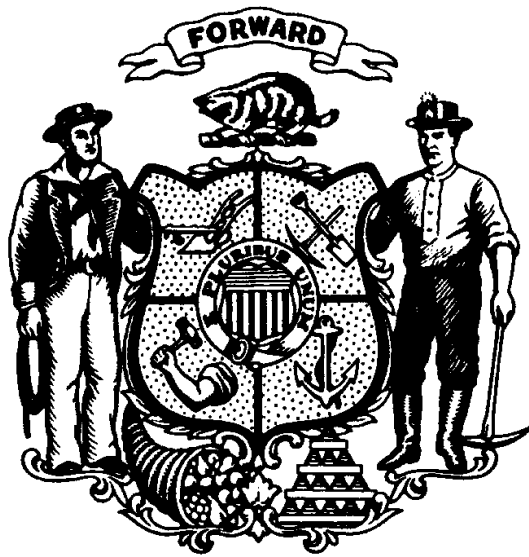


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 535**



Publication Date: July 14, 2000  
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REVISOR OF STATUTES BUREAU  
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## EMERGENCY RULES NOW IN EFFECT

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

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

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

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

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### EMERGENCY RULES NOW IN EFFECT (3)

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

1. Rules adopted revising s. **ATCP 11.20** and creating ss. **ATCP 11.01(11m)** and **11.73**, relating to swine import and required tests.

#### Finding of Emergency

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

- Pseudorabies is a highly contagious disease of swine and other livestock. Wisconsin initiated its pseudorabies program in 1976. Since that time, the department has worked diligently, pork producers have sacrificed significantly and the state has paid substantial costs to eradicate the disease. In 1997, the National Pseudorabies Control Board recognized Wisconsin as a pseudorabies stage IV state. If there are no incidents of pseudorabies in the state before October, 2000, the state will be classified as a pseudorabies stage V state (free of the disease) at that time. Classification as a pseudorabies stage IV or V state creates significant benefits in the swine export market.

- There has been a significant increase in pseudorabies cases reported in several pseudorabies stage II and III states. In the past, Wisconsin pork producers have imported many swine from the pseudorabies stage II and III states which are now experiencing an increase in pseudorabies.

- If pseudorabies spreads to Wisconsin, the Wisconsin pork industry will be hampered in its ability to produce and export swine and pork products.

- The increased prevalence of pseudorabies in states from which Wisconsin import shipments originate creates a substantial threat to

the pork industry in Wisconsin. The department finds that an emergency rule is needed to minimize the threat of pseudorabies.

**Publication Date:** May 25, 2000

**Effective Date:** May 25, 2000

**Expiration Date:** October 22, 2000

**Hearing Date:** June 29, 2000

2. Rule adopted amending s. **ATCP 74.08(1)**, relating to fees required of agent cities and counties that license and inspect retail food establishments.

#### Finding of Emergency

The Department of Agriculture, Trade and Consumer Protection ("department") finds that an emergency rule is necessary to promote the public welfare, and prevent unnecessary economic hardship on cities and counties that license and inspect retail food establishments for the department. The facts constituting the emergency are as follows:

- (1) The department licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., the department may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments for the department. The department monitors and assists the agent city or county. From the license fees that it collects, an agent city or county must pay the department an annual fee to cover the department's costs. The department sets the fee by rule.

- (2) By rule, the department establishes license fees for retail food establishments that it licenses directly. An agent city or county may charge a license fee that differs from the state license fee established by the department.

- (3) Under current rules, an agent city or county must pay the department an annual fee, for each retail food establishment, that is equal to 20% of the license fee that the department would charge if it licensed the establishment directly.

- (4) Effective February 1, 1998; the department increased license fees for retail food establishments that it licenses. The fee increase was caused, in part, by a legislative budget change that required the department to recover 60% (rather than 50%) of its program costs from license fees. The fee change approximately doubled the department's license fees, increasing the maximum retail food license fee from \$210 to \$450 and the minimum fee from \$42 to \$90.

- (5) The department's 1998 license fee increase incidentally increased the annual fees that agent cities were required to pay to the department, beginning with the license year ending June 30, 1999. As a result of the department's license fee increase, agent cities and counties were required to pay the department 20% of the increased license fee amounts. This change effectively doubled city and county fee payments to the department and imposed a serious financial burden on those city and county governments. The increased fee payments also exceeded the amounts needed to cover the department's costs under agent city and agent county agreements.

- (6) In order to reduce the financial burden on local governments and eliminate the department's surplus receipts, it is necessary to reduce the agent city and county percentage fee payment from 20% to 10% beginning with the license year that ends June 30, 2000. The public welfare necessitates that the department make this rule change by June 30, 2000. However, it is not possible to make this rule change by June 30 using normal rulemaking procedures. The

department is, therefore, adopting this rule change by emergency rule, pending adoption by normal rulemaking procedures.

**Publication Date:** June 30, 2000  
**Effective Date:** July 1, 2000  
**Expiration Date:** November 29, 2000

3. Rules adopted creating **ss. ATCP 10.21(1m) and 10.63(1m)** relating to an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne’s disease).

### Finding of Emergency

(1) Paratuberculosis, also known as Johne’s disease, is an infectious and communicable disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer’s herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

(2) 1989 Wis. Act 277 established a Johne’s disease “implied warranty” in the sale of cattle and goats. Under the “implied warranty” law, s. 95.195, Stats., a seller implicitly warrants to a buyer that cattle and goats are free of Johne’s disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johne’s disease at the time of sale, and the seller has *not* complied with applicable testing and disclosure requirements, the buyer may sue the seller for damages under the “implied warranty.”

(3) The “implied warranty” law protects buyers of cattle and goats, and gives sellers an incentive to test their animals for Johne’s disease. A seller may avoid the “implied warranty” by testing and disclosing. Testing is important for the ultimate control of this serious disease.

(4) 1999 Wis. Act 160 changed the “implied warranty” law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized the department of agriculture, trade and consumer protection (“DATCP”) to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The “implied warranty” no longer applies to *any* animals or diseases (including Johne’s disease) unless DATCP identifies those animals and diseases by rule.

(5) DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johne’s disease in cattle and goats. The Legislature, in a related action, appropriated \$100,000 in grant funds to help herd owners pay for Johne’s disease testing in FY 2000–2001. DATCP has also adopted new Johne’s disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. The new rules, contained in ss. 10.21 and 10.63, Wis. Adm. Code, clearly indicate DATCP’s understanding and intent that the new law would apply to Johne’s disease in cattle and goats. However, the new rules are technically flawed, in that they fail to state *explicitly* that the new law applies to Johne’s disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of “permanent” remedial rules.

(6) This emergency rule is needed to resolve any possible challenge or uncertainty related to the coverage of the new “implied warranty” law. This emergency rule clarifies that the “implied warranty” law applies to Johne’s disease in cattle and goats. This emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease of cattle and goats, will protect buyers of cattle and goats, will promote certainty in commercial transactions, and will prevent

unnecessary litigation related to the applicability of the “implied warranty” law.

**Publication Date:** June 30, 2000  
**Effective Date:** July 1, 2000  
**Expiration Date:** November 29, 2000  
**Hearing Date:** July 27, 2000  
[See Notice this Register]

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## 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 (See section 9110 (3yu) 1999 Wis. Act. 9)

### Analysis prepared by the Department of Commerce

Statutory authority: ss. 227.11 (2)(a) and 227.24 and s. 9110 (3yu)(b) of 1999 Wis. Act 9.

Statutes interpreted: ss. 101.143, 101.144, 292.11, and 292.31 and ch. 160

The proposed ch. Comm 46 is identical to ch. NR 746 that is being promulgated by the Department of Natural Resources.

Chapter Comm 46 provides that the Department of Natural Resources has authority for “high–risk sites” and that the Department of Commerce has authority for “low and medium risk sites.” The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a “high–risk site” or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter Comm 46 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.
2. Determining when sites may close.
3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum–contaminated site.
4. Tracking the achievement of remediation progress and success.
5. Reporting of program activities.

**Publication Date:** May 17, 2000  
**Effective Date:** May 18, 2000  
**Expiration Date:** September 1, 2000  
**Hearing Dates:** June 15, July 10 & 12, 2000

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  
**Hearing Date:** March, 27, 2000  
**Extension Through:** September 11, 2000

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## **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. Act 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  
**Extension Through:** July 27, 2000

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## **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  
**Hearing Date:** April 13, 2000  
**Extension Through:** August 31, 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  
**Hearing Dates:** April 25, & 27, May 2, 4 & 8, 2000  
**Extension Through:** August 28, 2000

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## 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  
**Extension Through:** July 31, 2000

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## **EMERGENCY RULES NOW IN EFFECT**

### *Health & Family Services*

**(Medical Assistance, Chs. HFS 101–108)**

Rules adopted revising **chs. HFS 102, 103 and 108**, relating to the medicaid purchase plan.

### **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 the manner in which a new program called the Medicaid Purchase Plan, established under s. 49.472, Stats., as created by 1999 Wis. Act 9, will operate. Under the Medicaid Purchase Plan, working adults with disabilities whose family net income is less than 250% of the poverty line are eligible to purchase Medical Assistance, the name given to Medicaid in Wisconsin, on a sliding–fee scale. The order incorporates the rules for operation of the Medicaid Purchase Plan into chs. HFS 101 to 103 and 108, four of the Department’s chapters of rules for operation of the Medical Assistance program.

The Medicaid Purchase Plan is projected to provide health care coverage to 1,200 Wisconsin residents with disabilities by the end of Fiscal Year 2001.

Health care coverage under the Medicaid Purchase Plan is identical to the comprehensive package of services provided by Medical Assistance. Individuals enrolled in the Medicaid Purchase Plan would also be eligible for Wisconsin’s home and community–based waivers under s. 46.27, Stats., provided they meet the functional criteria for these waivers.

Department rules for the operation of the Medicaid Purchase Plan must be in effect before the Medicaid Purchase Plan may begin. The

program statute, s. 49.472, Stats., as created by Act 9, effective October 27, 1999, states that the Department is to implement the Medical Assistance eligibility expansion under this section not later than January 1, 2000, or 3 months after full federal approval, whichever is later. Full federal approval was received on January 7, 2000. The Department is publishing the rules by emergency order with an effective date of March 15, 2000 to meet the expected program implementation date and the legislative intent in order to provide health care coverage as quickly as possible to working people with disabilities.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate the Medicaid Purchase Plan and in the process provide more specificity than s. 49.472, Stats., as created by Act 9, regarding the non–financial and financial conditions of eligibility for individuals under the Medicaid Purchase Plan; define whose income is used when determining eligibility and the monthly premium amount; explain statutory conditions for continuing eligibility; explain how the monthly premium amount is calculated; describe the processes associated with the independence account; and set forth how the Department, in addition to providing Medical Assistance coverage, is to purchase group health coverage offered by the employer of an eligible individual or an ineligible family member of an eligible member for the Medicaid Purchase Plan if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

**Publication Date:** March 15, 2000  
**Effective Date:** March 15, 2000  
**Expiration Date:** August 12, 2000  
**Hearing Dates:** June 15, 16, 19 & 20, 2000

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## **EMERGENCY RULES NOW IN EFFECT**

### *Health & Family Services*

**(Health, Chs. HFS 110–)**

Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk–Sharing Plan (HIRSP).

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

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. Department staff consulted with the Health Insurance Risk–Sharing Plan (HIRSP) Board of Governors on April 26, 2000 on the rules, as required by s. 149.20, Stats.

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty–four percent of the 8,427 HIRSP policies in effect in March 2000, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 12.4%. Rate increases for specific policyholders range from 3.5% to 15.0%, depending on a policyholder’s age, gender, household income, deductible and zone of residence within Wisconsin. This increase reflects industry–wide premium increases and takes into account the increase in costs associated with Plan 1 claims. According to state law, HIRSP premiums cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market. The average 12.4% rate increase for Plan 1 is the minimum increase necessary to maintain premiums at the lowest level permitted by law.

A second type of medical coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Sixteen percent of the 8,427 HIRSP policies in effect in March 2000, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 18.2%. Rate increases for specific policyholders range from 7.5% to 21%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry-wide cost increases and adjust premiums to a level that more accurately reflects actual claim costs for Plan 2 policyholders.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles. Policyholders are to pay 60% of the costs of HIRSP.

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

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2000. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$10,119,482. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$9,898,358. On April 26, 2000, the HIRSP Board of Governors approved the calendar year 1999 reconciliation process and the HIRSP budget for the plan year July 1, 2000 through June 30, 2001.

**Publication Date:** June 30, 2000  
**Effective Date:** July 1, 2000  
**Expiration Date:** November 29, 2000

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## EMERGENCY RULES NOW IN EFFECT

### Insurance

Rules were adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2000.

### Finding of Emergency

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

Actuarial and accounting data necessary to establish PCF fees is first available in January of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2000.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 00–061, will be filed with the secretary of state in time to take effect September 1, 2000. Because the fund fee provisions of this rule first apply on July 1, 2000, it is necessary to promulgate the rule on an

emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 5, 2000.

**Publication Date:** May 22, 2000  
**Effective Date:** July 1, 2000  
**Expiration Date:** November 28, 2000

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## EMERGENCY RULES NOW IN EFFECT (2)

### Natural Resources

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

1. 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

2. Rules adopted creating **ch. NR 168**, relating to the brownfield site assessment grant program administration.

### Finding of Emergency

This rule implements the brownfield site assessment grant program. Created in the 1999–2000 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination of an eligible site or facility; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos as part of demolition activities; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. The legislature appropriated \$1.45 million for the 99–01 biennium for these grants. Local governments are required to contribute matching funds as cash or in-kind, or both, equal to 20% of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that 70% of available funds are to be allocated to “small” grants (i.e. a grant award between \$2,000 and \$30,000); and 30% of available funds are to be allocated to “large” grants (i.e. a grant award of more than \$30,000 but not more than \$100,000). Act 9 required that the department promulgate these rules as necessary

to administer the program, and directed the department to promulgate them as emergency rules.

**Publication Date:** July 10, 2000  
**Effective Date:** July 10, 2000  
**Expiration Date:** December 8, 2000

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## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

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

Rules adopted revising **chs. NR 700, 716, 720, 722, 726 and creating ch. NR 746**, relating to site contaminated with petroleum products discharged from petroleum storage tanks.

#### **Exemption From Finding of Emergency (See section 9110 (3yu) 1999 Wis. Act 9)**

The proposed ch. NR 746 is identical to ch. Comm 46 that is being promulgated by the Department of Commerce.

Chapter NR 746 provides that the Department of Natural Resources has authority for “high–risk sites” and that the Department of Commerce has authority for “low and medium risk sites.” The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a “high–risk site” or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter NR 746 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.
2. Determining when sites may close.
3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum–contaminated site.
4. Tracking the achievement of remediation progress and success.
5. Reporting of program activities.

The amendments and new provisions that are proposed to be added to chs. NR 700, 716, 720, 722 and 726, as part of this rule package, consist of cross–references to ch. NR 746 that are proposed to be inserted in chs. NR 700, 716 and 726, and exemptions from the requirements in chs. NR 720 and 722 that would conflict with the requirements in ch. NR 746: that is, an exemption from the soil cleanup standards in ch. NR 720 and the remedial action option evaluation requirements in ch. NR 722 for those sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy the risk criteria in s. NR 746.06 and are eligible for closure under s. NR 746.07.

**Publication Date:** May 17, 2000  
**Effective Date:** May 18, 2000  
**Expiration Date:** September 1, 2000  
**Hearing Dates:** June 15, July 10 & 12, 2000

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## EMERGENCY RULES NOW IN EFFECT (5)

### *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  
**Extension Through:** July 31, 2000

2. 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  
**Extension Through:** July 30, 2000

3. 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  
**Extension Through:** July 30, 2000

4. Rules adopted creating s. **PI 6.07**, relating to the public library system aid payment adjustments.

### 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:

In accordance with s. 43.24 (1)(b), Stats., the rules adjust public library aid payments to be consistent with system services areas after territorial changes occur. Using the formula created under the rule, an aid adjustment will be paid by the department in April for a territorial change. Emergency rules must be in place before the formula may be used.

**Publication Date:** March 4, 2000  
**Effective Date:** March 4, 2000  
**Expiration Date:** August 1, 2000  
**Hearing Date:** April 4, 2000

5. Rules adopted revising **ch. PI 32**, relating to grants for alcohol and other drug abuse programs.

### 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:

For the upcoming school year, the department will send grant application materials to school districts in March. Grant applications must be returned to the department in the spring of 2000 and grants will be awarded prior to July 1, 2000. In order for applicants to development proposals and for the state superintendent to review the proposals and make grant awards in time for the 2000–2001 school year, rules must be in place as soon as possible.

**Publication Date:** March 4, 2000  
**Effective Date:** March 4, 2000  
**Expiration Date:** August 1, 2000  
**Hearing Dates:** March 6 and 8, 2000

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## EMERGENCY RULES NOW IN EFFECT

### Public Service Commission

Rules adopted amending s. **PSC 116.03(4)** and creating s. **PSC 116.04(6)**, relating to the definition of fuel and permissible fuel costs.

### Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend ch. PSC 116 Wis. Adm. Code. Amending the definition of “fuel” in s. PSC 116.03(4) and creating s. PSC 116.04(6) would allow investor-owned utilities the ability to incorporate the cost of voluntary curtailment into the cost of fuel to increase the reliability of electric service in Wisconsin for the summer of 2000 and beyond. This change would assist in implementing the requirement of 1999 Wis. Act 9, s. 196.192(2)(a), Stats.

**Publication Date:** June 5, 2000  
**Effective Date:** June 5, 2000  
**Expiration Date:** November 2, 2000

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## EMERGENCY RULES NOW IN EFFECT

### Revenue

Rules were adopted revising **ch. WGC 61**, relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

### Finding of Emergency

The 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 the facts constituting the emergency is:

Sections 565.02 (4)(g) and 565.10 (14)(b)3m., Stats., as created by 1999 Wis. Act 9, provide for the implementation of a retailer performance program, effective January 1, 2000. The program may be implemented only by the promulgation of rules.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. The retailer performance program is being implemented retroactively to January 1, 2000, pursuant to Section 9443 (1) of 1999 Wis. Act 9.

**Publication Date:** March 3, 2000  
**Effective Date:** March 3, 2000  
**Expiration Date:** July 31, 2000  
**Hearing Date:** May 31, 2000

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## 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  
**Hearing Date:** May 1, 2000  
**Partial Extension Through:** August 28, 2000

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Transportation*

1. 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:** July 1, 2000  
**Hearing Date:** February 14, 2000  
**Extension Through:** August 29, 2000

2. Rule adopted creating **s. Trans 4.09 (4)**, relating to cost–efficiency standards for systems participating in the Urban Mass Transit Operating Assistance program.

### Finding of Emergency

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

1999 Wis. Act 9 specifies that the Department may not enter into a contract for the payment of state aids until cost–efficiency standards have been incorporated into an administrative rule, which is “in effect” for calendar year 2000 contracts, and unless the contract requires the transit system to comply with those rules as a

condition of receiving state aid. The Department is promulgating this emergency rule making so that state aid contracts can be executed prior to the scheduled first quarter payment date (March 31) in calendar year 2000 to ensure that payments are not delayed causing undue hardship to Wisconsin municipalities.

**Publication Date:** March 23, 2000  
**Effective Date:** March 23, 2000  
**Expiration Date:** August 20, 2000  
**Hearing Date:** April 12, 2000

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## EMERGENCY RULES NOW IN EFFECT

### *Workforce Development*

#### (Economic Support, Chs. DWD 11–59)

Rules adopted creating **s. DWD 12.28**, relating to Wisconsin works disregard of year 2000 census income.

### 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 establish additional eligibility criteria and specify how eligibility criteria are to be administered for the Wisconsin Works (W–2) program. The department is promulgating a rule to exclude income earned from temporary employment with the U.S. Census Bureau in determining W–2 and child care eligibility and child care copayments. The rule will contribute to the welfare of the people of Wisconsin by broadening the pool of available workers to help ensure an accurate Census count, particularly in low–income neighborhoods. The rule must be effective immediately because temporary Census employment is expected to begin April 2000 and last two to six months. DWD will not be seeking a permanent rule on this issue.

**Publication Date:** April 9, 2000  
**Effective Date:** April 9, 2000  
**Expiration Date:** September 6, 2000  
**Hearing Date:** May 15, 2000

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## 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  
**Extension Through:** July 28, 2000



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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### **Commerce**

#### ***(Flammable & Combustible Liquids, Ch. Comm 10)***

**Subject:**

Ch. Comm 10 – Relating to flammable, combustible and hazardous liquids.

**Description of policy issues:**

*Description of the objective of the rule:*

The purpose of Comm 10 – Flammable and Combustible Liquids Code is to provide for safe storage, handling, installation, operation, maintenance and use of flammable and combustible liquids.

The purpose of the rule revision is to update the code to address current trends and recognize current technology for the storage, transfer and use of flammable, combustible and hazardous liquids. The proposed rule will incorporate additional statutory requirements as provided in Section 173 of 1999 Assembly Bill 133, and update adopted national standards, material specifications, operating procedures and storage and leak detection technologies.

*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:*

The code currently adopts many outdated national standards relative to storage and use of flammable and combustible liquids. These standards are very difficult for customers to obtain and contain outdated requirements. For example, the code mandates compliance with the 1987 edition of NFPA 30 – Flammable and Combustible Liquids Code, for many aspects of flammable and combustible liquid storage and use. This edition of the standard is very difficult to obtain at any cost and does not address current industry trends or technology. The 1987 edition does not recognize the use of double wall tanks for aboveground storage, whereas the current edition provides standards that address design and installation. Double wall tanks have been widely accepted for many years in the industry and by regulators. Use of double wall tanks currently requires additional administrative procedures to be used in Wisconsin, whereas revising the code to adopt current industry standards will result in much greater understanding and continuity for manufacturers, contractors, owners and operators.

The code is also deficient in recognizing flexible, nonmetallic piping, which has become the industry standard. The code does not recognize several current day standards of practices developed by the American Petroleum Institute and other respected organizations. These are just a few examples of the need to update the code to acknowledge current practice and standards.

The code does not clearly differentiate the various use activities of storage tanks or the use activities of fuel dispensing. Currently the code addresses a million gallon storage terminal tank similar to a twenty thousand gallon bulk tank, and addresses snowmobile fueling similar to automobile fueling.

The only policy alternative available would be to do nothing and leave the code as it is. This would result in a continual decline in the relevance and effectiveness of the code. This would also result in accelerating unnecessary cost increases, time delays and administrative procedures.

AB 133 designated that the department implement regulatory requirements relating to the storage of hazardous substance liquids. Options will be developed and implemented to address technical design and operational requirements for hazardous liquids.

**Statutory authority for the rule:**

Sections 101.02 (1) and (15), 101.09 (3), 101.12, 101.14 (1) and (4), Stats., Stats.

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

Many of the code deficiencies appear to be clear. However, there are some areas that appear to be more complicated. The goal is to address and resolve all issues in an expedient manner. If it appears that the revision or modification of specific code items will delay the implementation of revision items that carry a significant consensus, the code revision may be divided into two phases, with the more complicated items in the second phase of the code revision.

Commerce staff code committee advisory members: 5

Commerce staff sub-committee members: 6

Anticipated number of formal committee meetings: 12

Anticipated number of sub-committee meetings: 8

Estimated Commerce staff hours: 940 hours

*Contact information:*

For questions, please contact:

Duane Hubeler  
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### **Health and Family Services**

#### ***(Community Services, Chs. HFS 30--)***

**Subject:**

Ch. HFS 50 – Relating to facilitating the adoption of children with special needs.

**Description of policy issues:**

*Action(s):*

To amend ss. HFS 50.09 and 50.10 and other provisions of ch. HFS 50, as needed, to assure consistency with ss. HFS 50.09 and 50.10.

*Description of objective(s):*

This revision will streamline reporting requirements by eliminating the need to register children when the adoption agency is not currently seeking an adoptive placement, known as "deferral cases." Court oversight created by s. 48.38, Stats., and DHFS data systems (Human Services Reporting System [HSRS] and Wisconsin Statewide Adoption and Child Welfare Information System [WiSACWIS]) are more effective methods of monitoring services to children for whom adoption agencies are not currently seeking adoptive placements.

*Description of policies – relevant existing policies, proposed new policies and policy alternatives considered:*

The State Adoption Information Exchange registers children who need an adoptive placement and seeks prospective adoptive parents for those children through photo listing and other techniques. When ch. HFS 50 was created, the State Adoption Information Exchange also served as a clearinghouse to track children who were legally free for adoption but were determined not appropriate for adoption or otherwise not in need of an adoptive placement at that time.

Currently, such children who are legally free for adoption are monitored by permanency plans submitted to the court under s. 48.38, Stats., and an administrative or court review each six months under the same provisions. Children in the Department's guardianship are also monitored through reports from the Human Services Reporting System (HSRS) or its replacement, WiSACWIS. The Department no longer uses the data of the State Adoption Information Exchange about deferral cases.

**Statutory authority:**

Sections 48.55 and 48.975, Stats.

**Estimates of staff time and other resources needed to develop the rules:**

It is estimated that 100 hours of staff time will be necessary to prepare these revisions and staff the promulgation effort.

*Contact information:*

For questions, please contact:

Larry Hartzke, Administrative Rules Manager  
Dept. of Health and Family Services  
Telephone: (608) 267-2943  
Email: [hartzlr@dhfs.state.wi.us](mailto:hartzlr@dhfs.state.wi.us)

### ***Pharmacy Examining Board***

**Subject:**

S. Phar 6.06 – Relating to minimum equipment that shall be contained in the service area of a pharmacy.

**Description of policy issues:**

*Objective of the rule:*

The objective of the rule is to bring the code into conformity with current pharmacy practice pertaining to both the equipment required and the specifications for each item of required equipment.

*Policy analysis:*

Currently s. Phar 6.06 references both equipment and standards that are out-of-date with current pharmacy practice. A problem has arisen in providing pharmacists guidance on acceptable equipment which is currently available which meets the intent of the board as comporting with good pharmacy practice. Modifying the rule will clarify the standards for minimum equipment to be contained in the service area of a pharmacy.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (2) and (3) (e), Stats.

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

100 hours.

*Contact information:*

For questions, please contact:

Pamela Haack, Paralegal  
Dept. of Regulation and Licensing  
Telephone: (608) 266-0495  
Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)

### ***Pharmacy Examining Board***

**Subject:**

S. Phar 10.03 (15) – Relating to prescription order blanks imprinted with the name of a specific pharmacist or pharmacy.

**Description of policy issues:**

*Objective of the rule:*

The objective of the rule is to allow the name of a pharmacy service to be imprinted on prescription order blanks in order to provide more information and choice to consumers seeking specialized pharmacy services or retailers of durable medical equipment.

*Policy analysis:*

Currently s. Phar 10.03 (15) restricts a pharmacist or pharmacy from furnishing prescription order blanks to a prescriber imprinted with a specific name of a pharmacist or a pharmacy. The purpose of the current rule is to prevent undue patient influence in the selection of a pharmacy or pharmacist. The intent of the rule is to promote consumer choice and freedom to select a pharmacist or pharmacy free from actual or implied pressure. Pre-imprinted prescription order blanks can result in the situation whereby the patient will interpret the prescription order to require that it must be filled by the imprinted pharmacy or pharmacist. Contrasted to the original intent of the rule, a pharmacy offering a service that supplies specialty infusion services or selling or renting special types of durable medical equipment is a different category of pharmacy which is often difficult for a patient to obtain information about regarding services offered and locations. A problem for consumer patients has arisen that in this limited type of pharmacy scenario, the consumer patient is receiving too little information regarding available options to fill the prescription order.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2), and 450.02 (2) and (3) (e), Stats.

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

100 hours.

*Contact information:*

For questions, please contact:

Pamela Haack, Paralegal  
Dept. of Regulation and Licensing  
Telephone: (608) 266-0495  
Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)

### ***Revenue***

**Subject:**

S. Tax 9.69 – Relating to Wisconsin's agreement with the tobacco product manufacturers and the money received from them as a part of the Master Settlement Agreement.

**Description of policy issues:**

*Objective of the proposed rule:*

The objectives of the proposed rule are to:

- Provide guidelines that explain the reporting requirements for both tobacco product manufacturers and Wisconsin permitted cigarette distributors, in order for the State of Wisconsin to be in compliance with the Master Settlement Agreement and s. 895.10, Stats.

- Provide guidelines for tobacco product manufacturers and importers of cigarettes, for establishing qualifying escrow accounts.

*Policy analysis:*

The rule is being created to reflect current Department policy.

**Statutory authority:**

Sections 227.11 (2) (a), 227.24 and 895.10 (4), Stats.

**Estimate of staff time required:**

The Department estimates it will take approximately 100 hours to develop this rule order.

*Contact information:*

For questions, please contact:

Mark Wipperfurth  
Dept. of Revenue  
Telephone: (608) 266–8253  
Email: [mwipperf@dor.state.wi.us](mailto:mwipperf@dor.state.wi.us)

### ***Transportation***

**Subject:**

Ch. Trans 158 – Relating to specifying the location where a Wisconsin–issued Vehicle Identification Number (VIN) should be placed on a vehicle.

**Description of policy issues:**

*Description of the objective of the rule:*

This rule–making creates ch. Trans 158, which specifies the location where a Wisconsin–issued Vehicle Identification Number (VIN) should be placed upon a vehicle. DOT is directed by 1999 Wis. Act 80 to promulgate this rule.

*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:*

For certain situations, if a vehicle does not have a manufacturer’s VIN, Wisconsin will issue a VIN for the vehicle. To meet the statutory requirement of s. 342.30 (2), Stats., DOT currently, by policy, specifies where on the vehicle that VIN should be placed.

**Statutory authority for the rule:**

Section 342.30 (2), Stats.

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

100 hours.

*Contact information:*

For questions, please contact:

Julie A. Johnson, Paralegal  
Dept. of Transportation  
Telephone: (608) 267–3703  
Email: [julie.johnson@dot.state.wi.us](mailto:julie.johnson@dot.state.wi.us)

### ***Transportation***

**Subject:**

Chs. Trans 260 and 261 – Relating to single and multiple trip permits for mobile homes and/or manufactured homes.

**Description of policy issues:**

*Description of the objective of the rule:*

Chapter Trans 260 governs single trip permits for mobile homes/manufactured homes. Chapter Trans 261 governs multiple trip permits for mobile homes/manufactured homes. The proposed amendments will redefine the dimensions allowable under multiple trip permits, and require local highway authority route approval under single trip permits.

*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:*

Current allowable dimensions for multiple trip permits are outdated, considering recent changes in manufactured housing design. New configurations exceed the dimensions for multiple trip permits, and require single trip permits. By redefining the allowable dimensions, DOT should reduce the number of single trip permits needed, which will reduce workload in DMV and also reduce permit turnaround time, which will benefit industry. DOT issues all permits for mobile home transport. However, much of the movement is on local highways, for which DOT has very limited information regarding structure clearances, roadside impediments, etc. DOT requires local authority route approval on some mobile home permits, and this proposal will extend that approval to single trip mobile home permits. In this way, safety of the load and the public is improved, as the DOT can be more certain that designated route will clear structures and roadside impediments.

**Statutory authority for the rule:**

Section 348.25 (3), Stats.

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

Approximately 300 hours.

*Contact information:*

For questions, please contact:

Julie A. Johnson, Paralegal  
Dept. of Transportation  
Telephone: (608) 267–3703  
Email: [julie.johnson@dot.state.wi.us](mailto:julie.johnson@dot.state.wi.us)

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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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

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

#### **Transportation**

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

On June 30, 2000, the Department of Transportation submitted proposed rules to the Legislative Council Rules Clearinghouse.

##### ***Analysis***

The proposed rule affects ch. Trans 233, relating to the division of land abutting a state trunk or connecting highway.

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

A public hearing is required and will be held on Friday, August 4, 2000. The organizational unit responsible for the promulgation of the proposed rule is the Division of Transportation Infrastructure Development/ Division of Transportation Districts/ Office of General Counsel.

##### ***Contact Information***

For more information, please contact:

Julie A. Johnson, Paralegal  
Dept. of Transportation  
Telephone: (608) 267-3703  
Email: [julie.johnson@dot.state.wi.us](mailto:julie.johnson@dot.state.wi.us)

#### **Workforce Development**

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

On June 23, 2000, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

##### ***Analysis***

Statutory authority: ss. 103.05 (3), 103.005 (1) & 227.11 (2), Stats. The proposed rules create ch. DWD 42, relating to the state directory of new hires.

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

Public hearings are required and will be held on August 7, 8, 10 and 22, 2000. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

##### ***Contact Information***

For more information, please contact:

Michelle Kho  
Bureau of Legal Affairs  
Unemployment Insurance Division  
Telephone: (608) 266-6684  
Email: [khomi2@dwd.state.wi.us](mailto:khomi2@dwd.state.wi.us)

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# NOTICE SECTION

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## Notice of Hearings

*Agriculture, Trade & Consumer Protection*

*[CR 00-141]*

► (Reprinted from June 30, 2000 Wis. Adm. Register.)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed rule changes to chapter ATCP 136, Wis. Adm. Code. The hearings will be held at the times and places shown below. The public is invited to attend and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **August 15, 2000** for submittal of additional written comments. Please submit written comments to the attention of Eileen Pierce, Division of Trade and Consumer Protection, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911.

## Copies of Rule

A copy of the proposed rule may be obtained free of charge from DATCP, Division of Trade and Consumer Protection, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708 or by calling 608-224-4944. Copies will also be available at the public hearing.

Handicap access is available at all hearing locations. An interpreter for the hearing impaired will be available on request for the hearing. Please make reservations for a hearing interpreter at least ten days prior to the hearing date by writing Holly Heggestad, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708 or by contacting the message relay system (TDD) at 608-224-5058.

## Hearing Information

### •Eau Claire area

July 12, 2000  
Wednesday  
1:00 – 3:00 p.m. and  
6:00 – 8:00 p.m.  
DATCP Regional Office  
1<sup>st</sup> Floor Conference Room  
3610 Oakwood Hills Pkwy.  
Eau Claire, Wisconsin

### •Madison area

July 14, 2000  
Friday  
10:00 a.m. – 12:00 p.m. and  
2:00 – 4:30 p.m.  
Prairie Oak State Office Bldg.  
DATCP Board Room  
2811 Agriculture Drive  
Madison, Wisconsin

### •Milwaukee area

July 18, 2000  
Tuesday  
10:00 a.m. – 12:00 p.m. and  
2:00 – 4:30 p.m.  
Milwaukee Regional DATCP  
Office  
1<sup>st</sup> Floor Conference Room  
10930 W. Potter Road  
Suite C  
Milwaukee, Wisconsin

•Green Bay area

July 24, 2000

Monday

1:00 – 3:00 p.m. and

6:00 – 8:00 p.m.

Northeast Wisconsin

Technical College

Room 6201

2740 West Mason Street

Green Bay, Wisconsin

•Wausau area

July 26, 2000

Wednesday

1:00 – 3:00 p.m. and

6:00 – 8:00 p.m.

Marathon Public Library

Wausau Room (3<sup>rd</sup> Floor)

300 First Street

Wausau, Wisconsin

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

Statutory Authority: ss. 93.07(1), 100.20(2) and 100.45(5) and (5e)

Statutes Interpreted: ss. 100.20(2) and 100.45

### ***Background: Current Rules***

In 1990, the Wisconsin legislature enacted comprehensive legislation regulating the sale, handling and use of ozone-depleting refrigerants. The legislature has adopted several amendments since 1990. Current law is based, in part, on federal regulations adopted by the U.S. environmental protection agency under Title VI of the federal clean air act amendments of 1990. Among other things, this legislation created s. 100.45, Stats., which directs DATCP to adopt rules regulating the servicing of mobile air conditioners and the sale and use of ozone-depleting refrigerants. Current law also directs DATCP to establish fees for regulated businesses to cover the cost of the program.

DATCP adopted rules related to mobile air conditioners in 1991 as ch. ATCP 136, Wis. Adm. Code. The rules were most recently revised in 1996. The current rules:

- Regulate sales of ozone-depleting refrigerants and refrigerant substitutes, and the servicing of mobile air conditioners and trailer refrigeration equipment.
- Require regulated businesses to register with DATCP. Registered businesses must have approved recovery and recycling equipment. Technicians employed by the business must also be trained, tested and certified under a DATCP-approved training program.
- Require regulated businesses to recover, recycle or reclaim refrigerants used in mobile air conditioners and trailer refrigeration equipment. Recycled refrigerants must meet industry-developed purity standards.
- Prohibit venting of refrigerants and “topping off” of leaky mobile air conditioners or trailer refrigeration equipment. Technicians must inspect for leaks, and make proper repairs, before adding refrigerant.
- Prohibit sales of refrigerant in small containers (less than 15 pounds), and restrict other refrigerant sales to certified technicians and state-licensed businesses.
- Establish annual license fees for regulated businesses.

### ***Proposed Rule Changes***

This rule increases the annual registration fee for businesses engaged in repairing and servicing mobile air conditioners and trailer refrigeration equipment. This rule increases the annual fee from \$80 to \$120. DATCP has not adjusted the fee since start-up of the program in 1991. A fee increase is needed to maintain the current level of program operations.

Current rules require on-site recovery, recycling and reuse of refrigerant for motor vehicle air conditioning systems. This rule relaxes current prohibitions against the sale or transfer of recovered refrigerant, consistent with 1997 Wis. Act 165 and recent changes in federal regulations, by permitting auto salvagers and others to sell recovered refrigerant to DATCP-registered repair businesses for recycling and reuse. This rule removes current obsolete references to “used refrigerant broker”, including broker registration requirements.

Under current law, DATCP may regulate refrigerants used as substitutes for ozone-depleting refrigerants in mobile air conditioners and trailer refrigeration equipment. This rule more closely regulates the use of substitute refrigerants, consistent with federal EPA regulations under 40 CFR Part 82, Subpart G. The proposed changes require a person installing an EPA-accepted substitute refrigerant to completely remove the original refrigerant, install unique fittings, and meet other retrofitting requirements. These requirements are designed to prevent costly cross-contamination of refrigerant supplies and potential damage to recycling equipment and mobile air conditioning systems.

This rule prohibits deceptive advertising and sales claims for substitute refrigerants and requires sellers to disclose all use restrictions and installation requirements associated with the product.

This rule also makes the following minor changes to ch. ATCP 136, Wis. Adm. Code, by (1) clarifying training requirements for new resident technicians who were previously certified under a federal technician training program, (2) eliminating expiration dates for DATCP-approved technician training programs and clarifying DATCP’s authority to audit training programs and review training materials for compliance with DATCP rules, and (3) clarifying recordkeeping requirements for persons buying and selling refrigerant to more effectively track purchases and sales.

## ***Fiscal Estimate***

See page 20 of the June 30, 2000 *Wisconsin Administrative Register*.



## **Initial Regulatory Flexibility Analysis**

See page 20 of the June 30, 2000 [Wisconsin Administrative Register](#).

## **Notice of Hearing**

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

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces it will hold a public hearing on its emergency rule (ss. ATCP 10.21(1m), and 10.63(1m)) relating to an implied warranty that cattle and goats are free of paratuberculosis (also known as Johnne's disease).

### **Hearing Information**

July 27, 2000  
Thursday  
2:00 p.m.

Agriculture, Trade &  
Consumer Protection  
Prairie Oak State  
Office Bldg.  
2811 Agriculture Dr.  
Madison, WI

Public comment is being sought on the Department's emergency rule, pursuant to s. 227.24(4), Stats., which requires that a public hearing be held within 45 days after an emergency rule is adopted. Following the public hearing, the hearing record will remain open until **August 4, 2000** to receive additional written comments.

An interpreter for the hearing impaired will be available on request for this public hearing. Please make reservations for a hearing interpreter by **July 20, 2000**, either by writing to Dr. Robert Ehlenfeldt, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911 (telephone 608-224-4880) or by calling the Department TDD at 608-224-5058.

### **Analysis prepared by the Department of Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 93.07(1) and 95.195 as affected by 1999 Wis. Act. 160

Statutes interpreted: s. 95.195 as affected by 1999 Wis. Act 160

The department of agriculture, trade and consumer protection administers the "implied warranty" law under s. 95.195, Stats., related to sales of animals. This emergency rule implements 1999 Wis. Act 160, which modified the "implied warranty" law. This emergency rule maintains the current coverage of the law by clarifying that the law applies to paratuberculosis (Johnne's disease) in cattle and goats. This emergency rule does not expand the coverage of the current law.

#### **Background**

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

1989 Wis. Act 277 established a Johnne's disease "implied warranty" in the sale of cattle and goats. Under the "implied warranty" law, a seller implicitly warrants to a buyer that cattle and goats are free of Johnne's disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johnne's disease at the time of sale, and the seller has *not* complied with those testing and disclosure requirements, the buyer may sue the seller for damages under the "implied warranty."

The "implied warranty" law protects buyers, and gives sellers an incentive to test their animals for Johnne's disease. A seller may avoid the "implied warranty" by testing and disclosing. Testing is important for controlling this serious disease.

1999 Wis. Act 160 changed the "implied warranty" law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized DATCP to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The "implied warranty" will no longer apply to *any* animals or diseases (including Johnne's disease in cattle or goats) unless DATCP identifies those animals and diseases by rule.

DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johnne's disease in cattle and goats. DATCP has in fact adopted new Johnne's disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. However, the new rules are technically flawed, in that they imply but do not *explicitly state* that the new law applies to Johnne's disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of "permanent" remedial rules. This emergency rule does not change the substance or intended application of DATCP's Johnne's disease rules.

#### **Text of Rule**

**SECTION 1.** ATCP 10.21(1m) is created to read:

ATCP 10.21(1m) IMPLIED WARRANTY. Section 95.195, Stats., covers paratuberculosis in cattle and applies to sales of cattle.

**SECTION 2.** ATCP 10.63(1m) is created to read:

ATCP 10.63(1m) IMPLIED WARRANTY. Section 95.195, Stats., covers paratuberculosis in goats and applies to sales of goats.

## **Fiscal Estimate**

The department does not expect this emergency rule to have any fiscal effect on state or local governments.

## **Initial Regulatory Flexibility Analysis**

This emergency rule will have little or no impact on small businesses. It does not change the extent of coverage of the implied warranty rule. It merely makes explicit the coverage which was previously only implied in the John's disease rules.

## **Notice of Hearing**

### ***Public Service Commission***

The Commission proposes to create a new chapter of rules pursuant to provisions of 1999 Wis. Act 9, in order to establish a renewable resource credits (RRC) trading program. The renewable resource requirement legislation, s. 196.378, Stats., requires electric energy providers to meet increasing percentages of their retail energy sales with renewable resources. An RRC program must be established, allowing electric providers that supply more retail renewable energy than the minimum statutory requirements to sell credits to other providers, or to bank credits for future use. Rules promulgated will perform several functions basic to the creation of an RRC program, as specified in s. 196.378 (3), Stats.

Notice is further given that a hearing will be held beginning on **Wednesday, July 26, 2000, at 9:30 a.m. in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin**, and continuing at times to be set by the presiding Administrative Law Judge. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the case coordinator listed below.

## **Summary and Analysis of Rules**

Statutory authority: ss. 196.02(1) and (3), 196.378(3), and 227.22

Statute interpreted: s. 196.378

1999 Wis. Act 9 created a renewable portfolio standard, requiring electric providers to meet certain minimum percentages of their retail sales with renewable resources. These minimum percentages gradually increase over time. In lieu of providing renewable energy to its customers, an electric provider can obtain an RRC. The proposed rules address the requirements and procedures for creation and use of RRCs.

The proposed rules require a program administrator to implement and supervise an RRC trading program for participants. Beginning on January 1, 2001, RRCs for use in the trading program may be created by the energy output of a renewable facility. The energy output must be physically metered and sold at retail and the program administrator must verify the accuracy of the metering. The renewable facility must also register with, and be certified by, the Commission.

The program administrator will create an RRC account to track RRCs for each program participant. The program administrator will also credit RRCs to RRC accounts. When an RRC is credited to an account, the account owner may sell or transfer the RRC to any person. An RRC may continue to be sold or traded as long as each buyer or transferee reports the transaction to the program administrator within 10 days of its consummation. The program administrator retires the RRCs upon their use to satisfy the electric providers minimum renewable energy requirement. If an RRC is not used within five years of its creation, the program administrator will retire it.

The rules require that a renewable facility creating RRCs be certified by the Commission. To accomplish this, the owner of a renewable facility, or its designated representative, must provide registration information to the Commission. This information includes the renewable facility's location, owner, and technology; date placed in service; and rated capacity. Information that demonstrates that the renewable facility meets the resource eligibility criteria must also be provided.

## **Initial Regulatory Flexibility Analysis**

The proposed rules would apply to electric public utilities and retail electric cooperatives. The proposed rules do not affect small businesses as defined in s. 227.114, Stats.

## **Environmental Analysis**

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

## **Fiscal Estimate**

It has not been determined how the program administrator will be created. A collaborative report to the Commission will be part of the rulemaking process. The report will address this issue, among others, and make a recommendation to the Commission for action. Until the report is received and action is taken by the Commission, it would be speculative to provide cost data. A new fiscal note will be developed after the Commission has acted on the collaborative report.

Questions from the media should be directed to Jeff Butson, Public Affairs Director, at (608) 267-0912.

Questions or requests for a free copy of the proposed rules regarding this matter should be directed to case coordinator Carol A. Stemrich at (608) 266-8174.



# Notice of Hearing

## Transportation

[CR 00-109]

Notice is hereby given that pursuant to ss. 15.04 (1) (g), 85.16 (1), 86.07 (2), 85.025, 85.05, 84.01 (15), 84.015, 84.03 (1), 84.01 (2), 85.02, 88.87 (3), 20.395 (9) (qx), 236.12 (2) (a) and (7), 236.13 (1) (e) and (3), 1.11 (1), 1.12 (2), 1.13 (3), as created by 1999 Wis. Act 9; 114.31 (1), 84.01 (17), 66.30 (2); and 86.31 (6), Stats., as affected by 1999 Wis. Act 9; and interpreting ss. 1.13 (2), 16.9651 (2) and 66.0295 (2) (c), Stats., all as created by 1999 Wis. Act 9; 15.04 (1) (g), 1.11, 1.12, 32.035, 88.87, 703.11, Stats; 84.01 (15), 84.015, 84.03 (1), Stats., and the federal laws and regulations thereby expressly endorsed and adopted by the Legislature, including 23 USC 109, 134, 135, 138, and 315; and 236.12 (2) (a), 236.34, 236.45 and 703.11, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below to consider the amendment of ch. Trans 233, Wis. Adm. Code, relating to division of land abutting a state trunk or connecting highway.

## Hearing Information

<u>Date &amp; Time</u>	<u>Location</u>
August 4, 2000 Friday 9:00 a.m.	Room 421, Hill Farms State Transportation Bldg. 4802 Sheboygan Ave. MADISON, WI

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

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

## Written Comments

The public record on this proposed rule-making will be held open until close of business **Friday, August 11, 2000**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Julie Johnson, Administrative Rules Coordinator, Department of Transportation, Office of General Counsel, Room 115-B, P. O. Box 7910, Madison, WI 53707-7910.

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

Statutory authority: ss. 15.04(1)(g), 85.16(1), 86.07(2), 85.025, 85.05, 84.01(15), 84.015, 84.03(1), 84.01(2), 85.02, 88.87(3), 20.395(9)(qx), 236.12(2)(a) and (7), 236.13(1)(e) and (3), 1.11(1), 1.12(2); 1.13(3), as created by 1999 Wis. Act 9; 114.31(1), 84.01(17), 66.30(2); and 86.31(6), Stats., as affected by 1999 Wis. Act 9

Statutes interpreted: ss. 1.13(2), 16.9651(2), 66.0295(2)(c), and 86.255, Stats., all as created by 1999 Wis. Act 9; 15.04(1)(g), 1.11, 1.12, 32.035, 88.87, Stats; 84.01(15), 84.015, 84.03(1), Stats., and the federal laws and regulations thereby expressly endorsed and adopted by the Legislature, including 23 USC 109, 134, 135, 138, and 315; and 236.12(2)(a), 236.34, 236.45 and 703.11, Stats.

## General Summary of Proposed Rule

### THREE OBJECTIVES:

This proposed revision to ch. Trans 233 attempts to accomplish three objectives. First, it implements agreements reached through a broad-based, participative process for consideration of improvements to the 1999 rule, sponsored by the Subcommittee on Review of ch. Trans 233 of the Assembly Committee on Transportation. Second, it attempts to strike a proper balance between individual and governmental highway setback concerns through a combination of specific analysis and applicability of different setback provisions to defined portions of the state trunk and connecting highway system. The proposal reflects the testimony and discussion at the hearing before the Joint Committee for Review of Administrative Rules on June 21, 2000. Third, it recognizes and reflects recent changes in state and federal laws regarding land use that affect highway and transportation planning and development.

### BRIEF HISTORY:

Chapter Trans 233, relating to land divisions abutting state trunk highways and connecting streets, was established in 1956 and required amendments for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. Chapter Trans 233 was first revised effective February 1, 1999.

WISDOT has gained about a year and half experience with the revised rule and has been working cooperatively with many affected interests and legislators to refine the implementation of the new provisions of ch. Trans 233 through a four step process, in brief:

1. Education, Training, Meetings.
2. Specific Responses to Questions.
3. Uniform Implementation.
4. Refine Rule As Necessary.

Through this process, WISDOT and others have reached numerous agreements to amend ch. Trans 233, Wis. Adm. Code, in conjunction with the Subcommittee on Review of ch. Trans 233 of the Assembly Committee on Transportation. These agreements have been memorialized in the Wisconsin Legislative Council Staff Memorandum of William Ford to Representative David Brandemuehl dated February 18, 2000 and an attached memo from James S. Thiel of February 14, 2000 to former Secretary of Transportation Thompson.

## 1. IMPLEMENT AGREEMENTS:

The first purpose of this proposed rule revision is to implement these conceptual agreements for clarification or modification of the rule as part of this continuing cooperative process “for the safety of entrance and departure from the abutting [highways] and for the preservation of the public interest and investment in the [highways].” Further details of these improvements are provided in notes following each section of the proposed rule revision.

The legislative Subcommittee asked WISDOT and other interested parties to continue to work together to develop amendments to s. Trans 233.08, relating to setback requirements and restrictions. There has been a setback provision in the rule since 1956 that has always contained language limiting structures and improvements within the setback.

WISDOT followed-up with several conceptual meetings and discussions with affected interests and exchanges of various drafts and correspondence relating to setbacks. A hearing was held before the Joint Committee for Review of Administrative Rules (JCRAR) on June 21, 2000, at which further concepts and ideas were advanced or clarified.

## 2. ADDRESS SETBACK ISSUES:

The second purpose of this proposed rule revision is to address these competing setback and related issues that came forward at the JCRAR hearing on June 21, in a manner consistent with the Committee’s continuing oversight.

The proposed resolution of these concerns is discussed in some detail in this general summary of the rule. There are about 11,800 miles of state trunk highways. There are about 520 miles of connecting highways in 112 cities and 4 villages.

The statutes and the setback provisions of the current rule apply in full to all state trunk highways and connecting highways in all 72 counties with one modification: in Milwaukee County, the City of Milwaukee is excluded.

The U.S. Supreme Court has determined that the constitutionality of highway setbacks is well-established. Gorieb v. Fox, 274 US 603, 608–610, 47 S. Ct. 675, 677, 71 L. Ed. 1228, 53 A.L.R. 1210 (1927); Euclid v. Ambler, 272 US 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926); See also “Validity of front setback provisions in zoning ordinance or regulation”, 93 A.L.R.2d 1223; and 83 Am. Jur. 2d Zoning and Planning, sec. 191 (2000).

“Setback regulations are widely upheld as an appropriate use of zoning power, although, of course, such regulations must be reasonable and not confiscatory.”

In a recent Wisconsin case upholding the validity of a highway setback requirement, the Wisconsin Court stated that setbacks:

“promote a variety of public purposes...provision for light and air, fire protection, traffic safety, prevention of overcrowding, rest and recreation, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and may, in particular cases, promote a variety of aesthetic and psychological values as well as ecological and environmental interests.” (citing 3 The Law of Zoning and Planning sec. 34B.02[2] (1995). Town of Portland v. WEPCO, 198 Wis. 2d 775, 779, 543 N.W.2d 559, 560–61 (1996)

Not all traffic safety reasons for setbacks are apparent. Setbacks from freeways and expressways and other major through highways also serve to enhance traffic safety by making it possible for workers and equipment to access the many light, water, sewer, power, communication and other public utilities in or across highways for maintenance and construction from the back of the highway right of way line. Without setbacks highway and law enforcement authorities would be required to allow access from the highway lanes themselves or close traffic lanes, or both, on these higher speed and higher traffic volume highways. By their very nature these actions would impede traffic, increase congestion and increase the crash and injury risk to the motorists on the highway, highway and law enforcement personnel, and the public utility workers.

A recent Wisconsin Legislative Council analysis of the law of regulatory takings generally concludes that the ongoing judicial goal is to find an appropriate balance between two conflicting principles: the property rights of individuals and the government’s authority on behalf of all citizens to regulate an owner’s use of the land.

The general rule is that a regulation is only a “taking” requiring compensation if it deprives the owner of “all or substantially all” of the value of a constitutionally protected property interest. It is not enough for the property owner to show that the regulation denies the owner of the expected use of the property. To make this determination, the courts have adopted an ad hoc, case-by-case, specific analysis of each situation, because there is no clear “set formula.”

Requiring the dedication of property for public use, including the dedication of private property for public highway and transportation purposes, as part of a land division approval process is not a taking of private property for public use without just compensation. This issue was decided by the Wisconsin Supreme Court in Jordan v. Village of Menomonee Falls, 28 Wis. 2d 608, 137 N.W.2d 442, 446–448 (1965) and confirmed recently in Hoepker v. City of Madison Plan Commission, 209 Wis. 2d 633, 649–650, par. 21, 563 N.W.2d 145, 152 (1997). Additionally, the Legislature has established a procedure for inverse condemnation through which an individual may seek compensation for a regulatory taking, s. 32.10, Stats.

It is important to distinguish the above land division situations initiated by private owners from those where WISDOT does acquire property from one private property owner to provide to another private owner as a result of WISDOT’s actions. For example, WISDOT has the authority to condemn lands of one property owner to provide a public access road to another property owner who would otherwise be landlocked by the highway construction actions initiated by WISDOT, Section 84.09, Stats; 61 OAG 36 (1972). Another example is where WISDOT’s highway construction actions initiated by WISDOT require the taking of the parking lot of a small grocery store. If no relocation of the grocery store to serve the community is reasonably possible and the grocery store is critical to the community, WISDOT has authority to condemn lands of an adjacent private owner to provide a functional parking lot for the other private owner and thereby preserve the facility for the community. In all of these cases WISDOT pays compensation for an actual taking. Section 84.09, Stats; 61 OAG 36 (1972).

On May 26 WISDOT proposed to conduct a specific setback analysis when requested of land divisions abutting a state trunk of connecting highway to determine whether WISDOT can responsibly adjust the setback line or allow a specific structure or improvement within the setback, in a timely manner, with a reasonable appeal process.

The May 26 WISDOT proposal had a 20–year horizon for analysis.

In response, one group of interests proposed that any setback analysis be tied to WISDOT’s 6–year plan adopted under s. 84.01 (17), Stats. WISDOT and others rejected this suggestion because the 6–year plan is too short a period, is both under–inclusive and over–inclusive, is constrained by financial resources rather than public need, and is inconsistent with federal law.

Also in response, another group of interests generally indicated that WISDOT's 20-year specific analysis proposal had gone too far in striking the balance in favor of addressing private, individual concerns to the detriment of sound transportation planning in the interest of safety, convenience and investment of the public. WISDOT had been too short-sighted in its 20-year specific analysis proposal and ought to consider a broader set of criteria.

Finally, the hearing before the Joint Committee for Review of Administrative Rules on June 21 brought out further testimony and suggestions regarding setbacks from additional legislators, from the existing interest groups, and from new groups and individuals.

Therefore, WISDOT proposes a separate setback provision of this proposed rule revision to balance individual, private concerns while preserving the public interest as follows:

**A. HIGHWAYS AND MAPS FOR "NORMAL" SETBACK.** The normal setback associated with land divisions that has been in existence since 1956 is 110 feet from the center line of the highway or 50 feet from the nearest right of way line, whichever is greater. This normal setback provision will be made applicable to a reduced system of highways. This will consist of those state trunk and connecting highways identified as part of the National Highway System (NHS), [the NHS includes all of Wisconsin's Corridors 2020 as a subset], as well as all other principal arterials, and all other state trunk highways with current average daily traffic of 5,000 or more, and all other state trunk and connecting highways within incorporated areas and within one mile of those corporate boundaries, and those highways with current and forecasted congestion projected to be worse than Level of Service "C" within the following 20 years. [\*\*\*INSERT MILEAGE NUMBERS\*\*\*] The rule calls for updating reference maps that identify this system at least every two years. Persons may still seek special exceptions to this normal setback requirement through a specific analysis process.

**B. OTHER HIGHWAYS.** The remaining state trunk and connecting highways will have a reduced setback of 15 feet from the nearest right of way line, unless local ordinances require a greater setback. Persons may still seek special exceptions to this reduced setback requirement through a specific analysis process.

### 3. IMPLEMENT CHANGES IN STATE AND FEDERAL LAW:

The third purpose of this proposed rule provision is to recognize and reflect recent changes in state and federal laws and regulations regarding land use that affect highway and transportation planning and development.

#### Human Equality:

Section 15.04 (1) (g), Stats., requires the head of each Wisconsin agency to examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes to determine whether they have any arbitrary discriminatory effect on the basis of race, religion, national origin, sex, marital status or sexual orientation. If WISDOT or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

Similarly, Title VI of the Civil Rights Act of 1964 states that "no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 USC 2000d. It bars intentional discrimination as well as disparate impact on protected groups. The federal government has taken steps to require the implementation of these laws at the earliest possible time in the transportation planning process.

Highway building projects that require the destruction of downtown areas due to lack of corridor preservation and lack of adequate setbacks and lack of concern for the affected populace have allegedly had a disparate impact on low income and minority populations. WISDOT believes that it cannot fulfill the mandates of these laws without a comprehensive system of review of land divisions abutting state trunk and connecting highways.

#### Environment:

Sections 1.11, 1.12, 32.035 and 1.13, 16.9651(2), and 66.0295 (2) (c), Stats., as created by 1999 Wis. Act 9, direct, authorize, and encourage Wisconsin state agencies, including WISDOT, to the fullest extent possible, to consider the effect of their actions on the environment (air, water, noise, endangered plants and animals, parks, historic, scenic, etc.), the use of energy, the impact on agriculture and to balance the mission of the agency and local, comprehensive planning goals, including building of community identity by revitalizing main streets and enforcing design standards, encouragement of neighborhood designs that support a range of transportation options, and providing an integrated, efficient and economical transportation system that affords mobility, convenience and safety that meets the needs of all citizens, including transit-dependent and disabled citizens, and implements transportation corridor plans.

Similarly, federal laws require WISDOT to abide by federal design and construction standards while also considering, for example, the impact of WISDOT's actions on air, noise, water pollution, man-made and natural resources, community cohesion and injurious displacement of people, businesses and farms, and implementing federal regulations that require a minimum 20-year transportation planning horizon. WISDOT is authorized and directed by Wisconsin law to carry out all of these federal mandates by ss. 84.01 (15), 84.015, and 84.03 (1), Stats.

In order to achieve these objectives, WISDOT must do specific analyses looking forward for at least 20 years as required by federal law. WISDOT believes that it cannot fulfill the mandates of these laws without a comprehensive system of review of land divisions abutting state trunk and connecting highways.

#### RESTRICTIONS REQUIRING USE OF EXISTING CORRIDORS:

The Wisconsin Supreme Court has determined that WISDOT cannot expand its authority to acquire property by agreeing to environmental and human impact mitigation demands of other state and federal authorities in order to get their concurrence to proceed with a project. *Milton v. Transportation Dept.*, 184 Wis. 2d 738, 516 N.W.2d 709 (1994). Subsequent to this decision, the Wisconsin Legislature enacted ss. 86.255, Stats., in 1999 Wis. Act 9, that places further restrictions on WISDOT's authority to acquire property. These judicial and legislative restrictions have made it necessary for WISDOT to rely on farther, long-range planning and corridor preservation.

#### CONCLUSION:

Within the rigorous expectations placed upon and expected of WISDOT in providing a transportation system for the public, the ultimate objective of this proposed rule revision is to recognize state and local economic and land use goals, enhance the effectiveness of the rule "as may be deemed necessary and proper for the preservation of highways, or for the safety of the public, and to make the granting of any highway access permit conditional thereon," to provide reasonable flexibility and clarity that does not jeopardize public investments or safety now or in the future, and to provide for "the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways." The rule is intended to ensure adequate setbacks and access controls,

with sufficient flexibility to provide for locally planned traditional streetscapes and setbacks in existing and planned urban areas, and to ensure the maximum practical use of existing highway facilities and rights of way to minimize the need for new alignments or expansion of lower function facilities. WISDOT believes that it cannot achieve these legal mandates and expectations without a comprehensive system of review of land divisions abutting state trunk and connecting highways.

### **Fiscal Estimate**

There will be an insubstantial reduction in revenues from the fee for the services provided by WISDOT in conjunction with review of land divisions. The change should not have an effect upon any county, city, village, town, school district, vocational, technical and adult education district and sewerage district liability unless they are assuming the role of developer. That situation occurs approximately five to ten times per year statewide. Developers will see a slight reduction in costs related to some condominium plat reviews. Surveyors who submit maps for review will pay less in total fees for the same reason, but those savings could be passed onto the developer. There will also be a slight reduction in costs of surveys passed on to developers or owners.

Several of WISDOT's transportation districts may use existing personnel to review more or less land divisions than in the past. There will be fewer reviews by WISDOT's Central Office staff, but there may be greater involvement with delegations of reviews to local units of government. It is expected that some of the District costs will be defrayed by WISDOT delegating the review for some developments of land abutting connecting highways to the local municipality as allowed in s. 236.12 (2) (a), Stats. Since, in general, local officials do review these documents now, there would be no additional costs to any reviewing authority, except to the extent they may voluntarily wish to also review developments of land abutting state trunk highways within their geographic jurisdiction.

In the long-term, there will in all likelihood be state, local and private savings that can be attributed to better long-range transportation planning and less adverse and more positive effects upon communities, businesses, residents, and the environment. An efficient and safe transportation system will have a positive, but hard-to-quantify, fiscal effect.

### **Initial Regulatory Flexibility Analysis**

Section 236.12 (7), Stats., allows WISDOT to establish by rule the reasonable service fees for all or part of the costs of the activities and services provided by WISDOT under that chapter of the statutes. The rule revision eliminates fees to cover the costs of WISDOT for reviewing condominium plats where there is only a change from lease to ownership without a change in property use that affects transportation systems. There is also a delegation to district offices and municipalities that will provide greater access and flexibility in verifying and field reviewing documents. The setback requirements are also reduced on defined highways where consistent with safety and sound transportation planning. Finally, there is a provision for specific analysis and review of requests for special exceptions that does not have to meet the strict, restrictive legal standards for granting variances announced by the Wisconsin Court in State v. Kenosha County Bd. of Adjust., 218 Wis. 2d 396, 577 N.W.2d 813 (1998). The rule also makes new exceptions for locating residential swimming pools within the setback at the owner's option.

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

Copies of the rule may be obtained upon request, without cost, by writing to Julie Johnson, Administrative Rules Coordinator, Department of Transportation, Office of General Counsel, Room 115-B, P. O. Box 7910, Madison, WI 53707-7910, or by calling (608) 267-3703. Alternate formats of the proposed rule will be provided to individuals at their request.

### **Notice of Hearings** *Workforce Development* *(Economic Support,* *Chs. DWD II to 59)* *[CR 00-108]*

Notice is hereby given that pursuant to ss. 103.005 (1), 108.04 (2) (b), and 227.11 (2), Stats., the Department of Workforce Development will hold four public hearings to consider the creation of ch. DWD 42, relating to the state directory of new hires.

### **Hearing Information**

<u>Date &amp; Time</u>	<u>Location</u>
August 7, 2000 Monday 1:00 p.m.	Room 371, G.E.F. #1 201 E. Washington Ave. MADISON, WI
August 8, 2000 Tuesday 10:30 a.m.	Room 136 Waukesha State Office Bldg. 141 N. W. Barstow St. WAUKESHA, WI

August 10, 2000  
Thursday  
10:30 a.m.

Suite B  
Fox Valley Hearing Office  
2900 N. Mason St.  
APPLETON, WI

August 22, 2000  
Tuesday  
11:00 a.m.

Suite 1 (Hearing Room 2)  
Eau Claire Hearing Office  
715 S. Barstow St.  
EAU CLAIRE, WI

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make oral presentations of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotope format will be made available on request to the fullest extent possible.

### **Analysis Prepared by the Dept. of Workforce Development**

Statutory authority: ss. 103.05 (3), 103.005 and 227.11

Statute interpreted by the rule: s. 103.05

Relevant federal law: 42 USC 653a (a) (1) (A)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) directed each state to establish a process by which employers report information about employees shortly after the date of hire for the purpose of assisting child support agencies in locating parents or putative fathers. In response, the State of Wisconsin enacted s. 103.05, Stats., which directed the Department of Workforce Development (DWD) to establish and operate a hiring reporting system that includes a state directory of new hires.

Employers report new hire information to the Department of Workforce Development Unemployment Insurance Division (DWD–UID), which administers the state new hire directory. When employers report new hires to DWD–UID, the names are checked against a list of persons sought to ascertain paternity or who owe child support. Matches are referred to the state Bureau of Child Support. The state directory is also transmitted to a National Directory so that it can be similarly used by each state to locate parents who have moved to other states.

Most employees are considered new hires when they report for work the first time or when they return to work after an unpaid absence of more than 90 days. Poll workers, who generally only work at the polls a few days a year and who tend to do so repeatedly, will be considered newly–hired the first time they work for an employer but not each subsequent time they work at the polls for that same employer. Similarly, substitute teachers will be considered newly–hired the first time they work for a particular employer during a school year but not each subsequent time they are provided a substitute teaching assignment by that employer during that school year.

Required information in a new hire report includes the following data elements: (1) employee name, (2) employee address, (3) employee social security number, (4) employer name, (5) employer address, (6) employer's Federal Employer Identification Number (FEIN), (7) date the employee started work, and (8) employee's date of birth. Additional required information of multi–state employers who choose Wisconsin as the sole state to which it reports is the state in which the employee will work, if other than Wisconsin.

An employer may fulfill its reporting requirement for a newly–hired employee using the following formats: (1) on paper by submitting a paper report containing all listed elements, (2) on paper by submitting a completed copy of the employee's federal W–4 form, (3) on paper by submitting a copy of the employee's Wisconsin WT–4 form containing all listed elements, or (4) electronically, as prescribed by the Department.

An employer who files a new hire report by submitting a federal W–4 form in which the first six elements listed in the rule have been completed has satisfied the reporting requirement.

The Department may waive the date of birth reporting requirement if the employer is unable to provide it.

An employer must file new hire reports within 20 days after the newly–hired employee starts work.

An employer with employees in more than one state, that is, a multi–state employer, may report all new hires to a single state. Multi–state employers choosing the single–state reporting option must submit written notice of the state to which they choose to report to the federal Department of Health and Human services.

Any person who violates any provision of this rule may be subject to penalties provided under s. 103.05, Stats.

### **Initial Regulatory Flexibility Analysis**

The proposed rules impose no significant impact on small businesses, as defined under s. 227.114, Stats., since the requirement of employers to file new hire reports is already mandated by federal and state laws. Six of the required elements listed in the proposed rules are specifically required by the federal legislation creating the new hire program. While “date of birth” is listed as an additional required element, the Department will waive that requirement if it determines that the employer is unable to obtain it. “Date of hire” and “state in which the employee will work, if other than Wisconsin” are listed as required elements only to further the goals of the federal and state legislation and are not required if the employer fulfills the new hire filing requirement by submitting a completed W–4 form. These W–4 forms are already required for all businesses with employees under the Internal Revenue Code and therefore do not impose additional paperwork.

### **Fiscal Estimate**

The proposed rules have no fiscal impact beyond what has already been identified in the state's budget process. Federal legislation required the implementation of the new hire reporting system. Employers' voluntary compliance with the request to provide the dates of birth for newly–hired employees to verify their identities reduces costs to governmental units and employers while protecting employees who do not



actually have child support obligations from unwarranted legal or administrative action. Since existing state legislation requires that the state offer both paper and electronic reporting, the numerous options of reporting provided in the proposed rules do not create additional impact.

### **Contact Information**

The proposed rules are available on the DWD web site at: <http://www.dwd.state.wi.us/dwd/heardings.htm>. A paper copy may be obtained at no charge by contacting:

Michelle Kho  
Unemployment Insurance Division  
Dept. of Workforce Development  
P.O. Box 7905  
Madison, WI 53707-7905

Telephone (608) 266-6684

Email: [khomi2@dwd.state.wi.us](mailto:khomi2@dwd.state.wi.us)

### **Written Comments**

Written comments on the proposed rules received at the above address no later than **Thursday, August 24, 2000**, will be given the same consideration as testimony presented at the hearing.

### **Text of Rule**

SECTION 1. Chapter DWD 42 is created to read:

#### **Chapter DWD 42 STATE DIRECTORY OF NEW HIRES**

**DWD 42.01 Purpose.** (1) Federal law (42 USC 653a (a) (1) (A)) requires each state to establish a state directory of new hires that contains information reported by employers about each newly hired employee and requires employers to report this information. Sec. 103.05, Stats., implemented the federal new hire reporting requirements by creating a state directory of new hires and requiring employers to report information to the department about each newly hired employee.

(2) This chapter specifies the information that employers must provide, the procedures by which employers may comply with the new hire reporting requirements, and the penalties for violating this rule.

**DWD 42.02 Definitions.** In this chapter:

- (1) "Department" means the department of workforce development or its authorized agent.
- (2) "Employee" means an individual who is an employee within the meaning of chapter 24 of the internal revenue code of 1986 (26 USC 3401 et seq.) but does not include an individual performing intelligence or counterintelligence functions for a federal or state agency if the head of such agency has determined that reporting pursuant to s. DWD 42.01 with respect to such individual could endanger the individual's safety or compromise an ongoing investigation or intelligence mission.
- (3) "Employer" means a person who is an employer within the meaning of chapter 24 of the internal revenue code of 1986 (26 USC 3401(d)) and includes any governmental entity and any labor organization.
- (4) "Federal employer identification number" means the identifying number assigned to the employer under s. 6109 of the internal revenue service code of 1986 (26 USC 6109).
- (5) "Labor organization" means an organization that is a labor organization within the meaning of section 2(5) of the national labor relations act (29 USC 152(5)) and includes any hiring hall or other organization that is used by the labor organization and an employer to carry out requirements of an agreement described in section 8(f)(3) of the national labor relations act (29 USC 159(f)(3)) between the labor organization and the employer.
- (6) "Multi-state employer" means an employer that employs individuals in Wisconsin and in at least one other state.
- (7) "Newly hired employee" means:
  - (a) An employee who reports for work for the first time.
  - (b) An employee, other than a poll worker or a substitute teacher, who is rehired, recalled or returns to work after an unpaid absence of more than 90 days.
  - (c) A poll worker who the employer has never reported to the state directory of new hires as a newly hired employee.
  - (d) A substitute teacher who performs services for the employer but who the employer has not reported to the state directory of new hires as newly hired during the current school year.
- (8) "Poll worker" means a person who staffs a polling place on election day to assist in holding the election.
- (9) "State directory of new hires" means an automated directory containing information supplied by employers about each newly hired employee, pursuant to s. 103.05, Stats.

**DWD 42.03 Reporting requirements.** (1) REPORT CONTENTS. Except as provided in sub. (2)(b) and s. DWD 42.04(b), each employer that has one or more employees who perform services in Wisconsin shall file a report containing the following information with the department:

- (a) Newly hired employee's name.
  - (b) Newly hired employee's address.
  - (c) Newly hired employee's social security number.
  - (d) Employer's name.
  - (e) Employer's payroll address for the newly hired employee.
  - (f) Employer's federal employer identification number.
  - (g) Date the newly hired employee started work.
  - (h) Employee's date of birth.
- (2) **REPORT FORMAT.** (a) An employer may file new hire reports in any of the following ways:
- 1. Electronically, as prescribed by the department.
  - 2. On paper by submitting a copy of the newly hired employee's completed WT-4 form (Employee's Wisconsin Withholding Exemption Certificate/New Hire Reporting).
  - 3. On paper by submitting a paper report containing all of the information required under sub. (1).
  - 4. On paper by submitting a copy of the newly hired employee's completed federal W-4 form (Employee's Withholding Allowance Certificate).
- (b) If an employer files a new hire report by submitting a copy of the newly hired employee's W-4 that contains completed reporting requirements (a) through (f) of sub. (1), then the employer has satisfied the reporting requirement.
- (3) **REPORT DUE DATES.** (a) Except as provided in par. (b), a report must be filed within 20 days after the newly hired employee starts work.
- (b) If an employer is filing new hire reports electronically, reports must be filed twice monthly, not less than 12 days nor more than 16 days apart.
- (c) If the deadline for filing a report falls on a Saturday, Sunday, any of the holidays enumerated under ss. 230.35 (4) (a) and 757.17, Stats., or any other day on which mail is not delivered by the United States postal service, then the deadline shall be extended to include the next business day.
- (4) The department may waive the requirement to report the date of birth of the newly hired employee if the employer is unable to provide it.
- DWD 42.04 Multi-state employers.** (1) **REPORTING OPTIONS.** Multi-state employers may choose to do either of the following:
- (a) Report only the newly hired employees working in the state of Wisconsin as described in s. DWD 42.03 and report employees not working in Wisconsin to the respective states in which they work.
  - (b) Report all newly hired employees to a single state in which the multi-state employer has at least one employee working, regardless of where the other employees work. If the multi-state employer chooses Wisconsin as the single state to which it reports, that employer must use the electronic filing format. In addition to containing all the data elements in s. DWD 42.03(1), the electronically filed report for any newly hired employee not working in Wisconsin must also include the state in which the employee will work. Report due dates are the same as those provided in s. DWD 42.03(3).
- (2) **FEDERAL NOTICE.** Employers reporting under the option in sub. (1)(b) must submit a written notice to the secretary of the federal department of health and human services informing him or her of which state has been selected for new hire reporting.
- (3) **REPORT FORMATS.** The information to be supplied and the format used by multi-state employers to file new hire reports may vary according to the requirements of the state to which the new hire reports are being filed.
- DWD 42.05 Penalties.** (1) Any person who violates any provision of this rule may be subject to the penalties provided under s. 103.05, Stats. No penalty may be imposed unless the person has been notified of the violation and has been provided with an opportunity to correct the violation.
- (2) Pursuant to s. 103.005(10), Stats., if a penalty is imposed it shall be subject to review in the manner provided in ch. 227, Stats.

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

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

**Agriculture, Trade and Consumer Protection (CR 99-168):**

Chs. ATCP 10, 11 and 12 – Relating to animal diseases, animal movement and livestock markets, dealers and truckers.

**Barbering and Cosmetology Examining Board (CR 00-19):**

Ch. BC 5 – Relating to theory hours conducted by the school outside of the classroom.

**Employe Trust Funds (CR 00-43):**

Ch. ETF 50 – Relating to eligible applicants for disability benefits.

**Employe Trust Funds (CR 00-62):**

S. ETF 10.60 (2) and (3) – Relating to electronic reporting for the Wisconsin Retirement System (WRS).

**Financial Institutions-Banking, -Savings Banks and -Savings and Loans (CR 00-45):**

Chs. DFI-Bkg 4, DFI-SB 19 and DFI-SL21 – Relating to financial subsidiaries.

**Workforce Development (CR 99-163):**

Chs. DWD 100, 101, 102, 110, 111, 126, 127, 128, 129, 132, 135, 140 and 149 – Relating to a limited waiver of the work search requirement, ability to work and availability for work and various minor changes relating to unemployment insurance.

**Workforce Development (CR 00-46):**

SS. DWD 270.085 and 272.085 – Relating to student worklike activities that do not constitute employment.



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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

**Commerce (CR 00-9):**

An order affecting chs. Comm 2, 5, 82 and 84, relating to program revenue fees.  
Effective 09-01-00.

**Revenue (CR 00-23):**

An order creating s. Tax 2.32, relating to defining "gross receipts" for the recycling surcharge.  
Effective 09-01-00.

**Veterans Affairs (CR 00-41):**

An order affecting ss. VA 2.01 and 12.02 and creating ch. VA 15, relating to the health care aid grant program, to the personal loan program and to grants to federally-recognized American Indian tribes and bands.  
Effective 08-01-00.



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