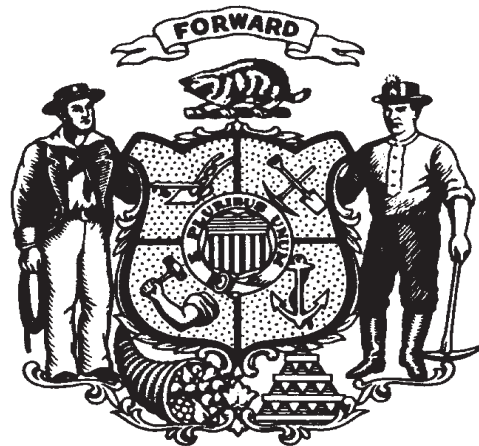


Wisconsin Administrative Register

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Emergency rules now in effect

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

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

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

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

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

Agriculture, Trade & Consumer Protection – (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 and rule analysis

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 and rule analysis

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) finds that an emergency exists and that an emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

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

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

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

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

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

Commerce

(Flammable and Combustible Liquids – Ch. Comm 10)

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

Finding of emergency and rule analysis

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 and rule analysis

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 and rule analysis

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

In light of these developments, the parties negotiated a settlement which includes an immediate revision of the present rules to conform to the latest decisional law regarding the extent to which inmates' access to sexually explicit

material can be restricted for legitimate penological objectives. Adoption of the revised rules no later than February 23, 2001, is necessary to avoid a lapse of the settlement agreement and lengthy trial with the attendant possibility of having to pay a considerable amount in attorneys' fees.

This order:

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

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

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

Employment Relations Commission

Rules were adopted amending **ch. ERC 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 and rule analysis

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 and rule analysis

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 and rule analysis

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

Summary

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

Lead Abatement Activities

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

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

Lead poisoning can also affect older children and adults. In 1999, a 40–year old man employed to remove paint from windows of a rental dwelling was severely lead poisoned. He was hospitalized with complaints of headaches and joint pain. He underwent multiple sessions of chelation therapy to

remove some of the lead from his blood, but still suffered serious neurological damage, which affected his speech and balance. This man's lead poisoning could have been avoided if he had been trained to use lead-safe techniques and personal protection equipment.

Existing Wisconsin Law

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

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

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

New Federal Regulations

The U.S. Department of Housing and Urban Development (HUD) revised 24 CFR Part 35 effective September 15, 2000. The regulations require most properties owned by the federal government or receiving federal assistance to conduct specified activities to make the property lead-safe. Specifically, these regulations affect property owners receiving federal rehabilitation funds and landlords whose tenants receive federal rental assistance. To meet HUD's lead-safe standards, most affected properties must have a risk assessment completed and must use certified persons to reduce or eliminate the lead-based paint hazards identified in the risk assessment report. Property owners must also use trained people to perform maintenance or renovation activities and must have clearance conducted after completing activities that disturb

lead-based paint. Clearance is a visual inspection and dust-lead sampling to verify that lead-based paint hazards are not left behind. The HUD regulations also establish a new, research-based standard for clearance that is more protective than HUD's previously recommended standard.

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

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

New Wisconsin Law

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

Result of Changing Federal and State Requirements

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

In addition to the demand for certified persons generated by the HUD regulations, Act 113 is generating its own demand for certified persons. Many property owners want to begin reducing lead-based paint hazards on their properties in order to meet the standards for lead-free or lead-safe property when the standards take effect. Although property owners and their employees may be certified now under Chapter HFS 163, Wis. Adm. Code, some property owners feel 5 days of training is too extensive for the work they will be performing. Act 113 requires the Department to establish the requirements for a training course of up to 16 hours that property owners,

their agents and employees may complete in order to receive certification. This emergency rule meets the requirement of Act 113 by providing for certification as a lead (Pb) low–risk supervisor to independently perform limited lead hazard reduction activities after only 2 days of training.

Department Response

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

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

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

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

Publication Date: December 1, 2000
Effective Date: December 1, 2000
Expiration Date: April 30, 2001
Hearing Date: January 12, 16, 17, 18 and 19, 2001
Extension Through: June 28, 2001

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

1. Rules adopted creating s. NR 1.445 and revising ch. NR 51, relating to the stewardship program.

Exemption from finding of emergency

Emergency rules are necessary for the department to act as authorized under s. 23.0917, Stats., as created by 1999 Wis. Act 9. According to section 9136 (10g) of this Act, the department is not required to make a finding of emergency or provide evidence that promulgating this emergency rule is necessary for the preservation of public peace, health, safety or welfare. In addition, the emergency rules promulgated under this authority remain in effect until June 30, 2001, or

until the date on which the corresponding permanent rules take effect, whichever is sooner.

Analysis prepared by the 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 and rule analysis

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

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

Finding of emergency and rule analysis

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

Publication Date: December 15, 2000

Effective Date: December 15, 2000

Expiration Date: May 14, 2001

Hearing Date: January 17, 2001

Natural Resources

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

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

Exemption from finding of emergency

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

Analysis prepared by the Dept. of Natural Resources

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

Statute interpreted: s. 292.15, Stats.

Section 292.15 (2) (ae) 3m., Stats., directs the department to promulgate rules to describe the requirements that must be met by a voluntary party seeking a Certificate of Completion, where natural attenuation is employed as the remedial action. The 1999–2001 State Budget (1999 Wisconsin Act 9) created s. 292.15 (2) (ae), Stats., which allows parties to use natural attenuation as a remedy to obtain the voluntary party liability exemption. This section includes a provision where the DNR may require a voluntary party to obtain environmental insurance if the voluntary party wants to receive a Certificate of Completion before the groundwater enforcement standards are met through natural attenuation. This rule requires that all voluntary parties who apply for the liability exemption under this section obtain environmental insurance to cover the cost to cleanup the environment if natural attenuation fails.

Publication Date: March 6, 2001

Effective Date: March 6, 2001

Expiration Date: August 3, 2001

Hearing Date: April 16, 2001

Public Service Commission (3)

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

Finding of emergency and rule analysis

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

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

3. 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

Tobacco Control Board

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

Finding of emergency and rule analysis

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

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

While tobacco's effects are in individuals' futures, immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been a 19 percent increase in

high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease and stroke.

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

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

tobacco use in Wisconsin.

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

Publication Date: November 7, 2000
Effective Date: November 7, 2000
Expiration Date: April 6, 2001
Hearing Date: January 10, 2001
Extension Through: June 4, 2001

Scope statements

Employee Trust Funds

Subject

Some Wisconsin Retirement System (WRS) annuity options are defined by administrative rule, as authorized by Wis. Stats. 40.24 (1) (g). ETF 20.02 (1) creates an option for a joint and survivor annuity with payments reduced by 25% upon the death of either the participant or the joint survivor named on the original annuity application. At present, this reduction affects the annuity payment for the month in which either the participant or the named survivor dies. Since the effect is currently retroactive to the first of the month, when the joint survivor dies an overpayment to the participant routinely occurs, requiring collection efforts or other adjustments. The proposed rulemaking will amend ETF 20.02 (1) to specify that a reduction in payment due to the death of the named survivor will not take effect until the end of the month in which the death occurs. No change is proposed with respect to the reduction resulting from the death of the participant; this avoids any conflict with the portion of Wis. Stats. 40.02 (5) concerning the last payment of an annuity due to an annuitant.

The proposed rulemaking will include several non-substantive, technical amendments which will conform the rules to changes in terminology used by the Department, correct cross-references to renumbered statutes and conform the language of the rules to newly defined terms. The proposed rulemaking will amend terminology in ETF 20.04 (1) and (2) conform the rules with the newly defined terms "joint and survivor annuity" and "named survivor" found in Wis. Stats. 40.02 (39r) and (41r), created by 1997 Wis. Act 110.

One type of annuity available from the WRS is intended to provide enhanced WRS benefits until the annuitant becomes eligible for Social Security benefits at age 62. It is the intent of this option that the annuitant's total anticipated income from both the WRS and Social Security will be the same each month, both before and after reaching age 62. This type of annuity was previously called a "Social Security Integrated" annuity. The Department has now adopted the term "Accelerated Payment Annuity" to describe this option, to preclude the misperception that this option involves the Department interacting with the Social Security Administration to coordinate and calculate this benefit. The proposed rulemaking will amend ETF 20.04 (3) and 20.05 (1), to replace the description "social security integrated annuity" with the terminology "accelerated payment annuity" to describe the temporary annuity authorized by Wis. Stats. 40.24 (1) (e).

The proposed rulemaking will add "alternate payee" to the list of persons in ETF 20.05 who may not choose the accelerated annuity option described in Wis. Stat. 40.24 (1) (e), if the result would be that the amount of the lifetime annuity would be less than a specified threshold. This reflects the harmonizing of the accelerated payment option under Wis. Stat. 40.24 (1) (e) with the threshold in Wis. Stat. 40.25 (1) (a) for payment of a life annuity. The dollar amount of this threshold is indexed annually by the salary index defined in Wis. Stat. 40.02 (52). The proposed rulemaking will also

update the stated dollar amount of the threshold (\$25 in 1982) to the present indexed amount (\$129 in 2001).

In addition, the proposed rulemaking will revise the cross-references in ETF 20.04 (3), and 20.05 (1) and (2) from "s. 40.24 (4)" to "s. 40.24 (1) (e)." This reflects the renumbering of Wis. Stats. 40.24 (1) to (5) by 1989 Wis. Act 166.

Objective of the Rule. The proposed amendment would accomplish two objectives; providing a slightly enhanced benefit to participants who now experience the full annuity reduction for the entire month in which their named survivor dies and eliminating the overpayments that routinely occur when the department is notified of the joint survivor's death too late in a month to stop the full payment for that month from being issued.

The Department is also proposing amendments to ETF 20.04 (1), (2), (3) and ETF 20.05 (1) and (2) which are intended to bring the language in the rule into conformity with the statutory definitions in s. 40.02 (39r) and (41r), Stats., and to reflect statutory provisions which have been renumbered since these rules were promulgated. Additional changes to ETF 20.04 (3) and ETF 20.05 (1) under consideration are intended to harmonize the rule with the description terminology that has been adopted by the Department, but does not reflect any statutory change.

Policy Analysis

The actuary has indicated that the proposed amendment to ETF 20.04 (1) would have such a negligible effect on the liabilities of the annuity reserve that according to the actuary there would be no change to the actuarial factor used to calculate this annuity option. Consequently, the proposed amendment to ETF 20.04 (1) would have a twofold beneficial result; a higher benefit payment due to the participant for the month in which the joint survivor dies, and more efficient administration of this option because the partial month's overpayment to the participant that routinely occurs and must be recovered with this option would be eliminated.

The remainder of the proposed amendments make no other changes than to bring the language in the rules into conformity with current statutory language

Policy Alternatives to the Proposed Rule

The alternative to promulgating this rule would be that the annuity option defined in ETF 20.04 (1) would continue to require that the participant experience the full annuity reduction for the entire month in which their named survivor dies, and that the language ETF 20.04 (1), (2) and (3) and ETF 20.05 (1) and (2) will not conform to the definitions in § 40.02 (39r) and (41r), Stats., nor reflect the renumbering of s. 40.24 (4) to s. 40.24 (1) (e), Stats.

Statutory Authority

Wis. Stats. 40.03 (1) (m), (2) (i), (7) (d), and (8) (d).

Staff Time Required

The Department estimates that state employees will spend 20 hours developing this rule.

Pharmacy Examining Board

Subject

The proposed modification of the rules pertaining to the qualifications for original licensure, s. Phar 2.01 (1) and qualifications for persons licensed in another state, s. Phar 2.04 (1).

Objective of the Rule. The objective of the proposed amendments of ss. Phar 2.01 (1) and 2.04 (1) is to create consistent licensure requirements with other states that require applicants in certain instances to take and pass the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), the Test of English as a Foreign Language (TOEFL), and the Test of Spoken English (TSE).

Policy analysis

Currently, Wisconsin law only requires that an applicant who is a foreign graduate of a school of pharmacy to take and pass the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), offered by the National Association of Boards of Pharmacy, Foreign Pharmacy Graduate Examination Committee (FPGEC). Other states require a foreign graduate of a school of pharmacy to take and pass three examinations, the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), the Test of English as a Foreign Language (TOEFL), and the Test of Spoken English (TSE). Upon successfully taking and passing all three examinations the foreign graduate earns FPGEC Certification. Requiring foreign graduate applicants in Wisconsin to earn FPGEC Certification as a precondition for licensure will allow Wisconsin licensure requirements in this instance to be considered “substantially equivalent” with other states, thus allowing greater mobility for pharmacists with Wisconsin licensure who thereafter seek licensure in other states.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2), 450.02 (3) (e), 450.03 (2)

and 450.04 (1).

Staff Time Required

It is estimated that 100 hours will be needed to amend the rules. The proposed rules will have no effect on the budget, staff or uniform policies or procedures of the Department of Regulation and Licensing.

Transportation

Subject

Objective of the Rule. This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding three highway segments to the network. The actual segments being proposed are: State Trunk Highway 27 from USH 14 S.E. of Viroqua to STH 40 in Radisson; STH 60 from USH 12 in Sauk City to IH 43 E. of Grafton; and STH 156 from STH 22 in Clintonville to STH 29 in Shawano County.

Policy analysis

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received three requests from Walters Brothers Lumber Manufacturing, Inc., in Radisson, WI, Roadway Express in Green Bay, WI, and Fuchs Trucking in Sauk City, WI, to add these highway segments.

Statutory Authority

Section 346.07 (4), Stats.

Staff Time Required

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

Submittal of rules to legislative council clearinghouse

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

Accounting Examining Board

Rule Submittal Date

On April 26, 2001, the Accounting Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule-making order relates to experience in public practice.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 11, 2001 at 9:45 a.m. in Room 180, 1400 East Washington Avenue, Madison, WI.

Contact Information

Pamela Haack, Paralegal, Administrative Rules Coordinator, (608) 266-0495.

Administration

Rule Submittal Date

On April 23, 2001, the Department of Administration submitted a proposed rule ch. Adm 46 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 16.004 (1), 16.969 (2), 20.002 (13) and 196.491 (3g), Stats.

Statute Interpreted: s. 16.969, Stats.

In 1999 Wis Act 9, the Legislature required person receiving a Certificate of Public Convenience and Necessity by the Public Service Commission for high voltage transmission lines to pay the Department of Administration an annual impact fee and a one time environmental impact fee. The Department of Administration is required to develop rules to establish those fees, then distribute them to the cities, towns, villages or counties as identified by the Public Service Commission, through which the high voltage transmission lines are routed. The proposed rule establishes payment schedules and procedures as well as the means for distributing the fees collected to the appropriate county, town, village or city.

Agency Procedure for Promulgation

The Department will hold a public hearing on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Energy and Public Benefits is primarily responsible for promulgation of this rule.

Contact Information

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

Donna Sorenson
Department of Administration
Telephone (608) 266-2887

Agriculture, Trade and Consumer Protection

Rule Submittal Date

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

Analysis

The proposed rule affects chs. ATCP 55 and 56, relating to meat and meat food products.

Agency Procedure for Promulgation

The department's Food Safety Division is primarily responsible for this rule. Public hearings will be held on June 19, 20 and 22, 2001.

Contact Information

If you have questions, you may contact:
Carol Winner
Telephone (608) 224-4726

Commerce

Rule Submittal Date

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

Analysis

The proposed rule affects ch. Comm 30, relating to fire department safety and health.

Agency Procedure for Promulgation

The department's Safety and Buildings Division is responsible for this rule. Public hearings will be scheduled for June 5 and 8, 2001.

Contact Information

If you have questions, you may contact:
Ronald Acker
Telephone (608) 267-7907

Health and Family Services

Rule Submittal Date

On April 24, 2001, the Department of Health and Family Services submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules will create ch. HFS 95, to guide the use of force to prevent escapes and recapture escaped persons under Ch. 980, Stats., and to provide security at facilities housing such persons.

1999 Wisconsin Act 9 created s. 46.058, Stats. That law requires the department to establish rules to define the use of “necessary and appropriate force” in relation to preventing escapes and in pursuing and capturing persons detained at or committed under ch. 980, Stats., who have escaped. This order complies with that statutory requirement.

In addition to defining the use of force in such circumstances, this order sets forth standards for the appropriate use of force in order to provide security at facilities housing such persons. Use of force is sometimes required to prevent injuries, regain control of parts of a facility, control disruptive persons, or prevent property damage. This order requires the adoption of policies and procedures to ensure that only so much force is used as is necessary under the circumstances.

This order also sets forth criteria for use of firearms and incapacitating devices. Proper and ongoing training is required.

Agency Procedure for Promulgation

Public hearings will be held on May 30, 2001.

Contact Information

If you have questions, you may contact:
James Yeadon
Division of Care and Treatment Facilities
Telephone (608) 266-5525
or
Linda Harris
Division of Care and Treatment Facilities
Telephone (608) 267-7909

Hearing and Speech Examining Board

Rule Submittal Date

On April 18, 2001, the Hearing and Speech Examining Board submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to the licensure and regulation of speech-language pathologists, audiologists, temporary licensees and supervision of unlicensed individuals.

Agency Procedure for Promulgation

A public hearing is required and will be held on May 21, 2001 at 1:30 p.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Information

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

Natural Resources

Rule Submittal Date

On April 6, 2001 the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 8, relating to the issuance of DNR licenses and approvals.

Agency Procedure for Promulgation

A public hearing will be held on May 15, 2001.

Contact Information

If you have questions, you may contact:
Ruth Ann Raftery
Bureau of Customer Service and Licensing
Telephone (608) 266-8163

Natural Resources

Rule Submittal Date

On April 6, 2001 the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 20 and 25, relating to yellow perch fishing in Green Bay.

Agency Procedure for Promulgation

A public hearing will be held on May 21, 2001.

Contact Information

If you have questions, you may contact:
Bill Horns
Bureau of Fisheries Management and Habitat
Protection
Telephone (608) 266-8782

Natural Resources

Rule Submittal Date

On April 6, 2001 the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 46, relating to the administration of the Forest Crop Law and the Managed Forest Law.

Agency Procedure for Promulgation

A public hearing will be held on May 11, 2001.

Contact Information

If you have questions, you may contact:
Ken Hujanen
Bureau of Forestry
Telephone (608) 266-3545

Nursing

Rule Submittal Date

On April 26, 2001, the Board of Nursing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2), 441.01 (3) and 441.50, Stats.

The proposed rule-making order relates to the Nurse Licensure Compact.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 1, 2001 at 8:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, WI.

Contact Information

Nursing

Rule Submittal Date

On April 30, 2001, the Board of Nursing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 441.01 (3), Stats.

The proposed rule-making order relates to

board-approved schools, application procedures and licensure by endorsement.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 1, 2001 at 8:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, WI.

Contact Information

Pamela Haack, Paralegal, Administrative Rules Coordinator, (608) 266-0495.

Rule-making notices

Notice of Hearing

Accounting Examining Board [CR 01-47]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Accounting Examining in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 442.04 (3), Stats., the Accounting Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend Accy 5.04, relating to experience in public practice.

Hearing Date, Time and Location

Date: **June 11, 2001**
 Time: 9:45 a.m.
 Location: 1400 East Washington Avenue
 Room 180
 Madison, Wisconsin

Appearances at the Hearing:

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

Analysis prepared by the Department of Regulation and Licensing

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

Statute interpreted: s. 442.04 (3), Stats.

An applicant for a certificate as a certified public accountant is required to have earned a bachelor's or higher degree with an accounting concentration or its reasonable equivalent as determined by the Accounting Examining Board. An applicant must have 1 1/2 years of accounting experience equivalent to that of a senior in public practice.

The Accounting Examining Board amends its rule on experience in public practice to require that an applicant acquire senior level experience after earning a degree with an accounting concentration or a degree that is reasonably equivalent.

Text of Rule

SECTION 1. Accy 5.04 is amended to read:

Accy 5.04 Experience in public practice. An individual must have adequate accounting experience at the level of a junior in public practice before senior experience is possible. Such junior experience normally requires approximately 1 1/2 years, thus at least 3 years of experience in public practice is normally required to earn 1 1/2 years of experience at the senior level. Senior level experience shall be acquired after the applicant has earned a degree that qualified the applicant to take the CPA examination as described in s. Accy 3.04.

Fiscal Estimate

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

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

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

Initial Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 01-42]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules to repeal ch. ATPC 56, and to repeal and recreate ch. ATPC 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(1).
- 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]

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>
Tuesday, June 5, 2001	Room 3B, Thompson Commerce Center 201 W. Washington Avenue Madison
Friday, June 8, 2001	Room 105, Eau Claire State Office Building 718 W. Clairemont Avenue Eau Claire

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 (Community Services, Chs. HFS 30-) [CR 01-45]

NOTICE IS HEREBY GIVEN that, pursuant to ss. 46.056 (1) and 227.11 (2), Stats., the Department of Health and Family Services will hold a public hearing on the proposed order of the department creating ch. HFS 95 relating to the use of force to prevent escapes and to capture escaped persons under ch. 980, Stats., and to provide security at facilities housing such persons.

Hearing Information

The public hearing will be held:

Date and Time	Location
May 30, 2001 Wednesday Beginning at 10:30 a.m.	Conference Room B-145 State Office Building 1 West Wilson Street Madison, WI

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building, in the Monona Terrace

Convention Center Parking Ramp or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Dept. of Health and Family Services

This order creates rules to guide the use of force to prevent escapes and capture escaped persons under ch. 980, Stats., and to provide security at facilities housing such persons.

1999 Wisconsin Act 9 created s. 46.058, Stats. That law requires the department to establish rules to define the use of "necessary and appropriate force" in relation to preventing escapes and in pursuing and capturing persons detained at or committed under ch. 980, Stats., who have escaped. This order complies with that statutory requirement.

In addition to defining the use of force in such circumstances, this order sets forth standards for the appropriate use of force in order to provide security at facilities housing such persons. Use of force is sometimes required to prevent injuries, regain control of parts of a facility, control disruptive persons, or prevent property damage. This order requires the adoption of policies and procedures to ensure that only so much force is used as is necessary under the circumstances.

This order also sets forth criteria for the use of firearms and incapacitating agents. Proper and ongoing training is required.

Contact Person

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

Linda Harris
Division of Care and Treatment Facilities
P.O. Box 7851, Room 850
Madison, WI 53707-7851
(608) 267-7909 or,
if you are hearing impaired, (608) 266-1511 (TTY)

To comment on or discuss the content of the proposed rule, please e-mail or phone:

James Yeadon
Division of Care and Treatment Facilities
P.O. Box 7851, Room 850
Madison, WI 53707-7851
(608) 266-5525 or,
if you are hearing impaired, (608) 266-1511 (TTY)

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

Written comments on the proposed rule received at the above address no later than June 6, 2001, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This rule governs the use of force to prevent escapes or to capture escaped persons under ch. 980, Stats., and to provide security at facilities housing such persons. This affects the

Wisconsin Resource Center and the Sand Ridge Secure Treatment Center. The affected facilities will be required to use force under certain circumstances, with or without this rule, and any costs associated with the use of force will be absorbed within existing resources at Wisconsin Resource Center and Sand Ridge Secure Treatment Center. This rule merely sets parameters for the use of force under certain circumstances and for other security matters. Any fiscal effect as a result of this rule will be positive rather than negative. By having rules in place for the use of force, when such use becomes necessary, the state's potential civil liability will likely be reduced.

Initial Regulatory Flexibility Analysis

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

Notice of Hearing

Nursing [CR 01-46]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b), 227.11 (2) and 441.01 (3), Stats., and interpreting s. 441.50, Stats., as created by 1999 Wisconsin Act 22, the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to amend ss. N 4.03 (3), 4.04 (1) (d) and (3), 8.02 (1) (a) and 8.03 (1); and to create s. N 4.04 (4), relating to the Nurse Licensure Compact.

Hearing Date, Time and Location

Date: **June 1, 2001**
Time: 8:30 a.m.
Location: 1400 East Washington Avenue
Room 179A
Madison, Wisconsin

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by June 18, 2001 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 441.01 (3), Stats. and s. 441.50, Stats., created by 1999 Wisconsin Act 22.

Statute interpreted: s. 441.50, Stats.

By 1999 Wisconsin Act 22, the Wisconsin legislature adopted the Nurse Licensure Compact, by which nurses licensed and residing in one compact state may practice in another compact state without a separate license. Under the Compact, nurses residing in a compact state may be licensed in only one compact state, and that state must be their state of residence. While the Compact creates a practice privilege for registered nurses and licensed practical nurses in all compact states, there is no corresponding practice privilege for advanced practice nurse prescribers (APNPs). APNPs are licensed or certified in each state where they practice regardless of whether their state of practice is a compact state. Accordingly, in order for an APNP who resides and is licensed

in another compact state to practice as an APNP in Wisconsin, he or she must be certified as an APNP in this state. The current requirement for certification in Wisconsin is that the applicant be licensed as an RN in this state. That is an impossible condition under the compact, again because a nurse may be licensed in only one compact state, and that state must be the nurse's state of residence. This suggested amendment to the rule would suspend the requirement that the applicant for APNP certification be licensed in Wisconsin if he or she is duly licensed as an RN in another compact state.

Text of Rule

SECTION 1. N 4.03 (3) is amended to read:

N 4.03 (3) Is currently licensed to practice as a professional nurse in Wisconsin, or is currently licensed to practice professional nursing in another state which has adopted the interstate nursing compact.

SECTION 2. N 4.04 (1) (d) and (3) are amended to read:

N 4.04 (1) (d) Identification of current licensure as a professional nurse in Wisconsin, to include licensure or of current licensure in another state which has adopted the interstate nursing compact, including the license number and renewal information.

(3) Renewal of a license to practice nurse-midwifery shall be conducted as a separate procedure from the renewal of the nurse's license as a professional nurse; ~~however the time for renewal of each license shall be the same. The applicant for renewal shall inform the board whether the license [certificate] issued to him or her by the American college of nurse-midwives has been revoked or suspended.~~

SECTION 3. N 4.04 (4) is created to read:

N 4.04 (4) The applicant for renewal shall inform the board whether the certificate issued to him or her by the American college of nurse-midwives has been revoked or suspended.

SECTION 4. N 8.02 (1) (a) is amended to read:

N 8.02 (1) (a) The registered nurse has a current license to practice professional nursing in this state, or has a current license to practice professional nursing in another state which has adopted the interstate nursing compact;

SECTION 5. N 8.03 (1) is amended to read:

N 8.03 (1) Has a current license to practice as a professional nurse in this state or has a current license to practice professional nursing in another state which has adopted the interstate nursing compact.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East

Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495

Notice of Hearing

Nursing [CR 01-49]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Board of Nursing in ss. 15.08 (5) (b), 227.11 (2) and 441.01 (3), Stats., and interpreting ss. 441.01 (3) and (4), 441.05, 441.06 (1) and 441.10 (3) (d), Stats., the Board of Nursing will hold a public hearing at the time and place indicated below to consider an order to repeal N 2.03 (1) (d) and (2) (d), 2.04 (1) (b) and (5), 3.04 (1) (a) and (b), (5) and (6) and 3.05 (2) (b) and (c); to renumber N 3.04 (7); to renumber and amend N 2.04 (1) (intro.) and (1) (a), 3.04 (2), (3), (4) and 3.05 (2) (a); to amend N 2.02 (2), 2.03 (1) (c), (2) (c), 2.04 (2), (5) and (6) and 3.04 (1) (intro.); to repeal and recreate N 3.03; and to create N 3.04 (1) (c), relating to board-approved schools, application procedures and licensure by endorsement.

Hearing Date, Time and Location

Date: **June 1, 2001**

Time: 8:30 a.m.

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

Appearances at the Hearing:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by June 18, 2001 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 441.01 (3), Stats.

Statutes interpreted: ss. 441.01 (3) and (4), 441.05, 441.06 (1) and 441.10 (3) (d), Stats.

Section 1 further defines "board-approved school" to include institutions located in the United States, a U.S. territory, or a province of Canada. Sections 2 and 4 relate to applicants who graduate from a school other than a board-approved school, including that if an applicant graduates from a school other than a board-approved school, are required to demonstrate English competency prior to admission to the NCLEX. Sections 8 and 10 also relate to schools other than board approved schools.

Sections 3 and 5 repeal sections as a result of the amendments made in Sections 1, 2 and 4. Section 6 amends s. N 2.04 as a result of the renumbering of that section.

Section 7 repeals rules relating to photographs for identification purposes as this is no longer a requirement.

Section 11 repeals and recreates s. N 3.03, qualifications for endorsement. The endorsement rules currently tend to be confusing, with some provisions unclear, and others superfluous. Therefore, the board repeals and recreates the rules relating to endorsement.

Text of Rule

SECTION 1. N 2.02 (2) is amended to read:

N 2.02 (2) “Board-approved school” means an institution located in the United States, a U.S. territory, or a province of Canada which has a school, college, program or department of nursing which meets standards of the board or holds accreditation by a board-recognized nursing accreditation agency.

SECTION 2. N 2.03 (1) (c) is amended to read:

N 2.03 (1) (c) Has graduated from a board-approved school of professional nursing. An applicant who has graduated from a school of professional nursing other than a board-approved school shall be required to take and satisfactorily complete a board-approved qualifying examination prior to admission to the NCLEX.

SECTION 3. N 2.03 (1) (d) is repealed.

SECTION 4. N 2.03 (2) (c) is amended to read:

N 2.03 (2) (c) Has graduated from a board-approved school of practical nursing; and An applicant who has graduated from a school of practical nursing other than a board-approved school shall be required to demonstrate English competency prior to admission to the NCLEX.

SECTION 5. N 2.03 (2) (d) is repealed.

SECTION 6. N 2.04 (1) (intro.) and (1) (a) are renumbered N 2.04 (1) and amended to read:

N 2.04 (1) Each applicant shall file with the bureau a completed, notarized application on forms provided by the bureau. The application shall include: ~~(a) Signature~~ the signature of the applicant;.

SECTION 7. N 2.04 (1) (b) is repealed.

SECTION 8. N 2.04 (2) and (5) are amended to read:

N 2.04 (2) ~~Nursing schools outside of the United States~~ Schools of professional nursing other than board-approved schools shall forward, directly to the bureau, official transcripts of nursing education for applicants who were graduated from the school. The bureau may accept certified credentials directly from the commission on graduates of foreign nursing schools attesting to receipt of the original transcript or documentation of the applicant’s nursing education directly from the school of nursing.

SECTION 9. N 2.04 (5) is repealed.

SECTION 10. N 2.04 (6) is amended to read:

N 2.04 (6) An applicant who has graduated from a school of professional nursing ~~outside the United States~~ other than a board-approved school shall submit a valid certificate issued by the commission on graduates of foreign nursing schools (CGFNS).

SECTION 11. N 3.03 is repealed and recreated to read:

N 3.03 Qualifications for endorsement. (1) REGISTERED NURSE APPLICANT. (a) A registered nurse holding a license in another state, U.S. territory or province of Canada, or a registered nurse who has held a current license in a compact state within the 5 years prior to application, who has graduated from a board approved school of professional nursing may become licensed in Wisconsin provided the applicant meets all of the following:

1. Does not have an arrest or conviction record subject to ss. 111.321, 111.322 and 111.335, Stats.

2. Has passed the national council licensure examination for registered nurses or the state board test pool examination for registered nurses or other examination approved by the board.

3. Has a license against which no disciplinary action has been taken in any of the states, territories or provinces in which the applicant has held a license.

4. Has not been terminated from any employment related to nursing in another state for reasons of negligence or incompetence.

(b) A registered nurse holding a license in another state or U.S. territory or province of Canada who has not graduated from a board-approved school of professional nursing may become licensed in Wisconsin provided the applicant meets all of the following:

1. Has graduated from a school of professional nursing in this country or the country of original licensure.

2. If originally licensed in a foreign country, has passed the licensure examination in the country of original licensure.

3. Has passed the national council licensure examination for registered nurses or the state board test pool examination for registered nurses or other examination approved by the board.

4. Verifies at least 2 years of full-time or equivalent safe practice as a registered nurse within the last 5 years.

5. Verifies competency in the English language.

6. Has a license against which no disciplinary action has been taken in any of the states, territories, provinces or countries in which the applicant has held a license.

7. Has not been terminated from any employment related to nursing in another state, territory, province or country for reasons of negligence or incompetence.

(2) LICENSED PRACTICAL NURSE APPLICANTS.

(a) A practical nurse holding a license in another state, U.S. territory or province of Canada, or a licensed practical nurse who has held a current license in another compact state within the 5 years prior to application, who has graduated from a board-approved school of practical nursing may become licensed in Wisconsin provided the applicant meets all of the following:

1. Does not have an arrest or conviction record subject to ss. 111.321, 111.322 and 111.335, Stats.

2. Has passed the national council licensure examination for practical nurses or the state board test pool examination for practical nurses or other examination approved by the board.

3. Has a license against which no disciplinary action has been taken in any of the states, territories or provinces in which the applicant has held a license.

4. Has not been terminated from any employment related to nursing in another state for reasons of negligence or incompetence.

(b) A practical nurse holding a license in another state or U.S. territory or province of Canada who has not graduated from a board-approved school of practical nursing may become licensed in Wisconsin provided the applicant meets all of the following:

1. Has graduated from a school of practical nursing in this country or the country of original licensure.

2. If originally licensed in a foreign country, has passed the licensure examination in the country of original licensure.

3. Has passed the national council licensure examination for practical nurses or the state board test pool examination for practical nurses or other examination approved by the board.

4. Verifies at least 2 years of full-time or equivalent safe practice as a practical nurse within the last 5 years.

5. Verifies competency in the English language.

6. Has a license against which no disciplinary action has been taken in any of the states, territories, provinces or countries in which the applicant has held a license.

7. Has not been terminated from any employment related to nursing in another state, territory, province or country for reasons of negligence or incompetence.

Note: A list of methods by which English competency may be demonstrated is available at the board office located at P.O. Box 8935, 1400 East Washington Avenue, Madison, Wisconsin 53708.

SECTION 12. N 3.04 (1) (intro.) is amended to read:

N 3.04 Application procedure for R.N. and L.P.N. applicants. (1) Each applicant shall file a completed, signed and notarized application on forms provided by the bureau, along with the fee specified under s. 440.05 (1), Stats. The application shall include all of the following:

SECTION 13. N 3.04 (1) (a) and (b) are repealed.

SECTION 14. N 3.04 (2) and (3) are renumbered N 3.04 (1) (a) and (b) and amended to read:

N 3.04 (1) (a) ~~Statement~~ A statement of graduation shall be forwarded directly from the applicant's school of nursing indicating date applicant completed the nursing program ~~and confirmation that the nursing program was board approved at time of graduation.~~

(b) Verification of license shall be forwarded from the state, territory or province in which the original license by examination was issued.

SECTION 15. N 3.04 (1) (c) is created to read:

N 3.04 (1) (c) If originally licensed in a foreign country, verification of having passed the licensure examination in the country of original licensure.

SECTION 16. N 3.04 (4) is renumbered N 3.04 (1) (d) and amended to read:

N 3.04 (1) (d) ~~All Notarized translations of all~~ statements and documents written in a foreign language shall be ~~accompanied by notarized translations.~~ The cost of the translation shall be paid by the applicant.

SECTION 17. N 3.04 (5) and (6) are repealed.

SECTION 18. N 3.04 (7) is renumbered N 3.04 (2).

SECTION 19. N 3.05 (2) (a) is renumbered N 3.05 (2) and amended to read:

N 3.05 (2) An R.N. or L.P.N. licensed in any state, U.S. territory, or province of Canada may be granted a temporary permit from the board upon receipt of a completed application ~~indicating no past or pending disciplinary actions in another state, proof of graduation from a board approved school of professional or practical nursing or current licensure in another state,~~ demonstrating that the applicant has met the requirements of s. N 3.03 (1) or (2), the fee specified in s. 440.05 (2), Stats., and the permit fee specified in s. 440.05 (6), Stats., ~~and upon meeting the requirements under s. N 3.04 (6).~~

SECTION 20. N 3.05 (2) (b) and (c) are repealed.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearing

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

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

Hearing Date, Time and Location

Date: **June 13, 2001**
Time: 9:15 a.m.
Location: 1400 East Washington Avenue
Room 179A
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Dept. of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by June 27, 2001 to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

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

Statute interpreted: s. 440.03 (13)

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

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

Text of Rule

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

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

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

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

Notice of Hearing**Social Workers, Marriage and Family Therapists
Examining Board**

[CR 01-20]

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

Hearing Date, Time and Location

Date: **June 13, 2001**
Time: 9:15 a.m.
Location: 1400 East Washington Avenue
Room 179A
Madison, Wisconsin

Appearances at the Hearing

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

June 27, 2001 to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

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

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

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

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

Text of Rule

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

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

2. A psychologist licensed under ch. 448, Stats., or a psychiatrist licensed under ch. 448, Stats., approved by the social worker section in advance of the supervision of the practice of social work if the social worker section determines that supervision by a certified social worker is unobtainable or unreasonably restrictive of the delivery of social work services to a particular population, or unduly interferes with training social workers in providing services to a particular population.

Fiscal Estimate

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

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

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

Initial Regulatory Flexibility Analysis

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

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation

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

Submission of proposed rules to the legislature

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

Agriculture, Trade and Consumer Protection

(CR 01-015)

Ch. ATCP 161 – Relating to payments to ethanol producers.

Corrections

(CR 00-079)

Ch. DOC 306 – Relating to security.

Financial Institutions–Securities

(CR 01-025)

Ch. DFI–Sec 5 – Relating to adopting for use in Wisconsin the Investment Adviser Registration Depository.

Insurance

(CR 00-188)

Ch. Ins 3 – Relating to long term care insurance.

Nursing

(CR 00-167)

Ch. N 6 – Relating to defining the practice of nursing to include acting under the direction of optometrists.

Nursing

(CR 00-168)

Ch. N 8 – Relating to continuing education.

Pharmacy Examining Board

(CR 00-157)

Chs. Phar 2, 4, 12, 13, and 16 – Relating to consultation programs and licensure requirements.

Public Instruction

(CR 00-186)

Ch. PI 26 – Relating to the education for employment program.

Workforce Development

(CR 00-181)

Ch. DWD 80 – Relating to worker's compensation insurer name change or reorganization.

Rule orders filed with the revisor of statutes bureau

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

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

An order revising chs. ATCP 10 and 11 relating to reimbursement of Johne's Disease Testing Costs.
Effective 6-1-01

**Health and Family Services
(CR 00-171)**

An order revising ch. HFS 144 relating to immunization of students.
Effective 6-1-01

**Insurance
(CR 00-10)**

An order revising chs. Ins 13 and 50 relating to town mutual insurance.
Effective 1-1-02

**Psychology Examining Board
(CR 00-170)**

An order revising ch. Psy 4 relating to continuing education and temporary practice.
Effective 7-1-01

**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

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