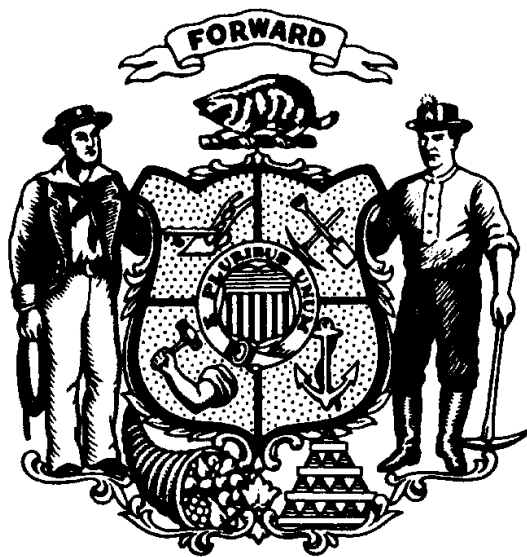


WISCONSIN ADMINISTRATIVE REGISTER

No. 537



Publication Date: September 14, 2000
Effective Date: September 15, 2000



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

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EMERGENCY RULES NOW IN EFFECT

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

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

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

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

EMERGENCY RULES NOW IN EFFECT (3)

Administration

1. Rules adopted creating **ch. Adm 43**, relating to public benefits fees

Exemption From Finding of Emergency

(See section 9101 (1zu) (a) of 1999 Wis. Act 9)

Analysis Prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1), 16.957(2)(c) 4. and 5., and (4)(b), Stats.

Statute interpreted: s. 16.957(2)(c) 4. and 5., and (4), Stats.

1999 Wis. Act 9 included major provisions relating to aspects of electric utility regulation, commonly referred to as “Reliability 2000.” That legislation created a new statutory framework within which public benefit programs relating to low-income energy assistance and energy conservation and renewable energy are continued and expanded. Under ss. 16.957(2)(c) and (4)(b), Stats., the Department of Administration is directed to promulgate rules setting fees to be collected by utilities from their customers, and establishing requirements and procedures related to those low-income and energy conservation programs. This rule provides mechanisms for setting, collecting, and reporting the fees, and related matters.

Publication Date: August 22, 2000
Effective Date: August 22, 2000
Expiration Date: January 19, 2000

2. Rule adopted creating **ch. Adm 44**, relating to energy conservation and efficiency and renewable resource programs.

Exemption From Finding of Emergency

(See section 9101 (1zu) (am) of 1999 Wis. Act 9)

Analysis Prepared by the Department of Administration:

Statutory authority: ss. 16.004(1) and 16.957(2)(c), 2., 2m. and 2n., Stats.

Statute interpreted: s. 16.957(2)(b) and (3)(b), Stats.

Under s. 16.957(2)(c)2, 2m., and 2n., Stats., the Department of Administration is required to promulgate rules for energy conservation and efficiency and renewable resource public benefits programs. The rule establishes requirements, procedures and criteria to be followed by program administrators in soliciting and selecting applications for grant funding to be awarded by the Department for energy programs established under s. 16.957(2)(b), Stats.

The Department believes it is neither wise nor practical to include specific detail in this rule to cover programs that are not yet in existence. These programs will be developed over a longer period of time, with a wide range of input from the Council on Utility Public Benefits, potential program providers, and recipient citizens. They will develop as the needs of the energy efficiency and conservation market becomes clearer and our collective knowledge is increased.

Examples of the variety of programs to be created under s. 16.957 (2) (b) 1., Stats., run the gamut from a simple rebate of a few cents for the purchase of energy efficient products or services to programs requiring complete engineering audits of industrial plants, arrangement of financing, performance contracting and multi-year performance monitoring. The requirements, procedures and related selection criteria necessary to implement these varying programs cannot be specified with detail in this rule. Rather, the rule is designed to allow flexibility for development of policies and procedures through detailed policy and procedure manuals for each program, consistent with Department practice for low-income assistance programs now in effect under ss. 16.385 and 16.39, Stats.

Publication Date: August 22, 2000
Effective Date: August 22, 2000
Expiration Date: January 19, 2001

3. Rules adopted creating **ch. Adm 45**, relating to low-income assistance public benefits.

Exemption From Finding of Emergency

(See section 9101 (1zu) (am) of 1999 Wis. Act 9)

Analysis Prepared by the Department of Administration:

Statutory authority: ss. 16.004(1) and 16.957(2) (c) 2., Stats.

Statute interpreted: s. 16.957(2) (a), Stats.

Under s. 16.957(2)(c), Stats., the Department of Administration is required to promulgate rules for low-income public benefits programs. The proposed rule establishes eligibility and application requirements and procedures for assistance under a low-income public benefits program established under s. 16.957(2)(a), Stats.

It is the Department’s understanding that the Legislature’s intent for this rule was to build upon and transition from the Low-Income Home Energy Assistance Program (LIHEAP) and the Low-Income Weatherization Assistance Program (LIWAP) currently administered by the Department under ss. 16.385 and 16.39, Stats., respectively. The Department presently utilizes extensive, detailed policy and procedure manuals under which those programs operate. Annual plans are also prepared for each of these programs which are

submitted to the federal government as required by the U.S. Department of Housing and Urban Development after extensive opportunities for public input, including public hearings. Because these programs, and the public benefits programs yet to be developed in concert with them under s. 16.957(2)(a), Stats., must be implemented during the heating season, they must be able to react to significant fluctuations of weather, energy costs and energy shortages in a relatively short period of time. For these reasons, this proposed rule is intentionally succinct, yet flexible in order to account for the specific needs of low-income assistance programs envisioned.

Expiration Date: August 22, 2000
Effective Date: August 22, 2000
Expiration Date: January 19, 2000

EMERGENCY RULES NOW IN EFFECT (5)

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

4. Rule adopted repealing s. ATCP 134.06 (3) (c) note and creating s. ATCP 134.06 (3) (d), relating to residential rental practices.

Exemption From Finding of Emergency

On June 21, 2000, the Legislature’s Joint Committee for Review of Administrative Rules (JCRAR) found that the “note” to s. ATCP 134.06 (3) (c) is actually a rule and directed DATCP to adopt the “note” as an emergency rule. According to s. 227.26 (2) (b), Stats., DATCP must promulgate the emergency rule under s. 227.24 (1) (a), Stats., within 30 days after the JCRAR directs DATCP to do so. Because the JCRAR has directed DATCP to adopt this emergency rule, DATCP is not required to make any other finding of emergency.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state landlord–tenant rules contained in ch. ATCP 134, Wis. Adm. Code. These rules affect over 1.5 million Wisconsin residents.

This emergency rule modifies current residential rental practices rules related to security deposit withholding. Under current rules, a landlord may not withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible. A “note” to s. ATCP 134.06 (3) (c) also states that a landlord may not withhold from a tenant’s security

deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant neglect.

Publication Date: July 20, 2000
Effective Date: July 20, 2000
Expiration Date: December 18, 2000

5. Rules adopted creating ch. ATCP 16, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis “non–modified accredited” state.

Finding of Emergency

(1) Bovine tuberculosis is a contagious, infectious and communicable disease caused by *Mycobacterium bovis* (*M. bovis*). It affects cattle, bison, deer, elk, goats and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts. Bovine tuberculosis causes weight loss and general debilitation, and can be fatal.

(2) Wisconsin is currently classified by the United States Department of Agriculture (USDA) as “accredited–free” for tuberculosis.

(3) The USDA recently reclassified Michigan from “accredited–free” to “non–modified accredited,” reflecting a higher risk of bovine tuberculosis.

(4) A significant number of bovine animals, goats and cervids are imported to Wisconsin from Michigan each year.

(5) The last known case of bovine tuberculosis in cattle in Wisconsin was confirmed in an animal imported from Michigan.

(6) If bovine tuberculosis becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in this state.

(7) An emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease in cattle, goats and cervids and will help protect the marketability of Wisconsin–raised animals.

Publication Date: August 11, 2000
Effective Date: August 11, 2000
Expiration Date: January 8, 2001
Hearing Date: September 19, 2000

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
Extension Through: October 30, 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: October 11, 2000

EMERGENCY RULES NOW IN EFFECT

Employe Trust Funds

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

Finding of Emergency

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

The Public Employe Trust Fund was created for the purpose of helping public employees 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 employees, by enhancing employee morale, by providing for the orderly and humane departure from service of employees 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 employees covered by the Wisconsin Retirement System will retire and take annuity benefits effective during 1999.

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

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

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

Publication Date: December 27, 1999
Effective Date: December 31, 1999
Expiration Date: May 29, 2000
Hearing Date: February 11, 2000
Extension Through: September 25, 2000

EMERGENCY RULES NOW IN EFFECT

Health & Family Services

(Management, Technology, etc., Chs. HFS 1–)

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: October 27, 2000

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
Extension Through: October 10, 2000

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

EMERGENCY RULES NOW IN EFFECT (3)

Natural Resources

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

1. Rules adopted revising **ch. NR 10**, relating to deer hunting in certain deer management units.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and forest resources, and to minimize deer nuisance problems, thereby protecting the public peace, health, safety and welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify the rules will result in excessively high deer populations well above established goal levels, causing substantial deer damage to agricultural lands and forest resources, and potential for disease.

Publication Date: May 15, 2000
Effective Date: August 4, 2000
Expiration Date: January 1, 2001

2. Rules adopted revising **ch. NR 10**, relating to the 2000 migratory game bird season.

Finding of Emergency

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

September 1. Failure to modify the rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 1, 2000
Effective Date: September 1, 2000
Expiration Date: January 29, 2001

3. Rules adopted creating **s. NR 1.445** and revising **ch. NR 51**, relating to the stewardship program.

Exemption From Finding of Emergency

Emergency rules are necessary for the department to act as authorized under s. 23.0917, Stats., as created by 1999 Wis. Act 9. According to section 9136(10g) of this Act, the department is not required to make a finding of emergency or provide evidence that promulgating this emergency rule is necessary for the preservation of public peace, health, safety or welfare. In addition, the emergency rules promulgated under this authority remain in effect until June 30, 2001, or until the date on which the corresponding permanent rules take effect, whichever is sooner.

Analysis Prepared by the Department of Natural Resources:

Statutory authority: ss. 227.11(2), 227.24, Stats. and s. 9136 (10g), 1999 Wis. Act 9

Statutes interpreted: ss. 23.09(19), (20) and (20m), 23.0917, 23.092, 23.094, 23.096, 23.098, 23.17, 23.175, 23.197, 23.27, 23.29, 23.295, 30.24 and 30.277, Stats.

The emergency rule:

- Implements a statutory change that requires the department to obtain county approval for acquisitions in counties where greater than 66% of the land is publicly owned.

- Moves three stewardship grant programs (local park aids, urban green space, and urban rivers) from ch. NR 50 to ch. NR 51. Improves grant administration by combining all stewardship grant programs into one chapter.

- Revises and expands program definitions, including definitions for nature–based outdoor recreation and middle kettle moraine, to clarify terms, reflect statutory changes and improve grant administration.

- Implements a statutory change that expands grant eligibility to include non 501(c)(3) organizations.

- Reorganizes the structure of chapter 51 to incorporate new programs and local government programs.

- Implements statutory changes that identify priorities and expand the purposes for which nonprofit conservation organizations can receive grants. Makes minor revisions to improve grant administration.

- Makes minor revisions to bring the natural areas program in line with statutory changes.

- Establishes the administrative framework for the new bluff protection program. Defines “bluff” and sets program priorities.

- Makes minor revisions in the habitat areas and fisheries program to bring the program in line with statutory changes and improve grant administration.

- Establishes the administrative framework for acquisition of property by the department and nonprofit conservation organizations to preserve wild lakes. Defines “wild lake.”

- Makes minor revisions to the stream bank program to bring the program in line with statutory changes.

- Makes minor revisions to the state trails program to improve grant administration.

- Implements a statutory change that makes nonprofit conservation organizations eligible for grants for state property development. Revises grant priorities and makes minor revisions to improve administration of the state property development grant program.

- Establishes the administrative framework and sets priorities for the new Baraboo Hills subprogram.

- Clarifies and streamlines the administration of local assistance grants to governmental units.

- Clarifies and streamlines the administration of the local park aids, urban green space, and urban rivers grant programs which provide grant funds for governmental units and nonprofit conservation organizations. Implements statutory changes that require that all grants issued under these programs be for nature–based outdoor recreation. Lists eligible nature–based projects and sets grant priorities. Also implements a statutory change that allows “shoreline enhancements” to be funded under the urban rivers program and provides a list of typical shorelines enhancements that will qualify for the program.

- Establishes the administrative framework for the new acquisition of development rights program that provides grant funds to local governments and nonprofit conservation organizations. Sets priorities and identifies other factors that will be considered in awarding grants.

- Makes minor revisions to improve administration of the Heritage state park and forest trust program.

Publication Date: September 1, 2000

Effective Date: September 1, 2000

Expiration Date: See section 9136 (10g), 1999 Wis. Act 9

EMERGENCY RULES NOW IN EFFECT

Natural Resources

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

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

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
Extension Through: October 30, 2000

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

EMERGENCY RULES NOW IN EFFECT

Regulation and Licensing

Rules adopted revising **chs. RL 90 to 92**, relating to educational and examination requirements for massage therapists and bodyworkers.

Exemption From Finding of Emergency

Section 2 of 1999 Wis. Act 98 states that the department is not required to make a finding of emergency and that the department need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules.

Analysis Prepared by the Department of Regulation and Licensing:

Statutory authority: s. 227.11 (2), Stats., and s. 440.982 (1) (b), Stats., as amended by 1999 Wis. Act 98.

Statutes interpreted: ss. 440.03 (1) and 440.982 (1) (a) and (b), Stats.

The emergency rule revision to chs. RL 90, 91 and 92 is necessary to implement 1999 Wis. Act 98, relating to educational and examination requirements for massage therapists and bodyworkers. The rules redefine an approved course of instruction to state that a course of instruction may now be approved by the department in addition to being offered by a school approved by the Educational Approval Board under s. 45.54, Stats. Prior to 1999 Wis. Act 98, an approved course of instruction could only be offered by a school approved by the Educational Approval Board.

The rules provide that a course of instruction approved by the department is either: (1) an associate degree program, or a vocational diploma program in massage therapy or bodywork offered by a technical college, or (2) a course of instruction in massage therapy or bodywork offered by a school accredited by an accrediting agency recognized by the U.S. Department of Education, or the Commission on Massage Training Accreditation.

An approved course of instruction must also meet the minimum requirements set forth in s. RL 92.02 (5), consisting of 600 classroom hours satisfying the subject area requirements listed in that section. Additional amendments renumber those remaining sections where affected.

SECTIONS 2, 4 and 6 create definitions of accrediting agency, associate degree program and vocational diploma program.

SECTION 3 renumbers and amends a provision to allow the department to approve a course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 7 amends the introduction to s. RL 91.01, removing a reference to a section that is deleted.

SECTION 8 repeals a provision relating to a registration that is no longer offered.

SECTION 9 renumbers and amends a provision relating to an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 11 renumbers and amends provisions relating to successful completion of examinations required for registration.

SECTION 13 amends a provision relating to the submitted proof pertaining to completion of an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 14 repeals a reference to a formerly approved course of instruction and creates a provision that a course of instruction from a school that is not approved by the educational approval board be from a school that is either a technical college or accredited by an accrediting agency.

SECTION 15 amends provisions to require evidence that the applicant completed a course in adult cardiopulmonary resuscitation.

Publication Date: September 3, 2000
Effective Date: September 3, 2000
Expiration Date: January 30, 2001
Hearing Date: October 3, 2000
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (2)

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
Extension Through: September 28, 2000

- Rules were adopted creating **s. Tax 9.69**, relating to the Master Settlement Agreement between the state of Wisconsin and tobacco product manufacturers.

Exemption From Finding of Emergency

Under a nonstatutory provision in 1999 Wis. Act 122, the Department of Revenue is authorized to promulgate an emergency

rule. The emergency rule is for the purpose of setting forth the requirements and methods to be used to ascertain the amount of Wisconsin excise tax paid each year on cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund or, if the department deems it appropriate, is a participating manufacturer under the Master Settlement Agreement between the state and tobacco product manufacturers. The emergency rule shall cover the period from the effective date of 1999 Wis. Act 122, May 23, 2000, to the date a permanent rule becomes effective. (Note: The department is required under s. 895.10 (4), Stats., as created by 1999 Wis. Act 122, to promulgate a rule and is required under a nonstatutory provision to submit a proposed permanent rule to the Legislative Council by September 1, 2000.)

A nonstatutory provision in 1999 Wis. Act 122 provides that the department is not required to provide a finding of emergency or to provide evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare.

The rule is therefore promulgated as an emergency rule without a finding of emergency and without evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The rule shall take effect upon publication in the official state newspaper and shall apply retroactively to sales of cigarettes on or after May 23, 2000, as provided in s. 895.10 (2) (intro.), Stats., as created by 1999 Wis. Act 122. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date: August 17, 2000
Effective Date: August 17, 2000
Expiration Date: January 14, 2001
Hearing Date: September 18, 2000

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
Extension Through: November 4, 2000

STATEMENTS OF SCOPE OF PROPOSED RULES

Agriculture, Trade and Consumer Protection

Subject:

Ch. ATCP 40 – Relating to fertilizer and related products.

Description of policy issues:

Preliminary objectives:

Update and clarify current rules regulating the sale of fertilizer and related products.

Preliminary policy analysis:

DATCP regulates fertilizer sales under s. 94.64, Stats. Fertilizers are plant growth products that contain recognized plant nutrients such as nitrogen (N), phosphorus (P) and potassium (K). The fertilizer law does not apply to unmanipulated manure, liming materials or other exempt products.

DATCP also regulates soil and plant additives under s. 94.65, Stats. “Soil or plant additives” are other products sold to improve plant growth, crop yield or soil conditions. The soil and plant additive law does not apply to unmanipulated manure, fertilizer, registered pesticides, liming materials or other exempt products.

DATCP regulates sales of fertilizer, soil additives and plant additives to prevent fraudulent sales claims, and to prevent sales of worthless or hazardous products. Companies must be licensed. Product contents must be disclosed on the product label, and ingredients must be present in the amounts guaranteed on the label.

Except as provided by rule, a company must obtain a DATCP permit to sell a fertilizer product that contains less than 24% NPK. (DATCP may issue a permit only for nonagricultural or special use purposes). A company must also obtain a DATCP permit to sell any soil or plant additive. Before issuing a permit, DATCP may demand scientific proof of efficacy and usefulness. DATCP may also require proof of sales claims and product safety.

DATCP has adopted rules under ch. ATCP 40 to regulate fertilizers and soil and plant additives. DATCP proposes to revise its current rules to:

- Clarify permit application procedures.
- Clarify standards for reviewing permit applications.
- Clarify standards for documenting product efficacy and label claims.
- Clarify the conditions under which a company may sell a fertilizer product containing less than 24% NPK without obtaining a DATCP permit for that product.
- Clarify and improve labeling and distribution requirements, including disclosure of product hazards.
- Improve compliance monitoring.
- Make other changes to clarify and update current rule provisions.

Policy alternatives:

No change. If DATCP takes no action, current rules will remain in effect. This may result in unnecessary misunderstandings and conflict related to the regulation of fertilizer and related products. Product labeling may be inadequate, and DATCP may have difficulty monitoring product compliance.

Statutory authority:

DATCP proposes to revise ch. ATCP 40, Wis. Adm. Code, under authority of ss. 93.07, 94.64, 95.65, 100.37, 100.42 and 100.43, Stats.

Estimate of staff time required:

DATCP estimates that it will use approximately 0.8 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

Contact information:

If you have specific questions or comments regarding the proposed rule-making, please contact:

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Madison, WI 53718

Commerce

(Licenses, Certifications and Registrations, Ch. Comm 5)

(Uniform Dwelling, Chs. Comm 20-25)

Subject:

Chs. Comm 5 and 20-25 – Relating to the Uniform Dwelling Code.

Description of policy issues:

Description of the objective of the rule:

The Uniform Dwelling Code establishes statewide uniform construction and inspection rules for one- and 2-family dwellings.

The statutes require the Department to review the rules of the Uniform Dwelling Code every two years. The Department is required to revise the rules after consultation with the Uniform Dwelling Code Council, which is appointed by the Governor. Code changes currently under development are expected to go into effect in early 2001. The code update being scoped herein is expected to be implemented in April 2003.

The objective of the rule is to:

- Have a clearly understood code that reflects application of current construction practices, products, standards, model codes, and materials.
- Have in place appropriate minimum standards for qualifications and responsibilities of persons and businesses that are required or permitted to obtain credentials.

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:

a) Existing policies. The Uniform Dwelling Code, chs. Comm 20-25, establishes statewide uniform construction and inspection rules for one- and 2-family dwellings. To ensure the health, safety and welfare of Wisconsin citizens using and residing in one- and 2-family dwellings, the Department believes that its codes and adopted standards must be viable and current.

b) New policies. This code review will identify potential code revisions necessary to:

- Address code requirement clarity problems that have been discovered since the last code review.
- Clarify administrative requirements.
- Address code requirements for credentialing, including continuous education.

- Reflect new construction practices, products, standards, and materials, including heating, ventilating and air conditioning, fire safety systems, dwelling egress and structural components.

- Address code requirements relative to safety, health, and welfare which are substantially different from the national model building codes.

c) Analysis of policy alternatives. The Department has identified the following alternatives:

- The Department could leave the code as written. However, the Department believes that using the code as it stands now would leave designers, builders and local inspectors unsure of how to comply with the code, and unaware of how newer materials and standards should be regulated and applied. This alternative conflicts with s. 101.63 (5), Stats.

- The Department could, after consulting with the council, adopt current standards, correct code clarity problems, incorporate code interpretations that have developed since the last code change, incorporate new construction practices, products, standards or materials, and incorporate new code requirements into the next code package. These proposed changes would fulfill the objective of protecting public health, safety and welfare. The Department recommends this alternative.

Statutory authority for the rule:

Applicable sections of Wisconsin Statutes:

Section 101.60 – Establishes statewide construction standards for 1–2 family dwellings.

Section 101.63 – Requires Department to establish standards for construction and inspection.

Section 101.63 (5) – Requires Department to biennially review rules.

Section 101.64 (3) – Permits Department to revise rules after consulting with UDC council.

Section 101.73 – Establishes statewide standards for manufactured 1–2 family dwellings.

Section 101.74 – Requires Department to establish standards for construction and inspection.

Section 101.73 (8) – Requires Department to biennially review rules.

Section 101.74 (3) – Permits Department to revise rules after consulting with UDC council.

Estimate of the amount of time necessary to develop the rule:

The following is the estimated work time between 11/00 and 4/03 that staff will be involved in these code change issues.

| | |
|---------------------------------------|--------------------|
| Dwelling code council meetings – | |
| (Average of 40 hr. x 8 meetings) | = 320 hr. |
| Code topics research, language drafts | = 450 hr. |
| Hearings, responses, revisions, etc. | = 375 hr. |
| <u>Environmental assessment –</u> | <u>= 40 hr.</u> |
| Total | = 1,185 hr. |

Contact information:

If you have specific questions or comments regarding the proposed rule-making, please contact:

Duane Hubeler
 Safety and Buildings Division
 Program Development Bureau
 Dept. of Commerce
 Telephone: (608) 266–1390
 Email: duane.hubeler@commerce.state.wi.us

Elections Board

Subject:

SS. EIBd 2.05 to 2.07 – Relating to the procedure for filing nomination papers and determining their sufficiency; the procedure for challenging nomination papers; the procedure for responding to challenges to nomination papers; and the procedure for filing officer review of challenges to nomination papers.

Description of policy issues:

Description of objective(s):

The objectives of the rule are:

- To amend the Elections Board's existing rule;
- To amend the provisions that provide for the nomination paper requirements and the standards for determining their sufficiency; and
- To amend the periods of time in which to file a challenge to nomination papers and in which to respond to a challenge to nomination papers.

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

Under the existing rules, nomination papers do not have to be numbered and a correction procedure has not been codified. Also, challengers and respondents have three business days in which to file their pleadings with the filing officer. The Board is considering whether nomination papers ought to be numbered and whether a correction procedure ought to be codified. It is also considering whether the periods of time for challenge and response ought to be increased to give challengers more time in which to file a challenge and respondents more time in which to file a response. By extending the time periods for challenge and response, each party would have more time in which to investigate the facts and circumstances underlying the challenge.

Statutory authority for the rule:

Sections 5.05 (1) (f) and 227.11 (2) (a), Stats.

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

8 hours of staff time.

Contact information:

If you have specific questions or comments regarding the proposed rule-making, please contact:

George A. Dunst, Legal Counsel
 State Elections Board
 Telephone: (608) 266–0136
 Email: george.dunst@seb.state.wi.us

Natural Resources

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

Subject:

Section NR 1.62 and ch. NR 45 – Relating to rock climbing on Department properties.

Description of policy issues:

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

General policy (s. NR 1.62) regarding rock climbing on Department properties; specific requirements regarding rock climbing which will go into ch. NR 45 – Proposed rules would affect all users of Department properties where rock climbing does or might occur, although the primary affected group would be persons engaged in rock climbing.

The proposed rules would include a Board policy on rock climbing, and specific provisions in ch. NR 45 that would regulate this activity. The Department's intention is that the policy would express general support for rock climbing on most Department properties and provide the basis for those restrictions that are necessary to protect public safety and natural resources.

Rock climbing is an increasingly popular activity in Wisconsin, with state lands (especially Devils Lake State Park) providing significant opportunities for climbers. Concerns about conflicts between climbers and other recreational users, and about damage to especially-sensitive cliff environments, led at Devils Lake to the temporary closure of one portion of the park, known as the "New Sandstone Area", to rock climbing. Concerns were expressed by rock climbers that the Department lacked a definitive policy for managing this activity, and the Department agreed that policies specific to rock climbing needed to be developed.

In early 1999, the Department convened a Rock Climbing Technical Advisory Committee (RCTAC), which consisted of a balanced group of climbers, property managers, and environmental interests, to develop an initial policy proposal. After extensive internal review, a proposed policy was reviewed and approved by the Land and Forestry Leadership Team. This proposal was essentially the same proposal which the RCTAC had approved, with two exceptions. First, the large volume of information contained in the RCTAC's draft was moved to an appendix. Second, a provision restricting rock climbing in State Natural Areas, which had been discussed but not adopted by the RCTAC, was inserted. This provision recognizes the special sensitivity of State Natural Areas and the need for a higher level of resource protection in these areas.

The proposed policy has been further discussed at an August 1 workshop of rock climbers and Department property managers. Comments are due to the Department by October 1. If the proposed policy will be non-controversial, the DNR's intent is to bring it to the Board on the same schedule as other proposed ch. NR 45 changes. If there is substantial disagreement over the proposed policy, the rules would come to the Board later in 2001, although hopefully soon enough to be in effect by climbing season.

To re-emphasize: the Department supports, and wishes to promote, responsible rock climbing on Department lands. The potential for controversy is in the extent of restrictions which the DNR believes are needed to minimize user conflicts and avoid damage to sensitive environments.

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

Explain the facts that necessitate the proposed change:

The Department has generally allowed this activity on a number of its properties. The increased level of this activity and concerns about conflicts with other users and the potential for environmental damage in certain situations have created the need for a more comprehensive and consistent approach to both encouraging the activity and providing appropriate regulation to limit user conflicts and environmental damage.

This rule/Board action does not represent an opportunity for pollution prevention and/or waste minimization. This rule deals with criteria and procedures for management of an outdoor recreation activity which is not a pollution source and does not generate waste.

Statutory authority:

Sections 23.09 (2), 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats.

Anticipated time commitment:

The anticipated time commitment is 160 hours. Two to three public hearings are proposed to be held in February, 2001 at Madison, Green Bay and Eau Claire/Wausau.

Contact information:

If you have any questions, please feel free to contact:

Bob Roden, Director
Bureau of Facilities and Lands
Dept. of Natural Resources
Telephone: (608)266-2197
Fax: (608)267-2750

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

Subject:

Section NR 1.95 – Relating to wetlands preservation, protection and management housekeeping changes to reflect law changes and the Department's wetland strategy, "Reversing the Loss".

Description of policy issues:

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

"Reversing the Loss – A Strategy for Protecting and Restoring Wetlands in Wisconsin" and "Section NR 1.95, Wetlands Preservation, Protection and Management."

Last year during a briefing on wetland mitigation, a former member of the Board asked about the Department's vision and goals for protecting and restoring Wisconsin's wetlands. Because of the numerous programs with wetland responsibility, the DNR had many program goals, but did not have a "big picture" for wetland management. Therefore the Wetland Team was assigned to develop a long-term vision with goals and performance measures for the desired future state of our wetlands and to recommend any needed revisions to the state's wetland policy.

The Team developed a plan titled "Reversing the Loss — A strategy for Protecting and Restoring Wetlands in Wisconsin", conducted an extensive public participation effort and reviewed, considered and incorporated much of the extensive and detailed comments they received from over 100 citizens and groups.

"Reversing the Loss" identifies four themes or directions for the Department's wetland efforts:

- Strengthen relationships with property owners, not-for-profit conservation organizations and local governments. Develop the outreach and incentives needed to encourage private wetland stewardship. Provide the technical assistance needed for private wetland stewardship.
- Manage wetlands for biodiversity, wildlife health and ecological integrity. Identify important wetlands within watersheds and develop coherent ecologically-based protection and management plan for each watershed. Encourage wetland restoration and enhancement projects for both specific functions and for the full range of functions.
- Simplify the DNR's regulatory approach by identifying ways to improve its current regulatory program, developing an effective wetland enforcement program and a compensatory mitigation program. Also look at developing a comprehensive state-administered wetland protection program.
- Develop and use modern technology. Increase the use and accessibility of the Wisconsin Wetland Inventory, develop a comprehensive, integrated and current wetland monitoring/resource inventory and increase the availability of wetland information.

The Department's wetland policy, s. NR 1.95, was enacted in 1978. While the policy has aged well, there have been numerous changes to federal laws and programs that have impacted heavily on

how the DNR regulates and manages Wisconsin's wetlands. These include major changes to the Corps S404 regulatory program, the development of the s. 401 (ch. NR 103) wetland water quality certification program and conservation programs such as the Conservation and Wetland Reserve Programs. The passage of state legislation authorizing compensatory mitigation and creating water quality certification enforcement authority is another significant change to our wetland programs. The Wetland Team has reviewed the policy and is recommending "housekeeping" changes to s. NR 1.95 to reflect both these changes and the strategic direction and goals of "Reversing the Loss".

The DNR does not anticipate any major issue discussion. Interest groups will be Wisconsin Builders Association, Wisconsin Cranberry Growers Association, Wisconsin Wetland Association, Wisconsin Waterfowlers Association, Wetlanders, Wisconsin Farm Bureau, Wisconsin Association of Lakes, Sierra Club, Audubon, Ducks Unlimited, Wisconsin Environmental Decade, U.S. Environmental Agency, U. S. Army Corps of Engineers, Natural Resources Conservation Service, U. S. Fish and Wildlife Service, Wisconsin County Code Administrators Association, and Wisconsin Tribal Resource Agencies.

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

Explain the facts that necessitate the proposed change:

"Housekeeping" changes are needed to reflect both the strategic directions of "Reversing the Loss – A Strategy for Protecting and Restoring Wetlands in Wisconsin" and the extensive changes in both federal and state wetland laws since the enactment of s. NR 1.95 in 1978. Of special note is this year's legislation authorizing wetland compensatory mitigation and enforcement of wetland water quality certifications.

This rule/Board action does not represent an opportunity for pollution prevention and/or waste minimization. It is an adoption of federal requirements that do not include or allow for pollution prevention.

Statutory authority:

Sections 1.11, 23.09, 29.011 and 281.11, Stats.

Anticipated time commitment:

The anticipated time commitment is 104 hours. Eight public hearings are proposed to be held in November and December 2000, in conjunction with compensatory mitigation hearings. The proposed locations for the hearings are: Green Bay, Rhinelander, Milwaukee, Spooner, LaCrosse, Madison, Eau Claire and Stevens Point.

Contact information:

Bureau of Fisheries Management and Habitat Protection
Dept. of Natural Resources
Telephone: (608) 267-7498
FAX: (608) 266-2244

Natural Resources

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

Subject:

Ch. NR 45 – Relating to the use of Department properties.

Description of policy issues:

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

Chapter NR 45 is the principal rule governing the conduct of visitors to Department properties. It covers a wide variety of topics, including vehicle use, pet activities, fires, beach use, firearms and hunting, camping, motorboat use, fees and charges, and numerous property-specific provisions.

During every even-numbered year, Department property managers are asked to submit proposed changes to ch. NR 45 that would enhance the safety and enjoyment of visitors and protect natural resources. These proposed changes are reviewed by an ad

hoc team of Department staff that are familiar with property management, by the Land and Forestry Divisions' standing Land and Recreation Policy Team, and by the Land and Forestry Leadership Team before being submitted as draft rules. In the past, most of the proposed rule changes included in the ch. NR 45 package have been non-controversial; the more complex or controversial rules tend to be submitted individually.

Proposed ch. NR 45 changes would likely come to the Board in January 2001 for approval to hold public hearings. The schedule is meant to allow new rules to be in place by the main summer recreation season.

These proposed rules relate to miscellaneous rule changes sought by Department property owners to improve public safety or property management. Users of the affected properties (both categories and specific individual properties) would be interested and potentially impacted.

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

Explain the facts that necessitate the proposed change:

Each specific proposal will represent a change in past policy, although most changes are consistent with broader policies for management of the public use of Department properties. Changes are prompted by problems which have emerged on Department properties or during development or implementation of new master plans.

This rule/Board action does not represent an opportunity for pollution prevention and/or waste minimization. The rule deals with the management of public recreational use of Department properties and does not, in itself, address either pollution prevention or waste minimization.

Statutory authority:

Sections 23.09 (2), 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats.

Anticipated time commitment:

The anticipated time commitment is 110 hours. Two to three public hearings are proposed to be held in February, 2001 at Madison, Green Bay and Eau Claire/Wausau.

Contact information:

If you have any questions, please feel free to contact:

Bob Roden, Director
Bureau of Facilities and Lands
Dept. of Natural Resources
Telephone: (608)266-2197
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Natural Resources

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

Subject:

Ch. NR 47 – Relating to emergency rule request for cost-shared suppression of gypsy moth outbreaks (Forestry Grant and State Aid Administration).

Description of policy issues:

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

A federal cost-sharing program exists to assist states to suppress defoliating populations of gypsy moth below damaging levels through a voluntary program for counties, communities and individuals. Both treatment and administrative costs are shared at up to 50%. Gypsy moth populations will be reaching damaging levels over areas large enough for aerial sprays this coming spring. To be able to offer the cost-sharing program for treatments in May 2000, DNR will need emergency rules in order for counties to do the necessary preparatory work this fall and winter. Counties, towns, cities and individuals are interested in applying for this program due to cost savings, technical assistance and public health and safety benefits.

Emergency Rule Request for Cost-shared Suppression of Gypsy Moth Outbreaks:

Request:

DNR requests approval of emergency rules in order to offer a cost-sharing program for suppression of gypsy moth outbreaks in 2001. In order to treat outbreak populations of gypsy moth next May, it is necessary that preparatory work be done this fall to define treatment areas. Without rules defining eligibility and an application procedure in place by November, DNR will not be able to offer cost-sharing assistance to communities. There are communities in eastern Wisconsin at risk of defoliation by gypsy moth with the potential for significant tree damage and landowner discontent. While it will be possible for some larger communities to organize an independent treatment program, public health and safety in these situations is a concern due to the use of aerial spray equipment and the wide variety of insecticides available. A unified state program has the advantage of experienced technical assistance, advanced safety equipment, and state-of-the-art monitoring equipment which is not always available to private spray projects.

Background:

The USDA Forest Service provides cost-sharing for voluntary, aerial spray programs to suppress outbreaks of gypsy moth capable of causing substantial defoliation. The Forest Service, however, requires the state to administer the program, including developing rules for awarding cost-sharing within Forest Service guidelines. In addition, the Wisconsin Gypsy Moth Strategic Plan specifies that DNR will work with counties in the suppression of this pest. Procedures regulating the Wisconsin cost-shared suppression program are in development. Criteria defining eligible treatment blocks have already been approved by the Cooperative Gypsy Moth Program (see #1 below):

#1 Criteria for Participation in the Federal Cost-Sharing Program for Suppression

Minimum Acreage: 40 acres

Minimum Canopy Coverage:

Residential (≥ 1 residence/5 acres) 25%

Rural (< 1 residence/5 acres) 50%

Minimum % Preferred Host: 50%

Egg Masses/Acre:

Residential (> 1 residence/5 acres) and high-use recreational: 500

Rural (< 1 residence/5 acre) and low-use recreational: 1000

===== #1 ends =====

Division of the program responsibilities among DNR, DATOP, County government and UW Extension is currently being refined (see #2 below):

#2 DNR's Forestry Mission:

- To protect and manage the forest resources of Wisconsin;
- To enhance and insure the present and future benefits of the forest resources including: timber production, watershed protection, wildlife habitat, air quality, soil protection, recreation, scenic beauty and employment opportunities, which combined provide a high quality of life for all Wisconsin citizens and visitors.

Purpose of the Wisconsin Gypsy Moth Program:

Suppression Component:

DNR will cooperate with county governments in Wisconsin to treat forested communities or valuable forests to minimize the impact caused by the gypsy moth.

In so doing, DNR will:

- Prevent negative economic impacts.
- Minimize adverse impacts to the environment.

- Enhance the growth and maintenance of trees and forests.
- Protect outdoor recreational opportunities.
- Protect water quality by preventing runoff associated with defoliation.
- Protect wildlife habitat.

Objective of the Wisconsin Gypsy Moth Program:

Suppression Component:

To protect certain forested areas from serious damage by limiting tree defoliation caused by gypsy moth larvae to less than 30% on 80% or more of the moderately to highly favored host trees. Forested areas treated would consist of those where treatment was requested, which fulfilled criteria for treatment and for which local funds had been provided for their share of treatment cost.

Highly Favored Hosts

Oaks
Aspens
White and River Birches
Crabapples
Basswood
Willows

Moderately Favored Hosts

Maples
Pines
Walnut
Hickory
Cherry
Beech
Hemlock

Suppression-Related Responsibilities and Staff:

Both Slow-The-Spread (STS) and suppression treatments will occur during 2000-2005 (and possibly beyond). Eventually, however, the STS program will move west out of the state and only suppression treatments will be done on an as-needed basis.

Currently, it seems most efficient to develop a cooperative treatment program with DATCP to handle both STS and suppression aerial sprays. Within this umbrella program, however, the contracts for treatment of suppression and STS blocks should be separate. This approach would have the advantages of minimizing duplication of effort while allowing the development of DNR staff and skills.

Cooperative DNR/DATCP activities include:

- Selection of sites and treatment type for STS program (a continuation of current procedure).
- Writing of the Environmental Assessment.
- Development, advertisement and selection of aerial application bids.
- Calibration of aircraft.
- Monitoring phenology for start of treatments.
- ICS management of spray program.
- Development of criteria and procedure for the suppression program.

DNR activities include:

- Providing regional predictive surveys of defoliation.
- Training county (and/or municipal) cooperators in conjunction with UW Extension.
- Reviewing, prioritizing and organizing proposed suppression blocks.
- Quality control of proposed suppression blocks.
- Processing local cost share.
- Overseeing suppression treatments.
- Assessing suppression treatments: defoliation surveys of treated sites, participant survey.
- Administering and dispersing grants to counties.
- Application for federal funds from the Forest Service.

DATCP activities include:

- Application for funds from the STS foundation.
- Male moth trapping program, DNR contracts with DATCP to monitor in quarantined counties.

Duties associated with participation in the STS program.

Providing GIS services for both STS and suppression programs. DNR would contract digitizing block maps for use with GPS guidance systems.

UW Extension activities include:

Educating the general public on gypsy moth, STS and suppression

Training county coordinators in conjunction with DNR

County government activities include:

Initial contact for landowners, taking requests for treatment.

Performing egg mass survey and delineating spray blocks.

Mapping blocks

Collecting permission from landowners or seeing that it is collected.

Accommodating objectors.

Collecting landowner or local share of treatment cost by prearranged date.

Collecting information that would be used in prioritizing blocks

Sending all documents for blocks in that county to DNR

Organizing public informational meetings

===== #2 ends =====

Gypsy moth has recently increased to defoliating levels within counties along the Lake Michigan shoreline and inland to Winnebago and Waukesha counties. This past summer, outbreak populations of this pest were limited to a few sites in Appleton, Brookfield, and Milwaukee. It is expected that populations of gypsy moth will continue to increase and more areas will be affected by this pest in the next few years. Already, DNR is receiving requests for assistance from individuals, towns, cities, and counties for suppressing gypsy moth populations that will likely reach defoliating levels in spring 2001.

Counties, towns, cities and individuals are interested in applying for the federal cost-sharing suppression program organized by the state for several reasons. The cost savings over a private suppression program can be great. Not only is the total cost shared, but by including these smaller treatment blocks in the overall state program, the cost per acre can be dramatically reduced. For example, in May 2000, a private spray program's cost was \$100/acre (for 40 acres), as compared with \$10/acre in the coordinated state Slow–The–Spread (STS) spray program (for >80,000 acres). Extensive technical assistance is available as part of the state suppression program. Most importantly, counties, towns, cities and individuals have a much greater assurance of a program with the highest standards for public health and safety. State staff have a high degree of technical expertise and extensive experience coordinating large aerial spray programs with a high degree of safety.

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

Explain the facts that necessitate the proposed change:

There is no previous policy on suppression of outbreak populations of gypsy moth. While the Department has been working with DATCP and the USDA Forest Service on aerial treatments of gypsy moth, this has been as part of a multi–state program to Slow–The–Spread (STS) of this non–native pest. Only small, discrete colonies on the leading edge of establishment in central and western Wisconsin are treated as part of the STS program. These pioneering colonies represent a future threat, but not a current one, as do established and building populations in the eastern counties of the state.

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

Statutory authority:

Sections 26.30, 28.01, 28.07 and 227.11 (2), Stats.

Anticipated time commitment:

The anticipated time commitment is 414 hours. Three public hearings are proposed to be held in November 2000 at Appleton, Waukesha and Marinette.

Contact information:

For further information, please contact:

Bureau of Forestry
Dept. of Natural Resources
Telephone: (608) 267–7494
FAX: (608) 266–8576

Natural Resources

(Environmental Protection—Air Pollution Control, Chs. NR 400—)

Subject:

Chs. NR 422, 460, 465 and 484 – Relating to incorporating existing national standards for hazardous air pollutants (NESHAP) for wood furniture manufacturing operations into the Wisconsin Administrative Code.

Description of policy issues:

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

This rule relates to the creation of ch. NR 460 Appendix JJ and ch. NR 465 and amendment of chs. NR 422 and 484 to incorporate existing national standards for hazardous air pollutants (NESHAP) for wood furniture manufacturing operations into the Wisconsin Administrative Code.

The U.S. Environmental Protection Agency published this NESHAP, which establishes maximum achievable control technology (MACT) for wood furniture manufacturing operations, on December 7, 1995. Section 285.27 (2), Stats., requires the Department to promulgate NESHAP by rule. Because this standard affects more than 10 sources, promulgation into state rule is consistent with the MACT Streamlining Policy adopted by the Board. While some changes may be necessary to accommodate the state's Administrative Code structure, no substantive changes will be proposed and the state rule will be essentially equivalent to the NESHAP.

There are no policy issues to be resolved. This standard affects facilities statewide which manufacture wood furniture or wood furniture components and which are considered major sources for federal hazardous air pollutants.

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

Explain the facts that necessitate the proposed change:

Section 285.27 (2), Stats., states that the Department shall promulgate by rule a standard similar to any standard promulgated under section 112 of the Clean Air Act.

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

Statutory authority:

Sections 227.11 (2) (a), 285.11 (1) and 285.27 (2), Stats.

Anticipated time commitment:

The anticipated time commitment is 464 hours. Two public hearings are proposed to be held in December 2000 at Appleton and Madison.

Contact information:

For further information, please contact:

Bureau of Air Management
Dept. of Natural Resources
Telephone: (608) 266–7718
Fax: (608) 267–0560

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

Subject:

Ch. NR 464 – Relating to hazardous air pollutant emissions from pulp and paper mills. The proposed rule is identical to the already-promulgated Federal Maximum Achievable Control Technology (MACT) Standard.

Description of policy issues:

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

Promulgation of the Federal Maximum Achievable Control Technology (MACT) Standard for pulp and paper mills in ch. NR 464.

The Bureau of Air Management is seeking approval to adopt the federal hazardous air pollutant standard for pulp and paper mills into the Wisconsin Administrative Code.

This standard was promulgated by USEPA on April 15, 1998, with a compliance date for most sources of April 2001. This standard limits hazardous air pollutant emissions from pulping and bleaching operations at affected pulp and paper mills.

The standard proposed is identical to the federal standard except for changes necessary in the numbering of sections to fit the format of the Wisconsin Administrative Code.

The U.S. EPA promulgated the MACT Standard for the pulp and paper industry effective April 15, 1998. This action incorporates that standard into the Wisconsin Administrative Code. There are no policy issues to be resolved. This standard affects facilities statewide which operate pulp and paper mills in the State.

The Department has sought input from the pulp and paper industry on the rule. The Department will notify and seek input from the Air Toxics Subcommittee and from the general public after approval for hearing.

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

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

Statutory authority:

Sections 285.11 (1) and 285.13 (7), Stats.

Anticipated time commitment:

The anticipated time commitment is 684 hours. The Department is proposing to hold two public hearings on the proposed rule in December 2000 at Wisconsin Rapids and Green Bay.

Contact information:

For further information, please contact:

Bureau of Air Management
 Dept. of Natural Resources
 Telephone: (608) 266-7718
 Fax: (608) 267-0560

Regulation and Licensing**Subject:**

Ch. RL 87, Appendix I – Relating to the Uniform Standards of Appraisal Practice (USPAP) requirements as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

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

The objective of the rule is to repeal and recreate ch. RL 87, Appendix I, the Uniform Standard of Professional Appraisal Practice, to include recent revisions to the Standards that will become effective on **January 1, 2001**.

Policy analysis:

These rules will adopt revisions contained in the 2001 edition of the Uniform Standards of Professional Appraisal Practice.

Statutory authority:

Sections 227.11 (2), 458.03, 458.05 and 458.24, 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 further information, please contact:

Pamela Haack
 Administrative Rules Coordinator
 Dept. of Regulation and Licensing
 Telephone: (608) 266-0495
 Email: pamela.haack@drl.state.wi.us

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

Chiropractic Examining Board

Rule Submittal Date

On August 18, 2000, the Chiropractic Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule–making order repeals and recreates ss. Chir 4.03 and 4.05 (1) (d), relating to nutritional supplements.

Agency Procedure for Promulgation

A public hearing is required and will be held on Thursday, October 12, 2000 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions, please contact:

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Administrative Rules Coordinator
Telephone: (608) 266–0495
Email: pamela.haack@drl.state.wi.us

Chiropractic Examining Board

Rule Submittal Date

On August 18, 2000, the Chiropractic Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule–making order affects s. Chir 5.01 (1), relating to continuing education requirements.

Agency Procedure for Promulgation

A public hearing is required and will be held on Thursday, October 12, 2000 at 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions, please contact:

Pamela Haack
Administrative Rules Coordinator
Telephone: (608) 266–0495
Email: pamela.haack@drl.state.wi.us

Commerce

(Licenses, Certifications and Registrations, Ch. Comm 5)

Rule Submittal Date

On August 24, 2000, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order amends ss. Comm 5.07, 5.08 and 5.92, relating to renewal of expired credentials.

Agency Procedure for Promulgation

A public hearing is required and will be held on Tuesday, September 26, 2000 at 1:00 p.m. in Room 3B at the Thompson Commerce Center, 201 West Washington Ave., Madison, Wisconsin. The agency unit primarily responsible for the promulgation of the proposed rule is the Safety and Buildings Division.

Contact Information

If you have questions, please contact:

Ronald Acker
Dept. of Commerce
Telephone: (608) 267–7907
Email: ronald.acker@commerce.state.wi.us

Commerce

(PECFA, Chs. Comm 46–47)

Rule Submittal Date

On August 28, 2000, the Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order creates ch. Comm 46, relating to Petroleum Environmental Cleanup Fund Interagency Responsibilities.

Agency Procedure for Promulgation

A public hearing is required and will be held on Tuesday, September 26, 2000 at 9:30 a.m. in Conference Room 3B at the Thompson Commerce Center, 201 West Washington Ave., Madison, Wisconsin. The agency unit primarily responsible for the promulgation of the proposed rule is the Bureau of PECFA.

Contact Information

If you have questions, please contact:

William J. Morrissey
Dept. of Commerce
Telephone: (608) 266–7605
Email: william.morrissey@commerce.state.wi.us

Regulation and Licensing

Rule Submittal Date

On August 30, 2000, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 227.11 (2), Stats., and s. 440.982 (1) (a) and (b), Stats., as amended by 1999 Wis. Act 98.

The proposed rule-making order affects chs. RL 90 to 92, relating to educational and examination requirements for massage therapists and bodyworkers.

Agency Procedure for Promulgation

A public hearing is required and will be held on Tuesday, October 3, 2000 at 10:00 a.m. in Room 124, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions, please contact:

Pamela Haack
Administrative Rules Coordinator
Telephone: (608) 266-0495
Email: pamela.haack@drl.state.wi.us

Workforce Development**(Economic Support, Chs. DWD 11-59)****Rule Submittal Date**

On August 31, 2000, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 49.145 (2) (d) and (n) 1. a., (3) (b) 1. and (4), 49.147 (6) (a) 2., 49.148 (1), 49.155 (1m) (d) and (5) and 227.11, Stats., as affected by 1999 Wis. Act 9.

The proposed rules affect chs. DWD 12 and 56, relating to W-2 eligibility and child care copayments.

Agency Procedure for Promulgation

A public hearing will be held on Friday, September 29, 2000 at 1:30 p.m. in Room 400X of the GEF #1 Building, 201 East Washington Ave., Madison, Wisconsin. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Economic Support.

Contact Information

If you have questions, please contact:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
Telephone: (608) 267-9403
Email: pridgel@dwd.state.wi.us

Workforce Development**(Economic Support, Chs. DWD 11-59)****Rule Submittal Date**

On August 30, 2000, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 49.19, 49.20 (1997-98), 49.193, 49.21 (1997-98), 49.27 (1997-98), and 227.11 (2), Stats.

The proposed rules affect chs. DWD 22 and HSS 205, 206, 207, 225 and 244, relating to obsolete public assistance policies and procedures.

Agency Procedure for Promulgation

A public hearing will be held on Friday, September 29, 2000 at 1:30 p.m. in Room 400X of the GEF #1 Building, 201 East Washington Ave., Madison, Wisconsin. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Economic Support.

Contact Information

If you have questions, please contact:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
Telephone: (608) 267-9403
Email: pridgel@dwd.state.wi.us

NOTICE SECTION

Notice of Hearing *Agriculture, Trade and Consumer Protection* (Reprinted from the August 31, 2000 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces it will hold a public hearing on its emergency rule (ch. ATCP 16), relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state.

Hearing Information

The public hearing will be held:

| <u>Date & Time</u> | <u>Location</u> |
|--|--|
| September 19, 2000 Tuesday Beginning at 2:00 p.m. | Room 172, DATCP Prairie Oak State Office Bldg. 2811 Agriculture Dr. MADISON, WI |

Written Comments

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 **Monday, September 25, 2000**, to receive additional written comments.

Contact Information

An interpreter for the hearing-impaired will be available on request for this public hearing. Please make reservations for a hearing interpreter by **Thursday, September 7, 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 Dept. of Agriculture, Trade and Consumer Protection

Statutory authority: s. 93.07 (1)

Statutes interpreted: ss. 93.07 (10), 95.20 and 95.25

In order to protect the public from bovine tuberculosis, this emergency rule restricts the importation of animals from states that the United States Department of Agriculture (USDA) has classified as "non-modified accredited."

Background

Bovine tuberculosis (TB) is an infectious disease caused by *Mycobacterium bovis* (*M. bovis*). It is generally described as a chronic debilitating disease of cattle but it may have an acute, rapidly progressive course. It can cause disease in most warm-blooded vertebrates, including humans. If TB becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in the state.

The TB eradication program is administered jointly by the Wisconsin Department of Agriculture, Trade and Consumer Protection (Department) and the USDA. After several decades of intense effort, the disease was nearly eradicated in the United States. Recently the USDA reclassified Michigan from "accredited-free" to "non-modified accredited" because TB was confirmed in several cattle herds and in several native white-tailed deer. Because of the ease of transmission of TB, the substantial number of animals imported to Wisconsin, and because the last-known incident of TB in a bovine animal in Wisconsin involved a bovine that was imported from Michigan, the Department has determined that Wisconsin needs to regulate the import of animals that originate from "non-modified accredited" states.

Rule Contents

Pre-Import Requirements:

Under this emergency rule, bovine animals, goats and cervids imported to Wisconsin from a tuberculosis "non-modified accredited" state must be accompanied by a certificate of veterinary inspection. The importer must obtain an import permit from the Department.

The veterinarian who completes the certificate of veterinary inspection must certify that the animal originates from a herd in which a whole herd TB test has been completed within the last 12 months. The veterinarian must certify that the whole herd test included every animal over 6 months of age in the herd, and that all test results were negative.

An imported animal must be individually tested for tuberculosis within 60 days (90 days for a cervid) prior to the import date, unless the animal is less than 6 months old on the import date. The test may be performed as part of a whole herd test if the whole herd test is performed within 60 days (90 days for a cervid) prior to the import date.

Post-Import Testing:

An animal imported to Wisconsin from a tuberculosis non-modified accredited state must be tested for tuberculosis not less than 90 days nor more than 120 days after it is imported. This testing requirement does not apply to feeder cattle that are confined to the receiving premises until they are shipped to slaughter. (The feeder cattle, when shipped to slaughter, must be accompanied by USDA form VS1-27.)

Post-Import Confinement:

Animals imported to Wisconsin from a tuberculosis non-modified accredited state may not be commingled with any other animals in this state, or removed from the premises at which they are first received in this state, until they test negative for tuberculosis or are shipped to slaughter.

Exception:

This emergency rule does not apply to animals that are imported directly to a slaughtering establishment for slaughter.

Fiscal Estimate

The Department anticipates costs to the Department of approximately \$2000 as a result of this emergency rule. The Department can accommodate these costs in its current budget. The Department does not anticipate any additional costs to counties or other local governments.

Initial Regulatory Flexibility Analysis

This emergency rule may have some financial impact on small business people who import bovine animals, goats or cervids. If these people import animals from states designated tuberculosis "non-modified" accredited, these people may incur additional costs associated with post-import testing of the animals. However, they may avoid additional testing costs by refraining from importing animals that originate from tuberculosis non-modified accredited states.

Despite the potential costs associated with testing, the rule is needed because the costs that would be incurred by small business people if bovine tuberculosis is imported to Wisconsin far exceeds any additional costs associated with testing animals that originate from tuberculosis non-modified accredited states.

Copies of the Emergency Rule

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

Animal Health Division
Telephone (608) 224-4883
Wis. Dept. of Agriculture, Trade & Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

Notice of Hearing
Agriculture, Trade and Consumer Protection
[CR 00-119]
(Reprinted from the August 31, 2000 Wis. Adm. Register)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed amendment to ch. ATCP 30, Wis. Adm. Code, relating to the use of atrazine pesticides.

Written Comments

The hearing will be held at the time and place shown below. The public is invited to attend the hearing and comment on the proposed rule. The Department also invites comments on the draft environmental impact statement accompanying the rule. Following the public hearing, the hearing record will remain open until **Thursday, September 21, 2000** for additional written comments.

Copies of Rule

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4502. Copies will also be available at the public hearing.

Contact Information

An interpreter for the hearing-impaired will be available on request for the hearing. Please make reservations for a hearing interpreter by **Friday, September 8, 2000** either by writing to Bruce Rheineck, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224-4502) or by contacting the message relay system (TTY) at 608/224-5058. Handicap access is available at the hearing.

Hearing Information

One hearing is scheduled:

| Date & Time | Location |
|---|---|
| September 13, 2000 Wednesday 3:00 – 5:00 p.m. 6:30 – 8:00 p.m. | Lodi City Hall 113 South Main St. LODI, WI |

Handicap access is available at the hearing.

Telephone (608) 592-3247 for information on the scheduled hearing.

Written comments will be accepted until **Thursday, September 21, 2000**.

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

Statutory authority: ss. 93.07 (1), 94.69 (9), 160.19 (2), and 160.21 (1)

Statutes interpreted: ss. 94.69, 160.19 (2) and 160.21 (1)

In order to protect Wisconsin groundwater, current rules under ch. ATCP 30, Wis. Adm. Code, restrict the statewide rate at which atrazine pesticides may be applied. Current rules also prohibit the use of atrazine in areas where groundwater contamination levels attain or exceed state enforcement standards.

Based on new groundwater test data, this rule expands an area in which atrazine use is prohibited.

Atrazine Prohibition Areas

Current rules prohibit the use of atrazine where atrazine contamination of groundwater equals or exceeds the current groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 103 designated areas, including major prohibition areas in the lower Wisconsin river valley and much of Dane and Columbia counties.

This rule enlarges one current prohibition area. This will increase the statewide acreage of atrazine prohibition areas by about 1,000 acres. This rule includes a map describing the expanded prohibition area.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface complying with s. ATCP 29.151 (2) to (4).

Fiscal Estimate

See page 19 of the August 31, 2000 Wisconsin Administrative Register.

The complete fiscal estimate is available upon request.

Initial Regulatory Flexibility Analysis

See page 20 of the August 31, 2000 Wisconsin Administrative Register.

Notice to Department of Development

The Department has given notice of this proposed rule to the Wisconsin Department of Development, as required by s. 227.114 (5), Stats.

Draft Environmental Impact Statement

The Department has prepared a draft environmental impact statement (EIS) for proposed 2001 amendment to rules on the use of pesticides containing atrazine. Copies are available from the Department on request and will be available at the public hearings. Comments on the EIS should be directed to the Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708 in care of Jeff Postle. Phone 608/224-4503. Written comments on the EIS will be accepted until **Thursday, September 21, 2000**.

Notice of Hearing

Athletic Trainers Affiliated Credentialing Board

[CR 00-131]

Notice is hereby given that pursuant to authority vested in the Athletic Trainers Affiliated Credentialing Board in ss. 15.085 (5) (b) and 227.11 (2), Stats., and ss. 448.9525 (1) and (2), 448.954 (2), 448.955 and 448.957 (2), Stats., and interpreting ch. 448, Stats., the Athletic Trainers Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to create chs. AT 1 to 5, relating to the licensure and regulation of athletic trainers.

Hearing Information

The public hearing will be held as follows:

| <u>Date & Time</u> | <u>Location</u> |
|---|---|
| September 29, 2000 Friday 9:15 a.m. | Room 179A 1400 East Washington Ave. MADISON, WI |

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **Friday, October 13, 2000** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.085 (5) (b) and 227.11 (2), Stats., and ss. 448.9525 (1) and (2), 448.954 (2), 448.955 and 448.957 (2), Stats., as created by 1999 Wis. Act 9.
Statutes interpreted: Chapter 448, Subchapter VI, Stats.

In this proposed rule-making order, the Athletic Trainers Affiliated Credentialing Board creates rules relating to the licensure of athletic trainers. These rules are a result of 1999 Wis. Act 9 which created the Athletic Trainers Affiliated Credentialing Board. Chapters AT 1 to 5 establish requirements and standards for licensure and the practice of licensed athletic trainers. The rules specify the educational, examination, experience and insurance requirements for licensure; minimum requirements for a protocol for the treatment of an athletic injury; approved continuing education; and rules of professional conduct.

Section AT 1.01 sets forth the statutory authority for the proposed rules. Section AT 1.02 creates the definitions for the rules. Section AT 1.03 sets forth the use of restricted title or designation. Section AT 1.04 sets forth the requirements for liability insurance coverage and surety bonds. Section AT 1.05 provides the examination provider.

Sections AT 2.01 and 2.02 outline the application process. Sections AT 2.03, 2.04 and 2.05 set forth the application process for a temporary license and a temporary license renewal.

Sections AT 3.01 and 3.02 set forth the continuing education requirements.

Section 448.9525 (2), Stats. requires that the Athletic Trainers Affiliated Credentialing Board and the Medical Examining Board jointly promulgate rules relating to the minimum requirements of an evaluation and treatment protocol for athletic trainers and their consulting physicians and a record on a protocol form. Section AT 4.01 describes the protocol evaluation and treatment procedures to be established by the licensee and approved by the consulting physician. Section AT 4.02 spells out the mandatory protocol requirements. The Medical Examining Board has reviewed proposed ch. AT 4 and found it acceptable. The Medical Examining Board will be involved in further review and final adoption of the rules under s. 448.9525 (2), Stats.

Section AT 5.01 defines unprofessional conduct as it applies to the profession.

Text of Rule

SECTION 1. Chapters AT 1 to 5 are created to read:

Chapter AT 1 GENERAL REQUIREMENTS AND PROCEDURES

AT 1.01 Authority. The rules in chapters AT 1 to 5 are adopted pursuant to ss. 15.085 (5) (b), 227.11 (2) (a), 448.9525 (1) and (2), 448.954 (2), 448.9545 (2) (a), 448.955, 448.956 (1) and 448.957 (2), Stats.
AT 1.02 Definitions. In chs. AT 1 to 5:

(1) "Board" means the affiliated credentialing board.

- (2) "Department" means the department of regulation and licensing.
- (3) "License" means a license as an athletic trainer issued by the board.
- (4) "Licensee" means a person who is licensed as an athletic trainer under s. 448.953, Stats.
- (5) "NATABOC" means the national athletic trainers association board of certification.
- (6) "Protocol" means a precise and detailed written plan for the evaluation and treatment of an athletic injury and that has resulted from an occupational activity.
- (7) "Trainer" means a person engaged in athletic training who is not licensed as an athletic trainer under s. 448.953, Stats.

AT 1.03 Use of restricted title. A trainer may engage in the practice of athletic training provided that the trainer does not use a title or designation in violation of s. 448.951, Stats.

AT 1.04 Surety bond or liability insurance coverage. As a precondition to the granting or renewal of a license, an applicant or licensee must submit a certificate of insurance, declarations page, policy binder or other evidence satisfactory to the department that he or she has in effect a surety bond in the amount of \$1,000,000, or malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year. No licensee shall engage in athletic training unless the licensee has in effect the insurance required by this section.

AT 1.05 Required examinations. For purposes of satisfying the examination requirement of ss. 448.953 (1) (f) and (h) and 448.954, Stats., the board accepts the results of a credentialing examination administered by the NATABOC.

Chapter AT 2 ATHLETIC TRAINER LICENSE

AT 2.01 Applications. An applicant for a license shall file an application. An applicant who does not comply with a request for information related to the application within one year from the date of the request shall file a new application and pay the fee specified in s. 440.05 (1), Stats.

AT 2.02 Application contents. In addition to satisfying the requirement of s. 448.953, Stats., an application for licensure shall include the following:

(1) Official undergraduate transcripts properly attested to by the degree granting institution and submitted by the institution directly to the board establishing that the applicant has been granted a bachelor's degree by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located, a regional or national accrediting agency recognized by the U.S. department of education or accredited by a Canadian accrediting agency satisfactory to the board.

(2) Unless applying for a temporary license under s. 448.953 (4) (a), Stats., official certification attested to and submitted directly to the board by NATABOC that the applicant has met the requirements for certification of the NATABOC and has passed the certification examination administered by the NATABOC.

AT 2.03 One-year temporary license application. An applicant who satisfies the requirements of s. 448.953 (3) (a), Stats., may apply for a one-year temporary license. The temporary license is valid for one year and may not be renewed.

AT 2.04 Two-year temporary license application. In addition to satisfying the requirements of s. 448.953 (4) (a), Stats., an application by an applicant applying under s. 448.953 (4) (a), Stats., shall include a chronological history by the applicant stating that he or she has engaged in athletic training during each of the 12 consecutive months immediately preceding November 1, 2000.

AT 2.05 Temporary license renewal application. In addition to satisfying the requirements of s. 448.953 (4) (a), Stats., a temporary license renewal application by an applicant under s. 448.953 (4) (a), Stats., shall set forth a chronological history by the applicant demonstrating the significant progress that he or she has made toward satisfying the requirement under s. 448.953 (1) (f), Stats. To be deemed significant progress for purposes of renewal of a temporary license under s. 448.953 (4) (a), the chronological history shall include a history outlining that he or she has engaged in athletic training for not less than 18 of the previous 24 months, and that he or she has made a minimum of one attempt to successfully take the NATABOC certification examination and the score received on each attempt.

AT 2.06 Temporary license renewal. A temporary license shall not be renewed if an applicant does not satisfy the requirement of showing significant progress toward satisfying the requirement under s. 448.953 (1) (f), Stats.

Chapter AT 3 CONTINUING EDUCATION

AT 3.01 Approved courses. For purposes of satisfying the continuing education requirement of s. 448.9545, Stats., a course of study approved by the affiliated credentialing board is a course that has been approved for continuing education credit by NATABOC.

AT 3.02 Evidence of compliance. For the renewal of any license granted under subch. VI of ch. 448, Stats., the board will accept as evidence of compliance with this chapter certification by the NATABOC that the licensee has attended and completed continuing education programs approved under the provisions of s. AT 3.01.

Chapter AT 4 EVALUATION AND TREATMENT PROTOCOL

AT 4.01 Protocol evaluation and treatment procedures. A protocol established by the licensee and approved by the consulting physician shall be in writing and may include any of the following evaluation and treatment procedures when authorized by the consulting physician:

(1) Authorization for taking a basic medical history when necessary for evaluation and treatment of an athletic injury that may include any of the following:

- (a) Previous medical history.
- (b) Previous surgical history.
- (c) Pertinent family medical history.
- (d) Current medication history including known drug allergies.
- (e) Relevant social history.
- (f) Chief medical complaint.
- (g) History of the present injury or illness for which the person to be treated is seeking evaluation and treatment.

(2) Authorization to evaluate the athletic injury utilizing any of the following procedures:

- (a) Palpation.
- (b) General observation.
- (c) Motion assessment.
- (d) Muscle strength tests.
- (e) Endurance tests.
- (f) Neurological assessment.
- (g) Joint play assessment.
- (h) Functional evaluation.
- (i) Objective physical measurement.

(3) Authorization to form a preliminary diagnosis of the athletic injury for which the person to be treated is seeking evaluation and treatment.

(4) Authorization to utilize treatment procedures to treat an athletic injury including any of the following:

- (a) Emergency care.
 - (b) Ultrasound.
 - (c) Phonophoresis.
 - (d) Electrical nerve stimulation.
 - (e) Iontophoresis.
 - (f) Specified diathermy.
 - (g) Intermittent compression.
 - (h) Traction.
 - (i) Therapeutic massage.
- (5) Authorization to utilize rehabilitation procedures to rehabilitate an athletic injury including any of the following:
- (a) Progressive resistance exercise.
 - (b) Range of motion exercise.
 - (c) Trigger point therapy.
 - (d) Joint mobilization for range of motion only.
 - (e) Proprioceptive neuromuscular facilitation.
 - (f) Functional exercise.
 - (g) Cardiovascular exercise.
 - (h) Aquatic exercise.
 - (i) Authorization to administer specifically enumerated drugs.

AT 4.02 Mandatory protocol requirements. A protocol must contain all of the following:

(1) The requirement that the licensee notify the consulting physician as soon as possible if a person being treated by the athletic trainer sustains new injuries.

(2) The requirement that if a licensee or the consulting physician of the licensee determines that a patient's medical condition is beyond the scope of practice of the licensee, the licensee shall, in accordance with the protocol, refer the patient to a health care practitioner who is licensed under ch. 446 or 447, Stats., or subch. II, III or IV of ch. 448, Stats., and who can provide appropriate treatment to the patient.

- (3) The requirement that a licensee shall modify or terminate treatment of a patient that is not beneficial to a patient or that the patient cannot tolerate.
- (4) The name, signature and date of signature of the consulting physician and the athletic trainer.

Note: Protocol forms are available upon request to the board at 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708.

Chapter AT 5 STANDARDS OF CONDUCT

AT 5.01 Definition. "Unprofessional conduct" means any practice or behavior which violates the minimum standards for the profession necessary for the protection of the health, safety or welfare of an athlete or the public, and includes, but is not limited to, the following or aiding or abetting the same:

- (1) Knowingly making or presenting or causing to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, in connection with any application for a license.
- (2) Making a material misstatement in an application for a license or for renewal of a license.
- (3) In sitting for any licensure examination, soliciting or knowingly disclosing examination content.
- (4) Failing to cooperate with the board in an investigation under this section.
- (5) Practicing or attempting to practice under any license when unable to do so with reasonable skill and safety to any person.
- (6) Engaging in any athletic trainer practice which constitutes a danger to the health, welfare, or safety of a patient or the public, including but not limited to, practicing in a manner which substantially departs from the standard of care ordinarily exercised by an athletic trainer which harmed or could have harmed a patient.
- (7) Subject to ss. 111.321, 111.322 and 111.335, Stats., practicing as an athletic trainer when the person's ability to engage in the practice was impaired by alcohol or other drugs.
- (8) Having been adjudicated mentally incompetent by a court of competent jurisdiction.
- (9) Subject to ss. 111.321, 111.322 and 111.335, Stats., having violated federal or state laws, local ordinances or administrative rules the circumstances of which substantially relate to the practice of athletic trainers.
- (10) Engaging in conduct which evidences a lack of trustworthiness to transact the business required by the profession.
- (11) Misrepresenting professional qualifications such as education, specialized training or experience.
- (12) Offering to perform or performing services which the licensee is not qualified to perform by education or experience without retaining the services of another who is qualified.
- (13) Using false, fraudulent or deceptive advertising or publicity; or practicing or attempting to practice under another's name.
- (14) Falsely representing that the licensee is engaged in a partnership or association with another unless there exists in fact a partnership or association, or practicing under a firm name that misrepresents the identity of those practicing in the firm or misrepresents the type of services which the firm is authorized and qualified to perform.
- (15) Violating the confidences of a patient except as otherwise required by law.
- (16) Violating or attempting to violate any provision or term of ch. 448, Stats., or of any valid rule of the board.
- (17) Violating or attempting to violate any term, provision or condition of any order of the board.
- (18) Falsifying patient records.
- (19) Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice as an athletic trainer, which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by any agency of the federal government, including but not limited to, the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.
- (20) Engaging in inappropriate sexual contact, exposure, gratification or other sexual behavior with or in the presence of a patient.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

The rules increase the existing appropriation. It may not be possible to absorb the increased costs within the agency's budget. There are no local government costs. The affected ch. 20, Stats., appropriations are s. 20.165 (1) (g) and (i), Stats.

Assumptions Used in Arriving at Fiscal Estimate:

Legislation created a 6-member Athletic Trainer Affiliated Credentialing Board, which would be attached to the Medical Examining Board. The Board would need to meet every month for the first year of regulation, and six times a year thereafter. Costs associated with annual Board meetings include \$1,200 for per diems, \$2,000 for lodging, and \$3,500 for meals and travel. First year Board expenses would increase by \$6,500 to cover the expenses of six additional meetings.

The Department is estimating that 500 athletic trainers will apply for licensure if this bill is enacted into law. The legislation established requirements for the licensing of athletic trainers. An additional Program Assistant I would be needed to process and revise forms and applications, answer applicant questions, prepare applications for Board review, and issue temporary permits. Annual costs for this position are \$27,130 for salary and fringe benefits; \$1,200 for on-going costs and \$5,500 in one-time costs for furniture and a personal computer. Other costs associated with licensing include \$600 for printing and postage of applications, \$800 for the printing and postage to send out regulatory digests to all credentialled athletic trainers, and \$4,000 for code books.

The Department would need to hire a 0.5 FTE Consumer Protection Investigator to assist with the enforcement of this profession. Costs associated with this position include \$17,170 for salary and fringe benefits and \$1,200 for on-going costs and \$5,500 in one-time costs for furniture and a personal computer. The Board has the authority to assess forfeitures of up to \$10,000 for certain violations and possible criminal penalties of \$10,000 and 9 months imprisonment for violating "this subchapter or any rules promulgated under this subchapter." The Department is basing this need on the fact that there will be 25 complaints per year, of which 60 percent will be opened for investigation and on the fact that the existing Department complaint-handling staff are working hard to handle the existing caseload and cannot absorb the regulation of additional groups or professions without it having an adverse impact on the complaint-handling process.

Copies of Rule and Contact Information

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

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

Telephone: (608) 266-0495

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Notice of Hearing *Commerce* *(Licenses, Certifications and* *Registrations, Ch. Comm 5)* *[CR 00-126]*

Notice is hereby given that pursuant to ss. 101.02 (1), 145.02 (4) and 145.07 (5), Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules amending ss. Comm 5.07 (2), Comm 5.08 (3) and Comm 5.92 (3), relating to the renewal of expired credentials.

Hearing Information

The public hearing will be held as follows:

| Date & Time | Location |
|--|--|
| September 26, 2000 Tuesday Beginning at 1:00 p.m. | Room 3B Thompson Commerce Ctr. 201 West Washington Ave. MADISON, WI |

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

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (1), 145.02 (4) and 145.07 (5)
Statutes interpreted: ss. 101.02 (1), 145.02 (4) and 145.07 (5)

Chapter Comm 5 contains the Department's rules for the issuance of numerous credentials which businesses and individuals are either mandated or permitted to obtain. These credentials are licenses, certifications and registrations that relate to activities associated with the construction and inspection of buildings and structures or specific components and elements that serve buildings and structures.

The proposed rules consist of revisions in ch. Comm 5 relating to the consequences for renewal of expired licenses, certifications and registrations. Under the current renewal requirements, a renewal is considered late if it is not submitted within 6 months after the expiration date of the license, certification or registration. Under the proposed rules, the renewal must be submitted no later than one term after the expiration date before it is considered late. A late renewal means the applicant must comply with all of the requirements for obtaining the license, certification or registration initially. The proposed rules also correspondingly extend the time period during which any required continuing education credit may be obtained.

The proposed rules also consist of a revision in the qualification requirements for the master plumber–restricted examination by including a licensed journeyman plumber as a qualified person.

Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rule–making will remain open until **Friday, October 6, 2000**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

Copies of Rules and Contact Information

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

Environmental Analysis

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

Initial Regulatory Flexibility Analysis

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

The proposed rules will affect any businesses that obtain licenses, certifications or registrations from the Division of Safety and Buildings.

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

When applying within the one–term deadline for renewal of a license, certification or registration that requires continuing education credit, the applicant must document and file with the Department any continuing education credit obtained after the normal time frame.

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

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

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing ch. Comm 5. The proposed rules contain a Division filing fee of \$25.00 for the submittal of a form related to obtaining continuing education credit for an expired credential. The Division anticipates very few submittals of this form, and the fee will cover any additional workload costs related to processing the form. Therefore, the proposed rules will not have any fiscal effect on the Division.

Notice of Hearing

Commerce

(PECFA, Chs. Comm 46–47)

[CR 00–130]

Notice is hereby given that pursuant to ss. 101.143 and 101.144, Stats., the Department of Commerce will hold a public hearing on proposed rules creating ch. Comm 46, relating to Petroleum Environmental Cleanup Fund Interagency Responsibilities. This proposed action is to adopt a permanent rule to replace the current emergency rule in effect.

Hearing Information

The public hearing will be held as follows:

| <u>Date & Time</u> | <u>Location</u> |
|---|---|
| September 26, 2000 Tuesday Commencing at 9:30 a.m. | Room 3B, Third Floor Thompson Commerce Ctr. 201 West Washington Ave. MADISON, WI |

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

Analysis Prepared by the Dept. of Commerce

Statutory authority: ss. 227.11 (2) (a) and 227.24, Stats., and Section 9110 (3yu)(b) of 1999 Wis. Act 9.
Statutes interpreted: ss. 101.143, 101.144, 292.11 and 292.31 and ch. 160, Stats.

The Wisconsin Department of Commerce proposes an order to create ch. Comm 46 as a joint rule with the Department of Natural Resources, relating to sites contaminated with petroleum products from petroleum storage tanks.

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.

Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **Friday, September 29, 2000**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing.

Copies of Rule and Contact Information

A copy of the proposed rules may be obtained without cost from Diane Ploessl, Department of Commerce, P.O. Box 7838, Madison, Wisconsin 53707, telephone (608) 261-7726, or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Initial Regulatory Flexibility Analysis

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

The rule will impact small businesses that are or will be conducting remediations of petroleum product contaminations.

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

The provisions of the rule will not create any new recordkeeping or procedures for individuals conducting petroleum remediations. The rules simply codify the processes used by the Departments of Natural Resources and Commerce in their administration of the remediation efforts.

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

The rules will not require any professional skills for compliance.

Fiscal Estimate

There is no state fiscal effect. There are no local government costs.

Assumptions used in arriving at fiscal estimate:

The Department is promulgating the rule to codify provisions in the working relationship between the Departments of Natural Resources and Commerce in the administration of the PECEFA program. At this point in time, the longer-term fiscal impact of these changes cannot be determined. A workload study will follow that will be completed by the two agencies after implementation and assessment of impact.

Notice of Hearing *Regulation and Licensing*

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.982 (1) (b), Stats., as amended by 1999 Wis. Act 98, and interpreting ss. 440.03 (1) and 440.982 (1) (a) and (b), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order adopting emergency rules affecting chs. RL 90 to 92, relating to educational and examination requirements for massage therapists and bodyworkers.

Hearing Information

The public hearing will be held as follows:

| <u>Date & Time</u> | <u>Location</u> |
|--|--|
| October 3, 2000 Tuesday 10:00 a.m. | Room 124 1400 East Washington Ave. MADISON, WI |

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P. O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **Monday, October 9, 2000** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutory authority: s. 227.11 (2), Stats., and s. 440.982 (1) (b), Stats., as amended by 1999 Wis. Act 98.

Statutes interpreted: ss. 440.03 (1) and 440.982 (1) (a) and (b), Stats.

The proposed revisions to chs. RL 90, 91 and 92 are necessary to implement 1999 Wis. Act 98, relating to educational and examination requirements for massage therapists and bodyworkers. The proposed rules redefine an approved course of instruction to state that a course of instruction may now be approved by the Department in addition to being offered by a school approved by the Educational Approval Board under s. 45.54, Stats. Prior to 1999 Wis. Act 98, an approved course of instruction could only be offered by a school approved by the Educational Approval Board.

The proposed rules provide that a course of instruction approved by the Department is either:

- 1) An associate degree program, or a vocational diploma program in massage therapy or bodywork offered by a technical college, or
- 2) A course of instruction in massage therapy or bodywork offered by a school accredited by an accrediting agency recognized by the U.S. Department of Education, or the Commission on Massage Training Accreditation.

An approved course of instruction must also meet the minimum requirements set forth in s. RL 92.02 (5), consisting of 600 classroom hours satisfying the subject area requirements listed in that section. Additional amendments renumber those remaining sections where affected.

Sections 2, 4 and 6 create definitions of accrediting agency, associate degree program and vocational diploma program.

Section 3 renumbers and amends a provision to allow the department to approve a course of instruction authorized by s. 440.982 (1) (b), Stats.

Section 7 amends the introduction to s. RL 91.01, removing a reference to a section that is deleted.

Section 8 repeals a provision relating to a registration that is no longer offered.

Section 9 renumbers and amends a provision relating to an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

Section 11 renumbers and amends provisions relating to successful completion of examinations required for registration.

Section 13 amends a provision relating to the submitted proof pertaining to completion of an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

Section 14 repeals a reference to a formerly-approved course of instruction and creates a provision that a course of instruction from a school that is not approved by the Educational Approval Board be from a school that is either a technical college or accredited by an accrediting agency.

Section 15 amends provisions to require evidence that the applicant completed a course in adult cardiopulmonary resuscitation.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Information

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

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

Telephone: (608) 266-0495

Email: pamela.haack@drf.state.wi.us

Notice of Hearing Regulation and Licensing [CR 00-128]

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and s. 440.982 (1) (b), Stats., as amended by 1999 Wis. Act 98, and interpreting ss. 440.03 (1) and 440.982 (1) (a) and (b), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order adopting permanent rules affecting chs. RL 90 to 92, relating to educational and examination requirements for massage therapists and bodyworkers.

Hearing Information

The public hearing will be held as follows:

| Date & Time | Location |
|---|---|
| October 3, 2000 Tuesday 10:00 a.m. | Room 124 1400 East Washington Ave. MADISON, WI |

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P. O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **Monday, October 9, 2000** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutory authority: s. 227.11 (2), Stats., and s. 440.982 (1) (b), Stats., as amended by 1999 Wis. Act 98.

Statutes interpreted: ss. 440.03 (1) and 440.982 (1) (a) and (b), Stats.

The proposed revisions to chs. RL 90, 91 and 92 are necessary to implement 1999 Wis. Act 98, relating to educational and examination requirements for massage therapists and bodyworkers. The proposed rules redefine an approved course of instruction to state that a course of instruction may now be approved by the Department in addition to being offered by a school approved by the Educational Approval Board under s. 45.54, Stats. Prior to 1999 Wis. Act 98, an approved course of instruction could only be offered by a school approved by the Educational Approval Board.

The proposed rules provide that a course of instruction approved by the Department is either:

- 1) An associate degree program, or a vocational diploma program in massage therapy or bodywork offered by a technical college, or
- 2) A course of instruction in massage therapy or bodywork offered by a school accredited by an accrediting agency recognized by the U.S. Department of Education, or the Commission on Massage Training Accreditation.

An approved course of instruction must also meet the minimum requirements set forth in s. RL 92.02 (5), consisting of 600 classroom hours satisfying the subject area requirements listed in that section. Additional amendments renumber those remaining sections where affected.

Sections 2, 4 and 6 create definitions of accrediting agency, associate degree program and vocational diploma program.

Section 3 rennumbers and amends a provision to allow the Department to approve a course of instruction authorized by s. 440.982 (1) (b), Stats.
Section 7 amends the introduction to s. RL 91.01, removing a reference to a section that is deleted.

Section 8 repeals a provision relating to a registration that is no longer offered.

Section 9 rennumbers and amends a provision relating to an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

Section 11 rennumbers and amends provisions relating to successful completion of examinations required for registration.

Section 12 amends provisions to require evidence that the applicant completed a course in adult cardiopulmonary resuscitation.

Section 13 repeals outdated provisions.

Section 14 clarifies reciprocal registration.

Section 15 amends a provision relating to the submitted proof pertaining to completion of an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

Section 16 repeals a reference to a formerly-approved course of instruction and creates a provision that a course of instruction from a school that is not approved by the Educational Approval Board be from a school that is either a technical college or accredited by an accrediting agency.

Text of Rule

SECTION 1. RL 90.02 (1) is renumbered RL 90.02 (3).

SECTION 2. RL 90.02 (1) is created to read:

RL 90.02 (1) “Accrediting agency” means any of the following:

- (a) A regional or national accrediting agency recognized by the U.S. department of education.
- (b) Commission on message training accreditation.

SECTION 3. RL 90.02 (2) is renumbered RL 90.02 (4) and amended to read:

RL 90.02 (4) “Course of instruction” means a series of classroom courses, ~~not including continuing education, which is approved by the department or at a school approved by the educational approval board under s. 45.54, Stats.,~~ having a unified purpose which lead to a diploma or degree or to an occupational or vocational objective, ~~meeting the requirements of sub. (5).~~

SECTION 4. RL 90.02 (2) is created to read:

RL 90.02 (2) “Associate degree program” means a program defined in s. 38.01 (1), Stats.

SECTION 5. RL 90.02 (3), (4), (5), (6), (7) and (8) are renumbered RL 90.02 (5), (6), (7), (8), (9) and (10).

SECTION 6. RL 90.02 (11) is created to read:

RL 90.02 (11) “Vocational diploma program” means a program defined in s. 38.01 (11), Stats.

SECTION 7. RL 91.01 (intro.) is amended to read:

RL 91.01 Application for registration. ~~Except as provided in s. RL 91.02, an~~ An individual applying for registration as a massage therapist or bodyworker shall submit all of the following to the department:

SECTION 8. RL 91.01 (3) (a) is repealed.

SECTION 9. RL 91.01 (3) (b) is renumbered RL 91.01 (3) (a) and amended to read:

RL 91.01 (3) (a) ~~If filing an application for registration on or after March 1, 2000, has~~ Has completed at least 600 classroom hours of study in a course of instruction ~~at an approved school of massage therapy or bodywork,~~ as provided under s. 440.982 (1) (b), Stats.

SECTION 10. RL 91.01 (3) (c) and (d) are renumbered RL 91.01 (3) (b) and (c).

SECTION 11. RL 91.01 (3) (e) is renumbered RL 91.01 (3) (d) and amended to read:

RL 91.01 (3) (d) ~~If filing an application for registration on or after March 1, 2000, passed examinations~~ Has passed the national certification examination for therapeutic massage and bodywork offered by the national certification board for therapeutic massage and bodywork or a substantially equivalent examination approved by the national commission of certifying agencies of the national organization for competency assurance or an examination approved by the department relating to the practice of massage therapy or bodywork ~~and state laws governing the practice of massage therapy and bodywork.~~

SECTION 12. RL 91.01 (3) (e) and (f) are created to read:

RL 91.01 (3) (e) Has passed an examination on state laws and administrative rules governing massage therapy or bodywork.

(f) Has successfully completed a course consisting of 8 classroom hours in adult cardiopulmonary resuscitation and standard first aid, unless the course is completed as part of a course of instruction as provided under s. RL 92.01 (5) (e).

SECTION 13. RL 91.02 is repealed.

SECTION 14. RL 91.03 (1) (intro.) and (1) (c) 1. are amended to read:

RL 91.03 Reciprocal registration. (1) An individual applying for registration on the basis of a similar license, registration or certification in another state or jurisdiction of the United States or another country shall:

- (1) (c) 1. Holds a current similar license, registration or certificate to practice massage therapy or bodywork in another state or jurisdiction of the United States or another country.

SECTION 15. RL 92.01 (1) is amended to read:

RL 92.01 (1) An individual applying for registration as a massage therapist or bodyworker ~~prior to March 1, 2000, shall submit evidence satisfactory to the department that he or she has completed at least 500 classroom hours of study in a course of instruction at an approved school of massage therapy or bodywork, as provided under s. 440.982 (1)(b), Stats. An individual applying for registration as a massage therapist or bodyworker on or after March 1, 2000, shall submit an official transcript or other official documentation showing dates and total hours attended and a description of the curriculum completed, evidence satisfactory to the department that he or she has completed at least 600 classroom hours of study in a course of instruction at an approved school of massage therapy or bodywork, as provided under s. 440.982 (1)(b), Stats.~~

SECTION 16. RL 92.01 (3) and (4) are repealed and recreated to read:

RL 92.01 (3) A course of instruction at a school approved by the educational approval board under s. 45.54, Stats., and shall in addition meet the requirements of sub. (5).

- (4) In addition to satisfying the requirements of sub. (5), a course of instruction that is approved by the department shall be one of the following:

- (a) An associate degree program, or a vocational diploma program in massage therapy or bodywork offered by a technical college established pursuant to s. 38.02, Stats.
(b) A course of instruction in massage therapy or bodywork offered by a school accredited by an accrediting agency.

SECTION 17. RL 92.01 (5) (e) and (f) are amended to read:

RL 92.01 (5) (e) Adult cardiopulmonary resuscitation (CPR) and standard first aid: 8 classroom hours. ~~The requirement of this paragraph may be alternatively satisfied as provided under s. RL 91.01 (3) (f).~~

- (f) Additional massage therapy or bodywork course offerings meeting the objectives of the course of instruction: ~~402~~ 100 classroom hours.

SECTION 18. RL 92.02 is amended to read:

RL 92.02 Approved schools. Except for a course of instruction that is approved by the department, as provided under s. RL 92.01 (3) (4), an approved course of instruction designed to meet the requirements in this chapter shall be provided by an approved school of massage therapy or bodywork, approved by the educational approval board, as provided under s. 440.982 (1)(b), s. 45.54, Stats.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Information

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

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

Telephone: (608) 266-0495

Email: pamela.haack@drl.state.wi.us

Notice of Hearing

Workforce Development

(Economic Support,

Chs. DWD 11–59)

[CR 00–129]

Notice is hereby given that pursuant to ss. 49.145 (2) (d) and (n) 1. a., (3) (b) 1. and (4), 49.147 (6) (a) 2., 49.148 (1), 49.155 (1m) (d) and (5), and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing on proposed rules affecting chs. DWD 12 and 56, relating to W–2 eligibility and child care copayments.

Hearing Information

The public hearing will be held as follows:

| <u>Date & Time</u> | <u>Location</u> |
|---|---|
| September 29, 2000 Friday Beginning at 1:30 p.m. | Room 400X GEF #1 Building 201 East Washington Ave. MADISON, WI |

An accessible entrance to the building is available via a ramp from the corner of Washington Avenue and Webster Street to the Webster Street entrance. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267–9403 at least 5 working days before the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. The address for written comments follows later in this notice.

Analysis Prepared by the Dept. of Workforce Development

Statutory authority: ss. 49.145 (2) (d) and (n) 1. a., (3) (b) 1. and (4), 49.147 (6) (a) 2., 49.148 (1), 49.155 (1m) (d) and (5), and 227.11, Stats., as affected by 1999 Wis. Act 9.

Statutes interpreted: ss. 49.145 (2) (d) and (n) 1. a., (3) (b) 1. and (4), 49.147 (6) (a) 2., 49.148 (1), 49.155 (1m) (d) and (5), Stats., as affected by 1999 Wis. Act 9.

Substantive changes:

1. Copayment responsibility is eliminated for foster parents and for kinship care relatives who are caring for a kinship care child under court order, unless they are receiving a child care subsidy for another child who is not a foster or kinship care child. Foster parents and kinship care relatives currently pay the minimum copayment based on number of children in child care and type of care received, unless they are receiving a child care subsidy for another child who is not a foster or kinship care child. Kinship care relatives caring for a child without a court order will continue to pay the minimum copayment.

2. Foster care payments received pursuant to s. 46.261, Stats., and kinship care payments received pursuant to s. 48.57 (3m) or (3n), Stats., will be considered to be allocated toward the care of the child for whom they are received and will not be included in determining financial eligibility for child care subsidies under s. 49.155, Stats., for other children in the household. Currently, these payments are counted as household income and some families become ineligible for child care subsidies for their own children if they care for foster children or kinship care children.

Clarifications:

Two changes made to the child care copayment table in March 2000 are incorporated into rule language. Children who are authorized for child care assistance for 20 hours or less are subject to 50% of the copayment amounts. Also, parents who have left a W–2 employment position for unsubsidized employment pay the minimum copayment amount based on number of children in the family in child care and the type of child care selected for the first month of the unsubsidized employment.

Statutory updates:

Several updates are made to bring the rules in compliance with changes made in 1999 Wis. Act 9. The 60–day residency requirement for W–2 is repealed. Earned income of dependent children and child support income is excluded in determining W–2 eligibility. A job access loan may be used to purchase a car. Language changes are made regarding JOBS participation and eligibility reviews. A reference to a statutory section that lists the grant amounts for prorated community service jobs is added. Language on child care eligibility which duplicated obsolete statutory provisions is repealed.

Initial Regulatory Flexibility Analysis

Privately–run W–2 agencies will be affected by the rule change, but the rule will not have a significant impact on a substantial number of small businesses.

Fiscal Estimate

The fiscal effect of the elimination of copayment responsibility for foster parents and kinship care relatives is expected to be approximately \$173,160 (740 children x \$4.50/week copay adjustment x 52 weeks).

Other changes are not expected to have a significant fiscal effect.

Copies of Rule and Contact Information

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

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P. O. Box 7946
Madison, WI 53707-7946

Telephone: (608) 267-9403

Email: pridgel@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than **Friday, October 6, 2000** will be given the same consideration as testimony presented at the hearing.

Notice of Hearing *Workforce Development* *(Economic Support,* *Chs. DWD 11-59)* *[CR 00-127]*

Notice is hereby given that pursuant to ss. 49.19, 49.20 (1997-98), 49.193, 49.21 (1997-98), 49.27 (1997-98), and 227.11 (2), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules repealing chs. DWD 22 and HSS 205, 206, 207, 225 and 244, relating to the repeal of obsolete public assistance policies and procedures.

Hearing Information

The public hearing will be held as follows:

| Date & Time | Location |
|---|---|
| September 29, 2000 Friday Beginning at 1:30 p.m. | Room 400X GEF #1 Building 201 East Washington Ave. MADISON, WI |

An accessible entrance to the building is available via a ramp from the corner of Washington Avenue and Webster Street to the Webster Street entrance. 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, English materials in audiotape format will be made available on request to the fullest extent possible.

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. The address for written comments follows later in this notice.

Analysis Prepared by the Dept. of Workforce Development

Statutory authority: ss. 49.19, 49.20 (1997-98), 49.193, 49.21 (1997-98), 49.27 (1997-98), and 227.11 (2), Stats.

Statutes interpreted by the rule: ss. 49.19, 49.20 (1997-98), 49.193, 49.21 (1997-98), 49.27 (1997-98), and 227.43 (1) (by), Stats.

Chapters DWD 22 and HSS 205, 206, 207, 225 and 244 relate to public assistance policies and procedures administered by the Division of Economic Support when it was within the Department of Health and Social Services. Many of the policies pertain to the Aid to Families with Dependent Children (AFDC) program, which was replaced by Wisconsin Works (W-2) in 1997. These rules came under the authority of the Department of Workforce Development (DWD) in 1996 when the Division of Economic Support left DHSS and merged with the Department of Industry, Labor, and Human Relations to form DWD.

Chapter DWD 22 provided rules on aid for 18-year old high school students who became ineligible for AFDC solely as a result of reaching the age of 18. The statutory authority for this rule, s. 49.20, Stats. (1997–98), has been repealed.

Chapter HSS 205 provided rules on monthly reporting of income for the determination of eligibility and benefit amount for AFDC, food stamp, and medical assistance programs. Monthly reporting is no longer used in the food stamp or medical assistance program.

Chapter HSS 206 provided rules for the administration of the Job Opportunities and Basic Skills (JOBS) training program for AFDC recipients, which existed from 1995 to 1998.

Chapter HSS 207 provided rules for the administration of the Work–Not–Welfare demonstration project, which existed from 1995 to 1997. The statutory authority for this rule, s. 49.27, Stats. (1997–98), has been repealed.

Chapter HSS 225 provided rules for the administration of fair hearings in appeals of public assistance, food stamp, and medical assistance claims within the Department of Health and Social Services. Hearings on appeals of public assistance claims are now conducted by the DOA Division of Hearings and Appeals and rules governing their procedure are at ch. HA 3.

Chapter HSS 244 provided rules on the confidential nature of records. Confidentiality requirements are now covered by s. 49.143 (5), Stats., s. DWD 12.08 (2), and W–2 agency contracts. Public notice and confidentiality requirements related to old age assistance liens are within the jurisdiction of the Department of Health and Family Services.

Rule Text

SECTION 1. Chapters DWD 22 and HSS 205, 206, 207, 225 and 244 are repealed.

Initial Regulatory Flexibility Analysis

There will be no significant impact on small business.

Fiscal Estimate

The repeal of obsolete public assistance rules will have no fiscal effect.

Written Comments

Written comments received at the following address no later than **Wednesday, October 4, 2000**, will be given the same consideration as testimony presented at the hearing:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707–7946

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

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

Agriculture, Trade and Consumer Protection (CR 00-60):

Ch. ATCP 75 – Relating to retail food establishments.

Health and Family Services (CR 00-59):

Ch. HFS 196 – Relating to restaurants.

Transportation (CR 00-109):

Chs. Trans 231 and 233 – Relating to division of land abutting a state trunk or connecting highway.

Workforce Development (CR 00-66):

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

Workforce Development (CR 00-67):

Chs. HSS 245 and DWD 18 – Relating to public assistance record retention.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

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

An order amending ss. BC Figure 5.02, Figure 5.04, Figure 5.05 and Figure 5.06, relating to theory hours conducted by the school outside of the classroom.

Effective 10–01–00.

Employe Trust Funds (CR 00–43):

An order affecting ch. ETF 50, relating to eligible applicants for disability benefits.

Effective 10–01–00.

Employe Trust Funds (CR 00–62):

An order affecting s. ETF 10.60 (2) and (3), relating to electronic reporting for the Wisconsin Retirement System (WRS).

Effective 10–01–00.

Investment Board (CR 00–70):

An order creating s. IB 2.04, relating to Investment Board title holding companies.

Effective 10–01–00.

Regulation and Licensing (CR 00–18):

An order amending s. RL 62.11, relating to holding classes outside of the classroom.

Effective 10–01–00.

NOTICE OF NONACQUIESCENCE

NOTICE OF NONACQUIESCENCE

Tax Appeals Commission

ESSIE L. ZOLLICOFFER

:

Petitioner,

: NOTICE OF NONACQUIESCENCE

v.

: Docket No. 99-W-125

WISCONSIN DEPARTMENT OF REVENUE,

:

Respondent.

Pursuant to s. 73.01 (4) (e) 2 of the Wisconsin Statutes, the respondent hereby gives notice that, although it is not appealing the decision or order of the Tax Appeals Commission rendered in the above captioned matter under date of **July 27, 2000**, it has adopted a position of nonacquiescence in regard to that decision or order. DOR acquiesces in this decision only to the extent that it is based upon a factual finding that the taxpayer lacked the ability or authority to order, direct, or prioritize the payment of corporate taxes or other obligations due the Department. The effect of this action is that, although the decision or order is binding on the parties for the instant case, the Commission's conclusions of law, its construction of statutes, its use of case law and other authority and the legal rationale of its decision in the instant case are not binding upon or required to be followed by the respondent in other cases.

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