

The 1999–2000 Wisconsin Statutes and Annotations can be ordered now in bound volumes or on the *WisLaw*® CD–ROM

Bound Volumes:

Prices for the 1999–2000 Wisconsin Statutes and Annotations bound volumes are detailed below. Any sales tax due must be added to these prices:

Hard Cover <u>With Postage</u>	Hard Cover <u>Without Postage</u>	Soft Cover <u>With Postage</u>	Soft Cover <u>Without Postage</u>
\$142.00	\$135.00	\$117.00	\$110.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419. The bound volumes of the statutes will be available in late November 2000.

WisLaw® CD–ROM:

Up-to-date *WisLaw*® CD–ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*® contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross–References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*® Infobases are substantially integrated with hypertext links. *WisLaw*® utilizes the Windows 95 versions of Folio Views search and retrieval software. Folio is used by 75 of the top 80 legal publishers. State agencies are using *WisLaw*® for their legal research. *WisLaw*® is distributed by the Document Sales and Distribution Section to requesting state agencies on a complimentary basis.

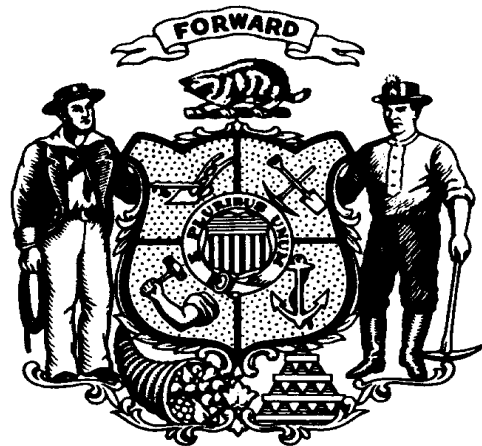
WisLaw® is available only by annual subscription. *WisLaw*® End–user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, WI 53707–7840

Wisconsin Administrative Register

No. 543



Publication Date: March 14, 2001

Effective Date: March 15, 2001



Revisor of Statutes Bureau
Suite 800, 131 West Wilson Street
Madison, Wisconsin 53703-3233

Table of contents

Emergency rules now in effect.**Pages 3 to 9**

Agriculture, Trade and Consumer Protection:

Rule relating to residential rental practices.

Rules relating to importing certain animals from a USDA-designated “non-modified accredited” state.

Rules adopted relating to reimbursement of Johne’s disease testing costs.

Rules adopted revising **ch. ATCP 80**, relating to pathogen testing of ready-to-eat dairy products. **[First Appearance]**

Commerce:

Flammable and Combustible Liquids, Ch. Comm 10

Rules relating to effective date of required upgrades to above ground bulk tanks.

Corrections:

Rules revising **ch. DOC 309** relating to sexually explicit material at adult correctional institutions. **[First Appearance]**

Employment Relations Commission:

Rules relating to the calculation of a qualified economic offer in collective bargaining with professional school district employees.

Financial Institutions – Securities:

Rules relating to the investment adviser registration depository.

Health & Family Services:

Health, Chs. HFS 110—

Rules relating to certification for removal of lead-based paint hazards.

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Rules relating to the stewardship program.

Rules relating to the federal cost sharing program to suppress gypsy moths.

Rules relating to speed limits for snowmobiles.

Public Service Commission:

Rules relating to treatment of confidential records.

Rules relating to cost of fuel.

Tobacco Control Board:

Rules relating to the administration and awarding of grants for tobacco control and establishing criteria for recipients of the grants.

Scope statements.**Pages 10 to 13**

Commerce:

Fees, amusement rides and design and construction of public swimming pools.

Fees and Wisconsin uniform plumbing code.

Amusement rides and attractions.

Credentials for residential sprinkler installers.

Corrections:

Relating to community supervision of offenders.

Health and Family Services:

Health care information provided by hospital emergency departments.

Natural Resources:

Standards and criteria for the Lower St. Croix National Scenic Riverway.

Miscellaneous fur, fish, game and outdoor recreation.

Nursing Home Administrator Examining Board:	Conduct that may warrant a suspension or revocation; deadline for applying for an examination; technical changes.
Transportation:	Requirement for vehicles and standards for the equipment used on vehicles.
Submittal of rules to legislative council clearinghouse.	Pages 14 to 15
Administration:	Ch. Adm 30 – Relating to payroll deductions for charitable purposes.
Agriculture, Trade and Consumer Protection:	Ch. ATCP 29 – Relating to pesticide license fee surcharges.
Corrections:	Ch. DOC 309 – Relating to resources for inmates.
Employment Relations Commission:	Ch. ERC 33 – Relating to the calculation of a qualified economic offer for school district professional employees.
Hearings and Appeals:	Ch. HA 2 – Relating to truth–in–sentencing.
Pharmacy Examining Board:	Ch. Phar 6 relating to minimum equipment.
Social Workers, Marriage and Family Therapists and Professional Counselors:	Relating to background checks. Relating to supervision of pre–certification supervised practice of social work.
Rule–making notices.	Pages 16 to 19
Agriculture, Trade and Consumer Protection:	Hearing to consider revision to ch. ATCP 161, relating to grants to ethanol producers. Hearing to consider revision to ch. ATCP 29, relating to pesticide license fee surcharges.
Pharmacy Examining Board:	Hearing to consider s. Phar 6.06, relating to minimum equipment.
Submission of proposed rules to the legislature.	Page 20
Chiropractic Examining Board	(CR 99–147) – Ch. Chir 4
Geologists, Hydrologists and Soil Scientists:	(CR 00–139) – Ch. GHSS 1
Health and Family Services:	(CR 00–191) – Ch. HFS 112
Psychology Examining Board:	(CR 00–170) – Chs. Psy 2 and 4
Social Workers, Marriage and Family Therapists and Professional Counselors:	(CR 00–158) – Ch. SFI 1
Transportation:	(CR 01–001) – Ch. Trans 131
Transportation:	(CR 00–122) – Ch. Trans 158
Workforce Development:	(CR 00–182) – Ch. DWD 14
Rule orders filed with the revisor of statutes bureau.	Page 21
Financial Institutions – Banking:	(CR 00–166) – s. DFI–Bk 8.04
Health and Family Services:	(CR 00–134) – Ch. HFS 97
Natural Resources:	(CR 00–118) – Ch. NR 10

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 – (4)

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: April 16, 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 Date: September 19, 2000
Extension Through: May 7, 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
Hearing Date: February 13, 2002

4. Rules adopted revising **ch. ATCP 80**, relating to pathogen-tests on ready-to-eat dairy products.

Finding of Emergency

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) 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) DATCP licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules, under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product.

(2) There has been a nationwide increase in food borne disease outbreaks associated with food and dairy products. Such outbreaks can occur when ready-to-eat foods enter food distribution channels without being tested for pathogenic bacteria.

(3) There is no national or state law requiring dairy plant operators to test ready-to-eat dairy products for pathogens prior to sale or distribution. Dairy plant operators have a natural incentive to test, in order to avoid liability and meet their customers' product safety demands. But the current test reporting requirement under s. ATCP 80.56(4) discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from distribution.

(4) There is an urgent need to repeal this counterproductive reporting requirement, and to create alternative rules that will encourage pathogen testing and provide stronger public health protection. This emergency rule will encourage more pathogen testing, and provide stronger public health protection, pending the adoption of "permanent" rule changes.

Publication Date: March 2, 2001
Effective Date: March 2, 2001
Expiration Date: July 30, 2001

Commerce

(Flammable and Combustible Liquids – Ch. Comm 10)

Rules adopted revising **s. Comm 10.345**, relating to the effective date of required upgrades to aboveground bulk tanks that were in existence on May 1, 1991.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare. The facts constituting the emergency are as follows:

Wisconsin Administrative Code ch. Comm 10, Flammable and Combustible Liquids Code, became effective on 5/1/91. Section Comm 10.345 (2) contains requirements for bulk tanks in existence on that date to be provided with specific containment or leak detection upgrades within 10 years of that date. Some concerns have been expressed on the impact that compliance date could have on heating oil supplies and prices this winter. Construction requirements could result in a substantial number of tanks storing heating oil to be closed

during the winter heating season in preparation for the required upgrades.

Based on these concerns, the department has agreed to extend the compliance deadline for 3 months until 8/1/01 if approvable tank system upgrade plans have been submitted to the department by 2/1/01.

Publication Date: January 6, 2001
Effective Date: January 6, 2001
Expiration Date: June 4, 2001
Hearing Date: February 27, 2001

Corrections

Rules adopted revising **ch. DOC 309**, relating to sexually explicit material at adult correctional institutions.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules are necessary for preservation of the public welfare. A statement of the facts constituting the emergency is: Effective December 1, 1998, the Department implemented rules restricting inmates' access to sexually explicit material. These rules were challenged in federal court in a class action suit brought by several inmates (*Aiello v. Litscher*, Case No. 98-C-791-C, Western District of Wisconsin). The defendants filed a motion for summary judgment, but it was denied by the court in language that suggested the rules were unconstitutional in their present form based on a number of federal appellate court decisions that were reported after the rules were implemented.

In light of these developments, the parties negotiated a settlement which includes an immediate revision of the present rules to conform to the latest decisional law regarding the extent to which inmates' access to sexually explicit material can be restricted for legitimate penological objectives. Adoption of the revised rules no later than February 23, 2001, is necessary to avoid a lapse of the settlement agreement and lengthy trial with the attendant possibility of having to pay a considerable amount in attorneys' fees.

This order:

- Revises the present rules restricting inmates' access to sexually explicit material by prohibiting access to published material that depicts nudity on a routine or regular basis or promotes itself based on nudity in the case of individual one-time issues.

- Revises the present rules by prohibiting access to written material when it meets the legal definition of obscenity.

Publication Date: February 23, 2001
Effective Date: February 23, 2001
Expiration Date: July 23, 2001

Employment Relations Commission

Rules were adopted amending **ch. ERC 3, Appendices A, B and C** relating to the calculation of a qualified economic offer in collective bargaining with professional school district employees.

Finding of Emergency

As required by s. 227.24 (1), Stats., we find that it is necessary to promulgate the amendment to ch. ERC 33, Appendices A, B, and C as an emergency rule to preserve the public peace, health, safety and welfare. Absent promulgation of this emergency rule, the timely and peaceful resolution of collective bargaining disputes in Wisconsin will be endangered.

The amendment of ch. ERC 33, Appendices A, B and C is required by 1999 Wisconsin Act 9's amendment of the statutory definition of a qualified economic offer in s. 111.70(1)(nc)1.c., Stats., and the ruling of the Wisconsin Court of Appeals in *Racine Education Ass'n v. WERC*, 238, Wis.2d 33 (2000). The amended statutory definition of qualified economic offer first applies to school district professional employee bargaining agreements covering the period of July 1, 2001 through June 30, 2003.

As amended, ch. ERC 33, Appendices A, B and C allow a school district to accurately calculate the level of salary increase, if any, which the district must offer to the labor organization representing the district's professional employees as part of a qualified economic offer. As amended, ch. ERC 33, Appendices A, B and C implement (1) the statutory requirement that salary increases due to a promotion or the attainment of increased professional qualifications are not part of a qualified economic offer; and (2) the ruling of the Court in *Racine Education Ass'n v. WERC* that a qualified economic offer cannot exceed a 3.8% increase in salary and fringe benefit costs.

Publication Date: January 22, 2001
Effective Date: January 22, 2001
Expiration Date: June 20, 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
Hearing Date: April 18, 2001

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 Date: 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 Date: 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 Date: January 17, 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
Extension Through: May 20, 2001

- 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 Date: January 23, 2001

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 Date: January 10, 2001

Scope statements

Commerce

Subject

A revision to chs. Comm 2, 34 and 90 relating to fees, amusement rides, and design and construction of public swimming pools.

Objectives of the Rule. The objectives of this rule revision, to be incorporated into one or more rule packages, are to:

- a) combine the administrative rules regarding waterslides into the public swimming pool code to better serve the citizens and visitors of the State;
- b) provide a better system of public swimming pool, waterslide and water park inspection in coordination with the Department of Health and Family Services (DHFS);
- c) result in clearly understood codes that reflect the application of sound practices relating to health and safety to employees and pool customers.

Policy analysis

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

a) Existing policies. The current policy includes a provision that waterslides are subject to inspection by the department at least annually. Commerce conducts plan review for all public swimming pools, whirlpools and waterparks. Current staffing levels and workloads do not allow inspection of the construction of these public pools by Commerce. Public pools must have operating plans including life guard location. These operating plans are reviewed by DHFS and the implementation is reviewed in the pool's annual licensing inspection. Staffing requirements for waterslides are enforced by Commerce amusement ride and water slide inspectors. Currently both departments travel throughout the state allocating staffing resources to conduct annual inspections on waterslides and pools, respectively.

b) New policies. Commerce would conduct public pool construction inspections prior to DHFS conducting operational inspections required for the permitting of public swimming pools and water slides. Commerce would cease conducting annual inspections of waterslides as amusement rides and would rely on such inspections being made by DHFS public swimming pool inspectors.

The new policies would also:

- i. create a process for the department (and its agents) to conduct initial construction–related inspections of all public swimming pools;
- ii. implement a fee schedule for initial and subsequent inspections for public swimming pool construction;
- iii. transfer administrative rules regarding waterslides from the Amusement Ride code (Comm 34) to the Public Swimming Pool code (Comm 90).

c) Policy alternatives. The alternative of not revising these codes will result in the following:

- i. the continuance of the current situation whereby DHFS field staff have an inability to write orders on construction–related deficiencies that may be discovered at the time of their permitting inspections for public swimming pools;

- ii. the continuance of redundant inspections of waterslides on an annual basis by Commerce and DHFS that have impacts on the department's capacity to conduct other health and safety–related investigations.

Statutory authority

The Department authority for regulating the design and installation of public swimming pools is given in s. 145.26, Stats. The Department authority for regulating amusement rides, which include waterslides, is given in ss. 101.02 (15) (h) to (j) and 101.17, Stats.

Staff Time Required

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

Staffing resources are adequate to complete this project.

The following is the estimated time that department staff will be involved in the rulemaking process between now and 2002.

	<u>Hours</u>
Advisory council meetings (2)	40
Code topics research, language	60
Hearings, responses, revisions, etc.	60
Administrative and support	10
<u>Environmental assessment</u>	<u>5</u>
Total	175

Commerce

Subject

A revision to chs. Comm 2, 5 and 82 relating to fees and Wisconsin uniform plumbing code.

Objectives of the Rule. The objectives of this rule revision, to be incorporated into one or more rule packages, are to:

- a) adjust plan and product review priorities so that health and safety issues receive the appropriate level of commitment of time and resources;
- b) protect drinking water quality through effective regulations of plumbing systems;
- c) reduce plan review and product review workload to enable the shifting of a plumbing plan review position into the plumbing field operations section thereby enabling Commerce to implement construction inspections for public swimming pools.

Description of Policy Issues

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

- a) Existing policies.

- i. The current policy requires that any cross connection control device (CCCD) or assembly proposed to be installed in this state, no matter the location, be submitted for review and that a fee for this review is assessed (\$125.00 for each CCCD or assembly). All CCCDs and assemblies installed in this state must be tested by an individual registered by the department as a cross connection control device tester. Each CCCD or assembly is required to be tested and inspected on an established annual cycle. Each CCCD or assembly is given an object identification number by the department.

ii. The current policy also includes the review of water treatment devices that treat for aesthetic contaminants including water softeners, carbon filters and iron filters. Each such device is subject to review and approval unless the device is listed by an acceptable national product listing service as complying with the Wisconsin Uniform Plumbing Code.

b) New policies. The new policy would:

i. delete the requirement for submittal and review of cross connection control devices when not proposed for use in health care and related facilities;

ii. review national standards, particularly NSF 42 for water treatment devices, to determine if water treatment devices that treat for aesthetic contaminants need to receive the same level of staff review as other water treatment devices;

iii. create a process for plumbing designers and installers to follow so that all installed cross connection control devices or assemblies will be registered with the department; and

iv. create a fee schedule for the registration of cross connection control devices installed in facilities other than health care and related facilities.

c) Policy alternatives. The alternative of not revising these codes will result in Commerce not being able to shift a plumbing plan review position into the plumbing field operations section to implement construction inspections of public swimming pools.

Statutory Authority

Section 145.02, Stats., provides the Department authority over the construction, installation and maintenance of plumbing in connection with all buildings in this state, including buildings owned by the state or any political subdivision thereof, so that plumbing shall be safe, sanitary and such as to safeguard the public health and the waters of the state.

Section 145.13, Stats., requires the Department to adopt the state uniform plumbing code. The state plumbing code and amendments to that code as adopted by the department have the effect of law in the form of standards statewide in application and shall apply to all types of buildings, private or public, rural or urban, including buildings owned by the state or any political subdivision thereof. The state plumbing code shall comply with ch. 160, Stats. All plumbing installations shall so far as practicable be made to conform with such code.

Section 145.02(2), Stats., provides that the department shall have general supervision of all such plumbing and shall after public hearing prescribe, publish and enforce reasonable standards which shall be uniform and of statewide concern so far as practicable.

Staff Time Required

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

Staffing resources are adequate to complete this project.

The following is the estimated time that department staff will be involved in the rulemaking process between now and 2002.

	<u>Hours</u>
Advisory council meetings (2)	60
Code topics research, language	60
Hearings, responses, revisions, etc.	60
Administrative and support	10

<u>Environmental assessment</u>	<u>5</u>
Total	195

Commerce

Subject

Chapter Comm 34 relating to amusement rides and attractions.

Objective of the rule. The objective of the rule is to update the provisions of the Department’s administrative rules relating to amusement rides and attractions. An advisory council will be formed to review the rules and identify potential rule revisions.

Description of Policy Issues

The current rules of chapter Comm 34 are based on nationally recognized designs and practices. The rules cover the design, construction, operation, repair, inspection, assembly, disassembly and use of amusement rides, amusement attractions and amusement structures at carnivals, fairs and other places of amusement. Because it has been 7 years since chapter Comm 34 was revised, it is anticipated that the review will result in several change proposals to bring the rules into conformance with current national standards. Avoiding this update will result in continuing to have rules that are not consistent with current nationally recognized designs and practices.

Statutory Authority

Sections 101.12 (1) (e) and (2), 101.17 and 101.19 (1) (b), Stats.

Staff Time Required

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule. The department estimates that it will take approximately 400 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings and legislative review. The department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

Chapter Comm 5 relating to credentials for residential sprinkler installers.

Description of Policy Issues

Objective of the rule. The objective of this rule revision, incorporated into one or more rule packages, is to establish a limited license category for individuals to install residential automatic fire sprinkler systems under standards NFPA 13R and 13D of the National Fire Protection Association.

Policy Analysis

Presently, under state statutes and the rules of chapter Comm 5, individuals who install automatic fire sprinkler systems of any type must be licensed sprinkler contractors, journeyman sprinkler fitters or apprentices. The proposed rule would create a new license category of installers specializing in limited types of sprinkler systems meeting the standards of NFPA 13R and 13D. These types of systems are utilized only in low–rise residential buildings, such as apartment buildings, dormitories and motels, and one– and 2–family dwellings. National labor agreements already recognize this type of specialization. The alternative would

be to keep the status quo and not allow this type of specialization.

Statutory Authority

Section 145.17 (2) of the statutes provides the department the authority to prescribe rules as to the qualifications, examination and licensing of individuals who install automatic fire sprinkler systems.

Staff Time Required

It is estimated that these rule revisions relating to credentials will require the resources of about 4 individual staff members from the department as follows:

	<u>Hours</u>
Administrative time	40
Code Consultant's time	120
Program Managers' time	120
<u>Program Staff time</u>	<u>60</u>
Total Time	340

Corrections

Subject

Rule promulgation and amendment to repeal and recreate Ch. DOC 328, the rule relating to community supervision of probation, parole, lifetime, and extended supervision offenders. This rule has been amended on several occasions, but has not been comprehensively revised since its inception in 1981. This comprehensive revision will reflect the ways in which the Department of Corrections proposes to supervise offenders in the community given changes in staffing patterns and offender populations. The rule will also reflect that in addition to probationers and parolees the Department of Corrections now has statutory authority and the responsibility to supervise persons on lifetime and extended supervision.

Policy Issues

Objective of the Rule. The dual objectives of the rule are public safety and rehabilitation of the offender. This comprehensive rule revision will accurately reflect the methodology of community supervision in the year 2001 and beyond. The rule will reflect new statutory responsibilities that the legislature has mandated for offenders and the Department of Corrections. The revised rule will reflect that the Department of Corrections now has custody of persons on lifetime and extended supervision, and explain the differences in the substance and delivery of supervision to those groups.

Statutory Authority

Mandatory Release, Extended Supervision, Lifetime Supervision of Serious Sex Offenders, and Control and Supervision of Probationers: ss. 302.11, 302.113, 939.615, 973.10, Stats.

Staff Time Required

The Department estimates that it will take 300 hours to develop the rule including workgroup meetings, drafting, cost estimates, public hearings, and complying with rule making requirements.

Health and Family Services

Subject

Chapter HFS 120-Health care information provided by hospital emergency departments.

Policy Issues

Objective of the Rule. The Department proposes to amend and create rules to include the Department's collection of emergency department data pursuant to a legislative mandate under 1997 Wis. Act 231. The Department proposes to collect health care data from those Wisconsin general medical-surgical hospitals that indicated they had provided emergency room services during the previous fiscal year.

The Department also proposes to make 2 minor corrections to the chapter. These changes pertain to hospital reporting of rate increases under s. HFS 120.09 (3) (b) and deletion of the existing requirement to submit data via the Internet.

Policy analysis

In 2000, the Department promulgated administrative rules specifying the collection of data from hospitals, freestanding ambulatory surgery centers and physicians. Those rules did not specify the Department's collection of hospital emergency department data. However, emergency department data is needed to obtain a complete picture of health care services delivered in a hospital setting. Planning began for the collection of emergency department data in 1996 when a joint study by the Division of Health's Bureau of Public Health found that Wisconsin hospital emergency departments have the capacity to submit acceptable data. The University of Wisconsin Center for Health Systems Research surveyed data users such as the American Association of Retired Persons, the Department of Transportation, business health coalitions, such as the Madison-based Alliance, and health care providers and found substantial interest in the collection and analysis of emergency department data.

Statutory Authority

Section 153.75

Staff Time Required

25 hours of Department staff time to develop and present proposed rules to the Board on Health Care Information and 20 hours for Board members to review the proposed rules.

Natural Resources

Subject

Amend Ch. NR 118 (Standards and Criteria for the Lower St. Croix National Scenic Riverway) due to the adoption of a new Lower St. Croix national Scenic Riverway Cooperative Management Plan.

Policy Issues

Objective of the Rule. Ch. NR 118 describes minimum local zoning requirements for communities located within the National Scenic Riverway area. The proposed Cooperative Management Plan (CMP) outlines guidelines for revised state land use and surface water regulations. Additionally, a recent statutory amendment allows greater flexibility for local ordinances. The new rules will implement both the new CMP and the statutory amendment.

Policy analysis

In the near future, the Lower St. Croix Cooperative Management plan will be approved by both Minnesota and Wisconsin Department of Natural Resources. The plan is to provide a general direction for managing the Lower St. Croix National Scenic Riverway for the next 15 to 20 years. Chapter NR 118 is the Department rule which addresses the appropriate management techniques for land use and shoreland and bluff area development in this area. Many of the methodologies in ch. NR 118 will need to be amended to reflect changes in the Cooperative Management Plan. In

addition, we will be seeking additional flexibility for communities as they begin to develop comprehensive land use management plans including Lower St. Croix Riverway issues.

Statutory Authority

Wild and Scenic Rivers Act (16 U.S.C. 1274) and Section 30.27 Stats.

Staff Time Required

292 hours.

Natural Resources

Subject

Chapter NR 19, miscellaneous fur, fish, game and outdoor recreation.

Policy Issues

Objective of the Rule. Wisconsin statutes provide that the importation of non–native fish species is to be regulated by the department. Presently, the consideration of requests to import non–native species for fish farming is guided by a memorandum of understanding between the department of agriculture and the department of natural resources. It is necessary now to formalize the department’s process for reviewing requests to import non–native fish and to draft the appropriate administrative code language to guide that process. The rule–making will be of interest to fish farmers, sport fishers, environmental groups, and others.

Statutory Authority

Sections 29.735 and 227.11, Stats.

Staff Time Required

94 hours.

Nursing Home Administrator Examining Board

Subject

Conduct that may warrant a suspension or revocation; deadline for applying for an examination; technical changes.

Policy Issues

Objective of the Rule. The board intends to make 3 substantive changes, relating to conduct that may warrant a suspension or revocation, and relating to a 60–day deadline for applying for the licensing examination. The board also intends to make 5 technical changes, relating to correcting addresses in notes following substantive rule provisions, correcting a citation in a rule, and correcting a term used in the rules.

Policy analysis

One of the substantive changes will be to create a rule that defines the phrase “a pattern of serious violations of federal or state statutes, rules or regulations.” This phrase is in s. 456.10 (1) (d), Stats., which was created in 1997 Wisconsin Act 237. The board has given guidance to the department’s enforcement staff regarding the board’s interpretation of this phrase; however, the board now intends to define the phrase in the rules.

Another substantive change would eliminate the 60–calendar–day filing deadline for the nursing home

administrator licensing examination. Another substantive change would be to include under s. NHA 5.02, unprofessional conduct, providing false information to the board by a nursing home administrator.

Two of the technical changes would correct the name and address of the NAB, as provided in notes following ss. NHA 1.02 (3) and 3.03. Another technical change would correct the address of the American College of Health Care Administrators in the note following s. NHA 4.03 (1). Another technical change would correct the citation in s. NHA 4.01 (1) (d) from s. NHA 2.02 (1) (a) to s. NHA 2.02 (1). A final technical change would change “continuing education credits” to “continuing education hours,” as used in s. NHA 3.02 (5).

A “pattern” would be defined as more than one occurrence in 3 years. “Serious violations of federal or state statutes” would be defined as state level A violations or federal violations at level H or higher.

The 60–calendar–day examination filing deadline would be eliminated, because the national and state portions of the licensing examination are now administered by a professional testing agency on a weekly basis by computer.

By including under “unprofessional conduct” the provisions of false information to the board by a nursing home administrator, the board will have clear authority to take appropriate action against the license of the nursing home administrator.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2), 456.02, 456.04 and 456.10, Stats.

Staff Time Required

100 hours.

Transportation

Subject

Prescribing minimum equipment requirements for vehicles and standards for the equipment used on vehicles.

Policy Issues

Objective of the Rule. The objective of this rule making is to amend ch. Trans 305 to require van–type vehicles to have operable interior door handles on passenger doors located on the sides of the vehicles. The intent is to enhance the safety of passengers inside the vehicles, enabling them to escape the vehicle, in instances of vehicle crashes. The vehicles most affected by this rule change would be those vehicles operated by private companies that transport passengers for recreational purposes, for shuttle transportation, and general transport. It is not intended to be applied to vans used primarily for transportation of cargo, or to impose substantial additional costs on operators of van–type vehicles.

Policy analysis

There are no current policies relevant to the rule, nor the development of new policies.

Statutory Authority

Sections 85.16 (1) and 110.075, Stats.

Staff Time Required

32 hours.

Submittal of rules to legislative council clearinghouse

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

Administration

Rule Submittal Date

On February 19, 2001, the Wisconsin Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Adm 30, relating to payroll deductions for charitable purposes.

Agency Procedure for Promulgation

A public hearing is not required and the rule will be promulgated pursuant to the 30-day notice procedure under s. 227.16 (2) (e), Stats.

Contact Information

If you have any questions regarding this rule, please contact:

Donna Sorenson
Department of Administration
Telephone (608) 266-2887
Mailing Address:
P.O. Box 7864
Madison, WI 53707-7864

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On February 23, 2001, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATPC 29, relating to pesticide license fee surcharges.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule On March 28, 2001 at 1:00 p.m. in Board Room, 2811 Agriculture Drive, Madison, WI

Contact Information

If you have questions, please contact:

Karen Ayers
Division of Agricultural Resource Management
Telephone: (608) 224-4523
Mailing Address:
2811 Agriculture Drive
PO Box 8911
Madison, WI 53718-6777

Corrections

Rule Submittal Date

On February 23, 2001, the Department of Corrections submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. DOC 309, relating to resources for inmates.

Agency Procedure for Promulgation

The department will schedule a public hearing at a later date.

Contact Information

If you have questions, please contact:
Division of Adult Institutions
Telephone: (608) 266-6606
Mailing Address:
149 E. Wilson St.
Madison, WI 53707-7925

Employment Relations Commission

Rule Submittal Date

On February 20, 2001, the Wisconsin Employment Relations Commission submitted a proposed administrative rule to the joint legislative council staff for review.

Analysis

The proposed rule revises Ch. ERC 33 relating to the calculation of a qualified economic offer for school district professional employees. Pursuant to s. 227.16 (2) (b), Stats., a public hearing on this proposed rule is not required.

Contact Information

If you have questions please contact:

Peter Davis
General Counsel
Telephone: (608) 266-1381
Mailing Address:
18 S. Thornton Avenue
Madison, WI 53707-7870

Hearings and Appeals

Rule Submittal Date

On February 22, 2001, the Division of Hearings and Appeals submitted proposed rule changes to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule changes affects ch. HA 2, relating to Truth-In-Sentencing.

Agency Procedure for Promulgation

No public hearing has been scheduled at this time.

Contact Information

If you have questions, please contact:

William J. Lundstrom, Asst. Administrator
Telephone: (608) 266-7668
FAX: (608) 264-9885
Mailing Address:
5005 University Ave. #201
Madison, WI 53705
EMAIL: william.lundstrom@dha.state.wi.us

Pharmacy Examining Board**Rule Submittal Date**

On February 28, 2001 the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order revising s. Phar 6.06 relating to minimum equipment.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 10, 2001 at 9:15 a.m. in Room 179A, at 1400 East Washington Avenue

Contact Information

If you have questions, please contact:
Pamela Haack, Paralegal, Administrative Rules
Coordinator
Phone: (608) 266-0495
Mailing Address:
1400 East Washington Avenue
Madison, WI 53708

Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors**Rule Submittal Date**

On February 21, 2001, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to background checks.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 19, 2001 at 9:15 a.m. in Room 179 A, Washington Square Building, 1400 E. Washington Avenue, Madison WI 53708.

Contact Information

If you have questions, please contact:
Pamela Haack, Paralegal
Administrative Rules Coordinator
Telephone: (608) 266-0495
Mailing Address:
Washington Square Building
1400 E. Washington Avenue
Madison WI 53708

Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors**Rule Submittal Date**

On February 21, 2001, the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to supervision of pre-certification supervised practice of social work.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 19, 2001, at 9:15 a.m. in Room 179A, Washington Square Building, 1400 E. Washington Avenue, Madison WI 53708.

Rule-making notices

Notice of Hearing Agriculture, Trade and Consumer Protection [CR 01-15]

(reprinted from 2/28/01 Wis. Admin. 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, subchapter III, Wis. Adm. Code) relating to annual grants to ethanol producers. The hearing will be held:

Monday, March 12, 2001 at 1:00 p.m.
Wisconsin Dept. 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. Additional written comments will be accepted until March 12, 2001.

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 March 7, 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 01–21]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rule changes to ATCP 29, Wis. Adm. Code. 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 April 11, 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 Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708 or by calling (608) 224–4523. Copies will also be available at the public hearing.

An interpreter for the hearing impaired will be available on request for the hearing. Please make reservations for a hearing interpreter by March 21, 2001 either by writing Karen Ayers, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608/224–4523), or by contacting the message relay system (TTY) at 608/224–5058. Handicap access is available at the hearing.

Wednesday, March 28, 2001 from 1:00 p.m.–5:00 p.m.
Wisconsin Dept. of Agriculture, Trade and Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI 53718–6777.

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

Statutory authority: ss. 93.07 (1) and 94.73(15)

Statutes interpreted: ss. 94.681 (3), 94.685(3)(a) 2., 94.703 (3) (a) 2. and 94.704 (3) (a) 2.

This rule increases pesticide license fee surcharges in order to continue funding for the agricultural chemical cleanup program under s. 94.73, Stats.

Background

The department of agriculture, trade and consumer protection (DATCP) administers an agricultural chemical cleanup program under s. 94.73, Stats. This program is designed to clean up environmental contamination caused by spills of fertilizers and nonhousehold pesticides. Under the cleanup program, DATCP may reimburse a portion of the eligible cleanup costs. Over 360 contaminated sites are being cleaned up under this program.

When the cleanup program was first established, it was funded by a combination of general tax dollars (GPR) and agricultural chemical license fee surcharges. But the Legislature later withdrew GPR funding. The Legislature also transferred \$500,000 in license fee surcharge funds from this program to the state general fund. The program is now funded entirely by license fee surcharges.

Under s. 94.73 (15), Stats., DATCP must adjust these surcharges by rule, as necessary, to maintain a cleanup fund balance of not more than \$5 million and not less than \$2 million. In response to a fund surplus, DATCP adopted rules suspending license fee surcharges until December, 2002. But an increase in cleanup reimbursement claims has depleted the fund more rapidly than expected. DATCP currently projects that the fund balance will fall below the required \$2 million minimum amount later this calendar year. If no new funding is provided, the fund balance will likely fall to zero in the next biennium.

In order to provide continued funding for cleanup projects, this rule reinstates pesticide license fee surcharges beginning in December, 2001. This rule change will likely prevent the fund balance from falling to zero, but will not necessarily maintain the required minimum balance of \$2 million. This rule does not affect fertilizer license fees, which will automatically resume in August, 2002.

Pesticide Manufacturers and Labelers; License Fee Surcharges

Under this rule, pesticide manufacturers and labelers must pay license fee surcharges based on their annual gross sales of pesticide products in Wisconsin:

- For each product with annual gross sales less than \$25,000, the surcharge is \$5. This surcharge is added to the current basic license fee of \$275 per product.
- For each product with annual gross sales between \$25,000 and \$75,000, the surcharge is \$100. This surcharge is added to the current basic license fee of \$790.
- For each product with annual gross sales greater than \$75,000, the surcharge is 0.75% of gross sales. This surcharge is added to the current basic license fee of \$2760 plus 0.2% of gross sales.

A manufacturer or labeler must pay the required surcharge for each license year ending December 31, based on sales for the 12 months ending September 30 of the preceding license year. This rule first applies to license applications for the year 2002. To obtain a license for the year 2002, an applicant must pay surcharges based on sales for the 12 months ending September 30, 2001.

Dealers and Distributors of Restricted-Use Pesticides; License Fee Surcharges

Under this rule, a dealer or distributor of restricted-use pesticides must pay an annual license fee surcharge for each business location. This surcharge adds \$40 to the current annual license fee of \$60 per business location. A dealer or distributor must pay the surcharge to obtain a license for each year ending December 31, beginning with the 2002 license year.

Pesticide Application Businesses

Under this rule, a pesticide commercial application business must pay an annual license fee surcharge for each business location. The surcharge adds \$55 to a current annual license fee of \$70 per business location. A pesticide application business must pay the surcharge in order to obtain a license for each license year ending December 31, beginning with the 2002 license year.

Individual Commercial Applicators

Under this rule, an individual commercial applicator of pesticides must pay an annual license fee surcharge of \$20,

which is added to the current annual license fee of \$30. An individual commercial applicator must pay the surcharge in order to obtain a license for each license year ending December 31, beginning with the 2002 license year.

Fiscal estimate

Based on currently pending ACCP claims and claim volumes normally submitted and reviewed in the last half of a fiscal year, the department estimates the balance in the ACCP fund will be approximately \$2.7 million at the end of FY 2000/2001. This estimate anticipates that by June 2001, the department will be able to complete its review of the large backlog of existing cases generated by an October, 2000 deadline.

Based on written cost estimates or written cost approvals, and department knowledge of which projects have been completed, the department estimates ongoing annual expenditures by the industry of between \$4.2 million and \$4.7 million per year. Department records indicate that at least 90% of these costs will be submitted for reimbursements, and that 75% of submitted costs are paid out. The department anticipates an ongoing annual reimbursement demand of \$3.1 million to \$3.4 million.

This rule assumes the final version of this rule would be published either November 1, 2001 or December 1, 2001. Based on numbers of licenses issued and dollar values of nonhousehold pesticides sold, the department anticipates that this rule could generate \$1,560,000 in annual surcharge fee revenues, beginning in FY 2001/2002. Publication after December 1, 2001 would not provide revenues during FY 2001/2002, since all affected licenses are issued during December.

Note: Separate from this rule, fertilizer license and tonnage revenue for the ACCP fund will first be collected during FY 2002/2003, providing an additional \$500,000 annually to the ACCP Fund.

Initial regulatory flexibility analysis

The proposed changes to ATCP 29, Wis. Adm. Code will have an effect on small businesses that sell or use pesticides in Wisconsin.

Businesses Affected:

Currently all manufactures and labelers of pesticides used in agricultural crop production must register those pesticides and pay certain fees for those pesticides, with the fees based on the value of Wisconsin sales. Agricultural coops and farm centers that sell or apply pesticides must be licensed to do these activities. A portion of these fees, known as the Agricultural Chemical Cleanup Program (ACCP) surcharge, are used to clean up sites that have been contaminated by spills of pesticides and fertilizers. Most of the surcharge fees are passed to farmers through distributor imposed surcharges on the products.

The product and license surcharge fees have not been collect since December of 1997 because the balance of funds that were available in the ACCP fund exceeded the anticipated costs of cleaning up contaminated sites. This is no longer the case, and as a result, the proposed changes to ATCP 29, Wis. Adm. Code, reinstate the product and license surcharge fees.

Most manufacturers of pesticides and many manufacturers of fertilizers, as well as many agricultural coops and farm centers are not small businesses. Some smaller coops and farm centers are small businesses. Since most of these fees are

passed on to farmers, the greatest impact should be at the farm level, most of which are small businesses.

Anticipated Impacts

The department estimates this rule will increase farm costs by \$1,560,000 per year. Based on 30,000 farms, the department anticipates average per farm cost of about \$52. Separate from this rule, increases in fertilizer tonnage will commence in July 2001, simultaneously adding \$500,000 to the ACCP fund and \$90,000 to the ACM fund.

There are no anticipated changes in recordkeeping, reporting, or other practices as a result of this rule.

Notice of Hearing Pharmacy Examining Board [CR 01-23]

The state of Wisconsin Pharmacy Examining Board will hold a public hearing on a proposed rule revising s. Phar 6.06, relating to minimum equipment. The hearing will be held:

Tuesday, April 10, 2001 at 9:15 a.m.
Wisconsin Department of Regulation and Licensing
1400 East Washington Avenue
Room 179A
Madison, WI 53708

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by April 21, 2001 to be included in the record of rule-making proceedings.

Analysis Prepared by the Department of Regulation and Licensing

Statutory authority: ss. 15.08 (5) (b), 227.11 (2), 450.02 (3) (e) and 450.09 (3).

Statutes interpreted: s. 450.09 (3)

Rule Contents

Currently, s. Phar 6.06 references equipment and standards that are out-of-date with current pharmacy practice. A

problem has arisen in providing pharmacists guidance on acceptable equipment which is currently available which meets the intent of the board as comporting with good pharmacy practice. Modifying s. Phar 6.06 clarifies the standards for minimum equipment to be contained in the service area of a pharmacy. The modification to s. Phar 6.06 (1) (a) recognizes that an electronic as well as a torsion prescription balance is permitted, and the corresponding sensitivity for each. Section Phar 6.06 (1) (b) requires that an appropriate set of accurate weights be maintained for any mechanical torsion prescription balance used, according to the purpose of compounding. This modification acknowledges the wide range of types of compounding undertaken by pharmacists and allows discretion and professional judgment in the selection of weights appropriate to use. Section Phar 6.06 (1) (c) requires a range of single metric scale graduates capable of weighing 5 ml. to 100 ml. The reference to handbook 44 has been deleted as unnecessary. Section Phar 6.06 (1) (j) recognizes that statutes and rules may be made available via electronic means and therefore now allows for immediate accessibility to those statutes and rules as satisfying that portion of the rule.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

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

Contact Person:

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

Pamela Haack,
Department of Regulation and Licensing,
Office of Administrative Rules
1400 East Washington Avenue, Room 171
P.O. Box 8935
Madison, Wisconsin 53708 (608 266-0495)

Submission of proposed rules to the legislature

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

Chiropractic Examining Board (CR 99-147)

Ch. Chir 4 – Relating to utilization reviews.

Geologists, Hydrologists and Soil Scientists (CR 00-139)

Ch. GHSS 1 – Relating to a rules committee.

Health and Family Services (CR 00-191)

Ch. HFS 112 – Relating to licensing of emergency medical technicians-paramedic operational plans.

Psychology Examining Board (CR 00-170)

Chs. Psy 2 and 4 – Relating to continuing education and temporary practice

Social Workers, Marriage and Family Therapists and Professional Counselors (CR 00-158)

Ch. SFC 1 – Relating to the state jurisprudence examination.

Transportation (CR 01-001)

Ch. Trans 131 – Relating to a motor vehicle emissions inspection program.

Transportation (CR 00-122)

Ch. Trans 158 – Relating to placement of Wisconsin-issued motor vehicle identification numbers (VINs).

Workforce Development (CR 00-182)

Ch. DWD 14 – Relating to continuing education requirements.

Rule orders filed with the revisor of statutes bureau

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

Financial Institutions – Banking (CR 00-166)

An order to repeal s. DFI-Bk 8.04 relating to stating name and location of office on bank checks.
Effective 4-1-01

Health and Family Services (CR 00-134)

An order to repeal and recreate HFS 97, relating to complaint procedures for inmates of the Wisconsin Resource Center
Effective 4-1-01

Natural Resources (CR 00-118)

An order renumbering, amending and creating rules pertaining to deer management unit boundaries and population goals.
Effective 3-1-01

**The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840**

First Class
U.S. POSTAGE PAID
Madison, Wisconsin
Permit Number 1369

First Class Mail

***Wisconsin
Administrative
Register***

Dated Material. Please Do Not Delay!