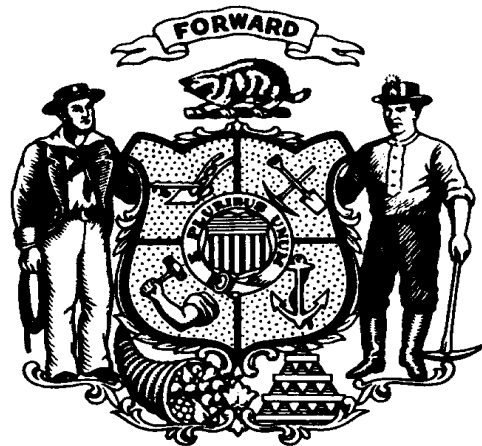


# Wisconsin Administrative Register

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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 – (2)

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.

#### Statement 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 Dates:</b>	<b>September 19, 2000</b>
<b>Extension Through:</b>	<b>March 8, 2001</b>

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### Commerce

#### (PECFA – Chs. Comm 46–47)

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.

#### Statement 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 Dates:</b>	<b>December 13, 2000</b>

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

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

#### Statement 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>
<b>Hearing Dates:</b>	<b>January 12, 16, 17, 18 and 19, 2001</b>
	<b>[See Notice this Register]</b>

### **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.

#### **Statement of Emergency**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial

deer damage to agricultural lands and forest resources, and to minimize deer nuisance problems, thereby protecting the public peace, health, safety and welfare. Normal rule-making procedures will not allow the establishment of these changes by August 1. Failure to modify the rules will result in excessively high deer populations well above established goal levels, causing substantial deer damage to agricultural lands and forest resources, and potential for disease.

**Publication Date:** May 15, 2000  
**Effective Date:** August 4, 2000  
**Expiration Date:** January 1, 2001  
**Hearing Dates:** June 12, 2000

## 2. 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

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

### Statement 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  
**Hearing Dates:** January 17, 2001  
 [See Notice this Register]

## 4. Rules adopted revising ch. NR 6 relating to defining unreasonable and improper speed to include operating a snowmobile at speeds greater than 50 MPH during the hours of darkness.

### Statement of Emergency

During the 1999-2000 snowmobile season conservation wardens investigated 38 fatal snowmobile accidents. Of these accidents, 10 deaths could be directly attributed to operation at excessive speed during the hours of darkness. Fourteen other deaths could have been avoided if the operators had observed more prudent speeds, allowing them to avoid nighttime hazards. Potentially 24 of the 38 fatalities could have been avoided if the snowmobiler had been operating at slower speeds during the hours of darkness. Unless an immediate change is made in the snowmobile laws similar number of avoidable fatalities will occur during the 2000-2001 snowmobile season. Even greater numbers could occur if the early snows seen in November of 2000 remain, thereby extending the snowmobile season beyond that experienced in 1999-2000.

**Publication Date:** December 15, 2000  
**Effective Date:** December 15, 2000  
**Expiration Date:** May 14, 2001  
**Hearing Dates:** January 17, 2001  
 [See Notice this Register]

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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.

#### Statement 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.

<b>Publication Date:</b>	<b>July 10, 2000</b>
<b>Effective Date:</b>	<b>July 10, 2000</b>
<b>Expiration Date:</b>	<b>December 8, 2000</b>
<b>Extension Through:</b>	<b>February 5, 2001</b>

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## 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.

<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>

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## 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

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## 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 from a school that is either a technical college or accredited by an accrediting agency.

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

**Publication Date:** September 3, 2000  
**Effective Date:** September 3, 2000  
**Expiration Date:** January 31, 2001  
**Hearing Dates:** October 3, 2000

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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.

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

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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.

### Statement 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 Dates:</b>	<b>January 10, 2001</b>

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# Statements of scope of proposed rules

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## Agriculture, Trade and Consumer Protection

### Subject

Cheesemakers Licenses

### Description of Policy Issues

Current department rules prescribe the qualifications needed to be eligible to obtain a cheesemaker's license. Section ATCP 69.02, Wis. Adm. Code, specifically requires experience in cheesemaking. These rules have been in effect for many years and need to be updated. The department proposes to modify the rule to allow for an alternative adult learning method to meet the experience requirement. Although the proposed alternative experience requirements would differ from current requirements, these alternative experience requirements will be equivalent in their objectives, content and rigor.

Wisconsin is the only state which requires that cheesemakers be licensed to engage in that occupation. This requirement has been in effect since 1929.

Prices paid for producer milk are volatile and dairy producers would like to be able to pursue direct marketing opportunities. There is increasing consumer demand for specialty and farmstead cheese. For these reasons, milk producers would like to be able to add value to their products on the farm. Some of these milk producers would like to make cheese from their milk and sell it directly to consumers and restaurants. However, the current experience requirements make it impractical for most producers to obtain the cheesemaking experience needed as a prerequisite to processing cheese at a dairy plant located on their farm.

Developing an adult education method for obtaining cheesemaking experience requirements would allow milk producers to meet the requirements by attending approved university level courses while concurrently working as a milk producer. These courses would be prescribed by the rule. The rule would also include a required period of actual cheesemaking experience in a cheese factory.

#### *Policy alternatives:*

- Do nothing. This alternative would frustrate the efforts of some milk producers to produce value-added products on their farms. Wisconsin milk producers are effectively prevented from benefiting from increased consumer demand for specialty and farmstead cheese.
- Eliminate the requirement to hold a cheesemakers license when making cheese. This alternative would allow milk producers (and anyone else) to make cheese without a license. This alternative may dilute Wisconsin's cheesemaking expertise and ultimately adversely impact the quality and safety of cheese manufactured in Wisconsin.

### Statutory Authority

The department proposes to develop cheesemaker license rules under authority of ss. 93.07 and 97.17, Stats. The rules would interpret s. 97.17, Stats.

### Staff Time Required

The department estimates that it will require approximately 0.25 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. The department will assign existing staff to develop this rule.

## Agriculture, Trade and Consumer Protection

### Subject

Plant Inspection and Pest Control

### Description of Policy Issues

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) administers plant pest control rules, including Japanese beetle import restrictions. The Japanese beetle has infested over half of all U.S. states. Current DATCP rules restrict imports of certain plants, soil and other materials from infested states. Before a person may import regulated materials to Wisconsin from an infested state, a pest control official from the infested state must inspect and certify that the materials are free of Japanese beetles.

Despite these import restrictions, the Japanese beetle has now infested Wisconsin. Continued import restrictions may therefore serve no useful purpose, and may unnecessarily impede interstate commerce. Wisconsin's current import restrictions are also inconsistent with the U. S. Harmonization Plan on Japanese Beetle Regulations, published by the National Plant Board.

The U. S. Harmonization Plan suggests uniform state regulatory standards for Japanese beetle. Generally speaking, the plan contemplates regulation of shipments from infested states to *non-infested* states. The plan does not contemplate regulation of shipments to *infested* states, because those regulations may serve no useful purpose and may impose unnecessary costs on interstate commerce. The plan is a suggested guideline for states, and is not legally binding on them. Wisconsin's current import restrictions, while not prohibited by the U.S. Harmonization Plan, are inconsistent with the plan guidelines.

DATCP proposes to eliminate the current Japanese beetle import restrictions, which may no longer serve a useful purpose. DATCP will continue to provide export certification services to persons who wish to export regulated materials from Wisconsin to non-infested states. DATCP also proposes to make minor or non-substantive technical changes to current pest control rules.

#### *Policy alternative:*

- No change. If DATCP takes no action, the current Japanese beetle import restrictions will remain in effect. Since the Japanese beetle has already infested Wisconsin, the current import restrictions may serve no useful purpose and may unnecessarily impede interstate commerce. Technical defects in the current rules will also go unremedied.

### Statutory Authority

The department proposes this rule under authority of ss. 93.07(1) and (12) and 94.01(1), Stats.

### Staff Time Required

The department estimates that it will use approximately 200 hours of staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussions, and communicating with affected persons and groups. The department will assign existing staff to develop this rule.

## Health and Family Services

### Subject

Birth Defect Prevention and Surveillance System

### Description of Policy Issues

1999 Act 114 replaced the Birth Defect Outcome and Monitoring Program with what is known in Act 114 as the Birth Defect Prevention and Surveillance System. The new system has several differences from the previous reporting program:

1. The definitions of reportable conditions under Act 114 differ from the old statute language. The proposed rule recreation must specify the birth defects that are a structural deformation, disruption or dysplasia, or a genetic inherited or biochemical disease.
2. Only infants and defects up to the age of 2 will be required to be reported to the Department.
3. The list of persons required to report a birth defect to DHFS will be expanded beyond physicians to include hospitals and pediatric specialty clinics.
4. The rules will specify the content, format, and procedures for submitting a report to the Department necessary for the Department's establishing and maintaining an up-to-date registry of birth defects.
5. Act 114 creates an entity known as the Council on Birth Defect Prevention and Surveillance for the purpose of making recommendations to the department regarding the establishment of the registry and the Department's administrative rules and the content of the reports required from medical care providers.
6. Beginning in April 2002, the Council is to biennially report to the legislature on the effectiveness of the registry.
7. Create a mechanism to assure confidentiality by requiring parental or guardian written consent before reporting or releasing an infant's name and address.

**Statutory Authority**

Sections 253.12 and 227.11 (2), Stats.

**Staff Time Required**

Estimated 60 hours of Department staff time to draft and submit to the Legislative Counsel Rules Clearinghouse a rulemaking order and associated materials. A statutorily-required Council on Birth Defect Prevention and Surveillance is to make recommendations concerning the rule promulgation.

## Health and Family Services

**Subject**

Permit fees for vending of food and beverages, bed and breakfast establishments, restaurants, hotels/motels and tourist rooming houses, swimming pools, campgrounds, and recreational and educational camps.

**Description of Policy Issues**

The Department and agent local government health departments regulate campgrounds, recreational and educational camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations under the authority of Chs. 254 and 250 Stats., to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The Department's rules are in Chs. HFS 172, 175, 178, 195, 196, 197, and 198, Wis. Adm. Code. None of these facilities may operate without receiving a permit from the Department or an agent local government health department. A permit is evidence that a facility complies with the Department's rules on the date of issuance of the permit. Under the rules, a facility is charged a permit fee. The restaurant, lodging, and recreational facility regulation and licensing program is 100% funded by licensing revenue. Current budget projections indicate a deficit in the upcoming fiscal year. License fees need to be increased to fully fund the program. Significant investment in technology – licensing

and inspection software – have stressed the regulation and licensing program budget. The major expenditures in technology are behind us, however, the workload of staff continues to be very heavy, with each staff member providing consultation and inspection services to approximately 550 facilities. Also, with the anticipated promulgation of the new food rule (HFS 196), the Department is committing to inspect every full service restaurant (approximately 9,000 facilities) at a minimum of once per year. This will require that we fill every authorized position and provide for LTE support during our busy summer months, where inspections include food festivals and fairs.

To minimize the impact of fee increases on small facility owners and operators, the Department will propose in this rule a revised license fee schedule for restaurants that is based upon gross annual receipts for the facility.

Alternatives to increasing fees include:

1. Allowing the regulation and licensing program budget to end in deficit for SFY 01 and future years.
2. Reducing the costs associated with the program. (Note: personnel costs represent approximately 70% of the budget. A reduction in staffing would extend the frequency of facility inspections beyond the current average of approximately once every 18 months.)

**Statutory Authority**

Chapter 250, Stats., and ss. 254.47 (4) and 254.68, Stats.

**Staff Time Required**

40 hours.

## Natural Resources

**Subject**

Department's intent to convene a group of Department technical experts and representatives outside the agency to develop a strategy for regulating mercury releases from wastewater.

**Description of Policy Issues**

With EPA's recent approval of a new ultra-sensitive test method for mercury, and the department's approach of disregarding effluent tested as a viable tracking mechanism is no longer appropriate. Limited available low-level data indicates many permittees will not be able to achieve effluent limitations called for by rules protecting water quality. We need a new approach that recognizes the widespread distribution of mercury in the environment, continues to emphasize pollution prevention as a control strategy and provides a rational mechanism that allows permittees to work toward achieving water quality based effluent limitations.

The department's current approach for mercury in wastewater is authorized by a provision in ch. NR 106, Wisconsin Administrative Code, promulgated in 1997. The newly approved test method changes the condition such that mercury is no longer covered under this provision. Rulemaking that provides an expedited water quality standards variance has been suggested by department staff as one possible solution to the potential that a significant number of permittees will be unable to meet effluent limitations for mercury. Other solutions that may present themselves will also be investigated.

**Statutory Authority**

Chapter 283

**Staff Time Required**

348 hours

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## Submittal of rules to legislative council clearinghouse

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

### Agriculture, Trade and Consumer Protection

#### Rule Submittal Date

On December 13, 2000, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

The proposed rule-making order amends s. ATCP 97.04 (4) (a) 1. to 5., relating to public warehouse keeper license fees.

#### Agency Procedure for Promulgation

A hearing is scheduled for January 18, 2001.

#### Contact Information

If you have questions, please contact:  
Linda Meinholz  
Telephone: (608) 224-4933  
[Email: meinhl@wheel.datcp.state.wi.us](mailto:meinhl@wheel.datcp.state.wi.us)

### Commerce

#### Rule Submittal Date

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

#### Analysis

The proposed rule-making order affects chs. Comm 4, 14, 16, 50 to 64, 65, 66, 69, and 73, relating to construction and fire prevention for public buildings and places of employment, including commercial buildings and structures, and multifamily dwellings.

#### Agency Procedure for Promulgation

Hearings have been scheduled for January 16, 18, 23, and 25, 2001.

#### Contact Information

If you have questions, please contact:  
Sam Rockweiler  
Department of Commerce  
Telephone: (608) 266-0797  
[Email: sam.rockweiler@commerce.state.wi.us](mailto:sam.rockweiler@commerce.state.wi.us)  
Mailing Address:  
Department of Commerce  
4th Floor, 201 W. Washington Avenue  
Madison, WI 53703

### Health and Family Services

#### Rule Submittal Date

On December 7, 2000, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

#### Analysis

These are amendments to the Department's rules for immunization of children before they enter school and while in school. The rules apply to children attending elementary school, middle school, junior or senior high school or a day care center. The rules implement s. 252.04 (1) to (7) and (10), Stats.

This rulemaking order adds varicella (chicken pox) to the list of diseases against which students are to be immunized. Section 252.04 (1), Stats., mandates the Department's implementation of a statewide immunization program to eliminate mumps, measles, rubella (German measles), diphtheria, pertussis (whooping cough), poliomyelitis and other diseases that the Department specifies by rule, and to protect against tetanus. To these diseases, the Department has previously added hepatitis B. The Department is authorized under s. 252.04 (1) and (2), Stats., to add diseases to that list by rule.

The Department has decided to add varicella to the list of diseases specified in ch. HFS 144 based on recommendations of the federal Centers for Disease Control Advisory Committee on Immunization Practices that children entering child care facilities and elementary and middle schools either receive varicella vaccine or have other evidence of immunity to varicella. Varicella causes more illness than any other childhood vaccine-preventable disease. In 1998, 4,446 cases of varicella were reported in Wisconsin. Complications from varicella can lead to hospitalization and even death. Before the availability of varicella vaccine, varicella caused an estimated 11,000 hospitalizations and 100 deaths per year in the United States. Since children affected by the rule may have already had varicella, parents will be able to comply with the requirement by indicating that their child has had the disease. The Department proposes to phase-in the requirement for immunization against varicella beginning with the 2001-02 school year. For the 2001-02 school year, the requirement will apply to any child entering a day care center or kindergarten. The requirement would apply to all grades by the 2005-06 school year.

This rulemaking order also proposes:

1. Increasing by 4 months the age at which measles-mumps-rubella (MMR) vaccine is required from the currently specified 12 month age to conform to the Centers for Disease Control's annually updated Recommended Childhood Immunization Schedule;
2. Clarifying that the requirement for a dose of DTP/DTPa/DT/Td vaccine (i.e., any combination of diphtheria, tetanus and pertussis vaccine; diphtheria, tetanus and acellular pertussis vaccine; pediatric type diphtheria and tetanus vaccine; or adult type tetanus and diphtheria vaccine) to be received after the 4<sup>th</sup> birthday applies to children in kindergarten only; and
3. Reducing the Hep B (hepatitis B) requirement from 3 doses to 2 doses for students who receive a licensed two-dose formulation of Hep B vaccine.

#### Agency Procedure for Promulgation

Public hearings have been scheduled for January 16, 17, and 18, 2001.

#### Contact Information

If you have questions, please contact:  
Marjorie Hurie  
Division of Public Health  
Telephone: (608) 266-8621  
[Email: HURIEMB@dhfs.state.wi.us](mailto:HURIEMB@dhfs.state.wi.us)  
Mailing Address:  
Department of Health and Family Services  
Room 318, 1 W. Wilson Street  
Madison, WI 53703



## Health and Family Services

### Rule Submittal Date

On December 7, 2000, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

### Analysis

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. September 2000 regulations issued by the U.S. Department of Housing and Urban Development (HUD) require most properties owned by the federal government or receiving federal assistance to conduct specified activities to make the property lead-safe. The HUD regulations most directly 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 a clearance visual examination and dust-lead sampling conducted after completing activities that disturb lead-based paint. The regulations also require annual re-evaluation of the property by a certified lead risk assessor. The federal government assumes that states will commence 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. Consequently, on December 1, 2000, the Department revised its training accreditation and certification requirements of ch. HFS 163 by emergency order.

An individual may apply for certification in the following disciplines: lead low-risk worker, low-risk supervisor, high-risk worker, contractor supervisor, hazard investigator, inspector, risk assessor, project designer and sampling technician. 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 hazard investigator, inspector, risk assessor, low-risk supervisor or contractor supervisor, must pass a certification examination. In addition, the Department must accredit the lead training courses that prepare persons for certification.

In addition to the recently issued federal regulations, 1999 Wisconsin Act 113 requires the Department to review local ordinances and promulgate rules using a research-based methodology. These rules must establish all of the following:

- A process for issuing the certificates and registering the properties for which certificates are issued.
- Procedures for revoking a certificate, and the period of validity for a certificate.
- What interim lead hazard control measures a new owner must take in vacant units when immunity from liability from liability is provided during the first 60 days after acquiring a new dwelling.
- The requirements for a training course of up to 16 hours that property owners, their agents and employees must complete if seeking certification.
- The scope of the lead investigation and lead hazard reduction activities that may be performed following certification.

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.

Therefore, the proposed repeal and recreation of ch. HFS 163 will accomplish dual purposes. They will bring ch. HFS 163 into compliance with the recently issued federal regulations and revise the chapter pursuant to 1999 Wisconsin Act 113.

### Agency Procedure for Promulgation

Public hearings are scheduled for January 12, 16, 17, 18, and 19, 2001.

### Contact Information

If you have questions, please contact:  
 Gail Boushon  
 Asbestos and Lead Section  
 Division of Public Health  
 Telephone: (608) 267-2289  
 Email: [BoushGA@dhfs.state.wi.us](mailto:BoushGA@dhfs.state.wi.us)  
 Mailing Address:  
 Department of Health and Family Services  
 Room 145, 1 W. Wilson St.  
 Madison, WI 53703

## Natural Resources

### Rule Submittal Date

On December 8, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. FR-42-00] to the Legislative Council Rules Clearinghouse.

### Analysis

The proposed rule-making order affects ch. NR 47, relating to the federal cost sharing program to suppress gypsy moths.

### Agency Procedure for Promulgation

A public hearing is scheduled for January 31, 2001.

### Contact Information

If you have questions, please contact:  
 Andrea Diss  
 Bureau of Forestry  
 Telephone: (608) 264-9247

## Natural Resources

### Rule Submittal Date

On December 8, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. FH-48-00] to the Legislative Council Rules Clearinghouse.

### Analysis

The proposed rule-making order affects s. NR 25.03, relating to the relicensing commercial fishers on Lake Michigan.

### Agency Procedure for Promulgation

Public hearings are scheduled for January 12 and 22, 2001.

### Contact Information

If you have questions, please contact:  
 Bill Horns  
 Bureau of Fisheries Management and Habitat Protection  
 Telephone: (608) 266-8782  
 Email: [hornsw@dnr.state.wi.us](mailto:hornsw@dnr.state.wi.us)

## Natural Resources

### Rule Submittal Date

On December 8, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. RR-06-01] to the Legislative Council Rules Clearinghouse.

### Analysis

The proposed rule-making order affects ch. NR 754, relating to environmental insurance requirements for liability exemptions for voluntary remediation.

### Agency Procedure for Promulgation

A public hearing is scheduled for January 16, 2001.

**Contact Information**

If you have questions, please contact:  
 Michael Prager  
 Bureau of Remediation and Redevelopment  
 Telephone: (608) 261-4927

**Natural Resources****Rule Submittal Date**

On December 8, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. AM-38-00] to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule-making order relates to hazardous air pollutant emissions from pulp and paper mills.

**Agency Procedure for Promulgation**

Public hearings are scheduled for January 23 and 24, 2001.

**Contact Information**

If you have questions, please contact:  
 Steve Dunn  
 Bureau of Air Management  
 Telephone: (608) 267-0566  
[Email:dunns@dnr.state.wi.us](mailto:dunns@dnr.state.wi.us)

**Natural Resources****Rule Submittal Date**

On December 8, 2000, the Department of Natural Resources submitted a proposed rule [Board Order No. AM-43-00] to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule-making order affects s. NR 422.083 relating to reducing ambient ozone concentrations in southeastern Wisconsin by controlling volatile organic compound (VOC) emissions.

**Agency Procedure for Promulgation**

A public hearing is scheduled for January 31, 2001.

**Contact Information**

If you have questions, please contact:  
 Grant Hetherington  
 Bureau of Air Management  
 Telephone: (608) 264-8854

**Psychology Examining Board****Rule Submittal Date**

On December 5, 2000, the Psychology Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule-making order relates to continuing education and temporary practice.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on January 12, 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

**Tobacco Control Board****Rule Submittal Date**

On December 7, 2000, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse on behalf of the Tobacco Control Board.

**Analysis**

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 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 proposes 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 will establish 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.

**Agency Procedure for Promulgation**

Public hearings are scheduled for January 10, 2001.

**Contact Information**

If you have questions, please contact:  
 David Gundersen  
 Executive Director  
 Tobacco Control Board  
 Telephone: (608) 267-0944  
[Email:GUNDEDF@dhfs.state.wi.us](mailto:GUNDEDF@dhfs.state.wi.us)

**Workforce Development****Rule Submittal Date**

On December 14, 2000, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects s. DWD 14.24 relating to stale electronic food stamp accounts.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on January 19, 2001. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Economic Support.

**Contact Information**

If you have questions, please contact:  
Elaine Pridgen  
Telephone: (608) 267-9403  
[Email:pridgel@dwd.state.wi.us](mailto:pridgel@dwd.state.wi.us)

**Workforce Development****Rule Submittal Date**

On December 14, 2000, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule amends s. DWD 80.67 relating to worker's compensation insurer name change or reorganization.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on January 19, 2001. The organizational unit responsible for the promulgation of the proposed rules is the DWD Division of Worker's Compensation.

**Contact Information**

If you have substantive questions, please contact:

Richard D. Smith, Director  
Bureau of Legal Services  
Worker's Compensation Division  
Telephone: (608) 267-6704  
[Email:smithri@dwd.state.wi.us](mailto:smithri@dwd.state.wi.us)

All other questions, please contact:

Sharon Fellows, Administrative Assistant  
Worker's Compensation Division  
Telephone: (608) 266-2041  
[Email:FELLOS@dwd.state.wi.us](mailto:FELLOS@dwd.state.wi.us)

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## Rule-making notices

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### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

[CR 00-149]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed rule relating to fees required of agent cities and counties that license and inspect retail food establishments. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until January 26, 2001, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4700. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **Monday, January 13, 2001**, either in writing to Debbie Mazanec, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, (608) 224-4712, or by contacting the message relay system (TTY) at (608) 266-4399 to forward your call to the department at (608) 224-5058. Handicap access is available at the hearing.

One hearing is scheduled:

**Wednesday, January 17, 2001, 10:00 a.m. until 11:30 a.m.**  
**Wisconsin Department of Agriculture, Trade and Consumer Protection**  
**Prairie Oak State Office Building, Room 472**  
**2811 Agriculture Drive**  
**Madison WI 53718**  
**Handicapped accessible**

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

Statutory authority: ss. 93.07 (1), 97.41 (2) and 97.41 (5)

Statute interpreted: s. 97.41 (5)

The Department of Agriculture, Trade and Consumer Protection ("DATCP") licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., DATCP may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments as DATCP's local agent. DATCP monitors, trains and assists the local agent. From the license fees it collects, the local agent must pay DATCP an annual fee to cover DATCP's costs. DATCP sets the fee by rule.

Under current rules, a local agent must pay DATCP an annual fee for each locally licensed retail food establishment that is equal to 20% of the license fee DATCP would charge if DATCP licensed the establishment directly. Effective February 1, 1998, DATCP increased license fees for retail food establishments that it licenses. The fee increase resulted, in part, from a legislative budget change that required DATCP to recover 60% (rather than 50%) of its food safety program costs from license fees. The fee change approximately doubled DATCP's license fees, increasing the maximum retail food license fee from \$210 to \$450 and the minimum fee from \$42 to \$90.

As an indirect consequence of DATCP's 1998 license fee increase, local agents were also required to pay increased fees to DATCP beginning with the license year ending June 30, 2000. Because local agents were required to pay 20% of the increased license fee amounts, their fee obligations to DATCP effectively doubled. This projected fee increase exceeded DATCP's needs and burdened local agents.

DATCP adopted an emergency rule to ease this fee burden for the license year ending June 30, 2000. The emergency rule temporarily reduced the local agents' percentage fee payment from 20% to 10%.

This rule "permanently reduces the local agents' percentage fee payment from 20% to 10%.

#### Fiscal Estimate

DATCP licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., DATCP may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments for DATCP. DATCP monitors and assists the agent city or county. From the license fees that it collects, an agent city or county must pay DATCP an annual fee to cover DATCP's cost. Under current rules, an agent city or county must pay DATCP an annual fee for each retail food establishment that is equal to 20% of the license fee that DATCP would charge if DATCP licensed the establishment directly. This percentage rate has been in effect since the agent program was established.

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

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

DATCP's 1998 license fee increase incidentally increases the annual fees that agent cities are required to pay to DATCP, beginning with the license year ending June 30, 2000. As a result of DATCP's license fee increase, agent cities and counties are required to pay DATCP 20% of the increased license fee amounts. This effectively doubles city and county fee payments to DATCP and may impose a serious financial burden on city and county governments. The increased fee payments also would exceed the amounts needed to cover DATCP costs under agent city and agent county agreements.

#### Initial Regulatory Flexibility Analysis

The modifications to s. ATCP 74.08(1), Wis. Adm. Code (Retail Food Establishment; Local Government Regulation) will help small businesses. There are 23 agents and approximately 3,600 retail food establishments that are part of the department's agent retail food establishment licensing and inspection program. Chapter ATCP 74, Wis. Adm. Code, gives the city and county governments jurisdiction to license and inspect these establishments. The cities and counties also have the right to charge their own fees based on the costs of their programs.

Section ATCP 74.08 (1), Wis. Adm. Code requires the local governments to pay the department a 20% reimbursement based on the fees charged in s. ATCP 75.015 (2m) Wis. Adm. Code. When the department increases its fees, this causes the local governments to increase their fees. Those actions increase the fees charged to the retail food establishments.

The proposed change to s. ATCP 74.08 (1) Wis. Adm. Code, will lower the required reimbursement rate for the retail agent program from 20% to 10% of the fees charged in s. ATCP 75.015 (2m). This will eliminate the increase in reimbursement costs for the local governments, which resulted from the department's last increase in license fees. This will, in turn, reduce the need for county and local governments to increase license fees for retail food establishments.

### Notice of Hearing

#### Agriculture, Trade and Consumer Protection

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed rule (proposed ch. ATCP 161, subch. III, Wis. Adm.

Code) relating to annual grants to ethanol producers. The hearing will be held:

**Wednesday, January 24, 2001, 1:30 p.m.**  
**Wisconsin Department of Agriculture, Trade and Consumer Protection**  
**Board Room (SR-106)**  
**2811 Agriculture Drive**  
**Madison, WI 53718-6777**

The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until January 31, 2001, for additional written comments.

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

An interpreter for the hearing impaired will be available on request for this public hearing. Please make reservations for the hearing interpreter by January 3, 2001 either by writing to Kevin LeRoy, Division of Trade and Consumer Protection, PO Box 8911, Madison, WI 53708, (608/224-4928), or TDD at (608/224-5058). Handicap access is available at the hearing.

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

Statutory authority: ss. 93.07(1) and 93.75(3)

Statutes interpreted: s. 93.75

The legislature, in 1999 Wisconsin Act 55, created an ethanol grant program under s. 93.75, Stats. The legislature authorized the department of agriculture, trade and consumer protection (DATCP) to make grants to ethanol producers in this state. The legislature has not yet provided any funding for the grant program. This rule implements the grant program, subject to legislative funding. The ethanol grant program is scheduled to sunset on July 1, 2006.

### **Statutory Requirements**

To be eligible for a grant under s. 93.75, Stats., an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period unless DATCP specifies a different amount by rule. The ethanol producer must also purchase commodity inputs from "local sources" as defined by DATCP rule.

Under s. 93.75, Stats., an ethanol producer is eligible for grant payments during the first 60 months of ethanol production. Subject to available funding, the legislature directed DATCP to pay 20 cents per gallon for up to 15 million gallons of eligible ethanol production per 12-month period. DATCP must adopt rules to prorate grant payments if there are not enough funds to pay all ethanol producers at the authorized statutory rate.

### **Rule Contents**

#### **Annual Grants to Ethanol Producers**

Under this rule, an ethanol producer may apply by April 1 of each year to receive an ethanol production grant for any consecutive 12-month period ending within a year prior to that April 1. (The applicant chooses the consecutive 12-month period.) Subject to available funding, DATCP will award to each eligible applicant a grant of 20 cents per gallon for up to 15 million gallons of "eligible ethanol" produced during the consecutive 12-month period identified in the grant application.

#### **Eligible Producer**

An ethanol producer is eligible for an annual grant if all the following apply:

- The producer produced at least 10 million gallons of "eligible ethanol" during the consecutive 12-month period identified in the grant application.
- DATCP has not previously awarded a grant to the ethanol producer for ethanol produced during the consecutive 12-month period identified in the grant application.
- The ethanol producer first began producing ethanol in this state not more than 60 months prior to the end of consecutive 12-month period identified in the grant application.

#### **Eligible Ethanol**

Under this rule, DATCP will make grant payments only for "eligible ethanol" production. "Eligible ethanol" means ethanol that the ethanol producer produces in this state from commodities purchased from local sources. A "commodity" includes grain and other starch or sugar crops. A "commodity purchased from a local source" means any of the following:

- A commodity that the ethanol producer purchases from a person who grew that commodity in this state.
- Grain that the ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

#### **Grant Application**

An ethanol producer must submit a grant application in writing, on a form provided by DATCP. The application must specify all the following:

- The consecutive 12-month period for which the applicant seeks a grant.
- The total gallons of "eligible ethanol" that the applicant produced during that consecutive 12-month period.
- The name and address of each supplier from whom the applicant purchased a commodity used to produce the "eligible ethanol." The applicant must identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant must give the address of the grain facility from which the grain dealer shipped that grain to the applicant.
- The applicant's federal tax identification number.
- The date on which the applicant first produced ethanol in this state.
- Any other information required by DATCP.

#### **DATCP Action on Grant Applications**

DATCP must award grants by June 1 of each year, and must make grant payments by June 30 (the end of the state fiscal year). If DATCP denies a grant application, or awards a smaller prorated amount (see below), DATCP must explain its action in writing.

DATCP may require an applicant to provide additional information, and may deny a grant application if the applicant fails to honor DATCP's reasonable request for relevant information. DATCP may exercise its authority under ch. 93, Stats., to verify a grant application, or to verify the applicant's eligibility for a grant.

DATCP may deny a grant application, or recover grant payments made to an applicant, if DATCP finds that the applicant has materially misrepresented any information related to a grant application.

#### **Prorating payments**

Under this rule, if grant awards in any state fiscal year exceed the grant funds appropriated for that fiscal year, DATCP must prorate grant awards based on each applicant's eligible ethanol production during the consecutive 12-month period identified in the applicant's grant application. An ethanol producer who receives a pro-rated grant may *not* apply for the balance of that grant in the next fiscal year.

#### **Fiscal Estimate**

This proposed rule was initiated when the legislature passed 1999 Wis. Act 55. This act created an ethanol grant program under s. 93.75, Wis. Stats. Under this program, the department is authorized to make grants to certain ethanol producers. The legislation requires the department to adopt rules for the program.

Administrative costs associated with this program should be minimal and easily absorbed into the agency's general duties.

#### **Initial Regulatory Flexibility Analysis**

1999 Wis. Act 55 created an ethanol grant program under s. 93.75, Wis. Stats. Under this program, the department is authorized to make grants to certain ethanol producers. The legislation requires the department to adopt rules for the grant program.

To be eligible for a payment, the ethanol producer must produce at least ten million gallons of ethanol per year. The legislation requires the department to pay ethanol producers who meet the statutory and proposed rule criteria 20¢ per gallon for not more than 15 million gallons.





Means: The section has not been adopted; no text is replacing or substituting for this section.

6. This is a department exception to the requirements in IBC section XXXX:

Means: An exception is being added to the section where none exists.

7. This is an additional department exception to the requirements in IBC section XXXX:

Means: A numbered exception is being added where one or more exceptions already exist.

The references in the Comm chapters to individual IBC sections typically are to a particular paragraph or set of paragraphs within a referenced IBC section, and are not intended to affect any subsequent subdivisions of the specified section unless stated otherwise. For example, a directive to substitute certain language for IBC section 415.7.3 is not intended to mean that IBC sections 415.7.3.1 through 415.7.3.5 are also being changed.

In the Comm chapters that include modifications to the ICC codes, individual code sections generally are numbered to correspond with the section numbering in the ICC codes. For example, section Comm 62.0202 corresponds to IBC section 202, and Comm 62.3408 corresponds to IBC section 3408.

This rule package includes a proposal to subsume the current Uniform Multifamily Dwelling Code, Comm 66, into the Commercial Building Code. This proposal is intended to discontinue repeating the administrative requirements of the Commercial Code in a Multifamily Code.

These chapters include affirmation that the Department will retain its authority to interpret all of the incorporated requirements, including those from the ICC codes, and to issue variances to those requirements.

This rule package does not include rule changes for updating several other Comm code chapters that currently reference or relate to chapters Comm 51 to 64, such as Comm 2, 3, 5, 18, 34, 41, 45, 70, 75–79, 81–87, and 90. A separate, subsequent rule package with a simultaneous effective date is expected to contain this updating.

### Council Members and Representation

The members and representation of the councils advising the Department on this rule package are as follows:

**Commercial Building Code Council:** Warren Bauer, representing the American Institute of Architects – Wisconsin Society; Curt Hastings, representing the Associated General Contractors of Wisconsin; Tim Ihlenfeld, representing laborers and craftworkers in the Wisconsin State AFL–CIO; Joe Jameson, representing building inspectors and the League of Wisconsin Municipalities; David Kakatsch, representing the City of Milwaukee and certified municipalities; David Keller, representing building owners and the Wisconsin Realtors Association; Terry Kennedy, representing the Wisconsin Society of Professional Engineers; Bill King, representing building owners and the Wisconsin Department of Administration; Dennis Krutz, representing insurance organizations; Ed Ruckriegel, representing the City of Madison Fire Department; Michael Shoys, representing building owners and Wisconsin Manufacturers & Commerce; Russ Spahn, representing the Wisconsin State Fire Chiefs' Association; and Fred Stier, representing the Associated Builders and Contractors of Wisconsin and the Wisconsin Builders Association.

**Multifamily Dwelling Code Council:** Charles Aldrian, representing architects, engineers, and designers; Beth Gonnering, representing building contractors and developers; Ed Gray, representing labor organizations for the building trades; Richard Paur, representing municipal inspectors in large counties; Phil Kalscheur, representing manufacturers and suppliers of cement products; Linda Keegan, representing the public; Harry Macco, representing building contractors and developers; Carl Mastaglio, representing the public and advocating fair housing; Bruce McMiller, representing building inspectors in small counties; Larry Plumer, representing the fire services; William Roehr, representing labor organizations for the building trades; Ed Ruckriegel, representing the fire services; C. Frederick Tolson, representing manufacturers and suppliers of gypsum products; and Kerry

Vondross, representing manufacturers and suppliers of concrete block products.

**Fire Safety Code Council:** David L. Berenz, representing the Wisconsin State AFL–CIO; Dan Burazin, representing the Associated General Contractors of Greater Milwaukee, Inc.; Larry Burton, representing the Wisconsin Insurance Alliance; J. C. Carver, representing the City of Madison Fire Department; Gregg Cleveland, representing the Wisconsin State Fire Chiefs' Association; Steven Fritsche, representing the City of Milwaukee; Tom Jahn, representing the Wisconsin Society of Fire Protection Engineers; Gerard J. Rabas, representing Wisconsin Manufacturers & Commerce; Russ Spahn, representing the Wisconsin Fire Inspectors Association; Robert W. Stedman, representing the City of Waukesha Fire Department; and David M. Wheaton, representing the Wisconsin Building Inspectors Association.

**Means of Egress and Accessibility Code Council:** Larry Earll, representing the Wisconsin Department of Administration; Cleo Eliason, representing barrier-free accessibility and the Easter Seal Society of Wisconsin, Inc.; Steven Howard, representing the Wisconsin State Fire Chiefs' Association; Mary Lawson, representing the American Institute of Architects – Wisconsin Society; Larry Palank, representing general contractors and the Associated General Contractors of Greater Milwaukee, Inc.; Richard Pomo, representing barrier-free accessibility and the Wisconsin Council for the Blind; Ed Solner, representing the American Institute of Architects – Wisconsin Society; Monica Sommerfeldt, representing the Wisconsin Builders Association; David M. Wheaton, representing inspectors and the Wisconsin Building Inspectors Association.

**Elevator Code Council:** Warren R. Bauer, representing the American Institute of Architects – Wisconsin Society; Ken Bavery, representing the Wisconsin State Fire Chiefs' Association; David Koch, representing elevator manufacturers/suppliers and the National Association of Elevator Contractors; Bruce Lammi, representing engineers and the Wisconsin Society of Professional Engineers; Steve Lex, representing the Wisconsin State AFL–CIO; Jeff Lund, representing lift manufacturers/suppliers and the Waupaca Elevator Company; William Page, representing lift manufacturers/suppliers and the Accessibility Equipment Manufacturers Association; David M. Rakowski, representing Northwestern Elevator Company, Inc.; John Zalewski, representing inspectors and the City of Milwaukee; Andrew M. Zielke, representing elevator manufacturers/suppliers and the National Elevator Industry, Inc.

**Structural Review Code Council:** Professor Steven Cramer, representing the University of Wisconsin – Madison Department of Civil and Environmental Engineering; Chuck Hanson, representing the American Society of Civil Engineers; Kirk Haverland, representing the Wisconsin Society of Professional Engineers; David Hyzer, representing the American Institute of Architects – Wisconsin Society; Lynn Lauersdorf, representing the Wisconsin Department of Administration; Professor Michael Oliva, representing the University of Wisconsin – Madison Department of Civil and Environmental Engineering; Robert Schumacher, representing the American Society of Civil Engineers; Alan Wagner, representing the American Society of Civil Engineers; and Michael West, representing the American Society of Civil Engineers.

**Energy Conservation Code Council:** Ross DePaola, representing the Wisconsin Environmental Decade; Thomas F. Flickinger, representing the Wisconsin Association of Consulting Engineers; Jay F. Jorgensen, representing the Wisconsin Chapter of the American Society of Heating, Refrigerating, and Air Conditioning Engineers; Timothy J. Kritter, representing the Associated Builders and Contractors of Wisconsin; William F. McKee, representing the Associated General Contractors of Wisconsin; Dave J. Osborne, representing the Wisconsin Builders Association; Gerald W. Schulz, representing the Wisconsin Chapter of the National Electrical Contractors Association; Harry A. Sulzer, representing the League of Wisconsin Municipalities; Robert D. Wiedenhofer, representing the Sheet Metal and Air Conditioning Contractors Association of Wisconsin.

**Heating, Ventilating, and Air Conditioning Code Council:** Michael J. Broge, representing the Wisconsin Association of



Consulting Engineers; Timothy J. Gasperetti, representing the Building Owners and Managers Association of Milwaukee; Michael Mamayek, representing the Plumbing and Mechanical Contractors of Southeast Wisconsin; Ken Pavlik, representing the Wisconsin Builders Association; Richard J. Pearson, representing the Wisconsin Chapter of the American Society of Heating, Refrigerating, and Air Conditioning Engineers; Robert Pertzborn, representing the Wisconsin Association of Plumbing, Heating and Cooling Contractors; David Stockland, representing the Associated Builders and Contractors of Wisconsin; Harry A. Sulzer, representing the League of Wisconsin Municipalities; and Robert D. Wiedenhofer, representing the Sheet Metal and Air Conditioning Contractors Association of Wisconsin.

### Chapter-by-Chapter Analysis

#### Chapter Comm 61

The first chapter of the proposed revised Wisconsin Commercial Building Code will be numbered chapter Comm 61. This first chapter of the code will delineate the administrative and enforcement processes and procedures, currently found in chapter Comm 50, that the Department will utilize and people are to follow in designing and constructing buildings. The chapter covers such matters as the scope and application of the code, plan review, product review, inspection, appeals and Department authorization of plan review and inspection agents. In comparison to chapter Comm 50 the new chapter has been reorganized, but has been revised very little in substance. Although one subject of significant revision reflects the combining of the Commercial Building Code and the Multifamily Dwelling Code into one book. Provisions have been incorporated to address the uniform application of the code for multifamily dwellings as well as building permits for such structures. Most of the other revisions are intended as clarifications, with an emphasis towards the Department's statutory responsibilities and role. The chapter is laid out as follows:

Chapter Comm 61 – Administration and Enforcement

Subchapter I – Scope and Application

Subchapter II – Responsibilities, Appeals, Petitions and Penalties

Subchapter III – Plan Review

Subchapter IV – Multifamily Building Permits

Subchapter V – Supervision and Inspection

Subchapter VI – Product and Standard Review and Approval

Subchapter VII – First Class City and Certified Municipality Approvals

#### Chapter Comm 62

Chapter Comm 62 is proposed to primarily contain the Wisconsin modifications of the 2000 *International Building Code*<sup>®</sup>, as adopted in chapter Comm 61.

The following listing is a summary of the concerns identified by the Department and the various advisory councils relating to the use and application of the IBC and recommendations for changes and additions to or omissions from the IBC.

1. Chapter 1 of the IBC, and numerous other sections of the IBC, contain extensive administrative and enforcement requirements that generally have been developed by municipal officials, for use by municipal officials in other states which do not have Wisconsin's emphasis on state-level enforcement and administration. Numerous modifications were developed by Division staff to orient these requirements to this emphasis, and to maintain other current administrative and enforcement procedures in Wisconsin, including those relating to regulation of existing or historic buildings. [See sections Comm 62.0100 (1); Comm 62.0202; Comm 62.0400 (1); Comm 62.0401; Comm 62.0402; Comm 62.0403 (2); Comm 62.0414; Comm 62.0415; Comm 62.0703; Comm 62.0712; Comm 62.0901 (1); Comm 62.0902; Comm 62.0903 (1), (4), and (5); Comm 62.0907 (1) and (3); Comm 62.0909; Comm 62.1407; Comm 62.1506; Comm 62.1603 (2); Comm 62.1604; Comm 62.1607; Comm 62.1612; Comm 62.1621; Comm 62.1802; Comm 62.1805; Comm 62.1809; Comm 62.1905; Comm 62.1914; Comm 62.1916; Comm 62.2101; Comm 62.2105; Comm 62.2108; Comm 62.2208; Comm 62.2303; Comm 62.2503; Comm 62.3102; Comm 62.3103; Comm 62.3104 (2); Comm 62.3109; Comm 62.3400 (1); and Comm 62.3406.]

2. Section 115 of the IBC contains detailed requirements for unsafe buildings and structures, and includes directives for how local building officials are to address these buildings and structures. Text is proposed that would apply these requirements to all public buildings and structures and places of employment, which exist before, on, or after the effective date of the proposed rules. [Comm 62.0100 (2)]

3. The proposal contains three modifications to the IBC for retaining Wisconsin's current electrical code, plumbing code, and private sewage code, rather than adopting the ICC codes for these three subjects. [Comm 62.0202 (1) (d), (i), and (j)]

4. Several sections of the Wisconsin Statutes contain building construction criteria that supercede or are in addition to various IBC requirements. Several modifications to the IBC are proposed for maintaining compliance with these statutory criteria, which include use and occupancy classifications [Comm 62.0310], recycling space [Comm 62.0400 (2)], employee restrooms [Comm 62.0400 (3)], sixty-foot high-rise fire sprinkler thresholds [Comm 62.0403 (1)], retroactive fire sprinkler requirements for University of Wisconsin dormitories [Comm 62.0403 (1)], firewall identification [Comm 62.0705], fire hose threads [Comm 62.0901 (2)], thresholds for fire sprinklers or two-hour fire resistance in multifamily dwellings [Comm 62.903 (2)], mandatory fire sprinklers for all newly constructed University of Wisconsin dormitories [Comm 62.0903 (3)], retroactive fire alarm and detection system requirements [Comm 62.0907 (2)], barrier-free accessibility [Comm 62.1101 (1), Comm 62.1107 (1) and (3), and Comm 62.1109], smoking area signage [Comm 62.1109 (2) Note], prohibition of pay toilets [Comm 62.2902 (7)] protection of adjoining property [Comm 62.3300 (2)], barrier-free accessibility for fair housing in existing structures [Comm 62.3400 (1) and Comm 62.3408], community-based residential facilities for 9–20 unrelated adults [Comm 62.3400 (2)], and statewide requirements for historic buildings [Comm 62.3406].

5. Proposed text would continue Wisconsin's current alternatives for isolating fuel-fired appliances in parking garages. [Comm 62.0406]

6. Several modifications to the IBC were developed to retain current flexibility for achieving minimum levels of fire safety, which include fire separation distance to a no-build easement [Comm 62.0702], fire-resistance clarification for connections between buildings [Comm 62.0704], alternatives for fire-resistive floor, ceiling, and roof construction [Comm 62.0719], fire resistance for cellulose insulation [Comm 62.0720], and manual wet fire sprinkler systems [Comm 62.0904].

7. Although text is proposed that replaces the IBC fire sprinkler thresholds in multifamily dwelling buildings with Wisconsin's statutory thresholds for these fire sprinklers or two-hour fire resistance, a related section of the IBC, 705.1, is not proposed to be changed for these thresholds. Section 705.1 specifies that each portion of a building separated by one or more fire walls which comply with the section must be considered a separate building. Consequently, instead of using unpierced four-hour-rated fire walls to separate a large multifamily building into smaller buildings that individually are not required to have fire sprinklers or two-hour fire resistance, as Wisconsin currently allows, two-hour-rated fire walls with various protected openings could be used, for example, in wood-frame construction, in lieu of providing fire sprinklers in these multifamily buildings. Also, the IBC's building area and height limits would apply individually, but not cumulatively, to each portion that is separated in this fashion by these fire walls. [Comm 62.0903 (2)]

8. Chapter 10 of the IBC contains the means of egress requirements for all buildings, including specific occupancy requirements. The means of egress requirements in the IBC consist of three separate and distinct parts, which are the exit access, the exit, and the exit discharge. While the current Wisconsin Commercial Building Code uses these same terms, they have not been applied consistently, especially in the occupancy chapters. It is anticipated that the overall impact of the means of egress chapter will be very small for most public buildings and places of employment. A few minor modifications are proposed relating to determination of occupant load for outdoor areas, guard tower

exiting, and safe dispersal areas for buildings located more than 100 feet to a public way. [Comm 62.1003, 62.1005, and 62.1006]

9. There are a number of IBC means of egress requirements that differ from the means of egress requirements currently applied to multifamily housing. This rule package maintains the IBC language without modification. The criteria that differ from the current Multifamily Dwelling Code requirements include the following:

- The IBC requires all raised platforms greater than 30 inches above the floor to be protected with guardrails with a height of 42 inches (current requirement is 36 inches). This requirement applies to raised platform areas within the dwelling unit as well as those in the common-use areas of the building. [IBC 1003.2.12.1]

- Open guards must have balusters or ornamental patterns such that a 4-inch diameter sphere cannot pass through any opening up to 34 inches above the floor. From a height of 34 inches to 42 inches above the floor, a sphere not more than 8 inches must not pass through the openings (current requirement is 6-inch sphere). [IBC 1003.2.12.2]

- In the IBC, the stair tread must be at least 11 inches in depth and the riser height is limited to 7 inches (current requirements of 9 inches by 8 inches). These stairway tread and riser dimensions apply to stairways within the dwelling units and in all the common use areas. [IBC 1003.3.3.3]

- The IBC does not recognize the use of a “rescue/jump” platform as a means of egress component for any occupancy, including dwelling units. However, the IBC does provide options for one exit under IBC 1005.2.2.

- The current Multifamily code requires at least 2 ways out of every sleeping room. One of the means of egress may be a window. The IBC, in addition to the means of egress required to be provided, also mandates that basements and sleeping rooms below the fourth story have at least one exterior emergency and rescue opening. [IBC 1009.1]

10. The IBC chapter 11 accessibility requirements are substantially equivalent to the federal Americans With Disabilities Act Accessibility Guidelines. Currently, the federal Access Board is rewriting the ADAAG standards to be consistent with the IBC format. Chapter Comm 69 currently uses the ADAAG standards as the base accessibility construction standards; therefore users of the code are familiar with the standards in the IBC, except for the new format. A number of minor changes are proposed to clarify the application of the code to certain occupancies, such as government-owned facilities, and to require parking signs to comply with Wisconsin Department of Transportation requirements. [Comm 62.1104]

11. The accessibility requirements in the 2000 edition of the IBC relating to multifamily housing are not substantially equivalent to the federal fair housing law, so a number of changes are proposed to establish construction requirements that are substantially equivalent to the federal law as well as the state fair housing law. These changes include specifying that any building which is separated into smaller buildings by fire walls under the provisions of IBC section 705 must be considered one building when determining compliance with the fair housing criteria. [Comm 62.1101, Comm 62.1106, and Comm 62.1107]

12. The current multifamily accessibility requirements require that at least one bathroom be designed for a higher level of accessibility, with all other bathrooms complying with the basic level of accessibility. This requirement is not part of the federal or state fair housing laws or the IBC accessibility requirements. This rule package proposes to discontinue this requirement and to instead use the IBC and ICC/ANSI A117.1 bathroom design requirements without modification. [IBC 1107.5.4 and ICC/ANSI A117.1 1003.11.3.1, 1003.11.3.2]

13. Minor changes are proposed for clarifying the requirements for temperature control in interior environments and for drainage of interior courts. [Comm 62.1203 and Comm 62.1205]

14. Based on Wisconsin’s potential for extreme climate, and due to concern for the structural deterioration and associated health and welfare problems that can result from migration of moist, interior air into outside walls, air barrier requirements are proposed for exterior walls. [Comm 62.1403 and Comm 62.0202 (a)]

15. Reference to the Urban Wildland Interface Code is deleted because adoption of that code is not included in this rule package. [Comm 62.1505]

16. Several modifications to the IBC were developed by the Structural Review Council to clarify or simplify, but not weaken, the structural requirements, particularly for smaller buildings. These modifications include posting of live loads [Comm 62.1603 (1)], ground snow load alternatives [Comm 62.1608 (1)], an alternative snow exposure factor [Comm 62.1608 (2)], a wind load alternative [Comm 62.1609], a soil lateral load alternative [Comm 62.1610], clarification of earthquake loads [Comm 62.1614], alternative earthquake loads [Comm 62.1615], refinement of allowable pile and pier loads [Comm 62.1807 (3)], an alternative pile and pier load test [Comm 62.1807 (4)], a driven-pile alternative [Comm 62.1808], clarification of cast stone masonry [Comm 62.2103].

17. Proposed text excludes the IBC requirements for structural tests and special inspections, except for joist hangers and roof tiles, due to belief that these requirements are substantially met by continuing Wisconsin’s current construction oversight by registered professionals. [Comm 62.1700 (and Comm 61.50)]

18. Three modifications developed by the Structural Review Council would improve inadequacies in the IBC. These modifications address piles and piers in subsiding areas [Comm 62.1807 (1), (2), and (5)], empirical design of masonry [Comm 62.2109], and moisture barriers for nondurable wood bearing on exterior masonry or concrete [Comm 62.2304].

19. Several modifications provide alternative or minor additional plumbing requirements. These modifications address privacy and access to toilet rooms [Comm 62.1209], waiver of toilet rooms for unattended gasoline stations [Comm 62.1209 (2) (b)], maintenance of toilet rooms [Comm 62.2900 (1) and (2)], permanent and portable outdoor toilets [Comm 62.2900 (3)], enclosure of toilet fixtures [Comm 62.2900 (4)], substitution of urinals for water closets [Comm 62.2902 (1) (a)], cross-references to plumbing fixture requirements by other agencies [Comm 62.2902 (1) (b) and (5)], lavatories for toilet rooms [Comm 62.2902 (3)], signage for toilet rooms [Comm 62.2902 (4)], remote toilet rooms for small retail stores [Comm 62.2902 (4)], and direct access to toilet rooms for customers in stores [Comm 62.2902 (6)].

20. Three modifications are proposed for continuing Wisconsin’s current practice of not applying or enforcing requirements for the design or installation of conveyors and personnel or material hoists. [Comm 62.3001]

21. Proposed text requires that where ventilation openings are provided in hoistway walls, the openings must have guards securely fastened to the hoistway, to prevent creation of a shear point for maintenance and elevator inspectors. [Comm 62.3004 (1)]

22. Floor drains, sumps, and sump pumps are permitted by the IBC in a hoistway shaft if they are directly connected to the storm or clear water drain system. Proposed text clarifies that a connection to a sanitary system is prohibited and that plumbing systems not used in connection with the operation of the elevator may not be located in the elevator equipment rooms. [Comm 62.3004 (2) and Comm 62.3006 (2)]

23. Proposed text clarifies that where elevator machine rooms serve pressurized elevator hoistways and are not directly connected to the hoistway, the machine rooms are not required to be pressurized. [Comm 62.3006 (1)]

24. Proposed text clarifies that buildings connected by pedestrian access structures are considered separate structures. [Comm 62.3104]

25. Proposed text would continue Wisconsin’s current practice of not regulating encroachments into a public right-of-way. [Comm 62.3200]

26. Proposed text would continue Wisconsin’s current practice of not regulating safeguards during private-sector construction, except for maintaining egress, preventing water accumulation, and protecting adjoining property. [Comm 62.3300]

27. Three National Fire Protection Association standards that are adopted in the IBC are proposed to be replaced with more recent versions which are currently adopted in Wisconsin. [Comm 62.3500]

28. Proposed text would continue Wisconsin's current practice of not regulating employee qualifications, boards of appeals, agricultural buildings, fire districts, supplemental barrier-free accessibility, rodent proofing, flood-resistant construction, signs, and patio covers. [Comm 62.3600]

### Chapter Comm 63

The *International Energy Conservation Code*<sup>TM</sup> contains energy conservation requirements relating to the design of building envelopes for adequate thermal resistance and low air leakage, and the design and selection of mechanical, electrical, service water-heating and illumination systems and equipment, which will enable the effective use of energy in new and altered building construction. The IECC is divided into chapters that apply to low-rise residential buildings ( $\leq 3$  stories in height), and to commercial buildings, which includes high-rise residential buildings (4 stories or more in height), and non-residential buildings of any height.

The IECC is applied based on the occupancy classification of the building (residential or commercial) and how compliance with the energy conservation requirements will be demonstrated. The intent is that any of the options chosen will provide the same levels of energy conservation. The following is how the IECC is to be applied:

- Chapter 4, 5 or 6 of the IECC may be used for low-rise residential buildings.
- Chapter 7 or 8 of the IECC may be used for high-rise residential buildings and all commercial buildings.

IECC chapter 7 requires commercial buildings to comply with ASHRAE/EIS, Energy Code for Commercial and High-rise Residential Buildings. The existing chapter Comm 63 is basically the ASHRAE 90.1 Standard with various modifications and additions to improve energy conservation, and application and code enforcement. Therefore, the existing chapter Comm 63 with the improvements is substantially equivalent to chapter 7 of the IECC. It is proposed to maintain the existing Comm 63 requirements and locate them in subchapter III of the new proposed chapter Comm 63. Commercial buildings may be designed for compliance with the energy conservation requirements in chapter Comm 63, subchapter III as one option, or with the requirements in IECC chapter 8 as the other option. It is also the intent of these rule changes to ensure that either option chosen will result in equivalent energy conservation.

The following listing is a summary of the major concerns identified by the Department and the Energy Conservation Specialty Council relating to the use and application of the IECC and recommendations for changes and additions to or omissions from the IECC.

1. In general, the IECC requirements are substantially equivalent to the energy conservation requirements specified in the existing chapter Comm 63 for commercial buildings. However, the IECC has more stringent energy conservation requirements for low-rise residential buildings, especially the building envelope requirements. To evaluate how the IECC requirements would impact the design of residential buildings, the Department performed a survey of current construction plans for residential buildings located throughout the state to see if the buildings complied with the stricter IECC requirements. The results showed that 90% of the new construction plans surveyed already met the stricter building envelope requirements and most designers and owners would not be affected adversely by using the IECC requirements. These changes are viewed as useful and beneficial to the owners of residential buildings.

2. Approved vapor retarders are required on all frame walls, floor and ceilings, instead of permitting the option to ventilate these areas. This change is necessary for both infiltration and condensation control in Wisconsin's severe climate. [See sections Comm 63.0502, Comm 63.0802 (2), and Comm 63.1011 (4)]

3. Floors over outdoor air are required to have the same U-values as floors over unheated spaces. The minimum levels of insulation in the IECC are not cost effective for the owner. All other insulation levels were determined to be cost effective using a life-cycle cost economics analysis. A review of residential plans received by the Department indicated that 90% of new construction

already meets the IECC thermal envelope requirements. [Comm 63.0502]

4. The heating load calculations are to be determined in accordance with the requirements in s. Comm 63.1023. Both Comm 63.1023 and IECC section 503.3.1 follow the ASHRAE Handbook of Fundamentals; however, Comm 63.1023 includes specific parameters for areas such as indoor and outdoor design conditions, envelope conditions and lighting loads not included in the ASHRAE Handbook. Comm 63.1023 provides better direction to the users in the application of the code. [Comm 63.0503 and Comm 63.1023]

5. Interior design temperatures are to be maintained as specified in chapter Comm 64, Heating, Ventilating and Air Conditioning Code. [Comm 63.0003 (3)]

6. Adjustments for local exterior design conditions are to be determined through local weather resources, including computer programs for equipment sizing. [Comm 63.0302 (1)]

7. Pipe insulation for both commercial and residential buildings is to be provided in accordance with ASHRAE 90.1, Table 403.2.9.1. The new table for pipe insulation will be applied in all the options available for showing compliance with the energy conservation requirements. Table 63.1029 translates the inches of insulation required into R-values. This reduces the need for all parties involved from performing cumbersome calculations. [Comm Table 63.1029]

8. Supply ducts located in the plenum and within the building envelope are to be insulated to R-4 in addition to the requirements for unconditioned areas and outdoor areas. Moisture damage to building materials may occur from condensation from uninsulated ducts within a plenum. There is little, if any, additional cost to go from uninsulated sheet metal material to an R-4 insulated duct material. [Comm 63.0503 (2) (b) and Comm 63.0803 (2) (e)]

9. The IECC requires ducts in unconditioned areas to be insulated to R-5; however, the typically available R-5 ductwrap is only R-4.6 after it is installed in accordance with the manufacturer's instructions. This discrepancy has caused problems in the application and enforcement of the code. It is proposed to require ducts in these areas to be insulated to R-4. This requirement will be applicable in all options used to show compliance with the energy conservation requirements. [Comm 63.0503 (2) (b) and Comm 63.0803 (2) (e)]

10. Recessed lighting installed in the building envelope must be sealed to reduce infiltration. [Comm 63.1011 (3), Comm 63.0602 (2), and Comm 63.0802 (4)]

11. Automatic dampers are required on all outdoor air intakes. The IECC allows gravity or automatic dampers to be used. Experience indicates that gravity dampers are opened by wind subjecting occupants to drafts and results in higher energy costs to owners. [Comm 63.0503 (2) (c) and Comm 63.0803 (2) (d) and (3) (b)]

12. Light power budgets and controls requirements are to comply with Comm 63, subchapter III, Part 5, even if the IECC chapter 8 option is chosen. The lighting requirements in Comm 63 are in an improved format and provide for the most efficient use of lighting for energy conservation. [Comm 63.0504 (4) and Comm 63.0805]

13. Owners of commercial buildings are given options for showing compliance with the energy conservation code. One option is to show compliance with ASHRAE 90.1. Since chapter Comm 63, subchapter III is essentially ASHRAE 90.1 with various amendments for improving energy conservation, application and enforcement, it is proposed to substitute language for IECC chapter 7 to require compliance with Comm 63. [Comm 63.0701]

14. A modification was made to Table 63.1049 relating to interior lighting power allowances for merchandising display lighting. It is proposed to allow the smaller of the actual wattage of the lighting equipment for displays or a 0.8 W/ft<sup>2</sup> times the floor area of the display area to be added to the interior lighting power. [Table 63.1049, Part b]

15. In commercial buildings, each fan system is required to have economizer controls that comply with s. Comm 63.1031. The IECC does not provide for the most efficient use of that equipment and the owner would be missing opportunities to save energy and money. This requirement for the use of economizers will not be applied to low-rise residential buildings. [Comm 63.0803 (2) (c) and Comm 63.0803 (3) (b) and (d)]

16. Currently, under chapter Comm 63 off-hour or set-back HVAC controls are required in both residential and commercial buildings. However, in the IECC off-hour controls are required only in commercial facilities. Since it was the goal the Department to stay as close as possible to the IECC requirements and limit Wisconsin based requirements, it was decided not to apply the off-hour controls to residential buildings.

17. The IECC energy conserving requirements for residential pool water heaters will not be applied. They are inconsistent with requirements for commercial facilities, the on-off switch requirements are covered by other codes; the pool cover requirement is too vague to enforce and the need for a time switch to allow for lower time-of-day utility rates should be based on consumer economics. [Comm 63.0504 (3)]

(A more detailed comparison of the current and proposed requirements for chapter Comm 63 is available at the Safety and Buildings' web site at [www.commerce.state.wi.us](http://www.commerce.state.wi.us), or can be obtained from Roberta Ward at [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us) or at 608/266-8741 and 608/264-8777, TTY.)

### Chapter Comm 64

This rule revision, which repeals and recreates chapter Comm 64, relating to heating, ventilating and air conditioning, includes adoption of the 2000 *International Mechanical Code*<sup>®</sup>, with various omissions, additions or substitutions.

The following listing is a summary of the major concerns identified by the Department and the HVAC Specialty Council relating to the use and application of the IMC and recommendations for changes and additions to or omissions from the IMC.

1. The proposal is to continue to have the designer or installer provide the owner or operator with written instructions on the operation and maintenance of the equipment. The IMC is silent on this issue and experience proves that properly maintained equipment is less costly to operate and increases the life of the equipment. [See section Comm 64.0102]

2. The IMC requires that all appliances be listed and labeled unless approved as a modification; the proposal is to retain the current provisions for approval of unlisted equipment. [Comm 64.0301]

3. The proposal is to maintain the equipment testing and balancing provisions of the current code to assure proper operation of equipment. [Comm 64.0304 (1)]

4. The proposal is to keep indoor design temperatures below 68°F for some occupancies as currently allowed. Current provisions allow spot heating, and waiving of heating requirements for seasonal occupancies. Such allowances are in recognition high costs of operation during the Wisconsin heating season. [Comm 64.0309]

5. The proposal is to recognize that natural ventilation of some occupancies in Wisconsin may be ineffective and may thus compromise indoor air quality. Under the IMC, natural ventilation is allowed as an option in all spaces, except for: smoking lounges, toilet rooms, multifamily parking structures and public locker rooms. Current requirements for mechanical ventilation in many more occupancies are proposed to be maintained. [Comm 64.0401 (1)]

6. The proposal maintains current requirements for required building exhaust ventilating systems to operate continuously when people are in the building. An option is also proposed to allow rooms with 2 or fewer toilet fixtures to be exhausted only when such rooms are occupied. The exhaust fan could then be interconnected with the light switch. [Comm 64.0401 (2)]

7. The proposal also is to continue allowing current exceptions for reducing clearances for intake and exhaust openings that have been found to not compromise indoor air quality, but can reduce installation costs. [Comm 64.0401 (4)]

8. This proposal is to allow an option to use an engineered system that will produce the same indoor air quality as following the outdoor air ventilation rates as prescribed in the code. [Comm 64.0403 (2)]

9. A revised IMC Table 403.3 is proposed which includes the following: requires the same outdoor air requirements for similar occupancies; makes additional entries for common occupancies

from the current Table Comm 64.05; reduces outside air to 7.5 cfm/person in most occupancies as under the current code; requires the use of AIA Guidelines for Hospitals and Nursing Home Occupancies; and garage ventilation is reduced from 1.5 cfm/sf to 0.5 cfm/sf of exhaust. [Table 64.0403]

10. Some occupancy requirements are proposed to be maintained from the current code: natural ventilation may be used in smaller toilet rooms or janitor closets; and pool ventilation may be reduced with humidity control. [Comm 64.0403]

11. The proposal does not adopt IMC 403.3.2 that requires the amount of outside air to be based on a complex set of room by room calculations. It is replaced with current provisions that allow the amount of outside air to be based on the total number of occupants served by the system, rather than separate calculations for each room. The minimum air change rate is also retained. This is necessary when the outside air is based on the total number of occupants served by the system. The proposal provides for the movement of 'cleaner' air from areas of low occupancy to those of high occupancy. The air movement also increases filter effectiveness. For VAV systems, a minimum movement is needed. [Comm 64.0403 (6)]

12. Wisconsin experienced failure in automatic sensing devices installed in place of continuous exhaust in parking garages. The proposal includes additional provisions including the requirement to operate exhaust for at least five hours per day to assure effective exhaust results. [Comm 64.0404]

13. The proposal is to delete the requirement for an exhaust system where contamination may be simply "irritating." The current code provision does not require a system to accommodate those individuals who may have high sensitivity to contaminants. Where contamination is injurious to health or safety, an exhaust system must be installed. [Comm 64.0502]

14. The IMC has additional, more detailed requirements for commercial kitchen exhaust than the current chapter Comm 64. The proposal is to provide a performance requirement for alternatives to welded seams and joints which will provide more flexibility in installation and lower costs. [Comm 64.0500, Comm 64.0506, and Comm 64.0507]

15. Another proposal relating to commercial kitchen exhaust is to require commercial kitchen fans for use in grease-laden air to be so listed. [Comm 64.0506]

16. The proposal is to allow the reduction in the clearances between heaters and duct lining when the lining is so listed. [Comm 64.0604]

17. The proposal adds a requirement for some healthcare facilities to comply with AIA (American Institute of Architects) guidelines for filtration. [Comm 64.0605]

18. The definition of 'unusually tight construction' has been modified for chs. Comm 64 and 65 to reflect current Wisconsin building construction standards. In referencing this modification, the requirement for outside air for combustion has also been modified to allow greater use of inside air for combustion purposes (with restrictions). [Comm 64.0702]

19. The IMC prohibits the use of unvented, permanently installed liquid- and solid-fueled equipment. As under the current code, both installed and portable unvented equipment is prohibited under the proposal. [Comm 64.0801]

20. The proposal is to make the chapter internally consistent and consistent with the International Fuel Gas Code (IFGC), chapter Comm 65 for the following situations: location of combustion air openings, setback between intakes and exhausts and contaminant sources. [Comm 64.0710 and Comm 64.0918]

21. The proposal substitutes chapter Comm 41 for IMC boiler and hydronic piping requirements. Only minor revisions are proposed for the IMC requirements for water heaters used in space heating systems. The IMC, unlike the current chapter Comm 64, does not limit the use of such water heaters to 100,000 Btu/hour input. [Comm 64.1001 and Comm 64.1201]

22. The proposal substitutes chapter Comm 45 for IMC refrigeration requirements. [Comm 64.1101]

23. The proposal does not include IMC fuel oil requirements; these requirements are contained in chapter Comm 10. [Comm 64.1301]

24. The IBC requirements for fire resistive construction such as equipment enclosure, fire rated resistive damper placement, and air movement in rated corridors, may impact HVAC system design and installation.

25. In addition to the AIA Standard R673, standards, either newer than that adopted in the IMC or not adopted in the IMC, are adopted; they are: NFPA 13–1999, Installation of Sprinkler Systems; and NFPA 54–1999, National Fuel Gas Code.

(A more detailed comparison of the 2000 IMC and IFGC, the current chapter Comm 64, and this proposal is available at <http://www.commerce.state.wi.us/SB/SB-RuleChanges.html> or can be obtained from Roberta Ward at [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us) or at telephone 608/266–8741 and 608/264–8777, TTY.)

### Chapter Comm 65

This rule revision, which creates chapter Comm 65, relating to Fuel Gas Appliances, includes adoption of the 2000 *International Fuel Gas Code*<sup>®</sup>, with various omissions, additions or substitutions.

The following listing is a summary of the major concerns identified by the Department and the HVAC Specialty Council relating to the use and application of the IFGC and recommendations for changes and additions to or omissions from the IFGC.

1. Like the *International Mechanical Code*<sup>®</sup>, the IFGC requires that all appliances be listed and labeled unless approved as a modification. The proposal is to retain current code provisions which outline the Wisconsin process and the information and testing needed for this review. The IFGC is silent on what rule applies when the manufacturer's instructions may be in conflict with rule provisions. The proposal is to duplicate the provision in chapter Comm 64 and provide consistency for all fuel types. The IFGC is also silent on the clearances, guarding, appliance marking, and piping supports; the proposal is to duplicate the provisions proposed in chapter Comm 64. As in chapter Comm 64, a requirement for written instructions on operation and maintenance is proposed. [See sections Comm 65.0301 and 65.0304]

2. Current Wisconsin provisions prohibit the use of unvented space heaters because of the tight construction of Wisconsin buildings; this prohibition is proposed for both chapters Comm 64 and 65. [Comm 65.0303 (2) and 65.0620]

3. As in chapter Comm 64, the proposal is to retain current provisions that recognize Wisconsin's severe climate in that heat exchangers and burners must be made of corrosion resistant material. [Comm 65.0303 (1)]

4. As in chapter Comm 64, the equipment testing and balancing provisions are proposed such that these two chapters will be consistent for all fuel types. [Comm 65.0305]

5. The proposal is to continue some current Wisconsin provisions for use of indoor air for combustion in "tight" construction, consistent with provisions for other fuel types under chapter Comm 64. [Comm 65.0304]

6. The 2000 IFGC does not include the various provisions previously contained in 1998 IMC with regard to combustion air; the proposal is to maintain these requirements and be consistent for all fuel types. [Comm 65.0304]

7. The IFGC is also silent on various requirements for safe installation of combustion air ducts and outside air intake openings. The proposal is to duplicate these provisions from chapter Comm 64. [Comm 65.0304 and Comm 65.0620]

8. The proposal is to be consistent with chapter Comm 64 and not require platforms for fan only installations. [Comm 65.0306]

9. The current requirements for gas piping (using the NFPA 54 standard) are proposed to be retained. [Comm 65.0400]

10. The proposal is to not allow the installation of a number of unvented appliances as under the current code. Products of combustion in buildings may cause concern for safety and health and structural damage. [Comm 65.0501]

11. The proposal is to be consistent for all fuel types in termination of venting system and setback distances between outside air intakes and containment sources. [Comm 65.0503]

12. The proposal is also consistent for all fuel types for requirements for suspended duct furnaces. [Comm 65.0609]

13. Also, the American Institute of Architects (AIA), R673–1996–97, (Guidelines for Construction and Equipment of Hospital and Medical Facilities) as is used by DHFS is adopted in this chapter.

(A more detailed comparison of the 2000 IMC and IFGC, the current chapter Comm 64, and this proposal is available at <http://www.commerce.state.wi.us/SB/SB-RuleChanges.html> or can be obtained from Roberta Ward at [rward@commerce.state.wi.us](mailto:rward@commerce.state.wi.us) or at telephone 608/266–8741 and 608/264–8777, TTY.)

### Chapter Comm 66

The Department has the responsibility to supervise every public building and place of employment, including the fire safety aspects, in order to protect the life, health, safety and welfare of every employee, frequenter, tenant and firefighter. The changes contained in this proposal, including adoption of the *International Fire Code*<sup>®</sup> (IFC), are intended to update code requirements and adopted national standards relating to building construction, building equipment, commodity storage and isolation, fire prevention, fire detection, and fire suppression as one part of that responsibility.

The IFC is divided into the following 45 chapters that cover fire safety hazards in the areas of general fire safety requirements, hazardous structures, hazardous operations and hazardous materials:

1. Administration
2. Definitions
3. General Precautions Against Fire
4. Emergency Planning & Preparedness
5. Fire Service Features
6. Building Services & Systems
7. Fire-Resistance-Rated Construction
8. Interior Finish, Decorative Mat'l & Furnishings
9. Fire Protection Systems
10. Means of Egress
11. Aviation Facilities
12. Dry Cleaning
13. Combustible Dust-Producing Operations
14. Fire Safety During Construction & Demolition
15. Flammable Finishes
16. Fruit & Crop Ripening
17. Fumigation & Thermal Insecticidal Fogging
18. Semiconductor Fabrication Facilities
19. Lumber Yards & Woodworking Facilities
20. Manufacture of Organic Coatings
21. Industrial Ovens
22. Service Stations & Repair Garages
23. High-Piled Combustible Storage
24. Tents & Other Membrane Structures
25. Tire Rebuilding & Tire Storage
26. Welding & Other Hot Work
27. Hazardous Mat'ls-General provisions
28. Aerosols
29. Combustible Fibers
30. Compressed Gases
31. Corrosive Materials
32. Cryogenic Fluids
33. Explosives & Fireworks
34. Flammable & Combustible Liquids
35. Flammable Gases
36. Flammable Solids
37. Highly Toxic & Toxic Materials
38. Liquefied Petroleum Gases
39. Organic Peroxides
40. Oxidizers
41. Pyrophoric Materials
42. Pyroxylin (Cellulose Nitrate) Plastics
43. Unstable (Reactive) Materials
44. Water-Reactive Solids & Liquids
45. Referenced Standards

The IFC includes topics that are currently covered under several other Wisconsin administrative code chapters. Adoption of the IFC will facilitate the process of updating these requirements in unison on a regular basis. The IFC is designed to work together with the *International Building Code*, the *International Mechanical Code*,

the *International Energy Efficiency Code*, and the *International Fuel Gas Code*.

In this proposal, 8 chapters of the IFC are omitted. These 8 IFC chapters are: IFC 11 – Aviation Facilities, IFC 12 – Dry Cleaning, IFC 22 – Service Stations and Repair Garages, IFC 30 – Compressed Gases, IFC 33 – Explosives and Fireworks, IFC 34 – Flammable and Combustible Liquids, IFC 35 – Flammable Gases, and IFC 38 – Liquid Petroleum Gases. These 8 chapters cover topics that are currently covered by other rules administered by Commerce. The department is planning to update the topics covered by these 8 IFC chapters, with the effective date coordinated with the rest of this proposal.

Chapter 45 of the IFC incorporates many national standards by reference into the code. These include 88 standards produced by the National Fire Protection Association, many of which are already familiar to users of Wisconsin's codes.

In general, the IFC requirements are at least equivalent and in most cases, more detailed than the fire safety requirements contained in the current editions of the corresponding Wisconsin Administrative Code chapters.

Adoption of the IFC will expand the scope and application of fire safety regulations in Wisconsin. There are many fire hazards addressed in the IFC that have not been covered in Comm 14, the Fire Prevention Code, in the past. The IFC provides guidance for the building owner and the fire code official to ensure that fire hazards are identified and appropriate fire prevention procedures, and fire protection features, are provided based upon the specific hazard. The IFC is structured to manage the risks associated with fire and explosions within buildings, structures and upon the premises. The application of the IFC as proposed in the rules will provide for safe operations and processes in both new and existing properties.

## Notice of Hearings

### Health and Family Services (Health, Chs. HFS 110–199)

[CR 00–170]

Notice is hereby given that the pursuant to s. 252.04 (1), (2) and (10), Stats., the Department of Health and Family Services will hold public hearings to consider the amendments of ch HFS 144, Wis Adm. Code, relating to immunization of students. The public hearing will be held:

<u>Date &amp; Time</u>	<u>Location</u>
<b>January 16, 2001</b> Tuesday From 11 a.m. to 1 p.m.	First floor breakroom Marathon County Health Dept. 1200 Lake View Dr. Wausau, WI
<b>January 17, 2001</b> Wednesday From 1 p.m. to 3 p.m.	Room 102 CESA #1 2930 S. Root River Parkway West Allis, WI
<b>January 18, 2001</b> Thursday From 1 p.m. to 3 p.m.	Room B145 1 West Wilson St. Madison, WI

The hearing sites are fully accessible to people with disabilities.

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

These are amendments to the Department's rules for immunization of students before they enter elementary school, middle school, junior high school, senior high school or a day care center, and while in school. The rules implement s. 252.04 (2) to (7) and (10), Stats.

The rulemaking order adds varicella (chicken pox) to the list of diseases against which students are to be immunized. The current list consists of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, *Haemophilus influenzae b* and hepatitis B. That list is statutory and is reproduced in the current rules. The Department is authorized under s. 252.04 (2), Stats., to add diseases to that list by rule. The requirement for immunization against varicella will be phased-in beginning in the 2001–02 school year. For that school year,

the requirement will apply to students entering a day care center or kindergarten. For the 2005–06 school year, the requirement will apply to students in all grades.

The Department has decided to add varicella to its list of diseases against which students are to be immunized based on recommendations of the federal Centers for Disease Control (CDC) Advisory Committee on Immunization Practices (ACIP) that students entering child care facilities and elementary and middle schools either receive varicella vaccine or have other evidence of immunity to varicella. Varicella causes more illness than any other childhood vaccine-preventable disease. Complications from varicella can lead to hospitalizations and even death. Before the availability of varicella vaccine, varicella caused an estimated 11,000 hospitalizations and 100 deaths per year in the United States. Since children affected by the rule may have already had varicella, parents will be able to comply with the requirement by indicating that their child had the disease. Now that varicella vaccine is being given, the amount of disease in the population is decreasing, making exposure to chicken pox during childhood less likely. Without vaccine or exposure to the virus, many children will remain unprotected into adolescence and adulthood when varicella can cause more severe symptoms and complications. This is why varicella vaccine or history of disease will eventually be required for students in all grades.

This rulemaking order also increases the age at which measles–mumps–rubella (MMR) vaccine is required from 12 months of age to 16 months of age to conform to the age range given in the Recommended Childhood Immunization Schedule; clarifies that the requirement for a dose of DTP/DtAP/Dt/Td vaccine to be received after the 4<sup>th</sup> birthday applies to children in kindergarten only; and reduces the requirement for hepatitis B vaccine from 3 doses to 2 doses for students who received a licensed two-dose formulation of hepatitis B vaccine.

### Contact Person

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

**Daniel Hopfensperger**  
**Immunization Program**  
**1 W. Wilson St., Rm 318**  
**PO Box 2659**  
**Madison, WI 53701–2659**  
**608–266–1339 or 608–266–8621**

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at a hearing difficult and if you, therefore, require and interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or telephone shown above. Persons requesting a non-English or sign language interpreter should contact the person at the address and telephone number give above 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 26, 2001 will be given the same consideration as testimony presented at the hearing.

### Fiscal Estimate

The varicella vaccine the Department provides upon request and without charge to local health departments and school districts is purchased by the Department with a line of credit provided by the federal government's Centers for Disease Control and Prevention (CDC) or with GPR funds under s. 20.43 (1) (cm), Stats. S. 20.43 (1) (cm), Stats. Authorizes DHFS to expend an amount that is equal to the difference between the statutory limit of a \$9,000,000 sum sufficient appropriation and the amount of funding DHFS receives from the federal Vaccines for Children Program (VFC) and section 317 of the Public Health Service Act. The total estimated annual cost for vaccine to implement the varicella requirement is \$1.2 million; the possible annual cost to the state may be \$130,000. The following assumptions were used to estimate costs: The vaccine costs \$37.14/dose; the total annual cohort that will need vaccine is 33,000 students (6% of the students have already had disease and will not need vaccine; 40% of the students have already been vaccinated and will not need vaccine). Private providers will pay 62% of the vaccine cost (\$840,000); the federal VFC Program will pay 72% of the public sector vaccine cost (\$337,000); federal 317

funds or GPR funds will pay 28% of the of the public sector vaccine cost (\$130,000).

The rule changes will not affect the expenditures or revenues of local county and city health departments. Local health departments are responsible under s. HSS 144.08 for making available the required immunizations but only insofar as free vaccines are available from the Department. Local health departments are to administer the vaccines without charging for the vaccines but they may charge, and some do charge, for the costs of administration.

The rule changes may increase costs for schools and for district attorney or corporation council offices. Schools, including day care centers, will experience some increase in workload in tracking compliance with the new requirements, in referring students to the district attorney or corporation counsel for enforcement action, and district attorneys/corporation counsels may have more cases to handle. It is not known how much workload will increase or its impact, if any, on costs. However, since many students will be able to comply with the requirement by reporting a history of disease, the impact of adding this requirement will be less than that of adding previous vaccine requirements, e.g., hepatitis B, to which all students were assumed susceptible.

### Initial Regulatory Flexibility Analysis

These rule changes will affect students, parents, schools, local public health agencies, county attorney offices and the Department. They will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

## Notice of Hearings

### Health and Family Services (Health, Chs. 110–199)

Notice is hereby given that pursuant to ss. 227.24 (1), 250.04 (7), 250.041, 254.115, 254.167, 254.172, 254.176 (1) and (3), 254.178 (2), and 254.179, Stats., the Department of Health and Family Services will hold public hearings to consider the repeal and recreation of ch. HFS 163, Wis. Adm. Code, relating to certification for the identification, removal and reduction of lead-based paint hazards, the issuance and registration of certificates of lead-free status and lead-safe status, and the emergency rules now in effect on the same subject.

#### Hearing Information

The public hearings will be held:

<b>Date &amp; Time</b>	<b>Location</b>
<b>January 12, 2001</b> Friday Beginning at 10 a.m.	Milwaukee DNR Building Rm 141, 2300 N. Martin Luther King Dr. <b>Milwaukee WI</b>
<b>January 16, 2001</b> Tuesday Beginning at 10 a.m.	Green Bay Technical College Rooms C215 & C231 2740 W. Mason St. (Lot F) <b>Green Bay WI</b>
<b>January 17, 2001</b> Wednesday Beginning at 10 a.m.	Marathon Co. Aging and Disability Resource Ctr. Theater, 1100 Lakeview Dr. <b>Wausau WI</b>
<b>January 18, 2001</b> Thursday Beginning at 10 a.m.	Eau Clair County courthouse Room 2560, 721 Oxford Ave. <b>Eau Claire WI</b>
<b>January 19, 2001</b> Friday Beginning at 10 a.m.	Wilson Street State Office Bldg. Room 751, 1 W. Wilson St. <b>Madison WI</b>

The hearing sites are fully accessible to people with disabilities.

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

Chapter 254, Stats., provides for a comprehensive lead (Pb) 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 ch. 254, Stats., the Department promulgated ch. 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 ch. HFS 163, Wis. Adm. Code. The Section derives its revenues from two sources: various fees the Department assesses under this chapter; and lead program development grant monies the Department receives from EPA.

Under ch. HFS 163, 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. Effective December 1, 2000, the Department revised the training accreditation and certification requirements of the rule by emergency order. An individual may apply for certification in the following disciplines: lead low-risk worker, low-risk supervisor, high-risk worker, contractor supervisor, hazard investigator, inspector, risk assessor, project designer and sampling technician. 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 hazard investigator, inspector, risk assessor, low-risk supervisor or contractor supervisor, must pass a certification examination. In addition, the Department must accredit the lead training courses that prepare persons for certification.

### New Wisconsin Law

1999 Wisconsin Act 113 requires the Department to review local ordinances and promulgate rules using a research-based methodology. These rules must establish all of the following:

- Standards that a premises, dwelling or unit of a dwelling must meet for issuance of a certificate of lead-free status or lead-safe status.
- A process for issuing the certificates and registering the properties for which certificates are issued.
- Procedures for revoking a certificate, and the period of validity for a certificate.
- What interim lead hazard control measures a new owner must take in vacant units when immunity from liability is provided during the first 60 days after acquiring a new dwelling.
- The requirements for a training course of up to 16 hours that property owners, their agents and employees must complete if seeking certification.
- The scope of the lead investigation and lead hazard reduction activities that may be performed following certification.

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.

### New Provisions

Through the proposed permanent rulemaking order, the Department proposes adding the following provisions to ch. HFS 163:

#### Subchapter I – General Provisions

- Authority and purpose for activities involving lead-free or lead-safe property.
- The scope of Subchapter V, which the department proposes adding to implement Act 113.
- Definitions required by new provisions of the rule.

#### Subchapter II – Certification

- Training and certification requirements for persons who disturb lead-based paint involving lead-based property.
- For certification as a lead inspector or risk assessor, a requirement that the applicant submit proof of manufacturer's training for the XRF the person will use in inspections.
- Requirement that photo identification be presented for certification if training was not obtained from a Department-accredited training provider.

- Additional responsibilities for lead companies, including disclosure of information about the work to be performed and more information on the quarterly lead investigation activities summary.
- Expanded work practice section to address other activities, such as elevated blood investigations, lead-based paint construction, lead-free inspections, lead-safe investigations.

### **Subchapter III – Accreditation**

- Requirement to take photographs of students to submit to the Department and insert in training certificates.

### **Subchapter V – Registry of Property with Certificates of Lead-Free Status or Lead-Safe Status.**

- Lead-free and lead-safe property standards.
- Lead-free inspection and lead-safe investigation work practice standards and protocols to be used to determine whether a property meets the lead-free or lead-safe property standards.
  - Limitations on who may conduct lead-free inspections and lead-safe investigations.
  - The conditions that apply to maintaining a valid lead-safe certificate.
  - Procedures for issuing a certificate of lead-free or lead-safe status, including the establishment of the effective date and expiration date. (Not effective before September 1, 2001.)
  - Requirement for a property owner to obtain a certificate of lead-free or lead-safe status if a child residing in the property has been identified with an elevated blood level. (Not effective before September 1, 2001.)
  - Immunity provisions under s. 254.173, Stats., that are provided by a certificate of lead-free or lead-safe status. (Not effective before September 1, 2001.)
  - What a property owner must do to have temporary immunity for 60 days after acquiring a dwelling or unit. (Not effective before September 1, 2001.)

### **Consultation with the Lead Technical Advisory Committee and the Public**

As mandated by s. 254.174, Stats., the Department created a Lead Technical Advisory Committee (LTAC) to make recommendations to the Department concerning promulgation of lead-based paint rules. Advisory Committee members were selected to represent a key interest groups. These groups included lead hazard reduction professionals, lead identification professionals, landlords and other property owners, public health departments, child advocates and day care providers.

The Department charged the LTAC with advising the Department on implementation of statutory changes enacted in 1999 Wisconsin Act 113. The LTAC met on May 26, July 12, August 16, September 8 and September 22 to review reports and recommendations from 14 public forums previously held. At the May 26 meeting, members agreed on the following guiding principles for the rules developed implement Act 113:

- Focus on protecting the most children possible with current resources.
- Encourage proper maintenance as a means of reducing lead poisoning.
- Encourage wide participation in the registry program.
- Reduce confusion by limiting differences between Department rules and other applicable regulations, such as HUD's lead hazard reduction regulations under 24 CFR Part 35.
- Strive for simplicity and clarity in order to achieve better compliance.
- Be sensitive to costs and the impact costs have on the ability to get work done.
- Reward long-term improvements.
- Encourage work when a building is vacant in order to reduce risks to occupants.
- Enforce the regulations in order to encourage compliance.
- Evaluate the registry process regularly and revise as needed.
- Look for resources to reduce lead-based paint hazards.

The Department's 14 public forums were held in various locations statewide and facilitated relatively wide public participation in the LTAC's development of recommendations. In addition to Department staff and LTAC members, more than 50 people participated in the public forum process. Public forums discussed the following issues:

- Issuance of certificates of lead-free status or lead-safe status.
- Standards buildings must meet to qualify for a certificate.
- Standards for limiting the length of certificate validity.
- Requirements that certificate-holders must meet to maintain a certificate.
  - Protocols the certified lead professional must use when determining whether a building meets the standards for a certificate of lead-free status or lead-safe status.
  - Forms for the certificates of "lead-free status" and "lead-safe status."
  - Lead-safe work practices that must be used when conducting an activity that disturbs lead-based paint on a property.
  - Training and certification of persons who perform work involving property included in the registry of certificates of lead-free status or lead-safe status.
  - Educating the public about the registry of property with a valid certificate of lead-free status or lead-safe status.

### **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. The HUD regulations most directly 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 a clearance visual examination and dust-lead sampling conducted after completing activities that disturb lead-based paint. The regulations also require annual re-evaluation of the property by a certified lead risk assessor.

On June 3, 1998, EPA proposed standards for identifying lead-based paint hazards under the authority of section 403 of the federal Toxic Substance Control Act. Unlike previous federal lead-based paint legislation which focused only on the presence of lead-based paint, this legislation switches the focus of Federal lead-poisoning prevention efforts away from the removal of lead-based paint toward management of lead-based paint hazards. The proposed standards, when finalized, will play an important role in the national lead-based paint program. For example, the standards will be used by risk assessors to determine if lead-based paint hazards exist in pre-1978 housing and child-occupied facilities (e.g., daycare centers). Property owners will use the standards to identify conditions that must be disclosed before leasing or selling target housing under regulations of the U.S. Department of Housing and Urban Development (HUD) and EPA. The Department of Housing and Urban Development will also incorporate these standards into its regulations on lead-based paint hazard evaluation and control in federally-assisted and owned housing. In addition, these regulations will provide advice to the public about conditions considered to present health risks to young children that should be addressed. The standards may also be incorporated into local laws and regulations, housing codes, and lending and insurance underwriting standards.

EPA is also preparing to promulgate lead training and certification requirements under 40 CFR Part 745 for persons performing renovation and remodeling regulations. Under these regulations, 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 a visual examination and dust sampling for 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.

#### Contact Person

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

Gail Boushon, Regulatory Specialist  
Asbestos and Lead Section  
Room 137, 1 West Wilson Street  
P.O. Box 2659  
Madison, WI 53701-2659  
Telephone: (608) 261-6876, or 266-1511 if you are hearing impaired.  
Fax: (608) 266-9711  
Email: [boushga@dhfs.state.wi.us](mailto:boushga@dhfs.state.wi.us)

#### Fiscal Estimate

The Department expects that owners of the approximately 500,000 rental units in Wisconsin built before 1978 to be the primary purchasers of certificates of lead-free status or lead-safe status to be issued under the proposed rule. It further expects that about 50% of these properties will be eligible for a certificate of lead-free and 50% for a certificate of lead-safe. A certificate of lead-free status costs \$50 and is issued for an indefinite term. The Department anticipates that 10,000 certificates of lead-free status will be issued annually. A certificate of lead-safe status costs \$25 and is issued for terms that vary from 9 months to 7 years. The Department anticipates that 8,000 certificates of lead-safe status will be issued or renewed each year. Therefore, the Department estimates an annual total of \$700,000 in program revenues from the issuance of lead-free and lead-safe certificates. In addition, the proposed rule contains various fees for certification of individuals and companies, accreditation of training courses, and approval of principal instructors. The Department estimates that the proposed rule will increase revenues for these various by \$206,400 annually. Contact Gail Boushon, Regulatory Specialist with the Asbestos and Lead Section to obtain a copy of the spreadsheet showing the breakdown of the estimated revenues.

The Department anticipates the total annual cost of administering the program to be \$736,600. It estimates that 9.5 FTE will be necessary to administer the program at an estimated annual cost of \$551,595. Of the 9.5 FTE, 4.5 FTE are transferred from existing DHFS programs and 5.0 FTE are authorized under 1999 Wisconsin Act 113. In addition, the Department anticipates other annual costs in the amount of \$185,000. These costs include \$50,000 to maintain the database of certificates, \$120,000 laboratory costs for processing paint chip and dust wipe samples taken to verify eligibility for a certificate, and \$15,000 for printing, postage and other services and supplies.

#### Initial Regulatory Flexibility Analysis

The rule will affect small businesses as defined in s. 227.114 (1) (a), Stats. There are 286 certified lead companies in Wisconsin, of which at least 80% have fewer than 25 employees. There are 5 providers of training courses. Four of the training providers are companies and one is operated by a labor union. In addition, the proposal includes an option for property owners to obtain a certificate of lead-free status or lead-safe status in exchange for immunity from liability when a child is lead poisoned. The standards and certificates of lead-free status and lead-status will affect rental real estate owners who elect to participate. Many of these owners could be classified as small businesses. Therefore, the Department developed the rule only after careful consideration of the cost and administrative burden to affected parties.

In proposing standards that must be met in order for a real estate owner to receive a certificate of his or her building being lead-free or lead-safe, the Department continually weighed the cost to achieve or maintain a standard against the risk of a child being lead poisoned.

Training for certification was established in modules that allow easy movement to higher discipline levels after completing additional training without having to repeat information. This reduces the required initial amount of time and money, before a

person may be sure of his or her commitment, and reduces barriers to upward movement within the lead industry.

Minimum reporting requirements will be placed on trainers and lead professionals. The Department considers the information proposed to be required of property owners minimally essential for awarding certificates of lead-free or lead-safe to a structure's owner. Such certifications form the basis for the owner's immunity from liability. Therefore, reporting requirements cannot be reduced for "small businesses."

Compliance and reporting requirements have been simplified and consolidated wherever possible while:

1. Assuring building owners a basis for immunity from liability;
2. Providing the Department adequate monitoring and enforcement information; and
3. Providing the public sufficient information about individual buildings.
4. Providing the legislature with progress reports mandated in 1999 Wisconsin Act 113.

Schedules and deadlines are limited to what the Department considers to be essential for program operation. Since the proposed rule offers immunity from legal liability if specified standards necessary for ensuring the physical health of occupants are met, the compliance standards must be uniform for all parties and cannot be lessened simply because a structure's owner meets the statutory definition of a small business.

Fees were established at levels expected to be sufficient to support the program and slowly repay GPR startup funds authorized by the legislation, without providing an excess of funds. Since many certification disciplines and all instructor approvals and course accreditations are issued for 2 years, the Department also had to consider fees that would be sufficient if revenues received in one year of the 2-year cycle were substantially greater than in the other year of the 2-year cycle.

## Notice of Hearings

### Natural Resources (Fish, Game, etc. Chs. NR1- ) [CR 00-178]

NOTICE IS HEREBY GIVEN THAT ss. 29.041, 29.014 (1), 29.519 (1) and 227.11 (2) (a), Stats., interpreting ss. 29.041, 29.014 (1) and 29.519 (1), Stats., the Department of Natural Resources will hold public hearings on the amendment of s. NR 25.03 (2) (b) 3., Wis. Adm. Code, relating to relicensing commercial fishers on Lake Michigan. In order to identify inactive licensees, persons who apply for annual renewal of commercial fishing licenses for Lake Michigan must meet several criteria. Since 1989, one key criterion has been the minimum annual catch requirement. To qualify for relicensing, each licensee must, for at least one of the three commercial fishing zones, have reported a combined harvest that exceeds one of two numbers: 1) a zone-specific level set out in s. NR 25.03 or 2) an alternate computed level based on the harvests of all fishers during the year preceding the year during which the application for relicensing is submitted.

The proposed rule changes the requirements for relicensing commercial fishers on Lake Michigan. Under the proposed rule, the alternate minimum catch requirement would be computed based on harvest by all fishers during the most recent 12-month period, June of the preceding year through May of the year of application. This rule revision would make it easier for a commercial fisher to qualify for relicensing following a year when fish stocks declined.

NOTICE IS HEREBY FURTHER GIVEN THAT pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Commercial fishers on Lake Michigan
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills

NOTICE IS HEREBY FURTHER GIVEN THAT the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does

not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN THAT the hearings will be held on:

**January 12, 2001** Room 310, Green Bay City Hall, 100 N.  
Friday Jefferson St., Green Bay at 2:00 p.m.

**January 22, 2001** Room 118, County Administration Center  
(Middle Building), 121 W. Main St.,  
Monday Port Washington at 5:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Effect:**

There is no fiscal effect anticipated from the promulgation of this rule change.

Written comments on the proposed rule may be submitted to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than Monday, January 29, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FH-48-00] and fiscal estimate may be obtained from Mr. Horns.

### **Notice of Hearing**

#### **Natural Resources (Fish, Game, etc. Chs. NR1- )**

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.11 (2) (a) and 227.24, Stats., interpreting ss. 350.04 and 350.10 (1) (a), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. LE-49-00 (E) relating to the definition of unreasonable and improper speed for snowmobile operation during the hours of darkness. This emergency order took effect on December 14, 2000. The emergency rule defines unreasonable and improper speed to include snowmobile operation above 50 miles per hour during the hours of darkness. Snowmobiles competing in a sanctioned race or derby are exempt from the regulation.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

**January 17, 2001** Terrace Room (Room 100), UW Marathon  
Wednesday Center, 518 S. 7<sup>th</sup> Ave., Wausau  
at 11:00 a.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Karl Brooks at (608) 267-7455 with specific information on your request at least 10 days before the date of the scheduled hearing.

#### **Fiscal Estimate**

There will be no net change in FTE hours or expenditure of new funds for the Emergency Rule. The change will only be in terms of method of enforcement tactic used. Wardens will use existing equipment and existing hours to enforce this rule.

Written comments on the emergency rule may be submitted to Mr. Karl Brooks, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than January 31, 2001. Written

comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule [LE-40-00 (E)] may be obtained from Mr. Brooks.

### **Notice of Hearings**

#### **Natural Resources (Fish, Game, etc. Chs. NR 1-) [CR 00-177]**

NOTICE IS HEREBY GIVEN that pursuant to s. 227.11 (2), Stats., interpreting ss. 26.30, 28.01 and 28.07, Stats., the Department of Natural Resources will hold public hearings on amendments to ss. NR 47.005 (1), 47.007 (1) and 47.008 (1) and the creation of subch. IX of ch. NR 47, Wis. Adm. Code, relating to the federal cost sharing program to suppress gypsy moths. The purpose of this rule is to establish the administration and procedures for participation by landowners through counties in a voluntary, cooperative state suppression program for outbreaks in Wisconsin of a foreign pest, the gypsy moth. The suppression program will include an aerial insecticide treatment program (administered in partnership with the department of agriculture, trade and consumer protection) and administration of federal cost sharing for participants in that treatment program.

The suppression program will be offered to landowners through counties and municipalities if the county in which they are located declines to participate. Participating counties or municipalities will provide a coordinator who will serve as the contact for the public and the department. The rule defines the tasks that will be performed by the participating counties and municipalities, how to apply for the program, criteria of eligible areas for treatment and cost sharing under the program and eligible costs that can be shared in the federal cost sharing program.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 227.11 (2) and 227.24, Stats., interpreting ss. 26.30, 28.01 and 28.07, Stats., the Department of Natural Resources will hold public hearings on Natural Resources Board Emergency Order No. FR-41-00 (E) relating to the federal cost sharing program to suppress gypsy moths. This emergency order took effect on November 10, 2000. This emergency order establishes the administration and procedures for participation by landowners through counties in a voluntary, cooperative state suppression program for outbreaks in Wisconsin of the gypsy moth.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

**January 31, 2001**  
Wednesday

2:00 p.m.

**and**

7:00 p.m.

**Video conference participation** will be available at:

Room IS 1034, Instructional Services  
Bldg., UW-Green Bay, Green Bay  
Pyle Center, UW-Extension, 702  
Langdon Street, Madison and Room L21,  
UW-Marquette, 750 West Bay Shore,  
Marinette  
Room C103, Commons, UW-Waukesha,  
1500 University Drive, Waukesha

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities

upon request. Please call Andrea Diss at (608) 264-9247 with specific information on your request at least 10 days before the date of the scheduled hearing.

### Fiscal Impact

Gypsy moths populations continue to grow and spread in Wisconsin. Once established, populations go through cyclical periods of dramatic increase eventually reaching such high numbers that they strip whole forests of leaves in late June. When this happens, the public becomes very concerned and looks for ways to reduce the population of the pest 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 when pesticides are not used according to directions. A department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

The Wisconsin gypsy moth suppression program is a voluntary program that offers cost savings to Wisconsin landowners beyond independently arranged treatment programs. This program consists of two components; 1) participation in a state run aerial insecticide treatment to suppress outbreaking populations of gypsy moth and 2) a federal cost sharing program to help pay for the aerial treatment project. The suppression program will require expenditures from local government that can be recovered from landowners served by the program. The first cost savings comes from participating in a large, state negotiated contract, the cost for which has been significantly lower than that for private, small spray programs. The second cost savings is from participation in the department facilitated federal cost sharing program for suppression of gypsy moth outbreaks. The USDA Forest Service offers cost sharing up to 50% for treatments and associated administration for eligible suppression efforts.

Written comments on the proposed and emergency rules may be submitted to Ms. Andrea Diss, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707 no later than February 9, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Ms. Diss.

## Notice of Hearing

### Natural Resources

#### (Environmental Protection – Air Pollution Control Chs. NR 400–)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11 (1) and (6), Stats., interpreting s. 285.11 (6), Stats., and revising the State Implementation Plan developed under that section, the Department of Natural Resources will hold a public hearing on revisions to chs. NR 422 and 439, Wis. Adm. Code, relating to an one-hour ozone air quality standard attainment plan. These revisions include volatile organic compound (VOC) emission controls focused on meeting federal requirements for reasonably available control technology (RACT) VOC emission limits for plastic parts coating.

The Clean Air Act requires all major sources of VOCs in ozone non-attainment areas to minimize emissions through the application of RACT. With the Department's assistance, the United States Environmental Protection Agency (USEPA) identified three source categories requiring VOC RACT rules (i.e. plastic parts coating, industrial cleanup solvent fabrication or use, and ink manufacturing). By December 31 2000, the Department is required to submit a plan that includes VOC RACT rules for these three source categories to the USEPA as part of the attainment demonstration of the 1-hour ozone standard in 2007. The components of that plan were approved by the Wisconsin Natural Resources Board in September 2000. This proposed administrative rule for the control of VOC emissions from plastic parts coating operations addresses the last USEPA identified deficiency in this attainment demonstration plan. The primary emission limitations technique is restricting the VOC content of coatings. However, in addition, compliance can be achieved by using in-line averaging and control systems that meet specified requirements.

The proposed rule will regulate plastic parts coating at major sources in three broad industry segments: automotive/transportation, business machines and miscellaneous. The miscellaneous plastic parts category includes items such as signs, weather stripping and shutters.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: The proposed rule will regulate plastic parts coaters in three broad industry segments: automotive/transportation, business machines and miscellaneous. The automotive /transportation plastic parts category includes the interior and exterior components of automobiles, trucks, tractors, lawnmowers and other equipment which may be drawn or is capable of being driven on a roadway. The business machine plastic parts category includes the plastic housings and other exterior plastic components of electronic office equipment and of medical and musical equipment, including, but not limited to the following: computers, monitors, printers and keyboards, facsimile machines, copiers, microfiche readers, cellular and standard phones, and pencil sharpeners. The miscellaneous plastic parts category includes items such as signs, weather stripping and shutters.

b. Description of reporting and bookkeeping procedures required: The primary compliance method requires that records be maintained of the name or identification number of the coating and the VOC content of the coating, as applied, excluding water. In addition, plastic parts coaters using extreme performance coatings (EPC) need to record the annual quantity of the EPC coatings used. Alternative compliance methods such as a control equipment option or an in-line averaging option require records consistent with s. NR 422.04.

c. Description of professional skills required: none.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

<b>January 31, 2001</b>	Room 140-141, DNR Southeast Region
Wednesday	Headquarters, 2300 North Dr. Martin
10 a.m.	Luther King Jr. Blvd, Milwaukee

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Grant Hetherington at (608) 267-7539 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Grant Hetherington, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than February 15, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings.

### Fiscal Impact

The Department of Natural Resources is expected to incur minimal additional costs to implement and administer the rule. The rule potentially impacts four corporate sources which may need permit reviews and compliance determinations. Compliance determination will be incorporated into current program activities of reviewing annual compliance reports and ongoing site visits. New sources effected by the rule are currently required to obtain a permit and are not expected to incur additional reviews. The total estimated impact on Department permitting and compliance resources is approximately one-tenth FTE per year. The reduction in VOC emissions from the rule is not expected to significantly impact the Air Program's emission fee revenues under the current fee structure.

A copy of the proposed rule AM-43-00 and its fiscal estimate may be obtained from:

Proposed Rules  
Bureau of Air Management  
P.O. Box 7921  
Madison, WI 53707  
Phone: (608) 266-7718  
FAX: (608) 267-0560

## Notice of Hearings

### Natural Resources

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

[CR 00-175]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 285.11 (1) and 285.27 (2), Stats., interpreting ss. 285.11 (6) and 285.27 (2), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 464 and 484, Wis. Adm. Code, relating to hazardous air pollutant emissions from pulp and paper mills. The proposed rule will incorporate into state rules existing national emission standards for hazardous air pollutants (NESHAP) for pulp and paper mills. These standards took effect on April 15, 1998, and are intended to protect public health by requiring the control of emissions of hazardous air pollutants, as identified under the federal Clean Air Act, to the level attainable by implementing the maximum achievable control technology. Sources affected are new and existing facilities which are involved in the manufacture or processing of paper pulp, and which have the potential to emit more than 10 tons per year of a single hazardous air pollutant or more than 25 tons per year of any combination of hazardous air pollutants. The standards include emission limitations for pulp production and pulp bleaching.

Also included in this proposed order are updating changes to the general NESHAP provisions bearing on when alternative monitoring, testing and recordkeeping or reporting procedures may be approved by the department, and updating changes to certain test methods which are cited in ch. NR 439 and/or incorporated by reference in ch. NR 484.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

<b>January 23, 2001</b> Tuesday	Room 113, UW Stevens Point, 1015 Reserve Street, Stevens Point at 1:30 p.m.
<b>January 24, 2001</b> Wednesday	Appleton Public Library, 225 N. Oneida Street, Appleton at 1:30 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Park at (608) 266-1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Steve Dunn, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than February 2, 2001. Written comments will

have the same weight and effect as oral statements presented at the hearings.

### Fiscal Impact

No fiscal impact is anticipated as implementation of the Rule will be accomplished with present staff using existing resources.

A copy of the proposed rule AM-38-00 and its fiscal estimate may be obtained from:

Proposed Rules  
Bureau of Air Management  
P.O. Box 7921  
Madison, WI 53707  
Phone: (608) 266-7718  
FAX: (608) 267-0560

## Notice of Hearing

### Natural Resources

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

[CR 00 – 176]

NOTICE IS HEREBY GIVEN that pursuant to ss. 292.15 (2) (ae) 3m and 292.15 (2) (e), Stats., interpreting s. 292.15 (2) (ae) 3m, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 754, Wis. Adm. Code, relating to insurance requirements related to natural attenuation for voluntary party liability exemption. Section 292.15 (2) (ae), Stats., allows voluntary parties to use natural attenuation to obtain a Certificate of Completion before the groundwater enforcement standards are met. As a condition of receiving a Certificate of Completion, the department may require a voluntary party to obtain environmental insurance. Proposed ch. NR 754 describes the requirements that must be met for a voluntary party to obtain the insurance coverage required to obtain a Certificate of Completion. In addition to the rule, s. 292.15 (2) (ae), Stats., authorizes the department to develop a master contract with an insurer to provide the State insurance coverage if natural attenuation fails. The department has developed a master state contract to provide this insurance coverage to the state. This rule requires a voluntary party to obtain coverage under that contract, and pay a one-time insurance fee to the department to participate under this option.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

<b>January 17, 2001</b> Wednesday 1:00 p.m.	<b>Video conference participation</b> will be available at: Room 021, GEF #2, 101 South Webster Street, Madison Room 542, State Office Building, 819 N. 6 <sup>th</sup> Street, Milwaukee Room 618, State Office Building, 200 N. Jefferson, Green Bay Room 139, State Office Building, 718 W. Clairemont, Eau Claire
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NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Michael Prager at (608) 261-4927 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Fiscal Impact**

The department does not anticipate significant fiscal impacts from this rule. Parties seeking this optional liability exemption will be required to pay a one-time insurance fee to the department for insurance coverage. The department will then submit this fee to the contracted insurance underwriter to pay the insurance premiums required under the state's master insurance contract. As a result, we anticipate no net impact from this rule on the state. This rule is optional for parties who choose to conduct a voluntary cleanup and seek the voluntary party liability exemption using natural attention, where groundwater enforcement standards are being exceeded.

Written comments on the proposed rule may be submitted to Mr. Michael Prager, Bureau of Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707 or by FAX at (608) 267-7646 no later than January 22, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Prager.

**Notice of Hearing  
Psychology Examining Board  
[CR 00-170]**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 455.08, Stats., and interpreting ss. 455.03 and 455.065, Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. Psy 4.02 (4) (b) 1. and 2.; and to create s. Psy 2.14, relating to continuing education and temporary practice.

**Hearing Date, Time and Location**

Date: January 12, 2001  
Time: 9:15 a.m.  
Location: 1400 East Washington Avenue  
Room 179A  
Madison, Wisconsin

**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 26, 2001, to be included in the record of rule-making proceedings.

**Analysis prepared by the Department of Regulation and Licensing.**

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 455.08.

Statutes interpreted: ss. 455.03 and 455.065.

There has been confusion in the past related to the temporary practice provision of the psychological practice act, with persons practicing under the provision seeking to clarify whether "60 working days" means 4,870 hours or 60 calendar days. Also causing confusion is the situation where an out-of-state psychologist provides some services to a patient at a time when both are located within this state and some services to that patient when the patient is located in Wisconsin and the psychologist is located in his or her state of licensure. The proposed rule would be considered to be practicing in Wisconsin any time that the patient is located in this state.

Under s. 455.03, Stats., a psychologist who is licensed in another state may offer services as a psychologist in this state for not more than 60 working days in any year without holding a Wisconsin license. The objective of the rule would be to clarify that a "working day" is any day in which any psychological services are provided, regardless of the number of hours in that day that practice occurs. The rule would also make it clear that practice occurs in Wisconsin any time that the patient is located in Wisconsin, even if the out-of-state psychologist is located in his or her state of licensure and is providing the services by electronic or telephonic means.

Clearinghouse Rule 98-206 repealed and recreated the continuing education rules for purposes of simplification and the convenience of licensees. The previous rules establishing the requirements for approval of continuing education had evolved in a somewhat disorganized manner and were confusing to licensees and difficult for the board to administer. The board repealed and recreated the rule to remedy that situation by clarifying and simplifying the approval process. Due to a clerical oversight, s. Psy 4.02 (4) (a) was repealed, but s. Psy 4.02 (4) (b) remained in place. The objective of this rule is to correct that oversight.

**Text of Rule**

SECTION 1. Psy 2.14 is created to read:

Psy 2.14 Temporary practice. The following apply to the temporary practice of psychology by a psychologist who is licensed or certified by a similar examining board of another state or territory of the United States or of a foreign country or province who offers services as a psychologist in this state under s. 455.03, Stats.

(1) Any portion of a calendar day in which the psychologist provides services in this state is considered one working day.

(2) A psychologist provides psychological services in this state whenever the patient or client is located in this state, regardless of whether the psychologist is temporarily located in this state or is providing services by electronic or telephonic means from the state where the psychologist is licensed.

SECTION 2. Psy 4.02 (4) (b) 1. and 2. are repealed.

**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****Public Service Commission**

The Commission proposes an order to amend ch. PSC 116, Wis. Adm. Code, relating to fuel cost adjustments for electric public utilities. The Commission submitted a copy of the proposed amendment to the Joint Legislative Council Staff on the date of this notice.

**Hearing Date:** Tuesday, January 23, 2000, at 10:00 a.m.

**Hearing Location:** Public Service Commission, 610 North Whitney Way, Madison, WI (Amnicon Falls Conference Room)

**Comments Due:**

Wednesday, January 17, 2000 – Noon

**FAX Due:**

Tuesday, January 16, 2000 – Noon

Address comments to:

Lynda L. Dorr, Secretary to the Commission  
Public Service Commission  
P.O. Box 7854  
Madison, WI 53707-7854  
FAX (608) 266-3957

**Analysis Prepared by the Commission**

Statutory authority: ss. 196.02 (1), and (3), 196.20 (4) (d), and 227.11.

Statute interpreted: ss. 196.20 (4) and 196.192 (2) (a).

On August 16, 1984, the Commission issued an order establishing the electric fuel rules, ch. PSC 116, Wis. Adm. Code, pursuant to s. 196.20 (4) (d), Stats., that abolished use of an automatic fuel adjustment clause in Wisconsin. The order was published in the Register in October 1984, No. 346. It became effective on November 1, 1984.

The Commission determines the amount to be charged for Wisconsin retail electric rates in periodic rate case proceedings. The process includes a forecast of the utility's revenues and expenses for a representative test year when the rates will be in effect. The forecast is comprised of test year expenses and revenues that are monitored under the fuel rules, ch. PSC 116, Wis. Adm. Code, and other costs. For most forecast costs and revenues, differences between the projections and the actual amounts realized for costs will usually not cause rate changes. However, for the costs and revenues monitored under the fuel rules, a variance between forecast and actual costs can trigger a rate change. Chapter PSC 116, Wis. Adm. Code, defines the costs and revenues included in the fuel cost monitoring system and the process to determine and implement such a rate change.

An emergency revision to the fuel rules was published June 5, 2000. On June 20, 2000, the Commission issued a notice of rulemaking for emergency revision of ch. PSC 116, Wis. Adm. Code. A hearing was held on August 4, 2000. The definition of "fuel" in s. PSC 116.03 (4) was amended and s. PSC 116.04 (6), Wis. Adm. Code was created to allow investor-owned utilities the ability to incorporate the cost of voluntary curtailments of service into the cost of fuel to increase electric reliability in Wisconsin for the summer of 2000. The emergency rule changes expired on November 3, 2000.

The permanent rule amendments consider three general classifications of changes: revisions in the permanent rules to incorporate alternative sources of power, including the emergency provisions that expired November 3, 2000; a proposal for a deferral process to limit the cost risk of fuel cost volatility; and revisions to accurately reflect how the statute is being administered.

#### **1) Retail customer tariffs under s. 196.192(2)(a), Stats., for voluntary curtailable load**

Section 196.192 (2) (a), Stats., allows an electric utility to buy down firm customers' demand as a way to meet system peak demand. The firm load curtailment program provides the utility an alternative to avoid expensive fuel or purchased power costs and to make power available for other firm customers when the demand for electricity exceeds available supply.

Under the existing rules the costs of this program would be classified as non-monitored expenses or as reductions in revenue. The emergency rule change included this cost in the monitored fuel costs during the summer and fall of 2000. The emergency rule expired on November 3, 2000.

#### **2) Air conditioner load control programs**

In order to avoid expensive power purchases, utilities can pay customers to reduce the air conditioning load. This program also makes power available to other firm customers when the demand for energy exceeds the available supply. Utilities incur this cost as either a credit to the monthly fixed customer charge or as an expense per occurrence, credited to the customer's bill. The first method requires no fuel rules consideration. It may be appropriate to monitor the cost of the second method in the fuel rules. The estimate of the cost included in utility rates is based on the charge per occurrence and the number of occurrences. Each actual cost occurrence replaces a cost included in the fuel rules.

#### **3) Short-term rental of generating facilities**

Utilities sometimes rent generation facilities, such as diesel generators, as an alternative source of power. The Commission classifies the rental cost as operations and maintenance expense and the related fuel cost as part of the fuel rules. This is a satisfactory approach when a utility can accurately forecast its leased obligations. The difficulty comes between rate cases when a leased obligation is less expensive than monitored fuel costs of other alternative sources of power. Monitoring this cost in the fuel rules would afford the utility the opportunity to recover part of the additional cost if its inclusion causes fuel costs to exceed the monitored range.

#### **4) A proposal for a deferral process to limit the cost risk of fuel cost volatility**

The deferral mechanism is intended to address extraordinary changes in fuel costs, consistent with the Commission's deferred accounting procedures. While the current rate credit and surcharge mechanisms under the fuel rules would remain in place, the deferral mechanism would be a further refinement to reflect the greater volatility seen in fuel costs in recent years. The ratepayer and shareholder risk would be capped, but not eliminated.

#### **5) Revisions to accurately reflect how the statute is being administered in practice**

Terminology relating to "opportunity sales" describes those revenues from power transactions currently monitored. Opportunity sales are monitored because these transactions offset fuel costs and purchased power. The addition of wording relating to "cumulative limits" is made to reflect actual administration of the rules and to make the clauses referring to monitoring consistent with each other.

An agency shall prepare in plain language an analysis of each proposed rule, which shall be printed with the proposed rule when it is published or distributed. The analysis shall include a reference to each statute that the proposed rule interprets, each statute that authorizes its promulgation, each related statute or related rule and a brief summary of the proposed rule.

#### **Text of Proposed Rule**

SECTION 1. The note following PSC 116.02 is amended to read:

Note: These are ~~Lake Superior District Power Co., Lake Superior District Power Co., Madison Gas and Electric Co., Northern States Power Co., Wisconsin Electric Power Co., Wisconsin Power and Light Co., and Wisconsin Public Service Corp.~~

SECTION 2. PSC 116.03 (1) and (3) are amended to read:

PSC 116.03 (1) ~~An "emergency"~~ An "emergency"; "Emergency" increase in the cost of fuel" means an increase that is extraordinary and that is caused suddenly by forces beyond the utility's control or reasonable foresight.

(3) ~~An "extraordinary"~~ An "extraordinary"; "Extraordinary" increase in the cost of fuel" means an increase that exceeds the range set around the utility's monthly or cumulative estimates approved by the commission that will significantly alter the cost of fuel from the base cost authorized in the utility's latest rate case.

SECTION 3. PSC 116.03 (4) is renumbered PSC 116.03 (4) (intro.) and amended to read:

(4) (intro.) "Fuel" means coal, gas, nuclear fuel, oil, and any other type of material used to generate electricity, ~~and, and~~ and electricity purchased or sold wholesale, ~~and, and~~ and opportunity sales of electricity as determined in a rate proceeding; and other commission-approved plans designed for the reliable provision of electricity, including:

SECTION 4. PSC 116.03 (4) (a) to (c) is created to read:

(a) Retail customer tariffs under s. 196.192 (2) (a), Stats., for voluntary curtailable load.

(b) Air conditioner load control programs.

(c) Short-term rental of generating facilities.

SECTION 5. PSC 116.03 (5) is created to read:

(5) "Opportunity sales" means those sales of electricity as defined in Wis. Adm. Code ch. PSC 117 for out of state sales and as defined by the commission in a rate proceeding for in state sales.

SECTION 6. PSC 116.04 (1) (a) and (b) 3. and 5. are amended to read:

PSC 116.04 (1) (a) In each rate proceeding the commission shall consider the costs of fuel in setting base rates and shall set ranges within which monthly fuel costs may vary from monthly estimates either on a monthly or a cumulative basis or both, and within which annual fuel costs may vary from annual estimates in terms of cost per kilowatt hour without being considered ~~emergency~~ or extraordinary emergency or extraordinary an extraordinary increase in the cost of fuel.

(b) 3. The types, quantities, and delivered costs of fuel expected to be used by the utility.

5. ~~The possibility of sales or purchases of excess fuel or economy energy to or from other utilities or cooperatives possibility of sales or purchases of excess fuel or economy energy to or from other~~

utilities or cooperatives cost effect of known or projected purchases of electricity or opportunity sales of electricity as determined in a rate proceeding.

SECTION 7. PSC 116.06 is amended to read:

PSC 116.06 Emergency and extraordinary increases. (1) If a utility's monthly or cumulative fuel costs exceed the ranges set in its rate proceeding, and the annual fuel costs will be affected so as to exceed the annual range, the utility may seek ~~an emergency or extraordinary~~ an emergency or extraordinary a rate increase in a proceeding limited in scope to the question of the emergency or extraordinary increase in the cost of fuel costs.

(2) After a hearing confined solely to fuel costs, ~~an emergency or extraordinary fuel costs, an emergency or extraordinary~~ the emergency or extraordinary increase in the cost of fuel, a rate increase based on an increase in an electric utility's monthly or cumulative costs of fuel may be granted only if the commission finds that the fuel cost increase will affect the utility's average yearly fuel costs so as to fall outside the established annual range.

(3) If an increase in rates is based on a hearing confined solely to ~~fuel costs~~ an emergency or extraordinary increase in the cost of fuel, the commission shall condition the increase on a refund of any excess revenues collected by the utility.

SECTION 8. PSC 116.07 is amended to read:

PSC 116.07 Decreases. (1) If a utility's monthly or cumulative fuel costs fall below the monthly ranges set in its rate proceeding, any interested person may seek a rate decrease in a proceeding limited in scope to the question of the decrease in fuel costs.

(2) A rate decrease based upon a decrease in an electric utility's monthly or cumulative cost of fuel shall be granted only if the commission finds that the fuel cost decrease will affect the utility's average yearly fuel costs so as to fall outside the established annual range.

SECTION 9. PSC 116.08 (1) is amended to read:

PSC 116.08 Initiation of hearings. (1) The commission may order ~~an emergency or extraordinary~~ an emergency or extraordinary a rate ~~increase~~ increase proceeding under this chapter on its own motion or that of another interested person ~~or or and~~ may expand the scope of any rate proceeding held under this ~~section~~ chapter to consider other issues in addition to the cost of fuel.

SECTION 10. PSC 116.09 is created to read:

PSC. 116.09 Deferrals. (1) In setting base rates for the utility, the commission shall set an amount above and below the annual fuel cost estimate as the utility's fuel cost deferral range.

(2) An electric public utility may apply for authority to defer recovery for its annual actual fuel costs in excess of the fuel costs it recovered in rates if it can show that its additional fuel costs exceeded its fuel cost deferral range and that, if granted, the deferral will not create excess revenues.

(3) The commission, after a special surcharge hearing or as part of the utility's next rate case, may grant the recovery of deferred fuel costs, if it finds that the utility's additional fuel costs exceed its deferral range and that the deferral will not create excess revenues.

(4) The commission shall consider, on its own motion, or by application of any interested person, a credit to an electric public utility's ratepayers for a reduction in annual fuel costs compared with the fuel costs collected in rates that fall below its fuel cost deferral range.

#### **Initial Regulatory Flexibility Analysis**

The proposed rule would apply to electric public utilities as defined by s. 196.20 (4) (a) (2), Stats. The proposed rule will not affect small businesses as defined in s. 227.114, Stats.

#### **Fiscal Estimate**

This rule change has no fiscal impact.

NOTICE IS HEREBY GIVEN that pursuant to s. 227.16 (2) (b), Stats., the Commission will hold a public hearing on these proposed rule changes in the Amnicon Falls Conference Room, at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on **Tuesday, January 23, 2001**, at 10 a.m. This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

The Commission requests comments on the above issues. Any party who desires to file comments should submit an original and 15 copies as indicated at the beginning of the Notice. Members of the public need only file an original. These comments must be received by noon on Wednesday, January 17, 2000. Comments by fax are due one day earlier. Fax filing cover sheets must state "Official Filing" and include the docket number and the number of pages (limit of 20 pages). File by one mode only.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the case coordinator listed below.

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

Questions regarding this matter may be directed to case coordinator Sharon K. Hennings at (608) 267-2160 or by email at [hennis@psc.state.wi.us](mailto:hennis@psc.state.wi.us). Hearing or speech-impaired individuals may also use the Commission's TTY number at (608) 267-1479.

## **Notice of Hearing**

### **Public Service Commission**

Hearing Date: **Thursday, January 18, 2001** – 9:00 a.m.  
 Hearing Location: Public Service Commission, 610 North Whitney Way, Madison, WI  
 Comments Due: Friday, January 19, 2001 – Noon  
 FAX Due: Thursday, January 18, 2001 – Noon  
 Address Comments to:

**Lynda L. Dorr, Secretary to the Commission**  
 Public Service Commission  
 P.O. Box 7854  
 Madison, WI 53707-7854  
 FAX (608) 266-3957

The Commission proposes an order to revise ch. PSC 163 relating to telecommunications utilities price regulation.

#### **Analysis Prepared by the Public Service Commission of Wisconsin**

Statutory Authority: ss. 196.02 (3), 196.196 (1) (c), and 227.11 Statute Interpreted: s. 196.196

In 1993 Wisconsin Act 496 (Act 496), the legislature enacted a new regulatory model to manage the transition to a competitive telecommunications marketplace. Act 496 allows telecommunications utilities to elect a price regulation plan as specified in s. 196.196, Stats.

The rules in this chapter contain a process to govern implementation of the price regulation plan specified in s. 196.196, Stats. Important features of this process include:

- (1) electing price regulation;
- (2) mechanics of calculating prices for services covered under price regulation;
- (3) rate increases or rate structure changes independent of the price cap index;
- (4) price regulation review.

One objective of the proposed rule revision is to make those changes to this chapter deemed necessary as a result of the Commission's review of price regulation pursuant to s. 196.196 (1) (g), Stats., and the annual reviews of price regulation for each price-regulated telecommunications utility. These changes include the new concept of an optional infrastructure investment objectives plan (an option available once a utility has completed its initial infrastructure commitment under s. 196.196 (5), Stats.), changing the penalty and incentive mechanism table, and adding two additional service quality components approved by the Commission. An additional objective of the proposed rule revisions is to update the citations and clarify language, where necessary. Finally, two sections where a significant amount of reorganizing was done are described below.

Section PSC 163.04 (2) (c), which deals with service quality, has been reorganized into s. PSC 163.04 (2) (c) through (ct) for clarity. Many portions have just been moved to other locations in the section (for example, much of s. PSC 163.04 (2) (c) 2. has been moved to

s. PSC 163.04 (2) (cd) 1., much of s. PSC 163.04 (2) (c) 5. now appears in s. PSC 163.04 (2) (c) 2., and s. PSC 163.04 (2) (c) 6. through 8. are now in s. PSC 163.04 (2) (cp)). The establishment of initial service quality components, industry-wide standards, and company-specific benchmarks is discussed separately from the ongoing revisions of components, standards, and benchmarks. A new process has been created to ensure that any revisions to service quality benchmarks are completed before the beginning of the year to which they will be applied. Two additional Commission approved service quality components have been added. Finally, the Commission's ability to vary penalties due to exceptional or unusual circumstances has been changed to more closely match the language used in other PSC administrative rule chapters.

Section PSC 163.04 (2) (d), which deals with infrastructure investment, has also been reorganized into s. PSC 163.04 (2) (d) through (dw) for clarity. Again, many portions have just been moved to other locations in the section. The establishment of initial infrastructure investment components and benchmarks is discussed separately from the ongoing revisions of components and benchmarks. This section has also been updated to include the new concept of an optional infrastructure investment objectives plan. A new process has been created to ensure that any revisions to infrastructure benchmarks are completed before the beginning of the year to which they will be applied. Finally, the Commission's ability to waive all or a portion of an infrastructure penalty due to exceptional or unusual circumstances has been changed to more closely match the language used in other PSC administrative rule chapters.

#### Proposed Rules

Copies of the proposed rules can be obtained by contacting Tom Ferrer, (608) 266-1124.

#### Initial Regulatory Flexibility Analysis

These rules may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats., because they may elect to become price regulated under s. 196.196 (1), Stats., which would result in these rules becoming applicable to them. The agency has considered the methods in s. 227.114 (2), Stats., for reducing the impact of the rules on small telecommunications utilities and finds that incorporating any of these methods into the proposed rules would be contrary to the statutory objectives which are the basis for the proposed rules. In addition, the election of price regulation under this chapter is voluntary, and more flexibility and less stringent compliance requirements for small telecommunications utilities are available in ss. 196.195 (12) and 196.196 (4), Stats.

At the time of this notice, there are 84 local exchange companies in Wisconsin, 77 of which are small telecommunications utilities. The agency finds that the availability of a voluntary price regulation election under s. 196.196, Stats., and the process set forth in this chapter to govern the price regulation election are in the public interest for all telecommunications utilities in the state.

#### Fiscal Estimate

These rules will have no fiscal impact on the agency or on any other state or local units of government. No additional fiscal burden will be imposed on the state or on small businesses as a result of these proposed rules.

**NOTICE IS GIVEN** that a hearing on these proposed rules will be held beginning on **Thursday, January 18, 2001, at 9 a.m.** in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, and continuing at times to be set by the presiding Administrative Law Judge. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the case coordinator listed below.

#### Written Comments

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until Friday, January 19, 2001, at noon (Thursday, January 18, 2001, at noon, if filed by fax).

All written comments must include a reference on the filing to docket 1-AC-189. **File by one mode only.**

**If filing by mail, courier, or hand delivery:** Address as shown at the beginning of this Notice. Industry parties should submit **an original and 15 copies**. Members of the general public need **only file an original**.

**If filing by fax:** Send fax comments to (608) 266-3957. Fax filing cover sheet **MUST** state "**Official Filing**," the docket number (1-AC-189), and the number of pages (limited to 20 pages for fax comments).

#### Contact Persons

Questions from the media may be directed to Jeffrey L. Butson, Public Affairs Director at (608) 267-0912. Other questions regarding this matter should be directed to Thomas Ferris, case coordinator, at (608) 266-1124, or by email at [ferrit@psc.state.wi.us](mailto:ferrit@psc.state.wi.us). Hearing or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the case coordinator listed above.

### Notice of Hearing

#### Workforce Development (Economic Support, Chs. DWD 11-59) [CR 00-182]

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.129(7) and 227.11(2), Stats., the Department of Workforce Development proposes to hold a public hearing to repeal rules relating to stale electronic food stamp accounts.

#### Hearing Information

<b>January 19, 2001</b>	GEF 1 Building, Room 400X
Friday	201 E. Washington Avenue
10:00 a.m.	Madison

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

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

#### Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 49.129 (7) and 227.11 (2), Stats.  
Statute interpreted: Section 49.129, Stats.  
Relevant federal law: 7 CFR 274.12 (f) (7)

The proposed rule repeals the existing s. DWD 14.24, which allows the department to deactivate electronic food stamp accounts that have not been accessed for 3 months or longer. After deactivation, the benefits are made available to the food stamp group if they reapply for food stamps or contact the local economic support agency.

DWD 14.24 was adopted in September 1999 when the department implemented the electronic delivery of benefits under the federal food stamp program. The policy of deactivating accounts that have not been accessed for 3 months was intended to ensure contact with food stamp recipients who are not using their benefit cards. Under federal food stamp regulations at 7 CFR 274.12 (f) (7) (i), adoption of this policy is optional.

Based on feedback from local agencies, client advocates, and others, the department is now concerned that the process by which accounts are deactivated and then need to be reactivated has the



potential to serve as a barrier to participation, particularly among the elderly and disabled. The department has decided that this potential outweighs any value the current policy may have in ensuring contact with recipients. The new policy will repeal the department's authority to deactivate accounts that have not been accessed for 3 months. The department will initiate other efforts to communicate with recipients who are not using their cards to discuss any concerns they may have.

DWD 14.25, which provides for expunging electronic food stamp accounts that have not been accessed for one year, is mandatory under federal food stamp regulations at 7 CFR 274.12 (f) (7) (ii) and remains unchanged.

#### Rule Text

SECTION 1. DWD 14.24 is repealed.

#### Initial Regulatory Flexibility Analysis

The proposed rule will not affect "small business" as defined in s. 227.114 (1) (a), Stats.

#### Fiscal Estimate

There will be some costs associated with changing the internal and vendor automation systems but they are unknown at this time and will be absorbed within the department's budget.

#### Contact Information and Written Comments

Written comments on the proposed rules received at the following address no later than **January 24, 2001**, will be given the same consideration as testimony presented at the hearing.

Elaine Pridgen  
Office of Legal Counsel  
Dept. of Workforce Development  
P.O. Box 7946  
Madison, WI 53707-7946  
(608) 267-9403

### Notice of Hearing

#### Workforce Development Worker's Compensation, Ch. DWD 80 [CR 00-181]

The Wisconsin Department of Workforce Development proposes an order to repeal and recreate DWD 80.67 relating to worker's compensation insurer name change or reorganization.

#### Analysis Prepared by the Department of Workforce Development

**Statutory authority:** Secs. 102.15 (1) and 102.32 (2) (a), Stats.

**Statute interpreted by the rule:** Sec. 102.32 (2) (a), Stats.

#### Hearing Information

**January 19, 2001** Madison  
Tuesday GEF 1 Bldg. Room B-106  
10 a.m. 201 E. Washington Avenue

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

An accessible entrance to the building is available via a ramp from the corner of Washington Avenue and Webster Street to the Webster Street entrance. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-6704 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

The current DWD rule provides that when there is a change in the name, ownership, or control of an insurance company the insurer must notify DWD and the Wisconsin Compensation Rating Bureau (WCRB) 90 days prior to the change. It also requires insurers to notify its insured employers by issuing a new policy.

The proposed rule changes the 90-day notice to DWD and WCRB to 30 days, consistent with the 30-day notice requirement that the Office of the Commissioner of Insurance applies to all insurers. It also eliminates the notice requirements for changes of ownership or control. The proposed rule authorizes insurers to notify insured employers of the name change by an endorsement to the existing policies rather than by canceling policies and reissuing new policies with the new name.

This updates a rule that has not kept pace with modern practice. Thirty days is sufficient notice. Notifying employers by endorsements to existing policies is easier, less expensive, and is the current insurance industry procedure. The ownership and control notices have been eliminated because neither the Department nor the WCRB does anything with that information, and because the Office of the Commissioner of Insurance has similar notice requirements.

SECTION 1. DWD 80.67 is repealed and recreated to read:

DWD 80.67 **Insurer Name Change.** A worker's compensation insurer shall notify the department and the Wisconsin compensation rating bureau in writing 30 days before the effective date of a change in its name. The insurer shall comply with the name change requirements in its state of domicile and in the state of Wisconsin. On or before the effective date of an approved name change, the insurer shall notify each of its employers insured under ch. 102., Stats., that the insurer's name is changed. Insurers shall notify employers by an endorsement to the employer's existing policy that states the insurer's new name, or by any other means acceptable to the department. The insurer shall file a copy of the endorsement with the Wisconsin compensation rating bureau by personal service, facsimile or certified mail at the same time that it provides notice to the employer.

#### Initial Regulatory Flexibility Analysis

The rule affects companies authorized by the Commissioner of Insurance to sell worker's compensation insurance to Wisconsin employers. The proposed rule relaxes current reporting procedures by offering an easier method to comply with notification requirements. The type of professional skills necessary for compliance with the rules are skills related to processing insurance documents.

#### Fiscal Impact

The proposed rule has no fiscal impact.

#### Contact Information

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

Richard D. Smith, Director  
Bureau of Legal Services  
Worker's Compensation Division  
Dept. of Workforce Development  
P.O. Box 7946  
Madison, WI 53707-7946  
(608-267-6704)  
[smithri@dwd.state.wi.us](mailto:smithri@dwd.state.wi.us)

#### Written Comments

Written comments on the proposed rules received at the above address no later than January 22, 2001, will be given the same consideration as testimony presented at the hearing.

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## Rule orders filed with the Revisor of Statutes Bureau

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*The following administrative rule orders 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.*

**Natural Resources (CR 00-087)**

An order affecting ch. NR 101 relating to the wastewater fee program.  
Effective 2-1-01

**Natural Resources (CR 00-089)**

An order to repeal chs. NR 161, 162, and 163 and create ch. NR 162 relating to Clean Water Fund Program financial assistance.  
Effective 3-1-01

**Natural Resources (CR 00-090)**

An order affecting chs. NR 700, 716, 720, 722, 726, and 746, relating to sites contaminated with petroleum products discharged from petroleum storage tanks.  
Effective 2-1-01

**Natural Resources (CR 00-093)**

An order to create ch. NR 168 relating to the brownfield site assessment grant program administration.  
Effective 2-1-01

**Regulation and Licensing (CR 00-106)**

An order affecting chs. RL 121, 125, and 126, relating to the regulation of auctioneers and auction companies.  
Effective 2-1-01

**Regulation and Licensing (CR 00-128)**

An order affecting chs. RL 90, 91, and 92, relating to educational and examination requirements for massage therapists and bodyworkers.  
Effective 2-1-01

**Regulation and Licensing (CR 00-141)**

An order affecting ch. RL 7, relating to standards for approved drug testing programs.  
Effective 2-1-01

**Social Workers, Marriage and Family Therapists and  
Professional Counselors (CR 00-054)**

An order affecting ch. SFC 8, relating to continuing education programs.  
Effective 2-1-01

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## Rules published with this Register

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*The following administrative rule orders have been adopted and published in the **December 31, 2000** Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

**Commerce (CR 99-123)**

An order affecting chs. Comm 81, 82 and 84, relating to the state of Wisconsin's Uniform Plumbing Code.

Effective 1-1-01

**Commerce (CR 00-86)**

An order affecting ch. Comm 18, relating to inspection of elevators and other mechanical lifting devices.

Effective 1-1-01

**Corrections (CR 97-13)**

An order to repeal and recreate ch. DOC 303, relating to inmate conduct, inmate discipline, and procedures for the imposition of discipline.

Effective 1-1-01

**Employee Trust Funds (CR 00-116)**

An order affecting ch. ETF 10, relating to election procedures for the Employee Trust Funds Board.

Effective 1-1-01

**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 00-95)**

An order repealing and recreating ch. HFS 120, relating to the collection, analysis and dissemination of health care information.

Effective 1-1-01

**Health and Family Services (CR 00-114)**

An order affecting ch. HFS 119, relating to operation of the health insurance risk-sharing plan (HIRSP).

Effective 1-1-01

**Natural Resources (CR 00-2)**

An order affecting ss. NR 108.02 and 108.04 and chs. NR 114, 809, and 811, relating to plans and specifications submittals for reviewable projects, operator certification, safe drinking water, and operation and design of community water systems.

Effective 1-1-01

**Natural Resources (CR 00-76)**

An order to repeal and recreate ch. NR 190, relating to lake planning grants.

Effective 1-1-01

**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

**Natural Resources (CR 00-103)**

An order affecting ch. NR 10, relating to the 2000 migratory game bird season.

Effective 1-1-01

**Nursing (CR 00-51)**

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

Effective 1-1-01

**Public Instruction (CR 98-138)**

An order affecting ch. PI 11, relating to eligibility criteria for children with disabilities.

Effective 7-1-01

**Revenue (CR 00-123)**

An order affecting ch. Tax 9, relating to the master settlement agreement between the state of Wisconsin and tobacco product manufacturers.

Effective 1-1-01

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## Sections affected by rule revisions and corrections

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The following administrative rule revisions and corrections have taken place in November 2000, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### Revisions

#### Commerce:

##### (Elevators, Ch. Comm 18)

###### Ch. Comm 18

- S. Comm 18.03 (entire section)
- S. Comm 18.08 (2) (a), (b) and (c)
- S. Comm 18.11 (entire section)
- S. Comm 18.12 (entire section)
- S. Comm 18.48 (2) (a) and (d) and (4) (a)

##### (Plumbing, Chs. Comm 81-87)

###### Ch. Comm 81

- S. Comm 81.01 (7e), (17e), (18), (20), (60e), (67e), (67m), (79), (80), (82m), (90e), (116), (163e), (170e), (189), (199e), (203), (204), (209e), (209m), (252e), (288e) and (288m)
- S. Comm 81.20 (2), (3), Table 81.20-2, Tables 81.20-3e to 81.20-8, Table 81.20-10m, Table 81.20-11, and Table 81.20-14

###### Ch. Comm 82

- S. Comm 82.20 (4) (e), (11), (12) and Table 82.20-1
- S. Comm 82.21 (2) (a), (3) and Table 82.21-1
- S. Comm 82.33 (9) (i) and Table 82.33-3
- S. Comm 82.34 (4) (b)
- S. Comm 82.36 (3) (b), (4) (a), (5) (a), (6) (a), and Table 82.36-4a
- S. Comm 82.40 (3) (d) and (8) (g) and (i)
- S. Comm 82.41 (3) (a), (4) (b), (k) and (n), (5) (a), and (L), Table 82.41-1, and Table 82.41-2
- S. Comm 82.50 (2), (10) (g), (h) and (i), and (10) (g) Table 26
- S. Comm 82.60 (2) (d)

###### Ch. Comm 84

- S. Comm 84.10 (4) and (5)
- S. Comm 84.20 (2), (4) (b), (5) (d) to (s), (6) (a), (b), and (r)
- S. Comm 84.30 (5) (c) and Tables 84.30-3, 84.30-5, 84.30-6 and 84.30-8 to 84.30-11
- S. Comm 84.40 (2) (c), (3) (a), (4) (a), (c) and (d), (7), (8) (a) and (d), (9) (b), (10) (a) and (14) (c)

#### Corrections:

##### Ch. DOC 303

- SS. DOC 303.01 to 303.74 (entire sections)
- S. DOC 303.78 (entire section)
- SS. DOC 303.82 to 303.87 (entire sections)

#### Employee Trust Funds:

##### Ch. ETF 10

- S. ETF 10.10 (1), (1m) (b) and (7) (intro.)

#### Financial Institutions--Securities:

##### Ch. DFI-Sec 2

- S. DFI-Sec 2.02 (1) (intro.), (4), (9) (c) and (m)

##### Ch. DFI-Sec 3

- S. DFI-Sec 3.03 (3)

##### Ch. DFI-Sec 4

- S. DFI-Sec 4.03 (1) (j)
- S. DFI-Sec 4.06 (2) (i)

##### Ch. DFI-Sec 5

- S. DFI-Sec 5.03 (1) (h) and (o), (3) (c) and (5)
- S. DFI-Sec 5.05 (13) and (14)

##### Ch. DFI-Sec 7

- S. DFI-Sec 7.02 (1) (b)

#### Health and Family Services:

##### (Health, Chs. HFS 110--)

###### Ch. HFS 119

- S. HFS 119.07 (6) (b), (c) and (d) and tables
- S. HFS 119.15 (2) and (3)

###### Ch. HFS 120 (entire chapter)

#### Natural Resources:

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

###### Ch. NR 10

- S. NR 10.01 (1) (b), (c), (g), (u) and (v)
- S. NR 10.12 (1) (h) and (5) (d)
- S. NR 10.125 (3) (a)

###### Ch. NR 25

- S. NR 25.02 (25)
- S. NR 25.05 (1) (d)

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

###### Ch. NR 108

- S. NR 108.02 (13) (a) and (b)
- S. NR 108.04 (1), (2) (b) and (f)

###### Ch. NR 114

- S. NR 114.01 (entire section)
- S. NR 114.03 (3m), (9m), (11m), (14m) and (16)
- S. NR 114.05 (1), (2) and (9)
- S. NR 114.07 (5)
- S. NR 114.10 (1) to (7)
- S. NR 114.11 (4)
- S. NR 114.12 (2) (d) and (e)
- S. NR 114.14 (1) (h)
- SS. NR 114.26 to 114.37 (entire sections)

###### Ch. NR 190 (entire chapter)

##### (Environmental Protection--Water Supply, Chs. NR 800--)

###### Ch. NR 809

- S. NR 809.04 (7) to (80)
- S. NR 809.12 (3) (a), (4) (a) and (b), (5) (a) and (13)
- S. NR 809.21 (13)
- S. NR 809.22 (entire section)
- S. NR 809.23 (1)

S. NR 809.26 (1) (e), (i) and (j) and (3) (intro.), (a) and (b)  
 S. NR 809.31 (1) (d), (5) (c) and (d) and (6) (a)  
 S. NR 809.40 (entire section)  
 S. NR 809.41 (entire section)  
 SS. NR 809.561 to 809.569 (entire sections)  
 S. NR 809.725 Tables E, F, G and I  
 S. NR 809.75 (1) (intro.) and (4)  
 S. NR 809.755 (2) (f) and (3) (a)  
 S. NR 809.76 (intro.), (1), (2) and (5)  
 S. NR 809.765 (entire section)  
 S. NR 809.77 (intro.)  
 S. NR 809.775 (entire section)  
 S. NR 809.80 (4) to (11)  
 S. NR 809.81 (1) (a) and (5) (Lt)  
 SS. NR 809.83 to 809.837 (entire sections)  
 S. NR 809.90 (entire section)  
**Ch. NR 811**  
 S. NR 811.01 (entire section)

S. NR 811.05 (2) (a)  
 S. NR 811.08 (5)  
 S. NR 811.10 (2) (intro.) and (a), (3) and (4)  
 S. NR 811.11 (8)  
 S. NR 811.13 (3m) to (7)  
 S. NR 811.16 (4) (d) and (10) to (21)  
 S. NR 811.29 (1) (h) and (i)

**Nursing, Board of:****Ch. N 5**

S. N 5.08 (2) (b)

**Public Instruction:****Ch. PI 11**

S. PI 11.35 (1m), (2) and (3)  
 S. PI 11.36 (entire section)  
 S. PI 11.37 (entire section)

**Revenue:****Ch. Tax 9**

S. Tax 9.69 (entire section)

**Editorial corrections**

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

**Commerce:****(Plumbing, Chs. Comm 81–87)****Ch. Comm 81**

S. Comm 81.20 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Corrections:****Ch. DOC 303**

S. DOC 303.76 (1) (e) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Natural Resources:****(Environmental Protection—General, Chs. NR 100—)****Ch. NR 107**

S. NR 107.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 107.02 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 107.05 (3) (g) and (h) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 107.11 (4) (d) and (f) had corrections made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 108**

S. NR 108.02 (1), (11) and (13) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 108.03 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 108.04 (2) (a) and (3) (b) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 108.05 (2) and (4) (c) had corrections made under s. 13.93 (2m) (b) 7., Stats.

**Ch. NR 114**

S. NR 114.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 114.03 (16) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 114.14 (1) (h) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 114.15 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 114.23 (4) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 114.25 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**(Environmental Protection—Water Supply, Chs. NR 800—)****Ch. NR 811**

S. NR 811.41 (2) (c) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
 S. NR 811.58 (12) (d) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Public Service Commission:****Ch. PSC 2**

S. PSC 2.32 (2) and (3) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.35 (1) (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.391 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.40 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.60 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.611 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.62 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.64 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.65 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.66 (1) and (2) had corrections made under s. 13.93 (2m) (b) 7., Stats.  
 S. PSC 2.81 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Workforce Development:****(Civil Rights, Chs. DWD 218–225)****Ch. DWD 220**

S. DWD 220.02 (intro.), (1), (2), (12) and (14) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. DWD 220.03 (1) and (2) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. DWD 220.06 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. DWD 220.10 (2) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. DWD 220.11 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. DWD 220.12 (1) had corrections made under s.

13.93 (2m) (b) 7., Stats.

S. DWD 220.23 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. DWD 220.24 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. DWD 221**

S. DWD 221.02 (intro.), (1) and (9) had corrections made under s. 13.93 (2m) (b) 7., Stats.

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## Final regulatory flexibility analyses

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### Commerce (CR 99-123)

Chs. Comm 81, 82 and 84 – Wisconsin Uniform Plumbing Code.

#### Summary of Final Regulatory Flexibility Analysis:

Although there may be minimal additional costs for cross connection control device testers, who would be now required to file test reports with the local purveyor of water in addition to the current requirement to file such reports with the department; these costs may be offset by cost savings for their ability to tag and track these products more clearly and receive updated information on each device as provided by the state.

The additional paperwork to be routed/copied to the water purveyor may result in a positive impact on public health.

#### Summary of Comments:

No comments were reported.

### Commerce (CR 00-086)

Ch. Comm 18 – Inspection of elevators and mechanical lifting devices.

#### Summary of Final Regulatory Flexibility Analysis:

The proposed rules will clarify that owners may contract for inspection of their equipment covered by chapter Comm 18 with individuals holding a valid credential as a certified elevator inspector under chapter Comm 18 with individuals holding a valid credential as a certified elevator inspector under chapter Comm 5. This code change proposal may also encourage people certified as an elevator inspector to form a small independent inspection business. By having more inspection services available, the timely inspection of elevators and mechanical lifting devices may be improved, which helps in the safety of the general public and employees using this equipment.

#### Summary of Comments from Legislative Committees:

No comments were reported.

### Corrections (CR 97-013)

Ch. DOC 303 – Relating to discipline.

#### Summary of Final Regulatory Flexibility Analysis:

Proposed rules do not effect small businesses.

#### Summary of Comments:

No comments were reported.

### Employee Trust Funds, Employee Trust Funds Board and Wisconsin Retirement Board (CR 00-116)

Section ETF 10.10, – Relating to election procedures for the Employee Trust Funds Board.

#### Summary of Final Regulatory Flexibility Analysis:

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

#### Summary of Comments:

No comments were reported.

### Financial Institutions – Securities (CR 00-117)

Chs. DFI-Sec 2, 3, 4, 5, and 7 – Relating to securities brokers, dealers and agents.

#### Summary of Final Regulatory Flexibility Analysis:

No final regulatory flexibility analysis is included on the basis that the Division of Securities has determined, after complying with with s. 227.016 (1) to (5), Wis. Stats., that the proposed rules will not have a significant economic impact on a substantial number of small businesses.

#### Summary of Comments:

No comments were reported.

### Health and Family Services (CR 00-095)

Chapter HFS 120 – Relating to health care information.

#### Summary of Final Regulatory Flexibility Analysis:

The proposed rules apply to hospitals, freestanding ambulatory surgery centers, physicians and other health care professionals in their offices and clinics, health plans, organizations contracting for health care billing or record management. Six hospitals meet the s. 227.114 (1) Stats., definition of a “small business.” In addition, the Department estimates that approximately 2,400 to 2,800 physician practices that would be required to submit data under these proposed rules have fewer than 25 employees. The Department does not have data from ambulatory surgery centers that allow an estimate of which centers may be characterized as “small businesses.” Many centers are located at a medical clinic or hospital.

To accommodate entities that can meet the s. 227.114 (1), Stats., definition of a “small business,” the rules propose applying a less stringent standard for a physician who does not currently submit electronic claims. In addition, the rule proposes that the Department may grant an exception to the data submission requirements for a physician who submits an affidavit of financial hardship and supporting evidence demonstrating financial inability to comply with the requirements of the rules.

#### Summary of Comments:

On September 21, 2000, the Department received a request from Rep. Underheim, chair of the Assembly Committee on Health, and Sen. Rod Moen, chair of the Senate Committee on Health, Utilities, Veterans and Military Affairs to meet with them for the purpose of reviewing the rule and discussing modifications to it. Several proposed modifications were discussed at the meeting. As a result of the meeting, the Department modified several provisions in the rulemaking order. The changes include modifications in language on risk adjustment, data submission/error correction timetable, data rerelease, patient-identifiable data and the role of the Independent Review Board.

### Health and Family Services (CR 00-114)

Chapter HFS 119 – Relating to operation of the Health Insurance Risk-Sharing Plan (HIRSP).

**Summary of Final Regulatory Flexibility Analysis:**

The rule changes will not affect small businesses as “small business” is defined in s. 227.144 (1) (a), Stats. Although the program statutes and rules provide for assessment of insurers to help finance the Health Insurance Risk-Sharing Plan, no assessed insurer is a small business as defined in s. 227.114 (1) (a), Stats. Moreover, s. 149.143, Stats., prescribes how the amount of an insurer’s assessment to help finance HIRSP must be determined.

**Summary of Comments:**

No comments were received.

**Natural Resources (CR 00–002)**

Chapters NR 108, 114, 809, and 811 – Safe drinking water.

**Summary of Final Regulatory Flexibility Analysis:**

Off all the new proposals, only the Operator Certification and the Consumer Confidence Reporting regulations will have an immediate effect on some small businesses, such as mobile home parks, condo developments and apartment complexes. Overall costs for small businesses that must implement both these rules should be in the vicinity of \$650/year. In general, stringency of the rule revisions cannot be reduced further without violating federal law.

**Summary of Comments:**

No comments were reported.

**Natural Resources (CR 00–076)**

Chapter NR 190 – Lake management planning grants.

**Summary of Final Regulatory Flexibility Analysis:**

The proposed rule does not affect small business; therefore, a final regulatory flexibility analysis is not required.

**Summary of Comments:**

No comments were reported.

**Natural Resources (CR 00–102)**

Chapter NR 25 – Commercial fishing for chubs on Lake Michigan.

**Summary of Final Regulatory Flexibility Analysis:**

The proposed rule would directly affect commercial chub fishers by permanently expanding winter chub fishing opportunities. No new reporting requirements are involved and no additional skills are required.

**Summary of Comments:**

No comments were reported.

**Natural Resources (00–103)**

Chapter NR 10 – 2000 Migratory game bird season.

**Summary of Final Regulatory Flexibility Analysis:**

The proposed rules regulate individual hunters; therefore, a final regulatory flexibility analysis is not required.

**Summary of Comments:**

No comments were reported.

**Nursing (CR 00–051)**

Chapter N 5– Relating to renewal after 5 years.

**Summary of Final Regulatory Flexibility Analysis:**

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

**Summary of Comments:**

No comments were reported.

**Public Instruction (CR 98–138)**

Chapter PI 11 – Relating to children with disabilities.

**Summary of Final Regulatory Flexibility Analysis:**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Summary of Comments:**

No comments were reported.

**Revenue (CR 00–123)**

Chapter Tax 9 – Relating to tobacco product litigation settlement.

**Summary of Final Regulatory Flexibility Analysis:**

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

**Summary of Comments:**

No comments were reported.



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## Executive Orders

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**The following is a recent Executive Order issued by the Governor.**

**Executive Order 412.** Relating to a proclamation that the flag of the United States and the flag of the state of Wisconsin be flown at half-staff as a mark of respect for those brave

Americans Who Lost Their Lives as a Result of the Attack on Pearl Harbor.

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