

Wisconsin Administrative Register

No. 545



Publication Date: May 31, 2001

Effective Date: June 1, 2001



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

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

Bound Volumes:

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

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

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

WisLaw[®] CD–ROM:

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

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

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

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

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

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

Table of contents

Emergency rules now in effect.

Agriculture, Trade and Consumer Protection:

Pages 4 to 10

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

Rules relating to pathogen-tests on ready-to-eat dairy products.

Commerce:

Flammable and Combustible Liquids, Ch. Comm 10--

Rules relating to effective date of required upgrades to aboveground bulk tanks.

Financial Assistance for Businesses and Communities, Chs. Comm 105 to 128

Rules relating to the allocation of volume cap on tax-exempt private activity bonds.

Corrections:

Rules relating to sexually explicit material at adult correctional institutions.

Employment Relations Commission:

Rules relating to the calculation of a qualified economic offer.

Financial Institutions – Securities:

Rules relating to the investment adviser registration depository.

Health & Family Services:

Health, Chs. HFS 110--

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

Natural Resources:

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

Rules relating to the stewardship program.

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

Environmental Protection – Investigation and Remediation, Chs. NR 700--

Rules adopted relating to environmental insurance requirements.

Public Service Commission:

Rules relating to handling of confidential information.

Rules relating to the use of renewable resource credits.

Scope statements.**Pages 11 to 13**

Commerce:

Revising ch. Comm 113 relating to allocation of volume cap.

Revising chs. Comm 5, 50–64 and 66 relating to credentials for commercial building inspectors.

Employee Trust Funds:

Establishing new rules regarding the minimum required distributions (MRD) from a qualified retirement plan.

Financial Institutions–Securities:

Annual rule revision process, relating to the Wisconsin Uniform Securities Law.

Health and Family Services:

Revising ch. HFS 119, relating to Wisconsin Health Insurance Risk-Sharing Plan (HIRSP).

Public Instruction:

Ch. PI 16 relating to testing of pupils with limited-English proficiencies (LEP).

Submittal of rules to legislative council clearinghouse.

Agriculture, Trade and Consumer Protection

Health and Family Services:

Insurance:

Rule-making notices.

Agriculture, Trade and Consumer Protection:

Commerce:

Health and Family Services:

Insurance:

Natural Resources:

Submission of proposed rules to the legislature.

Natural Resources:

Natural Resources:

Social Workers, Marriage and Family Therapists and Professional Counselors:

Rule orders filed with the revisor of statutes bureau

Chiropractic Examining Board:

Dentistry Examining Board:

Regulation and Licensing:

Workforce Development:

Page 14

Ch. ATCP 80, relating to pathogen tests on ready-to-eat dairy products.

Ch. ATCP 81, relating to the grading, packaging and labeling of Swiss cheese.

Ch. HFS 120, relating to the extension of its data collection, analysis and dissemination activities to hospital emergency departments.

Section Ins 50.06 (2) (f), relating to financial statements.

Pages 15 to 30

Hearings on proposed amendments to ch. ATCP 81, relating to cheese grading, packaging and labeling.

Hearings on an emergency rule and a proposed amendment of ch. ATCP 80, relating to pathogen tests on ready-to-eat dairy products.

Hearings to consider chs. ATCP 55 and 56, relating to meat and meat food products.

Hearings to consider revision of ch. Comm 30, relating to fire department safety and health.

Health, Chs. HFS 110—

Hearings to consider revision of ch. HFS 120, relating to the collection, analysis and dissemination of health care information.

Notice of proposed rules to amend ch. HFS 110, relating to licensing of ambulance service providers and licensing of emergency medical technicians—basic and emergency medical technicians—basic IV.

Hearings to consider revision of ch. Ins 50, relating to notes to financial statements.

Fish, Game, etc., chs. NR 1—

Hearing to consider emergency rule revision to ch. NR 10, pertaining to deer hunting in 76 deer management units.

Environmental Protection—General, Chs. NR 100—

Hearings to consider revision of ch. NR 166, relating to the safe drinking water loan program.

Environmental Protection—Environmental Protection, Chs. NR 400—

Hearings to consider revision of ch. NR 410, relating to asbestos inspection fees.

Page 31

(CR 00-174) – Ch. NR 422

(CR 01-006) – Chs. NR 10, 12 and 19

(CR 00-147) – Ch. SFC 2

Page 32

(CR 00-124) – Chs. Chir 3 and 5

(CR 00-143) – Ch. DE 2

(CR 01-03) – Chs. RL 110 to 114

(CR 01-05) – Ch. DWD 290

Rules published with this register and final regulatory flexibility analysis.

Agriculture, Trade and Consumer Protection:

Commerce:

Elections Board:

Health and Family Services:

Natural Resources:

Pharmacy Internship Board:

Regulation and Licensing:

Tobacco Control Board:

Transportation:

Veterinary Examining Board:

Sections affected by rule revisions and corrections.**Sections affected by revisor's corrections not published.****Executive orders.**

Executive Order No. 3

Executive Order No. 4

Executive Order No. 5

Executive Order No. 6

Executive Order No. 7

Executive Order No. 8

Executive Order No. 9

Executive Order No. 10

Public notice.

Health and Family Services

Pages 33 to 34

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

Rules relating to mines, pits and quarries.

Rules relating to renewal of expired credentials.

Rules relating to the term "express advocacy" for campaign finance purposes.

Rules relating to immunization of students.

Rules relating to effluent limitations and pretreatment standards for the pesticide chemicals industry.

Rules relating to effluent limitations and pretreatment standards for the leather tanning and finishing industry.

Rules relating to the department's authority to void local hunting, fishing, and trapping ordinances.

Rules relating to pharmacy intern training.

Rules relating to home inspector examination and continuing education requirements.

Rules relating to the Tobacco Control Board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants.

Rules relating to a motor vehicle emissions inspection program.

Rules relating to the application deadline date for the examination required for licensure as a veterinarian.

Pages 35 to 37**Page 38****Page 39**

Relating to a proclamation of a state of emergency.

Relating to the proclamation of a state of emergency in Executive Order No. 3.

Proclamation of a state of emergency.

Relating to the Governor's Advisory Council on Judicial Selection.

Relating to a special session of the Legislature.

Relating to revising Executive Order No. 5.

Relating to a special election for the thirty-third senate district.

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 peace officers who have given their lives in the line of duty.

Page 40 to 41

Medical assistance reimbursement of nursing homes.

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 – (2)

1. 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

2. 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
Hearing Dates: June 14 & 15, 2001
 [See Notice this Register]

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

Commerce

(Financial Assistance for Businesses and Communities) (Chs. Comm 105–128)

Rules adopted revising **ch. Comm 113** relating to the allocation of volume cap on tax-exempt private activity bonds.

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.

Pursuant to s. 560.032, Stats., the Department of Commerce (Commerce) is responsible for administering the allocation of volume cap. The emergency rule is being adopted to incorporate in the administrative code recent changes to the Internal Revenue Code (Section CFR 146) which increases state volume cap limits on tax-exempt private activity bonds. The year 2000 limit was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002, the limit will be \$75.00; and thereafter, the limit will be indexed to inflation. The rule identifies a formula for the allocation of volume cap for the year 2001 and future years. This emergency rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and Commerce. The rules are also being revised to provide an allocation process that will allow Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

Publication Date: April 26, 2001
Effective Date: April 26, 2001
Expiration Date: September 23, 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
Hearing Dates: May 3, 4, & 9, 2001

Employment Relations Commission

Rules were adopted amending **ch. ERC 33, 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 – 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 Dates: January 12, 16, 17, 18 and 19, 2001
Extension Through: June 28, 2001

Natural Resources – (2) (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 Dept. 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
Extension Through: June 7, 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 part 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

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: July 19, 2001

2. Rules adopted creating **ch. PSC 118**, relating to the use of renewable resource credits.

Exemption from finding of emergency

1999 Wis. Act 9, section 9141 (2zt) (a) allows the Commission to promulgate an emergency rule creating an RRC trading program without making a finding of emergency.

Analysis prepared by the Public Service Commission

Statutory authority: ss. 196.02 (3), 196.378 (3), and 227.11, Stats.

Statute interpreted: s. 196.378, Stats.

1999 Wis. Act 9 created a renewable portfolio standard, requiring electric providers to meet certain minimum percentages of their retail sales with renewable resources. The minimum percentage gradually increases as follows:

Year 2001: 0.5 percent of total retail electric sales.

Year 2003: 0.85 percent of total retail electric sales.

Year 2005: 1.2 percent of total retail electric sales.

Year 2007: 1.55 percent of total retail electric sales.

Year 2009: 1.9 percent of total retail electric sales.

Year 2011: 2.2 percent of total retail electric sales.

In lieu of providing renewable energy to its customers, an electric provider can purchase a renewable resource credit. Under s. 196.378 (3) (a), Stats., the Commission must “promulgate rules that establish requirements for the use of a renewable resource credit, including the amount of a renewable resource credit.” This rule addresses the requirements and procedures for the use of renewable resource credits, during the interim period before the date when an identical permanent rule takes effect.

This rule establishes a renewable resource credits trading program and describes the minimum criteria for renewable facilities to be eligible for creation of credits in the trading program. The rule also describes the duties of a program administrator, who supervises and implements the trading program. The program administrator is required to create a trading account for participating electric providers and to award renewable resource credits to the account of an electric provider of energy, from a certified renewable facility, that exceeds its minimum requirement. The program administrator must retire renewable resource credits upon their use to satisfy an electric provider’s minimum renewable energy requirement.

Publication Date: April 7, 2001
Effective Date: April 7, 2001
Expiration Date: September 4, 2001

Scope statements

Commerce

Subject

Objective of the Rule. The objectives of the rule is to incorporate in ch. Comm 113 recent changes to the Internal Revenue Code which increase state volume cap limits on tax-exempt private activity bonds.

Policy analysis

The Division of Community Development within the Department of Commerce is responsible for administering the allocation of volume cap on tax-exempt private activity bonds. The year 2000 limit in the Internal Revenue Code was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002, the limit will be \$75.00; and thereafter, the limit will be indexed to inflation. The rule will outline the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and the Department of Commerce. The rule will also provide an allocation process that will allow the Department of Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

Statutory Authority

Sections 560.02 (4) and 560.032, Stats.

Staff Time Required

The department estimates that it will take approximately 60 hours to develop this rule. This time includes drafting the rule and processing the rule through public hearings and legislative review. The department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

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

a) Recognize diversified experience and/or training qualifications for individuals applying to obtain for the first time commercial building inspector certifications in light of the proposed utilization of the International Code Council suite of codes as the commercial building code and to reflect the distinct activities of plan review and field inspection.

b) Establish alternative schemes and certifications that reflect the various options of administering and enforcing the commercial building code and the fire prevention code by municipal agents.

Policy analysis

The present commercial building code specifies several options for municipalities to voluntarily become agents of the department with respect to plan review and field inspection activities. Even though the skills and knowledge associated with plan review and field inspection may differ with the activities and responsibilities, the department has only one type of credential to recognize both. The proposed rules would reflect and recognize the option of delegating these

activities and responsibilities to different individuals with special skills, knowledge and training along assigned duties.

Statutory Authority

Sections 101.02 (1), 101.12 (3) and 101.973 (10), Stats.

Staff Time Required

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

Administrative time	50 Hours
Code Consultant's time	140 Hours
Program Managers' time	140 Hours
<u>Program Staff time</u>	<u>80 Hours</u>
Total Time	410 Hours

Employee Trust Funds

Subject

In January 2001, the Internal Revenue Service issued proposed regulations under Internal Revenue Code Section 401 (a) (9) that establishes new rules regarding the minimum required distributions (MRD) from a qualified plan. The regulations are primarily designed to simplify the calculation of the MRD and in some instances allow payments to be extended over a longer period of time. These rules may also have implications for certain other types of payment options. The new rules are scheduled to go into effect for the plan year beginning January 1, 2002. Distributions initiated after this date must comply with the new requirements.

Objective of the Rule. The Department will continue its analysis of the provisions of the proposed rule to determine its impact on the current Wisconsin Retirement System (WRS) distribution options as well as the policies and procedures for rollover distributions to other qualified plans and individual retirement accounts (IRAs). The objective of the proposed rule is to ensure all current policies and procedures relating to distributions that impact the calculation of the MRD will conform to the new regulations.

Policy analysis

Preliminary review of the new regulations has identified that an administrative rule is necessary to ensure compliance with federal tax requirements relating to the calculation of minimum required distributions (MRD) and how this impacts certain WRS distribution options. The new rules include a specific schedule that must be used in determining the MRD. As a result of this new table, current WRS distribution options may not be in compliance beginning with distributions initiated in 2002.

Policy alternatives to the proposed rule

The WRS must be administered in compliance with Section 401 (a) for a qualified retirement system. Non-compliance with 401 (a) (9) creates plan qualification issues for the WRS and could potentially result in an excise tax penalty to a participant. Therefore, there is no acceptable alternative to this proposed rule making process.

Statutory Authority

Section 40.03 (1) (m) and (2) (i).

Staff Time Required

The department estimates that state employees will spend between 100 and 200 hours developing this rule.

Financial Institutions—Division of Securities**Subject**

Annual rule revision process for the Rules of the Division of Securities, Department of Financial Institutions, relating to the Wisconsin Uniform Securities Law.

Description of policy issues

Description of the objective of the rules:

The Division's annual rule revision process is conducted for the following purposes: (1) adopting new rules or amending existing rules, relating to the securities broker-dealer, agent, investment adviser, and investment adviser representative licensing provisions relating to certain limited agent examinations, designated supervisor requirements, and the filing of certain branch office information, to thereby effectively regulate new securities licensing developments that have occurred in the securities industry and marketplace that require regulatory treatment; (2) making modifications to existing federal covered security provisions to be consistent with federal securities law requirements; and (3) providing for electronic filing with the Division of any Consent To Service of Process.

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

Existing and new policies contained in the proposed rules include:

1. Adding a new rule subsection under DFI–Sec 4.01 (3) providing for a new, additional type of limited securities agent examination (needed as a result of provisions in the Gramm–Leach–Bliley Act) for bank employees engaged in selling private placement securities offerings.
2. Clarifying the timing of the notification requirement under existing rule DFI–Sec 4.04 (8) (a) and 5.04 (5) (a) for broker–dealers and investment advisers to inform the Division of the opening or change of address of any branch office location in Wisconsin.
3. Repealing both the licensing requirement in DFI–Sec 4.05 (6) that every broker–dealer must appoint a designated supervisor, and the related examination requirement in DFI–Sec 4.01 (5).
4. Adding a new rule subsection under the existing Federal Covered Security rules in DFI–Sec 2.04 (1) to deal with filings seeking extension of the effectiveness period of notice filings previously made by unit investment trusts or closed–end investment companies.
5. Adding a new fee rule under DFI–Sec 7.01 (5) prescribing a \$200 fee for filings for extension by entities identified in Item 4. above.
6. Creating a new rule subsection under the Service of Process statute in sec. 551.65, Wis. Stats., to provide for electronic filing of a Consent To Service of Process to thereby facilitate various electronic securities licensing and securities registration filing procedures.
7. Relocating the existing fee rule in DFI–Sec 7.01 (4) [regarding finance company prospectuses] to be a subsection of the registration fee rules in DFI–Sec 7.01 (1).

Statutory authority for the rules

Sections 551.63 (1) and (2), 551.29 (1) (c), 551.32 (4) and (7), 551.33 (1), (2) and (6), 551.52 (3), and 551.65 (1), Wis. 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 to develop the rules—25 hours. No other resources are necessary.

Health and Family Services**Subject**

The Department proposes to develop a rulemaking order that modifies ch. HFS 119 regarding the Wisconsin Health Insurance Risk–Sharing Plan (HIRSP). Modifications to ch. HFS 119 would reflect an actuarial update of HIRSP policyholder health insurance premiums, insurer assessments and provider payment rates for the period beginning July 1, 2001.

Policy Analysis

The Department has a longstanding Health Insurance Risk–Sharing Plan (HIRSP) for medically at–risk citizens. The proposed amendments to policyholder premiums, insurance assessments and provider assessments reflect updated HIRSP costs, in accordance with generally accepted actuarial principles. The Department has regularly amended ch. HFS 119 in the past (1998, 1999 and 2000) and this proposed rulemaking order is the most recent such amendment. One difference of the proposed rules will be that they may also reflect the conversion of HIRSP from a “cash” to an “accrual” basis of accounting, as recommended by the Legislative Audit Bureau and approved by the HIRSP Board of Governors at its April 25, 2001 meeting. The purpose of converting to an accrual basis of accounting is to provide a more accurate reflection of the program's financial condition.

The effect of the amended rule will be to ensure DHFS coverage of ongoing HIRSP costs for fiscal year 2002. Without this annual update, the revenues of the HIRSP program will quickly be eclipsed by program costs.

Statutory Authority

Sections 149.143 (2) (a) 3. and 4. and (3) (a), Stats.

Staff Time Required

The estimated DHCF staff time and other resources needed to develop and promulgate these rules will be about 120 hours. Included in this estimate is the time required to make actuarial calculations, rule drafting and promulgation.

Public Instruction**Subject**

Ch. PI 16 relating to testing of pupils with limited–English proficiencies.

Objective of the Rule. The proposed rules will:

1. Repeal the criteria and procedures relating to testing children with disabilities.
2. Ensure that all LEP pupils are given the Wisconsin Knowledge and Concept Examinations (WKCE) unless it has been determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil's academic knowledge and skills.
3. Clarify that exempting a pupil from taking the WKCE may not be used as the sole criterion in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for postsecondary education oppor-

tunities. Current rules seem to require school districts to promote or graduate and LEP pupil if the pupil is exempt from taking a standardized test.

4. Change the term “limited–English speaking” to “limited–English proficient” to be consistent with statutory terminology under s. 115.955 (7), Stats.

5. Clarify that the criteria under the chapter also applies to the 4th grade test administered under s. 118.30, Stats. At the time the rules were originally developed, only the 8th and 10th grade tests were being administered under s. 118.30, Stats. Since that time, the 4th grade test was added to the WKCE administered under s. 118.30, Stats., and the rules should be changed accordingly.

Policy analysis

Under s. 118.30, Stats., the state superintendent must adopt or approve examinations designed to measure pupil attainment of knowledge and concepts in the 4th, 8th and 10th grades. The statutes require the state superintendent to set criteria, by rule, regarding the testing of limited–English proficient (LEP) pupils. Currently, the rules establish criteria and procedures to determine whether a pupil with limited–English proficiency (LEP) or a pupil having an exceptional educational need or EEN (now referred to as child with a disability) may be exempt from taking a test under s. 118.30, Stats.

The U.S. Department of Education has recommended that for Wisconsin’s Title I program to be appropriately inclusive and thereby in compliance with federal regulations under the

Improving America’s Schools Act, the current rules need to be modified to ensure that pupils at lower proficiency levels are not automatically exempt from taking standardized tests. In addition, the rules relating to the testing of children with disabilities may be repealed because current state statutes and addition, the rules relating to the testing of children with disabilities may be repealed because current state statutes and federal law comprehensively address such testing issues and the rules conflict with the state statutes and federal law.

Policy alternatives to the proposed rule

If the department chooses not to change the current rules, the State of Wisconsin could be found out of compliance with federal regulations under the Improving America’s Schools Act thereby compromising the status of more than \$130 million in federal Title I funds.

Statutory Authority

Sections 118.30 (2) (b) 1. and 2. and 227.11 (2) (a), Stats.

Staff Time Required

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

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 May 15, 2001, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATCP 80, relating to pathogen tests on ready-to-eat dairy products. The department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review.

Contact Information

If you have questions, please contact:
Debbie Mazanec
Food Safety Division
Telephone (608) 224-4712

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On May 15, 2001, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATCP 81, relating to the grading, packaging and labeling of Swiss cheese. The department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review.

Contact Information

If you have questions, please contact:
Debbie Mazanec
Food Safety Division
Telephone (608) 224-4712

Health and Family Services

Rule Submittal Date

On May 4, 2001, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Under ch. 153, Stats., the Department of Health and Family Services is responsible for collecting, analyzing and disseminating a variety of health care data. In 2000, the Department substantially revised ch. HFS 120 to implement changes to ch. 153, Stats., included in 1997 Wisconsin Act 231 and 1999 Wisconsin Act 9. The principal purpose of this proposed rulemaking order is to incorporate the Department's proposed extension of its

data collection, analysis and dissemination activities to hospital emergency departments. To support these activities, the Department is also proposing rules that will give the Department the authority to assess fees on hospitals to cover the Department's additional data-related expenses.

This rulemaking order also proposes to make minor administrative changes to ch. HFS 120 to address Department organizational changes, amend providers' trading partner agreements, and revise the procedure under which providers submit data to the Department. Specifically, the Department proposes to amend references to a section of the Department that no longer exists; clarify that providers using qualified vendors to submit data to the Department must submit original and notarized copies of trading partner agreements; and make more general in rule the means by which providers submit data to the Department by specifying the electronic submission of data instead of submission via the internet. Finally, in section 5 of this proposed rulemaking order, the Department proposes to modify hospital rate increase reporting requirements by requiring hospitals to express the price increases as annualized percentages.

Agency Procedure for Promulgation

Public hearings will be held on June 20 and 21, 2001.

Contact Information

If you have questions, please contact:
Sandy Breitborde, Deputy Director
Bureau of Health Information
Telephone (608) 261-5986

Insurance

Rule Submittal Date

On May 4, 2001, the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

These changes will affect Section Ins 50.06 (2) (f) 1. and 2., Wis. Adm. Code, relating to notes to financial statements.

Agency Procedure for Promulgation

The date for the public hearing is June 15, 2001.

Contact Information

A copy of the proposed rule may be obtained from the OCI internet Web site at:
<http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Tammi Kuhl at (608) 266-0110 in OCI Central Files. For additional information, please contact Stephen Mueller at 267-2833 or e-mail at: stephen.mueller@oci.state.wi.us in the OCI Legal Unit.

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 01-57]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on proposed amendments to ch. ATCP 81, Wis. Adm. Code, relating to cheese grading, packaging and labeling. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open **until June 29, 2001**, for additional written comments.

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

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by June 7, 2001 either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, (608-224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearing locations.

Hearing Dates, Times And Locations

Date and Time: **Thursday, June 14, 2001**

10:00 a.m. – 12:00 noon

Location: Appleton Public Library
Lower Level Mtg. Room
925 S. Oneida Street
Appleton, WI 54911
Handicapped accessible

Date and Time: **Friday, June 15, 2001**

10:00 a.m. – 12:00 noon

Location: Iowa County Courthouse
County Board Room, 2nd Floor
222 N. Iowa Street
Dodgeville, WI 53533
Handicapped accessible

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

Statutory Authority: ss. 93.07 (1), 97.09 (4) and 97.177 (1) and (4), Stats.

Statute Interpreted: s. 97.177, Stats.

The department of agriculture, trade and consumer protection (DATCP) regulates the grading, packaging and labeling of cheese in this state. This rule modifies current rules related to the grading, packaging and labeling of Swiss (also known as emmentaler) cheese. The current rules are contained in ch. ATCP 81, Wis. Adm. Code.

Swiss Cheese Grading Terms

Under current rules, a cheese grader evaluates Swiss cheese based on eye, texture and other cheese characteristics. The current rule spells out grade standards for eye and texture characteristics in table format, using customary (but undefined) industry terms to identify various physical traits. This rule defines those terms, consistent with industry custom.

Swiss Cheese Grading Procedure

Under current rules, a grader must grade cheese by withdrawing and evaluating sample “plugs” of cheese using an implement known as a “trier.” This rule spells out a slightly different procedure for Swiss cheese. Under this rule:

- A cheese grader must determine Swiss cheese *flavor* and *body* characteristics by withdrawing and evaluating “plugs” of cheese. This rule spells out the procedure for withdrawing and evaluating Swiss cheese “plugs” using a trier.
- A grader must normally determine *texture*, *color* and *eye* characteristics by dividing a wheel or block of cheese in half and examining the exposed cut surfaces. If Swiss cheese has been already been cut into smaller pieces, the grader may examine the cut surfaces without making additional cuts. A grader may evaluate “plugs” of cheese, rather than cut pieces, if the cheese owner requests that procedure.

Wisconsin Grade Standards; Eye and Texture Characteristics

This rule changes current grade standards for Wisconsin grade A and Wisconsin state brand Swiss cheese. Under current rules, eyes must be uniformly distributed and a majority of the eyes must be $\frac{9}{16}$ to $\frac{13}{16}$ inch in diameter. Under this rule, eyes must be uniformly distributed and relatively uniform in size. A majority of the eyes must be $\frac{3}{8}$ to $\frac{13}{16}$ inch in diameter.

This rule establishes an eye size requirement for Wisconsin grade B Swiss cheese that is identical to that for Wisconsin grade A Swiss cheese. Under this rule, the majority of eyes must be $\frac{3}{8}$ to $\frac{13}{16}$ inch in diameter.

Fiscal Estimate

Assumptions Used in Arriving at Fiscal Estimate

Rules related to cheese grading, packaging and labeling are contained in Chapter ATCP 81, Wis. Adm. Code. Subchapter VII specifies the Wisconsin grade standards for Swiss or Emmentaler cheese. These standards include requirements for particular eye and texture characteristics of the cheese, including eye size. Current standards require that the majority of eyes (or holes) be $\frac{9}{16}$ to $\frac{13}{16}$ inch in diameter in order for the cheese to be labeled or sold as Wisconsin’s grade A or state brand Swiss (emmentaler) cheese.

This rule updates the Wisconsin grade standard for Swiss (emmentaler) cheese so that the Wisconsin cheese industry may embrace new cheese manufacturing and packaging technology and meet customer expectations. This rule update will permit smaller eyes in Swiss or emmentaler cheese than the current standard allows by expanding the lower end of the range. This change will facilitate cutting operations with high-speed slicing equipment and help provide a more con-

sistent quantity by weight of cheese in consumer packages. This rule change will also bring the Wisconsin grade standards into conformance with United States Department of Agriculture grade standards for Swiss cheese with regard to eye size, and allow the Wisconsin cheese industry to remain competitive on a nationwide basis.

This rule also defines current and new terms in Subchapter I to help clarify grade standard characteristics with respect to eye and texture characteristics of Swiss cheese. In Subchapter II, cheese grading procedures are modified to allow for better examination of eye and texture characteristics and evaluation of the cheese with respect to the proposed changes in the grade standard.

Currently, there are three multiple product graders employed by the department. No additional staff will be required to enforce these regulations. These amendments will not impose added costs on local government.

One-time costs of approximately \$3640 will be incurred by the department for rule development.

Long – Range Fiscal Implications

None anticipated.

Initial Regulatory Flexibility Analysis

This proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to cheese grading, packaging and labeling.

Under current DATCP rules, the majority of eyes or holes in Swiss (emmentaler) cheese must be $\frac{9}{16}$ to $\frac{13}{16}$ inch in diameter in order for the cheese to be labeled or sold as Wisconsin grade A or Wisconsin state brand. There are no eye size specifications in the current standards for Wisconsin grade B Swiss (emmentaler) cheese.

The proposed rule brings the Wisconsin grade standards for Swiss (emmentaler) cheese into conformance with recent changes in the federal grade standards adopted by the United States Department of Agriculture. The proposed rule allows smaller eyes by expanding the lower end of the eye size range and requires that the majority of eyes be $\frac{3}{8}$ to $\frac{13}{16}$ inch in diameter for Wisconsin grade A (Wisconsin state brand). It also requires the eyes to be relatively uniform in size and uniformly distributed. The proposed rule also establishes the same eye size range of $\frac{3}{8}$ to $\frac{13}{16}$ inch in diameter for Wisconsin grade B.

The proposed rule defines current and new terms to help clarify the grade standard characteristics with respect to eye and texture characteristics of Swiss cheese. The proposed rule also modifies grading procedures for Swiss cheese to allow for better examination and evaluation of texture, color, and eye characteristics. For the determination of texture, color, and eye characteristics, the cheese must be divided approximately in half to expose two cut surfaces for examination. Upon request of the owner of the cheese (or the owner's authorized representative), cheese samples for grading purposes may be obtained with the use of a trier in lieu of dividing the cheese in half.

This rule update in the Wisconsin grade standard for Swiss (emmentaler) cheese is necessary to keep pace with changes in manufacturing and packaging technology and meet a variety of customer and consumer preferences. Packagers and cut/wrap operations prefer smaller eyes that facilitate cutting operations with high-speed slicing equipment. Smaller eyes also enable the cutter to better control package weight and minimize trim. Delicatessen operators prefer a larger eye size due to customer preference at the retail level. It is believed that cheese manufacturers currently producing Swiss cheese

with an eye size range of $\frac{9}{16}$ to $\frac{13}{16}$ inch in diameter will maintain or grow their market niche.

The proposed rule will not impose any direct costs on small businesses. These rule changes do not require any additional reporting or recordkeeping. No additional knowledge or professional skills are needed to meet the requirements of these proposed amendments.

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 01-58]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on its emergency rule and a proposed permanent rule to amend Chapter ATCP 80, Wisconsin Administrative Code, relating to pathogen tests on ready-to-eat dairy products. The public is invited to attend the hearings and make comments on the the emergency rule and proposed permanent rule. Following the public hearings, the hearing record will remain open **until June 29, 2001**, for additional written comments.

A copy of the emergency and proposed permanent rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, or by calling 608-224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by June 7, 2001 either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, (608-224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearing locations.

Hearing Dates, Times And Locations

Date and Time: Thursday, June 14, 2001

10:00 a.m. – 12:00 noon

Location: Appleton Public Library
Lower Level Mtg. Room
925 S. Oneida Street
Appleton, WI 54911
Handicapped accessible

Date and Time: Friday, June 15, 2001

10:00 a.m. – 12:00 noon

Location: Iowa County Courthouse
County Board Room, 2nd Floor
222 N. Iowa Street
Dodgeville, WI 53533
Handicapped accessible

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

Statutory authority: ss. 93.07 (1), 97.09 (4) and 97.20 (4), Stats.

Statutes interpreted: ss. 97.09 (4) and 97.20 (4), Stats.

The Department of Agriculture, Trade and Consumer Protection (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. The current reporting require-

ment discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency and proposed permanent rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.

- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:

- * The tested product bears a product code or production lot number.

- * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement will continue. DATCP may inspect and copy test records as necessary.

Fiscal Estimate

The Department of Agriculture, Trade and Consumer Protection ("department") licenses and inspects dairy plants under Wis. Stats. ss 97.20. Under s. 80.56 (4), Wis. Admin. Code, the department requires the dairy plant operator to report to the department results of any microbiological test conducted on a pasteurized or ready-to-eat dairy product that confirms the presence of pathogenic organisms in that product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

The emergency rule and proposed permanent rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing.

The emergency rule and proposed permanent rule has no anticipated fiscal impact on the department.

Initial Regulatory Flexibility Analysis

The Department of Agriculture, Trade and Consumer Protection (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. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

The proposed rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing.

The proposed changes are already in effect under an emergency rule which the department adopted. This rule will make the temporary rule changes permanent. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.

- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:

- * The tested product bears a product code or production lot number.

- * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This rule requires no additional recordkeeping or other procedures for dairy plants. Small dairy plants will need no additional professional skills or assistance in order to comply with this rule.

This permanent rule will have minimal financial impact on the dairy industry.

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 01-42]

(reprinted from Mid-May, Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules to repeal ch. ATCP 56, and to repeal and recreate ch. ATCP 55, relating to meat and meat food products. The department will hold three hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rules. Following the public hearing, the hearing record will remain open until July 6, 2001, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4726. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by **June 12, 2001**, by writing to Carol Winner, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4726. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearings are scheduled at:

Tuesday June 19, 2001, 10:00 a.m. until 2:30 p.m.

Green Bay State Office Building
200 North Jefferson Street
Room 152-A
Green Bay, WI 54301
Handicapped accessible

Wednesday, June 20, 2001, 10:00 a.m. until 2:30 p.m.

WDATCP Regional Office
3610 Oakwood Hills Parkway
Eau Claire, WI 54701-7754
Handicapped accessible

Friday, June 22, 2001, 10:00 a.m. until 2:30 p.m.

Dept. of Agriculture, Trade and Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI 53718

Handicapped accessible

Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 97.09(4) and 97.42(4), Stats.

Statutes interpreted: ss. 97.02, 97.03, 97.10, 97.12, 97.42, 97.43, 97.44 and 97.45, Stats.

This rule repeals and recreates Wisconsin's current meat inspection rules. This rule incorporates major federal law changes affecting Wisconsin's meat inspection program, and repeals current rule provisions made obsolete by the new federal requirements. It also updates, reorganizes and clarifies current state rules.

Background

The United States department of agriculture ("USDA") administers the federal meat inspection program, which is designed to ensure that meat used for human food is safe, wholesome and properly labeled. The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers a similar meat inspection program for the state of Wisconsin. USDA provides 50% funding for Wisconsin's program. Under federal law, Wisconsin's program must be "at least equal to" the federal program.

Federal and state meat inspection programs have traditionally regulated the production and sale of meat from domesticated food animals such as cattle, swine and poultry. In recent years, they have also begun to regulate the production and sale of meat from other animals, such as farm-raised deer, ratites, captive game animals and captive game birds. The federal program regulates meat sold in interstate commerce. The state program focuses on meat produced and sold within Wisconsin, often by smaller meat establishments.

Animals must be slaughtered subject to state or federal inspection if their meat is sold for human consumption. Slaughter inspection includes *ante mortem* inspection of live animals and *post mortem* inspection of carcasses. Slaughter and processing operations must comply with sanitation standards. Meat must bear official inspection marks or legends, and must comply with other labeling requirements.

Federally inspected meat may be sold between states. State-inspected meat may be sold in Wisconsin, but federal law prohibits the sale of state-inspected meat to other states. This prohibition does not apply to state-inspected meat from captive game.

Congress and USDA recently overhauled the entire federal meat inspection program. They replaced the old system, based mainly on visual inspection, with a new "hazard analysis critical control point" (HACCP) system that includes pathogen testing. Wisconsin's meat inspection program must conform to the new federal standards. In the last biennial budget act (1999 Wis. Act 9), the Wisconsin legislature incorporated the new federal standards by reference under s. 97.42 (4m), Stats.

This rule repeals and recreates DATCP's current meat inspection rules, based on the new federal requirements. It also reorganizes and clarifies current rules. This rule updates current rules related to meat establishment licensing, slaughter inspection, slaughter and processing standards, custom slaughter and processing, mobile custom slaughter and processing, meat labeling, and the production of meat from non-traditional sources such as captive game animals and captive game birds.

Rule Contents

Coverage

This rule applies to persons who slaughter animals for human consumption, or who process, store, transport, sell or distribute meat for human consumption. But this rule does not apply to any of the following:

- Restaurants, vending machine commissaries or catering establishments, regulated by the Wisconsin department of health and family services or its agents, that sell meat only in meals that they serve.
- Federally inspected slaughter or processing establishments.
- Persons slaughtering their own animals, or processing or transporting their own meat, for their own personal or household consumption.

Definitions

This rule defines some important terms used in the rule, including the following:

- "Food animals" means all the following:
 - "Domesticated food animals." This includes cattle, swine, poultry (domesticated chickens, turkeys, geese, ducks, guinea fowl and squab), sheep, goats, farm-raised deer (not captive white-tail deer) and horses.
 - "Ratites." This includes ostriches and emus.
 - "Captive game animals." This includes bison, white-tail deer and other animals of a normally wild type that are produced in captivity for slaughter and consumption. It does not include farm-raised deer, ratites, captive game birds, fish, or game animals kept solely for hunting purposes at a hunting preserve.
 - "Captive game birds." This includes farm-raised game birds, such as pheasants, quail, wild turkeys, waterfowl and exotic birds, which are produced in captivity for slaughter and consumption. It does not include poultry or ratites. Nor does it include game birds kept solely for hunting purposes in a hunting preserve.
- "Meat" means the edible muscle and other edible parts of a food animal.
- "Meat establishment" means an establishment used to slaughter food animals for human consumption, or to process the meat of food animals for human consumption.
- "Custom slaughter" or "custom processing" means slaughter or processing services provided to an individual who already owns the affected food animal or meat, and who uses the resulting meat products solely for his or her personal or household consumption. The service provider does not sell meat to the service recipient, but merely provides a service for hire.
- "Mobile custom slaughter" or "mobile custom processing" means custom slaughter or processing services provided at the recipient's premises (typically a farm), rather than at a meat establishment.

Licensed Meat Establishments

This rule clarifies current meat establishment licensing requirements. Under this rule, no person may operate a meat establishment without a current annual license from DATCP. But no license is required for any of the following:

- Federally inspected slaughter or processing operations.
- Mobile custom slaughter or mobile custom processing operations. A person engaged in mobile custom slaughter or mobile custom processing operations must hold an annual registration certificate from DATCP (see below) if the person does not hold a meat establishment license.
- The custom slaughter or custom processing of captive game animals or captive game birds.

- A farmer who slaughters and processes, for sale at his or her farm, not more than 1,000 poultry per year produced on that farm. The poultry must be labeled “NOT INSPECTED.”

- A retail establishment that processes meat primarily for sale to consumers at the retail establishment, provided that all the following apply:

- The retail establishment is not engaged in slaughter operations.

- The retail establishment sells its processed meat only to consumers at the retail establishment, or to restaurants or institutions for use in meals served at those restaurants or institutions.

- The retail establishment’s sales of its processed meat to restaurants or institutions do not exceed \$28,800 annually, or 25% by dollar volume of its total annual meat sales, whichever amount is less.

- The retail establishment receives meat only from state licensed or federally inspected meat establishments.

- The retail establishment does not combine meat from different species for sale to restaurants or institutions.

- The retail establishment does not cure, smoke, season, can or cook any meat for sale to restaurants or institutions.

Meat Establishment License Fees

This rule clarifies current meat establishment licensing procedures, and incorporates current license fees without change. A meat establishment operator must pay an annual license fee of \$200, except that the annual fee is \$80 if the license holder is *solely* engaged in *custom slaughter* or *custom processing* operations.

Meat Establishments Processing Wild Game

Generally speaking, a meat establishment may not slaughter or process animals other than *food animals*. However, a meat establishment may *custom process* legally harvested wild game (such as legally hunted white-tail deer) for the game owner if all the following apply:

- The meat establishment operator notifies DATCP. DATCP may restrict wild game processing that is incompatible with the slaughter or processing of food animals at the same establishment.

- The operator accepts only clean and apparently wholesome wild game carcasses for custom processing.

- The operator, when custom processing wild game, complies with processing, labeling and record keeping requirements applicable to the custom processing of food animals. Among other things, the operator must label all of the resulting wild game products “NOT FOR SALE.”

- The operator processes wild game only at times when the operator is not slaughtering or processing food animals.

- The operator cleans and sanitizes equipment used to process wild game before using that equipment to slaughter or process food animals.

- The operator keeps wild game and wild game products separate from all other meat and meat food products in the meat establishment.

- The operator clearly labels wild game products, so they cannot be confused with other meat or meat food products. Wild game products must be clearly identified by species.

- The operator handles, processes and stores wild game and wild game products in a manner that prevents contamination of other meat and meat food products.

Slaughter Inspection Required

Under this rule, no person may *sell* any meat from any *food animal* unless the animal is slaughtered subject to state or federal inspection. This does not apply to any of the following:

- Custom slaughtering or custom processing (because there is no sale of meat).

- A poultry farmer selling meat from not more than 1,000 of his or her poultry each year, provided the poultry are labeled “NOT INSPECTED.”

- Captive game animals or captive game birds for which no inspection standards exist. This exemption is very limited, because DATCP and USDA have established inspection standards for most captive game animals and captive game birds.

Federal law prohibits the sale of state-inspected meat to other states. But this prohibition does not apply to state-inspected meat from *captive game animals*, *captive game birds* or *farm-raised deer*.

Slaughter Inspection Services

DATCP provides slaughter inspection services only to licensed meat establishments. A meat establishment operator requesting inspection services must specify a proposed slaughter schedule. In order to use its inspection staff most efficiently, DATCP may require a different schedule. The operator may not deviate from the established schedule without DATCP approval.

Ante mortem and post mortem slaughter inspections must be performed at a licensed meat establishment, except that DATCP may agree to perform a *field ante mortem* inspection on any of the following:

- Apparently healthy *farm-raised deer* or *captive game animals* that cannot be safely or humanely transported to a licensed meat establishment for ante mortem inspection.

- Apparently healthy *domesticated food animals*, if special circumstances prevent the transportation of those animals to a licensed meat establishment for ante mortem inspection.

DATCP may *not* perform *field ante mortem inspections* of diseased animals, or animals that cannot stand or walk. Ante mortem inspections of those animals *must* be performed at properly equipped meat establishments (see below).

Slaughter Inspection Charges

DATCP will provide slaughter inspection services without charge to a licensed meat establishment operator, except that DATCP will charge the operator for the inspection services if any of the following apply:

- The inspection pertains to a *captive game animal* or *captive game bird*.

- DATCP performs the inspection outside the operator’s normal slaughter schedule, before 6 AM or after 6 PM, or on a Saturday, Sunday or holiday. DATCP will also charge for any inspection hours that exceed 40 hours per week.

If a meat establishment operator is required to pay for slaughter inspection services, DATCP will bill uniform hourly charges based on DATCP’s statewide average cost to provide such services. DATCP may charge higher amounts for inspections that must be performed by veterinarians (see below). DATCP must give 30 days prior notice before increasing inspection charges.

A meat establishment operator must notify DATCP if a DATCP inspector fails to appear for a scheduled slaughter inspection. DATCP must provide another inspector as soon as possible, so that slaughter may proceed in a timely manner.

DATCP may withdraw slaughter inspection for cause, including violations of this rule. An operator may not conduct slaughter operations without inspection, if inspection is required by this rule.

Ante Mortem Inspection

This rule spells out procedures for ante mortem inspections. If a DATCP inspector performing an ante mortem inspection suspects that the animal has a disease or condition that may cause it to be condemned on post mortem, the inspector must withhold the suspect animal from slaughter pending further inspection by a DATCP veterinarian. If the veterinarian finds that the suspect animal is not fit for slaughter, the veterinarian must do one of the following:

- Condemn the animal.
- Withhold the animal from slaughter pending treatment, if the animal's condition can be corrected by treatment.

If DATCP agrees to perform a *field ante mortem* inspection at a place other than a licensed meat establishment (see above), the inspector must observe the live animal in the field, in motion and at rest. If an animal passes a field ante mortem inspection, the meat establishment operator may stun and bleed the animal in the field. The operator must bleed the animal immediately after stunning, and must transport the carcass to a licensed meat establishment for post mortem inspection and processing.

Post Mortem Inspection

This rule spells out post mortem inspection procedures:

- Post mortem inspections of *domesticated food animals*, other than poultry, must comply with federal procedures under 9 CFR 310. Procedures for farm-raised deer are the same as for sheep.
- Post mortem inspections of *poultry* and *captive game birds* must comply with 9 CFR 381.
- Post mortem inspections of *captive game animals* must comply with 9 CFR 310. Post mortem inspection procedures for bison are the same as for cattle. DATCP may specify inspection procedures for other captive game animals, as appropriate.

Slaughter Inspection Marks

A DATCP inspector must apply or supervise the application of an official inspection mark to each part of a carcass that the inspector finds, upon slaughter inspection, to be wholesome and fit for human food.

- For *domesticated food animals* (other than farm-raised deer) and for *ratites* (ostriches and emus), the mark consists of an *outline map of Wisconsin* enclosing the words "WIS. INSPECTED AND PASSED," the inspector number and the meat establishment license number.
- For *farm-raised deer*, *captive game animals* and *captive game birds*, the mark consists of an *equilateral triangle* containing the meat establishment license number.

If a DATCP inspector finds that any part of a carcass is unwholesome or unfit for human food, the inspector must mark that part "WIS. INSPECTED AND CONDEMNED." An inspector may also mark a suspect carcass "RETAINED" pending further inspection.

Slaughter and Processing Standards; General

This rule incorporates federal slaughter and processing standards by reference, and repeals state standards that are obsolete or duplicative. This rule keeps Wisconsin's program consistent with the federal program, as required by federal law and s. 97.42 (4m), Stats. Federal standards include HACCP and pathogen testing requirements.

Under this rule, slaughtering and processing operations (other than *mobile* custom slaughter or *mobile* custom processing operations) must comply with the following standards:

- Persons slaughtering or processing *domesticated food animals*, other than poultry, must comply with applicable federal standards under 9 CFR 307 to 311, 313 to 315, 317, 319, 416 and 417.
- Persons slaughtering or processing *poultry* or *captive game birds* must comply with applicable federal standards under 9 CFR 381 subparts G, H, I, J, K, L, O and P, and 9 CFR 416 and 417. There is an exception for farmers who slaughter and process not more than 1,000 of their own poultry annually, if the processed poultry are labeled "NOT INSPECTED."
- Persons slaughtering or processing *ratites* (ostriches or emus) must comply with applicable federal standards under 9 CFR 307 to 311, 313 to 315, 317, 319, 416 and 417.
- Persons slaughtering or processing *captive game animals* must do so in a humane and sanitary manner. If a captive game animal is slaughtered for sale subject to DATCP inspection, the slaughter must comply with procedures specified by DATCP.

Diseased or Injured Animals; General

A person may not slaughter a food animal for human consumption, or submit a food animal for slaughter for human consumption, if the person knows or has reason to know that the animal is diseased or injured. But this prohibition does not apply to any of the following:

- A slaughter inspected by DATCP or USDA.
- The *custom* slaughter of an animal injured within 24 hours prior to slaughter, if the animal is otherwise healthy. The animal owner must certify (see below) that the animal was injured within 24 hours prior to slaughter, and is not diseased.
- The *custom* slaughter of an animal injured more than 24 hours prior to slaughter, if the animal is otherwise healthy and all the following apply:
 - The animal owner certifies that the animal is injured, not diseased (see below).
 - A practicing veterinarian performs an ante mortem and post mortem inspection on the slaughtered animal.

Diseased or Injured Animals; Owner Certification

If a person submitting a food animal for slaughter for human consumption knows or has reason to know that the animal is diseased or injured, that person must sign and submit with that animal a written statement certifying all the following:

- The name and address of every person who has had custody of the animal in the last 30 days.
- The nature of each known or suspected disease or injury.
- The date and cause of each injury, if known.
- The date on which the animal became incapable of standing or walking, if the animal cannot stand or walk.
- All drugs given to the animal in the last 30 days, and the last date on which each drug was given.

Animals that Cannot Stand or Walk

A person may not slaughter for human consumption, or submit for slaughter for human consumption, a food animal that cannot stand or walk without assistance. But this prohibition does not apply to any of the following:

- An animal slaughtered at a licensed meat establishment, subject to DATCP inspection. The meat establishment must be properly equipped to handle animals that cannot stand or

walk, and a DATCP veterinarian must perform the ante mortem and post mortem inspection.

- A slaughter performed at a meat establishment inspected by USDA.
- The *mobile* custom slaughter of an injured (not diseased) animal, if the slaughter complies with this rule. The animal owner must certify (see above) that the animal is merely injured, not diseased. If the animal was injured more than 24 hours prior to slaughter, a licensed practicing veterinarian must perform an ante mortem and post mortem inspection.

An animal that cannot stand or walk must be treated humanely. A meat establishment operator must have proper equipment for moving the animal humanely. A DATCP veterinarian inspecting the slaughter may order the animal held for up to 24 hours for further observation. If the animal has been treated with drugs for which the prescribed withdrawal time has not elapsed, the DATCP veterinarian must condemn the animal or hold it until the withdrawal time elapses.

Carcasses and Meat Received for Processing

A meat establishment operator must examine all carcasses and meat received for processing at a meat establishment. An operator may not receive, into any processing or storage area, any unclean or apparently unwholesome carcass or meat.

A meat establishment operator may not process any meat produced by the custom slaughter of a diseased animal. An operator may custom process meat produced by the custom slaughter of an injured (not diseased) food animal if one of the following applies:

- The animal was injured within 24 hours prior to slaughter.
- A licensed practicing veterinarian performs an ante mortem and post mortem inspection of the slaughtered animal, and certifies that the meat is wholesome.

Condemned Animals and Meat

No person may slaughter, for human consumption, a food animal condemned by DATCP. If DATCP condemns a food animal on ante mortem inspection, the meat establishment operator must kill the animal and inject it with denaturant to make it inedible.

No person may process or sell, for human consumption, any meat condemned by DATCP. A meat establishment operator must denature or de-characterize the condemned meat so it is no longer edible. Containers used for condemned meat must be conspicuously marked "INEDIBLE."

Humane Slaughter

Persons slaughtering food animals must use humane methods. This rule specifies some humane slaughter methods, and requires meat establishment operators to handle animals humanely pending slaughter.

Slaughter and Processing Records

A person who slaughters any food animal for human consumption, or who processes the meat of any food animal for human consumption, must keep records including:

- The date and time of slaughter or processing.
- The number and type of animals slaughtered, and the disposition of the carcasses.
- The type and amount of meat processed, and the disposition of that meat.
- Certificates signed by persons submitting diseased or injured animals for slaughter (see above).

The person must keep the records for at least 3 years, and make the records available for inspection and copying by

DATCP upon request. This rule does not require a meat establishment operator to duplicate slaughter records kept by a DATCP inspector at that meat establishment.

Custom Slaughter and Processing

A person providing a *custom slaughter* or *custom processing* service must do all the following:

- Hold an annual meat establishment license *if required* (see above).
- Hold an annual registration certificate if engaged in *mobile* custom slaughter or *mobile* custom processing (see below). A licensed meat establishment operator is *not* required to hold a mobile registration certificate.
- Comply with applicable slaughter and processing standards (see above).
- Label all the resulting meat products "NOT FOR SALE," and return them to the service recipient. Products must also be labeled with the service provider's name, license number or registration number.
- Comply with applicable requirements related to *mobile* custom slaughter or *mobile* custom processing (see below) if the person provides *mobile* custom services.
- Conduct custom slaughter and processing operations in a humane and sanitary manner.
- Keep records required under this rule.

Mobile Custom Slaughter and Processing

A person providing *mobile* custom slaughter or *mobile* custom processing services must do all the following:

- Comply with applicable requirements related to custom slaughtering and processing (see above).
- Hold an annual registration certificate from DATCP unless the person holds an annual meat establishment license (see above). A person must apply for an annual certificate in writing, on a form provided by DATCP. There is no charge for the registration certificate.

Mobile custom slaughter and processing operations must be clean and sanitary. Equipment must be of sanitary design, and must be kept in clean and sanitary condition. Meat contact surfaces of equipment and utensils must be cleaned and sanitized after each use, and more often as necessary. Personnel must follow proper sanitation practices. There must be an adequate supply of water to clean carcasses and equipment.

A person performing a mobile custom slaughter must return the resulting meat to the service recipient at the slaughter site, except that the service provider may transport a carcass to a licensed meat establishment for custom processing. Carcasses must be transported in a sanitary manner.

A person providing mobile custom slaughter or processing services must file a monthly report with DATCP. The report must include all the following:

- The name and address of each service recipient.
- The number and type of animals slaughtered for each service recipient.
- The date of each slaughter.
- The disposition of each carcass. If a carcass is transported to another location for further processing, the report must identify that location.

Labeling Inspected Meat

A meat establishment operator who processes DATCP-inspected meat must label the resulting meat products with a state inspection legend. The inspection legend normally consists of an outline map of Wisconsin enclosing the words "WIS. INSPECTED" and the meat establishment number.

However, an equilateral triangle is used instead of a Wisconsin outline map if the meat comes from *farm-raised deer*, *captive game animals* or *captive game birds*.

Federal law prohibits the sale of state-inspected meat (meat required to bear a Wisconsin outline inspection legend) to other states. But this prohibition does *not* apply to state-inspected meat from *farm-raised deer*, *captive game animals* or *captive game birds* (meat required to bear a triangular inspection legend).

Meat Labeling; General

Meat must be labeled according to this rule and ch. ATCP 90 (fair packaging and labeling). Meat and meat food products offered for sale must be labeled with all the following:

- The name of the meat or meat food product.
- The net weight of the meat or meat food product.
- The name and address of the processor or distributor.
- A state or federal inspection legend, if required (see above).
- An ingredient statement if the product contains 2 or more ingredients.
- Safe handling instructions if required under 9 CFR 317.2(l).
- Appropriate statements identifying perishable products.

No person may sell any misbranded meat or make any false, deceptive or misleading representation in connection with the sale of meat. No person may misrepresent the identity of any meat product. Product identification must comply with standards of identity contained in 9 CFR 319.

This rule prohibits a person from doing any of the following:

- Applying any false mark, legend or label to meat.
- Misrepresenting that meat has been inspected, or misrepresenting inspection findings.
- Misrepresenting that meat has been processed at a licensed meat establishment, or is derived from carcasses inspected and passed by DATCP.
- Counterfeiting or misusing any meat inspection mark, label or marking device.
- Wrongfully removing a required mark or label from meat.
- Selling, transporting or storing improperly marked or labeled meat.

Meat Labels; Pre-approval

This rule eliminates the current requirement for DATCP pre-approval of meat labels, unless one of the following applies:

- The meat label makes health, quality or nutritional claims.
- The meat is derived from *captive game animals* or *captive game birds*.
- The meat label makes claims related to organizational membership or standards.

Meat Formulas

Under this rule, as under current law, DATCP must pre-approve meat product formulas for compliance with applicable requirements related to food safety and standards of identity.

Transporting Meat

Under this rule, a person must transport meat in a manner that keeps the meat wholesome and unadulterated. The internal temperatures of refrigerated products may not exceed 40°

F. at the time of delivery. Transportation vehicles and facilities must be adequate to ensure proper sanitation and food safety, and must be kept in clean and sanitary condition.

Meat Brokers and Distributors

A “meat broker” is a person who, without taking title to meat, arranges the purchase or sale of meat. A “meat distributor” is a person who distributes meat at wholesale. Under this rule, as under current law, meat brokers and meat distributors must hold an annual registration certificate from DATCP. Meat brokers and distributors must apply in writing, on a form provided by DATCP. There is no fee.

Prohibited Practices

This rule prohibits a person from doing any of the following:

- Processing or selling, for human consumption, any unwholesome, adulterated or misbranded meat.
- Slaughtering any food animal, for human consumption, under unsanitary conditions.
- Processing, storing, handling, transporting or selling meat or meat food products, for human consumption, under unsanitary conditions.
- Making any false, deceptive or misleading statement, when submitting a food animal for slaughter, related to any of the following:
 - The ownership, identity, origin or health status of the animal.
 - The administration of any drug to the animal.
 - The intended use of meat from the animal.

• Obstruct a DATCP employee performing his or her duties. Obstruction may include physical interference, verbal or physical abuse, threatening behavior or communications, or refusal to carry out legitimate directives.

Holding Orders, Condemnation Orders and Correction Orders

Under this rule, as under current law, an authorized DATCP employee may issue a holding order to prevent the sale or movement of suspect meat pending further examination to determine whether the meat is unwholesome, adulterated or misbranded. A holding order remains in effect for 14 days unless lifted. A holding order may be extended for up to 14 days.

Under this rule, as under current law, an authorized DATCP employee may issue an order condemning unwholesome, adulterated or misbranded meat if the owner or custodian cannot correct the problem or fails to do so.

Under this rule, as under current law, an authorized DATCP employee may issue an order requiring a person to correct unsanitary conditions and other law violations related to meat. DATCP may also prohibit the use of unsanitary equipment and utensils. An authorized DATCP employee may “tag” unsanitary equipment or utensils to prohibit their use.

Investigation and Enforcement

This rule refers to, but does not change, DATCP’s current enforcement authority. DATCP may conduct inspections and other investigations to determine compliance with this rule. DATCP may exercise its authority under chs. 93 and 97, Stats., in support of its inspections and investigations. DATCP may deny, suspend or revoke a license or registration certificate for cause. DATCP may also prosecute violators in court (penalties are provided by statute).

Administrative Appeals

A person may ask DATCP to reconsider any of the following actions:

- The denial of any application for a license or registration certificate.
- Ante mortem or post mortem inspection findings.
- A holding order, condemnation order or correction order.
- A decision to deny, limit or withdraw slaughter inspection services.
- Slaughter inspection billings.

Whenever DATCP receives a request for reconsideration, DATCP must hold a prompt informal conference with the requester. Alternatively, if the matter concerns a slaughter inspection finding by an inspector who is not a veterinarian, DATCP may have a veterinarian review the inspector’s finding. If the requester’s dispute is not resolved, the requester may seek a “contested case” hearing under ch. 227, Stats., and ch. ATCP 1.

Fiscal Estimate

This proposed rule change merges two existing rules and incorporates changes made in ch. 97, Stats. by 1999 Assembly Bill 133 which incorporated several sections of 9 CFR, the USDA Meat and Poultry Inspection rules and requirements. These changes include the following: eliminate prior approval for most labels, retain prior approval for formulas, include requirements for SSOP and HACCP, incorporate existing policies on game birds and animals as well as ratites, and eliminate language made redundant or conflicting with language adopted from 9 CFR into ch. 97, Stats.

The department anticipates no adverse financial impact on either the department or the regulated industry since the requirements for HACCP plans, SSOPs, and the associated records have already been implemented since January 2000, by the change to ch. 97, Stats. There should be no additional costs incurred by this proposed rule merger, since it only reflects and clarifies the situation that exists and will require only the one-time costs associated with the rulemaking of approximately \$1000, consisting of printing, mailing and costs associated with holding hearings.

Initial Regulatory Flexibility Analysis

This rule will not, by itself, have a major impact on small business. This rule merely implements state and federal law changes that have already been enacted. This rule also recodifies existing requirements, so they will be easier to read and understand. DATCP currently licenses, registers, and inspects about 500 meat and poultry establishments, mobile slaughterers, mobile processors and meat distributors. The establishments range from very small one and two-person operations to multi-product operations that manufacture and wholesale substantial amounts of meat and poultry products.

This rule incorporates current federal requirements under 9 CFR sections 307 to 311, 313 to 315, 317 to 319, 416, 417, and 381 subparts G, H, I, K, L, O and P. This is required by s. 97.42 (4m), Wis. Stats. and federal law, so that Wisconsin’s meat inspection program will be “equal-to” the federal program.

These federal requirements will have negligible impact at this time because most have already been implemented in Wisconsin meat establishments. This rule does not require any additional plans, procedures or records.

This rule does all the following:

- Incorporates federal rules requiring hazard analysis and critical control point (HACCP) plans and pathogen testing at meat establishments.

- Updates current rules and eliminates obsolete rules.
- Eliminates the need for prior approval of most meat labels.
- Continues to require prior approval of meat product formulations.
- Clarifies the requirements for the slaughter and processing of ratites, captive game birds and captive game animals.

These federal requirements have already been implemented in Wisconsin, and this rule imposes no additional testing or recordkeeping requirements. The department has already provided training to Wisconsin meat establishments to help them implement the new federal requirements that are incorporated, by reference, in this rule.

This rule will have a negligible impact on small business. It should not be necessary for licensed establishments to retain the services of a HACCP consultant, a bookkeeper or an attorney to comply with this rule.

Notice of Hearings

Commerce

**(Fire Department Safety and Health, Ch. Comm 30)
[CR 01-44]**

(reprinted to correct hearing time information)

NOTICE IS HEREBY GIVEN that pursuant to s. 101.055 (3), Stats., the Department of Commerce announces that it will hold public hearings on proposed rules relating to fire department safety and health.

The public hearings will be held as follows:

<u>Date and Time</u>	<u>Location</u>
<p>Tuesday, June 5, 2001 10:00 a.m.</p>	<p>Room 3B, Thompson Commerce Center 201 W. Washington Avenue Madison</p>
<p>Friday, June 8, 2001 11:00 a.m.</p>	<p>Room 105, Eau Claire State Office Building 718 W. Clairemont Avenue Eau Claire</p>

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **June 22, 2001**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Ronald Acker, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division website at:
www.commerce.state.wi.us/SB/SB-HomePage.
Paper copies may be obtained without cost from Roberta

Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, Email rward@commerce.state.wi.us, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

Analysis of Proposed Rules

Statutory Authority: s. 101.055 (3)

Statute Interpreted: s. 101.055 (3)

The Department of Commerce is responsible for adopting standards to protect the safety and health of public employees in the state of Wisconsin. The adopted standards must provide protection at least equivalent to that afforded to private sector employees under standards administered and enforced by the federal Occupational Safety and Health Administration (OSHA).

Chapter Comm 32 currently contains general safety and health standards for all public sector employees, and ch. Comm 30 contains additional safety and health standards for public sector fire department employees. The proposed rules consist of revisions in ch. Comm 30.

The purpose, scope and application of ch. Comm 30 are revised in order to clarify the coverage of the chapter and the relationship of ch. Comm 32. All of the NFPA standards incorporated by reference in ch. Comm 30 are updated to the current editions, and the rules for protective clothing and equipment are revised to reflect the new NFPA standard on protective ensemble for structural fire fighting.

The rule for the rescue of members is revised by clarifying the activities that the back-up team members may perform at the fire scene. The rule relating to the physical and medical capabilities of fire fighters is revised by requiring the employer, rather than the fire chief, to assure that fire fighters are physically capable of performing assigned duties. The proposed rules also include a new subchapter in order to clarify the ch. Comm 32 requirements that apply to several miscellaneous emergency operations performed by fire departments.

The proposed rules have been developed with the assistance of the Fire Department Safety and Health Advisory Council. The members of that citizen advisory council are as follows:

<u>Name</u>	<u>Representing</u>
Todd Blaser	Fire & EMS Legislative Leadership Coalition
Michael Drury	Professional Fire Fighters of Wisconsin
John W. Fulcher	Wisconsin Society of Fire Service Instructors
Steven Krause	Wisconsin State Fire Fighters Assn.
Tim McGrath	Wisconsin State Fire Chiefs Assn. (Career Dept.)
Randy Pickering	Wisconsin State Fire Chiefs Assn. (Combination Dept.)
Carl Weber	Wisconsin State Fire Chiefs Assn. (Volunteer Dept.)

NOTICE IS HEREBY GIVEN that the Department has considered the environmental impact of the proposed rules. In accordance with ch. Comm 1, the proposed rules are a Type

III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exists. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The proposed rules will not affect any small businesses as defined in section 227.114 (1) (a), Stats. The proposed rules apply to public sector employers and employees.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

Not applicable.

3. Types of professional skills necessary for compliance with the rules.

Not applicable.

Fiscal Estimate

The Safety and Buildings Division currently administers and enforces the provisions of ch. Comm 30 as part of the public sector safety and health program. The proposed rules update and clarify the existing administrative rules now being enforced, and there are no new requirements to affect costs or revenues. Therefore, the proposed rules will not have any fiscal effect on the Division or on local governments.

Notice of Hearing

Health and Family Services (Health, Chs. HFS 110-) [CR 01-51]

Notice is hereby given that pursuant to ss. 153.75 (1) and 227.11 (2) (a), Stats., the Department of Health and Family Services will hold a public hearing to consider the proposed revision of ch. HFS 120, relating to the collection, analysis and dissemination of health care information.

Hearing Information

The public hearings will be held:

<u>Date & Time</u>	<u>Location</u>
June 20, 2001 Wednesday 10 a.m. to noon	Best Western Midway 2901 Martin Avenue Wausau WI

June 21, 2001 Thursday 11 a.m. to 1 p.m.	Department of Administration Building Room 4B 101 E. Wilson Street Madison WI
---	--

The hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Health & Family Services

Under ch. 153, Stats., the Department of Health and Family Services is responsible for collecting, analyzing and disseminating a variety of health care data. In 2000, the Department substantially revised ch. HFS 120 to implement changes to ch. 153, Stats., included in 1997 Wis. Act 231 and 1999 Wis. Act 9. The principal purpose of this proposed rulemaking order is to incorporate the Department's proposed extension of its data collection, analysis and dissemination activities to hospital emergency departments. To support these activities, the Department is also proposing rules that will give the Depart-

ment the authority to assess fees on hospitals to cover the Department's additional data-related expenses.

The proposed rulemaking order also makes minor administrative changes to ch. HFS 120 to address Department organizational changes, amend providers' trading partner agreements, and revise the procedure under which providers submit data to the Department. Specifically, the Department proposes to amend references to a section of the Department that no longer exists; clarify that providers using qualified vendors to submit data to the Department must submit original and notarized copies of trading partner agreements; and make more general in rule the means by which providers submit data to the Department by specifying the electronic submission of data instead of submission via the internet. Finally, in section 3 of the proposed rulemaking order, the Department proposes to modify hospital rate increase reporting requirements by requiring hospitals to express the price increases as annualized percentages.

Contact Person

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

Judith Nugent
Bureau of Health Information
Division of Health Care Financing
P.O. Box 7984
Madison, Wisconsin 53707-7984
(608)266-2863 or,
if you are hearing impaired,
(608) 261-7798 (TDD)

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

Written comments on the proposed rules received at the above address no later than **June 29, 2001** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

The rules are being modified to implement the statutory changes included in 1997 Wis. Act 231, which authorizes DHFS to begin collecting data from Wisconsin hospitals on each emergency department (ED) patient. Responsibility for that data collection has been assigned to the Division of Health Care Financing, Bureau of Health Information (BHI). Wisconsin Act 231 also grants the Department the authority to assess hospitals for the associated costs involved. The authorizing statute created and funded a 1.0 FTE research technician position to log, edit and process the emergency department data as submitted. These changes detail the requirements for collecting emergency department information from hospitals with emergency departments. The rules provide for assessing hospitals from which data are collected for the costs of collection, database development and maintenance, generation of data files and standard reports, orientation and training and the expenses of the Board of Health Care Information.

Under the revised rules, BHI increases operating costs by \$40,200 for 1.0 FTE PR position. The additional costs include other BHI staff support, office space, systems development

costs and support and the maintenance of data files along with the generation of data files and standard reports. The costs of orientation and training and the expenses of the Board of Health Care Information also contribute toward the remaining \$34,800.

Assessments would be added to the annual hospital assessment. Seventy-five thousand dollars would only be collected from hospitals with emergency departments based on an approved formula. Future assessments will vary as revenues increase from the sale of data.

There are no local government costs. A copy of the full fiscal estimate may be obtained from Sandy Breitborde who may be contacted via the contact information provided in this notice.

Initial Regulatory Flexibility Analysis

The proposed rules affect hospitals, freestanding ambulatory surgery centers and physicians. Six hospitals meet the s. 227.114 (1), Stats., definition of a "small business." In addition, the Department estimates that approximately 2,400 to 2,800 physician practices that would be required to submit data under these proposed rules have fewer than 25 employees. The Department does not have data from ambulatory surgery centers that allow an estimate of which centers may be characterized as "small businesses." Many centers are located at a medical clinic or hospital.

The proposed rules add a category of data associated with emergency departments to the data already periodically submitted by hospitals. Therefore, no new reporting or book-keeping procedures or new professional skills are required for compliance with the proposed rule.

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

Section 227.114, Stats., requires agencies to consider whether any of the following methods can be employed for reducing the effect of rulemaking orders on small businesses:

- Establishing less stringent compliance or reporting requirements;
- Establishing less stringent schedules or deadlines for compliance or reporting requirements;
- Consolidating or simplifying compliance or reporting requirements;
- Establishing performance standards to replace design or operational standards required in the rule; and
- Exempting small businesses from any or all requirements of the rule.

With respect to hospitals meeting the definition of "small business," the Department cannot do any of the preceding because doing so would be impractical insofar as it would negate the Department's ability to create a timely and complete set of emergency department data.

Notice of Proposed Rules Health & Family Services [CR 01-52]

Notice is hereby given that pursuant to ss. 146.50 (5) (b) and (d) 1., (6) (b) 2. and (c) (intro.), (6n), (8m) and (13) (a) and (c) and 250.04 (7), Stats., and according to the procedures set

forth in s. 227.16 (2) (e), Stats., the Department of Health and Family Services will amend ss. HFS 110 (title), 110.02, 110.03 (25) and (54), 110.05 (4) (b) 3., 110.06 (title), (1) (title) and (2) (title), 110.06 (3) to (5) and Note, 110.07 (3) (b) (intro.), 110.09 (1) (intro.), 110.09 (2) (a) and 110.09 (6), and create ss. HFS 110.03 (42m), 110.07 (1) (c) 6m. and 6r. and 110.06 (2m), relating to licensing of ambulance service providers and licensing of emergency medical technicians—basic and emergency medical technicians—basic IV, as herein proposed, without public hearing, unless a petition for a hearing is received by the Department within 30 days after the publication of this notice on **June 1, 2001**. A petition for a hearing will be accepted if signed by any of the following who will be affected by the proposed rule: 25 persons; the representative of an association that represents a farm, labor, business or professional group; or a municipality.

Contact Person

If you have any questions about this rule or about filing a written petition for a hearing, contact Jon Morgan, Bureau of Emergency Medical Services, P.O. Box 2659, Room 118, Madison, WI 53701-2659, 608-266-9781.

Analysis Prepared by the Department of Health & Family Services

Chapter HFS 110 concerns the licensing of ambulance service providers, the certification of training centers, and the licensing and training of emergency medical technicians at the EMT—basic and EMT—basic IV levels of ability. Although the current rules recognize an EMT—basic IV licensure level, the current rules omit provisions providing for the Department's ability to issue EMT—basic IV training permits. The principal purpose of this proposed rulemaking order is to correct this oversight. The rulemaking order also proposes deleting the requirement to administer specific concentrations of epinephrine for anaphylactic shock.

The Department's authority to repeal and recreate these rules is found in ss. 146.50 (5) (b) and (d) 1., (6) (b) 2. and (c) (intro.), (6n), (8m) and (13) (a) and (c) and 250.04 (7), Stats. The rules interpret s. 146.50, Stats.

Text of Proposed Rules

SECTION 1. Chapter HFS 110 (title) is amended to read:

HFS 110 Licensing of Ambulance Service Providers and Emergency Medical Technicians—Basic and Basic IV

SECTION 2. HFS 110.02 is amended to read:

HFS 110.02 Applicability. This chapter applies to all applicants for and holders of an ambulance service provider license, an EMT—basic or EMT—basic IV license or an EMT—basic or EMT—basic IV training permit.

SECTION 3. HFS 110.03 (25) is amended to read:

HFS 110.03 (25) "Epinephrine" means the administration of epinephrine ~~in a concentration of 1:1000~~ for signs and symptoms of anaphylactic shock using an auto-injector or other approved administration device.

SECTION 4. HFS 110.03 (42m) is created to read:

HFS 110.03 (42m) "Preceptor" means an individual licensed as an EMT—basic IV, EMT—intermediate, EMT—paramedic, a physician, a registered nurse or a physician assistant who meets the requirements listed in s. HFS 110.07 (1) (c) 8. and who provides supervision of clinical or field experiences for individuals with an EMT—basic IV training permit.

SECTION 5. HFS 110.03 (54) is amended to read:

HFS 110.03 (54) "Wisconsin standard curriculum for training EMT—basic IV personnel" means the curriculum developed and approved by the department as essential for training EMT—basic IV personnel. ~~This training is based on the 1985 national standard curriculum for training EMTs—Intermediate with adaptations developed and approved by the department.~~

SECTION 6. HFS 110.05 (4) (b) 3. is amended to read:

HFS 110.05 (4) (b) 3. Administration of epinephrine ~~in a concentration of 1:1000 for adults or 1:2000 for pediatric patients,~~ for anaphylactic shock.

SECTION 7. HFS 110.06 (title), (1) (title) and (2) (title) are amended to read:

HFS 110.06 EMT—basic and EMT—basic IV training permit. (1) EMT—BASIC APPLICATION.

(2) EMT—BASIC REQUIRED TRAINING.

SECTION 8. HFS 110.06 (2m) is created to read:

HFS 110.06 (2m) EMT—BASIC IV APPLICATION. An individual requesting an EMT—basic IV training permit shall comply with all of the following:

(a) Apply on a form provided by the department.

(b) Hold a valid EMT license issued by the department or document equivalent training that, at a minimum, meets the national standard curriculum for training EMTs—basic as defined in s. HFS 110.03 (34).

(c) Be at least 18 years of age.

(d) Subject to ss. 111.321, 111.322, 111.335 and 146.50 (6), Stats., not have an arrest or conviction record that substantially relates to performance of the duties as an EMT as determined by the department.

(e) Present documentation of enrollment in department—approved EMT—basic IV training as evidenced by the course registration list.

(f) Provide any additional information requested by the department during its review of the application.

SECTION 9. HFS 110.06 (3) to (5) and Note are amended to read:

HFS 110.06 (3) ACTION BY THE DEPARTMENT. Within 40 business days after receiving a complete application for an EMT—basic or EMT—basic IV training permit, the department shall either approve the application and issue the permit or deny the application. If the application for a permit is denied, the department shall give the applicant reasons, in writing, for the denial and shall inform the applicant of the right to appeal that decision under s. HFS 110.09 (5). In this subsection, "complete application" means a completed application form and documentation that, for an EMT—basic, the requirements of sub. (1) (b) to (f) are met or, for an EMT—basic IV, the requirements of sub. (2m) (a) to (f) are met.

(4) RESTRICTIONS. (a) EMT—basic 1. An individual holding an EMT—basic training permit may function as an EMT only under the direction of an EMT—basic, a registered nurse, a physician assistant or a physician.

(b) 2. An individual holding an EMT—basic training permit is not considered a licensed individual under s. HFS 110.04 (1) (b) 2.

(c) 3. An individual holding an EMT—basic training permit may perform any of the actions authorized for an EMT—basic for which he or she has been trained, except advanced skills requiring medical director approval, but only if directly supervised by a licensed EMT—basic, a registered nurse, a physician assistant or a physician.

(b) *EMT–basic IV*. 1. An individual holding an EMT–basic IV training permit is not considered a licensed individual under s. HFS 110.04 (1) (b) 3.

2. An individual holding an EMT–basic IV training permit may perform the actions authorized for an EMT–basic IV only if the medical director or a preceptor designated by the medical director or training center medical director is present and giving direction.

(5) DURATION OF PERMIT. An EMT–basic or EMT–basic IV training permit shall be issued for 2 years and may not be extended or renewed. A new EMT–basic training permit can be granted if the applicant enrolls in an EMT–basic course and successfully completes the first 46 hours of that course. A new EMT–basic IV training permit can be granted if the applicant enrolls in an EMT–basic IV course and successfully completes the classroom portion of the course.

Note: Copies of the form required to apply for issuance of an EMT–basic or EMT–basic IV training permit are available without charge from the EMS Systems and Licensing Section, Division of Public Health, P.O. Box 2659, Madison, WI 53701–2659 or download the form from the DHFS website at www.dhfs.state.wi.us/DPH_EMSIP/index.htm.

SECTION 10. HFS 110.07 (1) (c) 6m. and 6r. are created to read:

HFS 110.07 (1) (c) 6m. Identification and a listing of the qualifications of each person who will function as preceptor of EMT–basic IV field training, with specifications of that person’s responsibilities. A copy of the preceptor’s resume shall be kept on file at the training center and made available to the department upon request. The preceptor shall comply with all of the following:

a. Be licensed to at least the EMT–basic IV level. Physicians, registered nurses and physician assistants, with training and experience in the pre–hospital emergency care of patients, shall be considered to be trained to at least the EMT–intermediate level.

b. Have a minimum of 2 years experience as a licensed practicing EMT–basic IV or equivalent as determined by the department and be designated by the service medical director.

c. Have responsibility for completing records of the field training of EMT–basic IV students and forwarding them to the training center.

6r. Documentation that field training for EMTs–basic IV will be provided by a Wisconsin licensed EMT–basic IV ambulance provider or providers as evidenced by the signatures of the training center representative, training center medical director and the medical director and operator for all ambulance service providers agreeing to provide supervised field training. A copy of the signed agreement shall be kept on file at the training center and made available to the department upon request.

SECTION 11. HFS 110.07 (3) (b) (intro.) is amended to read:

HFS 110.07 (3) (b) Application for initial course approval at the EMT–basic or EMT–basic IV level shall be made by submitting to the department a statement that all sections of the national standard curriculum and department standards for training EMTs–basic in advanced skills or EMTs–basic IV will be used and which identifies the number of hours devoted to classroom training and supervised clinical or field experience. Applications for approval of an initial course from a Wisconsin technical college system district shall be jointly reviewed by the department and the Wisconsin technical col-

lege system board. An application for initial course approval shall include all of the following:

SECTION 12. HFS 110.09 (1) (intro.), (2) (a) and (6) are amended to read:

HFS 110.09 Enforcement. (1) DENIAL OF LICENSE, AUTHORIZATION, PERMIT OR CERTIFICATION; NONRENEWAL; SUSPENSION; REVOCATION; OR REPRIMAND OF LICENSEE, PERMIT HOLDER, CERTIFIED TRAINING CENTER OR CERTIFIED EMT–BASIC OR EMT–BASIC IV INSTRUCTOR–COORDINATOR. The department may deny, refuse to renew, suspend or revoke an ambulance service provider license, an EMT–basic or EMT–basic IV license, an authorization for an EMT–basic or EMT–basic IV to use advanced skills, an EMT–basic or EMT–basic IV training permit, a training center certification or an EMT–basic or EMT–basic IV instructor–coordinator certification or reprimand a licensee, permit holder, certified training center or certified EMT–basic or EMT–basic IV instructor–coordinator after providing the applicant, ambulance service provider, EMT–basic or EMT–basic IV licensee, EMT training permit holder, certified training center or certified EMT–basic or EMT–basic IV instructor–coordinator with written notice of the proposed action and written notice of opportunity for a hearing under sub. (5) if the department makes a finding of any of the following:

(2) EMERGENCY SUSPENSION OF LICENSE, PERMIT OR CERTIFICATION. (a) The department may summarily suspend an ambulance service provider license, EMT–basic or EMT–basic IV license, authorization for an EMT–basic or EMT–basic IV to use advanced skills, EMT–basic or EMT–basic IV training permit, training center certification or EMT–basic or EMT–basic IV instructor–coordinator certification when the department has probable cause to believe that the licensee, permit holder, certified training center or certified EMT–basic or EMT–basic IV instructor–coordinator has violated the provisions of s. 146.50, Stats., or this chapter, and that it is necessary to suspend the license or permit immediately, without advance written notice, to protect the public health, safety or welfare.

(6) REPRIMANDS. The department may reprimand a licensee, permit holder, certified training center or certified EMT–basic or EMT–basic IV instructor–coordinator if the department finds that the licensee, permit holder, certified training center or certified EMT–basic or EMT–basic IV instructor–coordinator falls within any of the circumstances specified in sub. (1) (a) to (h). The department’s issuance of the reprimand shall constitute the final decision of the department and is not subject to a hearing under sub. (5).

Fiscal Estimate

This order revises the Department’s rules for licensing emergency medical technicians–basic IV (EMTs–basic IV). Specifically, these rules are amended to correct the omission of requiring an EMT–basic IV training permit for providers. Although an exact estimate is currently not possible, it is projected that approximately 50 to 100 ambulance service providers will apply for this license level over the course of the 2001–03 biennium. Currently, the specified training permit process is in effect for all other EMT license levels, e.g., EMT–Intermediate and EMT–paramedic. Consequently, this change will not place new responsibilities on providers or individual applicants.

Under the proposed revisions, Department staff will have minimal additional workload to process the EMT–basic IV

training permits. As a result, it is projected that the proposed revisions will have no fiscal impact on the expenditures or revenues of state government or local governments.

Initial Regulatory Flexibility Analysis

The rule changes will not affect small businesses as defined in s. 227.114 (1) (a), Stats.

Notice of Hearing Commissioner of Insurance [CR 01-50]

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting s. Ins 50.06 (2) (f), Wis. Adm. Code, relating to notes to financial statements.

The public hearings will be held as follows:

Date and Time	Location
Friday, June 15, 2001	Room 6
10:00 a.m. or as soon thereafter as the matter may be reached	OCI 121 E. Wilson St., Madison WI

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Stephen Mueller, OCI, PO Box 7873, Madison WI 53707.

Analysis of Proposed Rules

Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42 and 623.02, Stats.

Statutes interpreted: ss. 600.01 and 623.02, Stats.

Analysis

This rule change relates to the required footnotes in the CPA audit report on the statutory financial statements of insurance companies.

Under the existing s. Ins 50.06 (2) (f), the footnotes include those required by the NAIC (National Association of Insurance Commissioners) annual statement instructions and by generally accepted accounting principles. The footnotes shall also include: (1) a reconciliation of the differences, if any, between the audited statutory financial statements and the annual statement filed by the company under Ins 50.20, and (2) a summary of the ownership and relationships between the insurance company and all affiliates.

The NAIC has adopted a more detailed accounting manual ("Codification") for insurance companies for use beginning in 2001. The NAIC Accounting Practices & Procedures Manual specifically identifies all the required footnotes, including the ownership and relationships between the insurance company and all affiliates. Therefore, the language in the existing rule referring to footnotes required by generally accepted accounting practices, and to the ownership and relationships with affiliates, can be deleted and replaced with the reference to the NAIC Accounting Practices and Procedures Manual. The remainder of the changes to the text involve moving subsection (1) into the body of the text because subsection (2) is deleted.

OCI considers this change to be nonsubstantive. It follows the NAIC's changes to its model audit rule as a result of Codification. The proposed change has been reviewed and commented upon by national CPA firms and insurance company trade associations as the NAIC revised its model audit rule. The proposed amendment is identical to the NAIC's amended audit rule, which is expected to be adopted in every state. The national uniformity of the amended audit rule in each state will minimize the costs for CPA firms to complete their required audits and for the multi-state insurance company groups who pay for them.

SECTION 1. Section Ins 50.06 (2) (f) is amended to read:

(f) Notes to the financial statements. These notes shall be those required by the appropriate national association of insurance commissioners' annual statement instructions and naic accounting practices and procedures manual. ~~And any other notes required by generally accepted accounting principles and~~ The notes shall also include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to subchapter II with a written description of the nature of these differences.

SECTION 2. Section Ins 50.06 (2) (f) 1. & 2. are repealed.

Initial Regulatory Flexibility Analysis

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

Fiscal Effect

There is no fiscal effect anticipated.

Contact Person

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

Notice of Hearing Natural Resources (Fish, Game, etc., Ch. NR 1—)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 29.014, 29.197, 227.11 (2) (a) and 227.24, Stats., interpreting ss. 29.014, 29.177, 29.197 and 29.181, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-15-01(E) pertaining to deer hunting in 76 deer management units. This emergency order will take effect on September 1, 2001. The significant regulations include a 4-day antlerless only deer hunt allowing the use of bows and guns from October 25-28; a 4-day antlerless only deer hunt, allowing the use of bows and guns from December 6-9; a 9-day either sex gun hunt; a 4-day extension to the early archery season; and one free antlerless tag with the purchase of every deer hunting license. State parks included will not participate in the October or December hunts, but antlerless permits may be filled by authorized hunters in these parks.

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

Monday, June 11, 2001 at 1:00 p.m.
Room 027, GEF #2
101 South Webster Street, Madison

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 William Vander Zouwen at (608) 266-8840 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. William Vander Zouwen, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than June 15, 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. Vander Zouwen.

Notice of Hearings

Natural Resources

(Environmental Protection—General, Chs. NR 100—) [CR 01-53]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11(2) and 281.61, Stats., interpreting ss. 281.59, 281.61, subch. III of ch. 227, subch. II of ch. 19 and chs. 196, 283 and 70, Stats., the Department of Natural Resources will hold public hearings on the repeal and recreation of ch. NR 166, Wis. Adm. Code, relating to the safe drinking water loan program. The U. S. Environmental Protection Agency recently interpreted federal laws to allow safe drinking water loan program funding of new public water systems. The proposed revisions to ch. NR 166 will enable safe drinking water loan program funding of new public water systems projects, revise the safe drinking water loan program priority scoring and ranking system to include scoring of new public water system projects and make general improvements to better reflect current policies and procedures.

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 hearing will be held on:

June 12, 2001 **Video conference participation** will be
Tuesday available at:
9:00 a.m. Room 021, GEF #2,
101 South Webster Street, Madison
Room 139, State Office Building, 718 W.
Clairemont Ave., Eau Claire
Room 618, State Office Building, 200 N.
Jefferson St., Green Bay
Room 542, State Office Building,
819 North 6th St., Milwaukee
Conference Room 2, DNR Regional
Hdqrs., 107 Sutliff Ave., Rhinelander
Conference Room, DNR Regional Hdqrs.,
810 W. Maple St., Spooner

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 Dan Olson at (608) 267-9638 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There is no state or local fiscal impact specifically associated with revising this rule.

Written comments on the proposed rule may be submitted by Mr. Dan Olson, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707 no later than June 15, 2001. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule and fiscal estimate may be obtained from Mr. Olson.

Notice of Hearings

Natural Resources

(Environmental Protection—Air Pollution Control, Chs. NR 400—) [CR 01-55]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a) and 285.11 (1), Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on an amendment to s. NR 410.03 (3) (c), Wis. Adm. Code, relating to asbestos inspection fees. The proposed rule will increase the asbestos inspection fee from \$200 to \$210 on large asbestos abatement projects. A large asbestos abatement project is one where at least 1000 square or linear feet of regulated asbestos containing material is to be abated, or a combination of square and linear feet where the summed total is at least 1000.

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: Asbestos abatement contractors and their customers for large asbestos abatement projects
- b. Description of reporting and bookkeeping procedures required: No new procedures
- c. Description of professional skills required: No new skills

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

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

June 26, 2001 Room 717, GEF #2 Bldg.
Tuesday 101 South
at 11:00 a.m. Webster Street, Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommoda-

tions, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Park at (608) 266-1054 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

A review of asbestos project notifications for the past four years indicated approximately 400 large projects occur annually. With a fee increase of \$10 per large project the additional program revenue generated would be \$4,000 annually. It is estimated that half of the revenue generated will be from state and local governments.

Written comments on the proposed rule may be submitted to Mr. Joe Brehm, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 no later than June 29, 2001. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule AM-20-01 and its fiscal estimate may be obtained from:

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

Submission of proposed rules to the legislature

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

Natural Resources

(CR 00-174)

Ch. NR 422 – Relating to reducing ambient ozone concentrations in southeastern Wisconsin by controlling volatile organic compound (VOC) emissions.

Natural Resources

(CR 01-006)

Chs. NR 10, 12 and 19 – Relating to hunting, trapping and nuisance wildlife control.

Social Workers, Marriage and Family Therapists and Professional Counselors

(CR 00-147)

Ch. SFC 2 – Relating to clinical social work concentration and supervised clinical field training.

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.

**Chiropractic Examining Board
(CR 00-124)**

An order revising chs. Chir 3 and 5 relating to continuing education requirements.
Effective 7-1-01

**Dentistry Examining Board
(CR 00-143)**

An order revising ch. DE 2 relating to a system of remediation for applicants who have failed the clinical and laboratory examinations more than three times.
Effective 7-1-01

**Regulation and Licensing
(CR 01-03)**

An order revising chs. RL 110 to 114, relating to professional boxing.
Effective 7-1-01

**Workforce Development
(CR 01-05)**

An order revising ch. DWD 290, relating to annual adjustment of thresholds for application of prevailing wage rates.
Effective 7-1-01

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the May 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.

Agriculture, Trade and Consumer Protection (CR 00-146)

An order revising chs. ATCP 10 and 11 relating to reimbursement of Johne's Disease Testing Costs.

Effective 6-1-01

Summary of final regulatory flexibility analysis

This rule establishes standards for the grant program created by 1999 Wis. Act 9 to assist cattle owners in paying for Johne's disease testing. It will affect cattle owners who wish to obtain reimbursement for a portion of the costs incurred to test their herds for Johne's disease.

When a herd owner has his herd tested for Johne's disease and requests that the herd be classified on the basis of that test, the department will advise the herd owner that he or she is eligible to participate in the grant program. To participate in the grant program, the herd owner must file a claim no later than February 1 of the year following the calendar year in which the herd was tested. The owner must provide copies of bills from either the veterinarian or the laboratory to establish amount of laboratory costs incurred.

This claim filing process is the least onerous possible that is consistent with the state's need to audit and assure that grants are only given in appropriate amounts to eligible owners. The rule permits filing the claim anytime between the date their herd is classified and February 1 of the year after the testing is conducted. This allows significant flexibility for the animal owner.

Comments

On February 7, 2001, this department transmitted the rule for legislative committee review. On February 8, 2001, the rule was assigned to the Senate Committee on Labor and Agriculture. The Committee's review period expired on March 8, 2001, without the Committee holding hearings or objecting to the rule.

On February 12, 2001, the rule was assigned to the Assembly Committee on Agriculture. The Committee's review period expired on March 14, 2001, without the Committee holding hearings or objecting to the rule.

Commerce (CR 00-115)

An order revising ch. Comm 8 relating to mines, pits and quarries.

Effective 6-1-01

Summary of final regulatory flexibility analysis

Section 101.15 (2) (e), Stats., requires the Department to promulgate rules prescribing minimum safety standards for mines, explosives, quarries and related activities. The proposed rules of Clearinghouse Rule No. 00-115 are minimum requirements to meet the directives of the Statutes, and any exceptions from compliance for small businesses would be

contrary to the statutory objectives which are the basis for the rules.

Comments

No comments were reported.

Commerce (CR 00-126)

An order revising ch. Comm 5 relating to renewal of expired credentials.

Effective 6-1-01

Summary of final regulatory flexibility analysis

The proposed rules include less stringent compliance requirements relating to the consequences for renewal of expired licenses, certifications and registrations for all credential holders. The proposed rules codify the conditions that the Department has been requiring when granting petitions for variance for renewal of expired licenses, certifications and registrations. These changes will allow credential holders to more efficiently and economically renew expired licenses, certifications and registrations.

Comments

No comments were reported.

Elections Board (CR 99-150)

An order revising ch. EIBd 1 relating to the term "express advocacy" for campaign finance purposes.

Effective 6-1-01

Summary of final regulatory flexibility analysis

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

Comments

No comments were reported.

Health and Family Services (CR 00-171)

An order revising ch. HFS 144 relating to immunization of students.

Effective 6-1-01

Summary of final regulatory flexibility analysis

The changes to the administrative rules being proposed will not have an effect on small businesses as defined under s. 227.114, Stats.

Comments

No comments were reported.

Natural Resources (CR 98–198)

An order to amend, repeal, recreate and create ch. NR 233, relating to effluent limitations and pretreatment standards for the pesticide chemicals industry.

Effective 6–1–01

Summary of final regulatory flexibility analysis

The Department anticipates approximately 6 Wisconsin facilities to be subject to the formulating and packaging subchapter of this rule. Additionally, there is a subchapter that requires zero discharge to “agricultural refilling establishments”. While there are potentially many of these facilities, existing Department of Agriculture, Trade and Consumer Protection rules already prohibit discharges to surface waters or publicly owned treatment works. Additionally, these rules are already required under federal regulations.

Comments

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

Natural Resources (CR 98–199)

An order to amend, repeal, recreate and create ch. NR 252, relating to effluent limitations and pretreatment standards for the leather tanning and finishing industry.

Effective 6–1–01

Summary of final regulatory flexibility analysis

There are 12 Wisconsin industries that conduct leather tanning and finishing and are subject to the provisions of this rule. No impact is expected since these industries are already subject to the equivalent federal rule.

Comments

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

Natural Resources (CR 00–88)

An order to create s. NR 19.40, to implement the department’s authority to void local hunting, fishing, and trapping ordinances.

Effective 6–1–01

Summary of final regulatory flexibility analysis

The rule will primarily affect local units of government and will not directly impact small businesses. Therefore, a final regulatory flexibility analysis is not required.

Comments

The rule was reviewed by the Assembly Natural Resources Committee and the Senate Environmental Resources Committee. A public hearing was held on February 28, 2001 by the Assembly Natural Resources Committee. No modifications were requested by the committee.

Pharmacy Internship Board (CR 99–159)

An order revising ch. Ph–Int 1 relating to pharmacy intern training.

Effective 6–1–01

Summary of final regulatory flexibility analysis

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

Comments

No comments were reported.

Regulation and Licensing (CR 00–142)

An order to amend ch. RL 133, relating to home inspector examination and continuing education requirements.

Effective 6–1–01

Summary of final regulatory flexibility analysis

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

Comments

No comments were reported.

Tobacco Control Board (CR 00–173)

An order creating ch. TCB 1 relating to the Tobacco Control Board’s administering and awarding grants for tobacco control and establishing criteria for recipients of the grants.

Effective 6–1–01

Summary of final regulatory flexibility analysis

This rule affects the Wisconsin Tobacco Control Board, programs and organizations eligible for funding from the Tobacco Control Board, and programs and organizations funded by the Tobacco Control Board. It will not affect small businesses as “small business” is defined in s. 227.114 (1) (a), Stats.

Comments

No comments were reported.

Transportation (CR 01–001)

A rule relating to a motor vehicle emissions inspection program.

Effective 6–1–01

Summary of final regulatory flexibility analysis

This proposed rule will have no adverse impact on small businesses.

Veterinary Examining Board (CR 00–144)

An order relating to the application deadline date for the examination required for licensure as a veterinarian.

Effective 6–1–01

Summary of final regulatory flexibility analysis

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

Comments

No comments were reported.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **May 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

Agriculture, Trade and Consumer Protection:

Ch. ATCP 10

S. ATCP 10.21 (10) (c) and (15)

Ch. ATCP 11

S. ATCP 11.62 (6) (am)

Commerce:

(Licenses, Certifications, etc., Ch. Comm 5)

Ch. Comm 5

S. Comm 5.07 (2)

S. Comm 5.08 (3)

S. Comm 5.92 (3)

(Mines, Pits and Quarries, Ch. Comm 8)

Ch. Comm 8 (entire chapter)

Elections Board:

Ch. EIBd 1

S. EIBd 1.28 (2) (c)

Health and Family Services:

(Health, Chs. HFS 110—)

Ch. HFS 144

S. HFS 144.01 (1)

S. HFS 144.02 (13m)

S. HFS 144.03 (2) (a), (f) and (g), (3) (a), (3m), (6) and Table 144.03-A

Natural Resources:

(Fish, Game, etc., Chs. NR 1—)

Ch. NR 19

S. NR 19.40 (entire section)

(Environmental Protection—WPDES, Chs. NR 200—)

Ch. NR 233

S. NR 233.03 (1e), (1o), (2e) to (2u), (3), (3e), (6e), (6o), (8) and (11)

S. NR 233.04 (3) and (3e)

SS. NR 233.30 to 233.36 (entire sections)

SS. NR 233.50 to 233.57 (entire sections)

Ch. NR 252

S. NR 252.02 (12)

SS. NR 252.03 to 252.0365 (entire sections)

S. NR 252.04 (4)

S. NR 252.11 Table

S. NR 252.15 (entire section)

S. NR 252.25 Table

S. NR 252.31 Table

S. NR 252.35 (entire section)

S. NR 252.41 Table

S. NR 252.44 Table

S. NR 252.51 Table

S. NR 252.61 Table

S. NR 252.64 Table

S. NR 252.65 Table

S. NR 252.71 Table

S. NR 252.85 Table

S. NR 252.91 Table

S. NR 252.95 (2)

Pharmacy Internship Board:

Ch. Ph-Int 1

S. Ph-Int 1.01 (3)

S. Ph-Int 1.02 (entire section)

S. Ph-Int 1.03 (1) and (2) (intro.) and (g)

S. Ph-Int 1.04 (1) and (4)

S. Ph-Int 1.05 (entire section)

S. Ph-Int 1.06 (2), (3), (4) (a), (c), (d) and (e) and (5)

S. Ph-Int 1.07 (1) (a), (2), (5), (6) and (7)

Regulation and Licensing:

Ch. RL 133

S. RL 133.01 (3)

S. RL 133.02 (1)

Ch. RL 135

S. RL 135.02 (1)

Tobacco Control Board (entire code)

Transportation:

Ch. Trans 131

S. Trans 131.02 (6m), (6r), (11), (22), (26), (32), (34m), (37m), (50m) and (58)

S. Trans 131.03 (4), (6) (b) and (d), (7) (a) and (c), (8) (g), (9) (g), (10) (b), (11) (o) and (15) (a)

S. Trans 131.04 (1) (intro.)

S. Trans 131.05 (1) (j)

S. Trans 131.11 (2) (d) and (e) and (3) (b)

S. Trans 131.12 (2) (d)

S. Trans 131.13 (1) (a), (2), (5) (a) and (b)

S. Trans 131.16 (2) (b) and (c)

Veterinary Examining Board:**Ch. VE 2**

- S. VE 2.01 (1m)
- S. VE 2.03 (1)

Ch. VE 3

- S. VE 3.02 (2)
- S. VE 3.03 (intro.)
- S. VE 3.05 (1)

Ch. VE 4

- S. VE 4.01 (4) (b)

Ch. VE 5

- S. VE 5.03 (1) (d)

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 11**

- S. ATCP 11.11 (1) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Commerce:**(Manufactured Homes, Ch. Comm 27)****Ch. Comm 27**

- S. Comm 27.30 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

(Boilers and Pressure Vessels, Ch. Comm 41)**Ch. Comm 41**

- S. Comm 41.49 (4) (b) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Corrections:**Ch. DOC 324**

- S. DOC 324.04 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. DOC 324.09 (4) (h) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. DOC 325

- S. DOC 325.13 (2) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. DOC 326

- S. DOC 326.04 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. DOC 327

- S. DOC 327.16 (6) (c) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Health and Family Services:**(Community Services, Chs. HFS 30—)****Ch. HFS 37**

- S. HFS 37.03 (entire section) had a correction made under s. 13.93 (2m) (b) 6., Stats.
- S. HFS 37.06 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Natural Resources:**(Environmental Protection—General, Chs. NR 100—)****Ch. NR 110**

- S. NR 110.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 110.03 (2), (27) and (34) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 110.05 (2) (c) and (g) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 110.09 (2) (f) and (j) and (4) (c) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 110.13 (1) (d) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 110.14 (2) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 110.15 (5) (q) and (6) (b) and (c) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 110.26 (5) (d) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. NR 125

- S. NR 125.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 125.02 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 125.07 (3) and (4) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 125.09 (1) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Ch. NR 126

- S. NR 126.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 126.05 (13) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 126.11 (1) (b) to (e) had corrections made under s. 13.93 (2m) (b) 7., Stats.

Ch. NR 127

- S. NR 127.01 (entire section) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. NR 127.02 (entire section) had corrections made under s. 13.93 (2m) (b) 7., Stats.

S. NR 127.03 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**(Environmental Protection--WPDES,
Chs. NR 200--)**

Ch. NR 205

S. NR 205.01 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 205.03 (35) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 205.04 (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.

S. NR 205.06 (3) had a correction made under s. 13.93 (2m) (b) 7., Stats.

Veterinary Examining Board:

Ch. VE 9

S. VE 9.05 (5) had a correction made under s. 13.93 (2m) (b) 7., Stats.

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
HSS 211.01	20.435 (1) (bs)	20.435 (4) (kb)
HSS 211.03 (1)	49.19 to 49.41	49.19
HSS 211.03 (11)	49.046	49.046, 1995 Stats. Note inserted: Note: 1995 Wis. Act 27 repealed s. 49.046, Stats.
HSS 230.03 (1)	49.19 to 49.41	49.19
HS 4.03 (1)	15.707 (1)	Note inserted: Note: 1997 Wis. Act 27 repealed s. 15.707 (1), Stats.
ILHR 816.01	101.27	106.15
ILHR 816.02 (5), (6), (9)	101.27	106.15
ILHR 816.04 (intro.)	101.27	106.15
ILHR 816.07 (3)	101.27	106.15
ILHR 816.09 (3)	101.27	106.15
ILHR 816.11 (1) (a), (b), (d), (2) (intro.), (3) (intro.), (4) (intro.)	101.27	106.15
ILHR 820.01	101.27	106.15
ILHR 820.02 (59) and (72)	101.27	106.15
ILHR 820.09 (intro.)	101.27	106.15
ILHR 820.10 (1) (intro.), (b) (intro.), (2) (intro.), (b) (intro.)	101.27	106.15
ILHR 820.09 (intro.)	101.27	106.15
ILHR 820.09 (intro.)	101.27	106.15

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 3. Proclamation of a state of emergency.

Executive Order 4. Relating to the proclamation of a state of emergency in Executive Order No. 3.

Executive Order 5. Proclamation of a state of emergency.

Executive Order 6. Relating to the Governor's Advisory Council on Judicial Selection.

Executive Order 7. Relating to a special session of the Leg-

islature.

Executive Order 8. Relating to Executive Order No. 5 proclaiming a state of emergency.

Executive Order 9. Relating to a special election for the thirty-third senate district.

Executive Order 10. 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 peace officers who have given their lives in the line of duty.

Public notice

Health and Family Services

(Medical Assistance Reimbursement of Nursing Homes)

State of Wisconsin Medicaid Nursing Facility Payment Plan: FY01–02

The State of Wisconsin reimburses Medicaid–certified nursing facilities for long–term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State’s Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Federal Health Care Financing Administration (HCFA).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective July 1, 2001.

The proposed changes would update the payment system and make various payment–related policy changes. Some of the changes are necessary to implement various budget policies contained in the Wisconsin 2002–2004 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$120,578,500, all funds, (\$72,347,100 FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wisconsin Statutes.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of 2002–2004 Biennial Budget Bill and to disburse the \$120,578,500 allotted in the bill to a rate increase of approximately 11.7 percent. These modifications will include adjustments to the maximums, per diems, and other payment parameters in Sections 5.400, 5.500, 5.600, 5.700, 5.800 and 5.900, changes in the occupancy percentage used to establish the minimum occupancy standard in Sections 3.030, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000. The parameters for calculating the capital payment will be moved from Section 3.530 to Section 5.000 and will be updated.
2. Changing references to previous years for descriptive reasons will be done where necessary.
3. Eliminate the labor regions listed in Section 5.410 and all other references to them.
4. Begin a transition to a pricing system for all cost centers except property, property tax and provider incentives. Incorporate a price–based component in Sections 3.120, 3.200, 3.250, 3.300 and 3.800. Modify the application of the minimum occupancy factor in Section 3.030 on the price–based component. Create a case mix index based on resource utilization groups (RUGs) III in Sections 3.00 and 5.00.
5. Define restricted use beds in Section 1.300.
6. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2001–2002 period.
7. Change the deadline for bed banking in Section 3.060 to the last day in the common period in Section 1.303.
8. Clarify the Exceptional Medicaid/Medicare Utilization Incentive in Section 2.710.
9. Create the Private Room Incentive in Section 2.720 (a) and create Section 2.270 (b).
10. Broaden and reorganize provisions for special allowances for locally operated facilities in Section 3.775.
11. Clarify Section 3.790.
12. Create a definition of Medicaid days in Section 1.317.
13. Revise Central office costs in Section 2.252.
14. Revise recognizable debt balances in Section 3.526 (b).
15. Revise refinancing–related interest expense in Section 3.526 (d).
16. Revise parameters for over–the–counter drugs in Sections 2.600 and 3.600.
17. Revise Section 1.173 to include supplemental questionnaires.
18. Revise Section 1.281 to accommodate the interaction between Medicare PPS revenues and therapy buyers.
19. Revise the inflation percentages for property tax and municipal fees in Section 5.710

- 20. Revise Section 3.900 by changing the reimbursement method for the Veterans Home at King.
- 21. Delete Section 3.780.
- 22. Define "extraordinary appeal" in Section 1.120.
- 23. Significantly increase the base allowance for the Exceptional Medicaid/Medicare Utilization incentive in Section 5.920.

Copies of the Proposed Changes:

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing
Attention: Nursing Home Medicaid Payment Plan
P.O. Box 309
Madison, WI 53701-0309
or by faxing James Cobb at 608-264-7720.

The available proposed changes may be reviewed at the main office at any County Department of Social Services or Human Services.

Written comments/meetings:

Written comments on the proposed changes may be sent to the Division of Health Care Financing at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may also be made in the proposed changes based on comments received at these forums.

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

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

First Class Mail

*Wisconsin
Administrative
Register*

Dated Material. Please Do Not Delay!