

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

**NOTICE OF
PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that pursuant to ss. 145.12 (5) (a) and 145.20 (6) Stats., as affected by 2007 Wisconsin Act 197 the Department of Commerce will hold a public hearing on proposed rules under Comm 5.12 establishing a schedule of forfeitures for POWTS Governmental Unit Employees.

The public hearing will be held as follows:

Date and Time:

Wednesday, April 15, 2009
10:00 AM

Location:

Conference Room 3B
Thompson Commerce Center
201 West Washington Avenue
Madison

Interested persons are invited to appear at the hearing 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 [date], to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or contact through Relay 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 a request from 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 Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266-8741 or contact through Relay. Copies also will be available at the public hearing.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.



State of Wisconsin \ Department of Commerce

HEARING DRAFT of PROPOSED RULES

Rule No.: Comm 5.12

Relating to: Administrative Forfeitures for POWTS Governmental
Unit Employees

COM-10544 (N.03/97)

COM-10527 (N.03/97)

The Wisconsin Department of Commerce proposes an order to amend Comm 5.12 (a) and Comm 5.33 (6); and to create Comm 5.12 (2m), relating to the assessment of forfeitures for POWTS governmental unit employees.

ANALYSIS OF PROPOSED RULES

1. Statutes Interpreted.

Sections 145.12 (5) (a) and 145.20 (6), Stats., as affected by 2007 Wisconsin Act 197

2. Statutory Authority.

Sections 145.12 (5) (a) and 145.20 (6), Stats., as affected by 2007 Wisconsin Act 197

3. Related Statute or Rule.

None

4. Explanation of Agency Authority.

Section 145.02, Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective standards for Private Onsite Wastewater Treatment Systems (POWTS) including the licensing of individuals to inspect POWTS. Section 145.20, Stats., delineates the responsibilities and duties of governmental units administering and enforcing the laws and rules pertaining to POWTS. Section 145.12 (5) (a), Stats., as affected by 2007 Wisconsin Act 197, authorizes the Department to directly assess forfeitures to governmental unit employees who violate the limitations under s. 145.20, Stats., for POWTS employees that perform work outside of the scope of their governmental unit responsibilities.

5. Summary of Proposed Rules.

The proposed rules under chapter Comm 5 delineate the procedures for implementing the forfeiture assessments for POWTS governmental unit employees violating the outside employment limitations established under 2007 Wisconsin Act 197. The proposed rules establish a schedule for forfeitures based upon various situations and/or activities. Current rules delineate a process for appealing a forfeiture assessment.

6. Summary of, and Comparison with Existing or Proposed Federal Regulations.

There are no known federal regulations or proposed federal regulations that could be compared to the direct forfeiture provision.

7. Comparison with Rules in Adjacent States.

A search of the rules in adjacent states found that Minnesota, Iowa, Illinois, and Michigan do not have any regulations regarding conflict of interest related to their onsite sewage program governmental unit employees. The comparisons were completed via a web search.

8. Summary of Factual Data and Analytical Methodologies.

The proposed rules were developed by reviewing the provisions under ss. 145.12 (5) (a) and 145.20 (6), Stats., as created by 2007 Wisconsin Act 197, as well as existing administrative rules for administrative forfeitures administered by the Department of Commerce.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The 2007 Wisconsin Act 197 affects governmental unit employees who administer and enforce regulations pertaining to design, installation and maintenance of POWTS by limiting the activities that such employees may undertake outside of their governmental employment. The proposed rules implement administrative forfeitures authorized under 2007 Wisconsin Act 197 for violations of these limitations.

The department does not believe that the proposed rules will increase the effect on small businesses over that imposed by the Act.

An economic impact report has not been required pursuant to s. 227.137, Stats.

10. Agency Contact.

James Quast, Program Manager, jim.quast@wisconsin.gov, (608) 266-9292

11. Public Hearing Comments.

The hearing record on this proposed rulemaking will remain open until 4:30 pm, Thursday, April 23, 2009. Written comments on the proposed may be submitted to James Quast, at the Department of Commerce, P.O. Box 8689, Madison, WI 53701-2689 or Email at jim.quast@wisconsin.gov.

SECTION 1. Comm 5.12 is amended to read:

Comm 5.12 (1) GENERAL. In addition to the forfeitures provided for in ~~sub-~~ subs. (2) and (2m), penalties for violations of the provisions of this chapter may be assessed in accordance with the respective penalty provisions in the statutes, depending upon the license, certification or registration category or activity involved.

SECTION 2. Comm 5.12 (2m) is created to read:

Comm 5.12 (2m) POWTS FORFEITURES. (a) Pursuant to s. 145.12 (5) (a), Stats., the department may assess a forfeiture in the amount listed in par. (b) to a violator of the restriction requirements under s. 145.20 (6) (a), Stats.

Note: See the appendix for a reprint of 145.20 (6) (a), Stats.

(b) The amount of forfeiture assessed against an individual who violates the restriction requirements under s. 145.20(6) (a) shall be one of the following:

1. First offense - \$1,000.
2. Second offense - \$1,500.
3. Third and subsequent offense - \$2,000.

SECTION 3. Comm 5.33 (6) is amended to read:

Comm 5.33 (6) RESPONSIBILITIES. A certified soil tester who, as ~~either~~ an employee of a local governmental unit ~~or under contract to a local governmental unit~~, is responsible for administering regulations governing ~~privately owned private onsite~~ wastewater treatment systems may not provide soil evaluations relative to the design, installation or maintenance of private ~~sewage onsite wastewater treatment~~ systems within the boundaries of the local governmental unit.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
