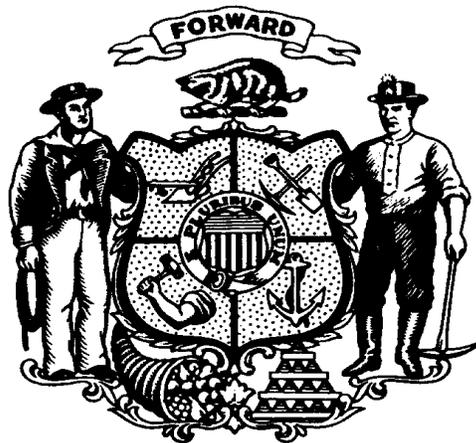


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Emergency rules now in effect

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

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

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

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

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.

Agriculture, Trade & Consumer Protection – (3)

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

Exemption from finding of emergency

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

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

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

This emergency rule modifies current residential rental practices rules related to security deposit withholding. Under current rules, a landlord may not withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible. A "note" to s. ATCP 134.06 (3) (c) also states that a landlord may not withhold from a tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant neglect.

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

2. Rules adopted creating ch. ATCP 16, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state.

Finding of Emergency

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

Bovine tuberculosis causes weight loss and general debilitation, and can be fatal.

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

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

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

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

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

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

Publication Date:	August 11, 2000
Effective Date:	August 11, 2000
Expiration Date:	January 8, 2001
Hearing Dates:	September 19, 2000
Extension Through:	March 8, 2001

3. Rules adopted creating s. ATCP 10.21 (10) (c) and (15) relating to reimbursement of Johne's disease testing costs.

Finding of Emergency

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

1. 1999 Wisconsin Act 9 was published on October 28, 1999. It appropriates \$100,000 for financial assistance to owners of livestock herds for conducting testing for Johne's disease (paratuberculosis) for FY 2000-01. It requires the department to provide the financial assistance.

2. 1999 Wisconsin Act 9 requires the department to promulgate rules for implementing the financial assistance program.

3. Permanent rules establishing the program will not take effect before June 1, 2001. This emergency rule establishes an interim procedure which will allow owners of livestock herds to apply for grants under this program. Without this rule, no person would be able to apply for a grant in FY 2000-01 until at least June 1, 2001, and the department would have insufficient time to review and process the grant requests before the end of the fiscal year.

Publication Date:	January 1, 2001
Effective Date:	January 1, 2001
Expiration Date:	May 31, 2001

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.

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

Financial Institutions – Division of Securities

Rules adopted revising **ch. DFI–Sec 5**, relating to adopting for use in Wisconsin the Investment Adviser Registration Depository.

Finding of Emergency

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

The U.S. Securities and Exchange Commission ("SEC"), in conjunction with the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has developed an electronic filing system for licensure of investment advisers to replace the paper filing system which heretofore has been used in all states. The system, the Investment Adviser Registration Depository (IARD), will permit investment advisers to satisfy their initial and renewal filing obligations to obtain licensure under the federal and state securities laws with a single electronic filing made over the Internet, instead of having to make separate paper filings with the SEC and with each state in which the investment adviser seeks to do business.

After several years in development and a pilot phase in the fall of 2000 that the Division participated in, the commencement date for states and the SEC to accept filings under the IARD has been set for January 1, 2001. Consequently, NASAA member states, including Wisconsin, need to take the necessary rule-making or other regulatory action by January 1, 2001 to enable investment advisers to make their licensing filings electronically. The Emergency Rules make the necessary changes to the Division's investment adviser license filing provisions that are immediately needed to adopt the IARD for use in Wisconsin by investment advisers.

The IARD will be operated by NASD Regulation, Inc., a self-regulatory organization that for 20 years has operated an equivalent electronic filing system (the Central Registration Depository or "CRD") for federal and state licensure of securities broker-dealers and their sales agents. As with the CRD, the IARD will provide the advantages of: (1) elimination of paper filings; (2) a single filing will satisfy federal and state filing requirements; and (3) automatic payment of state licensing fees to the states where the investment adviser does business. Additionally and importantly, the IARD will provide the investing public with immediate, real-time

access to information about investment advisers and their representatives.

Congress in its passage of the National Securities Markets Improvement Act in 1996 provided for the development of this electronic filing system for investment advisers, and the SEC has adopted rules mandating such. The SEC and the states have been working together to develop both the necessary changes to the filing form (Form ADV), and to the filing procedures to achieve uniformity in the filing processes and procedures. Additionally, to achieve uniformity among the states in the adoption of rules implementing the IARD, a NASAA Working Group has developed Model Rules (with commentary) to coordinate with the SEC requirements. The Wisconsin Emergency Rules adopted herein follow the NASAA Model Rules.

The Emergency Rules provide for: (1) a revised Licensing Procedure section in s. DFI–Sec 5.01 (1) and (2); (2) temporary and permanent hardship exemption provisions in s. DFI–Sec 5.01 (11); (3) a revised brochure rule in s. DFI–Sec 5.05(8); (4) revised filing periods and license expiration dates for licenses of investment advisers and investment adviser representatives, as well as for license withdrawals in ss. DFI–Sec 5.07 and 5.08; (5) a revised procedure for filings by federal covered advisers in s. DFI–Sec 5.11; and (6) a specific section in s. DFI–Sec 5.12 dealing with transition filings. Separate from these Emergency Rules, the Division will be issuing General Orders to further implement timing for various categories of filers, and which will provide partial fee rebates for 2001 for the smaller, state-only licensed advisers to help defray the initial one-time fee (of \$150) they must pay for their initial participation in the IARD.

Publication Date:	December 29, 2000
Effective Date:	January 1, 2001
Expiration Date:	May 31, 2001

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

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

Finding of Emergency

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

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

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

unanticipated and undeserved expenses. Therefore, the Department is promulgating this emergency rule until the Department can promulgate a similar permanent rule.

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

Publication Date:	September 5, 2000
Effective Date:	September 5, 2000
Expiration Date:	February 2, 2001
Hearing Dates:	December 13, 2000

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.

Finding of Emergency

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

Summary

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

Lead Abatement Activities

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

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

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

avoided if he had been trained to use lead-safe techniques and personal protection equipment.

Existing Wisconsin Law

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

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

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

New Federal Regulations

The U.S. Department of Housing and Urban Development (HUD) revised 24 CFR Part 35 effective September 15, 2000. The regulations require most properties owned by the federal government or receiving federal assistance to conduct specified activities to make the property lead-safe. Specifically, these regulations affect property owners receiving federal rehabilitation funds and landlords whose tenants receive federal rental assistance. To meet HUD's lead-safe standards, most affected properties must have a risk assessment completed and must use certified persons to reduce or eliminate the lead-based paint hazards identified in the risk assessment report. Property owners must also use trained people to perform maintenance or renovation activities and must have clearance conducted after completing activities that disturb lead-based paint. Clearance is a visual inspection and dust-lead sampling to verify that lead-based paint hazards are not left behind. The HUD regulations also establish a new, research-based standard for clearance that is more protective than HUD's previously recommended standard.

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

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

any activity that disturbs paint in a pre-1978 dwelling, except when work on owner-occupied property was done by the property owner.

New Wisconsin Law

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

Result of Changing Federal and State Requirements

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

In addition to the demand for certified persons generated by the HUD regulations, Act 113 is generating its own demand for certified persons. Many property owners want to begin reducing lead-based paint hazards on their properties in order to meet the standards for lead-free or lead-safe property when the standards take effect. Although property owners and their employees may be certified now under Chapter HFS 163, Wis. Adm. Code, some property owners feel 5 days of training is too extensive for the work they will be performing. Act 113 requires the Department to establish the requirements for a training course of up to 16 hours that property owners, their agents and employees may complete in order to receive certification. This emergency rule meets the requirement of Act 113 by providing for certification as a lead (Pb) low-risk supervisor to independently perform limited lead hazard reduction activities after only 2 days of training.

Department Response

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

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

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

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

Publication Date:	December 1, 2000
Effective Date:	December 1, 2000
Expiration Date:	April 30, 2001
Hearing Dates:	January 12, 16, 17, 18 and 19, 2001

Natural Resources – (3) (Fish, Game, etc., Chs. NR 1–)

1. 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

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

Finding of Emergency

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

Publication Date: November 10, 2000
Effective Date: November 10, 2000
Expiration Date: April 9, 2001
Hearing Dates: January 17, 2001

3. 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.

Finding 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

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

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

Finding of Emergency

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

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

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

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

Exemption from finding of emergency (See section 9110 (3yu) 1999 Wis. Act 9)

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

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

Chapter NR 746 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.

2. Determining when sites may close.
3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum-contaminated site.
4. Tracking the achievement of remediation progress and success.
5. Reporting of program activities.

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

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

Public Service Commission (2)

1. 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

2. Rules adopted amending s. PSC 116.06 (1) and (2), relating to the triggering mechanism and the period of time in which fuel costs are estimated for purposes of seeking an emergency or extraordinary rate increase under s. PSC 116.06.

Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend s. PSC 116.06 (1) and (2), which would allow the Commission to grant a rate increase to an applicable Class A electric public utility based on estimated fuel cost for the year in which it is reasonably anticipated that the rate increase would go into effect. In granting the rate change the Commission must find, after a hearing confined solely to fuel costs, that the utility is eligible to seek an emergency or extraordinary rate increase under the current rule, an emergency or extraordinary increase in the cost of fuel exists, and the fuel cost increase will affect the utility's average yearly fuel costs for the year in which it is reasonably anticipated that the rate increase would go into effect so as to fall outside the established annual range for that year. This change would assist in implementing the rule at a time of volatile fuel costs.

Publication Date:	December 28, 2000
Effective Date:	December 28, 2000
Expiration Date:	May 27, 2001
Hearing Dates:	January 23, 2001

Regulation and Licensing

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

Exemption from finding of emergency

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

Analysis prepared by the Department of Regulation and Licensing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tobacco Control Board

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

Finding of Emergency

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

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

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

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

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

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

Publication Date:	November 7, 2000
Effective Date:	November 7, 2000
Expiration Date:	April 6, 2001
Hearing Dates:	January 10, 2001

Statements of scope of proposed rules

Administration

Subject

Establishing fees for certain high voltage transmission lines.

Description of Policy Issues

Objective of the rule. The Department of Administration proposes to create rules to establish fees to be paid by persons who are issued a Certificate of Public Convenience and Necessity by the Public Service Commission for high voltage transmission lines to the Department of Administration.

Under 1999 Wisconsin Act 9, the Legislature requires persons receiving a Certificate of Public Convenience and Necessity from the Public Service Commission for a high voltage transmission line designed for operation at a nominal voltage of 345 kilowatts or more, to pay to the Department of Administration an annual impact fee and a one time environmental impact fee. The Department of Administration is required to develop rules to establish those fees, then must distribute them to the cities, towns, villages or counties, as identified by the Public Service Commission, through which the high voltage transmission lines are routed. The distribution is allocated by the Public Service Commission according to the amount of investment associated with the high voltage transmission line to each such city, town, village and county. The rule will also establish payment schedules and procedures as well as the means for distributing the fees collected to the appropriate county, town, village or city.

Statutory Authority

Sections 16.969 and 196.491 (3g), Stats.

Staff Time Required

40 to 60 hours

Hearings and Appeals

Subject

Creating rules for the administrative revocation of Truth-in-Sentencing Extended Supervision.

Description of Policy Issues

Objective of the rule. The Division intends to modify the existing rules found in ch. HA 2 governing the revocation of Probation, Parole and Juvenile Aftercare to include the revocation of Truth-in-Sentencing Extended Supervision.

These changes are required as a result of the enactment of the Truth-in-Sentencing provisions of 1997 Act 283. That Act abolished Parole for crimes committed on and after December 31, 1999 and replaced it with a Truth-in-Sentencing bifurcated sentence. The bifurcated sentence provisions require a judge to impose a sentence with two parts. The first part is a period of prison confinement. The second, called Extended Supervision, is a period of community supervision administered by the Department of Corrections. Like Parole, the Extended Supervision may be revoked if the offender violates the rules of his or her community supervision and the offender may be returned to prison. Unless waived by the offender, the offender is entitled to an administrative due process revocation hearing before the Division of Hearings and Appeals. The proposed rule changes will modify the existing provisions of ch.

HA 2 to include the revocation of Truth-in-Sentencing Extended Supervision.

Statutory Authority

Sections 302.113 and 302.114, Stats. as created by 1997 Act 283.

Staff Time Required

20 hours

Natural Resources

Subject

Revision of ch. NR 8, standards and procedures for the automated license issuance system regarding authorization to issue approvals and purchasing approvals for another person.

Description of Policy Issues

Objective of the rule. Currently approvals can be purchased for another person if an application form has been completed and signed by the applicant. This change would enable a parent or guardian of a child under the age of 18 to purchase an approval and sign on behalf of that child. It also allows the purchase of stamp approvals for another person if the customer number is provided. This code authorizes license agents and DNR offices to issue a variety of approvals. Requested change would further clarify and expand the types of approvals that can be issued by license agents and gives DNR the ability to specifically authorize agents to issue additional approvals. Affected groups include license agents and the public who purchase F&W approvals.

Current policy does not allow a parent to purchase a license for a child, contrary to most business transactions in our society where the parent has authority over the child's transactions. This policy also discourages parents from purchasing a hunting license for a child for an activity they may not participate in themselves.

By clarifying and expanding the types of approvals available through license agents, customers would find it more convenient to obtain approvals which previously had limited availability.

Statutory Authority

Sections 29.024 (5) and 29.024 (6), Stats.

Staff Time Required

36 hours

Natural Resources

Subject

Authorization to form a task force to develop recommendations for statutory and administrative rule revisions of recordkeeping requirements and procedures for licensed sport trollers.

Description of Policy Issues

Objective of the rule. Establish a task force of sport trollers, conservation wardens and fisheries staff representing Lakes Michigan and Superior to recommend a change in statute and administrative code pertaining to record keeping for sport trollers.

Conservation wardens have conducted multiple investigations into the sport trolling industry. These investigations have revealed a continuing problems with individual captains failing to file true and accurate reports of their daily fishing activity as required by law.

Statutory Authority

Sections 29.514 (2) and 227.11 (2) (a), Stats.

Staff Time Required

74 hours

Natural Resources

Subject

Development of an environmental management system (EMS) applicable to the development of waste policy.

Description of Policy Issues

Objective of the rule. Primary issues: Evaluate environmental impacts of policies related to waste generation and waste management by applying the ISO 14000 Environmental Management System (EMS) model. Initiate an in depth dialogue with stakeholders to develop a common vision and goals for the future of waste management in Wisconsin. Groups likely to be impacted or interested: manufacturers, the waste industry, local governments, citizen environmental protection groups, the general public, the energy utility industry.

Waste generation and management are significantly influenced by policies beyond department authority. The department cannot effectively regulate wastes based primarily on end of pipe options. Experience has also shown that end of pipe measures are not the most cost effective means for waste generators to ensure environmental protections. Broad based policy changes must be investigated with stakeholders to determine if a new strategy can be agreed upon to at first minimize, and ultimately to eliminate waste, along with the concept of it.

Statutory Authority

Sections 289.06 and 289.07, Stats.

Staff Time Required

400 hours

Workforce Development

Subject

Annual adjustment of thresholds for application of prevailing wage rates.

Description of Policy Issues

Objective of the rule. When a state agency or local governmental unit constructs a public works project, it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Sections 66.0903 (5) and 103.49, Stats., set initial estimated project cost thresholds for application of prevailing wage rates and requires that DWD adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a construction trade publication.

The current threshold for application of the prevailing wage for a single-trade public works project is \$34,000 and the current threshold for a multi-trade public works project is \$168,000. The proposed thresholds are \$35,000 for a single-trade public works project and \$172,000 for a multi-trade public works project.

Statutory Authority

Sections 66.0903 (5) and 103.49 (3g), Stats.

Staff Time Required

Less than 20 hours.

Submittal of rules to legislative council clearinghouse

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

Insurance Commissioner

Rule Submittal Date

On December 28, 2000, the Office of the Commissioner of Insurance has submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ss. Ins 3.455 and 3.456 and appendices, relating to long term care insurance.

Agency Procedure for Promulgation

The date for public hearing is January 29, 2001.

Contact Information

If you have questions, please contact:

Stephen Mueller
OCI Legal Unit
Telephone: (608) 267-2833
Email: Stephen.Mueller@oci.state.wi.us
Mailing Address:
121 E. Wilson Street
Madison, WI 53702

Insurance Commissioner

Rule Submittal Date

On December 29, 2000, the Office of the Commissioner of Insurance has submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Ins 25, relating to privacy of personal information.

Agency Procedure for Promulgation

The date for public hearing is January 31, 2001.

Contact Information

If you have questions, please contact:

Fred Nepple
OCI Legal Unit
Telephone: (608) 266-7726
Email: Fred.Nepple@oci.state.wi.us
Mailing Address:
121 E. Wilson Street
Madison, WI 53702

Public Instruction

Rule Submittal Date

On December 26, 2000, the Department of Public Instruction submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. PI 18, relating to social studies high school graduation requirements.

Agency Procedure for Promulgation

Public hearings will be scheduled.

Contact Information

If you have questions, please contact:

Les Wakefield, Consultant
Democracy Education
Telephone: (608) 266-3560
Email: les.wakefield@legis.state.wi.us
Mailing Address:
100 N. Hamilton, Room 404
Madison, WI 53701

Public Instruction

Rule Submittal Date

On December 26, 2000, the Department of Public Instruction submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. PI 26, relating to the education for employment program.

Agency Procedure for Promulgation

Public hearings will be scheduled.

Contact Information

If you have questions, please contact:

Bryan Albrecht, Director
Lifework Education
Telephone: (608) 267-9251
Email: bryan.albrecht@dpi.state.wi.us
Mailing Address:
125 S. Webster St., 4th Floor
Madison, WI 53703

Public Service Commission

Rule Submittal Date

December 21, 2000,

Analysis

Revision of ch. PSC 2, relating to practice and procedure before the Commission.

Agency Procedure for Promulgation

The date for public hearing is January 26, 2001.

Contact Information

If you have questions regarding the proposed rules, you may contact:

John Lorence at (608) 266-8128

Rule-making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 00-149]

(reprinted from 12/31/00 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed 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 (reprinted from 12/31/00 Wis. Adm. Register)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed 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.

Ethanol producers may only apply for a grant payment if they have been in business for sixty months or less. The entire program is scheduled to sunset on July 1, 2006.

There is little chance that any ethanol producer who can produce the minimum ten million gallons per year would also meet the state's definition of a "small business" contained in s. 227.114 (1) (a). Stats. In that statutory section, "small business" means a business entity, including its affiliates, which is independently owned and operated and is not dominant in its field, and which employs fewer than twenty-five full time employees or which has gross annual sales of less than \$2,500,000. Consequently, the department expects this program to have minimal impact on small business in the ethanol production industry.

The grant program should have a major impact on the prices for agricultural crops used in the production of ethanol. By providing another market for these agricultural crops, the prices for those crops should increase. The increase in prices will benefit Wisconsin farmers. Since the grant program is designed to promote the purchase of crops grown in Wisconsin, there will be a benefit to Wisconsin small businesses derived from this program and rule.

Notice of Hearing

Agriculture, Trade and Consumer Protection [CR 00-183] (reprinted from 12/31/00 Wis. Adm. Register)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a proposed rule related to Public Warehouse Keepers; License Fees. This rule amends ch. ATCP 97. The hearing will be held:

Thursday, January 18, 2001, 10:00 a.m.

WI Department of Agriculture, Trade and Consumer Protection
Conference Room 472
2811 Agriculture Drive
Madison, WI 53718-6777

The public is invited to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until January 28, 2001 for additional written comments.

A copy of the proposed rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade & Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, or by calling (608) 224-4936. Copies will also be available at the public hearing.

An interpreter for the hearing impaired is available upon request for the hearing. Please make a reservation for a hearing interpreter by January 11, 2001, by contacting Linda Meinholz at (608) 224-4933 or Don Furniss at (608) 224-4930 or by contacting the TDD at the Department 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. 93.02 (3) (a) and 99.08.

Statutes Interpreted: Ch. 99.

This rule increases annual license fees for public storage warehouses licensed under Wis. Stat. ch. 99. These are warehouses that store property (food, wearing apparel, cars, boats, furniture, household goods, etc.) for others for hire.

The department of agriculture, trade and consumer protection (DATCP) licenses public storage warehouses to protect depositors. The following warehouses are exempt from licensing under Wis. Stat. ch. 99:

- A warehouse used only for the warehouse keeper's property
- A grain warehouse licensed under Wis. Stat. ch. 127.
- A frozen food locker plant.
- A cooperative warehouse used to store farm products and merchandise only for cooperative members.
- A municipal warehouse.
- A dairy plant warehouse used to store the dairy plant's own products.
- A vegetable processor's warehouse used to store the processor's own products.
- A warehouse operated by a common carrier, if the common carrier transfers and stores property for periods of not more than 30 days.
- A warehouse licensed under the United States warehouse act.
- A "mini-warehouse" or other storage space rented to a person who has free access to the storage space and is responsible for the property stored there.

DATCP has adopted public storage rules under Wis. Admin. Code ch. ATCP 97. Among other things, the current rules establish annual license fees for public storage warehouses. Warehouse keepers pay annual license fees based on the warehouse size.

DATCP's regulatory program is funded entirely by license fees. Current fees are not adequate to cover program costs. This rule increases license fees as follows:

Warehouse	Size (Sq. Ft.)	Current Fee	Proposed Fee
Class 1	1-9,999	\$75	\$90
Class 2	10,000-49,000	\$150	\$185
Class 3	50,000-99,999	\$240	\$300
Class 4	100,000-149,999	\$320	\$400
Class 5	150,000-Over	\$420	\$500

Fiscal Estimate

This rule amends Wis. Admin Code ATCP 97.04 (4) (a) to increase the annual license fees paid by public warehouse keepers. Increases ranging from 20% to 25%, depending on license class, will provide additional revenues of approximately \$16,200 annually beginning with the license year July 1, 2001. The department estimates one-time costs of approximately \$500 for printing, mailing and holding hearings on the proposed rule changes.

Initial Regulatory Flexibility Analysis

The Department of Agriculture, Trade and Consumer Protection regulates public warehouse keepers to protect depositors. The regulatory program is funded entirely by license fees. Current fees are not adequate to sustain the program. License fees were last increased in 1994.

This rule increases annual license fees for public warehouse keepers, many of whom are small businesses. The fee increases range from 20% to 25%, depending upon the square footage of space used for storage of property of others, with a maximum increase of \$100.

Notice of Hearing

Office of the Commissioner of Insurance [CR 00-188]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rulemaking order affecting ss. Ins 3.455 and 3.46 and appendices, Wis. Adm. Code, relating to long term care insurance.

Hearing information

January 29, 2001

1 p.m. or as soon thereafter as the matter may be reached
Room 6, OCI, 121 East Wilson Street, Madison, WI

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at

the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Stephen Mueller, OCI, PO Box 7873, Madison WI 53707

Analysis prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 601.41(3), 601.42, 628.34(12), 628.38, 631.20, 632.72, 632.76 & 632.81.

Statutes interpreted: see statutory authority

Analysis: These proposed amendments and additions to Ins 3.455 and 3.46 derive from a recent redraft of the National Association of Insurance Commissioner's long term care model regulation. That regulation and these proposed amendments and additions attempt to enhance consumer protection in long term care insurance policies. The development and marketing of long term care insurance policies will broaden as the population ages. These changes will provide the proper regulatory incentives to require insurers to properly price these insurance products so that premiums can be kept stable. The rule requires enhanced consumer disclosure and notification designed to ensure that prospective applicants have sufficient information to make informed decisions about the coverage and the insurance company.

This rule also seeks to help promote uniformity in the national marketplace by essentially following the language and intent of a model act designed for promulgation in all the states. With these standards in place insurers can more easily design new products and modify existing products with some assurance that the products will be accepted in all the states. The model act was also designed to help address some of the tax issues that flow from long term care insurance products.

Among other things this rule eliminates the current loss ratio requirement on initial rate filings to enable companies to set initial premiums intended to remain in place for the life of the policy. If a company does file for a rate increase, the rule imposes significant consequences on the insurance company including disclosure requirements for future marketing of the product and future loss ratio requirements.

This proposed rule includes modifications to Ins 3.46 Appendices 1 & 2 and the creation of Appendix 5.

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

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

Contact Person

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting

Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264-8110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707-7873.

Notice of Hearing

Office of the Commissioner of Insurance [CR 00-189]

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of a proposed rulemaking order affecting ch. Ins 25, Wis. Adm. Code, relating to privacy of personal nonpublic information.

Hearing Information

January 31, 2001

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

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 7 days following the date of the hearing. Written comments should be addressed to: Fred Nepple, General Counsel, OCI, PO Box 7873, Madison WI 53707

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42, 633.17, and 628.34 (12).

Statutes interpreted: ss. 600.01, 610.70, and 628.34 (12).

Proposed rule governing privacy of Consumer Financial and Health Information

The proposed rule is based on the National Association of Insurance Commissioners ("NAIC") model Privacy of Consumer Financial and Health Information Regulation. That model was prepared by the NAIC to meet the requirements of Title V of the Gramm-Leach-Bliley Act ("GLB"). The objective of the NAIC in preparing that model was to achieving uniformity with the federal privacy rules for financial information.

1. Protection of Nonpublic Personal Financial Information:

The financial information portion of the proposed rule tracks the GLB privacy regulations which were promulgated by the federal banking agencies in May, 2000. Licensees (all individuals or entities required to obtain a license under the Wisconsin insurance code, including agents, brokers, TPAs and insurers) must provide notices describing their privacy policies to their consumers and customers, and provide consumers and customers with the opportunity to prohibit the sharing of nonpublic personal information with nonaffiliated third parties ("opt out"). Agents may rely on compliance by the insurers they represent. Disclosure among affiliated entities is not restricted.

In addition, the proposed rule will have a July 1, 2001 effective date and will make it clear that the GLB provisions are not in effect in this state until that date.

The proposed rule includes certain exceptions to the general prohibition on sharing information with non-affiliates without going through the privacy notice and opt out procedures. These exceptions are intended to allow sharing for normal business reasons. The proposed rule permits sharing nonpublic personal financial information with nonaffiliated third parties if the licensee gives initial notice of its privacy policies to the consumer and the information is shared under an agreement for the third party to provide services or under a joint marketing agreement. The proposed rule also permits sharing nonpublic personal financial information, without giving the privacy notices, to accomplish the purpose of processing and servicing a consumer transaction and for certain enumerated purposes including purposes authorized by law, to protect against fraud or breach of confidentiality, to provide information to rate advisory, accreditation, and rating organizations, to attorneys and accountants, to regulators, in connection with a merger or sale of a business, and to respond to a subpoena or court ordered disclosure.

The restrictions on sharing information with non-affiliates applies to information obtained from individuals who are not customers of the licensee but who provide information to obtain a benefit under a policy or as claimant. However licensees are not required to provide privacy notices to those consumers or follow the opt out procedure unless they share the information other than as permitted under the rule. Licensees are required to give those customers an initial privacy notice if the information is shared under a joint service or marketing service contract. In addition a licensee is only required to provide annual privacy notices to commercial lines customers, such as group plan sponsors and employer/worker compensation policyholders, but not to the employees or dependents claiming under those policies, unless the licensee shares information other than as permitted by the rule.

2. Protection of Nonpublic Personal Health Information:

The proposed rule includes separate provisions governing health information. These provisions apply to those licensees who are not

already subject to the restrictions applicable to an insurer under s. 610.70, Stats. The provisions are in addition to restrictions that may be applicable under s. 146.82, Stats., to patient health care records. The rule makes it clear that an insurer is responsible for ensuring that its agents are in compliance with s. 610.70, Stats.

Those licensees not governed by s. 610.70, Stats., primarily brokers and third party administrators, are subject to provisions of the proposed rule that prohibit the licensee from sharing health information with any person, affiliated or non-affiliated, unless they obtain the affirmative consent to the sharing of health information with any person. The proposed rule includes exceptions to this restriction intended to allow the licensee to disclose the health care information consistent with the purpose for which it was obtained. Some of these include claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; rate-making and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; and actuarial, scientific, medical or public policy research. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

The health information provisions of the proposed rule do not apply to licensees who are in compliance with the health information privacy regulations promulgated by the U.S. Department of Health and Human Services ("HHS") pursuant to the Health Information Portability and Accountability Act (HIPAA). The HHS regulations will not be effective for two years.

3. Additional Provisions

The proposed rule includes provisions that prohibit the sharing of account access information and that prohibit unfair discrimination based on a refusal to give consent to the sharing of information.

The Commissioner particularly requests comment on the effect of inclusion of third party claimants and commercial policies within the scope of the rule as well as comment that describes any additional exceptions that should be permitted for the sharing of protected information.

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

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:

Insurers, insurance intermediaries and third party administrators

b. Description of reporting and bookkeeping procedures required:

None beyond those currently required.

c. Description of professional skills required:

The proposed rule will require maintenance of information and operating systems to comply with its requirements.

Contact Person

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

Notice of Hearing

Public Service Commission [CR 00-187]

The Commission proposes an order to amend ss. PSC 1.04, PSC 3.02(1)(b) and (e), and PSC 3.04(1) and to repeal and recreate ch. PSC 2, Wis. Admin. Code, relating to practice and procedure before the Commission.

Notice is given that pursuant to ss. 196.02 (3) and 227.11 (2), Stats., and interpreting ss. 196.24 (3), 196.26 to 196.30, 196.33 and 196.39, Stats., and, generally, ch. 196, Stats., the Commission will hold a hearing in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on Friday, January 26, 2001, at 9:00 a.m. to consider the amendment and the repeal and recreation of rules relating to practice and procedure before the Commission.

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 to participate in this hearing or who needs to obtain this document in a different format should contact the person identified below.

The Commission will accept written comments on the proposed rules if filed no later than January 19, 2001

Hearing Information

Friday, January 26, 2001 – 9:00 a.m.

Public Service Commission, 610 North Whitney Way,
Madison, WI (Amnicon Falls Hearing Room, 1st Floor)

Summary of Proposed Rule

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: Sections 196.02 (3) and 227.11 (2), Stats.

Statutes interpreted: Sections 196.14, 196.24 (3), 196.26 to 196.30, 196.33, 196.39, 196.72, and 196.795 (9), Stats., and, generally, ch. 196, Stats.

This revision updates and revises the rules relating to practice and procedure before the Commission. This rule also creates procedures for the confidential treatment of records.

The rule establishes processes for filing documents with the Commission, including provisions for facsimile filing, and establishes the number of copies to be filed. The rule identifies persons that need to be served with documents in proceedings and proper methods for service. The rule describes how time is to be computed for determining when a filing or an event is to take place. The rule creates a process for requesting an enlargement of time.

The process for opening dockets by the commission is established in the rule. A docket may be opened at the Commission's own motion or at a person's request. Under the rule, a person may make a request to open a docket by filing an application, petition, or complaint. The rule eliminates the distinction between, and the processes for, the handling of "formal" and "informal" complaints.

If the commission decides to open a docket, it issues a notice of proceeding or notice of investigation. The current rules do not describe how dockets are opened.

Like the current rule, this rule describes who may be parties in a proceeding. The rule establishes the standards that are to be met in order to become a party by right or a party by permissive intervention. The rule repeals the previous distinction between a "limited" and a "full" intervenor.

The rule identifies the role and authority of the administrative law judge presiding at a proceeding and retains the provision from the current rule that commission staff do not appear in a proceeding in support or opposition to a position, but only to discover and present information pertinent to the proceeding.

The rule eliminates specific provisions that detail particular aspects of hearings, such as rules for prehearing conferences, appearances, order of presenting evidence, changes in the time or place of hearings, conduct of hearings, briefs, and transcripts.

The rule revises processes for filing motions, conducting discovery, reopening proceedings, and for requesting interlocutory review by the Commission of rulings of the administrative law judge.

The rule retains provisions requiring notice to customers when a utility requests a general rate increase and provisions requiring a hearing if a utility wishes to abandon facilities or discontinue service. The rule repeals outdated provisions relating to motor carrier authority applications and provisions relating to municipal acquisition proceedings.

The rule also creates a process for a commissioner to request a synopsis or summary of evidence pursuant to s. 196.24(3), Stats. Under the rule, commission staff will prepare a synopsis or summary of the evidence if requested by a commissioner. Parties have the opportunity to respond to the synopsis to add or correct facts.

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.

Text of Proposed Rule

SECTION 1. PSC 1.04 is amended to read:

PSC 1.04 Supervisor of hearings. The supervisor of hearings ~~in the legal department [of the commission] of the commission~~ is authorized and directed to assign to ~~each of such agents~~ any administrative law judge employed by the commission the supervision of any particular investigation or the conduct of hearings and taking of testimony bearing upon any particular investigation or hearing made or held by the commission. Such assignments by the supervisor of hearings for the conduct of hearings, if made by indication on the commission calendar of hearings shall constitute specific authority to the agent thus designated to conduct the particular hearing and the taking of testimony in the matter or proceeding to which such designation pertains. The secretary to the commission is authorized, in the absence of the supervisor of hearings, to perform the latter's duties.

SECTION 2. Chapter PSC 2 is repealed and recreated to read:

PUBLIC SERVICE COMMISSION

CHAPTER PSC 2

PRACTICE AND PROCEDURE

Subchapter I – General

PSC 2.01 Applicability
 PSC 2.02 Definitions
 PSC 2.03 Computation of Time and Time Limits
 PSC 2.04 Filing and Service
 PSC 2.05 Requests to Open Dockets
 PSC 2.06 Notices
 PSC 2.07 Application for Rate Increase; Notice to Customers
 PSC 2.08 Abandonment or Discontinuance of Service
 PSC 2.10 Confidential Status

Subchapter II – Proceedings

PSC 2.20 Parties and Role of Commission Staff and Administrative Law Judge
 PSC 2.21 Intervention
 PSC 2.22 Motions
 PSC 2.23 Discovery
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Subchapter I – General

PSC 2.01 Applicability. This chapter establishes the rules of practice and procedure in PSC investigations, proceedings and other dockets. Portions of this chapter also apply generally to matters such as filing (including filing with a request for confidentiality) computation of time and other administrative matters whether or not in dockets. Where a statute or rule prescribes a particular process for certain kinds of matters, that process shall apply wherever inconsistent with this chapter.

NOTE: Examples of particular processes for certain kinds of matters are the customer complaint rules contained in chapters PSC 113, 134, 165, and 185.

PSC 2.02 Definitions. In this chapter:

- (1) "Administrative law judge" means a person designated to preside over a proceeding.
- (2) "Application" means a written request that the commission issue or amend a certificate, license, permit or any other approval, authorization or exemption.
- (3) "Chairperson" means the chairperson of the commission.
- (4) "Commission" means the public service commission.
- (5) "Complaint" means a complaint authorized to be filed by ch. 196, Stats.
- (6) "Contested case" has the meaning given in s. 227.01 (3), Stats.
- (7) "Docket" means an investigation, proceeding or other matter opened by a vote of the commission.
- (8) "Hearing" means a contested case hearing or other trial-type hearing.
- (9) "Investigation" means an investigation under ch. 196, Stats.
- (10) "Party" means a person or agency named or admitted as a party in a proceeding.

- (11) "Person" has the meaning given in s. 990.01 (26), Stats.
- (12) "Petition" means a written request to the commission, other than an application or complaint, to open a docket.
- (13) "Proceeding" means a contested case or other docket that includes a hearing.
- (14) "Public hearing" means a hearing, which is not a trial-type hearing.
- (15) "Secretary" means the secretary to the commission.
- (16) "Working day" has the meaning given in s. 227.01 (14), Stats.

PSC 2.03 Computation of Time and Time Limits. (1) DEFINITION. In this section, "holiday" has the meaning given in s. 230.35 (4) (a), Stats.

(2) COMPUTATION OF TIME. In computing any period of time, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the commission is closed, in which case it shall be the next day the commission is open. When a period of time prescribed or allowed is less than 11 days, Saturdays, Sundays, and holidays shall be excluded in the computation.

(3) ENLARGEMENT OF TIME. (a) When an act is required by law or by order to be done at or within a specified time, the period of time may be enlarged, but only on good cause shown and upon just terms. Requests under this subsection, when made in a proceeding, shall be made by motion. Requests under this subsection, when made in docket other than a proceeding, shall be made in a letter addressed to the secretary. Requests shall be made within a reasonable time prior to the expiration of the period in question. Requests made after the expiration of the specified time shall not be granted unless the failure to act was the result of excusable neglect. (b) 1. Only the commission may modify a period of time established by the commission. 2. Notwithstanding subd. 1., the chairperson of the commission may enlarge a period established by the commission for up to 3 working days.

(4) SERVICE BY MAIL. Whenever a person is authorized or required to do some act within a prescribed period after the service of any paper upon the person and the paper is served upon the person by mail, 3 days shall be added to the prescribed period.

PSC 2.04 Filing and Service. (1) DEFINITION. In this section, "working day" has the meaning given in s. 227.01 (14), Stats.

(2) FILING. (a) A person shall file any paper authorized or required to be filed by this chapter with the records management unit of the commission between the hours of 7:45 a.m. and 4:00 p.m. on a working day. Papers are not considered filed until they are date and time stamped by the records management unit. Persons may file in person or by mail. In addition, persons may file submissions of no greater than 25 pages by facsimile.

(b) A person, other than an individual, shall file the original and 19 copies of all papers, except that the records management unit will make the required number of copies of any paper filed by facsimile and bill the filer for the cost. An individual shall file the original and 3 copies of any paper.

(3) SERVICE. (a) 1. In a proceeding, parties shall serve upon all other parties, a copy of any paper filed with the commission. In dockets other than proceedings, where the commission has ordered or requested written comments, persons filing comments shall serve copies upon all persons identified on the service list established in the docket, if any.

2. Notwithstanding the subd. 1., individuals are not required to serve their comments on any other person.

3. The filing of any paper required to be served constitutes a certification by the person mailing the filing that a copy of such paper has been served.

(b) Service shall be made by delivering or mailing a copy. Delivery means handing it to the person; transmitting a copy of the paper by facsimile machine to the person's office; or leaving it at the person's office with a clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place at the office; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing at that location. Service by mail is complete upon mailing. Service by facsimile is complete upon transmission.

(c) A party may not serve submissions of greater than 25 pages by facsimile. A party shall serve a paper copy of any paper served or filed by facsimile within 2 days of transmission.

(4) IMPROPER SERVICE OR FILING. The commission will not consider any paper not properly served nor filed.

(5) ELECTRONIC SERVICE OR FILING. The commission may authorize and establish procedures for electronic service and filing.

PSC 2.05 Requests to Open Dockets. (1) HOW REQUESTED. The commission may open a docket at the request of any person or on its own motion. A person requesting the commission to open a docket shall file an application, a complaint, or a petition, depending upon the legal basis for the request.

(2) REQUEST REQUIREMENTS. A request to open a docket shall contain all of the following:

(a) A statement of the issues presented.

(b) A statement of the facts necessary to an understanding of the issues.

(c) A discussion of the statutes or rules conferring jurisdiction upon the commission.

(d) A statement of the reasons why the commission should exercise its jurisdiction.

(e) A statement of whether the applicant, complainant, or petitioner is requesting an investigation, a proceeding, or both.

(3) CONTESTED CASE STATUS. If a person requests the commission to open a proceeding, the request shall state whether the matter should be a contested case and, if so, shall discuss how the matter meets the statutory definition of contested case.

(4) SERVICE REQUIREMENT. If a request to open a docket alleges a violation by any named person of any statute, rule or order of the commission, the person filing the request shall serve a copy of the request on the person named, in the manner provided in s. 801.11, Stats., for service of a summons.

(5) RESPONSES. No person may file a response to a request unless the commission requests or orders a response.

NOTE: It is not necessary to file a request to open a docket in order to seek information or assistance from the staff or in order to bring any matter to the commission's attention. This section is intended to retain the substance of format rule s. PSC 2.10 (1), except that there no longer are "formal investigations." As provided in new s. PSC 2.05, a person may request or the commission on its own motion may open an investigation, a proceeding, or another docket. The commission may decide to open a docket based upon information acquired from informal contacts with the commission.

PSC 2.06 Notices. (1) HOW ISSUED. A docket is opened when the commission issues a Notice of Investigation, a Notice of Proceeding, or such other notice sufficient to identify the basis and nature of the docket. A notice is issued when it is signed by the secretary at the direction of the commission.

(2) PROCEEDINGS. (a) A notice of proceeding shall state all of the following:

1. Whether the proceeding is being initiated on the commission's own motion or upon request.

2. The purpose of the proceeding.

3. The legal basis for the proceeding.
4. The names of the parties.
5. Whether the proceeding is a contested case and, if so, what class of contested case or, if the proceeding is not a contested case, what procedures will govern the proceeding.

(b) Unless otherwise stated in a notice of proceeding or order of the commission, the procedures of ch. 227, Stats., concerning class 1 contested cases shall apply to all proceedings other than contested cases.

(c) A notice of proceeding may contain any of the following:

1. A statement of the issues for decision.
2. A date for a prehearing conference or hearing.
3. A notice of assessment pursuant to s. PSC 5.09.
4. Any other information pertinent to the proceeding.

(d) If a notice of proceeding schedules a contested case hearing, the notice shall comply with ss. 227.44 (1) and (2), Stats.

(3) INVESTIGATIONS. (a) A notice of investigation shall state the matter to be investigated and the legal basis for the investigation.

(b) A notice of investigation may contain any of the following:

1. An order or request for comments.
2. An order for a public hearing.
3. A notice of assessment pursuant to s. PSC 5.09.
4. Any other information pertinent to the investigation.

(4) OTHER DOCKETS. In dockets other than proceedings or investigations, the commission's notice may include any information pertinent to the docket.

NOTE: Commission dockets are usually either proceedings or investigations. These rules provide for an "other dockets" category to cover the possibility that a matter will not properly constitute either a proceeding or investigation.

PSC 2.07 Application for rate increase; notice to customers. (1) NOTICE OF APPLICATION FOR RATE INCREASE. (a) When a public utility applies for a general revision of rates, which, if authorized, would result in a rate increase, the public utility shall inform each affected customer of the filing of the application and the general nature and effect of the filing.

(b) The public utility shall provide the notice under par. (a) by means of a bill insert over one complete billing cycle, using its standard bill insert and mailing procedures. If customer bills are not issued monthly, the utility shall furnish the information to customers by a special mailing or by means of a display advertisement in a newspaper having general circulation in the utility's service area.

(2) MUNICIPALITY EXCEPTION. Notwithstanding sub. (1) (b), a municipal utility serving fewer than 1,000 customers may elect to post notice of the information in sub. (1) (a), if the notice is posted in at least 3 public places at locations and in a manner likely to give notice to customers affected and the notice is posted within 7 days of the utility filing its application.

(3) NOTICE OF HEARING. (a) A public utility subject to sub. (1) (a) shall notify each affected customer of the hearing regarding the utility's application for the revision of rates. The notice shall include, at a minimum, the date, time and place of the hearing, and information regarding how customers may contact the utility to confirm the hearing schedule. The public utility shall distribute the notice in a manner authorized under subs. (1) (b) and (2). Except as provided in par. (b), the notice shall be given at least 10 days before the hearing.

(b) Except for a municipal utility that may provide notice under sub. (2), if a public utility cannot provide 10 days notice by means of a bill insert, the utility shall inform its customers by a special mailing or a display advertisement in a newspaper of general circulation in the utility's service area.

(4) PROOF OF NOTICE. At the hearing concerning the application for the revision of rates, the public utility shall furnish proof of compliance with this section.

PSC 2.08 Abandonment or discontinuance of service. No public utility may abandon facilities or discontinue service without commission authorization made after a public hearing. The commission need not hold a public hearing if the application is accompanied by all of the following:

(1) A map indicating the location of the facilities to be abandoned or the facilities from which service is to be discontinued, as well as the location of all actual or potential customers affected by the proposed action.

(2) A statement that all actual or potential consumers have either consented to or waived objection to abandonment or discontinuance.

PSC 2.10 Confidential status. (1) APPLICABILITY. This section applies to requests made to the commission to treat as confidential information in possession of the commission or being requested by the commission.

(2) RESPONSIBILITY FOR ESTABLISHING CONFIDENTIALITY. The burden of establishing the need for confidential treatment of any information shall be on the person requesting confidential treatment of the information.

(3) APPLICATION FOR CONFIDENTIAL STATUS. Any person seeking confidential treatment of information shall file with the commission a written application for confidential status containing in affidavit form all of the following:

(a) The name and address of the applicant.

(b) The name and position of the individual filing the application.

(c) The specific type of information for which confidential status is sought.

(d) The facts and supporting legal authority believed to constitute a basis for obtaining confidential treatment of the information.

(4) ADDITIONAL INFORMATION. (a) Within 21 days after receiving a complete application, the commission shall mail to the applicant a list of written interrogatories the answers to which are necessary for a determination under this section. If a confidentiality determination can be made solely on the basis of information appearing in the application, the commission may waive written interrogatories.

(b) If an extension has not been granted and if the applicant fails to answer all the interrogatories within 30 days after the date the commission mails the interrogatories, the commission shall deny the application. The commission may also deny the application if the applicant fails to provide the information requested in the interrogatories.

(c) The responses to the interrogatories shall be treated as confidential if the applicant submits a request for confidential treatment of the responses.

(5) DETERMINATION. (a) Within 30 days after receiving a complete application if interrogatories are waived, or within 30 days after receiving the information requested in the interrogatories, the commission shall issue a written determination on the request for confidentiality. The determination shall include all of the following:

1. A finding which identifies the type of information sought to be assigned confidential status.

2. A determination of whether the commission has the authority to compel submittal of the information if the commission requested the information.

3. If the authority exists, a determination of whether the commission is authorized by law to assign confidential status to the type of information at issue.

4. The decision to deny or to grant the request in whole or in part.

(b) A determination to assign confidential status shall be made pursuant to one or more of the following:

1. Section 196.14, Stats.
2. Section 196.72, Stats.
3. Section 196.795 (9), Stats.

4. Upon a finding consistent with the ruling in *State ex rel. Youmans v. Owens*, 28 Wis.2d 672, (1965) that confidential treatment of the information is in the public interest.

5. Other specific statutory or common law right to confidential treatment of information.

(c) A determination made pursuant to par. (b) 4. shall also include answers to all of the following questions:

1. How many people have knowledge of the supposedly "secret" information? Will disclosure increase that number to a significant degree?
2. Does the contested information have any value to the possessor? To a competitor? Is that value substantial?
3. What damage, if any, would the possessor of the secret suffer from its disclosure? What advantages would its competitors reap from disclosure?
4. What benefits are likely to flow from disclosure? To whom? Are they significant? In this connection, what is the public "need" for disclosure? Can it be satisfied in any other way?

(d) 1. The commission shall notify the applicant in writing of the determination. The commission post on its internet website a list of all determinations made under this section and may provide any other notice it considers to be appropriate.

2. If information that is granted confidential status is filed in conjunction with a commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for the proceeding, and shall file proof of service with the commission.

(6) INTERIM CONFIDENTIAL STATUS. Information for which confidential status is requested shall not be open to public scrutiny until 40 days after issuance of the determination.

(7) CONTESTED CASES. In any contested case hearing before the commission, the administrative law judge, in determining the merits of a request for confidential treatment of information which arises during the course of the hearing, may render a ruling on the request only after receiving answers to the questions appearing in sub. (5) (c) 1. to 4.

Subchapter II – Proceedings

PSC 2.20 Parties and role of commission staff and administrative law judge. (1) WHO ARE PARTIES. The following are parties to proceedings:

- (a) A person filing an application is an applicant.
- (b) A person filing a complaint is a complainant.
- (c) A person filing a petition is a petitioner.
- (d) A person admitted to the proceeding pursuant to s. PSC 2.21 is an intervener.

(2) ROLE OF COMMISSION STAFF. Members of the commission staff appear neither in support of nor in opposition to any cause, but solely to discover and present, if necessary, information pertinent to the proceeding.

(3) ROLE OF ADMINISTRATIVE LAW JUDGE. (a) The administrative law judge presiding over a proceeding has all of the powers identified in s. 227.46, Stats., except, as provided in s. 227.46 (1) (h), Stats., the power to make or recommend findings of fact, conclusions of law and decisions in proceedings other than class 2 contested cases.

(b) The commission retains jurisdiction to direct the progress of any docket notwithstanding s. 227.46, Stats.

PSC 2.21 Intervention. (1) INTERVENTION BY RIGHT. A person satisfying the criteria of s. 227.44 (2m), Stats., may intervene in a proceeding as a matter of right.

(2) PERMISSIVE INTERVENTION. A person not satisfying the criteria of s. 227.44 (2m), Stats., may nevertheless intervene in a proceeding if the person's participation likely will promote the proper disposition of the issues to be determined in the proceeding and if the person's participation will not impede the timely completion of the proceeding.

(3) PROCEDURE. A person requesting intervention shall file a motion no later than 14 days after issuance of the notice of proceeding. A party may respond to the motion no later than 7 days after service of the motion.

PSC 2.22 Motions. (1) HOW MADE. A party seeking an order shall file a motion. Unless made during a hearing, a motion shall be made in writing, shall state with particularity the grounds for the motion, and shall set forth the relief requested.

(2) RESPONSES TO MOTION. Another party may respond to a motion no later than 5 days after service of the motion.

(3) MOTION FOR PROCEDURAL ORDER. A motion for a procedural order may be acted upon without a response to the motion.

PSC 2.23 Depositions. (1) Parties and Commission staff may take depositions in the same manner and by the same methods as provided under ch. 804, Stats., unless inconsistent with or prohibited by statute or as otherwise determined by the commission or the administrative law judge.

(2) MOTIONS. Any motion pursuant to s.804.12, Stats. shall include a certification that the movant has in good faith conferred or attempted to confer with the person subject to the motion in an effort to resolve their dispute without commission action.

PSC 2.24 Synopsis or summary of the evidence. (1) HOW REQUESTED. If a commissioner informs commission staff that he or she wishes to consider deciding a proceeding on the basis of a summary or synopsis of the evidence, pursuant to s. 196.24 (3), Stats., commission staff shall prepare a summary or synopsis and serve it upon the parties to the proceeding.

(2) RESPONSE. A party who wishes to respond to a synopsis or summary of the evidence shall file a response no later than 10 days after service of the synopsis or summary. A response shall be limited to a statement of additional or corrected facts and may not contain argument.

PSC 2.25 Interlocutory orders of the commission. (1) DISCRETIONARY REVIEW. The commission, on the motion of a party or on its own motion, may review an order or any other ruling of the administrative law judge and may, on its own motion, issue any order if the commission finds that to do so would further the proper disposition of the proceeding. A motion under this section shall be treated as a motion for a procedural order.

(2) HOW MADE. A motion under this section must be filed no later than 5 working days after the ruling is made or the order is signed, whichever is sooner. Unless otherwise ordered, no party may respond to the motion. The filing of a motion under this section does not stay the proceeding.

(3) DISPOSITION. If the commission does not issue an order with respect to a motion under this section within 10 days after the motion is filed, the motion is considered denied.

PSC 2.26 Reopening. A request pursuant to s. 196.39 (1), Stats., shall be made by motion. If the commission does not issue an order

with respect to the motion within 30 days, the motion is considered denied.

SECTION 3. PSC 3.02 (1) (b) is amended to read:

PSC 3.02 (1) (b) Someone for whom ~~full~~ intervention in the proceeding would cause significant financial hardship without compensation from the commission.

SECTION 4. PSC 3.02 (1) (e) is amended to read:

PSC 3.02 (1) (e) Someone who has been granted ~~full~~ party status and who will participate in the proceeding as a ~~full~~ party.

SECTION 5. PSC 3.04 (1) is amended to read:

PSC 3.04 (1) Compensation shall not exceed the actual and reasonable expenses authorized by the commission and incurred as a result of the applicant's participation as a ~~full~~ party in a commission proceeding.

SECTION 6. INITIAL APPLICABILITY.

(1) This rule first applies to a request to open a docket filed on the effective date of the rule and to a proceeding opened on the effective date of the rule.

(2) The treatment of section PSC 2.10 the Wisconsin Administrative Code first applies to a request for confidential treatment made to the commission on the effective date of this rule.

Initial Regulatory Flexibility Analysis

This rules revision does not directly affect small businesses, as defined in s. 227.114 (1) (a), Stats. Because the revisions are intended to establish consistent procedures for practice before the Commission, no special provisions are included for small businesses.

Fiscal Estimate

This proposed rule clarifies, streamlines, and updates various provisions related to the practices and procedures in PSC investigations, proceedings and other dockets. Contained within the rule is a new process for determining the confidentiality of records submitted by public utilities to the Commission. The process the rule prescribes requires the PSC to make a determination of confidentiality and notify the applicant. The PSC processed 1,280 requests for confidential treatment of data in calendar year 1999 and has processed 975 requests so far in calendar year 2000. This proposed rule will not have a fiscal impact on the PSC or local government.

The rule does not propose changes that would create fiscal effects on either state or local governments.

Contact Person

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

Questions regarding these rules should be directed to Edward S. Marion at (608) 266-1264, or by e-mail at marioe@psc.state.wi.us. Hearing or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

Notice of submission of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

([CR 00-119](#)):

Ch. ATCP 30 – Relating to pesticide product restrictions.

Transportation ([CR 00-152](#)):

Ch. Trans 201 – Relating to outdoor advertising sign annual fees.

Administrative rules filed with the Revisor of Statutes Bureau

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

Agriculture, Trade and Consumer Protection (CR 00-104)

An order affecting chs. ATCP 136 relating to reclaiming and recycling refrigerant for mobile air conditioners.
Effective 3-1-01

Athletic Trainers Affiliated Credentialing Board (CR 00-131)

An order to create chs. AT 1 to 5 relating to the licensure and regulation of athletic trainers.
Effective 3-1-01

Commerce (CR 00-130)

An order affecting ch. Comm 46 relating to risk screening and closure criteria for petroleum product contaminated sites, and agency roles and responsibilities.
Effective 3-1-01

Health and Family Services (CR 99-157)

An order to repeal and recreate ch. HFS 175 relating to recreational and educational camps.
Effective 3-1-01

Health and Family Services (CR 00-92)

An order to repeal and recreate ch. HFS 110 relating to licensing of ambulance service providers and licensing of emergency medical technicians-basic.
Effective 3-1-01

Pharmacy Examining Board (CR 00-107)

An order affecting ch. Phar 8 relating to the dispensing of controlled substances.
Effective 3-1-01

Transportation (CR 00-121)

An order to create ch. Trans 156, relating to the automated partnership processing system program.
Effective 2-1-01

Transportation (CR 00-137)

An order affecting ch. Trans 4 relating to the state public transit operating assistance program.
Effective 2-1-01

Workforce Development (CR 00-066)

An order affecting ch. DWD 16 relating to emergency assistance for families facing impending homelessness.
Effective 2-1-01

Workforce Development (CR 00-129)

An order affecting chs. DWD 12 and 56 relating to W-2 eligibility and child care copayments.
Effective 2-1-01

Workforce Development (CR 00-127)

An order affecting chs. DWD 22 and HSS 205, 206, 207, 225, and 244 relating to obsolete public assistance policies and procedures.
Effective 3-1-01

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