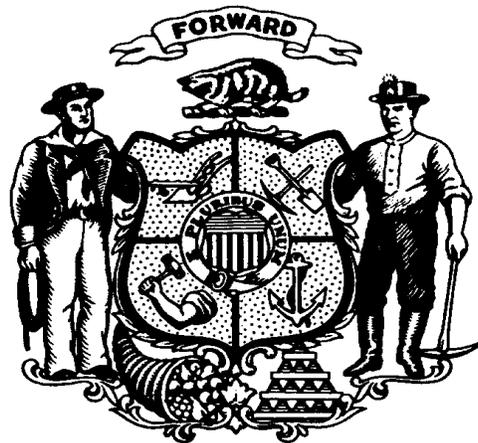


Wisconsin Administrative Register

No. 543



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Emergency rules now in effect

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

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

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

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

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection – (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

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

Rules adopted creating **ch. NR 754** relating to environmental insurance requirements for liability exemptions for voluntary remediation.

Exemption from finding of emergency

This rule is being promulgated as an emergency rule because 1999 Wis. Act 9 (Section 9136(3)) required the adoption of this rule as an emergency rule (following the procedures in s. 227.24, Stats.). 1999 Wis. Act 9 stated that the department is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety or welfare and without having to provide a finding of emergency.

Analysis prepared by the Dept. of Natural Resources

Statutory authority: ss. 227.11(2) and 227.24, Stats.

Statute interpreted: s. 292.15, Stats.

Section 292.15 (2) (ae) 3m., Stats., directs the department to promulgate rules to describe the requirements that must be met by a voluntary party seeking a Certificate of Completion, where natural attenuation is employed as the remedial action. The 1999–2001 State Budget (1999 Wisconsin Act 9) created s. 292.15(2)(ae), Stats., which allows parties to use natural attenuation as a remedy to obtain the voluntary party liability exemption. This section includes a provision where the DNR

may require a voluntary party to obtain environmental insurance if the voluntary party wants to receive a Certificate of Completion before the groundwater enforcement standards are met through natural attenuation. This rule requires that all voluntary parties who apply for the liability exemption under this section obtain environmental insurance to cover the cost to cleanup the environment if natural attenuation fails.

Publication Date: March 6, 2001
Effective Date: March 6, 2001
Expiration Date: August 3, 2001
Hearing Date: April 16, 2001
 [See Notice this Register]

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

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

Finding of emergency

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

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

Financial Institutions

Subject

Section DFI—SB 16.03 (7) relating to investments in development companies.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to create s. DFI—SB 16.03 (7). Description of existing relevant policies and new policies proposed to be included in the rule and an analysis of policy alternatives:

Currently state-chartered banks are authorized to invest, in an amount not to exceed in the aggregate 5% of its capital, in shares of small business investment companies located in this state. However, similar authorization does not exist for state-chartered savings banks. This rule authorizes state-chartered savings banks to similarly invest. This rule helps state-chartered savings banks to remain competitive with other financial institutions.

Statutory authority for the rule:

Section 214.03, Stats.

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

Estimated time to be spent by state employees – 40 hours. No other resources are necessary.

Contact information:

For additional information, contact:
Mark Schlei, Deputy General Counsel
Department of Financial Institutions
Office of the Secretary
P.O. Box 8861
Madison, WI 53708–8861
Tel. (608) 267–1705
TTY (608) 266–8818

Financial Institutions

Subject

Section DFI—SL 16.05 relating to investments in development companies.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to create s. DFI—SL 16.05.

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

Currently state-chartered banks are authorized to invest, in an amount not to exceed in the aggregate 5% of its capital, in shares of small business investment companies located in this state. However, similar authorization does not exist for state-chartered savings banks. This rule authorizes state-chartered savings banks to similarly invest. This rule helps state-chartered savings banks to remain competitive with other financial institutions.

Statutory authority for the rule:

Section 215.135, Stats.

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

Estimated time to be spent by state employees – 40 hours. No other resources are necessary.

Contact information:

For additional information, contact:
Mark Schlei, Deputy General Counsel
Department of Financial Institutions
Office of the Secretary
P.O. Box 8861
Madison, WI 53708–8861
Tel. (608) 267–1705
TTY (608) 266–8818

Insurance

Subject

Revision of s. Ins 50.06 (2) (f), relating to notes to annual audited financial statements.

Policy analysis

Objective of the rule. This rule will simplify rule language concerning required notes to annual audited financial statements that insurers file with the commissioner.

Analysis. There is no policy change, current policy is to follow National Association of Insurance Commissioners' (NAIC) guidelines in the interest of uniformity, a change in NAIC guidelines makes specific language in the current rule superfluous.

Statutory authority

Sections 601.41 (3) and 601.42

Staff time required

10 hours

Natural Resources

Subject

A revision to ch. NR 25 relating to commercial fishing rule changes recommended by the commercial fisheries task force.

Policy analysis

The commercial fisheries task force recommended 12 key areas for changes to the commercial fishing regulations. At the August 16, 2000 Natural Resources Board meeting the Board approved the recommendations of the task force and directed department personnel to start the rule writing process. Groups impacted and interested in these issues include: Commercial fisheries task force, Lake Michigan and Lake Superior commercial fishing boards, licensed commercial fishermen and crew members, Great Lakes sport fishing groups, and wholesale fish dealers.

The commercial fisheries task force was formed to address the following stated issue: "The long term stability of Great Lakes fish stocks are in jeopardy. Under current laws and

limited Department resources, we cannot determine or control the number of fish being harvested. Current laws fail to deter false reporting, unlawful harvest, and unlawful sale of commercial fish species. As a result, consumers, sport fishers, commercial fishers, wholesale fish dealers, and others suffer from reduced bag limits, reduced quotas, and lost business opportunities.”

Statutory authority

Sections 29.014, 29.519 and 227.11 (2) (a)

Staff Time Required

990 hours

Natural Resources

Subject

Rule development for pen standards for captive animals held under the authority of a dog training permit. Rule development for the use of captive bear for bear dog training and bear dog trials.

Policy analysis

Currently the dog training rules do not specify pen standards for captive animals held under the authority of a dog training and the rules do not address the use of captive bear for bear dog training and bear dog trial purposes. Only general guidelines for the use of captive animals are in place to deal with the issue.

Groups likely impacted are members of the Conservation Congress (bear committee and hunting with dogs committee), Wisconsin Wildlife Federation and Wisconsin Bear Hunters Association. Groups interested include Raising Awareness of the Value of Endangered Nature (RAVEN) Alliance for Animals and Humane Society of Wisconsin.

Currently the dog training rules do not specify pen standards for captive animals held under the authority of a dog training license and the rules do not address the use of captive bear for bear dog training and bear dog trial purposes. Minimum pen standards are established by ch. NR 16 that should apply uniformly to any person possessing live captive animals. The use of captive bears for dog training purposes has become more prevalent which raises concerns about humane care and treatment of captive bear. Captive bear are held under the authority of game farm license that has very specific pen standards and barrier fence standards which are being ignored when the captive bear are used for dog training purposes. The department has a statutory mandate to ensure that captive animals receive humane, adequate and sanitary care. This requirement is especially acute with captive bear which can live 15 to 30 years in captivity.

Statutory authority

Sections 29.014 (1), 29.321 and 227.11 (2) (a)

Staff Time Required

152 hours

Natural Resources

Subject

Amendments to sections NR 809.50, 809.51, 809.52 and 809.53, relating to safe drinking water regulations for radionuclides.

Policy analysis

This rule will establish a Maximum Contaminant Level (MCL) of 5 pCi/l for radium 226 plus radium 228 in drinking

water. This MCL has been under review since USEPA proposed revisions to the radionuclide rule in 1991. This rule also establishes MCLs and monitoring requirements for gross alpha activity, gross beta activity and uranium in drinking water. Action by the Bureau of Watershed Management to address acceptable methods for disposing drinking water treatment plant wastes that contain radionuclides is expected to occur in 2001, but will be delayed from the timeframe indicated. Some minor rule changes will also be presented to correct typographical errors and include clarifications issued by USEPA for existing rules.

The United States Environmental Protection Agency (USEPA) published a final rule to establish drinking water standards for radionuclides on December 7, 2000. As a primacy agency, the Department must develop drinking water standards to be included in ch. NR 809 that are no less stringent than the federal regulations.

Statutory authority

Sections 281.17 (8), 227.11 (2), 281.11 and 281.12

Staff Time Required

141 to 191 hours

Transportation

Policy analysis

Objective of the rule. Chapter Trans 260 governs single trip permits for mobile homes/manufactured homes. Chapter Trans 261 governs multiple trip permits for mobile homes/manufactured homes. The proposed amendments are intended to redefine the dimensions allowable under multiple and single trip permits, and will redefine the way that single and multiple trip mobile home permit dimensions are measured, and consider provisions for escort requirements.

Current allowable dimensions for multiple and single trip permits are outdated, considering recent changes in manufactured housing design. New configurations exceed the dimensions for multiple trip permits, and require single trip permits. By redefining the allowable dimensions, the number of single trip permits needed will decrease. This will reduce workload in DMV and also improve permit turnaround time, which will benefit industry. DOT issues all permits for mobile home transport. To improve consistency of administration and enforcement, the Department wants the way in which dimensions are measured for single and multiple trip permits to be uniform.

Statutory authority

Section 348.25 (3)

Staff time required

Approximately 300 hours

Transportation

Policy analysis

Objective of the rule. This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding one highway segment to the network. The actual segment being proposed is State Trunk Highway 48 from STH 53 in Rice Lake to STH 40.

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with

changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a request from Birchwood Lumber and Veneer Company, Birchwood, WI, to add the highway segment.

Statutory authority

Section 348.07 (4)

Staff time required

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

Submittal of rules to legislative council clearinghouse

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

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On February 27, 2001, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule makes minor remedial drafting changes to current department rules under chapters ATCP 92, 1, 29, 30, 57, 91, 98, 101, 109, 110, 111, 116, and 121.

Agency Procedure for Promulgation

The department will hold a public hearing on April 25, 2001.

Contact Information

The department's Office of Legal Counsel is primarily responsible for this rule.

If you have questions, you may contact:
Roxy Capelle at (608) 224-5023.

Medical Examining Board

Rule Submittal Date

On March 14, 2001, the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to the USMLE examination.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 16, 2001 at 8:30 a.m. in Room 179A, Medical Examining Board, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions, you may contact:
Pamela Haack, Paralegal
Administrative Rules Coordinator
(608) 266-0495

Medical Examining Board

Rule Submittal Date

On March 14, 2001, the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule-making order relates to prescribing or dispensing schedule II amphetamines or schedule II anorectics.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 16, 2001 at 8:30 a.m. in Room 179A, Medical Examining Board, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions, you may contact:
Pamela Haack, Paralegal
Administrative Rules Coordinator
(608) 266-0495

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board

Rule Submittal Date

On March 5, 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 professional counselor training certificates.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 17, 2001 at 10:00 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions, you may contact:
Pamela Haack, Paralegal
Administrative Rules Coordinator
(608) 266-0495

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board

Rule Submittal Date

On March 5, 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 conforming existing rules to present practices and to other rules.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 22, 2001 at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

If you have questions, you may contact:
Pamela Haack, Paralegal
Administrative Rules Coordinator
(608) 266-0495

Rule-making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

[CR 01-21]

(Reprinted from mid-March 2001 Register)

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

See page 18 from the 3/15/01 Wis. Adm. Register.

Initial regulatory flexibility analysis

See page 18 from the 3/15/01 Wis. Adm. Register.

Notice of Hearing**Agriculture, Trade and Consumer Protection****[CR 01-28]**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules relating to minor remedial drafting changes to department rules. 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 rules. Following the public hearing, the hearing record will remain open until April 30, 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 Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-5023. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **April 18, 2001**, by writing to Roxy Capelle, Division of Legal Counsel, P.O. Box 8911, Madison WI 53708-8911, telephone (608) 224-5023. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

One hearing is scheduled:

Wednesday, April 25, 2001

1:30 p.m. until 3:30 p.m.

Dept. of Agriculture, Trade and Consumer Protection
Board Room

2811 Agriculture Drive

Madison, WI 53704

Handicapped accessible

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

Statutory Authority: s. 93.07 (1)

Statutes Interpreted: s. 93.07(10), 95.20 and 95.25

This rule makes the following minor remedial drafting changes to current DATCP rules:

Modifies ch. ATCP 1 (administrative orders and contested cases) to be consistent with s. 227.485, Stats., and the Wisconsin Court of Appeals decision in *Gordon v. State Medical Examining Board*, 225 Wis. 2d 552 (Ct. App. 1999). This rule clarifies that a prevailing party filing a motion for costs and attorneys fees in an administrative contested case must file that motion within 30 days after the department issues its proposed (not final) decision in the case. If the department issues its final decision without first issuing a proposed decision, the prevailing party may file the motion within 30 days after the department issues its final decision.

Under current law, the administrative law judge who hears the case must issue a proposed decision if the administrative law judge is not the final decisionmaker. This rule clarifies (per current law) that if the administrative law judge is the final decisionmaker, the administrative law judge may issue a final decision without first issuing a proposed decision.

Clarifies the license expiration dates for bulk milk weigher and sampler licenses. This rule clarifies (per current law) that the license is a 2-year, not a 3-year license. A license normally expires on September 30. But if the department issues an original license prior to September 30 of any year, based on an application received after August 15 of that year, the license expires on the 3rd September 30 after the department issues the license.

Clarifies current rules related to home improvement contracts. Under current rules (ch. ATCP 110), some home improvement contracts must be in writing. A home improvement contract must contain certain disclosures if (1) current rules require a written contract or (2) *the contract is prepared on the seller's "pre-printed contract form."* This rule clarifies the second condition, which has been somewhat difficult to interpret. Under this rule, a home improvement contract must contain certain disclosures if (1) current rules require a written contract or (2) *the buyer signs a written contract.* This rule makes parallel modifications to other rule provisions dealing with contract changes.

Repeals obsolete rule provisions related to motor fuel price posting, including provisions authorizing the temporary use of so-called "pennywheel conversion devices." These temporary provisions had a stated "sunset" date of December 31, 1998, and are no longer in effect.

Clarifies current prohibitions related to "referral selling plans" (ATCP 121). Under current rules, a "referral selling plan" means "any method of sale where the seller or lessor, as an inducement for a consumer sale, offers compensation to a prospective buyer or lessee either for (a) names of other prospective buyers or lessees, or (b) otherwise aiding the seller or lessor in making consumer sales." A referral selling plan operates like a pyramid scheme or lottery. Each buyer purchases in reliance upon promised future payments that *may* result if the buyer refers other sales prospects who purchase in turn. But the payments may never occur, and the "chain" of prospects inevitably breaks. In 1968, the department prohibited referral selling plans unless the seller compensates the buyer *before* making any sale to *that* buyer (thus eliminating the element of "chance"). This rule clarifies but does not change the current prohibition.

Eliminates obsolete references to statutes or rule provisions that no longer exist, and corrects obsolete references to statutes or rule provisions that have been changed. Amends several rule titles, to shorten or clarify those titles. Corrects a number of erroneous cross-references in current rules. Makes non-substantive drafting and organizational changes.

Fiscal Estimate

This rule will have no fiscal effect on the department or local units of government.

Initial Regulatory Flexibility Analysis

This rule makes minor remedial drafting changes to a variety of DATCP rules. This rule merely clarifies rule provisions, conforms current rule provisions to current law, or makes non-substantive organizational or drafting changes.

Notice of Hearing
Architects, Landscape Architects, Professional
Engineers, Designers and Land Surveyors
Examining Board
[CR 01-34]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors in ss. 15.08 (5) (b), 137.06 and 227.11 (2), Stats., and interpreting s. 443.17, Stats., the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors will hold a public hearing at the time and place indicated below to consider an order to create s. A-E 2.02 (7), relating to seals and stamps.

Hearing Date, Time and Location

Date: April 11, 2001
Time: 1:15 p.m.
Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by April 25, 2001 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 137.06 and 227.11 (2), Stats.

Statute interpreted: s. 443.17, Stats.

The current rules of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors require all registration seals or stamps affixed to drawings and specifications to be filed as public documents to be original seals or stamps. This proposed rule-making order will authorize registrants to use electronic signatures, to include use of registration seals or stamps, when submitting drawings and specifications as public documents, as permitted by the government unit receiving the drawings and specifications. This proposed change will enhance the options consistent with available technology and need a more efficient means to submit original documents required as public records. This proposed rule will create s. A-E 2.02 (7) to include reference to affixing a seal or stamp to specifications as well as drawings to be filed as original documents. The rule also clarifies which authority a registrant must follow when using electronic signatures.

Text of Rule

SECTION 1. A-E 2.02 (7) is repealed and recreated to read:

A-E 2.02 (7) (a) All seals or stamps affixed to drawings and specifications to be filed as public documents shall be original. No stickers or electronically scanned images shall be allowed.

(b) All seals and stamps on drawings and specifications to be filed as public documents shall be signed and dated by the registered professional as follows:

1. In a permanent ink contrasting with the seal and the background; or,
2. Utilizing an electronic signature meeting the requirements of s. 137.06, Stats., if permitted by the governmental unit that is to receive the drawings and specifications.

(c) If other standards for signatures or seals are prescribed by statute, the statutes shall govern.

Fiscal Estimate

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearings

Corrections
[CR 00-140]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 302.07, 302.08, 302.11 (2) and 302.04, Stats., the department of corrections proposes the following rule relating to classification, assessment and evaluation and program review.

Hearing information:

<u>Date & Time</u>	<u>Location</u>
April 17, 2001 Tuesday 11:00 A.M.	Room 041 State Office Building, GEF III 125 S. Webster Madison, Wisconsin
April 18, 2001 Wednesday 10:00 a.m.	Room 120 State Office Building 141 N.W. Barstow Street Waukesha, Wisconsin
April 19, 2001 Thursday 11:00 A.M.	Room 136 State Office Building 1681 2 nd Avenue South Wisconsin Rapids, Wisconsin

The public hearing sites are accessible to people with disabilities.

Proposed Order of the Department of Corrections Repealing and Recreating rules

The Wisconsin department of corrections proposes an order to repeal ss. DOC 302.01-302.20, and create ss. DOC

302.01–302.205, relating to classification, assessment and evaluation, and program review.

Analysis by the Department of Corrections

Statutory authority: ss. 301.02, 301.03 (2), 302.07 and 227.11 (2), Stats.

Statutes interpreted: ss. 301.046, 301.048, 302.045, 302.055, 302.07, 302.08, 302.15, 302.18, 302.27, 303.065 and 303.068, Stats.

After more than 20 years of experience with the rules related to classification, assessment and evaluation, and program review, the Department of Corrections proposes to update the rules.

Need for Revision

The need for these changes cannot be overstated. The current rule was written and enacted at a time when the classification unit was a part of the adult institution system and at a time when the entire adult institution population represented fewer than 4,500 inmates. That system included all maximum, medium and minimum security facilities. Personnel staffing committees and reviewing recommendations came from within the system and did not permit independent review or decision making. Often, conflicting program and custody decisions were settled by the same staff member affected by the outcome.

Chapter DOC 302 governs inmate classification, assessment and evaluation, and program review at state correctional institutions. As technology, science, population and government evolve over time, practices must adapt to those changes. We ultimately grow wiser and more efficient based on new knowledge and procedures. What was thought routine, necessary or even effective correctional practice in 1980 may not be accurate today.

For example, our prison population has grown from 1,930 in 1976 to more than 20,600 currently. This enormous increase in prisoners, along with their increased level of sophistication, has placed a greater burden on correctional staff. In many ways, Wardens and staff no longer enjoy the luxury of time that once afforded them the ability to maneuver bureaucratic requirements. The situations encountered and decisions that are made are infinitely different from those of 20 years ago when the current rule was promulgated.

While addressing the needs of the Department, including internal restructuring and reorganization, this rule change also retains and strengthens inmate involvement in the classification processes including the assignment of custody, program and placement. In general, the processes are streamlined, require fewer mandatory reviews, and provide options for dealing with emergencies and situations when the offender is not accessible.

Background

This rule provides the Department a process for determining custody classification, program or treatment assignment, and transfer decisions concerning inmates. The Department uses classification to regulate the level of supervision and movement of inmates within and outside of an institution.

Assessment and Evaluation provides the Department a process for conducting the initial assessment on risk, criminal and social background, sentence structure, academic and vocational requirements; conducting certain kinds of evaluations; determining custody classification; assessing the motivation of an inmate; and formulating an individualized plan to coordinate custody classification and recommended programs for an inmate on arrival to the Department.

Program Review provides the Department an ongoing process for review of the custody, program and treatment assignments and placement.

Definitions

This rule makes only the following definition change: “Security Classification” is changed to “Custody Classification.”

This rule also changes “minimum security–community residential confinement (CRC)” to “community” custody.

Custody Classification

Unlike the current rule, this rule clearly establishes that custody classification is defined by an inmate’s level of risk. This rule specifically provides that custody classification function is to regulate the supervision and movement of inmates among institutions and between institutions and community programs and is defined by the risk associate with any of the following:

- Assaultive or predatory behavior;
- Escape, walk–away, or absconding;
- Misconduct;
- Disruption to the orderly processes of an institution;
- Participation and progress in program or treatment;
- Adjustment and history under community supervision; and
- Pending legal processes.

The higher the risk, the higher the inmate’s overall custody level. Custody level is evaluated using a minimum of 14 different factors that summarize an offender’s history as best possible. This includes the use of an objective risk rating system. This rule also adds community concerns relating to an offender’s risk as one of the factors considered when determining custody classification. This rule also allows parole commission actions and stated expectations such as the likelihood of release during review period to be considered as factors in assigning a custody classification

This rule establishes that program consideration is a right that offenders have if certain prerequisites are met and space is available. The rule clarifies that no offender can be forced into programming and that program refusal may have an impact on custody classification.

This rule condenses the current six custody classifications into five by combining “maximum security close” and “maximum security–general” to create “maximum.”

For each custody level, this rule requires certain levels of monitoring relating to conduct, behavior and activities and removes restrictions in the current rule regarding inmate supervision, movement and programs. This change helps to more clearly separate institutional issues from classification issues. It is the institution’s responsibility to determine housing, supervision and movement methods and policies. Classification is responsible for designating the level of custody.

Specifically, this rule provides that community custody requires limited monitoring of conduct, behavior and activities and removes restrictions regarding residence, placement, purpose, allowing more flexibility within the custody classification. Provides that community custody is used for the following inmates who are in the community without Department of Corrections escort:

- Work or study release;
- Off–grounds projects under supervision of non–correctional staff;
- Driving institution vehicles;
- Leave for qualified inmates;
- Community residential confinement;

Intensive sanctions; and

Other programs which the department may establish.

This rule also guarantees that an inmate's custody classification shall be no greater than the institution's designated security classification except for pending transfers, declared emergencies or disturbances.

This rule removes the 10 year old chart of institutions and their designated classifications because this information is continually changing due to new or altered institutions within the system.

This rule applies a consistent procedure for custody classification at the conclusion of A & E and deletes language distinguishing procedures at Waupun, Green Bay and Taycheedah.

Life Sentences

This rule simplifies the process for determining minimum custody eligibility for inmates serving life sentences. Offenders with life sentences are no longer designated as one of four life categories. The current rule divides life sentence inmates into four categories based on various factors surrounding the nature of the crime, the inmate and the victim. This process is tedious, difficult, and uncertain at best. This new rule will simplify that process and treat all inmates according to the same standards for determining eligibility for minimum custody. Inmates serving a life sentence who have reached the parole eligibility date will now be treated with the same procedures used for all other inmates.

This rule provides that an inmate serving a life sentence without the possibility of parole is not eligible for minimum or community custody classification.

Assessment and Evaluation

Requires that the A & E process be done as "expeditiously as possible" and removes the arbitrary timeframe of 6 weeks after arrival. Obtaining certain information, such as sentencing transcripts and Pre-Sentence Investigation reports, often takes longer than six weeks. Without this change, inmates that do not have these necessary documents would have to be staffed and transferred. When these documents become available, the PRCs would need to conduct an early recall to consider the information. It is more efficient to permit the A & E process to complete the review even though it may take longer than the currently prescribed six week time period.

This rule extends the time period to no more than 12 months for A&E review. This will reduce the number of frivolous reviews and enable staff to set recall dates to correspond to significant changes in offender plans.

Because housing, movement and supervision are institutional issues and should not be confused with classification issues, this rule removes language specifically authorizing restricted movement during the A & E process. Institutions maintain discretionary authority to separate an inmate from the general resident population via custody classification. See 302.07 and 302.12.

Provides that A & E reviews be conducted by a classification specialist with the assistance of other staff as needed and removes requirement that A & E be conducted by a committee comprised of not less than 3 permanent members. This change is necessary because the increased number of admissions add a tremendous burden on the limited resources of the institution to perform committee work. This change permits the classification specialist to work directly with the inmate in the process rather than relying on a second or third party that may not know anything about the case. This change will increase the A & E efficiency.

Program Assignment

This rule allows inmates to be considered for school assignments, vocational programs, or treatment assignments provided the following conditions are met:

Inmate has an A & E or program review need in the area considered;

Space available in the program;

Inmate attains necessary and appropriate custody classification;

State or federal laws do not exclude the inmate from participation; and

Inmate meets program or treatment prerequisites.

This rule allows the department to consider more than the currently limiting list of factors regarding criteria for program assignment.

Program Review

This rule provides a simplified program review process by reducing the committee membership and allowing the offender to deal directly with the committee rather than a social worker. The current rule requires the social worker to make comments to an inmate regarding a process they have very little knowledge about. Often, the time between the social worker's interview with the inmate and the actual PRC date may be several weeks, requiring information to be updated for the committee. Further, the social worker's comments may not clearly reflect the inmate's comments. This rule change reduces the duplication of work, shortens the time between the social worker's comments and the PRC date, and permits the inmate to discuss issues directly with the committee.

This rule allows for alternative forms of communication including telephone conference calls, video, written comments and other electronic devices to greater involve the inmate and ensure that program review is completed in a more timely manner.

Recordkeeping

This rule creates a process where the institution may, between regularly scheduled PRC, record certain information concerning an inmate. Occasionally, inmate records need to be updated but the PRC process is not required. This provision will allow the institution to keep more accurate records in a timely manner without confusing the need for a PRC.

Appeals

This rule creates a process whereby an inmate may appeal procedural issues relating to custody classification, transfer, institution placement, and program or treatment assignment.

Orientation

Removes language allowing orientation sessions to be conducted by inmates. Orientation is an administrative process and should clearly be presented by staff so that policies, procedures and descriptions of the system are accurately stated. Inmates should not be in a position to explain these issues to other inmates. It is unmistakably the responsibility of the Department of Corrections.

This rule change removes language requiring specific orientation procedures, including those for handicapped and non-English speaking inmates, as these requirements are a part of the Department's continuing mission to provide resources consistent with state and federal laws and regulations including fundamental fairness and due process.

This rule removes requirement that each inmate, during A & E or transfer from another institution, receive written copy of the rules of conduct. Chapter DOC 303 already provides for this.

Section 1. Chapter DOC 302 is repealed and recreated to read:

DOC 302.01 Applicability. Pursuant to authority vested in the department of corrections by ss. 227.11 (2), 301.02, 301.03 (2), and 302.07 Stats, the department adopts this chapter which applies to the department and all inmates in its legal custody for implementation of ss. 301.046, 301.048, 302.045, 302.055, 302.07, 302.08, 302.15, 302.18, 302.27, 303.065 and 303.068, Stats.

DOC 302.02 Purpose of classification. (1) The purpose of this chapter is to provide procedures for custody classification, program or treatment assignments, and transfers.

(2) The goals and objectives of this chapter are all of the following:

(a) To classify every inmate based upon risk factors relative to public safety, institutional security, and staff and inmate safety.

(b) To establish and review the custody classification, program or treatment assignments, and institution placement that ensures public, staff, and inmate safety.

(c) To involve inmates in the processes for custody classification, program or treatment assignments, and transfer consideration.

(d) To the extent possible, match inmate need to institution resources.

(e) To provide a documented current and historical reference of custody classification, program or treatment assignments, transfers and comments on each inmate.

DOC 302.03 Definitions. In this chapter:

(1) "A&E" or "assessment and evaluation" means assessment and evaluation as performed under s. DOC 302.12.

(2) "Classification section chief" means the section chief of the bureau of offender classification and movement.

(3) "Classification specialist" means the A&E or program review staff person from the bureau of offender classification and movement.

(4) "Custody classification" means the security rating applied to an inmate based on the procedures of ss. DOC 302.13 and 302.17.

(5) "DAI" means the division of adult institutions, department of corrections.

(6) "DCC" means the division of community corrections, department of corrections.

(7) "Department" means the department of corrections.

(8) "Director" means the director of the bureau of offender classification and movement, department of corrections, or his or her designee.

(9) "Disciplinary hearing" means a hearing authorized under ch. DOC 303 for the discipline of inmates for misconduct.

(10) "IS" means intensive sanctions administered by the department of corrections.

(11) "PRC" means the program review committee.

(12) "Program needs" means the program or treatment needs of an individual inmate which reduce the risk to re-offend, escape, or be a security problem during confinement and promote readiness for community reintegration.

(13) "Program review" or "PR" means the ongoing process of monitoring of custody classification, institution placement

and program or treatment assignments as performed under s. DOC 302.17.

(14) "Program or treatment" means the programs, treatment and services provided by an institution or the department such as education, alcohol and drug abuse treatment, sex offender treatment, and clinical and social service counseling.

(15) "Secretary" means the secretary of the department of corrections, or his or her designee.

(16) "Security classification" means the security level of an institution based upon the physical plant characteristics, staff resources and degree of supervision of inmates.

(17) "Superintendent" means a superintendent, or designee, at a correctional center as established under s. 301.13, Stats..

(18) "Warden" means the warden, or designee, at an institution.

(19) "Working days" means all days except Saturday, Sunday, and state legal holidays.

DOC 302.04 Custody classification. (1) The purpose of a custody classification is to determine the appropriate placement of an inmate in order to regulate the supervision and movement of inmates among institutions, and between institutions and community programs.

(2) Custody classification is determined by assessing the risk of each inmate regarding all of the following:

(a) Assaultive or predatory behavior.

(b) Escape, walk-away, and absconding occurrences.

(c) Violation of inmate disciplinary rules under ch. DOC 303.

(d) Disruption to the orderly processes of an institution.

(e) Participation and progress in program or treatment.

(f) Adjustment and history under community supervision.

(g) Pending legal processes.

(3) The department initiates custody classification at A&E and changes it by an individualized assessment through the program review process using factors identified in s. DOC 302.07.

DOC 302.05 Custody classification levels. An inmate is classified under one of the following 5 custody classification levels based upon the result of an assessment of the inmate's risk under the A&E or PRC process:

(1) Maximum custody requires very close monitoring of inmate conduct, behavior and activities.

(2) Medium custody requires moderate monitoring of inmate conduct, behavior and activities.

(3) Medium-out custody requires moderate monitoring of inmate conduct, behavior and activities inside the institution and permits placement outside the confines of the institution under supervision.

(4) Minimum custody requires general monitoring of inmate conduct, behavior and activities inside the institution and permits placement outside the confines of the institution.

(5) Community custody requires limited monitoring of inmate conduct, behavior and activities. This classification is used for the following activities:

(a) Work or study release under ch. DOC 324.

(b) Off-grounds projects under the supervision of non-correctional staff under ch. DOC 325.

(c) Driving institution vehicles under ch. DOC 325.

(d) Leave for qualified inmates under ch. DOC 326.

(e) Community residential confinement under ch. DOC 327.

(f) Intensive sanctions under ch. DOC 333.

(g) Other programs which the department may establish.

DOC 302.06 Institutional security classifications and relationship to custody classification. (1) Except for inmates awaiting transfers, and institutions in which there is a declared emergency or disturbance, an inmate's custody classification shall be no greater than the designated security classification of the institution in which the inmate is placed.

(2) Segregation units at any facility are considered maximum security.

DOC 302.07 Factors in assigning a custody classification. The department may consider factors that include but are not limited to the following in assigning custody classification:

(1) The nature and seriousness of the offense the inmate was convicted of. In evaluating the seriousness of the offense, the department may consider the following:

- (a) Potential of physical danger to another.
- (b) Harm done to the victim in the commission of the offense.
- (c) Whether the inmate exhibited physical aggressiveness that exposed another to harm.
- (d) Aggravating or mitigating factors in the commission of the offense for which the inmate was convicted.

(2) The inmate's criminal record and juvenile delinquency adjudications.

- (3) The length of sentence being served.
- (4) The inmate's motivation for the crime convicted of.
- (5) The inmate's attitude regarding the offense and sentence.

(6) The inmate's record of adjustment and misconduct including any record of escape from a department facility, IS, a mental health facility, a local jail or any other confinement facility, or absconding from probation, parole, or extended supervision.

(7) The length of time the inmate has been in a particular custody classification and overall time served during the current period of incarceration.

(8) The inmate's medical and clinical needs, including physical or psychological treatment and observation.

(9) The risk of placing an inmate in the community where the offense was committed or where the institution is located, including the general attitude of the public as reflected by elected officials, judges, sheriffs, district attorneys, or a victim or witness.

(10) The inmate's performance or refusal to participate in programs or treatment

(11) A pending legal process, notification or detainer.

(12) Parole commission actions and stated expectations, and in the absence of any stated expectations, the likelihood of a release during the review period.

(13) The results of specially designed and researched risk rating instruments developed to assist with the individualized and objective assessment of a custody classification or program and treatment assignments and placements.

(14) The inmate's vulnerability to physical assault by other inmates.

DOC 302.08 Requirements for assigning a minimum custody classification to an inmate serving a life sentence.

(1) In this section, "life sentence" means a sentence of life imprisonment. An inmate sentenced to life imprisonment who is released on parole, violates a condition of parole and is returned to a state correctional institution with or without a new sentence is considered to be serving a life sentence. If the governor pardons or commutes a life sentence, it is no longer

a life sentence. The life sentence definition also applies to an inmate from another jurisdiction who is serving a sentence of life imprisonment under that jurisdiction's laws.

(2) To be eligible for a minimum custody classification, an inmate serving a life sentence shall have:

(a) Reached parole eligibility as defined in ss. 304.06 (1) and 973.014, Stats.

(b) A recommendation for minimum custody classification made by the PRC under s. DOC 302.17.

(c) Director's approval for minimum custody classification.

DOC 302.09 Program consideration. Unless otherwise specified by the rules of the department or by state and federal law, inmates may be considered for school assignments, vocational programs or treatment assignments within the Wisconsin correctional system if all of the following conditions are met:

(1) The inmate has a program or treatment need that the program being considered would meet.

(2) There is space available in the program.

(3) The inmate attains the custody classification needed for transfer to the site where the program is available.

(4) The inmate meets program or the treatment prerequisites.

DOC 302.10 Factors in assigning a program or treatment component. (1) The department may consider factors including but not limited to the following in assigning an inmate to a program or treatment component:

(a) Factors under s. DOC 302.07.

(b) Program or treatment prerequisites.

(c) The inmate's past performance in programs.

(d) Federal or state law requirements.

(2) The inmate may choose not to participate in program and treatment with an understanding that a refusal may affect custody classification and placement.

DOC 302.11 Purposes of A&E. The purposes of A&E shall be all of the following:

(1) To assess an inmate's risk under s. DOC 302.04 (2).

(2) To determine an inmate's custody classification.

(3) To provide an inmate with orientation to the department.

(4) To assess an inmate's criminal and social background, sentence structure, and academic and vocational requirements.

(5) To evaluate an inmate's academic, vocational, medical, social, and treatment needs.

(6) To determine an inmate's treatment and program needs and priorities and coordinate these with custody classification and institution or program placement.

DOC 302.12 Applicability of the assessment and evaluation. (1) Every inmate shall participate in an assessment and evaluation or an alternative process as approved by the department. This process shall be completed as expeditiously as possible.

(2) The director may alter the scope, purpose and duration of the assessment and evaluation process to meet security and bed needs of the department.

DOC 302.13 Procedure for custody classification at conclusion of A&E. (1) The classification specialist shall do all of the following:

(a) Collect and review information pertaining to the inmate such as offense history, adjustment, risk factors, program goals and other relevant concerns.

(b) Interview the inmate and afford the inmate an opportunity to provide information.

(c) Document the inmate's views.

(d) Prepare a report that includes all of the following:

1. A summary of the information gathered through (a), (b) and (c).

2. A recommendation of custody classification, program or treatment needs, institution placement, and a date for program review not to exceed 12 months.

(2) The director shall review the recommendations and make a final custody classification decision.

(3) The department shall make available to the inmate a written copy of the decision.

DOC 302.14 Applicability of program review. The department shall monitor custody classification, risk rating, institution placement and program or treatment assignments for every inmate.

DOC 302.15 Purpose of program review. The purpose of program review is the following:

(1) To provide systematic review of the inmate's needs relating to education, medical, clinical, social, offense-related and other treatment needs.

(2) To assess the inmate's custody classification.

(3) To assess the inmate's motivation to become involved in treatment and programs.

(4) To secure program or treatment space as needed to permit the inmate to complete an assignment.

(5) To provide the inmate with supplemental or alternative treatment or program assignments.

(6) To provide a review of the inmate's adjustment, conduct and program participation.

(7) To evaluate the inmate's risk.

(8) To establish a date not to exceed 12 months for the next program review.

(9) To permit program review prior to the date set in (8) when one of the following occur:

(a) A significant change affecting custody, program or treatment assignments, or institution placement as determined by the classification specialist.

(b) An order of the director or warden.

(c) Referral by the institution adjustment committee as defined in s. DOC. 303.02 (1).

(10) To recommend placement changes to accommodate program objectives.

DOC 302.16 Program review personnel. Every correctional institution and center shall have a program review committee.

(1) The director shall designate a classification specialist as the chairperson of the program review committee in a correctional institution.

(2) The superintendent shall designate a staff member to serve as the chairperson of the program review committee in a community correctional center.

(3) The warden or superintendent may designate up to 2 staff members to represent their respective division on the committee.

DOC 302.17 Program review procedure. (1) Before the scheduled program review, an institution staff member, designated by the Warden or Superintendent, shall do all of the following:

(a) Investigate and document the inmate's adjustment and conduct, program or treatment assignments and other relevant

factors to make a determination of progress and accomplishments.

(b) Make written comments to the program review committee regarding custody classification, program or treatment assignment, and institution placement.

(2) Before the scheduled review, classification staff will inform the inmate of the following:

(a) The program review date.

(b) The inmate's option to waive the interview appearance.

(c) That if the inmate disrupts the interview or refuses to attend the interview, staff shall conduct the review procedure without the inmate being present.

(3) At the program review committee interview, staff shall inform the inmate of the following:

(a) The purpose of the review.

(b) The staff comments regarding custody classification, program or treatment assignments, and institution placement.

(4) The inmate may present additional information and state an opinion about the custody classification, program or treatment assignment, or institution placement at the PRC interview. The inmate may present the additional information in writing if the inmate is unavailable for the PRC interview.

(5) The program review chairperson may suspend the program review in order to investigate any issue affecting custody classification, institution placement and program or treatment assignment.

(6) Each member of the committee shall have one vote. A recommendation for a change in custody classification, transfer, or institution placement requires a unanimous vote. If the vote is not unanimous, the classification specialist shall refer the decision to the classification section chief and the warden for a recommendation. If they are not able to agree, the classification section chief shall refer the case with comments to the director, who will make the decision. A recommendation for program or treatment assignment requires a majority vote.

(7) The committee shall consider as factors in assigning custody classification those stated in s. DOC 302.07. In addition, the criteria under s. DOC 302.08 shall apply to the custody classification of inmates serving a life sentence. Factors other than those in ss. DOC 302.07 and 302.08 may be considered to preserve the security and safety needs of inmates, staff, facilities or community.

(8) The committee's recommendation for custody or transfer requires approval of the director.

(9) The PRC may use written comments, telephone conference calls, video or other electronic devices or medium for program review.

(10) The classification specialist shall give the program review decision to the inmate in writing.

DOC 302.18 Appeals. (1) An inmate may appeal procedural issues relating to custody classification, transfer, institution placement, and program or treatment assignment to the director within 30 days of the inmate's receipt of the written decision.

(2) The director shall respond to an appeal within 30 days following written receipt of the appeal.

DOC 302.19 Transfers. (1) The director may transfer an inmate to any facility authorized by the department.

(2) The director may transfer an inmate based solely on the availability of beds and security needs of the department.

(3) When an inmate is removed from an institution for a medical, clinical, or security emergency, the inmate may be segregated from the general inmate population. If the department is unable to do so, the inmate may be transferred

to a county jail or other confinement facility pending the results of the disciplinary hearing or review of the inmate's custody classification and program assignment. If the jail or other facility is unable or unwilling to retain an inmate, the inmate may be transferred to another placement pending the placement in an institution within the department.

(4) If an inmate is not transferred in accordance with s. DOC 302.17, the department shall review the custody and institution placement as provided under s. DOC 302.17 within 10 working days following the decision that prompted the transfer.

(5) Notwithstanding s. DOC 302.17, when the PRC screens an inmate to determine eligibility for transfer to another institution, or decides to transfer the inmate to another institution, the inmate is not entitled to know the criteria or factors upon which the decisions are based if the department determines that release of the criteria would threaten the security of the prison system.

DOC 302.20 Recordkeeping. (1) The director, section chief or a classification specialist may record information concerning an inmate between regularly scheduled PRC regarding:

- (a) Program or treatment assignments.
- (b) Progress of program or treatment assignment.
- (c) Physical health.
- (d) Mental health.
- (e) Conduct and adjustment.
- (f) Placement.
- (g) Custody level.

(2) The classification specialist shall provide the inmate a copy of the record and shall permit the inmate to provide information at the next regularly scheduled program review.

DOC 302.205 Emergency suspension of rules. The secretary may temporarily suspend the rules specified in this chapter if the warden determines that there is a disturbance or an emergency.

Appendix

Note: DOC 302.05. Section DOC 302.05 identifies the five custody classifications used in Wisconsin. Each of the five categories reflect the different level of risk portrayed by the inmate based on the purpose of custody classification as explained in s. DOC 302.04 and assessed on each of the factors presented in ss. DOC 302.07 and 302.08. Each institution determines its own method for day to day supervision to respond to the risk presented by the inmate's behavior, conduct and activities.

Note: DOC 302.11. Among the objectives of the correctional system are protection of the public through appropriate correctional supervision and the re-assimilation of the inmate into the community. These require an assessment of the inmate's needs and objectives, assignment to an appropriate institution and program, motivation of the inmate, and periodic review of the inmate's progress. The A&E process is the initial effort to orient, classify and assign inmates in the Wisconsin correctional system. Its purposes are stated in s. DOC 302.11.

Note: DOC 302.17. Section. DOC 302.17 states the procedure and decision making authority for decisions concerning the ongoing academic, vocational, medical, clinical, social, offense-related or other treatment needs of an inmate. The authority of staff to classify and transfer inmates is broad.

To ensure a fair, informed decision, the process has the following elements:

1. A decision-making process that involves staff who are most informed about the inmate.
2. Centralized decision-making for the whole correctional system.
3. An opportunity for the inmate to be heard on the issues being addressed.
4. A written explanation of the decision provided to the inmate.
5. An appeal process (s. DOC 302.18).

Note: DOC 302.19. This section is intended to cover inmate transfers among state prisons, federal institutions, or a facility otherwise deemed appropriate, as well as inmate transfers to facilities located outside the state of Wisconsin.

Initial Regulatory Flexibility Analysis:

These rules are not expected to have an effect on small businesses.

Fiscal Estimate:

The Department of Corrections is proposing to repeal and recreate ch. DOC 302 relating to the classification, assessment and evaluation (A&E), and program review of inmates. While addressing the needs of the Department, including internal restructuring and reorganization, this rule change also retains and strengthens inmate involvement in the classification process, including the assignment of custody, program and placement. In general, the processes are streamlined, require fewer mandatory reviews, and provide options for dealing with emergencies and situations when the offender is not accessible. Specific changes include, but are not limited to:

- Clearly establishing that custody classification is defined by an inmate's level of risk;
- Requiring that A&E be done as expeditiously as possible instead of the current six week timeframe;
- Providing that A&E reviews be conducted by a classification specialist with the assistance of other staff as needed and removes the requirement that A&E be conducted by a committee comprised of not less than three permanent members, and;
- Providing a simplified program review process by reducing the committee membership and allowing the offender to deal directly with the committee rather than a social worker.

Although these rule changes are not expected to have a fiscal impact on the Department, the proposed changes are expected to reduce workload and streamline processes for already overburdened staff.

Contact Person:

Julie M. Kane (608) 267-9839
Office of Legal Counsel
149 East Wilson Street
P.O. Box 7925
Madison, Wisconsin 53707-7925

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments:

Written comments on the proposed rules received at the above address no later than April 30, 2001 will be given the same consideration as testimony presented at the hearing.

Notice of Hearings
Natural Resources
(Fish, Game, etc., Chs. NR 1—)
[CR 01–30]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (h), 26.35, 28.07 and 227.11 (2), Stats., interpreting ss. 26.35 and 28.07, Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of s. NR 1.212 (1) and (2), Wis. Adm. Code, relating to private forestry priorities for assistance and amendment of s. NR 1.213 (3) (b) and (d), Wis. Adm. Code, relating to the cooperating forester program.

Section NR 1.212 provides guidance in setting priorities followed by DNR foresters when scheduling fieldwork with over 10,000 private landowners annually. The rule is necessary because demand for assistance far exceeds available staff time. The revised rule establishes initial management guidance to landowners, timber harvest advice, referrals to cooperating private foresters for timber harvest marking, forestry incentives program administration, and landowner education among the highest priorities. Less emphasis would be placed on providing complex or detailed services that may be available from private enterprise or on practices that are not mandatory under the forest tax programs. These changes are designed to make more efficient use of DNR staff time and to integrate state forestry services more closely with assistance available from private enterprise and other groups in order to serve as many landowners as practical.

In addition to providing private forestry assistance through DNR staff, the Department promotes services of private and industrial foresters to landowners seeking help. Commercial foresters who apply and agree to follow the management guidelines and minimum training requirements of the Cooperating Forester Program are included. Currently, cooperators agree to follow DNR forestry standards only on work coming directly from DNR referrals, with a possibility of lower standards elsewhere. The rule will also raise the minimum continuing forestry education requirement for cooperators from 6 to 10 hours per year in an additional effort to improve quality.

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

- a. Types of small businesses affected: Private consulting foresters and industrial foresters
- b. Description of reporting and bookkeeping procedures required: No new requirements
- c. Description of professional skills required: No new skills. However, cooperating foresters are required to apply DNR approved silviculture guidelines in all their work. Participation in the cooperating forestry program is entirely voluntary.

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

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

April 11, 2001 Wednesday	Pinery Room Portage County Library 1001 Main Street Stevens Point at 1:00 p.m.
April 12, 2001 Thursday	Large Conference Room DNR Headquarters 1300 Clairemont Avenue Eau Claire at 10:00 a.m.
April 19, 2001 Thursday	Large Conference Room DNR Headquarters 1125 N. Military Avenue Green Bay at 1:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Paul Pingrey at (608) 267-7595 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rules may be submitted to Mr. Paul Pingrey, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707 no later than April 27, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rules [FR-11-01] and fiscal estimate may be obtained from Mr. Pingrey.

Fiscal Estimate

There is no fiscal impact. The changes in work priorities will only redistribute available staff hours among services, not add services or costs. Regarding the Cooperating Forester Program, participants receive no remuneration and pay no fees.

Notice of Hearings
Natural Resources
(Fish, Game, etc., Chs. NR 1—)
[CR 01–07]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.505, 30.62 (2) (d) 2. and 3., 30.79 (2m) and 227.11 (2) (a), Stats., interpreting ss. 30.50 (2), 30.62 (2) (b), 30.635, 30.69, 30.77 and 30.79 (5), Stats., the Department of Natural Resources will hold public hearings on revisions to ss. NR 5.001, 5.125, 5.15 and 50.13, Wis. Adm. Code, relating to boating safety and enforcement. The proposed rule creates a definition for "boat" to include motorized fishing rafts which will then require the rafts to be licensed. This definition is consistent with federal law. Definitions are also being created for "public access" for the purpose of motorboat prohibitions on lakes 50 acres or less and "water skis, aquaplane or similar device" to include the technological advancements in the sport.

The proposed rule also adds another procedure for motorboat noise testing, creates a set of standards for local boating ordinances and clarifies the requirements that set a 40% cap on a municipal boat patrol's administrative expenses.

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

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

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

April 24, 2001 Tuesday	Room 222 UW-Marathon Center 518 7 th Avenue Wausau at 10:00 a.m.
April 24, 2001 Tuesday	Large Conference Room DNR Headquarters 1125 N. Military Avenue Green Bay at 3:00 p.m.
April 25, 2001 Wednesday	225 NW, State Capitol Madison at 10:00 a.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call John Lacenski at (608) 264-8970 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. John Lacenski, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707 no later than May 4, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [LE-01-01] and fiscal estimate may be obtained from Mr. Lacenski.

Fiscal Estimate

There will be no net change in FTE hours or expenditure of new funds for these rule revisions. The change will only be in terms of method of enforcement tactic used and definition of terms within said rules. Wardens will use existing equipment and existing hours to enforce these rules.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 01-11]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (intro.), 23.11 (1), 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats., interpreting ss. 23.09 (2) (intro.), 23.28 (3), 27.01 (2) (I) and (j) and 28.03, Stats., the Department of Natural Resources will hold public hearings on the creation of s. NR 1.33 and revisions to ch. NR 45, Wis. Adm. Code, relating to public use of department lands. The proposed rule includes a policy of the Natural Resources Board on rock climbing expressing general recognition for rock climbing as an appropriate outdoor recreational activity on most Department properties. Proposed changes to ch. NR 45 give the Department authority to regulate climbing activities, including the potential for requiring a climbing permit.

The proposed rule also contains provisions to:

1. Allow the department to issue citations for use or possession of drug paraphernalia.
2. Prohibit paint-ball activities on department lands.
3. Allow the Department, by posted notice, to restrict the use of centerfire and rimfire rifles, handguns or shotguns with slugs on the Nevin Springs fish and wildlife area.
4. Prohibit jumping or diving into the St. Croix River off the cliffs at Interstate state park.
5. Prohibit fishing in designated beach areas.
6. Regulate bicycle usage and camping at the Willow Flowage scenic waters area.
7. Prohibit pets in the indoor group camps and place a minimum 2-day restriction on group camp reservations on weekends at the Black River state forest.
8. Allow unleashed dogs in designated pet swim areas.
9. Clarify other existing rules.

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

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

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

April 24, 2001 Tuesday	Room 222 UW-Marathon Center 518 7 th Avenue Wausau at 11:00 a.m.
April 24, 2001 Tuesday	Large Conference Room DNR Headquarters 1125 N. Military Avenue Green Bay at 4:00 p.m.
April 25, 2001 Wednesday	225 NW, State Capitol Madison at 11:00 a.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kathryn Fitzgerald at (608) 267-2764 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Ms. Kathryn Fitzgerald, Bureau of Facilities and Lands, P.O. Box 7921, Madison, WI 53707 no later than May 4, 2001. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [LF-04-01] and fiscal estimate may be obtained from Ms. Fitzgerald.

Fiscal Estimate

There is no significant fiscal impact. Most of the provisions in ch. NR 45 which are being created or amended

are activities which are either an integral part of the day-to-day work of existing staff or would be incorporated into work activities. The only provisions that would have slight positive fiscal impacts are those being proposed related to defining vehicle fee areas at Black River Forest and clarifying that the fee exemption for Peninsula State Park golf course parking lot only applies to golfers and clubhouse patrons. The exact amount of revenue generated from these changes would be difficult to quantify and would be so insignificant that it has been included as "0" on the fiscal estimate worksheet. Correspondingly, any costs are likely to be insignificant and would likewise be difficult to estimate accurately.

Notice of Hearing

Natural Resources

(Environmental Protection – Remediation, Chs. NR 700—)

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) and 227.24, Stats., interpreting s. 292.15 (2) (ae), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. RR-13-01 (E) pertaining to environmental insurance requirements for liability exemptions for voluntary remediation. This emergency order took effect on March 6, 2001. The statute directed the Department to promulgate rules to describe the requirements that must be met by a voluntary party seeking a Certificate of Completion where natural attenuation is employed as the remedial action. The statute includes a provision where the Department may require a voluntary party to obtain environmental insurance if the voluntary party wants to receive a Certificate of Completion before the groundwater enforcement standards are met through natural attenuation. This rule requires that all voluntary parties who apply for the liability exemption under this section obtain environmental insurance to cover the cost to clean up the environment if natural attenuation fails.

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

April 16, 2001	Room 611A, GEF #2
Monday	101 South Webster Street
	Madison at 1:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Michael Prager at (608) 261-4927 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the emergency rule may be submitted to Mr. Michael Prager, Bureau of Remediation and Redevelopment, P.O. Box 7921, Madison, WI 53707 no later than April 20, 2001. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule may be obtained from Mr. Prager.

Fiscal Estimate

The department does not anticipate significant fiscal impacts from this rule. Parties seeking this optional liability exemption will be required to pay a one-time insurance fee to the department for insurance coverage. The department will

then submit this fee to the contracted insurance underwriter to pay the insurance premiums required under the state's master insurance contract. As a result, we anticipate no net impact from this rule on the state. This rule is optional for parties who choose to conduct a voluntary cleanup and seek the voluntary party liability exemption using natural attenuation, where groundwater enforcement standards are being exceeded.

Notice of Hearing

Public Service Commission

[CR 01-33]

Hearing Date: Tuesday, May 1, 2001 – 10 a.m.

Hearing Location: Amnicon Falls Hearing Room – 1st Floor, Public Service Commission, 610 North Whitney Way, Madison, WI

Comments Due: Friday, May 11, 2001 – Noon

FAX Due: Thursday, May 10, 2001 – Noon

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

The Commission proposes to amend Wis. Admin. Code ch. PSC 185 relating to Standards for Water Public Utility Service.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02 (3), 196.03, 196.16 (2) and 227.11 (2).

Statutes interpreted: ss. 196.02 (3), 196.03 (1) and 196.16 (2).

A hearing in this matter was originally held on December 5, 2000. However, while notice of that hearing was provided to all Wisconsin water utilities, the notice inadvertently was not published in the Wisconsin Administrative Register. To meet the statutory requirement of publication – and to allow interested parties the opportunity to comment on changes made as a result of the first hearing – a second hearing is being set for Tuesday, May 1, 2001 at 10:00 a.m. Persons who participated in the December 5, 2000 hearing may wish to submit written comments in lieu of attending the May 1, 2001 hearing.

The primary objectives of the proposed rule revisions are to update the water code for consistency with customer service provisions in the other utility industries, to clarify language and citations and to better reflect current technology and industry practice. Following is the analyses of the specific proposals. After these analyses are the instructions for the literal changes to the code.

SECTION 1. PSC 185.22 is amended for clarity and rewritten to maintain consistency with recent changes to PSC 113 of the electric code.

SECTION 2. PSC 185.33 (10) (a) is amended to limit the maximum monthly late charge rate from 1½ % to 1 % to comply with Wis. Stat. 138.05 (1) (a), and to be consistent with PSC 113 of the electric code.

SECTION 3. PSC 185.33 (13) (b) is amended to clarify that both a customer and a utility read of the water meter constitutes an actual read.

SECTION 4. PSC 185.33 (18) (c) is renumbered PSC 185.33 (18) (d).

SECTION 5. PSC 185.33 (18) (c) is created to allow a utility to request a signed application for residential service and verification of the identity and residency of an applicant for water service.

SECTION 6. PSC 185.361 (4) (b) is amended to change the time period consistent with SECTION 13. PSC 185.37 (11) (a) where the utility may not disconnect service until 10 days after the customer was noticed by the utility of the pending disconnection.

PSC 185.37 is concerned with the disconnection of water service and several parts of this rule have been reorganized and updated to be consistent with PSC 113 of the electric code.

SECTION 7. PSC 185.37 (1) (b) is amended to change the time period consistent with SECTION 13. PSC 185.37 (11) (a) where the utility may not disconnect service until 10 days after the customer was noticed by the utility of the pending disconnection.

SECTION 8. PSC 185.37 (1m) is created so that the utility may transfer past due utility bills of "jointly-metered property" (rental property) to the account of the property owner.

SECTION 9. PSC 185.37 (2) (am) is created so the utility can disconnect or refuse service to a customer who is delinquent on water service and tries to transfer service to a new account holder while the delinquent customer still resides within the household.

SECTION 10. PSC 185.37 (2) (e) and PSC 185.37 (2) (l) are amended to clarify the existing rule and to allow the utility to disconnect or refuse service to an applicant for service when the applicant does not provide the information set out in PSC 185.33 (18) (a), (b), and (c).

SECTION 11. PSC 185.37 (8) (h) is amended to clarify and expand utility requirements when a heat advisory, heat warning, or heat emergency has been issued.

SECTION 12. PSC 185.37 (8m) is created to clarify extenuating circumstances that utilities must consider before disconnecting a customer.

SECTION 13. PSC 185.37 (9) and (11) (a) are amended to clarify disconnection during the heating season and to change the time spans concerning disconnection and notices.

SECTION 14. PSC 185.38 (4m) is created to be consistent with ch. PSC 113 of the electric code and clarify utility responsibilities in handling deferred payment agreements.

SECTION 15. PSC 185.39 (2) (c) is amended to maintain consistency with ch. PSC 113 of the electric code. It clarifies expectations for utility response time involving complaints before the Commission.

SECTION 16. PSC 185.75 (5) is amended to eliminate the requirement to test water meters upon removal. The replacement language protects the customer who is in a meter accuracy dispute by requiring the utility removing the old meter to test it for accuracy.

SECTION 17. PSC 185.76 (6) is created to provide flexibility for qualifying utilities to adopt a metering program that recognizes technological change and local water quality as it relates to meter life cycle costing.

SECTION 18. PSC 185.87 is repealed to eliminate unnecessary duplication with Wis. Admin. Code NR 811.08 (5) Maintenance.

Text of Proposed Rule

SECTION 1. PSC 185.22 is amended to read:

PSC 185.22 **Information available to customers.** (1) ~~The utility shall keep on file in every station and office of the utility, where customer payments are received, copies of the rate schedules applicable in such locality. The utility shall keep copies of this chapter and such rules of the utility, as are applicable in every general and local office of the utility. A~~

utility shall have copies of its rates and rules applicable to the locality available in its office where payments are received and at area libraries. A utility shall give reasonable notice to customers as to where the information is available to them.

SECTION 2. PSC 185.33 (10) (a) is amended to read:

PSC 185.33 (10) (a) ~~The amount of the charge shall be no more than one and one-half percent per month for late charges related to service provided for the utility's residential class of customers, and shall be no more than one and one-half percent per month for late charges related to service provided for all other purposes, and The amount of the charge shall be filed with and approved by the Commission before it shall be applied.~~

SECTION 3. PSC 185.33 (13) (b) is amended to read:

PSC 185.33 (13) (b) ~~The utility may leave a meter reading form when access to a meter cannot be gained. If requested by the customer, the utility shall provide such a form. If no form is left on the premises, or if the form is not returned in time to be processed in the billing cycle, a minimum or estimated bill may be rendered. In cases of emergency the utility may render minimum or estimated bills without reading meters or supplying meter reading forms to customers. Only in unusual cases or when approval is obtained from the customer may more than 3 consecutive estimated or minimum bills be rendered. Except in unusual cases, a meter reading by the customer or the utility shall be obtained after 3 consecutive estimated or minimum bills have been rendered.~~

SECTION 4. PSC 185.33 (18) (c) is renumbered PSC 185.33 (18) (d).

SECTION 5. PSC 185.33 (18) (c) is created to read:

PSC 185.33 (18) (c) 1. A utility may request a signed application for residential service and verification of the identity and residency of an applicant for residential service at a premises where a bill remains unpaid for service provided within the previous 24 months.

2. Any one of the items under subd. a. or any 2 of the items under subd. b. shall constitute adequate verification of identity, although a utility may accept other forms of verification:

a. Photo identification card, driver's license, or U.S. military card.

b. Current utility bills, bank statements, rental agreements, or letter of identification from a social service agency or employer.

3. Any two of the following items shall constitute adequate verification of residency, although a utility may accept other forms of verification: current utility bills, bank statements, rental agreements, or letter of identification from a social service agency or employer.

4. An applicant denied or refused service because of this subsection shall be informed in writing of his or her ability to dispute the matter through the public service commission, and shall be provided with the address and telephone number of the commission.

SECTION 6. PSC 185.361 (4) (b) is amended to read:

PSC 185.361 (4) (b) ~~On termination of a guarantee contract, or whenever the utility deems the amount of surety insufficient, a cash deposit or a new or additional guarantee may be required on a 20-day written notice to the customer. The service of a customer who fails to comply with these requirements may be disconnected on an 8 a 10-day written notice, subject to the establishment of a deferred payment agreement for the deposit.~~

SECTION 7. PSC 185.37 (1) (b) is amended to read:

PSC 185.37 (1) (b) At least 8 10 calendar days prior to disconnection, the utility shall give a written notice of disconnection upon a form approved by the commission and which conforms to the requirements of sub. (11) unless excepted elsewhere.

SECTION 8. PSC 185.37 (1m) is created to read:

PSC 185.37 (1m) Prior to disconnecting a jointly-metered property containing more than one rental dwelling unit and where service is in the property owner or manager's name, the utility shall first make an attempt to transfer the debt to the property owner's or manager's residence or office service. If a transfer is permitted under sub. (7) (a), the utility shall pursue available collection efforts at the owner's or manager's property prior to disconnecting the jointly-metered property.

SECTION 9. PSC 185.37 (2) (am) is created to read:

PSC 185.37 (2) (am) Delinquency in payment for service received by a previous account holder or customer at the premises to be served, if an account is transferred to a new account holder or customer and the previous account holder or customer continues to be an occupant of the dwelling unit to be served.

SECTION 10. PSC 185.37 (2) (e) and PSC 185.37 (2) (l) are amended to read:

PSC 185.37 (2) (e) Refusal or failure to permit authorized utility personnel to read the meter at least once every 6 4 months where the utility bills monthly or bimonthly, or at least once every 9 months where the utility bills quarterly or less frequently than quarterly. The 4-6- or 9- month period begins with the date of the last meter reading;

PSC 185.37(2)(l) Failure of an applicant for utility service to provide the credit information necessary to establish new service or evaluate the need for a deposit or deferred payment agreement set forth in s. PSC 185.33(18) (a), (b) and (c).

SECTION 11. PSC 185.37 (8) (h) is amended to read:

PSC 185.37 (8) (h) If a heat advisory or warning has been declared by the national weather service for a geographic area which includes part or all of the utility service area. The utility may not disconnect service in affected counties when a heat advisory, heat warning, or heat emergency issued by the national weather service is in effect. A utility shall make reasonable attempts to reconnect service to an occupied dwelling that has been disconnected when an occupant states that there is a potential threat to health or life that results from the combination of the heat and loss of service. The utility may require that an occupant produce a licensed physician's statement or notice from a public health, social services, or law enforcement official which identifies the medical emergency for the occupant. Upon expiration of the heat advisory, heat warning, or heat emergency, the utility may disconnect service to a property that was reconnected during this period without further notice if an appropriate payment arrangement has not been established.

SECTION 12. PSC 185.37 (8m) is created to read:

PSC 185.37 (8m) If the utility is provided notice that there are extenuating circumstances, such as infirmities of aging, developmental, mental or physical disabilities, the use of life support systems, or like infirmities incurred at any age, or the frailties associated with being very young, the utility shall take these circumstances into consideration and ensure compliance with PSC 185.37(10) prior to disconnecting service.

SECTION 13. PSC 185.37 (9) and (11) (a) are amended to read:

~~PSC 185.37(9) Notwithstanding ss. PSC 113.1324 and 134.0624, a utility may disconnect residential water utility service at any time, unless water service is a necessary part of a dwelling's heating system.~~ Residential water utility service to an occupied dwelling may not be disconnected during the period November 1 to April 15 if the water service is a necessary part of a dwelling's heating system.

PSC 185.37 (11) (a) A utility shall not disconnect service unless written notice by first class mail is sent to the customer or personally served upon a responsible party at least 8 10 calendar days prior to the first date of the proposed disconnection except as provided in pars. (3), (4), and (7). If the billing address is different from the service address, notice shall be posted at each individual dwelling unit of the service address not less than 5 days before disconnection. If access is not possible, this notice shall be posted, at a minimum, to all entrances to the building and in the lobby. The notice shall contain: (1) the date of the notice; (2) the proposed date of disconnection; and (3) that, if feasible, the occupants may apply to the utility to accept responsibility for future bills and avoid disconnection of service. Refusal or acceptance of the application for service is subject to those conditions set out in this chapter. If disconnection is not accomplished on or before the 15 20th day after the first notice date, a subsequent notice shall be left on the premises not less than 24 hours nor more than 48 hours prior to the disconnection unless the customer and the utility agree to extend the 15 20-day time period.

SECTION 14. PSC 185.38 (4m) is created to read:

PSC 185.38 (4m) A utility that does not require a written deferred payment agreement shall communicate to the customer all points listed above (PSC 185.38 (4)) except those pertaining to a signature when making the arrangement with the customer. A utility must send written confirmation of a deferred payment agreement upon customer request. The commission may require a utility to use written deferred payment agreements.

SECTION 15. PSC 185.39 (2) (c) is amended to read:

PSC 185.39 (2) (c) The utility shall designate employees for responding to commission complaints who are readily available and have an appropriate and sufficient authority level for investigating and resolving concerns raised by the commission and its staff. Utilities shall promptly inform the commission of any changes in these designations. A utility shall respond to the commission staff's request for an investigation in a prompt manner: by attempting to contact the complainant within 48 hours for most circumstances, or 4 hours in an emergency situation, and by providing a response to the commission within 10 business days. Staff may extend this time period if the utility requests more time to complete its investigation. Based on information provided by the utility and the customer, the commission staff shall make an informal determination for settlement of the dispute and communicate that determination to both parties. Either party to the dispute may request and receive the commission staff determination, and the basis for it, in writing. Commission staff shall inform any customer disputing an informal determination of the right to pursue a formal review.

SECTION 16. PSC 185.75 (5) is amended to read:

~~PSC 185.75 (5) Upon Removal. If a meter is removed while a usage dispute is pending.~~

SECTION 17. PSC 185.76 (6) is created to read:

PSC 185.76 (6) When system losses are less than the required percentages under s. PSC 185.85 (4), a utility in lieu of testing every meter as required under sub. (1), may satisfy the requirements of this section for 5/8, 3/4, and 1-inch meters by adopting a new meter replacement program that results in

each meter being replaced within 20 years of the original date of installation.

SECTION 18. PSC 185.87 is repealed.

SECTION 19. PSC 185.88 and 185.89 are renumbered PSC 185.87 and PSC 185.88.

Fiscal Impact

The Commission anticipates that there will be minimal or decreasing effect on state expenditures. Local government expenditures should be reduced. See attachment A.

Initial Regulatory Flexibility Analysis

The proposed rules would apply to public utilities as defined in s. 196.01 (5), Stats. The proposed rules do not affect small businesses as defined in s. 227.114, Stats.

NOTICE IS HEREBY GIVEN that the Commission will hold a hearing on these proposed rules in the **Amnicon Falls Hearing Room**, at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on **Tuesday, May 1, 2001 at 10:00 a.m.** This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the case coordinator listed below.

Written Comments

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until Friday, May 11, 2001, at noon (Thursday, May 10, 2001, at noon, if filed by fax).

All written comments must include a reference on the filing to docket 1-AC-194. **File by one mode only.**

If filing by mail, courier, or hand delivery: Address as shown in the box on page 1. Industry parties should submit **an original and 15 copies**. Members of the general public need **only file an original**.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet MUST state **"Official Filing,"** the docket number (1-AC-194), and the number of pages (limited to 20 pages for fax comments).

Contact Persons

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

Questions regarding this matter should be directed to case coordinator Bruce Schmidt at (608) 266-5726, or by email at schmib@psc.state.wi.us. Hearing or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

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

Notice of Hearing

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board [CR 01-20]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors in ss.

15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 457.08 (3) (c) and (4) (c), Stats., the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors will hold a public hearing at the time and place indicated below to consider an order to amend s. SFC 4.01 (1) (b) 1. and 2., relating to supervision of precertification supervised practice of social work.

Hearing Date, Time and Location

Date: April 19, 2001

Time: 9:15 a.m.

Location: 1400 East Washington Avenue
Room 179A
Madison, Wisconsin

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by May 3, 2001 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

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

Statute interpreted: s. 457.08 (3) (c) and (4) (c), Stats.

Currently, supervision may be exercised by "a social worker certified at least at the level of the social worker being supervised, if the supervising social worker is qualified to practice without supervision." This does not adequately protect the public since certain grandfathered social workers without adequate training, knowledge and skill satisfy that definition. This rule-making will require that social workers who supervise a period of pre-certification practice of social work have a master's or a doctor's degree in social work.

Currently, there is no requirement for advance approval of supervisors. This rule-making permits supervision by a psychologist or a psychiatrist "if the social worker section determines that supervision by a certified social worker is unobtainable or unreasonably restrictive of the delivery of social work services to a particular population." Different interpretations of that language have led to misunderstandings. To avoid such situations, advance approval of supervisors other than independent clinical social workers will be required. This rule-making requires a person contemplating supervision by a person other than an independent clinical social worker to obtain approval by the social worker section in advance of the supervision period.

Text of Rule

SECTION 1. SFC 4.01 (1) (b) 1. and 2. are amended to read:

SFC 4.01 (1) (b) 1. A social worker certified at least at the level of the social worker being supervised, if the supervising social worker has a master's or doctor's degree in social work and is qualified to practice without supervision, or

2. A psychologist licensed under ch. 448, Stats., or a psychiatrist licensed under ch. 448, Stats., approved by the social worker section in advance of the supervision of the practice of social work if the social worker section determines that supervision by a certified social worker is unobtainable

or unreasonably restrictive of the delivery of social work services to a particular population, or unduly interferes with training social workers in providing services to a particular population.

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

Copies of Rule and Contact Person

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

Notice of Hearing

Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board [CR 01-19]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 440.03 (13), Stats., the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors will hold a public hearing at the time and place indicated below to consider an order to amend s. SFC 3.13 (1) (c), relating to background checks.

Hearing Date, Time and Location

Date: April 19, 2001
Time: 9:15 a.m.
Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison,

Wisconsin 53708. Written comments must be received by May 3, 2001 to be included in the record of rule-making proceedings.

Analysis

Analysis prepared by the Department of Regulation and Licensing.

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

Statute interpreted: s. 440.03 (13), Stats.

In this proposed rule-making order s. SFC 3.13 (1) is amended to permit the Social Worker Section to consider any criminal or disciplinary background by an applicant for a social work training certificate. The amendment would require an applicant applying for a social work training certificate to supply information about any prior disciplinary history and to grant authority to the section to deny an application based on a relevant disciplinary history or a criminal history substantially related to the profession.

Currently, there is a requirement that an applicant for a social work training certificate supply information about any criminal history. The rule does not specifically authorize the consideration of that information in the decision to grant a training certificate, nor does it require an applicant to provide any relevant disciplinary history.

Text of Rule

Section 1. SFC 3.13 (1) (c) is amended to read:

SFC 3.13 (1) (c) ~~Information requested by the section relating to any convictions or pending charges against the applicant for any criminal or traffic offenses. Proof that the applicant does not have a record of arrests or convictions, subject to ss. 111.321, 111.322 and 111.335, Stats., or a record of prior disciplinary actions against a professional credential in any jurisdiction.~~

Fiscal Estimate

1. The anticipated fiscal effect on the first liability and revenues of any local or 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 rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

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

Submission of proposed rules to the legislature

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

Tobacco Control Board (CR 00-173)

TCB 1 – Relating to the tobacco control board’s administering and awarding grants for tobacco control and establishing criteria for recipients of the grants.

Workforce Development (CR 01-005)

DWD 290.155 (1) – Relating to annual adjustment of thresholds for application of prevailing wage rates to the presiding officers of the Legislature for referral to the appropriate standing committees for legislative review.

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.

**Agriculture, Trade and Consumer Protection
(CR 00-119)**

An order relating to groundwater protection.
Effective 5-1-01

**Agriculture, Trade and Consumer Protection
(CR 00-145)**

An order relating to importing bovine animals, goats and cervids from "non-modified accredited" states.
Effective 5-1-01

Health and Family Services (CR 00-150)

An order relating to administration of supplemental security income (SSI), state supplemental payments to low-income elderly and disabled residents of Wisconsin and their dependent children.
Effective 5-1-01

Public Instruction (CR 00-83)

An order making several minor modifications to align ch. PI 14.03, minimum standards for audit and standard school district audit contracts.
Effective 5-1-01

Transportation (CR 00-152)

A rule relating to outdoor advertising sign annual fees.
Effective 5-1-01

Workforce Development (CR 00-108)

Rules relating to the state directory of new hires.
Effective 5-1-01

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **March 31, 2001** Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

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

Commerce (CR 00-73)

An order affecting chs. Comm 20-25 relating to the uniform (1-2 family) dwelling code.
Effective 4-1-01

Summary of final regulatory flexibility analysis

The Uniform Dwelling Code, per statute, applies uniformly throughout the state, regardless of the size of the business involved. The Uniform Dwelling Code Council, whose membership is determined per statute, has a majority of the members representing small businesses. The rules contained herein represent the consensus of that Council.

Comments received at public hearings consist of opinions on the best way to provide safe, economical and energy efficient housing in the state. These comments are reviewed with the Uniform Dwelling Code Council, whose membership has a majority representing small businesses. Those that achieve consensus through the Council are included in the proposed rules.

There are no substantial reporting requirements contained in these rules.

There are no substantial measures or investments required of small businesses contained in these rules.

Comments

No comments were received.

Natural Resources (CR 00-118)

An order renumbering, amending and creating rules pertaining to deer management unit boundaries and population goals.

Effective 4-1-01

Summary of final regulatory flexibility analysis

The rules do not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

Comments

The rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environmental Resources. There were no comments.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **March 2001**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Commerce:

(Uniform Dwelling, Chs. Comm 20-25)

Ch. Comm 20

- S. Comm 20.04 (1) and (3) to (5)
- S. Comm 20.05 (6) to (9)
- S. Comm 20.07 (4m), (10m), (15g), (17), (24m), (24r), (28), (28r), (33m), (34f), (36), (41m), (45), (47), (53), (53m), (55m), (56m), (60), (61) and (73m)
- S. Comm 20.10 (1) (b)
- S. Comm 20.24 (1), (4), (7) (f) to (r) and (12)

Ch. Comm 21

- S. Comm 21.02 (3) (a) and (e)
- S. Comm 21.03 (1), (2) (b), (5), (6), (6m), (7) and (8)
- S. Comm 21.04 (entire section)
- SS. Comm 21.08 to 21.11 (entire sections)
- S. Comm 21.15 (1) (e)
- S. Comm 21.17 (3) (d)
- S. Comm 21.18 (1) (b), (c) and (d), (2) (a), (3) and Tables 21.18-A, -B, -C, -D, -E and -F.
- S. Comm 21.22 (1m), (4) and (5) (b)
- S. Comm 21.24 (entire section)
- S. Comm 21.25 (1) (b), (c) and (d), (2), (3) (b), (6) and Tables 21.25-E and -F.
- S. Comm 21.27 (3) (a)
- S. Comm 21.29 (6) and (9)
- S. Comm 21.30 (7) (a), (d) and (e) and (9) (c)

Ch. Comm 22

- S. Comm 22.04 (entire section)
- S. Comm 22.07 Table 22.07-1
- S. Comm 22.12 (3)
- S. Comm 22.17 (1)
- S. Comm 22.18 (entire section)
- S. Comm 22.25 (entire section)
- S. Comm 22.27 (2)
- S. Comm 22.28 (2)
- S. Comm 22.31 (5)

Ch. Comm 23

- S. Comm 23.02 (3)
- S. Comm 23.04 (1) (e) and (4)
- S. Comm 23.045 (2) (b) and (c)
- S. Comm 23.06 (entire section)
- S. Comm 23.062 (entire section)
- S. Comm 23.14 (3)

Natural Resources:

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

Ch. NR 10

- S. NR 10.104 (4) (b) and (5) (b)
- S. NR 10.117 (5)
- S. NR 10.28 (1) and (2) (c)

Editorial corrections

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

Agriculture, Trade and Consumer Protection:

Ch. ATCP 118

- S. ATCP 118.01 (3) (b) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Commerce:

(Manufacture of Fireworks, Ch. Comm 9)

Ch. Comm 9

- S. Comm 9.24 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. Comm 9.28 (1) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

(Uniform Dwelling, Chs. Comm 20-25)

Ch. Comm 20

- S. Comm 20.09 (5) (b) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. Comm 21

- S. Comm 21.02 (3) (b) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. Comm 21.205 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. Comm 22

- S. Comm 22.22 (6) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Corrections:

Ch. DOC 303

- S. DOC 303.20 (1) and (2) (c) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. DOC 316

- S. DOC 316.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. DOC 380

S. DOC 380.03 (11) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Educational Approval Board:**Ch. EAB 1**

S. EAB 1.01 (23) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. EAB 3

S. EAB 3.01 (6) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. EAB 4

S. EAB 4.10 (2) (b) and (d) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. EAB 10

S. EAB 10.02 (4) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. EAB 10.04 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Elections Board:**Ch. El Bd 1**

S. El Bd 1.65 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Emergency Management:**Ch. WEM 1**

S. WEM 1.06 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. WEM 2

S. WEM 2.04 (1) (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. WEM 4

S. WEM 4.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. WEM 4.04 (3) had corrections made under s. 13.93 (2m) (b) 7., Stats.
S. WEM 4.09 (1) (a) and (2) (a) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. WEM 5

S. WEM 5.05 (5) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. WEM 6

S. WEM 6.02 (7) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Environmental Education Board:**Ch. EEB 2**

S. EEB 2.02 (1), (2) and (5) had corrections made under s. 13.93 (2m) (b) 7., Stats.
S. EEB 2.04 (1) and (4) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Natural Resources:**(Fish, Game, etc., Chs. NR 1--)****Ch. NR 10**

S. NR 10.001 (9c) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Natural Resources:**(Environmental Protection--Investigation and Remediation, Chs. NR 700--)****Ch. NR 706**

S. NR 706.02 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. NR 706.03 (5) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. NR 706.11 (3) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. NR 706.15 (2) (a) and (3) (a) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. NR 718

S. NR 718.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.
S. NR 718.02 (1) (a) and (b) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. NR 728

S. NR 728.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Errata

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

Commerce:**(Risk Screening and Closure Criteria for Petroleum Product Contaminated Sites, Ch. Comm 46)****Ch. Comm 46**

S. Comm 46.06 Table 1 was reprinted to correct error.

Employee Trust Funds:**Ch. ETF 20**

S. ETF 20.35 was reprinted to correct subsection titles.

Transportation:**Ch. Trans 8**

S. Trans 8.02 (7) was reprinted to correct printing error.

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
DFI-CU 60.06	186.255 (11)	186.235 (11)
DFI-SL 12.02 (4)	221.04 (1) (k)	221.0303 (1)
DFI-SL 13.04 (1), (2) (intro.) and Note	138.056 (1) (a) 4a.	138.056 (1) (a) 4. a.
DFI-SB 12.02 (4)	221.04 (1) (k)	221.0303 (1)
DFI-SB 13.03 (1) and (2) (intro.)	138.056 (1) (a) 4a.	138.056 (1) (a) 4. a.
DFI-SB 16.03 (6)	66.521	66.1103
WGC 18.01 (1) (a)	562.07, 20.192 (2) (g), 562.07 (1)	Note inserted: 1991 Wis. Act 39 repealed ss. 20.192 and 562.07, Stats.
WGC 18.01 (2)	562.07	Note inserted: 1991 Wis. Act 39 repealed s. 562.07, Stats.
WGC 18.01 (2)	181.02 (4)	181.0103 (5)
WGC 18.02	562.07	Note inserted: 1991 Wis. Act 39 repealed s. 562.07, Stats.
WGC 18.03	20.192 (2) (g) and 562.07	Note inserted: 1991 Wis. Act 39 repealed ss. 20.192 and 562.07, Stats.
WGC 43.02	163.63 (1)	563.63 (1)
WGC 44.01	163.04	563.04
HFS 5.01	46.22 (6), 49.50 (2) and (5), 51.42 (12)	49.33 (4) and (7), 51.42 (7) (b)
HFS 10.36 (1) (b) 1.	55.05 (1t)	55.01 (1t)
HFS 34.03 (11) (a) 3.	940.225 (5) (a) 940.225 (5) (b)	940.225 (5) (b) 940.225 (5) (c)
HFS 37.06 (1)	146.025	252.15
HFS 38.01 (1)	48.67 (1)	48.67
HFS 38.10 (2) (i)	ch. HSS 37	ch. HFS 37
HFS 40.03 (14)	115.86	115.817
HFS 40.03 (20)	HSS 101.03 (145)	HFS 101.03 (145)
HFS 40.03 (24)	HSS 107.32 (1) (a) 2.	HFS 107.32 (1) (a) 2.
HFS 40.09 (2) (b)	HSS 107.22	HFS 107.22

Location of invalid cross-reference	Invalid cross-reference	Correction
HFS 40.15 (2)	HSS 190.09	HFS 190.09
HFS 42.01	48.551 (2) 48.551	48.55 (2) 48.55
HFS 42.03 (1)	48.551	48.55
HFS 50.05 (1) (a)	49.19 (12)	48.62 (4)
HFS 59.02 (8)	938.22 (8)	Delete
HFS 61.92	51.42 (5) (b) to (d), 51.42 (12)	51.42 (5) (a) 2. to 4. and (7) (b)
HFS 65.02 (9)	49.177	49.77
HFS 68.02 (2) (b)	ch. HSS 82	ch. HFS 82
HFS 73.04 (1)	46.27 (5) (a)	46.27 (5) (am)
HFS 73.07 (1) (f)	49.177	49.77
HFS 75.03 (9) (a)	HFS 76.06, 76.07	HFS 75.06, 75.07
HSS 56.01 (2)	48.67 (1)	48.67
HSS 56.01 (2)	49.19 (12)	48.62 (4)
HSS 56.02 (2)	ILHR 51.01 (10)	Comm 51.01 (10)
HSS 56.04 (7) (c) 5. c.	ch. HSS 1	ch. HFS 1
HSS 56.09 (1) and (2) (a)	49.19 (12)	48.62 (4)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 418. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Assistant Fire Chief Dana Johnson of the Grantsburg Volunteer Fire Department.

Executive Order 1. Relating to the findings of Governor's task force on racial profiling.

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