227.19 (4) (d)1., Stats.**

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
Extension Through: March 2, 2000

EMERGENCY RULES NOW IN EFFECT

Natural Resources

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

Rules adopted creating **ch. NR 195**, relating to establishing river protection grants.

Finding of Emergency

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

These grants are funded from a $300,000 annual appropriation that lapses into other programs at the end of each fiscal year. Due to delays in approving the biennial budget, there is not enough time remaining in the current fiscal year to develop a permanent rule, following standard procedures, to allow grants to be awarded with the current fiscal year appropriation. Potential river protection grant sponsors have been anticipating these grants and are ready to apply and make use of these funds. An emergency order will prevent the loss of $300,000 for protecting rivers that the legislature clearly intended to make available to these organizations. Initiating this much–anticipated program through emergency order, while permanent rules are being developed, is a positive step toward successful implementation.

Publication Date: February 17, 2000
Effective Date: February 17, 2000
Expiration Date: July 16, 2000
Hearing Dates: March 16, 17, 21 & 22, 2000
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection–Investigation and Remediation, Chs. NR 700–)

Rules adopted creating **ch. NR 746**, relating to sites contaminated with petroleum products from petroleum storage tanks.

Finding of Emergency

The Wisconsin Natural Resources Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts contributing to the emergency is:

The Department of Commerce has adopted administrative rules under ss. 101.143 and 101.144, Stats., to implement the Petroleum Environmental Cleanup Fund Act (PECFA). The purpose of PECFA is to reimburse responsible persons for the eligible costs incurred to investigate and remediate petroleum product discharges from a petroleum product storage system or home oil tank system. The recent emergency rule, ch. Comm 46, was adopted by both the Department of Natural Resources and the Department of Commerce in January 1999, incorporating parts of a Memorandum of Understanding between the two agencies that relates to the classification of contaminated sites and creating risk screening criteria for assessing petroleum–contaminated sites. However, ch. Comm 46 expired on September 27, 1999, prior to publication of the permanent rule. The emergency rule, ch. NR 746, is being proposed in order to ensure rules continue in effect during the time period between now and when the permanent rule is published. This action is also in response to a resolution adopted by the Joint Committee for Review of Administrative Rules (JCRAR), which directed the Department of Commerce and the Department of Natural Resources to promulgate a new emergency rule for this interim time period.

The emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 29, 1999.

Publication Date: October 20, 1999
Effective Date: October 20, 1999
Expiration Date: March 18, 2000
Hearing Date: November 18, 1999

EMERGENCY RULES NOW IN EFFECT (4)

Public Instruction

1. Rules adopted revising **ch. PI 35,** relating to the Milwaukee parental school choice program.

Finding of Emergency

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

Emergency rules are necessary to clarify the eligibility criteria and requirements for parents and participating private schools in time for schools to properly establish procedures for the 2000–2001 school year. Furthermore, emergency rules are necessary to allow the private schools to begin planning summer school programs. The department is in the process of developing permanent rules, but such rules will not be in place prior to January 2000.

The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Publication Date: January 4, 2000
Effective Date: January 4, 2000
Expiration Date: June 2, 2000
Hearing Date: March 20, 2000
[See Notice this Register]

2. Rules adopted creating **ch. PI 10,** relating to supplemental aid for school districts with a large area.

Finding of Emergency

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

1999 Wis. Act 9 appropriated $125,000 to be awarded by the department to eligible school districts in the 1999–2000 school year. Emergency rules are necessary to clarify the eligibility criteria and procedures for school districts to apply for funds under the program.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Publication Date: January 28, 2000
Effective Date: January 28, 2000
Expiration Date: June 26, 2000
Hearing Date: March 15, 2000

3. Rules adopted creating **ch. PI 24**, relating to state aid for achievement guarantee contracts and aid for debt service.

Finding of Emergency

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

State Aid for Achievement Guarantee Contracts:

The department will send SAGE contract information to school districts by mid–February and require proposed contracts to be submitted to the department by April 1, 2000. Emergency rules are necessary to clarify the eligibility criteria and requirements for school districts applying for state aid for achievement guarantee contracts in time for the 2000–2001 school year.

Partial Debt Service Reimbursement:

On or after October 29, 1999, a school board must adopt an initial resolution under s. 67.05 (6a), Stats., for issuance of bonds where the purpose for borrowing includes providing funds for classroom expansion necessary to fulfill a contract under s. 118.43, Stats. Emergency rules are necessary to clarify the criteria and procedures for SAGE school districts to receive partial debt service reimbursement for the 2000–2001 school year.

The proposed rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Publication Date: January 28, 2000
Effective Date: January 28, 2000
Expiration Date: June 26, 2000
Hearing Date: March 15, 2000

4. Rules adopted creating **ch. PI 44,** relating to alternative education grants.

Finding of Emergency

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

1999 Wis. Act 9 appropriated $5,000,000 to be awarded by the department to eligible school districts or consortia of school districts in the 2000–2001 school year. Emergency rules are necessary to clarify the eligibility criteria and procedures for school districts or consortia of school districts to apply for funds under the program.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Publication Date: January 28, 2000
Effective Date: January 28, 2000
Expiration Date: June 26, 2000
Hearing Dates: March 9, 14 & 15, 2000

EMERGENCY RULES NOW IN EFFECT

Revenue

Rule adopted creating **s. Tax 18.08 (4),** relating to assessment of agricultural land.

Finding of Emergency

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

1995 Wisconsin Act 27 changed the way agricultural land is valued for property tax purposes. The law requires the Farmland Advisory Council to make recommendations regarding the transition from valuation under prior law to valuation under current law, and requires the department to promulgate rules to implement those recommendations.

On October 18, 1999, the Farmland Advisory Council recommended that agricultural land be assessed as of January 1, 2000 and thereafter according to value in agricultural use. Major Wisconsin farm organizations, among others, have petitioned the Department under s. 227.12, Stats., to promulgate an administrative rule implementing the Council's recommendation.

Since the Department holds assessor schools in November and typically publishes the next years use–value guidelines prior to January 1 of that year, an emergency rule requiring assessment of each parcel of agricultural land according to its value in agricultural use is necessary for the efficient and timely assessment of agricultural land as of January 1, 2000.

Publication Date: November 30, 1999
Effective Date: November 30, 1999
Expiration Date: April 27, 2000
Hearing Date: January 7, 2000

EMERGENCY RULES NOW IN EFFECT

Wisconsin Technical College System

Rules adopted creating **ch. TCS 16,** relating to grants for students.

Finding of Emergency

The Wisconsin Technical College System (WTCS) Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

1999 Wis. Act 9 (the 2000–2001 biennial budget bill) took effect on October 29, 1999. That act created ss. 20.292(1)(ep) and 38.305, Stats. An annual appropriation of $6,600,000 GPR in the second fiscal year of the 2000–2001 biennium was established. These funds are to be awarded by the WTCS Board as grants to students who are attending a Wisconsin technical college on a full–time basis and who are enrolled in a vocational diploma or associate degree program.

The Act requires the WTCS Board to promulgate rules to implement and administer the awarding of these grants. The Board has begun the permanent rule making process for establishing administrative rules for these student grants, but cannot complete the required public hearing and review of these rules prior the start of the upcoming school year, which begins on July 1, 2000. Moreover, prospective students evaluate their educational options, including costs, as early as February preceding their graduation from high school. Therefore, for the TOP Grant program to be implemented and the funds distributed to each technical college district, and in turn to each eligible student, in time for the upcoming school year, emergency administrative rules must be established immediately.

Publication Date: February 1, 2000
Effective Date: February 1, 2000
Expiration Date: June 30, 2000

EMERGENCY RULES NOW IN EFFECT

Transportation

Rules adopted revising **ch. Trans 4,** relating to requiring the use of a fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process.

Exemption From Finding of Emergency

Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats. and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized under s. 85.20, Stats. 1999 Wis. Act 9, section 9150(2bm), requires the Department to adopt an emergency rule to amend Chapter Trans 4 by adding a section that requires that cost proposals submitted by a publicly owned transit system in response to a request for proposals issued by a public body for the procurement of transit services to be funded under the state urban transit operating assistance program must include an analysis of fully allocated costs. The analysis must include all of the publicly owned system's costs, including operating subsidies and capital grants. This analysis shall be the basis for evaluating costs when ranking proposals.

Pursuant to 1999 Wis. Act 9, section 9150(2bm)(b), the Department is not required to provide evidence that the rule is necessary for the preservation of the public peace, health, safety or welfare, and is not required to provide a finding of emergency.

Publication Date: December 12, 1999
Effective Date: December 12, 1999
Expiration Date: See 1999 Wis. Act 9, section 9150 (2bm)
Hearing Date: February 14, 2000

EMERGENCY RULES NOW IN EFFECT

Workforce Development
(Prevailing Wage Rates, Ch. DWD 290–294)

A rule was adopted revising **s. DWD 290.155**, relating to the annual adjustment of thresholds for application of the prevailing wage rates for state or local public works projects.

Finding of Emergency

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

The Department of Workforce Development is acting under its statutory authority to annually adjust thresholds for the application of prevailing wage laws on state or local public works projects. The thresholds are adjusted in accordance with any change in construction costs since the last adjustment. The last adjustment was by emergency rule in January 1999 based on construction costs in December 1998. The Department uses the construction cost index in the December issue of the Engineering News–Record, a national construction trade publication, to determine the change in construction costs over the previous year. The current construction cost index indicates a 2.3% increase in construction costs over the previous year. This increase in construction costs results in an increase in the threshold for application of the prevailing wage laws from $33,000 to $34,000 for single–trade projects and from $164,000 to $168,000 for multi–trade projects.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six months, until the conclusion of the permanent rule–making process. Between January 1, 2000, and July 1, 2000, a single–trade project with a minimum estimated project cost of more than $33,000 but less than $34,000 or a multi–trade project with an estimated cost of more than $164,000 but less than $168,000 would not be exempt from the prevailing wage laws, as they would be if the emergency rule were promulgated. The threshold adjustments for application of the prevailing wage laws are based on national construction cost statistics and are unlikely to be changed by the permanent rule–making process. The Department is proceeding with this emergency rule to avoid imposing an additional administrative burden on local governments and state agencies.

Publication Date: December 29, 1999
Effective Date: January 1, 2000
Expiration Date: May 30, 2000
Hearing Date: February 28, 2000

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade and Consumer Protection

Subject:

Ch. ATCP 30 – Relating to pesticide product restrictions; atrazine pesticides.

Description of policy issues:

Preliminary objectives:

The preliminary objectives are to:

1) Regulate the use of atrazine pesticides to protect groundwater and assure compliance with Wisconsin's Groundwater Law;

2) Update current rule to reflect groundwater–sampling results obtained during the past year; and

3) Renumber and reorganize current rule, as necessary.

Preliminary policy analysis:

Under the Wisconsin Groundwater Law, ch. 160, Stats., the Department must regulate the use of pesticides to assure compliance with groundwater standards established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 µg/liter for atrazine and its chlorinated metabolites.

Under s. 160.25, Stats., the Department must prohibit atrazine uses that result in groundwater contamination levels that violate the DNR enforcement standard. The Department must prohibit atrazine use in the area where the groundwater contamination has occurred unless the Department determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Current rules under ch. ATCP 30 prohibit the use of atrazine in 101 designated areas (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the next year, the Department may identify additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with the Groundwater Law, the Department must take further action to prohibit or regulate atrazine use in the areas where these wells are located. The Department proposes to amend ch. ATCP 30 to add or repeal prohibition areas or take other appropriate regulatory action in response to any new groundwater findings.

Policy alternatives:

No change. If the Department takes no action on this proposed rulemaking, the Board approved final draft of the ch. ATCP 30 Pesticide Product Restrictions (to be promulgated in March 2000) will apply. However, the Department would take no new regulatory action in response to new groundwater findings obtained this year. This would not adequately protect groundwater in the newly–discovered contaminated areas, nor would it meet the Department's obligations under the Groundwater Law. Conversely, the Department would be unable to repeal the current restrictions on atrazine use where indicated by groundwater findings.

Statutory authority:

The Department proposes to revise ch. ATCP 30, Wis. Adm. Code, under authority of ss. 93.07, 94.69, and 160.19 through 160.25, Stats.

Staff time required:

The Department estimates that it will use approximately 0.6 FTE staff to develop this rule. This includes investigation; drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

Subject:

Ch. ATCP 136 – Relating to mobile air conditioners; reclaiming and recycling refrigerant.

Description of policy issues:

Preliminary objectives:

The preliminary objectives are to:

1) Increase existing annual registration fees to a level sufficient to cover the Department's costs to conduct necessary inspections and maintain current level of regulatory compliance activities.

2) Amend the rule to:

a. Delete obsolete provisions;

b. Harmonize state and federal laws related to refrigerants used in mobile air conditioners; and

c. Clarify the existing rule to make it easier to understand and follow.

Preliminary policy analysis:

DATCP enforces the state law and administrative rules that regulate the sale and use of refrigerants and refrigerant substitutes used in mobile air conditioners and trailer refrigeration equipment. The program is a part of the state's interagency effort to reduce the emission of refrigerant gases responsible for depletion of stratospheric ozone and global warming. DATCP's program complements the requirements of the federal Clean Air Act Amendments of 1990 and the regulations promulgated by the EPA under that law.

In enforcing the law, DATCP licenses and inspects businesses which install, service or repair motor vehicle air conditioners and trailer refrigeration equipment. The Department currently licenses 3,179 businesses and performs an average of 1,400 inspections each year. The Department's inspections ensure that the businesses are using approved refrigerant recovery and recycling equipment; that the technicians who service air conditioning systems are properly trained and certified by Department–approved programs; and that all sales or purchases of refrigerants comply with applicable standards for safety and environmental protection.

The current annual business registration fee is $80. This fee has not been changed since DATCP began administering the program in 1992. Without a fee increase, the program projects that it will incur a budget deficit by calendar year 2001.

The rule also needs to be amended to remove obsolete provisions; to make the rule consistent with recent state and federal statutory and regulatory changes (1997 Wis. Act 165 and 40 CFR Part 82); to clarify certain provisions regarding the sales and use of refrigerant substitutes; and to clarify the Department's authority under ss. 100.18 and 100.20, Stats., regarding fraudulent representations and unfair trade practices in connection with refrigerant sales.

Policy alternatives:

Do nothing. The program will begin operating with a negative balance on or before March 2001, the beginning of the 2001 licensing year. This will require the Department to reduce the number of inspections, educational outreach and regulatory compliance activities. However, even if services are reduced substantially, the rule will continue to include obsolete language and may conflict with current federal standards. Failure to update the current rule may also erode protection for consumers, since it will be more difficult for businesses to understand the rule and determine which procedures they must follow.

Statutory authority:

The Department proposes to develop this rule under authority of ss. 93.07 (1), 100.20 (2), 100.45 (5) and (5e), Stats.

Staff time required:

The Department estimates that it will use approximately 0.4 FTE staff time to develop this rule. This includes researching, drafting, preparing related documents and holding public hearings. The Department will assign existing staff to develop this rule.

Commerce (Tramways, Lifts and Tows, Ch. Comm 33)

Subject:

Ch. Comm 33 – Relating to tramways, lifts and tows.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to update ch. Comm 33 to current national standards.

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

Chapter Comm 33 establishes minimum technical standards for the safe design, construction, installation, operation, inspection and maintenance of aerial tramways, aerial lifts, surface lifts and rope tows. The chapter incorporates by reference a 1992 national standard issued by the American National Standards Institute (ANSI), and it includes several provisions in addition to the ANSI standard. This rule project will update the chapter and it will evaluate adopting by reference the current edition of the ANSI standard for passenger tramways.

The alternative of not revising the chapter would result in the administrative code not being up–to–date with current national standards.

Statutory authority for the rule:

The statutory authority is contained in sections 101.02 (15) (h) to (j), 101.17 and 101.19 (1) (b), Stats.

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

The Department estimates that it will take approximately 400 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

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

Subject:

NR Code – Relating to excluding Burnett, Washburn and Sawyer Counties from the northern bass zone.

Description of policy issues:

Subject of the administrative code action/nature of the Board action:

This action relates to revision of the northern bass zone, within which the daily bag limit for largemouth and smallmouth bass is 0 (catch and release only) from the first Saturday in May to the third Saturday in June. The proposed change would exclude Burnett, Washburn and Sawyer Counties from the northern bass zone.

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

Not known at this time.

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

Explain the facts that necessitate the proposed change:

This change is proposed at the request of the Secretary.

This rule/Board action does not represent an opportunity for pollution prevention and/or waste minimization.

Statutory authority:

Section 29.014, Stats.

Anticipated time commitment:

The anticipated time commitment is 214 hours. One public hearing is proposed to be held in April or May 2000 at either Spooner or Hayward.

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

Subject:

NR Code – Relating to increasing the harvest of antlerless deer in the proposed deer management units (DMU's).

Description of policy issues:

Subject of the administrative code action/nature of board action:

The Department requests Board approval to take the proposed Northern Forest Special Season framework to the public for comment in each of the affected units.

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

Issues to be resolved include the amount of deer–caused damage, the acceptability of Special Seasons in northern units, challenges to the DNR's deer population estimates, and conflicts with other user groups that may be affected by Special Season structure.

Groups likely to be impacted or interested include deer hunters and related associations, farmers, tree growers, and other landowners.

Background:

The Natural Resources Board is considering the proposed rule order to address an overabundance of deer in the northern forest (under the authority of ss. 29.014, 227.11 (2) (a) and 227.24, Stats.). These units are not likely to be brought to within 20% of their over–winter density goals under the regular deer season's structure.

The northern deer herd is well above population goals established in administrative code. It has fluctuated over the years, but there has been an increasing trend from the early 1970's through 2000. The northern forest herd has not been below goal overall since 1980. It appears that DNR can no longer depend on winter weather to control the northern herd: just 2 falls after 2 of the worst winters Wisconsin has had, buck harvests (indicative of population level) in 1998 were among the highest ever in many units. This winter's northern deer population is estimated at 433,000 deer compared to an established goal of 270,000. This is up from the estimated 420,000 deer in the north during the winter of 1998–1999, despite a state record total deer harvest in 1999. The Northern Forest antlerless harvest of 80,700 deer in 1999 approached the all–time high in this region of 85,221 antlerless deer (1995). A harvest of over 195,000 antlerless deer would be necessary to bring the region to goal in one year.

The Northern Forest only accounted for $246,379 of the almost $1,181,000 in appraised deer damage losses in the state. However, the average deer damage per acre of appraised land in the northern forest is approximately $877, compared to the average of $98 per appraised acre in the farmland deer management units.

The proposed northern forest special season would have the same season structure and permit issuance as the previously–used farmland Zone T seasons. This is because these types of seasons have been proven successful, and to minimize the confusion on the part of Wisconsin hunters and DNR frontline staff.

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

Explain the facts that necessitate the proposed change:

Many northern forest deer management units are well above deer population goals established in administrative code. The trend has been one of increase since the 1970's, and the northern forest deer herd has not been below overall goal since 1980. The proposed Special Seasons in the Northern Forest are much like the Zone T seasons used in the farmland units. Zone T seasons have proven to be effective at increasing the deer harvest in the farmland deer management units of Wisconsin.

Proposal:

Proposed season and tagging structure for the 2000 Northern Forest Special Season units:

1. 9–day either–sex gun season beginning November 20.

2. Free antlerless permits/tags (available after August 15) as follows:

a. Free tags can be used by licensed hunters in any Zone T or Northern Forest Special Season unit during all deer seasons (Archery, Early antlerless–only, Nine–day Gun and Muzzleloader);

b. Free tags issued at any ALIS license vendor;

c. As in past years, free tags would be issued at a rate of 3 per license for a maximum of six per hunter (3 for an archery license, 3 for a gun deer license);

d. No hunter's choice permits would be issued for these units.

3. Additional antlerless–only permits available for purchase.

4. Early antlerless–only Gun season on October 26–29; archery hunting during this period would be antlerless–only.

5. Early Archery season would be extended 4 days, through November 16.

6. Muzzleloader season November 27 through December 3: allow harvest of one deer of either sex per unused gun deer license and additional antlerless under the authority of free antlerless permits.

This rule/Board action does not represent an opportunity for pollution prevention and/or waste minimization.

Statutory authority:

Sections 29.014, 227.11 (2) (a) and 227.24, Stats.

Anticipated time commitment:

The anticipated time commitment is 47 hours. Hearings are proposed to be held in or near affected deer management units (DMU's) in March 2000.

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

Subject:

Ch. NR 10 – Relating to establishment of the 2000 migratory game bird hunting seasons.

Description of policy issues:

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

The rule changes the basic migratory game bird hunting season rule to comply with changes required by the U.S. Fish and Wildlife Service and suggested by the public during the hearing process.

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

This rule/Board action does not represent an opportunity for pollution prevention and/or waste minimization.

Statutory authority:

Section 29.014, Stats.

Anticipated time commitment:

The anticipated time commitment is 102 hours. Four hearings are proposed to be held during the time period of August 7 to 10, 2000 at locations including areas of northern, southeastern and western Wisconsin and Fox Valley/Green Bay.

Natural Resources (Environmental Protection––Air Pollution Control, Chs. NR 400––)

Subject:

Chs. NR 406 and 407 and s. NR 422.095 – Relating to establishing permit exemption levels for autobody refinishing facilities, and revising s. NR 422.095 in accord with federal regulations that are currently in place regarding Volatile Organic Compound (VOC) emission limitations for coatings used in the autobody refinishing industry.

Description of policy issues:

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

Autobody refinishing operations are currently affected by two segments of Wisconsin's air pollution control program: the air permitting requirements, and air emission limits. The current VOC emission limits, in s. NR 422.095, Wis. Adm. Code, are being revised to reflect current federal standards. The federal rule, adopted in 1998, limits the amount of volatile organic compounds in automobile coatings and components when they are manufactured.

The air permitting rules in chs. NR 406 and NR 407 are being revised to allow for small autobody refinishing facilities to be exempt from permitting.

Background:

The Bureau of Air Management is seeking approval to proceed with the development of rules to allow for both construction and operation permit exemptions, for small autobody refinishing facilities. There are approximately 1500–2000 facilities that would be affected by this action. The proposed exemption level from permitting for volatile organic compounds would be the same as that that exists for other facilities in current rules. EPA, in permit guidance, allows for creating exemptions from permitting for sources that have actual emissions that are substantially less than the major source threshold, which is the case with autobody refinishing operations.

The U.S. Environmental Protection Agency published a rule limiting the volatile organic compound content in coatings used in the autobody refinishing industry as they are produced at the manufacturer. The federal requirement became effective September 11, 1998 and applies to all automobile refinish coatings and coating components manufactured after January 11, 1999. As a result, volatile organic compound emissions from small autobody refinishers will now be substantially in compliance without including them in the state air permit program. Revision of the regulation would incorporate changes from the federal rule and would update the DNR's ozone state implementation plan.

The ozone reduction plan should not be adversely affected, as none of the proposed VOC limitations are less stringent than those in the current rule. There are eight proposed categories for VOC content limitations of the various coatings for the industry, previously there were seven. Five of the limitations remained the same, one is more stringent, one category for staged topcoat systems was augmented to cover more than four topcoat stages (four is in the current rule), and one new category was added.

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

Explain the facts that necessitate the proposed change:

The current autobody refinishing VOC emission limits are being updated to reflect the subsequent adoption of federal standards on coating manufacturers.

Chapters NR 406 and NR 407 are revised to allow for small autobody refinishing facilities to be exempt from permitting. EPA, in permit guidance documents, allows for this type of categorical exemption for facilities whose actual emissions are substantially less than the major source threshold.

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

Statutory authority:

Sections 285.11 (6), 285.60 (6) and 227.11 (2), Stats.

Anticipated time commitment:

The anticipated time commitment is 139 hours. Two public hearings are proposed to be held in June 2000 at Wausau and Madison.

Workforce Development (Economic Support, Chs. DWD 11–59)

Subject:

Ch. DWD 16 – Relating to emergency assistance for impending homelessness.

Description of policy issues:

Objective of the rule:

To implement the provision in 1999 Wis. Act 9 extending Emergency Assistance to families facing impending homelessness.

Existing policies and new policies included in the proposed rule and an analysis of policy alternatives:

The Department is developing policy to interpret the statutory definition of "impending homelessness." The proposed policy will require verification of receipt of a notice of foreclosure for nonpayment of a mortgage or property taxes or a notice terminating tenancy for nonpayment of rent and verification of a "financial crisis," such as loss of a job or a sudden health emergency.

Statutory authority for the proposed rule:

Sections 49.138 (1m) and 227.11, Stats.

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

100 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.

Commerce

Rule Submittal Date

On February 11, 2000, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects ch. Comm 43, relating to anhydrous ammonia.

Agency Procedure for Promulgation

A public hearing is required and two hearings are scheduled to be held on March 16, 2000 at Madison and on March 17, 2000 at Eau Claire. The agency unit responsible for promulgation of the proposed rule is the Safety and Buildings Division.

Contact Information

Ronald Acker
Dept. of Commerce
Telephone (608) 267–7907

Financial Institutions--Credit Unions

Rule Submittal Date

On October 14, 1999, the Department of Financial Institutions––Office of Credit Unions submitted a proposed rule to the Legislative Council Rules Clearinghouse. The Office of Credit Unions inadvertently failed to provide a notice of the submittal to the Legislative Council at that time for inclusion in the *Wis. Adm. Register*.

Analysis

Statutory authority: s. 186.235 (2) and (8), Stats.

Statute interpreted: s. 186.235 (14), (16), (17), and (18), Stats.

The Wisconsin Office of Credit Unions proposes an order to repeal ch. DFI–CU 52, relating to credit union examinations.

Chapter 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.

Agency Procedure for Promulgation

This rule was published according to the procedure set forth in s. 227.16 (2) (e), Stats., and no hearings were requested.

Contact Information

Ginger Larson, Director
Office of Credit Unions
345 W. Washington Ave., 3rd Floor
P. O. Box 14137
Madison, WI 53714–0137

Financial Institutions--Credit Unions

Rule Submittal Date

On October 14, 1999, the Department of Financial Institutions––Office of Credit Unions submitted a proposed rule to the Legislative Council Rules Clearinghouse. The Office of Credit Unions inadvertently failed to provide a notice of the submittal to the Legislative Council at that time for inclusion in the *Wis. Adm. Register*.

Analysis

Statutory authority: s. 186.235 (2) and (8), Stats.

Statutes interpreted: ch. 19, subch. II and s. 186.237 (7), Stats.

The Wisconsin Office of Credit Unions proposes an order to repeal ch. DFI–CU 64, relating to the public inspection and copying of records of the Office of Credit Unions.

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.

Agency Procedure for Promulgation

This rule was published according to the procedure set forth in s. 227.16 (2) (e), Stats., and no hearings were requested.

Contact Information

Ginger Larson, Director
Office of Credit Unions
345 W. Washington Ave., 3rd Floor
P. O. Box 14137
Madison, WI 53714–0137

Natural Resources

Rule Submittal Date

On February 10, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. WM–1–00] to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects chs. NR 10, 11, 15 and 16, relating to hunting, trapping and captive wildlife.

Agency Procedure for Promulgation

A public hearing is required and a public hearing is scheduled for April 10, 2000.

Contact Information

Pat Beringer
Bureau of Wildlife Management
Telephone (608) 261–6452

Natural Resources

Rule Submittal Date

On February 10, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. WM–2–00] to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects ch. NR 10, relating to hunting, trapping and wildlife research.

Agency Procedure for Promulgation

A public hearing is required and a public hearing is scheduled for March 14, 2000.

Contact Information

Pat Beringer
Bureau of Wildlife Management
Telephone (608) 261–6452

Natural Resources

Rule Submittal Date

On February 10, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. FH–4–00] to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects chs. NR 20, 22 and 26, relating to fishing regulations on inland boundary waters and fish refuges on inland waters.

Agency Procedure for Promulgation

A public hearing is required and a public hearing is scheduled for April 10, 2000.

Contact Information

Tim Simonson
Bureau of Fisheries Management and Habitat Protection
Telephone (608) 266–5222

Natural Resources

Rule Submittal Date

On February 10, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. SW–18–95] to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects ch. NR 135, relating to the nonmetallic mineral mining.

Agency Procedure for Promulgation

A public hearing is required and a public hearing is scheduled for March 13, 2000.

Contact Information

Tom Portle
Bureau of Waste Management
Telephone (608) 267–0877

Natural Resources

Rule Submittal Date

On February 10, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. FH–6–00] to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects ch. NR 195, relating to river protection grants.

Agency Procedure for Promulgation

A public hearing is required and public hearings are scheduled for March 16, 17, 21 and 22, 2000.

Contact Information

Carroll Schaal
Bureau of Fisheries Management & Habitat Protection
Telephone (608) 261–6423

Natural Resources

Rule Submittal Date

On February 10, 2000, the Department of Natural Resources submitted a proposed rule [Board Order Nos. WT–7–00; WT–8–00; WT–9–00; WT–10–00; WT–11–00; WT–12–00 and WT–13–00] to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects chs. NR 120, 151, 152, 153, 154, 216 and 243, relating to redesign of the nonpoint source pollution program.

Agency Procedure for Promulgation

A public hearing is required and public hearings are scheduled for March 13, 14, 15, 16, 20, 21, 22, 27 and 28, 2000.

Contact Information

Carol Holden
Bureau of Watershed Management
Telephone (608) 266–0140

Tourism

Rule Submittal Date

On February 11, 2000 the Wisconsin Department of Tourism submitted a proposed rule to the Legislative Council Rules Clearinghouse affecting ch. Tour 1, Wis. Adm. Code, relating to the joint effort marketing (JEM) program.

Analysis

Statutory authority:

Section 41.17, Stats., creates a joint effort marketing program and s. 41.17 (4) (g), Stats., authorizes the Department to adopt rules required to administer the program.

The program provides for grants to non–profit organizations engaged in tourism activities. Grant funds may be used for the development of publicity, the production and media placement of advertising, direct mail, and for destination marketing projects certain expenses related to attendance at trade shows. To be eligible, expenditures must be part of a project and overall advertising plan of the applicant organization intended to increase tourism in Wisconsin.

The current rules authorize funding for projects that relate to tourism events, promotions and destination marketing projects. An example

of an event might be a town festival. An example of a promotion might be the advertising of discounted entry and accommodation fees within an area for a limited period of time intended to attract tourists to a destination during shoulder or off season. Destination marketing is advertising that is not necessarily connected to an event or promotion, but that advertises a region of the state to a market that is identified in the statewide marketing plan as regional or extended regional, or that advertises a region of the state to potential meeting and convention or motorcoach visitors. Destination marketing advertising must be intended to attract tourists during a time that has not traditionally attracted substantial tourism to the area, and the proposal must be from an applicant representing a region made up of three or more municipalities. Funding under the Destination Marketing category is limited to $5,000 per municipality represented in an application and no more than $20,000 total per application.

The proposed rule increases the maximum limits for destination marketing projects to $10,000 per municipality represented and a total maximum per destination marketing project equal to the lesser of $40,000 or 7% of the fiscal year budget for destination marketing projects. It also makes clear that the 7% limit for all JEM projects is based upon the applicable share of the annual JEM budget. 1999 Wis. Act 9 (the recently adopted biennial budget) directs the Department of Tourism to increase the budget for Joint Effort Marketing to not less than $1,130,000 each year. The Joint Effort Marketing Program budget for the last year of the previous biennium was $700,000. One result of the mandated increase was to increase the maximum funding for all Joint Effort Marketing categories other than Destination Marketing. The rule produces a similar increase for Destination Marketing.

Agency Procedure for Promulgation

A public hearing is required. The public hearing is scheduled for Wednesday, March 15, 2000 at Meeting Room 2B at the Dept. of Tourism, 201 West Washington Ave., Madison, Wisconsin.

Contact Information

Dennis Fay
General Counsel
Telephone (608) 266–6747

Workforce Development

Rule Submittal Date

On February 2, 2000, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 66.293 (5) and 103.49 (3g), Stats.

The proposed rule–making order affects s. DWD 290.155, relating to the annual adjustment of thresholds for application of the prevailing wage rates for state or local public works projects.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 28, 2000. The organizational unit responsible for the promulgation of the rule is the DWD Equal Rights Division.

Contact Information

Elaine Pridgen
Telephone: (608) 267–9403
Email: pridgel@dwd.state.wi.us

NOTICE SECTION

Notice of Hearing

Administration
[CR 00–42]

Notice is hereby given that pursuant to ss. 16.004(1) and 227.11(2)(a), Stats., and interpreting ss. 16.61 and 16.612, Stats., the Department of Administration will hold a public hearing to consider the repeal and recreation of Ch. Adm 12, Wis. Adm.Code, relating to Electronic Records Management – Standards and Requirements.

Hearing Information

March 15, 2000
Wednesday
9:00 a.m.

Dept. of Administration
State Office Bldg.
St. Croix Room (1st Floor)
101 East Wilson Street
Madison, WI 53702

The hearing site is accessible to people with disabilities. Interested persons are invited to present information at the hearing. People appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearings, should be directed to: Donna Sorenson, Department of Administration, P.O. Box 7864, Madison, WI 53707–7864. Written comments must be received by **March 20, 2000**, to be included in the record of rule–making proceedings.

Fiscal Estimate

The rules does not require electronic records but if the choice is made to use such records, then it does set public standards. Agencies will need to manage electronic records as they manage other existing records, in all cases determining the best and most cost effective retention and management choices.

Analysis Prepared by the Department of Administration

Statutory authority: ss. 16.611, 16.612 and 227.11(2)(a)

Statutes interpreted: ss. 16.61 and 16.612

1995 Wis. Act 27 amended the statutes relating to storage of public records under ss. 16.611, and 16.612, Stats., to include storage of public records in electronic format. The statute directs the Department of Administration to adopt rules prescribing qualitative standards for the storage of public records in electronic format for state agencies under s.16.611 and for local units of government under s.16.612, Stats. The proposed rule repeals and recreates Ch. Adm 12 of the Wisconsin Administrative Code. The objective of the proposed rule is to ensure that the quality of public records in electronic format is maintained and that public records in electronic format remain accessible for their designated retention period.

This Chapter provides guidelines and standards for agencies wishing to maintain their public records electronically. Public records can be created and maintained with a variety of technologies including paper as well as various electronic methods. Electronic records may include but are not limited to scanned, imaged or word processing documents; electronic forms; sound or visual recordings; database entries and web–enabled records as well as others.

The Chapter defines terms used within and refers readers to the statutory definition of a public record found at s.16.61(2)(b), Stats. General provisions of the chapter are intended to ensure electronic records will be accessible through time and will comply with State record–keeping and confidentiality requirements. More specific provisions establish standards for information systems that are used to maintain agencies' public records where the electronic version is the exclusive agency record.

Initial Regulatory Flexibility Analysis

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

Agency Contact Person

Amy K. Moran
Division of Technology Management
Department of Administration
101 E. Wilson Street, 8th Floor
Madison, WI 53707–7864

Text of Rule

SECTION 1. Chapter Adm 12 is repealed and recreated to read:

Chapter Adm 12
Electronic Records Management — Standards and Requirements

Adm 12.01 Authority. This chapter is promulgated under the authority of ss.16.611, state public records, 16.612, local government records, and 227.11(2)(a), Stats., to implement 16.61, Stats.

Adm 12.02 Purpose. The purpose of this chapter is to ensure that public records in electronic format are preserved and maintained and remain accessible for their designated retention period.

Adm 12.03 Scope. This chapter establishes defined minimum requirements, standards and guidelines for state and local government accessibility of electronic public records from creation through active use, long–term management, preservation and disposition. This chapter does not require an agency to maintain public records in electronic format.

Adm 12.04 Definitions. In this chapter:

(1) "Accessible" means information arranged, identified, indexed and maintained in a manner that permits the custodian of the public record to locate and retrieve the information in a readable format within a reasonable time.

(2) "Accurate" means all information produced exhibits a high degree of legibility and readability and correctly reflects the original record when displayed on a retrieval device or reproduced on paper.

(3) "Authentic" means what is retained to be an electronic record correctly reflects the creator's input and can be substantiated.

(4) "Content" means the basic data or information carried in a record.

(5) "Context" means the relationship of the information to the business and technical environment in which it arises. It can include, but is not limited to, such elements as the origin of the record; date and time the record was created; identification of the record series to which the information belongs.

(6) "Electronic format" includes information created, generated, transmitted or stored in digital form or analog form.

(7) "Information system" means a system for generating, sending, receiving, storing or otherwise processing data.

(8) "Legible" means the quality of the letters, numbers or symbols can be positively and quickly identified to the exclusion of

all other letters, numbers or symbols when displayed on a retrieval device or retrieved by device or reproduced on paper.

(9) "Life cycle" means all phases of a record's existence: design, creation, active use, preservation and management through to disposition. As used here, the term "disposition" includes permanent preservation as well as designation for destruction.

(10) "Meaning" means a record carries its original content, context and structure throughout its life.

(11) "Public Record" has the meaning given in s.16.61(2)(b), Stats.

(12) "Readable" means the quality of a group of letters, numbers or symbols is recognized as words, complete numbers or distinct symbols.

(13) "Reliable" means the electronic record produced correctly reflects the initial record each time the system is requested to produce that record.

(14) "Structure" means the appearance or arrangement of the information in the record. It can include, but is not limited to, such elements as heading, body and form.

Adm 12.05 General Provisions. State and local agencies maintaining public records in electronic format shall do all the following:

(1) Comply with the appropriate legal and administrative requirements for record keeping.

(2) Ensure that electronic records are accessible, accurate, authentic, reliable, legible, and readable throughout the record life cycle.

(3) Document policies, assign responsibilities, and develop appropriate formal mechanisms for creating and maintaining public records throughout the record life cycle.

(4) Assure confidentiality or restricted access to records or records series maintained in electronic format limits access to those persons authorized by law, administrative rule or established agency policy.

Adm 12.06 Records and Information Systems Provisions. State and local agencies maintaining any public records exclusively in electronic format shall do all the following for those records:

(1) Develop information systems that accurately reproduce the records they create and maintain.

(2) Identify and document records created by information systems.

(3) Document authorization for the creation and modification of electronic records and, where required, ensure that only authorized persons create or modify the records.

(4) Design and maintain information systems so that these systems can provide the official record copy for those business functions accomplished by the system.

(5) Develop and maintain information systems that maintain accurate links to transactions supporting the records created where these links are essential to the meaning of the record.

(6) Ensure that information systems used to maintain public records under this section shall be able to:

(a) Produce electronic records that continue to reflect their meaning throughout the records' life cycle.

(b) Delete electronic records created.

(c) Export records to other systems without loss of information.

(d) Output record content, structure and context.

(e) Allow records to be masked to exclude confidential or exempt information.

Notice of Hearings

Agriculture, Trade & Consumer Protection

[CR 99–168]

▶ **Reprinted from Mid–February, 2000 *Wis. Adm. Register*.**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed department rule related to numerous changes to DATCP's current animal health rules and livestock market operators, livestock dealer and livestock trucker rules under ch. ATCP 10 to 12, Wis. Adm. Code. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. You do not need to attend the public hearings to officially comment on the proposed rules. You can submit written comments to the department. Following the public hearing, the hearing record will remain open until **March 23, 2000** for written comments. Send comments to:

Dr. Bob Ehlenfeldt
Dept. of Agriculture, Trade &
Consumer Protection
Division of Animal Health
PO Box 8911
Madison, WI 53708–8911

To request a copy of the proposed rules, call 608–224–4880 and leave your name and address or write to the above address.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **February 28, 2000,** either by writing to the above address or by calling 608–224–4880. TTY users call 608–224–5058.

Hearing Information

Three hearings are scheduled; they are all handicapped accessible:

Tuesday **March 7, 2000** **commencing at 5:30 p.m.**	**Department of Agriculture,** **Trade & Consumer Protection** **Board Room** **2811 Agriculture Drive** **Madison, WI**
Wednesday **March 8, 2000** **commencing at 5:30 p.m.**	**Brown County Library** **515 Pine Street** **Green Bay, WI**
Thursday **March 9, 2000** **commencing at 5:30 p.m.**	**Department of Agriculture,** **Trade & Consumer Protection** **3610 Oakwood Hills Parkway** **Eau Claire, WI**

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

Statutory authority: ss. 93.06(7), 93.07(1) and (10), 95.19(3), 95.23(3), 95.27(8), 95.55(3), 95.68(8), 95.69(8), 95.71(8), 95.715(2)(b) and (d)

Statutes interpreted: ss. 95.21, 95.25, 95.26, 95.27, 95.31, 95.35, 95.42, 95.43, 95.45, 95.46, 95.48, 95.49, 95.68, 95.69, 95.71, 95.715

The Wisconsin department of agriculture, trade and consumer protection (DATCP) administers programs to protect the health of livestock and domestic animals in this state. This rule makes numerous changes to DATCP's current animal health rules under ch. ATCP 10 to 12, Wis. Adm. Code. Among other things, this rule:

• Clarifies current animal import permit requirements, and authorizes the state veterinarian to impose new import requirements in response to disease risks. If the new import requirements have general application, the department will also adopt the requirements by rule.

• Requires state certification of veterinarians who perform official disease eradication and control functions in this state under Wisconsin animal health programs. A federally accredited veterinarian is automatically certified, but DATCP may suspend or revoke the state certification for cause.

• Expands the current list of "reportable diseases" but simplifies reporting methods.

• Clarifies that DATCP's animal health rules apply to government agencies as well as private individuals and businesses.

• Extends, from 2 years to 5 years, the time period for which animal health records must be kept.

• Incorporates federal standards by reference under several state disease control programs, including brucellosis in cattle, cervids and swine, tuberculosis in cattle and cervids; and pseudorabies in swine. This rule incorporates the federal standards in place of current state standards.

• Authorizes DATCP to issue a temporary "animal hold order" pending investigation to determine whether animals are diseased or illegally imported.

• Requires exhibitors at fairs and exhibitions to give copies of required animal health papers to the show chairman or show veterinarian. The show sponsor must keep the records for at least 5 years.

• Modifies livestock market requirements, including license application requirements.

• Eliminates the requirement for livestock market operators, dealers and truckers to provide vehicle identification numbers or serial numbers when registering livestock vehicles with DATCP.

• Eliminates obsolete disease control programs for anaplasmosis and mastitis.

• Modifies current import and testing requirements related to swine pseudorabies.

• Modifies current import and EIA testing requirements for horses, and modifies current rules related to equine markets, shows and quarantine stations.

• Modifies current disease control programs related to cervids, and creates a brucellosis control program for cervids.

• Modifies current rules related to goats, sheep, llamas, ratites and mink.

General Provisions

Import Restrictions

Under current rules, persons importing animals to this state must comply with certain disease certification and testing requirements. Persons importing some types of animals must obtain an import permit from DATCP. The state veterinarian may issue a special import permit waiving normal import requirements, if special circumstances warrant the permit.

This rule retains most pre–import disease certification and testing requirements and the state veterinarian's authority to issue a written permit waiving normal import requirements. DATCP must keep a record of every permit issued.

The state veterinarian may issue a verbal or written directive requiring a person to comply with additional import requirements necessary to prevent the spread of disease. Any person who receives notice of additional import requirements is prohibited from importing animals in violation of those requirements.

Wisconsin Certified Veterinarians

The United States department of agriculture (USDA) currently accredits private veterinarians to perform key functions under federal disease eradication and control programs. For example, accredited veterinarians issue interstate health certificates, assign official livestock identifications, administer official diagnostic tests, administer controlled vaccines and supervise the disposition of disease reactors. USDA may suspend or revoke the accreditation of a veterinarian who violates federal rules.

DATCP relies on federally accredited veterinarians to perform similar functions under state programs (such as the state's brucellosis, tuberculosis and pseudorabies control programs) for which federal counterpart programs exist. But Wisconsin has also established programs related to diseases (such as fish diseases and Johne's disease in cattle) for which there are no federal counterpart programs. If a federally accredited veterinarian violates state rules related to these programs (but violates no federal rules), there is no basis for USDA to suspend or revoke the veterinarian's federal accreditation.

Under this rule, a veterinarian must be a Wisconsin certified veterinarian to perform official disease eradication and control functions in this state. A federally accredited veterinarian who is licensed to practice in Wisconsin is automatically certified. A veterinarian loses this state certification if any of the following occurs:

• The state veterinary examining board suspends or revokes the veterinarian's license to practice in this state.

• USDA suspends or revokes the veterinarian's federal accreditation.

• DATCP suspends or revokes the veterinarian's state certification for cause. A licensed veterinarian who loses his or her state certification may continue to practice veterinary medicine, but may not perform functions for which certification is required.

Animal Health Rules Apply to Government Agencies

This rule clarifies that DATCP's animal health rules apply to government agencies as well as private individuals and businesses. For example, a government agency importing animals into Wisconsin must comply with the same import requirements that apply to private individuals and businesses.

Reportable Diseases

Under current rules, a veterinarian who diagnoses a "reportable disease" must report that disease to DATCP. This rule expands the current list of "reportable diseases" to include diseases listed by the world organization for animal health. This is necessary to give Wisconsin producers continued access to international markets.

Testing Animals

This rule clarifies that an owner or custodian of animals must, at the request of DATCP, present those animals to DATCP for disease testing. The owner or custodian must also restrain the animals to facilitate safe testing.

Recordkeeping

Under current rules, livestock markets, dealers and other persons must keep various records for 2 years. This rule extends the retention time to 5 years, to facilitate animal disease traceback and control.

Import Markets

Under current rules, animals imported to "Part 76" and "Part 78" livestock markets are exempt from certain import requirements. "Part 76" and "Part 78" markets are import markets regulated by USDA. The names originally derived from the federal code provisions (9 CFR 76 and 9 CFR 78) under which they were regulated. But USDA recently reorganized its code provisions, so the "Part 76" and "Part 78" names are no longer appropriate. This rule renames the markets as "federally approved livestock import markets," but does not change the substance of the current rules.

Reporting Diagnostic Test Results

Under current rules, a veterinarian reporting test results to DATCP must use a form provided by DATCP. Under this rule, a veterinarian is no longer required to use a DATCP form. Among other things, this will permit veterinarians to file test reports which were created electronically.

Certificates of Veterinary Inspection

Under current rules, an "interstate health certificate" or a "certificate of veterinary inspection" must accompany many

animals. This rule eliminates references to "interstate health certificates," which are no longer in widespread use, and refers only to "certificates of veterinary inspection."

Animal Hold Orders

This rule authorizes DATCP to issue a temporary hold order (in lieu of a quarantine order) whenever DATCP has reason to believe that animals may have been illegally imported, or may have been exposed to an infectious, contagious or communicable disease. A temporary animal hold order may prohibit the movement of animals for up to 90 days while DATCP investigates the suspected illegal import or disease exposure.

The state veterinarian may, for good cause, extend the animal hold order for up to 90 days. If investigation confirms a suspected disease problem or illegal import, DATCP may issue a quarantine order or take other appropriate action. A person adversely affected by a temporary animal hold order may request a hearing before DATCP to review the order.

Disease Indemnity Payments; Cleanup Deadlines

Under current law, DATCP may condemn animals to prevent the spread of disease. Owners of condemned animals may be eligible for indemnity payments. To qualify for indemnities under current rules, an owner must clean and disinfect the diseased premises within 15 days after the condemned animal is shipped to slaughter. DATCP may extend the cleanup deadline for another 15 days, but that may not provide adequate time in the winter (when cleaning and disinfecting may not be effective). This rule allows DATCP to extend the cleanup time for a period of time specified by DATCP.

Imported Animals Consigned to Livestock Markets; Origin Disclosed

This rule requires an animal owner to disclose an animal's state of origin when the owner consigns that animal to a Wisconsin livestock market.

Assault on Department Employee

This rule prohibits a person from physically assaulting a DATCP employee when the employee is performing his or her official duties.

Fairs and Exhibitions; Animal Health Records

Under current rules, persons exhibiting certain animals at a fair or exhibition must have certain health papers for those animals (e.g., health certificates or test results). This rule requires the exhibitor to provide copies of those health papers to the show chairman or show veterinarian. The show organizer must keep the records for at least 5 years. The exhibitor and the show organizer must make records available to DATCP for inspection and copying upon request.

Livestock Market Operators, Dealers and Truckers

Livestock Market Operator License

Under current law, a livestock market operator must be licensed and pay annual license fees. A livestock market (other than an equine market) that conducted sales on fewer than 5 days during the preceding year must pay an annual fee of $115. Other market operators must pay higher fees. Under this rule, a market operator who claims to have conducted sales on fewer than 5 days in the preceding year must identify, in the license application, the dates on which the operator conducted those sales.

Under current rules, a person applying to be licensed as a livestock dealer or market operator must prove compliance with applicable federal security and bonding requirements. This rule does not exempt license applicants from federal requirements, but does eliminate the requirement to prove compliance with those requirements.

Livestock Vehicles; Registration

Under current law, a livestock market operator, livestock dealer or livestock trucker must register livestock vehicles with DATCP. Under current rules, the operator must provide the vehicle identification number and serial number of each registered vehicle.

Under this rule, the operator is no longer required to provide the vehicle identification number or serial number. Under this rule, the operator may simply identify the number of vehicles operated and pay the required registration fee for those vehicles. DATCP will provide two registration stickers for each vehicle. The operator must attach one sticker to each side of the registered vehicle.

Equine Markets

This rule clarifies (per current law) that an equine market is a livestock market and must comply with rules relating to livestock markets. It also clarifies that a livestock market receiving, selling or delivering any equine animal must keep a copy of any required health certificate and equine infectious anemia (EIA) test result. The market operator must keep the record for at least 5 years.

Bovine Animals; Disease Control

Brucellosis Control Program; Federal Standards

Current rules spell out standards for DATCP's brucellosis control program. Some of the current standards are patterned after federal standards ("uniform methods and rules") adopted by USDA. This rule repeals those current state standards, and adopts current federal standards by reference. This will ensure that state standards are fully consistent with federal standards, and will make it easier for DATCP to adopt future changes in federal standards.

Brucellosis Vaccination

Under current rules, a veterinarian who vaccinates an animal for brucellosis must report that vaccination to DATCP. This rule extends the reporting deadline from 15 days after the vaccination date to 30 days after the vaccination date.

Tuberculosis Control Program; Federal Standards

Current rules spell out standards for DATCP's tuberculosis control program. Some of the current standards are patterned after federal standards ("uniform methods and rules") adopted by USDA. This rule repeals those current state standards, and adopts current federal standards by reference. This will ensure that state standards are fully consistent with the federal standards, and will make it easier for DATCP to adopt future changes in federal standards.

Anaplasmosis Control Program

This rule repeals current rules relating to anaplasmosis control and anaplasmosis–free herd certification, because the rules are no longer needed.

Mastitis Control Program

This rule repeals obsolete rules related to mastitis control. DATCP's food safety rules (which remain in effect) and modern dairy industry practices are more effective in addressing mastitis in dairy cattle.

Veal Lots

Under current rules, veal calves imported to an "approved veal lot" are exempt from certain import requirements. DATCP may certify a veal lot as an "approved veal lot" if the veal lot complies with standards specified in the current rules. Certification is voluntary and, to date, no veal lot operators have applied. This rule therefore repeals the "approved veal lot" rules.

Swine Disease Control

Pseudorabies Control Program; Federal Standards

Current rules spell out standards for DATCP's pseudorabies control program. Some of the current standards are patterned after federal standards adopted by USDA. This rule repeals those current state standards, and adopts current federal standards by reference. This will ensure that state standards are fully consistent with federal standards, and will make it easier for DATCP to adopt future changes in federal standards.

Pseudorabies: Swine Imports

Under current rules, swine imported to this state must meet certain health certification and testing requirements. Under current rules, imported swine must be isolated on the receiving premises until they test negative for pseudorabies (there are some exceptions). This rule maintains current import requirements, and adds a further restriction for swine imported from pseudorabies stage I or II states.

Under this rule, swine imported from a pseudorabies stage I or II state may not leave the premises where they are received unless they are shipped direct to slaughter. Swine received at a federally

approved livestock import market may be shipped to a farm for feeding, but may then be shipped only to slaughter. Swine that commingle with the imported swine are subject to the same restrictions unless all the imported swine are removed and a statistically significant number of the remaining swine test negative for pseudorabies.

Intrastate Movement of Swine; Pseudorabies Test

Under current rules, no person may move any of the following swine within this state unless the swine test negative on a pseudorabies test conducted within the preceding 30 days:

• A sow or boar that is more than 5 months old or weighs more than 175 pounds.

• Any swine moved to a swine growth performance test station.

• Any swine removed from a swine growth performance test station, unless DATCP gives prior written authorization.

• Any swine that weighs more than 100 pounds if DATCP has notified the owner of the swine's herd of origin that the herd is located in a high pseudorabies incidence area.

The following swine are currently exempt from the pre–movement testing requirement:

• An animal that originates from a qualified pseudorabies negative herd or a qualified pseudorabies negative grow–out herd.

• An animal moved directly to a licensed slaughter facility for immediate slaughter.

• An animal moved directly to a livestock market or livestock dealer premises if the animal is tested before it leaves the livestock market or dealer premises.

• An animal moved between 2 premises owned or operated by the owner of the animal.

This rule modifies current rules related to pre–movement testing of swine for pseudorabies. Under this rule, all swine must be tested for pseudorabies before they are moved within this state unless one of the following applies:

• Wisconsin is classified, by the national rabies control board, as a pseudorabies stage IV or V state.

• The swine originate from a qualified pseudorabies negative herd or a qualified pseudorabies negative grow–out herd.

• The swine are shipped directly to slaughter.

Swine Brucellosis Control Program; Federal Standards

Current rules spell out standards for the state swine brucellosis control program. Some of the current standards are patterned after federal standards ("uniform methods and rules") adopted by USDA. This rule repeals current state standards, and adopts current federal standards by reference. This will ensure that state standards are fully consistent with federal standards, and will make it easier for DATCP to adopt future changes in federal standards.

Feeder Swine

Current rules regulate "feeder swine" in various ways. Under current rules:

• No person may import "feeder swine" into this state unless the feeder swine are imported to a slaughter plant, to a federally approved import market ("Part 76 market"), or to a farm for finish feeding prior to slaughter. Feeder swine imported to any of these destinations are exempt from pre–import brucellosis testing.

• "Feeder swine" imported to a farm must be kept separate from breeder swine on that farm, and may not be removed from the farm except to slaughter.

• "Feeder swine are exempt from pre–import pseudorabies testing required of other swine if they originate from a "feeder swine pseudorabies monitored herd." Feeder swine, like other swine, are exempt from pre–import pseudorabies testing if they are imported directly to a slaughter plant, or to a federally approved import market ("Part 76 market").

• DATCP may certify a herd of "feeder swine" in this state as a "feeder swine pseudorabies monitored herd" if the herd tests negative for pseudorabies every year.

This rule changes the current definition of "feeder swine." Under the current rules, "feeder swine" mean any swine, except boars, that weigh less than 175 pounds and are kept for the sole purpose of feeding for slaughter. Under this rule, "feeder swine" mean any swine weighing 80 pounds or less that are kept for the sole purpose of feeding for slaughter.

Current rules require "official individual identification" of swine for various purposes. An animal's "official individual identification" uniquely identifies that particular animal. This rule creates a different, and less specific, form of "official individual identification" for "feeder swine." Under this rule, the "official individual identification" of feeder swine may simply identify the premises where the feeder swine originated.

Equine Animals

Horse Imports; Certificate of Veterinary Inspection

Under current rules, a horse imported to this state must be accompanied by a certificate of veterinary inspection. There are some exceptions. This rule affects current exceptions as follows:

• Under current rules, a certificate of veterinary inspection is not required for animals imported directly to slaughter. This rule continues this current exception.

• Under current rules, a horse may be imported to an equine market without a certificate of veterinary inspection if the importer and the equine market operator agree in writing that the animal will be sold from the equine market only for slaughter. This rule eliminates the requirement of a written agreement. Under this rule, an equine animal may be imported to a livestock market without a certificate of veterinary inspection if the horse is then shipped to slaughter, or if a veterinarian completes that certificate before the horse leaves the livestock market.

• Under current rules, an equine animal may be imported to a veterinary facility for treatment without a certificate of veterinary inspection, if the animal returns to the state of origin immediately after treatment. This rule retains this current exemption and creates a parallel exemption for Wisconsin animals returning to its place of origin immediately following treatment at an out–of–state veterinary facility.

• This rule creates a new exception for a horse imported for a trail ride, horse show or exhibition. A horse may be imported for that purpose without a certificate of veterinary inspection if all the following apply:

* Ownership of the horse does not change while the horse is in this state.

* The horse does not stay in this state for more than 7 days.

* The horse meets current equine infectious anemia (EIA) test requirements.

* The horse originates from a state that allows imports of Wisconsin horses, under similar conditions, to attend trail rides, horse shows and exhibitions.

Horse Imports; EIA Test

Under current rules, a horse imported to this state must first test negative for EIA. There are some exceptions. This rule affects current exceptions as follows:

• Under current rules, a pre–import EIA test is not required for animals imported directly to slaughter. This rule continues this current exception.

• Under current rules, a horse may be imported to an equine market without a pre–import EIA test if the animal is tested within 48 hours after it arrives at the market. The animal may not leave the market until the test results are known. Under this rule, an untested animal may be imported to a livestock market without a pre–import EIA test if one of the following applies:

* The animal is shipped directly to slaughter within 10 days after it arrives at the livestock market and before it is commingled with any animals not sent to slaughter.

* The livestock market operator has the animal tested for EIA within 10 days after it arrives at the market, and obtains the test results before the animal leaves the livestock market and before it is commingled with any other equine animal at the livestock market.

• Under current rules, an equine animal may be imported to a veterinary facility for treatment without prior EIA testing if the animal returns to the state of origin immediately after treatment. This rule retains this current exemption and creates a parallel exemption for Wisconsin animals returning to Wisconsin immediately following treatment at an out–of–state veterinary facility.

• Under this rule, DATCP may issue a written permit authorizing a person to import a horse before obtaining the results of a pre–import EIA test if all the following apply:

* The test sample is collected before the horse is imported.

* The horse is isolated at the receiving premises until the test results are known.

Horses Infected With EIA

This rule prohibits any person from importing an animal that has tested positive for EIA. If a person imports an animal under a DATCP written permit before obtaining the results of an EIA test and the owner receives positive results are received the animal enters this state, the owner must do one of the following:

• Euthanize the animal.

• Ship the animal to slaughter with DATCP approval.

• Return the animal to its state of origin with DATCP approval.

Quarantining Horses Exposed to EIA

Under current rules, DATCP must quarantine every horse that has been exposed to a horse that tests positive for EIA. This rule changes the quarantine requirement. Under this rule, DATCP must quarantine all horses kept at the premises where the EIA positive horse is normally housed. This rule does not require DATCP to identify and quarantine every horse that may have been exposed to the EIA positive animal.

Horse Shows, Fairs and Exhibitions

If DATCP finds that a horse infected with EIA participated in a horse show, fair or exhibition, DATCP will notify the sponsor of the horse show or exhibition. Under this rule, the sponsor must notify other participants that their animals may have been exposed to EIA.

Under current rules, no person may exhibit a horse at a fair or livestock exhibition unless the horse first tests negative for EIA. The sponsor of a horse show, fair or exhibition must record the name and address of every person who owns a horse participating in the event. The sponsor must keep the records for at least 2 years. This rule changes the current recordkeeping requirements. Under this rule, the sponsor must do one of the following:

• Keep, for at least 5 years, the name and address of the horse owner, the horse's name and identification, and the accession or laboratory number of the EIA test.

• Keep, for at least 5 years, a copy of the horse's EIA test report.

Equine Markets

Under s. 95.68(1)(b), Stats., an "equine market" is defined as a livestock market that deals exclusively with equine animals (horses). This rule clarifies (per current law) that equine markets are livestock markets and must comply with applicable livestock market rules. It also clarifies that a livestock market operator receiving horses must comply with applicable equine market requirements

Equine Quarantine Stations

Under current rules, a person applying for a permit to operate an approved equine quarantine station must disclose the location of the equine quarantine station, including county, township and section. Under this rule, the applicant must also disclose the fire number assigned to the proposed equine quarantine station. The quarantine station veterinarian must be a Wisconsin certified veterinarian, and the quarantine station must keep records for 5 years (rather than 2 years under current rules).

Cervids

Captive Cervids; Herd Owner Report

A "cervid" means a member of the family of animals that includes deer, elk, moose, caribou, reindeer and the subfamily of musk deer. Under current rules, a person keeping a herd of cervids in this state must report all the following to DATCP:

• The location of the herd.

• The number and types of animals in the herd.

• The name and address of the herd owner.

• The name and address of the local herd custodian if other than the herd owner.

This rule clarifies that the current reporting requirement applies only to captive deer or elk. It thereby exempts the department of natural resources from the current reporting requirement.

Farm–Raised Deer; Herd Registration

Under s. 95.55, Stats., and current rules, a person keeping farm–raised deer in this state must obtain a registration certificate from DATCP. DATCP may deny, suspend or revoke a registration certificate for cause, pursuant to s. 93.06(7), Stats. This rule clarifies that DATCP may deny, suspend or revoke a registration certificate if a person files an incomplete or fraudulent application, or misrepresents any information on the application.

This rule creates a registration fee surcharge of $100 if DATCP determines that the applicant kept farm–raised deer without a registration certificate within 365 days prior to applying for a registration certificate.

Tuberculosis in Cervids

Current rules spell out standards for DATCP's program for controlling tuberculosis in cervids. Some of the current standards are patterned after federal standards ("uniform methods and rules") adopted by USDA. This rule repeals those current state standards, and adopts current federal standards by reference. This will ensure that state standards are fully consistent with federal standards, and will make it easier for DATCP to adopt future changes in federal standards.

This rule modifies the federal standards, for Wisconsin, in one important respect. Whereas the federal standards permit the use of the blood tuberculosis test (BTB) in cervids, this rule prohibits use of the BTB test for any purpose in Wisconsin. In Wisconsin, the BTB test has consistently failed to identify, as TB suspects or reactors, animals that are culture positive for tuberculosis.

Tuberculosis Reactors

Under current rules, a cervid classified as a tuberculosis reactor must be identified as such within 24 hours, and must be shipped to slaughter within 15 days. This rule keeps the 15 day slaughter deadline but extends the identification deadline to 15 days.

Intrastate Movement; Certificate of Veterinary Inspection

Under current rules, a certificate of veterinary inspection must normally accompany a cervid moved within this state. There are several exemptions, including an exemption for cervids originating from an accredited tuberculosis–free herd, a tuberculosis qualified herd or a tuberculosis monitored herd. This rule eliminates this current exemption.

Cervids; Brucellosis Control Program

This rule creates a brucellosis control program for cervids. Under this rule:

• The program must comply with current federal standards ("uniform methods and rules") adopted by USDA.

• The person who collects a brucellosis test sample must be either a certified veterinarian or an authorized employee of DATCP or USDA.

• A veterinarian who conducts a brucellosis test must report the test results within 10 days. If the cervid tests positive for brucellosis, the veterinarian must report immediately and confirm the report in writing within 10 days.

• A veterinarian who performs a brucellosis test on a cervid must apply an official individual identification to that cervid.

• Within 15 days after a cervid is classified as a reactor, the cervid must be shipped to slaughter. Within 15 days after the cervid is shipped to slaughter, the owner must clean and disinfect the premises where the cervid was kept. The department may extend the cleaning and disinfecting deadline, if extension is appropriate.

DATCP may not pay indemnities to an owner who fails to meet the deadlines.

• DATCP may certify a herd of cervids as a brucellosis–free herd based on federal standards.

Other Animals

Goats

Current rules spell out standards for controlling tuberculosis in goats. Some of the current standards are patterned after federal standards ("uniform methods and rules") adopted by USDA. This rule repeals those current state standards, and instead adopts the current federal standards by reference. This will ensure that state standards are fully consistent with federal standards, and will make it easier for DATCP to adopt future changes in federal standards.

Sheep

This rule prohibits the sale or movement of sheep infected with or exposed to scrapie.

Exotic Ruminants or South American Camelids

Under current rules, a person importing an exotic ruminant (e.g., gnu, antelope, mouflon sheep, wild goats) or South American camelid (e.g., a llama) must hold an import permit from DATCP. The exotic ruminant or South American camelid must test negative for tuberculosis and brucellosis prior to import and must be accompanied by a certificate of veterinary inspection. This rule makes the following changes:

• It retains the requirement that the importer obtain an import permit for exotic ruminants, but it eliminates the permit requirement for South American camelids. It simplifies the procedure for obtaining a permit, and makes it consistent with other import permits.

• It retains the requirement for a negative tuberculosis and brucellosis test for exotic ruminants but eliminates the test requirements for South American camelids. It requires the importer to contact the department to identify species appropriate tests to be used for the exotic ruminants.

• It retains the requirement that the animal be accompanied by a certificate of veterinary inspection for both exotic ruminants and South American camelids.

Ratites

Under current rules, a person importing a ratite (e.g., an ostrich or emu) must obtain an import permit from DATCP. The ratite must test negative for avian influenza, and a veterinarian must certify that the ratite originates from a flock that has shown no signs of avian influenza for at least 6 months. This rule makes the following changes:

• It simplifies the procedure for obtaining a permit, and makes it consistent with other import permits.

• It eliminates the avian influenza test requirement.

• It changes the health certification requirement. Under this rule, an imported ratite must be accompanied by a standard certificate of veterinary inspection. A certificate is not required if the ratite is imported directly from a federal quarantine facility.

Mink

This rule eliminates the current aleutian disease–free herd certification program for mink.

Circus, Rodeo, Racing or Menagerie Animals

Under current rules, a person importing circus, rodeo, racing or menagerie animals must hold an import permit from DATCP. This rule simplifies the procedure for obtaining permits, and makes it consistent with the procedure for other permits.

Under current rules, a person importing circus, rodeo or menagerie animals must notify DATCP of the dates and locations at which the animals will be exhibited in this state. This rule eliminates this requirement.

Test Methods

Current rules identify specific test methods for a number of required animal health tests. This rule eliminates specific descriptions of test methods identified in federal rules, and instead incorporates the federal rules by reference. This will ensure that state test methods are fully consistent with federal methods, and will make it easier for DATCP to adopt future changes in federal standards.

This rule authorizes DATCP to approve additional test methods that are not specifically identified in this rule. This will make it easier for state disease control programs to keep pace with rapidly changing disease testing technology.

Technical Changes

This rule makes many nonsubstantive drafting and organizational changes to current rules.

The department is seeking authority from the department of justice and the revisor of the statutes to incorporate uniform methods and rules by reference.

Fiscal Estimate

See page 26 of the Mid–February, 2000 *Wisconsin Administrative Register.*

Initial Regulatory Flexibility Analysis

See page 26 of the Mid–February, 2000 *Wisconsin Administrative Register.*

Copies of Rule

A copy of the rule to be considered may be obtained, free of charge, from:

Division of Animal Health
Wisconsin Department of Agriculture,
Trade and Consumer Protection
P O Box 8911
Madison, WI 53708–8911

Notice of Hearings

Agriculture, Trade & Consumer Protection [CR 00–39]

The state of Wisconsin, Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATCP 50, Wis. Adm. Code, relating to the soil and water resource management program. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **April 19, 2000** for additional written comments.

A copy of this rule may be obtained free of charge from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, WI 53708–8911, or by calling the bureau at 608/224–4620. Copies will also be available at the public hearings.

An interpreter for the hearing impaired can be made available upon request for these hearings. Please make reservations for a hearing interpreter by **March 3, 2000** by writing to the bureau at the address in the preceding paragraph, by calling 608/224–4620, or by contacting the message relay system (TTY) at 608/224–5058. Handicap access is available at the hearings.

Hearing Information

*All hearings will begin with an informational session at **12:30 p.m.** The department will begin taking testimony at*

2:00 p.m. *and will remain available at the sites until* ***5:30 p.m.*** *Please note the time and places to participate in the video conference. Ten hearings are scheduled as follows:*

March 14, 2000 **Tuesday**	**South Central Wisconsin** **The Fitchburg Room** **Fitchburg Community Center** **5510 Lacy Road** **Fitchburg, Wisconsin 53711**
March 15, 2000 **Wednesday**	**Southeastern Wisconsin** **Michael Fields Agricultural Institute** **W2493 County Road ES** **East Troy, Wisconsin 53120**
March 16, 2000 **Thursday**	**The Pippen Conference Center** **Melvill Hall (formerly the Administration Building)** **U. W. Richland Center** **1200 Hwy 14 West** **Richland Center, Wisconsin 53581**
March 21, 2000 **Tuesday**	**West Central Wisconsin** **The Community Room** **Whitehall City Center** **18620 Hobson Street** **Whitehall, Wisconsin 54773**
March 22, 2000 **Wednesday**	**East Central Wisconsin** **Room 025 (west entrance)** **Calumet County Courthouse** **206 Court Street** **Chilton, Wisconsin 53014**
March 23, 2000 **Thursday**	**Central Wisconsin** **Hancock Ag Research Station** **N3909 County Hwy V** **Hancock, Wisconsin 54943**
March 28, 2000 **Tuesday**	**North Central Wisconsin** **Agricultural Center** **925 Donald Street** **Medford, Wisconsin 54451**
March 29, 2000 **Wednesday**	**Northeastern Wisconsin** **Clover Room, Multipurpose Bldg.** **Langlade County Fairgrounds** **Neva Road, Hwy 45 North** **Antigo, Wisconsin 54409**
March 30, 2000 **Thursday**	**Northwestern Wisconsin** **Barron County Courthouse, Rm 110** **330 E. LaSalle Street** **Barron, Wisconsin 54812**
April 5, 2000 **Wednesday** **from 7:30 p.m. to 9:30 p.m. at:**	**Video conference hearing** **The Pyle Center, UW Madison** **702 Langdon St., See Room Assignment** **Madison Wisconsin 53706** **Dept. of Natural Resources** **Regional Headquarters** **107 Sutliff Avenue** **Rhinelander, Wisconsin 54501** **UW Superior, Rothwell Student Ctr.** **1600 Catlin Ave., Room 218** **Superior, Wisconsin 54880**

Written comments will be accepted until **April 19, 2000**.

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

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

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

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

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

Background

General

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

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

In 1997 Wis. Act 27, the Legislature mandated a comprehensive redesign of state programs related to nonpoint source pollution. Among other things, the Legislature directed DATCP and DNR to establish conservation standards and practices for farms. The Legislature also directed DATCP to adopt rules related to nutrient management on farms. DATCP and DNR held informational hearings and obtained recommendations from an outreach advisory committee. This rule implements many of those recommendations. This rule also implements statutory changes contained in 1999 Wis. Act 9 (biennial budget act).

County Programs

DATCP administers soil and water conservation programs in cooperation with county land conservation committees. Counties adopt land and water resource management plans, administer county ordinances, adopt conservation compliance standards for farmers claiming farmland preservation tax credits, provide information and technical assistance, and make cost–share grants to landowners installing conservation practices.

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

Soil and Water Conservation on Farms

Farm Conservation Practices

DNR is primarily responsible for adopting farm performance standards to prevent nonpoint source pollution. DATCP must prescribe conservation practices to implement the DNR standards. DATCP must also establish soil conservation and farm nutrient management requirements. For ease of reference, this rule establishes a unified set of farm conservation practices that addresses nonpoint source pollution, soil conservation and nutrient management. Counties will take the lead role in implementing conservation practices on farms, with financial assistance from DATCP.

Under this rule (with limited exceptions discussed below), every farm in this state must implement the following conservation practices:

• *Soil erosion.* A farmer must manage croplands and cropping practices so that soil erosion rates on cropped soils do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 3 to 5 tons of soil loss per acre per year. Soil erosion on cropped fields in water quality management areas may not exceed ½ T. A farmer may implement this conservation practice in a variety of ways. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.

• *Grass waterways in cropland areas.* A farmer must maintain grass cover in highly erodible intermittent waterways in cropland areas. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.

• *Manure storage facilities.* A farmer must comply with standards in this rule if the farmer constructs, moves, enlarges, reconstructs or abandons a manure storage facility after the effective date of this rule.

• *Clean water diversion.* A farmer must divert clean water runoff from entering any feedlot or barnyard located in a water quality management area. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.

• *Livestock operations.* A farmer must manage livestock operations so that none of the following occur (these practices are prohibited by current law):

*Overflows from manure storage facilities.

*Unconfined manure piles in water quality management areas.

*Unrestricted livestock access to waters of the state that prevents themaintenance of sod cover adjacent to those waters.

*Direct runoff from animal feeding operations, or from stored manure, to waters of the state.

• *Manure applications.* Beginning with the effective date of this rule, a farmer may not apply more than 75 lbs. of P_20_5 per acre per year in the form of unincorporated manure or organic material. The following amounts of unincorporated manure are deemed to contain 75 lbs. of P_20_5 unless a test shows that the manure contains a different concentration of P_20_5:

Manure Type	Solid (tons)	Liquid (gallons)
Dairy	25	9,000
Beef	14	5,000
Swine	25	5,000
Poultry	5	2,000

• *Annual nutrient management plan.* A farmer applying manure or commercial fertilizer must have an annual nutrient management plan, and must follow that plan. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.

• *Nutrient management plan; preparation.* A qualified nutrient management planner (see below) must prepare each nutrient management plan required under this rule. A farmer may prepare a nutrient management plan if the farmer is a qualified nutrient management planner. A person selling bulk fertilizer to a farmer, for application after December 31, 2006, must record the name and address of the nutrient management planner who prepared the farmer's nutrient management plan (if the farmer has a plan).

• *Nutrient management plan; contents.* A nutrient management plan must be based on soil tests, and must comply with standards under this rule. Nutrient applications may not exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin in UWEX publication A–2809, Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998), unless the nutrient management planner documents a special agronomic need for the deviation. Appendix B contains a convenient summary of the UW recommendations for selected crops.

Exemptions

To comply with this rule, a farmer may need to discontinue or modify certain agricultural facilities or practices. However, this rule does not require a farmer to have a nutrient management plan, or to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule, unless one of the following applies:

• The farmer can comply without incurring significant out–of–pocket or opportunity costs. Opportunity costs may include, for example, losses in net income that occur when land is taken out of agricultural production or crop value is impaired because of the change.

• A federal, state or local governmental unit offers the farmer cost–share funding to cover at least 70% of the farmer's cost to comply.

County Implementation

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

Installing Conservation Practices; Technical Standards

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

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

• Manure storage systems
• Manure storage system abandonment
• Barnyard runoff control systems
• Access roads and cattle crossings
• Animal trails and walkways
• Cattle mounds
• Conservation tillage
• Contour farming
• Critical area stabilization
• Cropland cover (green manure)
• Diversions
• Field windbreaks
• Filter strips

- Grade stabilization structures
- Heavy use area protection
- Intensive grazing management
- Livestock fencing
- Livestock watering facilities
- Milking center waste control systems
- Nutrient and pesticide management
- Relocating or abandoning animal feeding operations
- Riparian buffers
- Roofs
- Roof runoff systems
- Sediment basins
- Streambank and shoreline protection
- Strip–cropping
- Subsurface drains
- Terrace systems
- Underground outlets
- Waste transfer systems
- Water and sediment control basins
- Waterway systems
- Well decommissioning
- Wetland development or restoration

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

- Adds a standard for cropland cover (green manure).
- Adds a standard for riparian buffers (the new standard is similar to the existing standard for filter strips).
- Eliminates required maintenance periods for the following practices (a county may negotiate a maintenance period with the farmer, and may provide more cost–share funding in return for a longer maintenance period):

*Conservation tillage

*Contour farming

*Cropland cover (new standard)

*Intensive grazing management

*Nutrient or pesticide management

*Strip–cropping

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

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

Cost–Share Funding for Conservation Practices

DATCP currently finances county cost–share grants to farmers who install soil and water conservation practices. DNR also provides cost–share funding under its nonpoint source pollution abatement program. This rule implements a legislative transfer of the rural nonpoint cost–share program from DNR to DATCP.

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

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

DATCP will enter into an annual funding contract with each county receiving cost–share funds. The county, in turn, must enter into cost–share contracts with individual landowners. DATCP must be a party to a landowner cost–share contract if the contract is for more than $25,000. This rule spells out requirements for county cost–share contracts with landowners (see below).

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

Maximum Cost–Share Rates

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

A county may determine the cost–share rate that it will pay under a cost–share contract with a landowner. The maximum cost–share rate is 70%, except that the maximum cost–share rate is 80% if DATCP makes an "economic hardship" finding. DATCP may make an "economic hardship" finding if it finds that the landowner has a debt–to–asset ratio of more than 60% and net assets of less than $200,000, but will be able to pay the balance of the cost to install the cost–shared practice.

Under this rule, cost–share payments for the following cropping practices may not exceed the following amounts:

- For contour farming, $9 per acre.
- For cropland cover, $25 per acre.
- For strip–cropping, $13.50 per acre.
- For field strip–cropping, $7.50 per acre.
- For high residue management systems, other than no–till, ridge till or mulch till systems, $18.50 per acre.
- For no–till or ridge till systems, $15 per acre.
- For mulch till systems, $10 per acre.

This rule also limits cost–share grants in the following ways:

- No cost–share grant to relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure management system or 70% of eligible relocation costs, whichever is less.
- Combined payments by all governmental units for a manure storage system may not exceed $35,000 ($45,000 if DATCP makes an "economic hardship" finding).

A cost–share grant under this rule may be combined with cost–share grants from other federal, state, local or private sources, provided that:

- The grants do not make duplicate payments for the same costs.
- Combined state–funded grants do not pay for more than 85% of project costs.

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

This rule does not require a farmer to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule unless the farmer's cost is insignificant or the farmer receives at least 70% cost–share funding (see above), up to the maximum cost–share amounts allowed under this rule.

Cost–Share Contracts with Landowners

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

• The location where the cost–shared practice will be installed, and a specific legal description if the cost–share grant exceeds $25,000.

• Design specifications for the cost–shared practice. Cost–shared practices must be designed and installed according to this rule.

• The estimated cost of the practice.

• The rate and maximum amount of the cost–share grant.

• A construction timetable.

• A required maintenance period. The maintenance requirement runs with the land, and is binding on subsequent owners, if the cost–share grant is for more than $25,000.

• A procedure for pre–approving material construction changes.

• A requirement that the landowner must properly install the cost–shared practice and make all payments for which the landowner is responsible before the county makes any cost–share payment to the landowner. The county may make partial payments for partial installations that have independent conservation benefits. Some cost–shared practices must be reviewed by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient management planner (see below).

• County remedies for breach of contract.

Nutrient Management Program

General

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

• *Manure applications.* Beginning with the effective date of this rule, a farmer may not apply more than 75 lbs. of P_2O_5 per acre per year in the form of unincorporated manure or organic material (see above).

• *Annual nutrient management plan.* A farmer applying commercial fertilizer or manure must have an annual nutrient management plan (see above), and must follow that plan. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.

• *Nutrient management plan; preparation and contents.* A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare a plan if the farmer is a qualified nutrient management planner. The plan may not recommend applications that exceed crop fertility levels recommended by the university of Wisconsin, unless the planner documents that the deviation is justified by special agronomic needs (see above).

• *Cost–share grants for animal waste and nutrient management.* A county may award cost–share grants for animal waste and nutrient management practices installed by farmers. Cost–shared practices must comply with technical standards under this rule.

Soil Testing Laboratories

Soil tests required by this rule must be performed by the university of Wisconsin or another soil testing laboratory certified by DATCP. To be certified, a laboratory must show that it is qualified and equipped to perform accurate soil tests. If a certified laboratory recommends nutrient applications that exceed the application rates provided under this rule, the laboratory must make the following disclosure:

IMPORTANT NOTICE

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

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

Nutrient Management Planners

A qualified nutrient management planner must prepare each nutrient management plan required under this rule. A farmer may prepare a nutrient management plan if the farmer is a qualified nutrient management planner. A qualified nutrient management planner must prepare plans according to this rule.

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

• Using soil tests.

• Calculating nutrient needs.

• Crediting manure and other nutrient sources.

• State and federal standards related to nutrient management.

• Preparing nutrient management plans according to this rule.

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

• The planner is recognized as a certified professional crop consultant by the national alliance of independent crop consultants.

• The planner is recognized as a certified crop advisor by the American society of agronomy, Wisconsin certified crop advisors board.

• The planner is registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American registry of certified professionals in agronomy, crops and soils.

• The planner successfully completes a training course presented or approved by DATCP.

• The planner holds equivalent credentials recognized by DATCP.

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

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

County Soil and Water Conservation Programs

General

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

• A county land and water resource management plan, and a program to implement that plan.

• County conservation standards that implement state soil and water conservation requirements on farms.

• A program to apply for, receive, distribute and account for state soil and water resource management grants.

• A program for distributing cost–share grants to landowners. A county must ensure that cost–shared conservation practices are designed and installed according to this rule.

• A recordkeeping and reporting system. Among other things, a county must file an annual accomplishment report and an annual financial report.

Land and Water Resource Management Plans

Under s. 92.10, Stats., every county must prepare a land and water resource management plan. DATCP must approve the county plan, for up to 5 years, after consulting with the LWCB. Beginning on August 1, 2001, DATCP may not award soil and water conservation grants to a county that lacks an approved plan.

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

• Water quality and soil erosion conditions throughout the county.

• State and local regulations that are relevant to the county plan. The plan must disclose whether local regulations will require farm conservation practices that differ materially from the practices required under this rule.

• Water quality objectives for each water basin, priority watershed and priority lake. The county must consult with DNR when determining water quality objectives.

• Key water quality and soil erosion problem areas. The county must consult with DNR when determining key water quality problem areas.

• Conservation practices needed to address key water quality and soil erosion problems.

• A plan to identify priority farms in the county.

• Compliance procedures, including notice, enforcement and appeal procedures, that may apply if a farmer fails to comply with applicable requirements.

• The county's multi–year workplan to achieve compliance with water quality objectives and implement farm conservation practices. The plan must identify priorities and expected costs.

• How the county will monitor and measure its progress.

• How the county will provide information and education to farmers, including information related to conservation practices and cost–share funding.

• How the county will coordinate its program with other agencies.

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

• Appoint and consult with a local advisory committee of interested persons.

• Assemble relevant data, including relevant data on land use, natural resources, water quality and soils.

• Consult with DNR.

• Assess resource conditions and identify problem areas.

• Establish and document priorities and objectives.

• Project available funding and resources.

• Establish and document a plan of action.

• Identify roles and responsibilities.

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

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

County Ordinances

A county may require farm conservation practices by ordinance. DATCP must review, and may comment on, proposed ordinances that implement farm conservation requirements under this rule (see s. 92.05(3)(L), Stats.). DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, Stats., if those ordinances regulate farm conservation practices.

A county need not obtain DATCP approval to adopt an ordinance, except for an agricultural shoreland management ordinance (see s. 92.17, Stats.). This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below).

A county ordinance implementing this rule may not require a farmer to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule unless the farmer's cost is insignificant, or the farmer receives at least 70% cost–share funding (see above).

Farmland Preservation; Conservation Standards

Farmers who claim farmland preservation tax credits must currently meet county farm conservation standards. This rule requires every county, by December 31, 2006, to incorporate in its standards the farm conservation practices required under this rule (see above). In a county that fails to comply, farmers may be disqualified from claiming tax credits. DATCP may also deny soil and water conservation funding to a noncomplying county.

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

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

A farmer who fails to meet farmland preservation conservation standards may continue to claim tax credits if the farmer complies with a farm conservation plan that will achieve full compliance within 3 years. A farm conservation plan is a written agreement between the farmer and county, in which the farmer agrees to install specified conservation practices by a specified date.

Annual Grant Application

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

• *A basic annual staffing grant.* A staffing grant is used to finance county staff engaged in soil and water conservation programs (see below). A grant may include training and support for county staff. The county must match a portion of the staffing grant, as provided in this rule. The grant application must identify the activities that the staff will perform, the amount of staff time projected for those activities, and the amount of funding requested.

• *Cost–share funding for farm conservation practices.* The county must identify the amount of cost–share funding requested, and the purposes for which the county will use that funding. DATCP distributes cost–share funding on a reimbursement basis, after the county certifies that the cost–shared practices are properly installed and paid for.

Annual Reports

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

By April 15 of each year, a county must also file with DATCP a year–end financial report for the preceding calendar year. The county must account for all soil and water conservation funds provided by DATCP. The report must include the county's opening balance, receipts, expenditures and closing balance in each relevant funding category. The county's chief financial officer must sign the report.

Accounting and Recordkeeping

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

DATCP Review

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

Training for County Staff

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

• DNR.

• NRCS.

• The university of Wisconsin–extension.

• The statewide association of land conservation committees.

• The statewide association of land conservation committee staff.

Grants to County and Local Government

DATCP awards soil and water conservation grants to counties. These grants finance county staff and support, as well as county cost–share grants to landowners. DATCP does not provide grants to local government, except that DATCP may award staffing grants to local governments engaged in DNR priority watershed projects. In certain limited cases, DATCP may authorize a county to distribute cost–share funds to local governments to finance conservation practices required by local ordinances.

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

Annual Grant Allocation Plan

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

• The total amount appropriated to DATCP for possible allocation under the plan, including the amounts derived from general purpose revenue (GPR), segregated revenue (SEG) and bond revenue sources.

• The total amount allocated under the plan, including the amounts allocated from GPR, SEG and bond revenue sources.

• The total amount allocated for basic annual staffing grants to counties, the total and subtotal amounts allocated to each county, and an explanation for any material difference in allocations between counties.

• The total amount allocated to counties for cost–share grants to landowners, the total and subtotal amounts allocated to each county, and an explanation for those allocations.

• The amounts allocated to non–county grant recipients, and an explanation for those allocations.

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

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

Revising the Allocation Plan

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

• Extend funding for landowner cost–share contracts that were signed by November 1 of the preceding year, but not completed during that year. Counties must apply by January 15 for contract funding extensions.

• Increase the total grant to any county. DATCP must give all counties notice and an equal opportunity to compete for funding increases (other than funding extensions for existing cost–share contracts).

• Reduce a grant award to any county with the agreement of that county.

• Reallocate a county's annual grant between grant categories, to the extent authorized by law and with the agreement of the county.

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

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

• Obtain LWCB recommendations on the proposed revision.

Grant Priorities

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

• *County staff and project continuity.* DATCP must give high priority to maintaining county staff and project continuity. DATCP must also consider priorities identified in the county grant application and in the county's approved land and water resource management plan.

• *Statewide priorities.* DATCP may give priority to county projects that address the following statewide priorities:

*Farms discharging pollutants to waters that DNR has listed as "impaired waters" under 33 USC 1313(d)(1)(A).

*Farms applying nutrients at more than twice the maximum rate specified under this rule.

*Farms whose cropland erosion is more than twice T–value.

*Farms discharging substantial pollution to waters of the state.

*Farms claiming tax credits under the farmland preservation program.

• *Other factors.* DATCP may also consider the following factors, among others, when determining grant allocation priorities:

*The strength of the county's plan and documentation.

*A county's demonstrated commitment to adopt and implement the farm conservation practices required under this rule.

*The likelihood that funded activities will address and resolve high priority problems identified in approved county land and water resource management plans.

*The relative severity and priority of the water quality and soil erosion problems addressed.

*The relative cost–effectiveness of funded activities in addressing and resolving high priority problems.

*The extent to which funded activities are part of a systematic andcomprehensive approach to soil erosion and water quality problems.

*The timeliness of county grant applications and annual reports.

*The completeness of county grant applications and supporting data.

*The county's demonstrated ability, cooperation and commitment, including its commitment of staff and financial resources.

*The degree to which funded projects contribute to a coordinated soil and water resource management program and avoid duplication of effort.

*The degree to which funded projects meet county needs and state requirements.

*The degree to which county activities are consistent with the county's approved land and water resource management plan.

Basic Annual Staffing Grants to Counties

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

A county must use a basic annual staffing grant in the year for which it is made. The county may use the grant for any of the following purposes specified in the grant contract:

• Salaries, fringe benefits and training for county staff engaged in soil and water resource management activities.

• Training for county land conservation committee members.

• Any of the following staff support costs identified in the grant application:

*Travel expenses, including mileage charges, vehicle leases, meals, lodging and other necessary costs.

*Personal computers, software, printers and related devices.

*Office supplies, including paper, copies, printing and postage.

*Office equipment and furnishings, including desks, chairs, calculators, drafting equipment and file cabinets.

*Field equipment.

*A proportionate share of costs for required financial and compliance audits.

*Information and education supplies and services.

*Other staff support costs approved by DATCP.

DATCP may award different staffing grant amounts to different counties, based on DATCP's assessment of funding needs and priorities. Subject to staffing costs and the availability of funds, DATCP will attempt to provide salary and fringe benefit funding for an average of 3 staff persons per eligible county, with full funding for the first staff person, 70% funding for the second staff person and 50% funding for any additional staff persons.

Subject to the availability of funds, DATCP must award at least the following amounts to the following eligible counties:

• $12,000 to a county that has a county conservationist operating according to an agreement with DATCP.

• $7,000 to a county that does not have a county conservationist operating under an agreement with DATCP.

DATCP must pay the full amount of a basic annual staffing grant by April 15 of the grant year, or within 30 days after DATCP and the county land conservation committee sign the grant contract, whichever is later. DATCP may pay a portion of the grant at a later date if funding for that portion is appropriated for distribution during the grant year, but is not yet available for distribution on the normal distribution date. The department must pay that remaining portion when the funding becomes available for distribution. All grant funds must be distributed according to an annual grant allocation plan (see above).

In the county's annual financial report to DATCP, the county must report any unspent grant funds remaining at the end of the grant year. DATCP must deduct the unspent amount from the next year's basic annual staffing grant to the county.

In order to receive a basic annual staffing grant, a county must do all the following:

• If the basic annual staffing grant provides salary and fringe benefit funding for more than one county staff person, the county must provide funding equal to at least 30% of the salary and fringe benefit cost for the second staff person and 50% of the salary and fringe benefit cost for each additional staff person funded by the grant (see s. 92.14(5g), Stats.).

• The county must maintain its annual soil and water resource management expenditures at or above the amounts that the county expended in each of the years 1985 and 1986 (see s. 92.14(7), Stats.).

A county may count, as part of its contribution, expenditures for any county staff engaged in soil or water resource management work, regardless of whether those staff work for the county land conservation committee. A county may not count capital improvement expenditures, or the expenditure of grant revenues received from any outside source.

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

Grants for Conservation Practices

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

• Files with DATCP a copy of the county's cost–share contract with the landowner. The cost–share contract must comply with this rule (see above).

• Certifies the reimbursement amount due.

• Certifies, based on documentation filed in the county, that the cost–shared practice is properly designed, installed and paid for (see above).

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

• Conservation tillage.

• Contour farming.

• Cropland cover (green manure).

• Intensive grazing management.

• Nutrient or pesticide management.

• Strip–cropping.

DATCP may use cost–share funds to reimburse a county for technical services that the county provides in connection with a cost–shared practice. Reimbursement for county technical services may not exceed 15% of project cost. Bond revenues may not be used to pay for technical services provided by the county.

DATCP may not use cost–share grant funds to reimburse a county for costs incurred after December 31 of the calendar year for which the funds are allocated. Unspent funds remain with DATCP, for distribution under a future year's allocation plan. If a landowner signs a funded cost–share contract by November 1 of the initial grant year, but does not complete that contract in that grant year (e.g., because of bona fide construction delays), DATCP may extend funding to the next year. DATCP will normally extend funding if the county requests the extension by January 15 of that next year. DATCP will not extend funding for more than one year.

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

• Copies of all county cost–share contracts with landowners.

• Documentation to support each county reimbursement request to DATCP (see above).

• Documentation showing all county receipts and disbursements of grant funds.

• Other records needed to document county compliance with this rule and the grant contract.

A county land conservation committee must retain cost–share records for at least 3 years after the committee makes its last

cost–share payment to the landowner, or for the duration of the required maintenance period, whichever is longer. The committee must make the records available to DATCP and grant auditors upon request.

Priority Watershed Program; County and Local Staffing Grants

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

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

This rule spells out standards for priority watershed staffing grants. Staffing grants include support costs. A county is not required to provide matching funds for priority watershed staffing grants, as it is for other staffing grants. Within the limits of available funds transferred from DNR, DATCP will try to ensure continuity of staffing and support for continuing priority watershed projects. Staffing grants for priority watershed projects will be phased out as remaining projects are completed.

Agricultural Engineering Practitioners; Certification

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

Applying for Certification

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

Certification Rating

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

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

Appealing a Certification Decision

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

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

Reviewing Certification Ratings

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

Suspending or Revoking Certification

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

County and Local Ordinances

General

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

Counties and local entities must submit relevant ordinances for review. They need not obtain DATCP approval of their proposed ordinances, except that DATCP must approve agricultural shoreland management ordinances (see s. 92.17, Stats.). This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below).

Manure Storage Ordinances

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

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

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

Agricultural Shoreland Management Ordinances

A county, city, village or town may enact an agricultural shoreland management ordinance under s. 92.17, Stats., with DATCP approval. Current rules spell out standards for agricultural shoreland management ordinances. This rule adopts the current rules without change. DATCP must seek DNR and LWCB recommendations before it approves an ordinance or amendment, except that DATCP may summarily approve an ordinance amendment that presents no significant legal or policy issues.

Local Regulation of Livestock Operations

A local governmental unit may regulate livestock operations under s. 92.15, Stats. Local regulations must be consistent with this rule. A local regulation may not require a farmer to change or discontinue that part of a facility or practice that existed prior to the

effective date of this rule unless the farmer's cost is insignificant or the farmer receives at least 70% cost–share funding.

Waivers

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

Standards Incorporated by Reference

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

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

Fiscal Estimate

The proposed rule amends ATCP 3.02(1)(h), revising an administrative code reference; creates ATCP 40.11, related to nutrient management plan requirements for agricultural fertilizer sales; and repeals and recreates ch. ATCP 50, Wis. Adm. Code, interpreting Ch. 92, Stats., regarding the state's soil and water resource management program and the department's role in s. 281.16, Stats., related to water quality protection from nonpoint sources. The proposed rule incorporates changes to Ch. 92, and s. 281.16, Stats., made by 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9, the past two biennial budget bills.

Impact of the Rule Revision on County Governments

The proposed rule establishes procedures and requirements for counties that prepare land and water resource management plans under s. 92.10, Stats. The initial plans were approved for two to three year periods. The next round of plans is expected primarily in 2001 and 2002. The department allocated an average of $2 million per year in 1999 and 2000 to counties to implement their land and water resource management plans. The department also allocates about $3.7 million annually (final allocation plan for 2000) to counties for basic annual staffing grants. The county's staff costs for preparing the county plans are eligible activities under these basic annual staffing grants.

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

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

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

	Low Cost	**High Cost**
Total Staff Needed Over Ten–year Implementation	1,786	4,218
Annual Staff Needs for Implementation	179	422
75% of Need From Redirecting Current Staff	134	317
Difference Which Estimates Annual Additional Staff Needs	45	105
Estimated Annual Cost (Assuming $45,000 per staff per year)	$20 million	$4.7 million

The department recognizes that current workload analysis shows that from the estimates made by the USDA Natural Resources Conservation Service, with assistance from counties, that there is already an unmet staff need to implement current programs.

If less than 75% of the needed staff to implement the performance standards and prohibitions were from redirecting current staff, the staff costs would increase proportionately. The result of redirecting these current staff would result in fewer staff available to implement current programs. Especially, those programs that do not directly or indirectly implement the agricultural performance standards and prohibitions. The department believes the low cost estimate for this fiscal estimate is more accurate. The department believes the low cost is more accurate, because these estimates do not include the staffing contributions made by the federal government.

Impact of the Rule Revision to State Government

1999 Wis. Act 9, the biennial budget bill, transfers $170,000 in fiscal year 1999–2000 and $190,000 in 2000–2001 from the Department of Natural Resources (DNR) to the department for three staff positions. These staff will work on the new responsibilities

resulting from the budget and the redesign of the state's nonpoint source programs. The department is assuming responsibilities to implement the agricultural component of DNR's nonpoint source program.

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

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

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

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

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

Initial Regulatory Flexibility Analysis

General Overview

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

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

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

Farmers

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

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

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

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

	Ten–Year Low Cost	Ten Year High Cost
Farmer's costs (30%)	$ 36,450,000	$ 89,910,000
State's costs (70%)	$ 85,050,000	$209,790,000
Total	$121,500,000	$299,700,000

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

	Ten–Year Low Cost	Ten Year High Cost
Farmer's costs	$2,700,000	$ 5,400,000
State's costs	$6,300,000	$12,600,000
Total	$9,000,000	$18,000,000

3. Proposed performance standard: Soil loss from any portion of cultivated fields located within water quality management areas that drain to navigable surface waters shall not exceed 0.33 of tolerable soil loss ("T")

	Ten–Year Low Cost	Ten Year High Cost
Farmer's costs	$ 739,440	$11,091,600
State's costs	$1,725,360	$25,880,400
Total	$2,464,800	$36,972,000

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

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

	Ten–Year Low Cost	Ten Year High Cost
Farmer's costs (30%)	$ 4,500,000	$ 7,500,000
State's costs (70%)	$10,500,000	$17,500,000
Total	$15,000,000	$25,000,000

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

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

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

Nutrient Management Planning

	Ten–Year Low Cost	Ten Year High Cost
Farmer's costs 30%	$ 85,500,000	$ 97,500,000
State's costs 70%	$199,500,000	$227,500,000
Total	$285,000,000	$325,000,000

Required Manure Storage

	Ten–Year Low Cost	Ten Year High Cost
Farmer's costs	$ 21,661,500	$28,875,000
State's costs	$ 50,543,500	$67,375,000
Total	$ 72,205,000	$96,250,000

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

	Ten–Year Low Cost	Ten Year High Cost
Farmer's costs 30%	$ 36,904,800	$ 38,750,040
State's costs 70%	$ 86,111,200	$ 90,416,760
Total	$123,016,000	$129,166,800

Because the estimated costs are so large, much of the required work may not get done, or at least it will not get done in the immediate future. The law requires that at least 70% cost sharing must be provided before a farmer may be required to do work to meet a performance standard. Therefore, the governing factor determining what a farmer must do is the amount of cost–share dollars the state has available each year. DATCP currently has approximately $3,000,000 in cost–share funds. Added to the farmers' share, this will install about $4,300,000 worth of conservation practices each year. The average grant amount for a contract issued by the department is between $15,000 and $20,000. If the department's cost–share funding stays at approximately $3,000,000, the total number of farmers that we will be able to work with will be between 150 and 200 each year. In their land and water resource management plans, counties may find different ways to reach more people with the available cost–share dollars.

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

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

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

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

More state and landowner funds will likely be spent on preparing nutrient management plans, thereby increasing business opportunities for this industry. By 2006, all cropland acres will be required to be following nutrient management plans. As many as nine to ten million cropland acres could require nutrient management plans at an average cost of between six and ten dollars an acre.

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

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

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

Construction contractors

Statewide, the impact of this proposed rule on construction contractors will differ from what it has been in the past. There will be no different professional skills required and no increase in

reporting and record–keeping requirements. The main impact of this proposed rule on contractors will be the redistribution of projects across the state. This may not affect large contractors who are more mobile and can set up branch offices, but smaller, less mobile operations may see a negative impact.

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

Draft Environmental Assessment

The department has prepared a draft environmental assessment for this proposed rule. Copies are available from the department upon request and will be available at the public hearings. Copies of the environmental assessment can from: Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, WI 53708–8911; telephone 608/224–4620. The department will accept comments on the draft environmental assessment at the public hearings and will accept written comments on the environmental assessment until April 14, 2000.

Notice of Hearings

Dept. of Commerce
(Anhydrous Ammonia, Ch. Comm 43)
[CR 00–38]

Notice is hereby given that pursuant to ss. 101.02 (15) (h) to (j) and 101.17, Stats., the Department of Commerce announces that it will hold public hearings on proposed rules repealing and recreating ch. Comm 43, relating to anhydrous ammonia.

Hearing Information

The public hearings will be held as follows:

Date & Time	Location
March 16, 2000 **Thursday** **10:00 a.m.**	**Room 3C** **Thompson Commerce Ctr.** **201 West Washington Ave.** **MADISON, WI**
March 17, 2000 **Friday** **11:00 a.m.**	**Room 105** **Eau Claire State Office Bldg.** **718 West Clairemont Ave.** **EAU CLAIRE, WI**

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or TTY at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Written Comments

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rule–making will remain open until **March 31, 2000**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (15) (h) to (j) and 101.17

Statutes interpreted: ss. 101.02 (15) (h) to (j) and 101.17

The Division of Safety and Buildings within the Department of Commerce is responsible for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. Chapter Comm 43 contains minimum safety standards for the design, construction, installation, operation, inspection, repair and maintenance of anhydrous ammonia systems.

The proposed rules consist of a complete update of ch. Comm 43 in order to bring the chapter up to date with current technology and nationally recognized standards. The current ch. Comm 43 is basically a rewritten version of a previous edition of the American National Standards Institute (ANSI) Safety Requirements for the Storage and Handling of Anhydrous Ammonia, ANSI K61.1, published by the Compressed Gas Association. The proposed rules contain the incorporation by reference of the 1999 edition of the ANSI K61.1 standard rather than rewriting it. The proposed new ch. Comm 43 also contains the same administration and enforcement provisions as the recently adopted new ch. Comm 40 for gas systems.

Although ch. Comm 43 generally applies only to new installations, the proposed rules contain one new retroactive rule and retain one existing retroactive rule from the current code. The new retroactive rule requires a working platform to be constructed at existing installations within one year from the effective date of the proposed rules. The current retroactive rule was effective on November 1, 1999, and requires a breakaway device to be installed at existing installations by January 1, 2001.

The proposed rules have been developed with the assistance of the Anhydrous Ammonia Code Advisory Council. The members of that citizen advisory council are as follows:

Name	Representing
Ed Aldridge	Growmark, Inc.
Bruce Barganz	Wisconsin Fertilizer & Chemical Association
Tim Clay	Wisconsin Federation of Cooperatives
Donald Healy	Wisconsin Agri–Service Association
Art Herschberger	Wisconsin Propane Gas Association
Bruce Kleespie	Kleespie Tank & Petroleum Equipment
Gene Reece	Wisconsin State Fire Chiefs Association

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with ch. Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules:

The rules will affect any business involved with the design, construction, installation, operation, inspection, repair or maintenance of anhydrous ammonia systems.

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

There are no new reporting or bookkeeping procedures required for compliance with the rules.

3.Types of professional skills necessary for compliance with the rules:

There are no types of professional skills necessary for compliance with the rules.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing the current rules for anhydrous ammonia systems. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing those rules. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Local municipalities may voluntarily enforce the rules for anhydrous ammonia systems, and they have the authority to offset any costs by charging appropriate fees.

Copies of Rules and Contact Information

A copy of the proposed rules may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearings.

Notice of Hearing

Department of Employment Relations (Division of Merit Recruitment and Selection) [CR 99–167]

Notice is hereby given that pursuant to s. 230.05(5), Stats., and interpreting s. 230.05(1), Stats., the Division of Merit Recruitment and Selection in the Department of Employment Relations will hold a public hearing at the time and place shown below to consider the creation of permanent rules relating to the provision of examination materials to hiring authorities and the removal of candidates from employment registers for failure to attend interviews.

Hearing Information

March 17, 2000	**Dept. of Employment**
Friday	**Relations**
10:00 A.M. to 11:00 A.M.	**345 West Washington Ave.**
	3rd Floor Training Room
	Madison, WI 53703

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

Written comments on the rules may be sent to the contact person by **March 21, 2000**. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

A copy of the rule is printed below.

Analysis Prepared by the Department of Employment Relations

This rule order is intended to give hiring managers additional information when interviewing certified candidates for a position and to facilitate the interview for candidates. Currently the Division of Merit Recruitment and Selection may not release narrative information supplied by candidates on examinations to hiring managers. Such information as details of a candidate's qualifications or experience, answers to essay questions, resumes when submitted in competition for a position are considered examination information that is confidential under s. ER–MRS 6.08 (2). Candidates may assume that the hiring manager has this information and neglect to offer it again.

This new section in s. ER–MRS 6.08 would permit the Division to pass on to hiring managers candidate information gathered in the examination phase of the recruitment.

The amendment to s. ER–MRS 11.04 (1) is also intended to facilitate the interviewing of potential candidates for positions. This change will allow the Administrator of Merit Recruitment and Selection to remove an individual from the list of qualified candidates for a position if the individual fails to appear for an agreed interview without giving a valid reason. This change will allow the Administrator to clear obviously disinterested individuals from the list and facilitate certifying *interested* candidates.

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

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

2. The specific statutory authority to examine the qualifications of applicants for positions in the civil service is found in s. 230.15(1).

3. Section 230.17 grants the Administrator authority to refuse certification to a candidate.

Text of Proposed Rule

SECTION 1. ER–MRS 6.08 (2) is amended to read:

ER–MRS 6.08 (2) ~~Examination~~ Except as provided in sub. (3), examination information which may not be released includes but is not limited to the following:

SECTION 2. ER–MRS 6.08(3) is created to read:

ER–MRS 6.08 (3) For certified individuals, the administrator may release to the appointing authority the following examination information, but only after the employment interview questions have been finalized:

(a) Narrative responses to open–ended examination questions such as essay or achievement history.

(b) Tapes of oral examinations.

(c) Resumes, letters of interest, and other narrative examination material provided by the certified candidates as long as the materials released do not contain scores, comments, ratings, or other evaluations.

SECTION 3. ER–MRS 11.04 (1) (h) is created to read:

ER–MRS 11.04 (h) *Failure to appear for scheduled interview.* When a person does not appear for a mutually agreed upon scheduled interview and does not provide a valid reason for such failure to appear within 5 work days of the interview date.

Fiscal Estimate

Supplying relevant information about candidates to hiring managers will speed the interviewing process and so save time for state agencies.

The removal of individuals who are not interested in interviewing for a positions from the list of candidates will also speed the hiring process and save time for state agencies. These changes will have no dollar impact.

Contact Person

Elizabeth Reinwald
Department of Employment Relations
345 West Washington Avenue
Madison, WI 53703

Elizabeth.Reinwald@der.state.wi.us
608–266–5316

Notice of Hearing

Insurance

[CR 00–40]

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 6.59 (4) (av), Wis. Adm. Code, relating to the exemption of attorneys seeking licensure for title insurance from certain testing requirements.

Hearing Information

March 22, 2000	**Room 6, OCI**
Wednesday	**121 East Wilson Street**
10:00 a.m., or as soon thereafter as the matter may be reached	**Madison, WI**

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

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

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

Contact Person

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at **http://www.state.wi.us/agencies/oci/ocirules.htm** or by contacting Tammi Kuhl, Services Section, Office of the Commissioner of Insurance, at (608) 266–0110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707–7873.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1–)

[CR 00–31 and CR 00–33]

Notice is hereby further given that pursuant to ss. 29.014, 29.041 and 227.11(2)(a), Stats., interpreting ss. 29.014, 29.041 and 29.177, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10, 11, 15 and 16, Wis. Adm. Code, relating to hunting, trapping and captive wildlife. The proposed rules:

1. Eliminate the New Auburn subzone for migratory birds.

2. Establish a mourning dove hunting season, daily bag limit and possession limit; remove the mourning dove from the protected animal list and require non–toxic shot for hunting of mourning doves.

3. Establish a snowshoe hare hunting season, daily bag limit and possession limit.

4. Allow unfilled gun deer licenses to be used during the muzzleloader deer season and allow deer of either sex to be harvested with the unfilled deer tag in the Mississippi River block units during the muzzleloader season.

5. Change the area closed to coyote hunting during the gun deer season.

6. Create hunting hour areas and zones to more accurately reflect the intended opening and closing time.

7. Establish hunting hours for gun bear, bow deer, deer with firearms and small game.

8. Repeal old hunting hours table.

9. Allow the same cartridges that are legal to hunt deer or bear in a rifle to be legal in a handgun.

10. Lengthen legal trapping hours.

11. Establish timely registration of bobcat, fisher and otter harvest.

12. Create wolf management zones.

13. Modify the Horicon zone boundary.

14. Add portions of Eau Claire and Pepin counties to the pheasant management zones.

15. Eliminate the Pine Island wildlife refuge.

16. Create a closed season for resting waterfowl in the Winx Flowage area.

17. Require game farm mute swans to be penned or sterlilized.

Notice is hereby given that pursuant to ss. 29.014(1), 29.041 and 227.11(2), Stats., interpreting ss. 29.014(1) and 29.041, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 20, 22 and 26, Wis. Adm. Code, relating to fishing regulations on inland and boundary waters and fish refuges on inland waters. The proposed rules:

1. Add several streams and stream reaches to the definition of "Lake Michigan tributaries" to include waters that are accessible to anadromous trout and salmon.

2. Modify the special early catch and release trout season.

3. Establish special regulations for walleye, sauger and their hybrids, largemouth and smallmouth bass, and catfish in Yellowstone lake, Lafayette county, with a daily bag limit of 2 of these species in total, with a minimum length limit of 12"and a maximum length limit of 14".

4. Establish a minimum length limit of 18" and a daily bag limit of one for largemouth and smallmouth bass on Christner lake, Sawyer county.

5. Reduce the daily bag limit from 25 in total to 10 in total for panfish on Chetac, Birch, Christner, Moose and Nelson lakes, Sawyer and Washburn counties.

6. Establish a minimum length limit of 18" and a daily bag limit of one for largemouth and small bass on Big and Little Gerber lakes, Sheboygan county.

7. Establish a minimum length limit of 18" and a daily bag limit of one for largemouth and smallmouth bass on Lake Twelve; establish a 40–inch minimum length limit with a daily bag limit of one for northern pike on Beg Cedar and Gilbert lakes, and reduce the daily bag limit from 25 in total to 10 in total for panfish on Lake Twelve, Washington county.

8. Extend the prohibition on night fishing and on hook with gaps larger than one–half inch on Lake Michigan tributaries by one month, beginning on September 1 rather than October 1, and prohibit fishing in any manner from one–half hour after sunset to one–half hour before sunrise on Lake Michigan tributaries during the period from September 1 to December 31.

9. Establish a closed season from April 2 to May 21 for yellow perch in Lake Superior.

10. Establish a minimum length limit of 26" and a daily bag limit of 2 for northern pike on Lake Michigan waters south of a line running east from the eastern terminus of Waldo boulevard in the city of Manitowoc and on the entire Manitowoc river.

11. Establish a minimum length limit of 15 inches and a daily bag limit of 5 for walleye, sauger and hybrids on Lake Michigan waters south of U.S. highway 10.

12. Establish a daily bag limit of 25 of each species for white or yellow bass, crappies, rock bass, sunfish or bluegills and yellow perch on the Wisconsin–Iowa boundary waters.

13. Establish a fish refuge from March 1 to the Friday preceding the first Saturday in May on the Lake Hallie outlet stream, Chippewa county.

14. Establish a fish refuge from July 15 to October 31 on the Bayfield Hatchery outlet ditch, Bayfield county.

15. Establish a fish refuge on Yellowstone lake sub–impoundment and rearing pond, Lafayette county, at any time while posted closed to fishing with department signs.

Initial Regulatory Flexibility Analysis

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

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

Hearing Information

At **7:00 p.m. on April 10, 2000**, the County Conservation Congress for each county will hold its election of delegates. Upon completion of the delegate election, the joint spring hearing/Conservation Congress meeting will convene to take comments on the above rule modifications.

Notice is hereby further given that the hearings will be held on **Monday, April 10, 2000 at 7:00 p.m.** in the following locations:

Adams	**Adams Co. Courthouse County Board Room 402 Main St. Friendship**
Ashland	**Ashland High School 1900 Beaser Ave. Ashland**
Barron	**Barron Co. Courthouse Auditorium 303 E. LaSalle Barron**
Bayfield	**Bayfield Co. Courthouse Board Room 117 E. 5th Washburn**
Brown	**Franklin Middle School Auditorium 1234 W. Mason St. Green Bay**
Buffalo	**Alma Area High School Auditorium S1618 STH '35' Alma**
Burnett	**Burnett County Government Center 7410 Co. Rd. K Siren**
Calumet	**Calumet County Courthouse Room 025 206 Court Street Chilton**
Chippewa	**Chippewa Falls Middle School Auditorium A 750 Tropicana Blvd. Chippewa Falls**
Clark	**Greenwood Elementary School Cafeteria 708 E. Division Greenwood**
Columbia	**Columbia County Admin. Building Basement 400 De Witte St. Portage**
Crawford	**Crawford County Courthouse Circuit Courtroom Prairie du Chien**
Dane	**Dane County Expo Center Madison**
Dodge	**Horicon Senior High School 841 Gray St. Horicon**
Door	**Door County Courthouse Room A150 421 Nebraska Sturgeon Bay**
Douglas	**Superior High School 2600 Catlin Ave. Superior**
Dunn	**Dunn County Fish/Game Club 1900 Pine Ave. Menomonie**
Eau Claire	**Eau Claire Co. Exposition Center 5530 Fairview Dr. Eau Claire**
Florence	**DNR Natural Resources Center Lower Large Conf. Room Hwys. 2 & 101 Florence**
Fond du Lac	**Theisen Jr. High School Auditorium 525 E. Pioneer Rd. Fond du Lac**
Forest	**Crandon Elementary School 9750 U.S. Hwy. 8 Crandon**
Grant	**Lancaster High School Hillary Auditorium 806 E. Elm Street Lancaster**
Green	**Pleasant View Annex Auditorium N3150 Hwy. 81 Monroe**
Green Lake	**Green Lake High School Multi Purpose Room 612 Mill St. Green Lake**

Iowa	Dodgeville Elementary School Gymnasium 404 N. Johnson Dodgeville
Iron	Iron County Courthouse Hurley
Jackson	Jackson County Courthouse County Board Room 307 Main Black River Falls
Jefferson	Jefferson Public Library 321 S. Main St. Jefferson
Juneau	Juneau County Courthouse Courtroom 220 E. State St. Mauston
Kenosha	Kenosha County Center Hearing Room 19600 75th St. Bristol
Kewaunee	Kewaunee County Courthouse 613 Dodge St. Circuit Court Room 212 Kewaunee
La Crosse	Onalaska High School Auditorium 700 Hilltop Pl. Onalaska
Lafayette	Darlington Community High School Cafeteria 11838 Center Hill Rd. Darlington
Langlade	Langlade County Courthouse Courtroom 800 Clermont Antigo
Lincoln	Merrill High School 1201 North Sals St. Merrill
Manitowoc	UW Center–Manitowoc Room E125 705 Viebahn St. Manitowoc
Marathon	Marathon High School Auditorium 204 East St. Marathon
Marinette	Wausaukee High School Cafeteria N11941 Hwy. 141 Wausaukee
Marquette	Marquette County Courthouse 77 W. Park Montello
Menominee	Menominee County Courthouse Basement Meeting Room Keshena
Milwaukee	Nathan Hale High School Auditorium 11601 W. Lincoln Ave. West Allis
Monroe	Sparta High School Auditorium 506 N. Black River St. Sparta
Oconto	Suring High School Cafeteria 411 E. Algoma Suring
Oneida	James William Junior High 915 Acacia Lane Rhinelander
Outagamie	Jefferson High School 1000 S. Mason Street Appleton
Ozaukee	American Legion Hall 435 N. Lake Street Port Washington
Pepin	Pepin County Government Center County Board Room 740 7th Ave. W., Durand
Pierce	Ellsworth Senior High School Auditorium 323 Hillcrest Ellsworth
Polk	Polk Co. Government Center 100 Court Plaza Balsam Lake
Portage	Ben Franklin Junior High School Auditorium 2000 Polk St. Stevens Point
Price	Price County Courthouse County Board Room Phillips
Racine	Union Grove High School 3433 S. Colony Ave. Union Grove
Richland	Richland County Courthouse Circuit Court Room Richland Center
Rock	Rock County Health Care Center Auditorium 3530 N. Hwy F. Janesville
Rusk	Ladysmith High School Auditorium Ladysmith
St. Croix	WI Indianhead Technical College Cashman Auditorium 1019 S Knowles Ave. New Richmond

Sauk	**UW – Baraboo Campus A4 Lecture Hall 1006 Connie Rd. Baraboo**
Sawyer	**Winter High School Auditorium Winter**
Shawano	**Shawano Middle School 1050 S. Union St. Room LGI Shawano**
Sheboygan	**Sheboygan Falls High School Cafeteria 220 Amherst Ave. Sheboygan Falls**
Taylor	**Taylor County Fairgrounds Multi–purpose Bldg. Medford**
Trempealeau	**Whitehall City Center Community Room 36245 Park St. Whitehall**
Vernon	**Viroqua Middle School Large Lecture Room Blackhawk Drive Viroqua**
Vilas	**Plum Lake Community Building Golf Course Rd. Sayner**
Walworth	**National Guard Armory 401 E. Fair St. Elkhorn**
Washburn	**Agriculture Research Station Hwy. 70E Spooner**
Washington	**UW–Washington County Campus Theater 400 University Dr. West Bend**
Waukesha	**Waukesha County Expo Center 4848 Northview Rd. Waukesha**
Waupaca	**Baymont Inn and Suites 110 Grand Seasons Dr. Waupaca**
Waushara	**Waushara County Courthouse 209 S. St. Marie Wautoma**
Winnebago	**Oshkosh North High School Auditorium 1100 W. Smith Oshkosh**
Wood	**Pittsville High School Auditorium 5407 1st Ave. Pittsville**

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 Candy Knutson at (608) 267–3134 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rules may be submitted to Mr. Al Phelan, Conservation Congress Liaison, P.O. Box 7921, Madison, WI 53707 no later than **April 14, 2000**. Written comments will have the same weight and effect as oral statements presented at the hearings. Written comments will NOT, however, be counted as spring hearing votes.

Copies of Rule and Contact Information

A copy of the proposed rules [WM–1–00] and [FH–4–00] and fiscal estimates may be obtained from Ms. Candy Knutson, Bureau of Legal Services, P.O. Box 7921, Madison, WI 53707 or by calling (608) 267–3134.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearing

Natural Resources
(Fish, Game, etc., Chs. NR 1–)
[CR 00–32]

Notice is hereby given that pursuant to ss. 29.014, 29.089, 29.327, 29.053(3) and 227.11(2)(a), Stats., interpreting ss. 29.014, 29.089, 29.327 and 29.053(3), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 10, Wis. Adm. Code, relating to hunting, trapping and wildlife research. The changes involve clarifications, definitions, increasing management efficiency and altering limitations on hunters.

1. In order to have control over the placement and subsequent removal of waterfowl hunting blinds, owners are required to put their names on the blind. The requirement of placing only a name on the blind is not adequate to help locate a person violating this section. This proposal requires all blinds on state–owned property to be permanently labeled with the owner's name and address in English letters one–inch square or larger.

2. Current rules allow for the registration of fisher and bobcat in whole condition, without pelt removal, if plans are to have a taxidermist mount the animal. This proposal adds otters to the existing rule. Currently rules also do not specify a return time for department receipt of necessary carcasses. This proposal establishes a 30–day requirement.

3. A proposal adds bobcat to an existing rule which requires a registration tag to be locked to the head of the pelt prior to transferring, giving, trading, selling or purchasing the pelt.

4. Clarifies the current rule on state park deer seasons applies only to those portions of the referenced state parks which are owned by the department.

5. The current rule regarding disabled hunts and special hunt authorizations does not specifically describe what tags may be used during these hunts. Currently zone T tags cannot be used during a disabled hunt. This proposal authorizes zone T permits to be filled during disabled hunts.

6. Allows for research to be conducted on lands and waters of the university of Wisconsin arboretum and university bay. The university shall provide a list of research projects annually for Department approval.

Initial Regulatory Flexibility Analysis

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

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may

prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

Notice is hereby further given that the hearing will be held on:

March 14, 2000	**Room 611A, GEF #2**
Tuesday	**101 S. 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 Pat Beringer at (608) 261–6452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Information

Written comments on the proposed rule may be submitted to Mr. Pat Beringer, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **March 15, 2000**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WM–2–00] and fiscal estimate may be obtained from Mr. Beringer.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearing

Natural Resources
(Environmental Protection– General, Chs. NR 100–)
[CR 00–29]

Notice is hereby given that pursuant to ss. 295.12, 295.20(4) and 227.11(2)(a), Stats., interpreting subch. I of ch. 295, Stats., the Department of Natural Resources will hold a public hearing on the creation of ch. NR 135, Wis. Adm. Code, relating to nonmetallic mining reclamation.

Agency Analysis

The proposed rule establishes a statewide system of county and locally administered reclamation programs for nonmetallic mines, to be funded by fees on active nonmetallic mines. The proposed rule contains 6 subchapters: subchapter I on the purpose and scope of the rule, applicability, definitions and its relationship to other environmental and land use regulations; subchapter II establishes the statewide standards to ensure that successful reclamation of all nonmetallic mining sites is achieved; subchapter III establishes a framework for issuing reclamation permits for all nonmetallic mining sites that are active on or active 8 months following the effective date of this chapter; subchapter IV details the responsibilities of regulatory authorities who administer nonmetallic mining reclamation programs; subchapter V details the oversight and assistance responsibilities of the department; and subchapter VI establishes requirements and procedures for registering marketable nonmetallic mineral deposits in order to preserve these resources for future mining.

Public hearings on this rule have been previously held in April and May of 1995 and May of 1998. The rule was adopted by the Natural Resources Board on December 8, 1999. However, due to the provisions of s. 227.14(6)(c), Stats., the rule was considered "withdrawn" when legislative review had not been completed by December 31 of the fourth year after it was submitted to the Legislative Council Rules Clearinghouse (i.e., by December 31, 1999). Therefore, the Department of Natural Resources is scheduling another public hearing on this rule prior to its promulgation.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.14, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Nonmetallic mines

b. Description of reporting and bookkeeping procedures required: Permit application, fees based on the currently mined acreage, need to obtain either a surety bond or some other method of financial assurance.

c. Description of professional skills required: Expertise in geology, engineering, agronomy or environmental science (such as ecology) may be required for the preparation of some reclamation plans particularly those of a complex nature. Expertise in civil engineering or geology will be required to identify and delineate nonmetallic mineral deposits for registration.

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

Hearing Information

Notice is hereby further given that the hearing will be held on:

March 13, 2000	**Room 511, GEF #2**
Monday	**101 S. Webster St.**
at 10:00 a.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 Tom Portle at (608) 267–0877 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Information

Written comments on the proposed rule may be submitted to Mr. Tom Portle, Bureau of Waste Management, P.O. Box 7921, Madison, WI 53707 no later than **March 17, 2000**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [SW–18–95] and fiscal estimate may be obtained from Mr. Portle.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

State Government Costs:

The total annualized cost to state government is estimated to be $172,000.00. This estimate is based on the following assumptions:

1. Fees will be collected from mine operators by the county and local government regulatory authorities who will forward the Department's portion. All Department costs will be covered by these fees.

2. All counties will promptly enact and enforce an ordinance which establishes a program to ensure compliance with the uniform reclamation standards contained in this rule. Counties and local governments who enact an ordinance and administer a nonmetallic mining reclamation program will collect fees and forward these fees to the Department in a timely manner.

3. The Department workload under the above assumptions will be limited to 3.0 FTE as authorized in the 1997–99 biennial budget.

Local Government Costs:

The total estimated annualized costs to local government is estimated to be $660,000. This estimate is based on the following assumptions:

1. All costs to county and local government will be covered by annual permit fees and by plan review fees as authorized by legislation. County and local fees must be established by ordinance.

2. Counties and local government will regulate about 2,000 nonmetallic mining operations by permit. It is assumed that continuing annual costs for county and local program administration of nonmetallic mining reclamation permit programs including operator assistance, fee collection, site inspections and compliance activities and recordkeeping will be 12 hours per permit per year. If the average county or local government employee cost is equal to $50,000 per year per employee for salary, fringe and travel, then the statewide annualized county and local government costs can be estimated as follows:

12 hrs./permit x 2,000 mines = 24,000 hrs./yr. statewide

24,000 hrs. / 1820 hrs. (available per employee per year) = 13.2 FTE statewide

$50,000 per FTE x 13.2 FTE = per year statewide = $660,000

These costs would be offset by equivalent county and local revenue from fees on active nonmetallic mining operations.

In addition to the continuing costs documented above, there will be one–time costs for county and local governments to review reclamation plans for existing mines. All existing mines are required to submit and have approved an approved reclamation plan. This must occur during the first 3 years of the program. It is assumed that 75% of existing mines will have no existing reclamation plan or one which requires major revision to meet the standards in ch. NR 135. For these 1500 mines, it is estimated that the costs will average 30 hours of staff time per plan. For the remaining 25% of the mines, it is assumed that there is an existing plan which may require minor modification and updating, but for which there is a significantly smaller workload. For these 500 mines, it is estimated that the costs will average 8 hours of staff time per plan. Therefore, the total one–time costs can be estimated as follows:

(30 hrs./mine x 1500 mines) + (8 hrs./mine x 500 mines)

= 45,000 hrs. + 4,000 hrs. = 49,000 hrs.

(49,000 hrs.) / 1820 hrs./FTE = 26.9 FTE

(26.9 FTE) x (50,000/FTE) = $1,346,000

or $1,346,000/3 = $449,000 for a one–time cost (for the initial 3 year period)

These one–time plan review costs will be offset by revenue from plan review fees or temporary surcharges permit surcharges.

Notice of Hearings

Natural Resources
(Environmental Protection– General, Chs. NR 100–)
[CR 00–30]

Notice is hereby given that pursuant to ss. 281.70 and 227.11(2)(a), Stats., interpreting s. 281.70, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 195, Wis. Adm. Code, relating to river protection grants.

Agency Analysis

1999 Wis. Act 9 created s. 281.70, Stats., which requires the department to establish river protection grants and promulgate rules for their administration. The law specifically requires the department to promulgate rules to implement a financial assistance program for units of local government, nonprofit conservation organizations and qualified river management organizations for planning and implementing river protection projects.

The department is required to cost share up to 75% for the cost of river planning grants of up to a maximum of $10,000 and river management grants of up to a maximum of $50,000. It lists, in detail, the general types of eligible planning and management activities the department shall fund including activities that help persons form local river management organizations. In addition to establishing the rules necessary for the general administration of a grant program, it directs the department to specifically establish rules for the conditions a river management organization must meet to be qualified to receive grants, designating eligible grant activities and establishing the types of rivers eligible for grants.

Initial Regulatory Flexibility Analysis

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

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

Notice is hereby further given that pursuant to ss. 281.70, 227.11(2)(a) and 227.24, Stats., interpreting s. 281.70, Stats., the Department of Natural Resources will hold public hearings on Natural Resources Board Emergency Order No. FH–5–00(E) relating to river protection grants. This emergency order took effect on February 17, 2000. This emergency order created ch. NR 195 implementing the river protection grant program.

Hearing Information

Notice is hereby further given that the hearings will be held on:

March 16, 2000 Thursday at 6:30 p.m.	**Conference Room DNR Service Center 107 Sutliff Avenue Rhinelander**
March 17, 2000 Friday at 4:00 p.m.	**Room 417, GEF #2 101 S. Webster Street Madison**
March 21, 2000 Tuesday at 4:00 p.m.	**Room 124, DOT Building 2000 Pewaukee Road Waukesha**
March 22, 2000 Wednesday at 7:00 p.m.	**Conference Room DNR Headquarters 1300 W. Clairemont Ave. Eau Claire**

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 Carroll Schaal at (608) 261–6423 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Information

Written comments on the proposed and emergency rules may be submitted to Mr. Carroll Schaal, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **March 24, 2000**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH–5–00E and FH–6–00] and fiscal estimate may be obtained from Mr. Schaal.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearings

Natural Resources
(Environmental Protection– General, Chs. NR 100–)
(Environmental Protection– WPDES, Chs. NR 200–)
[CR 00–25, 00–26, 00–27, 00–28, 00–34, 00–35, 00–36]

Notice is hereby given that pursuant to ss. 92.15, 227.11(2)(a), 281.16, 281.19, 281.33(4), 281.41, 281.65, 283.001, 283.11, 283.13, 283.31 and 283.37, Stats., interpreting ss. 92.15, 281.11, 281.12, 281.16, 281.19, 281.20, 281.33, 281.41, 281.65, 281.66, 281.96, 281.97, 281.98, 283.001, 283.11, 283.13, 283.19, 283.31, 283.33, 283.37, 283.53, 283.55, 283.59, 283.63 and 283.83, Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of ch. NR 120, Wis. Adm. Code, relating to the priority watershed management program, the creation of ch. NR 151, Wis. Adm. Code, relating to runoff management performance standards and prohibitions, the creation of ch. NR 152, Wis. Adm. Code, relating to model ordinances for construction site erosion control and storm water management, the creation of ch. NR 153, Wis. Adm. Code, relating to the runoff management grant program, the creation of ch. NR 154, Wis. Adm. Code, relating to best management practices, conditions and technical standards, revisions to ch. NR 216, Wis. Adm. Code, relating to storm water discharge permits, and the repeal and recreation of ch. NR 243, Wis. Adm. Code, relating to animal feeding operations.

Agency Analysis

Chapter NR 120 is the rule under which the department currently administers the nonpoint source water pollution abatement program. The chapter specifies the process to select, plan and implement priority watershed and priority lake projects to reduce nonpoint source pollution in both urban and rural areas. The rule also includes a mandatory component in which critical sites of nonpoint source pollution must be addressed, and the procedures to administer the grants for cost–sharing best management practices and for technical and other assistance.

Chapter NR 120 as recreated contains significant changes in three main areas including scope of the chapter, cost–share administration and critical sites administration. There are three main changes in the scope of the rule. The process for selecting priority watershed and lake projects has been eliminated entirely, pursuant to s. 281.65(3m), Stats. Provisions dealing with rural local assistance grants have been deleted and moved to ch. ATCP 50 for administration by the Department of Agriculture, Trade and Consumer Protection. Provisions dealing with urban nonpoint source grants have been deleted and moved to ch. NR 153. The section of existing ch. NR 120 that identifies best management practices eligible for cost sharing and applicable cost share conditions, has been moved and will be ch. NR 154. This change is made solely for administrative purposes. Significant changes in cost share administration include an increase in priority watershed project periods, changes in cost share rates for several best management practices, more detailed criteria for establishing economic hardship and restrictions on cost share reimbursements to rural grantees that exceed the expenditure amounts established by the department. Changes in critical sites administration include added flexibility in the notification schedule and an explicit requirement that grantees cover all critical sites needs provided that adequate cost sharing is made available by the department.

Chapter NR 151 is a new chapter that establishes runoff pollution performance standards for non–agricultural facilities and practices and performance standards and prohibitions for agricultural facilities and practices. The chapter also establishes performance standards for transportation facilities, and implementation and enforcement provisions for the performance standards and prohibitions. These standards are intended to be minimum standards of performance designed to achieve water quality standards. In some areas of the state, where the performance standards may not achieve the desired water quality, the chapter proposes a process to establish, by rule, more site specific targeted performance standards. Pursuant to s. 92.15, Stats., the code also includes requirements for department review of local livestock operation ordinances that exceed state performance standards and prohibitions for agricultural sources of pollution. The chapter finally specifies a process for the development and dissemination of department technical standards to implement the nonagricultural performance standards.

Chapter NR 152 is a new chapter intended to secure voluntary uniformity of regulations that affect municipalities. It contains model ordinances for both storm water management and for construction erosion control sites that do not include the construction of a building in accordance with s. 281.33, Stats. This statute also requires the department to distribute copies of the model ordinances upon request. Adoption of the ordinances on the part of local units of government is voluntary. However, the ordinances may assist communities that wish to meet anticipated requirements of "qualifying local programs" expected to be created in Wisconsin's equivalent of the U.S. EPA's Phase 2 storm water rules.

Chapter NR 153 is a new chapter that contains policy and procedures for administering two separate elements of the runoff management grant program. Subchapter I on targeted nonpoint source projects contains policies and procedures for making grants authorized under s. 281.65(4c), Stats. Subchapter II on urban nonpoint source and storm water projects contains policies and procedures for making grants authorized under s. 281.66, Stats. Once the existing priority watershed and lake projects selected under s. 281.65(3m), Stats., are completed, subchapters I and II will be the primary vehicle by which the department focuses limited financial and technical resources into areas where storm water runoff control is a high priority. Compared to the priority watershed projects being completed under ch. NR 120, the new projects conducted under ch. NR 153 will be shorter in duration, smaller in cost and scope and more widely spread across the state.

Chapter NR 154 identifies cost–effective best management practices, cost–sharing eligibility restrictions and technical standards for use with department cost–share programs and performance standards and prohibitions. The rule specifies the conditions that apply to all best management practices, and the conditions, standards and specifications that apply to cost–shared best management practices.

Chapter NR 216 establishes criteria and procedures for issuance of storm water discharge permits to certain construction sites, industrial facilities and municipalities, as required by s. 283.33, Stats., to limit the discharge of pollutants carried by storm water runoff into waters of the state. Chapter NR 216 is primarily being revised to incorporate nonagricultural performance standards in proposed ch. NR 151, subchs. II, III and IV. As revised, components of construction and municipal storm water discharge permits including storm water management programs, pollutant loading assessments, storm water pollution prevention plans, construction erosion control plans, and storm water management plans will need to meet the nonagricultural performance standards. Additional changes to this chapter are also being proposed to clarify the existing requirements of this chapter.

Chapter NR 243 is intended to implement design standards and accepted animal waste management practices for large animal feeding operations that are classified as point sources. It also establishes the criteria under which the department may issue a notice of discharge (NOD) or a permit to other animal feeding operations that discharge pollutants to waters of the state.

One of the proposed changes to ch. NR 243 is to incorporate the agricultural performance standards and prohibitions into the NOD and permit programs. In addition, other changes are proposed to clarify or further define department procedures for large permitted animal feeding operations and other animal feeding operations. Some of the proposed changes to large permitted livestock facilities include clarification of the application procedures for large animal

operations, clarification of manure management requirements, inclusion of requirements for composting and short–term stacking of manure, clarification of requirements for department approval of design structures and groundwater monitoring and clarification of requirements for mixed waste (e.g. milkhouse waste).

Other revisions to ch. NR 243 were also made to delineate the circumstances under which the department may issue a notice of discharge or a permit. Some of these changes include administrative procedures for issuing grants to local units of government for as cost–sharing and implementation provisions and conditions of cost–sharing to correct unacceptable practices.

Initial Regulatory Flexibility Analysis

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

a. Types of small businesses affected: Crop and livestock producers.

b. Description of reporting and bookkeeping procedures required: For livestock operations with less than 1,000 animal units or crop producer, the reporting, bookkeeping and other procedures required to achieve compliance with applicable performance standards and prohibition are dependent on the type of performance standard or prohibition. In general, the required bookkeeping procedures are designed to document that an operation is complying with performance standards and prohibitions. For livestock operators with 1000 animal units or more, annual reports are required for the land application of manure as well as some reporting requirements for compliance issues and groundwater monitoring. It is not expected that reporting requirements will be any different than those currently used.

c. Description of professional skills required: While the performance standards and prohibitions establish an acceptable level of performance for agricultural operations, the level of professional skill required for compliance with the performance standards depends on the performance standard or prohibition. For permit requirements for large operators, the type of professional skills needed to comply with the rule are not expected to be significantly different from the skills needed to meet existing rules.

The initial regulatory flexibility analysis for nonagricultural small businesses is as follows:

a. Types of small businesses affected: Any small business if constructing a new building where the land disturbance exceeds 5 acres or an industrial facility that requires storm water discharge permit coverage under subch. II of ch. NR 216.

b. Description of reporting and bookkeeping procedures required: A small business must submit a Notice of Intent prior to construction. Part of the submittal includes the development of an erosion and sediment control plan, a storm water management plan. Industrial facilities subject to subch. II of ch. NR 216's permitting requirements must prepare an industrial storm water pollution prevention plan where needed. This is already required in the current ch. NR 216. Both types of facilities will need to comply with the nonagricultural performance standards in proposed ch. NR 151.

c. Description of professional skills required: Depending on the site and size of a facility, the creation of the plans may require the assistance of a licensed professional engineer. The need to hire a consultant already exists under the current ch. NR 216.

Notice is hereby further given that pursuant to s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, the Department has prepared an Environmental Assessment for this action. The Department has made a preliminary determination that the proposal will not cause significant adverse environmental effects and that an Environmental Impact Statement will not be required.

Hearing Information

Notice is hereby further given that the hearings will be held on:

March 13, 2000 Monday at 1:30 p.m. and 7:00 p.m.	**UW–Platteville Ullsvik Center, corner of W. Main & Hickory in the Beauxarts Room Platteville**
March 14, 2000 Tuesday at 1:30 p.m. and 7:00 p.m.	**Western Wisconsin Tech. School 400 N. 6th Street in the Cafeteria La Crosse**
March 15, 2000 Wednesday at 1:30 p.m. and 7:00 p.m.	**Fitchburg Community Center 5510 Lacy Road in the Gymnasium Fitchburg**
March 16, 2000 Thursday at 1:30 p.m. and 7:00 p.m.	**Public Library 32 Sheboygan Street Fond du Lac**
March 20, 2000 Monday at 1:30 p.m. and 7:00 p.m.	**Bay Beach Wildlife Sanctuary Sanctuary Road in the Auditorium Green Bay**
March 21, 2000 Tuesday at 1:30 p.m. and 7:00 p.m.	**Holiday Inn 4060 S. Shore Drive in the Heisman Room Rhinelander**
March 21, 2000 Tuesday at 1:30 p.m. and 7:00 p.m.	**Badgerland Civic Center 301 Walnut Street in the Ballroom Spooner**
March 22, 2000 Wednesday at 1:30 p.m. and 7:00 p.m.	**UW–Stevens Point 1015 Reserve Street in Room 210 Stevens Point**
March 22, 2000 Wednesday at 1:30 p.m. and 7:00 p.m.	**Northern Great Lakes Visitor Ctr. 288 County Road G in the Auditorium Ashland**
March 27, 2000 Monday at 1:30 p.m. and 7:00 p.m.	**River Falls High School 230 North Ninth Street in the Auditorium River Falls**
March 28, 2000 Tuesday at 1:30 p.m. and 7:00 p.m.	**Waukesha VFW 409 Delafield Street in the Upstairs Hall Waukesha**

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 Carol Holden at (608) 266–0140 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments and Contact Information

Written comments on the proposed rules and Environmental Assessment may be submitted to Carol Holden, DNR Runoff Management Section, P.O. Box 7921, Madison, WI 53707 no later than **May 5, 2000**. Written comments will have the same weight and effect as oral statements presented at the hearings.

Copies of Rules

A copy of the proposed rules [WT–7–00, WT–8–00, WT–9–00, WT–10–00, WT–11–00, WT–12–00, WT–13–00], Environmental Assessment and fiscal estimates be may obtained from Ms. Holden.

Fiscal Estimates

Many of the changes to NR 120 are mandated by statute. These statutorily mandated changes include elimination of new project selection (1997 Wis. Act 27); transfer of rural local assistance grant administration to DATCP (1999 Wis. Act 9); elimination of supplemental cost sharing based on match provided by the local governmental unit (1997 Wis. Act 27); and restrictions on reimbursements that can be made to grantees who exceed the annual expenditure amounts established by the Department (1997 Wis. Act 237). In addition, 1999 Wisconsin Act 9 essentially required the Department to increase its cost share rates to 70% in order to implement agricultural performance standards established under 1997 Wis. Act 27. Under Act 27, at least 70% cost sharing must be made available before the performance standards can be enforced for existing practices and facilities. There is no net fiscal impact related to the cost share changes because the available funding will simply be distributed among fewer grantees. However, the fiscal impact of transferring rural local assistance grant administration to DATCP–including calculating local assistance grant awards, monitoring spending, and issuing grant documents and award payments—represents a savings of 0.25 FTE and $9100 in salary–related savings to the Department ($17.43/hr x 520 hours).

Additionally, there is no net fiscal effect on either state or local government related to the remaining rule changes Moving the administration of urban local assistance and nonpoint source grants for priority watershed grantees to NR 153 will have no net impact. Moving best management practices to NR 15 will have no fiscal impact. Increasing grant periods will have no state fiscal impact as the same amount of local assistance funding will simply be spread out over a longer time period. The impact on local governments of increasing the project period is minimal, requiring that each grantee provide local match for each additional staff year. The changes in cost share rates for economic hardship will not have a significant fiscal impact on either state or local government. Finally, changes in the critical sites notification procedure and establishment of the requirement that cost share funds be used, if sufficient, to cover critical sites will have no additional fiscal impact on state or local governments.

State Impacts – NR 151 performance standards will primarily be implemented through existing programs in NR 216 (Storm Water Discharge Permits) and NR 243 (Animal Waste Management), and also through NR 153 (Runoff Management Grants Program). The Department estimates an increased workload of 10.0 FTE annually related to implementing the NR 151 performance standards, detailed as follows:

Agricultural Performance Standards (Subchapter I of NR 151):

a. Implementing these standards will require approximately 0.5 FTE per region for evaluation, guidance and information and education–or 2.5 FTE statewide. These water resource engineer positions will assist with field investigations, provide guidance to Department and county staff on implementing agricultural performance standards and prohibitions, and conduct outreach efforts to inform and educate landowners and the public on agricultural performance standards and prohibitions. These positions would also provide support to modelling efforts and in–field evaluations designed to determine the effectiveness of agricultural performance standards and prohibitions. This would be an ongoing work effort with approximately 1040 hours per year per region. Salary–related costs associated with these positions equal (1040 hours x $28.36/hr x 5 regions = $147,500).

b. Implementing these standards will also require approximately 0.5 FTE per region for enforcement—or 2.5 FTE statewide. These positions would be water resource management specialists working on enforcement actions associated with implementation of agricultural performance standards for crop producers (performance standards and prohibitions for livestock producers will be handled through ch. NR 243). This position would work with counties in enforcing county ordinances and serve as the lead in enforcement in counties not enacting ordinances. This would be an ongoing work position requiring about 1040 hours annually per region. Salary–related costs associated with these positions equal (1040 hours x $23.29/hr x 5 regions = $121,100).

c. Implementing these standards will also require approximately 0.5 FTE statewide for reviewing ordinances. This water resource management specialist position would most likely be located in the Departments central office, responsible for reviewing local livestock operation ordinances that exceed statewide performance standards and prohibitions. In consultation with the Department of Agriculture, Trade and Consumer Protection, this position would be responsible for determining if local ordinances exceeding statewide performance standards and prohibitions are justified based on water quality concerns. Given the number of local governments that can enact ordinances and the fact that local ordinances regarding livestock operations are likely to be dynamic in nature as farming practices and the nature of local communities change, it is expected that this would be an ongoing position requiring about 1040 hours per year. The salary–related costs associated with this position are (1040 hours x $23.29/hr = $24,200).

Non–Agricultural Performance Standards, BMPs and Technical Standards (Subchapters II and IV of NR 151):

a. Implementing these standards will also require a water resource management specialist FTE for developing and revising technical standards for BMPs. This position would be the primary (lead) person working on items such as revising the Wisconsin Construction Site Best Management Practice Handbook and developing an infiltration technical standard. There are over 2080 hours of work to be done on the BMP handbook and infiltration standard and this does not include other technical standards that should be developed. Technical standards revisions will continue to be needed annually in the foreseeable future. The salary–related costs associated with this position are (2080 hours x $23.29/hr = $48,400).

b. Implementing these standards will also require a water resource management engineer FTE for modeling support and developing tools to measure BMP effectiveness. This position would be expected to become an expert at the different runoff models available such as P8 and SLAMM. This position would give support and training to consultants and other Department staff and would be modeling projects to evaluate the effectiveness of BMPs and give recommendations on BMP technical standards development. This is an ongoing position that would require approximately 2080 hours annually. The salary–related costs associated with this position are (2000 hours x $28.36/hr = $59,000).

c. Implementing these standards will also require a 0.50FTE water resource management specialist per region for evaluation, guidance, and information and education—or 2.5 FTE statewide. This position would conduct field investigations to evaluate project implementation and give the general public and private consultants guidance, training, and education on the performance standards, BMPs, and technical standards. This ongoing work will require approximately 1040 hours annually per region. The salary–related costs associated with these positions are (1040 hours x $23.29/hr x 5 regions = $121,100).

Local Fiscal Impacts of Non–agricultural Performance Standards:

Although they are difficult to calculate at this point, the fiscal impacts on local municipalities will result from the developed urban area performance standard in subchapter II of NR 151. The first phase of this performance standard stresses storm water management programs which utilize pollution prevention activities (public education programs, leaf management, street sweeping, storm sewer maintenance, fertilizer and pesticide management, illicit discharge detection and elimination). The performance standard will require a minimum level of performance across the urbanized areas. Many of these pollution prevention activities are low cost or a continuation of existing management practices. However, later phases of the performance standard emphasize and require the use of high efficiency (vacuum) street sweeping and

structural treatment devices, such as wet detention ponds to provide additional control of pollution from runoff.

Municipalities which have or are required to obtain an NR 216 municipal storm water permit are already required to meet all or a majority of these performance standards. Therefore, there may be no—or minimal—additional costs necessary to meet the performance standard. However, the performance standard will be applied more broadly than solely to facilities for which an NR 216 permit is required. Any urbanized area with a population density of 1000 persons per square mile will have to comply with the developed urban area performance standard.

Again, most of the performance standards are low cost. However, street sweeping requirements may add costs of, for example, $150,000 for a street sweeping unit. Municipalities may, however, already have street sweeping units or share them with neighboring municipalities, or they may lease them from private firms. Municipalities will be given until at least the year 2008 to replace existing sweepers with high efficiency models. Structural devices and street sweeper purchases will be eligible for up to a 50% grant reimbursement through the urban nonpoint source and storm water projects program in subchapter II of ch. NR 153. It is unknown if there will be adequate grant funding available to meet the demand for purchasing street sweepers and designing and installing treatment devices.

Additionally, municipalities may determine that in order to meet the performance standards, structural practices such as wet detention ponds are necessary. Structural treatment devices can be quite expensive, but the municipality would be in control of selecting what combination of treatment devices to implement to meet any performance standard. Further, the need for structural treatment devices varies greatly. Additionally, urban structural best management practices are eligible for Clean Water Fund bonding and urban nonpoint cost–sharing dollars provided by 1999 Wisc. Act 9. Therefore, the costs tc governments associated with implementing the developed urban area performance standards are difficult to calculate at this point.

Local Impacts of Agricultural Performance Standards and Prohibitions:

There is no expected fiscal impact to local units of government. State legislation authorizing the creation of statewide performance standards and prohibitions also provided funding for staff in each county to facilitate passage of county ordinances implementing the performance standards and prohibitions Although towns villages, cities, etc. , can also enact ordinances, no funding was provided for this. However enacting of ordinances at this level is permissive and is not required by NR 151.

NR 152 has no significant fiscal impact on either state or local governments. The only state fiscal impact is that associated with printing, distribution and information/education activity attendant to distributing the ordinances. It is anticipated that this can be done as part of the workload identified in the fiscal estimate for NR 153. There is no impact to local units of government, as adoption of the ordinance is not required by this rule.

The Department anticipates increased workload totaling 6.0 FTE and increased annual costs of $226,900 associated with implementing NR 153. The Department expects any local fiscal impacts to be minimal–if any–because the Department will maximize consistency between the administrative requirements of subchapters land II and between chapters NR 153 and NR 120. The Department has also assured grantees that existing priority watershed grant commitments created under chapter NR 120, and that will now be administered under chapter NR 153, will be given top priority in the scoring system so that the Department can honor those commitments and the local governments can rely on the funding promised in the past.

There are significant added administrative costs to the Department related to implementing chapter NR 153 as opposed to administering the former nonpoint source water pollution abatement program. While some economies of scale can be realized for the urban nonpoint pollution abatement program, new grantees will apply for funds. It requires much more time to initiate grants than to renew them (as with the priority watershed program) as applicants are unfamiliar with the grant process. A great deal of extra time is spent answering questions and corresponding with potential grantees while evaluating a new project. In addition, the targeted program no longer limits grant availability to priority watersheds. This means that an increasing number of requests will be received from areas without comprehensive watershed planning, which will be much more difficult to evaluate as baseline data and pollution control guidelines will not be in place. Further, the new program will involve many small grants of short duration (1–4 years) as opposed to the relatively few priority watershed grants lasting 10–12 years. Each of these smaller grants entails the same complement of administrative services as the larger grants, resulting in a greatly increased workload. In summary, there will be more grants, turning over in one–third the time, each requiring the same administrative services as priority watershed grants.

In order to administer the selection process, prepare and administer the grants, and provide the technical support that applicants will need in all phases of project application, implementation and evaluation, additional Departmental effort will be required. It is anticipated that the Department will need additional services from the following 6.0 FTE positions at annual salary–related costs totaling $226,900.

–1 Natural Resources Financial Assistance Specialist to serve as a grant manager in the Bureau of Community Financial Assistance ($17.43 x 2080 hours = $36,354).

–1Program and Planning Analyst (PPA –3) to serve as a Central Office coordinator with municipalities and DNR regions for storm water and urban nonpoint pollution abatement. This coordination work would extend to cover municipal flood control and riparian restoration programs when additional rules are drafted to implement s. 281.665, Stats. ($18.86 x 2080 = $38,229).

–1Program and Planning Analyst (PPA –3) (DNR Region) to assist in planning, developing, and coordinating storm water and urban nonpoint pollution abatement in the northeast region. This coordination work would extend to cover municipal flood control and riparian restoration programs when rules are drafted to implement s. 281.665, Stats ($18.86 x 2080 = $38,229).

–3 Water Resources Management Specialists located in the northeast, west central and northern regions to provide technical assistance in all aspects of application development, project implementation and evaluation ($18.28 x 2080 hours x 3 = $114,067).

Although there may be fiscal impacts associated with implementing the proposed changes to NR 120, NR 151, and NR 243 (see related fiscal notes), there are no fiscal impacts to state or local government directly related to NR 154.

There will not be any additional financial costs to either state or local governments to implement the proposed changes to NR 216, except those costs associated with meeting the performance standards of ch. NR 151. Since the additional fiscal impacts to state or local governments are due to implementation of ch. NR 151, the changes proposed to ch. NR 216 are assumed to have no cost to state or local governments. The frequency of reviewing erosion and sediment control plans and storm water management plans will continue at the same frequency. There will be no additional time spent on reviewing plans that will now be required to meet the performance standards under ch. NR 151.

Note: See the fiscal estimate for ch. NR 151 for the fiscal effects of implementing the performance standards of ch. NR 151.

The Department estimates that implementing the changes to NR 243 will increase the Department's workload by 0.8 FTE and $27,500 in salary–related costs. This increase is the result of a shift in responsibility for administration of cost–share grants from DATCP to DNR for NODS as mandated by 1999 Wisconsin Act 9. The Department has historically been responsible for ensuring NOD compliance. In addition to ensuring compliance, the Department will now also administer grants, develop and maintain policies and procedures, and perform all necessary fiscal management functions. The Department assumes that these duties will be performed by an FTE at a Program & Planning Analyst–3 classification. DATCP staff currently handle the workload associated with cost–share grant

administration for NODs and estimates that its decrease in staff workload (and therefore the DNR's increase) associated with the transfer to be 7% of 10 grant management and policy FTEs and 10% of 1 fiscal management FTE, or a total of 1456 hours. The salary–related costs associated with the Department's workload increase are ($18.86/hr x 1456 hours = $27,500).

The Department anticipates no fiscal impact on local governments.

Notice of Hearing

Public Instruction

[CR 00–5]

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 119.23, Stats., the department of public instruction will hold a public hearing as follows to consider emergency and proposed permanent rules, relating to the Milwaukee parental school choice program. Emergency rules were promulgated by the department effective January 4, 2000. The hearing will be held as follows:

Hearing Information

March 20, 2000 **Monday** **6:00 – 9:00 p.m.**	**Milwaukee** **Milwaukee Area Tech. College** **700 W. State Street** **Room 5120**

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Charlie Toulmin, Milwaukee Parental School Choice Consultant, at (608) 266–2853, or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule is available on the internet at http://www.dpi.state.wi.us/dpi/dfm/sms/chasrul.html. A copy of the rule and the fiscal estimate may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson
Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than **March 27, 2000**, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

1999 Wis. Act 9 created new provisions under s. 119.23, Stats., relating to the Milwaukee Parental School Choice Program (MPSCP). To reflect the statutory changes, Chapter PI 35, has been modified to:

• Specify voucher payment provisions for MPSCP summer school programs; and

• Calculate the annual voucher amount under the MPSCP.

Other changes have been made to ensure that participating schools are safe and to make it easier for parents to participate in the program, including:

• Calculating the annual income limits for participation in the MPSCP in a more timely fashion. Calculating the income eligibility limits earlier will allow schools to notify the department of their intent to be in the program and permit parents to apply to participating schools earlier. Such a change will make the MPSCP application process more in line with the application processes for other educational option programs in Milwaukee.

• Ensuring parents a fair opportunity to submit an application to a choice school by requiring that open application periods for the program set by the private schools will have to be at least 14 days in length.

• Requiring current and new choice schools to submit an occupancy certificate showing compliance with building codes.

Fiscal Estimate

It is assumed that except for the provision relating to voucher payment provisions for MPSCP summer school programs, the proposed rules relating to the Milwaukee parental school choice program (MPSCP) will not have a fiscal effect on local or state revenues or costs.

In FY 2000, the summer school payments under this program were approximately $250,000. This cost will result in a directly comparable reduction in state aid to the 426 school districts in Wisconsin. As a result of 1999 Wisconsin Act 9, one–half of this amount ($125,000) will come from Milwaukee Public Schools; one–half ($125,000) from the remaining districts. It is anticipated that this amount will increase as additional choice schools provide summer school. However, the number of additional pupils participating in summer school programs and membership for aid claimed in the future is indeterminable.

These rules will not have a fiscal effect on the private schools participating in the program.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114(1)(a), Stats.

Notice of Hearing

Dept. of Tourism

[CR 00–37]

Notice is hereby given that pursuant to s. 41.17 (4) (g), Stats., the Wisconsin Department of Tourism will hold a hearing at the time and place shown below to consider a proposed order to amend s. Tour 1.03 (3) (a), relating to the joint effort marketing (JEM) program.

Hearing Information

Date & Time	Location
March 15, 2000 **Wednesday** **10:00 a.m.**	**Meeting Room 2B** **Dept. of Tourism** **201 West Washington Ave.** **MADISON, WI**

Written Comments

Written comments on the proposed rules may be sent to the contact person by **Friday, March 31, 2000**. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

Analysis Prepared by the Dept. of Tourism

Section 41.17, Stats., creates a joint effort marketing (JEM) program and s. 41.17 (4) (g), Stats., authorizes the Department to adopt rules required to administer the program. The program provides for grants to non–profit organizations engaged in tourism activities. Grant funds may be used for the development of publicity, the production and media placement of advertising, direct mail, and, for destination marketing projects, certain expenses related to attendance at trade shows. To be eligible, expenditures must be part of a project and overall advertising plan of the applicant organization intended to increase tourism in Wisconsin.

The current rules authorize funding for projects that relate to tourism events, promotions and destination marketing projects. An example of an event might be a town festival. An example of a promotion might be the advertising of discounted entry and accommodation fees within an area for a limited period of time intended to attract tourists to a destination during shoulder or off season. Destination marketing is advertising that is not necessarily connected to an event or promotion, but that advertises a region of the state to a market that is identified in the statewide marketing plan as regional or extended regional, or that advertises a region of the state to potential meeting and convention or motorcoach visitors. Destination marketing advertising must be intended to attract tourists during a time that has not traditionally attracted substantial tourism to the area, and the proposal must be from an applicant representing a region made up of three or more municipalities. Funding under the Destination Marketing category is limited to $5,000 per municipality represented in an application and no more than $20,000 total per application.

The proposed rule increases the maximum limits for destination marketing projects to $10,000 per municipality represented and a total maximum per destination marketing project equal to the lesser of $40,000 or 7% of the fiscal year budget for destination marketing projects. It also makes clear that the 7% limit for all JEM projects is based upon the applicable share of the annual JEM budget. 1999 Wis. Act 9 (the recently adopted biennial budget) directs the Department of Tourism to increase the budget for Joint Effort Marketing to not less than $1,130,000 each year. The Joint Effort Marketing Program budget for the last year of the previous biennium was $700,000. One result of the mandated increase was to increase the maximum funding for all Joint Effort Marketing categories other than Destination Marketing. The rule produces a similar increase for Destination Marketing.

Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.14, Stats., the proposed rule will have minimal impact on small businesses. The initial regulatory flexibility analysis as required by s. 227.17 (3) (f), Stats., is as follows:

1) Type of small business affected by the rule: None.

2) The proposed reporting, bookkeeping and other procedures required for compliance with the rule: None.

3) The types of professional skills necessary for compliance with the rule: None.

Fiscal Estimate

The proposed rule has no fiscal effect.

Contact Information

For additional information about or copies of the proposed rules contact:

Dennis Fay, General Counsel
Telephone (608) 266–6747
Wis. Department of Tourism
P. O. Box 7976
Madison, WI 53707–7976

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.

Administration (CR 99–154):
Ch. Adm 47 – Relating to the Wisconsin Land Information Program grants–in–aid to local government.

Corrections (CR 97–13):
Ch. DOC 303 – Relating to inmate conduct, inmate discipline and procedures for the imposition of discipline.

Financial Institutions––Credit Unions (CR 99–145):
Ch. DFI–CU 52 – Relating to credit union examinations.

Financial Institutions––Credit Unions (CR 99–146):
Ch. DFI–CU 64 – Relating to public inspection and copying of records of the Office of Credit Unions.

Health and Family Services (CR 99–55):
Ch. HFS 181 – Relating to reporting of blood lead test results.

Kickapoo Reserve Management Board (CR 99–124):
Ch. KB 1 – Relating to the use of land, water and facilities in the Kickapoo Valley Reserve.

Natural Resources (CR 99–43):
Ch. NR 19 – Relating to the harvest, possession and sale of native amphibians, lizards and snakes.

Nursing, Board of (CR 99–126):
S. N 8.06 – Relating to prescribing limitations for advanced practice nurse prescribers.

Psychology Examining Board (CR 99–149):
SS. Psy 2.08 and 3.10 – Relating to re–examinations.

Transportation (CR 99–152):
Ch. Trans 320 – Relating to calculation of fees for special events, security, traffic enforcement and escort services.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

Agriculture, Trade and Consumer Protection (CR 99–87):
An order affecting ch. ATCP 34, relating to the chemical and container collection program ("clean sweep").
Effective 04–01–00.

Agriculture, Trade and Consumer Protection (CR 99–117):
An order affecting ch. ATCP 30, relating to pesticide product restrictions.
Effective 04–01–00.

Chiropractic Examining Board (CR 99–148):
An order creating s. Chir 4.07, relating to practice while suspended.
Effective 04–01–00.

Commerce (CR 98–83):
An order affecting chs. Comm 2, 5, 20, 52, 81 to 85 and 91 and ss. Comm 25.02, 50.06, 51.01 and 66.11, relating to private onsite wastewater treatment systems (POWTS) and sanitation systems and devices.
Effective 07–01–00.

Commerce (CR 99–86):
An order affecting ch. Comm 5 and ss. Comm 81.01, 82.40, 84.30 and 84.60, relating to credentials and fire sprinkler systems.
Part effective 04–01–00.
Part effective 07–01–00.

Health and Family Services (CR 99–106):
An order affecting chs. HFS 101 to 103 and 108, relating to providing eligibility under the BadgerCare program to families with incomes up to 185% of the federal poverty level that are not covered by health insurance, do not have access to an employer–subsidized family health care plan which is 80% or more subsidized and are not otherwise eligible for the Medical Assistance (MA) program under AFDC–related or SSI–related criteria.
Effective 04–01–00.

Higher Educational Aids Board (CR 99–132):
An order affecting s. HEA 11.03, relating to the Minority Teacher Loan Program.
Effective 04–01–00.

Pharmacy Examining Board (CR 98–76):
An order affecting ss. Phar 1.01 and 1.02 and ch. Phar 15, relating to the preparation of sterile pharmaceuticals by pharmacists.
Effective 04–01–00.

Public Service Commission (CR 98–172):
An order creating ch. PSC 117, relating to the assignment of costs and revenues, from sales of electric capacity and energy by public utility to out–of–state customers that the public utility does not have a duty to serve, in setting rates for retail electric service.
Effective 04–01–00.

Transportation (CR 99–144):
An order creating ch. Trans 316, relating to wood harvesting slashers.
Effective 04–01–00.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

The following administrative rule orders have been adopted and published in the ***February 29, 2000*** *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.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board (CR 99–102):
An order affecting chs. A–E 1, 2 and 8 and relating to the repeal of ch. A–E 10, professional geologist registration, and removal of all references to "professional geologists", "professional geology" and "geological".
Effective 03–01–00.

Chiropractic Examining Board (CR 99–40):
An order creating s. Chir 3.08, relating to use of limited liability entities in chiropractic practice.
Effective 03–01–00.

Commerce (CR 99–64):
An order affecting s. Comm 5.30 (4) and chs. Comm 41 and 42, relating to boilers and pressure vessels.
Effective 03–01–00.

Commerce (CR 99–80):
An order affecting ss. Comm 82.10, 83.01 and 83.03, relating to private sewage systems.
Effective 03–01–00.

Health and Family Services (CR 95–140):
An order repealing and recreating ch. HFS 52, relating to residential care centers for children and youth, formerly called child care institutions.
Effective 09–01–00.

Health and Family Services (CR 99–113):
An order amending ss. HFS 119.07 (6) (b) (intro.), Medicare Plan tables, (c) 2. (intro.) and tables and 119.15, relating to operation of the Health Insurance Risk–Sharing Plan (HIRSP).
Effective 03–01–00.

Insurance, Commissioner of (CR 98–183):
An order affecting chs. Ins 3 and 9 and ss. Ins 6.11 and 51.80, relating to revising requirements for managed care plans, preferred provider plans and limited service health organization plans to comply with recent changes in state laws.
Effective 03–01–00.

Natural Resources (CR 99–44):
An order affecting s. NR 20.09, relating to bow fishing hours on inland lakes during the rough fish spearing season.
Effective 03–01–00.

Natural Resources (CR 99–96):
An order affecting s. NR 20.12, relating to the marking and tagging of set or bank poles in inland waters.
Effective 03–01–00.

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board (CR 99–2):
An order affecting s. SFC 3.13, relating to criteria for approval of "another human service program approved by the section" for eligibility for a social worker training certificate and supervision of training certificate holders.
Effective 03–01–00.

Transportation (CR 99–136):
An order affecting ss. Trans 252.02 and 252.05, relating to escort vehicles.
Effective 03–01–00.

SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

The following administrative rule revisions and corrections have taken place in February, 2000, 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

Architects, Landscape Architects, Engineers, Designers and Surveyors Examining Board:

Ch. A–E 1
S. A–E 1.02 (1) and (3)
S. A–E 1.03 (2) (a)

Ch. A–E 2
S. A–E 2.01 (entire section)
S. A–E 2.02 (1), (2), (4) and (6)
S. A–E 2.03 (1) (a) and (b) and (2) (f)

Ch. A–E 8
S. A–E 8.02 (entire section)
S. A–E 8.03 (1), (2) (intro.) and (a), (3) (intro.) and (a) and (5) (d) and (e)
S. A–E 8.04 (intro.)
S. A–E 8.05 (1) (intro.)
S. A–E 8.06 (intro.)
S. A–E 8.07 (entire section)
S. A–E 8.08 (intro.)
S. A–E 8.09 (entire section)
S. A–E 8.10 (1) and (3)
S. A–E 8.11 (3)

Ch. A–E 10 (entire chapter)

Chiropractic Examining Board:

Ch. Chir 3
S. Chir 3.08 (entire section)

Commerce:

(Credentials, Ch. Comm 5)

Ch. Comm 5
S. Comm 5.30 (4) (d)

(Boilers and Pressure Vessels, Ch. Comm 41)

Ch. Comm 41
S. Comm 41.01 (entire section)
S. Comm 41.02 (entire section)
S. Comm 41.04 (intro.) and (29)
S. Comm 41.05 (entire section)
S. Comm 41.06 (entire section)
S. Comm 41.10 (entire section)
S. Comm 41.15 (3)
S. Comm 41.16 (2) (a) and (e)
S. Comm 41.17 (4) and (5)
S. Comm 41.18 (2) and (3) (c)
S. Comm 41.23 (1), (2) (a) and (3) (b)
S. Comm 41.24 (entire section)
S. Comm 41.28 (1)
S. Comm 41.29 (2) (intro.)
S. Comm 41.30 (1) (c)
S. Comm 41.31 (2)
S. Comm 41.34 (entire section)
S. Comm 41.36 (1)
S. Comm 41.38 (entire section)
S. Comm 41.42 (entire section)
S. Comm 41.43 (1) (a) and (d), (2) (a) and (d) and (3) (a) and (d)
S. Comm 41.45 (1) (intro.) and (3) (a)
S. Comm 41.46 (1) and (2)
S. Comm 41.48 (entire section)
S. Comm 41.55 (2)
S. Comm 41.60 to 41.80 (entire sections)

Ch. Comm 42 (entire chapter)

(Plumbing, Chs. Comm 82–87)

Ch. Comm 82
S. Comm 82.10 (7) to (15)

Ch. Comm 83
S. Comm 83.01 (2) (b) to (f)
S. Comm 83.03 (2)

Health and Family Services:

(Community Services, Chs. HFS 30––)

Ch. HFS 52 (entire chapter)

(Health, Chs. HFS 110––)

Ch. HFS 119
S. HFS 119.07 (6) (b) and (c)
S. HFS 119.15 (2) and (3)

Insurance, Commissioner of:

Ch. Ins 3
S. Ins 3.39 (7) (g) and (30) (r)
S. Ins 3.48 (entire section)
S. Ins 3.50 (entire section)
S. Ins 3.52 (entire section)
S. Ins 3.67 (entire section)

Ch. Ins 6
S. Ins 6.11 (3) (b)

Ch. Ins 9 (entire chapter)

Ch. Ins 51
S. Ins 51.80 (2)

Natural Resources:

(Fish, Game, etc., Chs. NR 1––)

Ch. NR 20
S. NR 20.09 (2)
S. NR 20.12 (1) (intro.), (c) and (d) and (1m)

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

Ch. SFC 3
S. SFC 3.13 (1) (a) and (3) (a) and (b)

Transportation:

Ch. Trans 252
S. Trans 252.02 (entire section)
S. Trans 252.05 (entire section)

EDITORIAL CORRECTIONS

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

Architects, Landscape Architects, Engineers, Designers and Surveyors Examining Board:

Ch. A–E 1
S. A–E 1.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. A–E 1.02 (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Commerce:

(Plumbing, Chs. Comm 82–87)

Ch. Comm 82
S. Comm 82.20 (13) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. Comm 82.41 (4) (n) had a correction made under s. 13.93 (2m) (b) 1., Stats.

Ch. Comm 83
S. Comm 83.035 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Health and Family Services:

(Community Services, Chs. HFS 30––)

Ch. HFS 85 (entire chapter) was renumbered from ch. HSS 85 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

Insurance, Commissioner of:

Ch. Ins 6
S. Ins 6.03 (3) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. Ins 6.06 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. Ins 6.35 (2) (a) and (b) and (3) (b) had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.
S. Ins 6.51 (3) (a) and (9) had corrections made under s. 13.93 (2m) (b) 7., Stats.
S. Ins 6.54 (1) and (3) (c) had corrections made under s. 13.93 (2m) (b) 7., Stats.
S. Ins 6.79 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. Ins 6.80 (3) had corrections made 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:

Pharmacy Examining Board:

Ch. Phar 16
S. Phar 16.03 (entire section) reprinted to correct printing error.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Architects, Landscape Architects, Professional Engineers, Designers & Land Surveyors Examining Board (CR 99–102)

Ch. A–E 1, 2, & 8 – The repeal of ch. A–E 10, professional geologist registration, and removal of all references to "professional geologists," "professional geology" and "geological."

Summary of Final Regulatory Flexibility Analysis:

These 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.

2. Chiropractic Examining Board (CR 99–40)

S. Chir 3.08 – The use of limited liability entities in chiropractic practice.

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.

3. Commerce (CR 99–64)

Chs. Comm 41–42 – Boilers and Pressure Vessels.

Summary of Final Regulatory Flexibility Analysis:

Sections 101.02 (15)(h) to (j) and 101.17, Stats., authorize the Department to promulgate rules prescribing minimum installation and operation standards for boilers and pressure vessels in public buildings and at places of employment. The proposed rules of Clearinghouse Rule No. 99–064 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.

4. Commerce (CR 99–80)

Ch. Comm 83 – Private Sewage Systems.

Summary of Final Regulatory Flexibility Analysis:

The rules re–establish local authority on the abandonment of private sewage systems when public sewer becomes available. This change does not have a direct impact on small businesses.

Summary of Comments of Legislative Standing Committees:

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

5. Health & Family Services (CR 95–140)

Ch. HFS 52 – Residential care centers for children and youth, formerly called child care institutions.

Summary of Final Regulatory Flexibility Analysis:

These revised rules apply to 38 privately owned residential child care institutions in Wisconsin, a few of which are small businesses as defined in s. 227.114(l)(a), Stats.

The rules have not been generally updated since 1971. They are revised by this order to bring them into compliance with current drafting standards, statutes and rules, to add new provisions to protect the health, safety and welfare of residents and to permit centers to operate short–term programs (up to 90 days) and respite care programs (up to 9 days) and programs for type 2 status juveniles.

There are new requirements relating to notification of parents and the Department; staff training; preadmission screening; initial assessment of a new resident within 30 days of admission; development of a treatment plan for each new resident; a center program statement; conditions for use of behavior management and control techniques; use of locked living units only with approval of the Department, and for purposes and under conditions specified in the rules; resident rights; transportation of residents; medication administration; fire safety; and conducting criminal records checks on prospective new employes.

No adjustments were made in the rules for the specific purpose of reducing the impact of new provisions on small businesses. This is because the rules are minimum requirements to protect the health, safety and welfare of center residents. Center residents are children, youth and young adults who have an emotional disturbance, difficulty in acquiring life skills or a developmental disability, or have been abusing alcohol or involved with drugs. It is also because many of the new requirements are widely recognized in the industry as representing good management practice or, in the case of enforcement provisions, the statutes have changed or the Department has gained experience with the enforcement provisions in the group day care center rules revised in 1997.

Only one center organized as a small business testified during the first (1995) public review of the proposed rules. The director of that center expressed concerns about the amount of paperwork required by the rules and the increased cost of compliance. In response, the Department pointed out that the rules have not been significantly updated in 25 years, that DILHR and DHFS do not duplicate building inspections and that the increase in the license fee was done by statute, not by rule.

Summary of Comments of Legislative Standing Committees:

No comments were received.

6. Health & Family Services (CR 99–113)

Ch. HFS 119 – The operation of the health insurance risk–sharing plan (HIRSP).

Summary of Final Regulatory Flexibility Analysis:

The rule changes will not affect small businesses as "small business" is defined ins. 227.114 (1) (a), Stats. Although the program statutes and rules provide for assessment of insurers to help finance the Health Insurance Risk—Sharing Plan (HIRSP), no assessed insurer is a small business as defined ins. 227.114 (1) (a), Stats. Moreover, s. 149.143, Stats., prescribes how the amount of an insurer's assessment to help finance HIRSP is determined.

Summary of Comments:

No comments were reported.

7. Insurance (CR 98–183)

Chs. Ins 3, 6, 9 & s. 51.80 – Revising requirements for managed care plans and limited service health organization plans to comply with recent changes in state law.

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 99–96)

Ch. NR 20 – Marking and tagging of set or bank poles in inland waters.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules do not regulate small businesses; 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 December 17, 1999, the Assembly Committee on Natural Resources extended their review period. No comments were received during the review period.

9. Natural Resources (CR 99–44)

S. NR 20.09 – Bow fishing hours on inland lakes during the rough fish spearing season.

Summary of Final Regulatory Flexibility Analysis:

The rule will not directly affect small business; therefore, no final regulatory flexibility analysis is 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 October 13, 1999, the Assembly Committee on Natural Resources extended their review period for 30 days. The Department was not contacted during this period for any additional information.

10. Social Workers, Marriage & Family Therapists & Professional Counselors Examining Board (CR 99–2)

Ch. SFC 3 – Criteria for approval of "another human service program approved by the section" for eligibility for a social worker training certificate and supervision of training certificate holders.

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.

11. Transportation (CR 99–136)

Ch. Trans 252 – Escort vehicles.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule amendment will benefit small businesses involved in oversize/overweight load transport. The amendment reflects changes in vehicle manufacturing and industry practices, and thus should reduce business costs in complying with escort vehicle requirements. Escort vehicle requirements are necessary to adequately protect safety of the traveling public which may encounter an oversize/overweight load in transit.

Summary of Comments:

No comments were reported.

SECTIONS AFFECTED BY REVISOR'S CORRECTIONS NOT PUBLISHED

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this *Wis. Adm. Register*.

Sections affected by Revisor's corrections not published.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Internet site.

Corrections: **NR 108.04(3)(b)** The cross–reference to "ch. 144" is invalid. The correct cross–reference is "ch. 281".

NR 110.01 Note The cross–reference to "ch. 144" is invalid. The correct cross–reference is "ch. 281".

NR 110.01 Note The cross–reference to "s. 144.99" is invalid. The correct cross–reference is "s. 299.97".

NR 114.14 (1) (h) The cross–reference to "ch. 144 or 147" is invalid. The correct cross–reference is "ch. 281 or 283".

NR 131.06 (4) (e) The cross–reference to "s. 144.83 (2) (c) 8" is invalid. The correct cross–reference is "s. 293.13 (2) (c) 8".

NR 131.06 (4) (e) The cross–reference "ss. 144.44 (4) (a) and 144.92 (2)" is invalid. The correct cross–reference is "ss. 289.31 (1) and 293.91 (2)".

NR 131.06 (4) (e) The cross–reference "chs. 30, 144 and 147" is invalid. The correct cross–reference is "chs. 30, 281 and 283".

NR 162.22 (2) The cross–reference "ch. 144" is invalid. The correct cross–reference is "s. 281.98".

NR 186.09 (4) (d) The cross–reference "ch. 144" is incorrect. The correct cross–reference is "chs. 287 and 289."

NOTICE OF NONACQUIESCENCE

NOTICE OF NONACQUIESCENCE

Tax Appeals Commission

BROWNING–FERRIS INDUSTRIES OF WISCONSIN, INC.	:	
	:	
Petitioner,	:	NOTICE OF NONACQUIESCENCE
v.	:	Docket No. 97–S–282
WISCONSIN DEPARTMENT OF REVENUE,	:	
	:	
Respondent.		

Pursuant to s. 73.01 (4) (e) 2, Stats., the Respondent hereby gives notice that, although it is not appealing the Decision and Order of the Tax Appeals Commission rendered in the above–captioned matter dated January 13, 2000, it has adopted a position of nonacquiescence in regard to the Commission's Conclusion of Law, paragraph 3, and in regard to the Commission's opinion in said Decision and Order that Petitioner's intercompany transfers are not sales or purchases from a retailer within the meaning of ss. 77.51 (14) and 77.53 (1) and (2), Stats.; that Petitioner's entering the net book value of the transferred assets on its books is not remuneration or consideration for the subject intercompany transfers; and that the items of tangible personal property which Petitioner received by intercompany transfer are not subject to Wisconsin use tax. The effect of this action is that, although said Decision and Order is binding on the parties for the instant case, the Commission's conclusions of law, the rationale, and construction of statutes in the above–captioned case related to the issue of the intercompany transfers are not binding upon or required to be followed by the Respondent in other cases.

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