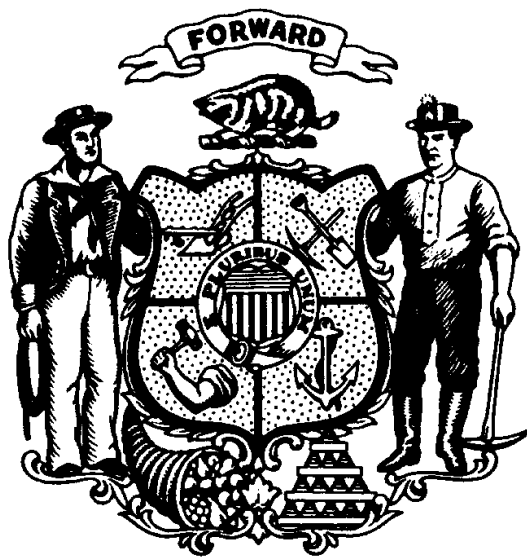


# WISCONSIN ADMINISTRATIVE REGISTER

**No. 540**



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# EMERGENCY RULES NOW IN EFFECT

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

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

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

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

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

## Agriculture, Trade & Consumer Protection – (3)

1. 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.

<b>Publication Date:</b>	<b>July 20, 2000</b>
<b>Effective Date:</b>	<b>July 20, 2000</b>
<b>Expiration Date:</b>	<b>December 18, 2000</b>
<b>Extension Through:</b>	<b>February 15, 2001</b>

2. 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.

<b>Publication Date:</b>	<b>August 11, 2000</b>
<b>Effective Date:</b>	<b>August 11, 2000</b>
<b>Expiration Date:</b>	<b>January 8, 2001</b>
<b>Hearing Date:</b>	<b>September 19, 2000</b>
<b>Extension Through:</b>	<b>March 8, 2001</b>

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.

<b>Publication Date:</b>	<b>June 30, 2000</b>
<b>Effective Date:</b>	<b>July 1, 2000</b>
<b>Expiration Date:</b>	<b>November 29, 2000</b>
<b>Hearing Date:</b>	<b>July 27, 2000</b>
<b>Extension Through:</b>	<b>December 28, 2000</b>

### Commerce (PECFA – Chs. Comm 46)

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.

<b>Publication Date:</b>	<b>May 17, 2000</b>
<b>Effective Date:</b>	<b>May 18, 2000</b>
<b>Expiration Date:</b>	<b>October 15, 2000</b>
<b>Hearing Dates:</b>	<b>June 15, July 10 &amp; 12, 2000</b>
<b>Extension Through:</b>	<b>February 11, 2001</b>

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

Rules were adopted creating **ch. HFS 79**, relating to state supplemental security income payments.

#### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate

preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 49.77 and 49.775, Stats., authorize the Department to administer Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. These SSI payments are funded by state general purpose revenue and federal Temporary Assistance for Needy Families (TANF) grant funding in excess of \$140,000,000 per state fiscal year. These payments are distributed monthly to approximately 100,000 beneficiaries and their dependent children. Neither s. 49.77 or 49.775, Stats., direct the Department to develop administrative rules to administer the program.

An unavoidable aspect of the program is the Department's need to periodically recover payments incorrectly made to benefit recipients. Overpayments and incorrect payments occur due to delays in transmission of eligibility and pricing information between the federal Social Security Administration and the Department and are not due to the Department's error or omission. On November 24, 1999, by order of the Wisconsin Court of Appeals, District II, the Department was found, absent administrative rule, to lack the authority to administratively recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits. The Department sought to appeal the decision to the Wisconsin Supreme Court, but recently learned that the Supreme Court will not hear the case. The Department's inability to recover payments made in error will cost the Department about \$10,000 per month. Developing and promulgating permanent administrative rules to address the Court's decision will require at least 7 months, thereby costing the Department approximately another \$70,000. The Department deems this unanticipated expense a threat to the public welfare insofar as Wisconsin and federal taxpayers should not be called upon to shoulder the burden of these unanticipated and undeserved expenses. Therefore, the Department is promulgating this emergency rule until the Department can promulgate a similar permanent rule.

This emergency rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to again effectively administer both state and federal public welfare funding. By issuing this rule, the Department will effectively recover taxpayer monies to which recipients were not entitled, pending the promulgation of permanent rules.

<b>Publication Date:</b>	<b>September 5, 2000</b>
<b>Effective Date:</b>	<b>September 5, 2000</b>
<b>Expiration Date:</b>	<b>February 2, 2001</b>
<b>Hearing Date:</b>	<b>December 13, 2000</b>

### Health & Family Services–(2) (Health, Chs. HFS 110–)

1. 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.

<b>Publication Date:</b>	<b>June 30, 2000</b>
<b>Effective Date:</b>	<b>July 1, 2000</b>
<b>Expiration Date:</b>	<b>November 29, 2000</b>
<b>Extension Through:</b>	<b>January 1, 2000</b>

- Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

### 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:

### Summary

September 2000 regulations issued by the U.S. Department of Housing and Urban Development (HUD) assume states' commencing lead abatement activities compliant with the federal regulations beginning March 15, 2001. The Department estimates that about 5,000 structures in the state require lead abatement activities. About 300 persons need to be trained to conduct lead abatement activities on these 5,000 structures. Without DHFS issuance of revised training program requirements, Wisconsin's lead training programs will not alter their courses to HUD standards or receive state accreditation in time for sufficient personnel to be trained by the time high demands for lead abatement commences. To sanction ill-trained lead abatement personnel by March 15, 2001, the Department would needlessly endanger the health of both untrained lead abatement personnel and the public whose residences are affected.

### Lead Abatement Activities

Residences built before 1978 have a high likelihood of containing lead-based paint. When lead-based paint is in poor condition or when it is disturbed through activities such as sanding or scraping, the paint can break down into chips and dust that become a potential source of lead poisoning for occupants. Wisconsin has nearly 500,000 rental units and 1 million owner-occupied units built before 1978 and presumed to contain lead-based paint.

Exposure to lead in paint, dust or soil has both short-term and long-term adverse health effects on children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. When not fatal, these effects on the body last a lifetime. Of 63,400 Wisconsin children under the age of 6 screened for lead poisoning in 1999, 3,744 were identified as having lead poisoning. However, the number of children affected by lead poisoning is probably much greater, since the 63,400 screened represented only 16% of the state's children under the age of 6. Many of these children would not become lead poisoned if pre-1978 dwellings did not have deteriorated paint or lead-based paint on friction or impact surfaces and if lead-safe techniques were used when disturbing lead-based paint.

Lead poisoning can also affect older children and adults. In 1999, a 40-year old man employed to remove paint from windows of a rental dwelling was severely lead poisoned. He was hospitalized with complaints of headaches and joint pain. He underwent multiple sessions of chelation therapy to remove some of the lead from his blood, but still suffered serious neurological damage, which affected his speech and balance. This man's lead poisoning could have been avoided if he had been trained to use lead-safe techniques and personal protection equipment.

### Existing Wisconsin Law

Chapter 254, Stats., provides for a comprehensive lead hazard reduction program, including lead exposure screening, medical case management and reporting requirements, and the development of lead training accreditation and certification programs. Under the authority of Chapter 254, Stats., the Department promulgated Chapter HFS 163, Wis. Adm. Code, in 1988 to provide rules for the certification of individuals performing lead hazard reduction and for the accreditation of the courses that prepare individuals for certification. These rules have been revised over time to meet requirements of the U.S. Environmental Protection Agency (EPA).

Wisconsin met federal standards for a state-administered lead training accreditation and certification program and received EPA authorization effective January 27, 1999. The Department's Asbestos and Lead Section of the Bureau of Occupational Health administers and enforces lead-based paint training, certification and work practice provisions of Chapter HFS 163, Wis. Adm. Code. The Section operates on a combination of program revenue and lead program development grants from the EPA.

Under Chapter HFS 163, Wis. Adm. Code, a person offering, providing or supervising lead-based paint activities for which certification is required must be certified as a lead company and may only employ or contract with appropriately certified individuals to perform these activities. An individual may apply for certification in the following disciplines: lead (Pb) worker, supervisor, inspector, risk assessor and project designer. For initial certification, the individual must be 18 years of age or older, must meet applicable education and experience qualifications, must successfully complete certification training requirements and, to be certified as a lead (Pb) inspector, risk assessor or supervisor, must pass a certification examination. All individuals must have completed worker safety training required by the U.S. Occupational Health and Safety Administration for lead in construction. In addition, a lead (Pb) worker, supervisor, or project designer must complete a 16-hour lead (Pb) worker course, a lead (Pb) supervisor or project designer also must complete a 16-hour lead (Pb) supervisor course, and a lead (Pb) project designer must complete an 8-hour lead (Pb) project designer course. A lead (Pb) inspector or risk assessor must complete a 24-hour lead (Pb) inspector course and a lead (Pb) risk assessor must also complete a 16-hour lead (Pb) risk assessor course.

### New Federal Regulations

The U.S. Department of Housing and Urban Development (HUD) revised 24 CFR Part 35 effective September 15, 2000. The



regulations require most properties owned by the federal government or receiving federal assistance to conduct specified activities to make the property lead-safe. Specifically, these regulations affect property owners receiving federal rehabilitation funds and landlords whose tenants receive federal rental assistance. To meet HUD's lead-safe standards, most affected properties must have a risk assessment completed and must use certified persons to reduce or eliminate the lead-based paint hazards identified in the risk assessment report. Property owners must also use trained people to perform maintenance or renovation activities and must have clearance conducted after completing activities that disturb lead-based paint. Clearance is a visual inspection and dust-lead sampling to verify that lead-based paint hazards are not left behind. The HUD regulations also establish a new, research-based standard for clearance that is more protective than HUD's previously recommended standard.

The EPA has issued a memorandum urging States to implement a lead sampling technician discipline for which a 1-day training course would be required. Addition of this discipline would help to meet the increased demand for clearance under both the HUD regulations and renovation and remodeling regulations being considered by EPA.

The EPA is preparing to promulgate lead renovation and remodeling regulations under 40 CFR Part 745. Under these training and certification regulations for renovators, any person who disturbs paint in a pre-1978 dwelling, other than a homeowner performing activities in an owner-occupied dwelling, will have to complete lead-safe training. EPA is also considering requiring clearance after any activity that disturbs paint in a pre-1978 dwelling, except when work on owner-occupied property was done by the property owner.

#### New Wisconsin Law

1999 Wisconsin Act 113 requires the Department to establish a process for issuing certificates of lead-free or lead-safe status and registering the properties for which certificates are issued. If a dwelling unit has a valid certificate of lead-free or lead-safe status when a person who resides in or visits the unit is lead poisoned, the property owner, and his or her agents and employees are generally immune from civil and criminal liability for their acts or omissions related to the lead poisoning or lead exposure. Act 113 also requires the Department to establish the requirements for a training course of up to 16 hours that property owners, their agents and employees may complete in order to receive certification. The Department must also specify the scope of the lead investigation and lead hazard reduction activities that may be performed following certification. Act 113 specifies that administrative rules to implement Act 113 must be submitted to the Legislative Council Rules Clearinghouse by December 1, 2000. The rules providing the standards for lead-free and lead-safe property, and the procedures for issuing certificates of lead-free status and lead-safe status, are being promulgated separately and are not expected to be published for several months.

#### Result of Changing Federal and State Requirements

New HUD regulations create an urgent need for appropriately trained and certified workers to conduct activities that reduce or identify lead-based paint hazards. Due to a lack of trained and certified individuals to perform the activities required by the HUD regulations, housing agencies in Wisconsin have been forced to ask HUD for a 6-month extension before beginning enforcement of the regulations. To be granted the extension, the agencies must provide a plan for increasing the number of certified persons to meet the demand by March 15, 2001. If HUD does not grant an extension, millions of dollars in federal funding for rehabilitation and lead hazard reduction may be lost.

In addition to the demand for certified persons generated by the HUD regulations, Act 113 is generating its own demand for certified persons. Many property owners want to begin reducing lead-based paint hazards on their properties in order to meet the standards for lead-free or lead-safe property when the standards take effect. Although property owners and their employees may be certified now under Chapter HFS 163, Wis. Adm. Code, some property owners feel 5 days of training is too extensive for the work they will be performing. Act 113 requires the Department to establish the requirements for a training course of up to 16 hours that property owners, their agents and employees may complete in order to receive certification. This emergency rule meets the requirement of Act 113 by providing for certification as a lead (Pb) low-risk supervisor

to independently perform limited lead hazard reduction activities after only 2 days of training.

#### Department Response

The Department is gravely concerned that a lack of properly trained and certified individuals to meet the increased demand may lead to an increase in lead poisoning due to work being performed by untrained individuals. The new disciplines in this emergency order will help meet the demand for certified individuals because the rules reduce the training hours required for certification by targeting training to specific activities. With more individuals becoming certified, housing authorities and property owners will be able to comply with HUD regulations and property owners will be able to reduce lead-based paint hazards in preparation for the implementation of Act 113 lead-free and lead-safe property standards.

In promulgating these revisions to the certification and training accreditation requirements under chapter HFS 163, the Department seeks to meet the needs of all the parties affected by training or certification requirements under State, federal or local lead regulations. For each revision made by these rules, the Department considered the impact of the cost, the ease with which persons could comply, the ability to easily move to a higher level of certification, and the consistency with other regulations. In developing the low-risk worker and low-risk supervisor disciplines, the Department also considered potential requirements of EPA's renovation and remodeling regulations.

The Department divided required training into smaller independent modules to allow individuals to complete the least amount of training necessary to safely and accurately perform the lead-based paint activities for which the individual becomes certified. In addition, the Department:

- Divided lead hazard reduction activities into those that are low-risk and high-risk.
- Divided site management activities into project design and supervision of low-risk versus high-risk activities.
- Divided lead investigation activities conducted by lead risk assessors into sampling, inspection, and hazard investigation.
- Revised the definitions, training and certification requirements and accreditation standards to reflect these categories of activities.

<b>Publication Date:</b>	<b>December 1, 2000</b>
<b>Effective Date:</b>	<b>December 1, 2000</b>
<b>Expiration Date:</b>	<b>April 30, 2001</b>

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### Natural Resources – (4) (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.

<b>Publication Date:</b>	<b>May 15, 2000</b>
<b>Effective Date:</b>	<b>August 4, 2000</b>
<b>Expiration Date:</b>	<b>January 1, 2001</b>

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  
**Hearing Date:** October 16, 2000

### 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  
**Hearing Dates:** November 1 & 2, 2000

### 4. Rules adopted revising ch. NR 47, relating to the federal cost sharing program to suppress gypsy moths.

#### Finding of Emergency

An emergency rule is necessary in order to make the cost shared gypsy moth suppression program available for aerial treatments in May 2001. Given the survival of caterpillars this summer, the department expects that populations of gypsy moth will be high enough in some localities in 2001 to necessitate suppression to protect tree health. In order to offer participation in the aerial treatment project and cost sharing from the U.S. Forest Service, it is necessary that preparatory work be done this fall and winter to define treatment blocks. When gypsy moth outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner and others when pesticides are not used according to directions. The Department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

**Publication Date:** November 10, 2000  
**Effective Date:** November 10, 2000  
**Expiration Date:** April 9, 2001

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## 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  
**Extension Through:** February 5, 2001

## 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:** October 15, 2000  
**Hearing Dates:** June 15, July 10 & 12, 2000  
**Extension Through:** February 11, 2001

## Public Service Commission

Rules adopted creating **s. PSC 2.06**, relating to procedures for the confidential treatment of records.

### Exemption from finding of emergency

At the direction of the Joint Committee for Review of Administrative Rules under s. 227.26 (2) (b), Stats., the Commission adopts a rule to create s. PSC 2.06, Wis. Adm. Code, relating to procedures for the confidential treatment of records.

### Analysis by the Public Service Commission

Statutory authority: ss. 196.02(1) and (3), 227.11, 227.24 and 227.26, Stats.

Statutes interpreted: ss. 196.14, 196.72 and 196.795 (9), Stats.

On August 15, 2000, the Commission voted to promulgate administrative rules on requests for confidential handling of documents filed with the Commission. On September 20, 2000, the Joint Committee for Review of Administrative Rules directed the Commission to adopt a rule on the subject under s. 227.26 (2) (b), Stats. This rule creates a process for obtaining a designation of confidential status. Under the rule, a determination on whether information shall be treated confidentially shall be made at the time the information is given to the Commission. Under previous Commission procedures, if a person filing a document sought confidential treatment of information in the document, the filer could do so by identifying the grounds under which confidentiality could be granted. The Commission would accept the filing, but the acceptance did not constitute a determination that public access to the information would not be permitted. The Commission would determine if confidential status should be granted when a request for that information was made by another person.

Under this rule, a person who wishes the Commission to keep confidential information in the possession of the Commission, or requested by the Commission, must make an application for confidential status. The application must identify the information for which confidential treatment is sought and identify the authority under which confidential status should be granted. Within 21 days after receiving an application, the Commission may seek additional information from the applicant, if needed, to make a confidentiality determination. The applicant must respond within 30 days to the information request.

The Commission will make a determination on a confidentiality request within 30 days of receiving the additional information or within 30 days of the filing of the application if no additional information is needed. The determination will specify what, if any, information is given confidential treatment and the basis for that determination.

The Commission will give the applicant written notice of its determination. The Commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice. If an applicant is authorized to file information confidentially in the context of a Commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for that proceeding.

**Publication Date:** October 23, 2000  
**Effective Date:** October 23, 2000  
**Expiration Date:** March 22, 2001

## 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.

<b>Publication Date:</b>	<b>September 3, 2000</b>
<b>Effective Date:</b>	<b>September 3, 2000</b>
<b>Expiration Date:</b>	<b>January 31, 2001</b>
<b>Hearing Date:</b>	<b>October 3, 2000</b>

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## Revenue

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.

<b>Publication Date:</b>	<b>August 17, 2000</b>
<b>Effective Date:</b>	<b>August 17, 2000</b>
<b>Expiration Date:</b>	<b>January 14, 2001</b>
<b>Hearing Date:</b>	<b>September 18, 2000</b>

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## Tobacco Control Board

Rules adopted creating **ch. TCB 1**, relating to the administration and awarding of grants for tobacco control and establishing criteria for recipients of the grants.

### Finding of Emergency

The Wisconsin Tobacco Control Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the health, safety and welfare of Wisconsin residents, particularly youth and current smokers. A statement of the facts constituting the emergency is as follows:

The health and fiscal impact of tobacco use are well documented. In Wisconsin alone, 7,800 deaths occur each year from tobacco-related disease. In addition, Wisconsin government, residents and health care providers pay over \$1.3 billion annually for health care costs associated with tobacco use.

While tobacco's effects are in individuals' futures, immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been a 19 percent increase in high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease and stroke.

In addition, tobacco use among specific populations continues to present an ongoing threat to the health of Wisconsin citizens. Wisconsin has a rate of tobacco use among pregnant women that is 30 percent higher than the national average. In addition, the national smoking rate among African-American youth doubled from 14 percent in 1993 to 28 percent in 1997. Finally, the 48% smoking rate of Medicaid recipients is twice the rate of the general population.

The ongoing and emerging health impacts and costs associated with tobacco use necessitate the immediate implementation of the comprehensive initiative to address tobacco use in Wisconsin.

The Board, through this order, is creating chapter TCB 1 relating to the Board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants. The rule is being promulgated under the authority of s. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation and eliminating environmental tobacco smoke.

<b>Publication Date:</b>	<b>November 7, 2000</b>
<b>Effective Date:</b>	<b>November 7, 2000</b>
<b>Expiration Date:</b>	<b>April 6, 2001</b>
<b>Hearing Date:</b>	<b>January 10, 2001</b>
	<b>[See notice this Register]</b>

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## 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.

<b>Publication Date:</b>	<b>April 9, 2000</b>
<b>Effective Date:</b>	<b>April 9, 2000</b>
<b>Expiration Date:</b>	<b>September 6, 2000</b>
<b>Hearing Date:</b>	<b>May 15, 2000</b>
<b>Extension Through:</b>	<b>December 31, 2000</b>

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### Natural Resources

#### Subject

Approval of the Laboratory Certification Program's budget and fees for Fiscal Year 2002 (as required per s. NR 149.05, Wis. Adm. Code) and presentation of the 2001 Registered Laboratory of the Year awards.

#### Description of Policy Issues

No policy issues to resolve. None of these actions include proposed rule changes. Impacted and interested groups include all environmental laboratories certified or registered by the State of Wisconsin.

#### Statutory Authority

Section 299.11 (5)

#### Staff Time Required

121.5 hours

### Natural Resources

#### Subject

Board action requested: Approve revised schedule for waste derived soil product standards (previously solid waste compost quality standards, initially authorized by the Natural Resources Board 4/99).

#### Description of Policy Issues

*Objective of the rule.* The primary issues remain unchanged from the initial pink sheet: testing requirements and acceptable contaminant levels, for composts and ingredients. Related Wisconsin rules to be considered include: chs. NR 518, 538, 720, 204, and 214, Wis. Adm. Code, and DATCP rules. Rules from other states and countries may be considered. Certification, labeling, use, recordkeeping, and fees may be addressed. Groups likely to be interested: waste industry, waste generators, agricultural and horticultural industries, home gardeners, DATCP, local governments, environmental protection groups, and soil scientists. Due to issue raised on what this rule should include and the work which has begun on PBTs, the program suggests a delay in the rulemaking.

*Existing policies, new policies and an analysis of policy alternatives.* The initial proposal for NRB authorization for rule development, and the 4/99 NRB authorization, both did represent a change from past policy. This action delays the rulemaking process. The explanation from initial pink sheet remains unchanged: The department does not currently have codified solid waste compost quality standards. Certain waste types, and compost produced from them, are exempt by rule from all or portions of requirements normally applicable to solid waste landspreading. Compost use proposals involving nonexempt waste types are reviewed on a case by case basis and quality standards are specified in approvals (or exemptions). Compost quality standards are needed to: encourage the recycling of wastes into compost products, protect public health and the environment with respect to this waste recycling, ensure

consistent implementation of the law, and reduce department plan review workload related to the use of solid waste composts.

#### Statutory Authority

The authorized rule development is authorized under ch. 289, Wis. Stats. [ss. 289.05 (1) and 289.06 (1), Stats.].

#### Staff Time Required

656 hours

### Natural Resources

#### Subject

Annual adjustment of timber stumpage rates in s. NR 46.30, cordwood weight conversion factors, and a clarification of "non-productive" for the administration of the Managed Forest Lands and Forest Croplands Lands.

#### Description of Policy Issues

The stumpage rate changes are an annual process and not a policy issue. Industrial and non-industrial landowners in the two forest tax laws, the towns and counties with forest tax law lands and landowners interested in entering into the forest tax laws are all interested in what happens to the stumpage rates. The same groups are interested in the following issue. The cordwood weight conversion factors have been changed in Forestry's Timber Sale Handbook and need updating in the Administrative Rule for forest tax laws. All tax law landowners may be impacted if they are selling timber by weight, although few currently do. Clarification is needed regarding the definition of "non-productive" forest land. This is a policy issue.

#### Statutory Authority

Sections 77.06 (2), 77.91 (1), and 227.11 (2) (a), Stats.

#### Staff Time Required

44 hours

### Natural Resources

#### Subject

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

#### Description of Policy Issues

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

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

Many forest deer management units are well above deer population goals established in administrative code. The trend has been one of increase since the 1970's, and the forest deer herd has not been below overall goal since 1980. In 2000, Zone T herd control seasons came to the forest deer management units for the first time. The proposed Special Seasons in the forest units are much like the Zone T seasons used in the past in farmland and forest units. Zone

T seasons have proven to be effective at increasing the deer harvest over the last five years.

#### Statutory Authority

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

#### Staff Time Required

97 hours

## Natural Resources

#### Subject

Chapter NR 437 will be created to establish and operate a system to register voluntary reductions of air pollutant emissions which are made before they are required by law.

#### Description of Policy Issues

A number of policy issues will be resolved. The major issues are baselines, and quantification and verification of emission reductions. Groups likely to be interested in these issues include electric utilities, paper companies, manufacturers, other industrial companies, environmental groups, and other state agencies.

This regulation represents the first time the department will formally register and track voluntary air pollutant emission reductions. The documentation and registration of voluntary emission reductions may be taken into consideration in the event that regulations requiring emission reductions are adopted in the future. This may provide protection to those sources which choose to voluntarily reduce air pollutant emissions before they are required to do so and thus eliminate a disincentive to take early action.

#### Statutory Authority

Section 285.78, Stats.

#### Staff Time Required

899 hours

## Board of Nursing

#### Subject

Certification requirements for advanced practice nurse prescribers.

#### Description of Policy Issues

*Objective of the rule.* By 1999 Wis. Act 22, the Wisconsin legislature adopted the Nurse Licensure Compact, by which nurses licensed and residing in one compact state may practice in another compact state without a separate license. Under the Compact, nurses residing in a compact state may be licensed in only one compact state, and that state must be their state of residence. While the Compact creates a practice privilege for registered nurses and licensed practical nurses in all compact states, there is no corresponding practice privilege for what are in this state termed advanced practice nurse prescribers (APNPs). APNPs are licensed or certified in each state where they practice regardless of whether their state of practice is a compact state. Accordingly, in order for an APNP who resides and is licensed in another compact state to practice as an APNP in Wisconsin, he or she must be certified as an APNP in this state. The current requirement for certification in Wisconsin is that the applicant be licensed as an RN in this state. That is an impossible condition under the Compact, again because a nurse may be licensed in only one compact state, and that state must be the nurse's state of residence. This amendment to the rule would suspend the requirement that the applicant for APNP

certification be licensed in Wisconsin if he or she is duly licensed as an RN in another compact state.

#### Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 441.01 (3), Stats.

#### Staff Time Required

120 hours

## Optometry Examining Board

#### Subject

Contact lens prescription release by optometrists.

#### Description of Policy Issues

*Objective of the rule.* To create rules setting forth the following in reference to the release of a contact lens prescription: (a) unprofessional conduct for failure to release; (b) content of the contact lens prescription; (c) expiration date of the contact lens prescription; and (d) definitions of terms that relate to the release of the contact lens prescription including, but not limited to, the terms "prescription order," "replacement contact lens" and "contact lens prescription."

To amend existing rules that relate to contact lens prescriptions including, but not limited to, ss. Opt 5.09, 5.10, 5.11 and 5.14

*Existing policies, new policies and an analysis of policy alternatives.* Existing rules do not clearly address contact lens release issues. The proposed rules would clearly define these issues. There are no viable policy alternatives.

#### Statutory Authority

Sections 15.08 (5) (b), 227.11 (2), 449.01 (1), 449.07 and 449.08, Stats.

#### Staff Time Required

100 hours

## Public Instruction

#### Subject

PI 18.03 (1) (a) 2. and PI 18.05 (1) (d).

#### Description of Policy Issues

*Objective of the rule.* Chapter PI 18 requires that students receive 4 credits of English, 3 credits of social studies, 2 credits of math, 2 credits of science and 1.5 credits of physical education in order to graduate from high school. Currently, the rule requires certain areas of instruction to be incorporated in those credits. Specifically, social studies requirements include instruction in local and state government. The proposed rules will require, as part of the 3 credits offered in social studies, that a school district offer a one semester course of instruction in local, state, tribal and federal government as recommended by the State Superintendent's Civics Action Task Force.

The proposed rules will also add a reference to s. 118.33 (3m), Stats., to align the rule with statutory language.

*Existing policies, new policies and an analysis of policy alternatives.* Adding instruction in tribal and federal government to the social studies high school graduation requirement aligns the rule with Wisconsin's Model Academic Standards for social studies established by Governor Thompson in 1998. Also, s. 121.02 (1) (L) 4., Stats., requires that school boards, as part of a social studies curriculum, provide instruction in the tribal sovereignty of the federally recognized American Indian tribes and bands located in this state.

The high school graduation requirements list areas of required instruction for English, math, science, social studies and physical

education. In addition to listing areas of required instruction for social studies, the rules require the provision of a one semester course of instruction in democracy education as part of the 3 credit offering of social studies.

The department could choose not to modify the current rule. However, most of the modifications are provisions made to align the rule with existing requirements.

#### **Statutory Authority**

Sections 118.33 (2) (c) and (4) (a), 121.02 (1) (L) and 227.11 (2) (a), Stats.

#### **Staff Time Required**

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed in creating the rule language, itself, will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than 6 months to complete.

## **Public Instruction**

#### **Subject**

Chapter PI 26.

#### **Description of Policy Issues**

*Objective of the rule.* To align the education for employment rules under ch. PI 26 with vocational/technical activities and programs being developed and implemented by public school districts.

Amendments to Ch. PI 26, Wis. Adm. Code, are suggested to bring the rule relating to the education for employment standard under s. 121.02 (1) (m), Stats., and s. PI 8.01 (2) (m), Wis. Adm. Code, into alignment with present day vocational/technical activities and programs being developed and implemented by public school districts. A change in the basic standard governing the career and technical education of all Wisconsin public school students will better prepare them by integrating academics with the proficiencies needed in the workplace. In general terms, the changes to Ch. PI 26 emphasize a continuous educational process beginning in the lower grades with career exploration and experience, moving to career planning and development in the middle school years and culminating in the development of workplace skills in grades 10 through 12.

*Existing policies, new policies and an analysis of policy alternatives.* Many of the components in the current rule are the same but reorganized in the modified rule. Such components include the development of a long range plan based on labor market information, employment needs, periodic follow-up studies of graduates, and an evaluation of current programs and staff development needs; the designation of a staff person to coordinate the program; allowing for career exploration and school supervised work experiences; and coordination with the school district standards, vocational skills, high school graduation requirements, and programs for children at risk; etc.

The rules will remove the requirement that school boards either appoint an education for employment council or participate in a CESA council. Instead, each board shall ensure representation on the tech prep council created under s. 118.34, Stats., and the tech prep council shall annually report to the board regarding the council's progress toward achieving its goals and objectives. In addition, the rule will:

- Add definitions of advanced placement, advanced standing, articulation course agreement, career awareness, career planning and preparation, transcribed credit and postsecondary credit for clarity.
- Clarify career development components to be offered to pupils at the elementary, middle and high school levels.
- Clarify the type of information to be collected when conducting graduate follow up studies.
- Require boards to include information on pupil transcripts.
- Require the program to integrate requirements under the tech prep, youth options, and youth apprenticeship programs.

The department could choose not to modify the current rule. However, given the demand for skilled workers and the increasing demands placed on employees to develop and improve their technical expertise, a change in the basic standard governing the career and technical education of all Wisconsin public school pupils is appropriate and needed.

#### **Statutory Authority**

Sections 121.02 (5) and 227.11 (2) (a), Stats.

#### **Staff Time Required**

The amount of time needed for rule development by department staff and the amount of other resources necessary is indeterminable. The time needed in creating the rule language will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than 6 months to complete.

## **Workforce Development**

#### **Subject**

DWD 12.22 – Relating to Review of W-2 Contested Case Decisions.

#### **Description of Policy Issues**

*Objective of the rule.* The objective of the rule is to allow for review of W-2 contested case decisions by the DWD Secretary when petitioned by the DWD Division of Economic Support or a party adversely affected by a hearing decision. The proposed rule will be based on a procedure adopted by the Department of Natural Resources at ss. NR 2.155 and 2.20.

*Existing policies, new policies and an analysis of policy alternatives.* Under the current procedure, decisions of hearing examiners from the DOA Division of Hearings and Appeals are released as final decisions when the issues are solely factual and are released as proposed decisions when the issues have policy level implications. Proposed decisions are reviewed by the DWD Secretary before they become final.

Under the new procedure, decisions of hearing examiners would be final unless the DWD Division of Economic support or a party adversely affected by a hearing decision petitions the Secretary for review. This change is suggested because it has proven difficult for hearing examiners to distinguish between issues that are purely factual and those that have policy level implications.

#### **Statutory Authority**

Sections 227.46 (3) and 49.152, Stats.

#### **Staff Time Required**

75 hours



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## SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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

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

#### Financial Institutions–Banking

##### Rule Submittal Date

On November 27, 2000, the Department of Financial Institutions, Division of Banking submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule repeals DFI–Bkg 8.04, relating to stating name and location of office on bank checks.

##### Agency Procedure for Promulgation

A public hearing is required and will be held on January 8, 2001.

##### Contact Information

If you have questions, please contact:

Mark Schlei  
Telephone: (608) 267–1705  
Email: [mark.schlei@dri.state.wi.us](mailto:mark.schlei@dri.state.wi.us)

##### Mailing Address:

Department of Financial Institutions  
4th Floor, 345 W. Washington Avenue  
Madison, WI 53703

#### Insurance Commissioner

##### Rule Submittal Date

On November 30, 2000, the Office of the Commissioner of Insurance submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

These changes will create chapter Ins 18, Wis. Adm. Code, relating to Grievance Procedures and Independent Review Organizations.

##### Agency Procedure for Promulgation

The date for the public hearing is January 10, 2001.

##### Contact Information

If you have questions, please contact:

Patrick Bass  
Telephone: (608) 264–6232  
or  
Julie E. Walsh  
Telephone: (608) 264–8101  
Email: [Julie.Walsh@oci.state.wi.us](mailto:Julie.Walsh@oci.state.wi.us)

Web site:

<http://www.state.wi.us/agencies/oci/ocirules.htm>

##### Mailing Address:

Office of the Commissioner of Insurance  
121 East Wilson Street, P.O. Box 7873  
Madison, WI 53707–7873

#### Board of Nursing

##### Rule Submittal Date

On November 30, 2000, the Board of Nursing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule–making order relates to continuing education.

##### Agency Procedure for Promulgation

A public hearing is required and will be held on January 4, 2001 at 8:30 a.m. in Room 179A.

##### Contact Information

If you have questions, please contact:

Pamela Haack  
Telephone: (608) 266–0495  
Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)

##### Mailing address:

Department of Regulation and Licensing  
Office of Administrative Rules  
1400 E. Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

#### Board of Nursing

##### Rule Submittal Date

On November 30, 2000, the Board of Nursing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule–making order relates to defining the practice of nursing to include acting under the direction of optometrists.

##### Agency Procedure for Promulgation

A public hearing is required and will be held on January 4, 2001 at 8:30 a.m. in Room 179A.

##### Contact Information

If you have questions, please contact:

Pamela Haack  
Telephone: (608) 266–0495  
Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)

##### Mailing address:

Department of Regulation and Licensing  
Office of Administrative Rules  
1400 E. Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

#### Pharmacy Examining Board

##### Rule Submittal Date

On November 17, 2000, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule–making order relates to transfer of prescription orders.

##### Agency Procedure for Promulgation

A public hearing is required and will be held on January 9, 2001 at 9:15 a.m. in Room 179A.

**Contact Information**

If you have questions, please contact:

Pamela Haack

Telephone: (608) 266-0495

[Email: pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us)

Mailing address:

Department of Regulation and Licensing

Office of Administrative Rules

1400 E. Washington Avenue

P.O. Box 8935

Madison, WI 53708

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# N O T I C E S

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## Notice of Hearing Financial Institutions—Banking [CR 00–166]

Pursuant to s. 227.17, Stats., notice is hereby given that the Department of Financial Institutions, Division of Banking will hold a public hearing at the time and place indicated below to consider repealing certain requirements that the name and location of a bank be on bank checks.

Date, Time and Place of Hearing

<u>Date &amp; Time</u>	<u>Location</u>
<b>January 8, 2001 Monday 9:00 a.m.</b>	<b>Tommy G. Thompson Conference Room 5th Floor Department of Financial Institutions 345 West Washington Avenue Madison, WI 53703</b>

This facility is accessible to individuals with disabilities through levels A, B or the first floor lobby. If you require reasonable accommodation to access any meeting, please call Lisa Bauer at (608) 264–7877 or TDY (608) 266–8818 for the hearing impaired at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided by the Americans with Disabilities Act.

### Text of the Proposed Rule

SECTION 1. Section DFI–Bkg 8.04 is repealed.

### Reference to Statutory Authority and Analysis Prepared by Department of Financial Institutions, Division of Banking

Analysis: To repeal s. DFI–Bkg 8.04. Statutory authority: Sections 220.02 (2) and 227.11 (2), Stats. Summary: Section DFI–Bkg 8.04 requires that the name and location of a bank home office shall be stated on all bank checks, and that the name of a bank branch may be stated on bank checks. State law on negotiable instruments, Uniform Commercial Code s. 403.104, Stats., does not require this information. Federal law on presentment and issuance of checks, 12 CFR 229.36, does not require this information. However, practically a check, both as a negotiable instrument and in the course of presentment, will contain bank identification information. Section DFI–Bkg 8.04 is, therefore, both unnecessary and redundant. Agency person to be contacted for substantive questions and responsible for agency's internal processing: Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, tel. (608) 267–1705.

### Fiscal Estimate

There is no state fiscal effect, and there are no local government costs. No funding sources or ch. 20 appropriations are affected. There are no long–range fiscal implications.

### Initial Regulatory Flexibility Analysis:

The proposed rule will not have an effect on small businesses.

## Notice of Hearing Office of the Commissioner of Insurance [CR 00–169]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order creating ch. Ins

18, Wis. Adm. Code, relating to grievance requirements and independent review organizations.

Date, Time and Place of Hearing

<u>Date &amp; Time</u>	<u>Location</u>
<b>January 10, 2001 Wednesday 9:30 a.m. or as soon thereafter as the matter may be reached</b>	<b>Room 6 Office of the Commissioner of Insurance 121 East Wilson Street Madison, WI 53703</b>

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 30 days following the date of the hearing. Written comments should be addressed to: Julie E. Walsh, OCI, PO Box 7873, Madison WI 53707

### Summary of Fiscal Estimate

There will be no state or local government fiscal effect.

### Initial Regulatory Flexibility Analysis

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

### Contact Person

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Patrick Bass, Administrative Services Section, Office of the Commissioner of Insurance, at (608) 264–6232 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707–7873.

## Notice of Hearing Board of Nursing [CR 00–167]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b) and 227.11 (2), Stats., and 441.11 (3) and (4), Stats., and interpreting s. 441.11 (3) and (4), Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to amend ss. N 6.02 (2) (intro.), (3) (intro.) and (4), 6.03 (2) (c) and (d), and 6.04 (1) (intro.), (d), 3., (2) (a) and (b), relating to defining the practice of nursing to include acting under the direction of optometrists.

Date, Time and Place of Hearing

<u>Date &amp; Time</u>	<u>Location</u>
<b>January 4, 2001 Thursday 8:30 a.m.</b>	<b>1400 East Washington Avenue Room 179A Madison, WI</b>

### Appearances At The Hearing

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 January 18, 2001 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

## Analysis

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), and s. 441.11 (3) and (4), Stats.

Statute interpreted: s. 441.11 (3) and (4)

1997 Wis. Act 62 amended the practice of nursing to include acting under the direction of optometrists. The practice of practical nursing means the performance for compensation of any simple acts in the care of convalescent, subacutely or chronically ill, injured or infirm persons, or of any act or procedure in the care of the more acutely ill, injured or infirm under the specific direction of a nurse, physician, podiatrist or optometrist. A simple act does not require any substantial nursing skill, knowledge or training, or the application of nursing principles based on biological, physical or social sciences, or the understanding of cause and effect in such acts and is one which is of a nature of those approved by the board for the curriculum of schools for licensed practical nursing.

The practice of professional nursing means the performance for compensation of any act in the observation or care of the ill, injured or infirm, or for the maintenance of health or prevention of illness of others, which requires substantial nursing skill, knowledge or training, or application of nursing principles based on biological, physical, and social sciences, such as the observation and recording of symptoms and reactions, the execution of procedures and techniques in the treatment of the sick under the general or special supervision or direction of a physician, podiatrist, dentist, or optometrist, or under an order of a person who is licensed to practice medicine, podiatry or dentistry in another state if that person prepared the order after examining the patient in that other state and directs that the order be carried out in this state, and the execution of general nursing procedures and techniques.

## Text of Rule

**SECTION 1.** N 6.02 (2) (intro.), (3) (intro.) and (4) are amended to read:

N 6.02 (2) (intro.) “Basic patient situation” as determined by an R.N., physician, podiatrist ~~or~~ dentist or optometrist means the following 3 conditions prevail at the same time in a given situation:

(3) (intro.) “Complex patient situation” as determined by an R.N., physician, podiatrist ~~or~~ dentist or optometrist means any one or more of the following conditions exist in a given situation:

(4) “Delegated medical act” means acts delegated to an R.N. or L.P.N. by a physician, ~~dentist or~~ podiatrist, dentist or optometrist.

**SECTION 2.** N 6.03 (2) (c) and (d) are amended to read:

N 6.03 (2) (c) Consult with a physician, ~~dentist or~~ podiatrist, dentist or optometrist in cases where the R.N. knows or should know a delegated medical act may harm a patient; and,

(d) Perform delegated medical acts under the general supervision or direction of a physician, ~~dentist or~~ podiatrist, dentist or optometrist.

**SECTION 3.** N 6.04 (1) (intro.), (d), 3. (intro.), (2) (a) and (b) are amended to read:

N 6.04 (1) PERFORMANCE OF ACTS IN BASIC PATIENT SITUATIONS. (intro.) In the performance of acts in basic patient situations, the L.P.N. shall, under the general supervision of an R.N. or the direction of a physician, podiatrist ~~or~~ dentist or optometrist:

(d) Consult with an R.N. ~~or~~ physician, podiatrist, dentist or optometrist in cases where an L.P.N. knows or should know a delegated nursing or medical act may harm a patient; and,

3. (intro.) Reinforce the teaching provided by an R.N., physician, podiatrist ~~or~~ dentist or optometrist and provide basic health care instruction; or,

(2) (a) Meet standards under sub (1) under the general supervision of an R.N., physician, podiatrist ~~or~~ dentist or optometrist.

(b) Perform delegated nursing or medical acts beyond basic nursing care under the direct supervision of an R.N., physician, podiatrist ~~or~~ dentist or optometrist. An L.P.N. shall, upon request of the board, provide documentation of his or her nursing education, training or experience which prepare the L.P.N. to competently perform these assignments.

## 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 Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

## Notice of Hearing Board of Nursing [CR 00-168]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b), 227.11 (2) and 441.16 (3) (d), Stats., and interpreting s. 441.16 (2) and (3), Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to create ss. N 8.02 (6m) and 8.05 (3), relating to continuing education.

Date, Time and Place of Hearing

### Date & Time

**January 4, 2001  
Thursday  
8:30 a.m.**

### Location

**1400 East Washington Avenue  
Room 179A  
Madison, WI**

## Appearances At The Hearing

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 January 18, 2001 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

## Analysis

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

Statute interpreted: s. 441.16 (2) and (3)

Section N 8.05 (1) requires advanced practice nurse prescribers to complete at least 8 contact hours per year of continuing education in clinical pharmacology/therapeutics, but does not define the term “contact hour.” This proposed rule-making order of the Board of Nursing will obviate confusion that has arisen in that regard by creating a definition of “contact hour.”

Evidence of continuing education completed by advanced practice nurse prescribers must be submitted by licensees on a schedule consistent with the schedule of submission of such evidence to the nurses’ national certifying bodies. Because of variations both as to frequency and date of filing with the national certifying bodies, there has been confusion among licensees as to how long evidence of continuing education must be retained. The board proposes creation of a rule which would establish a uniform minimum retention time of 4 years.

## Text of Rule

**SECTION 1.** N 8.02 (6m) is created to read:

N 8.02 (6m) "One contact hour" means a period of attendance in a continuing education program of at least 50 minutes.

**SECTION 2.** N 8.05 (3) is created to read:

N 8.05 (3) Every advanced practice nurse prescriber shall retain for a minimum period of 4 years, and shall make available to the board or its agent upon request, certificates of attendance issued by the program sponsor for all continuing education programs for which he or she claims credit for purposes of renewal of his or her certificate.

### 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 Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

## Notice of Hearing Tobacco Control Board

Notice is hereby given that, pursuant to s. 255.15 (1m), Stats., the Wisconsin Tobacco Control Board will hold a public hearing to consider the creation of ch. TCB 1, Wis. Adm. Code, relating to the establishment of criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke and the emergency administrative rules now in effect on the same subject.

### Hearing Information

The public hearing will be held:

<u>Date &amp; Time</u>	<u>Location</u>
January 10, 2001 Wednesday 10:00 a.m. to 2:00 p.m.	State Office Building 1 West Wilson Room 751 Madison, WI 53703

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities attending the Madison hearing is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp and in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

### Analysis Prepared by the Department of Health and Family Services

The health and fiscal impact of tobacco use are well documented. In Wisconsin alone, 7,800 deaths occur each year from tobacco-related disease. In addition, Wisconsin government, residents and health care providers pay over \$1.3 billion annually for health care costs associated with tobacco use.

While tobacco's effects are in individuals' futures, immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco

use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been a 19 percent increase in high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease and stroke.

In addition, tobacco use among specific populations continues to present an ongoing threat to the health of Wisconsin citizens. Wisconsin has a rate of tobacco use among pregnant women that is 30 percent higher than the national average. In addition, the national smoking rate among African-American youth doubled from 14 percent in 1993 to 28 percent in 1997. Finally, the 48% smoking rate of Medicaid recipients is twice the rate of the general population.

The ongoing and emerging health impacts and costs associated with tobacco use necessitate the immediate implementation of the comprehensive initiative to address tobacco use in Wisconsin.

The Board, through this order, is creating chapter TCB 1 relating to the Board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants. The rule is being promulgated under the authority of s. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation and eliminating environmental tobacco smoke.

Identical emergency rules were published and became effective on November 7, 2000.

### Contact Person

To find out more about the hearing or to request a copy of the proposed rule, write or phone:

David F. Gundersen  
Executive Director, Tobacco Control Board  
Room 250, 1 West Wilson Street  
PO Box 1190  
Madison, WI 53701-1190  
(608) 267-0944

The text of ch. TCB 1 is available on the Tobacco Control Board's website at [www.wtcb.state.wi.us](http://www.wtcb.state.wi.us). If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter, or a non-English, large-print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **January 17, 2000** will be given the same consideration as testimony presented at the hearing.

### Fiscal Estimate

This rule neither increases nor decreases existing appropriations or state or general local government fiscal liabilities or revenues beyond those identified in the original fiscal estimate of Act 9. The emergency rule provides parameters for the allocation of funds to state and local activities, and provides greater specificity regarding the funded programmatic activities related to the appropriation under s. 20.436 (1) (tc), Stats. Of the \$18,307,000 allocated by the Board, \$7,250,000 will go to state agencies and organizations and \$11,057,000 will go to local activities. Costs of administering these grant activities will be paid for by grant funding or covered by existing funding.

### Initial Regulatory Flexibility Analysis

The rule changes made by the emergency rule and the proposed permanent rule will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.



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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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

### **Agriculture, Trade and Consumer Protection (CR 00-060)**

An order to repeal and recreate ch. ATCP 75 relating to retail food establishments.

Effective 2-1-01

### **Financial Institutions, Division of Securities (CR 00-117)**

An order affecting chs. DFI-Sec 2, 3, 4 and 5 relating to securities registration exemptions, and to securities broker-dealer, agent, investment adviser and investment adviser representative licensing procedures, record-keeping requirements, and rule of conduct provisions.

Effective 1-1-01

### **Health and Family Services (CR 00-059)**

An order affecting ch. HFS 196, relating to restaurants.

Effective 2-1-01

### **Insurance Commissioner (CR 00-007)**

An order affecting ch. Ins 23, relating to standards for insurance marketed to fund prearranged funeral plans.

Effective 2-1-01

### **Natural Resources (CR 00-096)**

An order affecting chs. NR 400, 410, 423, 428, 439, 484 and 485, relating to reducing ozone concentrations in the ambient air in southeastern Wisconsin by controlling nitrogen oxides (NO<sub>x</sub>) and volatile organic compound (VOC) emissions.

Effective 2-1-01

### **Natural Resources (CR 00-101)**

An order affecting chs. NR 406, 407, 419, 422 and 484, relating to the control of volatile organic compound emissions from automobile refinishing operations.

Effective 2-1-01

### **Natural Resources (CR 00-102)**

An order to amend ch. NR 25, relating to commercial fishing for chubs on Lake Michigan.

Effective 1-1-01

### **Nursing (CR 00-051)**

An order affecting ch. N 5, relating to renewal after 5 years.

Effective 1-1-01

### **Regulation and Licensing (CR 00-100)**

An order affecting chs. RL 30, 31, 32, 33, 34 and 35, relating to private detectives, private detective agencies and private security personnel.

Effective 2-1-01

### **Regulation and Licensing (CR 00-105)**

An order affecting chs. RL 17, 24 and 25, relating to real estate education requirements.

Effective 2-1-01

### **Transportation (CR 00-109)**

An order affecting chs. Trans 231 and 233, relating to division of land abutting a state trunk or connecting highway.

Effective 2-1-01

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## PUBLIC NOTICE

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### Department of Financial Institutions Division of Savings Institutions

#### Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts For 2001

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) (2), Stats., directs the Department of Financial Institutions, Division of Savings Institutions, to determine annually the required interest rate. The rate is based on the average interest rate paid by Wisconsin depository institutions on passbook savings accounts.

The Department of Financial Institutions, Division of Savings Institutions, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be **2.53%** for 2001. This interest rate shall remain in effect through December 31, 2001.

#### Contact Person:

Mr. John Gervasi, Acting Administrator  
Division of Savings Institutions  
Department of Financial Institutions  
Telephone (608) 261-2300

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