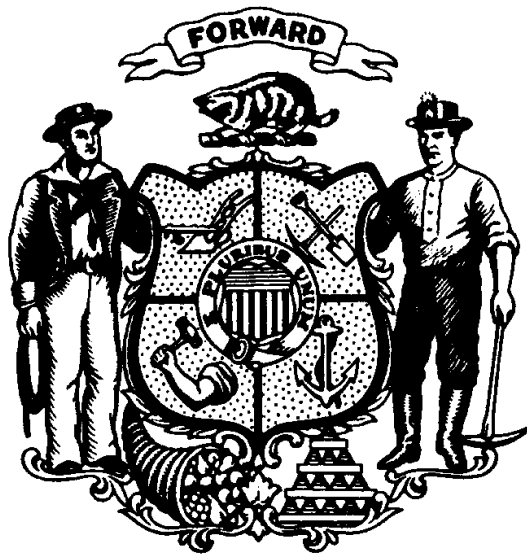


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 512**



Publication Date: August 14, 1998  
Effective Date: August 15, 1998



REVISOR OF STATUTES BUREAU  
SUITE 800, 131 WEST WILSON STREET  
MADISON, WISCONSIN 53703-3233



# State of Wisconsin Revisor of Statutes Bureau

Suite 800, 131 West Wilson Street, Madison, Wisconsin 53703-3233

(608) 266-2011 • Fax (608) 264-6978



**Bruce Munson**  
Revisor of Statutes  
[bruce.munson@legis.state.wi.us](mailto:bruce.munson@legis.state.wi.us)

**Gary L. Poulson**  
Deputy Revisor of Statutes  
Assistant Revisor-Administrative Code  
[gary.poulson@legis.state.wi.us](mailto:gary.poulson@legis.state.wi.us)

## Receive timely updates to Wisconsin legal publications by subscribing to the *WisLaw*<sup>TM</sup> CD-ROM

Up-to-date *WisLaw*<sup>TM</sup> CD-ROM's are released by the Revisor of Statutes Bureau several times a year. *WisLaw*<sup>TM</sup> contains the *continuously-updated Wisconsin Statutes and Annotations* with Index, Table of Cross-References, and Table of Sections Affected by Acts, the **Wisconsin Acts** with Index, the **Supreme Court Rules and Internal Operating Procedures**, recent **Opinions of the Attorney General** with Index, the **Wisconsin Constitution**, the **U.S. Constitution**, the **Administrative Register**, the **Town Law Forms**, and the **Wisconsin Code of Military Justice**. The Bureau plans to increase gradually the number of chapters of the Wisconsin Administrative Code currently on *WisLaw*<sup>TM</sup>.

All of the above *WisLaw*<sup>TM</sup> Infobases are substantially integrated with hypertext links. *WisLaw*<sup>TM</sup> utilizes the Windows versions of Folio PreViews search and retrieval software. Folio is used today by the Legislative Branch, by several state agencies, and by 75 of the top 80 legal publishers.

State agencies are using *WisLaw*<sup>TM</sup> for their legal research. *WisLaw*<sup>TM</sup> is distributed by DOA's Document Sales Unit to requesting state agencies on a complimentary basis.

*WisLaw*<sup>TM</sup> is only available by subscription for 12-month periods; the number of updated CD's to be released in any 12-month period is indeterminate. *WisLaw*<sup>TM</sup> End-user license and subscription order forms are available at Document Sales; CD's will only be delivered upon receipt of a signed license and subscription form and full payment.

A 12-month subscription plus a license for no more than one simultaneous user costs \$99. A 12-month subscription plus a license for no more than 4 simultaneous users costs \$149. A 12-month subscription plus a license for no more than 10 simultaneous users costs \$199. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

To obtain a *WisLaw* Subscription Order Form call (608) 266-3358 or write to us:

**WI Department of Administration  
Document Sales & Distribution Section  
202 S. Thornton Ave.  
P.O. Box 7840  
Madison, WI 53707-7840**

No orders will be accepted by FAX. For further information, call (608) 266-3358, TTY (608) 264-8499.

---



---

# TABLE OF CONTENTS

---



---

**Emergency Rules Now In Effect.****Pages 5 to 17.**

Agriculture, Trade and Consumer Protection:

Rules relating to the sales and use of pesticides containing clomazone.

Rules relating to fish farms and imports of live fish and fish eggs.

Rules relating to retail food establishment license exemption for restaurant permit holders.

Commerce:

Petroleum Environmental Cleanup Fund, Ch. ILHR 47

Rules relating to the Petroleum Environmental Cleanup Fund.

Commerce:

Building and Heating, etc., Chs. 50–64Multifamily Dwellings, Ch. 66

Rules relating to the commercial building and multi-family codes.

Building and Heating, etc., Chs. 50–64

Rule relating to exemption from accessibility laws for specific multifamily dwellings with separate exterior entrances.

Commerce:

Rental Unit Energy Efficiency, Ch. Comm 67

Rules relating to rental unit energy efficiency.

Commerce:

Barrier Free Design, Ch. Comm 69

Rule relating to vertical access to press box facilities.

Corrections:

Rule relating to custody and detention of felony probationers and parolees.

Financial Institutions:

Securities

Rule relating to federal covered securities and advisors.

Health &amp; Family Services:

Health, Chs. HSS/HFS 110—

Rules relating to restaurants.

Rules relating to subsidized health insurance for persons with HIV.

Rules relating to permit and related fees for regulated entities.

Rules relating to the Health Insurance Risk–Sharing Plan (HIRSP).

Insurance:

Rules relating to the Wisconsin Insurance Program (WIP).

Rules relating to annual patients compensation fund and mediation fund fees.

Natural Resources:

Fish, Game, etc., Chs. NR 1–

Rules relating to reservations for state parks, forests and other lands.

Rule relating to bag limits for walleye.

Rules relating to deer hunting in Unit 67A.

Rules relating to sport fishing for yellow perch in Sauk creek.

Rules relating to wildlife damage abatement and claims program.

Natural Resources:

Environmental Protection–Water Regulation,Chs. NR 300–

Rules relating to fees for waterway and wetland permit decisions.

Natural Resources:

Environmental Protection—Air Pollution Control,Chs. NR 400—

Rule relating to emission limitations for motor vehicles.

Public Service Commission:

Rules relating to the provision of universal telecommunications service and administration of the universal service fund and establishing the Education Telecommunication Access Program.

Rules adopted amending s. PSC 4.30, relating to draft environmental impact statements. **[FIRST APPEARANCE]**

Technical College System:

Rules relating to Faculty Development Grants.

Workforce Development:

Economic Support, Chs. DWD 11 to 59

Rules relating to Learnfare.

Workforce Development:

Prevailing Wage Rates, Chs. DWD 290–294

Rules relating to prevailing wage rates for state and local public works projects.

### ***Scope Statements.***

Chiropractic Examining Board:

S. Chir 4.05 (2) (f), (g) & (h) – Relating to prohibited techniques, procedures, practice systems, analyses, methods or protocols that are unsafe, ineffective, or outside the scope of the practice of chiropractic.

Health & Family Services:

Ch. HFS 120 – Relating to the Office of Health Care Information.

Natural Resources:

Ch. NR 23 – Relating to authorization to draft a rule and conduct a public hearing to add a small area of the Bay of Green Bay to the definition of the Wisconsin–Michigan Boundary waters.

Natural Resources:

Ch. NR 47 – Relating to revisions dealing with forestry grants and state aid administration.

Natural Resources:

Chs. NR 108, 110, 113, 116, 200 & 206 – Relating to modifications to existing administrative codes addressing DNR's regulation of large-scale soil absorption systems.

Public Instruction:

PI Code – Relating to establishing application requirements and criteria for awarding grants under the peer review and mentoring program.

Transportation:

Ch. Trans 300 – Relating to school bus equipment standards.

Workforce Development:

Ch. DWD 43 – Relating to child support enforcement.

### ***Notices of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse.***

### ***Page 22.***

Commerce:

Chs. Comm/ILHR 50–64 – Relating to the adopted NFPA Standards in the Building Code.

Commerce:

Ch. Comm 69 – Relating to the exemption of elevator access in certain government-owned or operated buildings.

Regulation & Licensing:

RL Code – Relating to the issuance and use of administrative warnings.

Transportation:

Ch. Trans 157 – Relating to the titling of vehicles held by trusts.

Transportation:

Chs. Trans 325, 326 & 328 – Relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

**Notices of Hearings or of Proposed Rules.**

Agriculture, Trade &amp; Consumer Protection:

Commerce:

Commerce:

Financial Institutions:

Transportation:

Transportation:

**Pages 23 to 29.**

Hearings to consider revision to chs. ATCP 102 and 105, relating to sales below cost and s. 100.30, Stats., “The Unfair Sales Act”.

Building, etc. Chs. 50–64

Hearing to consider certain NFPA standards.

Barrier–Free Design. Ch. Comm 69

Hearing to consider creation of s. Comm 69.18 (2) (a) 2.c., relating to exemption of elevator accessing certain government–owned or operated buildings.

Securities

Hearing to consider revision to chs. DFI–Sec 1 to 9, relating to federal covered securities, adviser and investment adviser representatives.

Proposed revision to ch. Trans 157, relating to replacing references to “affidavit” with the term “application” and repealing the provision requiring that the signatures of trustees be notarized or witnessed by a Department employee.

Proposed revision to chs. Trans 325 to 238, relating to motor carrier safety regulations.

**Notices of Submission of Proposed Rules to the Presiding Officer of Each House of the Legislature, Under S. 227.19, Stats.**

Agriculture, Trade &amp; Consumer Protection:

Controlled Substances Board:

Corrections:

Public Defender:

Revenue:

Technical College System Board:

Transportation:

Workforce Development:

**Page 30.**

(CR 98–1) – Ch. ATCP 134

(CR 98–54) – S. CSB 2.24

(CR 98–70) – S. DOC 328.22 (5)

(CR 98–89) – S. PD 3.02 (1)

(CR 97–97) – Ch. Tax 19

(CR 98–59) – Ch. TCS 15

(CR 98–82) – Ch. Trans 132

(CR 98–88) – S. DWD 80.60

**Administrative Rules Filed with the Revisor of Statutes Bureau.**

Corrections:

Health &amp; Family Services:

Natural Resources:

Natural Resources:

Natural Resources:

Natural Resources:

Workforce Development:

**Page 31.**

(CR 97–79) – Ch. DOC 309

(CR 98–35) – Chs. HFS 172, 175, 178, 195–198

(CR 98–18) – Chs. NR 500, 502, 504, 507, 509, 512, 514, 520, 620 &amp; 680

(CR 98–21) – Ch. NR 487

(CR 98–22) – Chs. NR 10, 11, 15, 19 &amp; 27

(CR 98–24) – Chs. NR 10, 11 &amp; 15

(CR 98–32) – Chs. DWD 290 &amp; 292



---

## 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.*

---

### EMERGENCY RULES NOW IN EFFECT (3)

#### Agriculture, Trade & Consumer Protection

1. Rules adopted creating **Ch. ATPC 36**, relating to the sale and use of pesticides containing the active ingredient clomazone.

#### Finding of Emergency

(1) Pesticides containing the active ingredient clomazone are used at spring planting on soybeans, tobacco, peppers, pumpkins, peas, cabbage and cucumbers. Clomazone is an effective herbicide which inhibits the formation of chlorophyll in target weeds.

(2) Clomazone is volatile. Off-target movement from clomazone applications can affect non-target plants located hundreds of feet from the application site. Off-target movement from clomazone applications can damage non-target plants by inhibiting the formation of chlorophyll in those plants.

(3) Off-target movement has occurred in many clomazone applications to date. Non-target plants exposed to off-target movement from clomazone applications turn yellow or white. Damage from 1997 clomazone applications was apparently more severe and long lasting than in prior years. In 1997, the department received 49 complaints of off-target movement to non-target plants. These complaints comprised 20% of all pesticide complaints received by the department in 1997. Department field staff report that these complaints represented only a fraction of the total number of clomazone off-target movement incidents that occurred. Off-target movement incidents have caused widespread public anger and concern, and have impaired public confidence in pesticide applications.

(4) The department proposes to adopt rules restricting the use of clomazone herbicides. The proposed restrictions are reasonably designed to reduce or eliminate damage to non-target plants from clomazone applications. Without these restrictions, continued clomazone applications will likely result in continued incidents of off-target movement and nontarget damage during the 1998 planting and growing season.

(5) Clomazone herbicides are commonly applied during spring planting. The department must adopt restrictions by emergency rule in order for those restrictions to take effect prior to the 1998 spring planting and application period. The department finds that an emergency rule under s. 227.24, Stats., is imperatively required to preserve the public peace and welfare in 1998, pending completion of normal rulemaking procedures under ch. 227, Stats.

**Publication Date:** March 15, 1998  
**Effective Date:** March 15, 1998  
**Expiration Date:** August 12, 1998  
**Hearing Date:** April 28, 1998

2. Rules adopted creating **ss. ATPC 10.68 and 11.58**, relating to fish farms and imports of live fish and fish eggs.

#### Exemption From Finding of Emergency

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

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

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

#### Fish Farms

##### Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

##### Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.

- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a

renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.

- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

#### Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:

- \*Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.

- \*Allows public fishing, for a fee, for fish hatched at that fish farm.

- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:

- \*Allows public fishing at the fish farm for a fee.

- \*Sells or trades fish, from the fish farm, to any person.

- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:

- \*Sell minnows to any person

- \*Sell fish or fish eggs to a type A registrant.

- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:

- \*The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.

- \*The fish farm consists solely of ponds used to hold or grow fish.

- \*The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

#### Registration Fees

This emergency rule establishes the following registration fees:

· Type A registration	\$50.00
· Type B registration	\$25.00
· Type C registration	\$ 5.00
· Type D registration	\$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

#### Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.

- DNR informs DATCP that DNR has approved the facility.

#### Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.

- The date on which the operator received or delivered the fish or fish eggs.

- The location at which the operator received or delivered the fish or fish eggs.

- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

#### Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.

- Violating the terms of the registration

- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.

- Physically assaulting a DATCP employee performing his or her official duties.

- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.

- Paying registration fees with a worthless check.

### **Fish Imports**

#### Import Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.

- Selling them as bait, or for resale as bait.

- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

#### Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.

- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.

- The number of each fish farm registration certificate, if any, held by the importer.

- Each species of fish or fish eggs which the importer is authorized to import under the permit.

- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.

- The purpose for which the fish or fish eggs are being imported.

- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.

- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).
- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non–native fish DNR approval.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employee while the employee is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.
- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must

examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

**Publication Date:** March 16, 1998

**Effective Date:** March 16, 1998

**Expiration Date:** See section 9104 (3xr) 1997 Wis. Act 27

**Hearing Date:** April 27, 1998

3. Rules adopted amending s. ATCP 75.015 (7)(c), relating to the retail food establishment license exemption for restaurant permit holders.

**Finding of Emergency**

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores (grocery stores, convenience stores, bakeries, delicatessens, etc.) under s. 97.30, Stats., and ch. ATCP 75, Wis. Adm. Code.

The state of Wisconsin department of health and family services (DHFS) currently licenses (permits) and inspects restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196, Wis. Adm. Code.

Recently, many retail food stores have added restaurant operations, and vice versa.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate regulation by DATCP and DHFS. The operator may be subject to duplicate licensing, duplicate license fee payments, and duplicate inspection based on different (and sometimes inconsistent) rules.

The current duplication is unnecessary, confusing, and wasteful of public and private resources. This temporary emergency rule is needed to eliminate duplication, and protect public welfare, during the food store license year that begins on July 1, 1998. DATCP also plans to adopt a permanent rule according to normal rulemaking procedures under ch. 227, Stats.

This emergency rule applies to food store licenses issued by DATCP, but does not apply to food store licenses issued by agent cities and counties under s. 97.41, Stats. DATCP plans to adopt permanent rules for all food store licenses, whether issued by DATCP or by agent cities or counties, effective July 1, 1999.

**Publication Date:** July 1, 1998

**Effective Date:** July 1, 1998

**Expiration Date:** November 28, 1998

---

**EMERGENCY RULES NOW IN EFFECT****Commerce****(Petroleum Environmental Cleanup Fund,  
Ch. ILHR 47)**

Rules adopted revising **ch. ILHR 47**, relating to the petroleum environmental cleanup fund.

**Finding of Emergency and Rule Analysis**

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

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Claims made against the PECFA fund are currently averaging over \$15,000,000 per month. Approximately \$7,500,000 per month is allotted to the fund for the

payment of claims. The fund currently has a backlog of \$250,000,000 representing almost a 30-month backlog of payments to be made to claimants. Immediate cost saving measures must be implemented to mitigate this problem.

The rules make the following changes to manage and reduce remediation costs:

#### Administrative Elements.

These changes include updating the scope and coverage of the rules to match current statutes, clarifying decision making for remedial action approvals and providing new direction to owners, operators and consulting firms.

#### Progress Payments.

Progress payments are proposed to be reduced for some owners and sites. The criteria that trigger payments will now also be based on outcomes. The timing of payments from the fund is designed to benefit those that get sites successfully remediated and to create incentives for the use of the flexible closure tools and natural attenuation tools that were created by the Department of Natural Resources. Applications submitted before the effective date of the new rules would still be subject to the current rules.

#### Remedial Alternative Selection.

These provisions would create two different paths for funding for sites. Through the use of a group of environmental factors, the risk of a site will be determined. Active treatment systems that use mechanical, engineered or chemical approaches would not be approved for a site without one or more environmental factor present. Approved treatments for sites without environmental factors would be limited to non-active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. The five environmental factors are:

- A documented expansion of plume margin;
- A verified contaminant concentration in a private or public potable well that exceeds the preventive action limit established under ch. 160;
- Soil contamination within bedrock or within 1 meter of bedrock;
- Petroleum product, that is not in the dissolved phase, present with a thickness of .01 feet or more, and verified by more than one sampling event; and
- Documented contamination discharges to a surface water or wetland.

#### Reimbursement Provisions.

Several incentives are added to encourage owners and consultants to reduce costs whenever possible. Provisions are added for the bundling of services at multiple sites to achieve economy of scale and for using a public bidding process to reduce costs. In addition, owners are encouraged to conduct focused remediations that utilize all possible closure tools. To encourage this approach, if a site can be investigated and remedied to the point of closure for \$80,000 or less, the consultant can complete the action without remedial alternative approvals or the risk of the site being bundled or put out for bidding. The consultant is provided additional freedom under the structure of the fund in order to facilitate remediation success. Special priority processing of these cost-effective remediations would also be provided.

#### Review of Existing Sites.

These changes give the Department more ability to redirect actions and impose cost saving measures for sites that are already undergoing remedial actions. Reevaluations including, the setting of cost caps would be done on sites chosen by the Department.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state

newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** April 21, 1998  
**Effective Date:** April 21, 1998  
**Expiration Date:** September 18, 1998  
**Hearing Date:** May 29, 1998

## EMERGENCY RULES NOW IN EFFECT (2)

### Department of Commerce

(Building & Heating, etc., Chs. Comm/ILHR 50–64)

(Uniform Multifamily Dwellings, Ch. ILHR 66)

1. Rules adopted revising **chs. Comm 51, ILHR 57 and 66**, relating to commercial buildings and multifamily dwellings.

### Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.02 (15), 101.12, and 101.971 to 101.978, Stats., the Department protects public health, safety, and welfare by promulgating construction requirements for commercial and public buildings, including multifamily dwellings. Present requirements include methods for stopping fire in one area of a building from spreading to another area through service openings in walls, floors, and ceilings, such as penetrations for plumbing and electrical components. The methods that were specified have been shown to fail under fire testing conditions.

The proposed rule impacts all public buildings, which includes multifamily dwellings, and replaces the failed firestopping methods with techniques, materials, and methods that have been tested and nationally recognized. The rule essentially mandates use of tested and listed fire-stop systems for nearly all penetrations of every wall, floor, and ceiling that is required to provide area-separation protection consisting of either a fire-protective membrane or fire-resistive rated construction. The rule also clarifies some problematic, technical provisions that have resulted in confusion and unnecessary costs. Without the proposed rule revisions, firestopping methods that have been proven to be ineffective would still be allowed to be utilized, thereby putting public safety and health at risk.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** January 28, 1998  
**Effective Date:** January 28, 1998  
**Expiration Date:** June 27, 1998  
**Hearing Date:** March 11, 1998  
**Extension Through:** October 24, 1998

2. Rule adopted revising **ch. ILHR 57**, relating to an exemption of multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators from the accessibility laws.

### 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 peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter ILHR 57, subchapter II, Wis. Adm. Code, establishes design and construction requirements for accessibility in covered

multifamily housing as defined in s. 101.132 (1), Stats., formerly s. 106.04 (2r) (a) 4., Stats. The design and construction requirements in ch. ILHR 57, subchapter II, are based on the multifamily accessibility law in s. 101.132, Stats. The state law on accessibility in covered multifamily housing is substantially equivalent to the federal Fair Housing law of 1988. The proposed changes in ch. ILHR 57, subchapter II, are in response to 1997 Wis. Act 237 that exempts multilevel multifamily dwelling units without elevators from the multifamily accessibility law. This state law change does not conflict with the federal Fair Housing law since the federal Fair Housing law does not cover multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators.

The proposed rule eliminates only those sections requiring access to and accessible features within multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators. If the rules are not revised an inconsistency between the statutes and the administrative rules would result. This inconsistency may cause confusion in application and enforcement within the construction industry and may result in construction delays, which may be costly.

**Publication Date:** June 17, 1998  
**Effective Date:** June 17, 1998  
**Expiration Date:** November 14, 1998

## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. Comm 67**, relating to rental unit energy efficiency.

### Finding of Emergency

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

The facts constituting the emergency are as follows. Under s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

- Buildings of one or two rental units that were constructed after December 1, 1978.
- Buildings of three or more rental units that were constructed after April 15, 1976.
- Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

- Attics
- Furnaces and boilers
- Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building
- Sill boxes
- Heating and plumbing supply in unheated crawlspaces
- Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

**Publication Date:** June 30, 1998  
**Effective Date:** June 30, 1998  
**Expiration Date:** November 27, 1998  
**Hearing Date:** August 14, 1998

## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (Barrier-Free Design, Ch. Comm 69)

Rule adopted creating **s. Comm 69.18 (2) (a) 2. c.**, relating to vertical access to press box facilities.

### 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 peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter Comm 69, establishes design and construction requirements for accessibility in all buildings and facilities. Chapter Comm 69 is based on the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Titles II and III of the federal Americans with Disabilities Act. A number of public school districts are in the process of constructing press boxes at athletic fields. In accordance with both the federal and state rules, an elevator must be used to provide access to a press box. This requirement causes a serious financial hardship on the school districts, since the press boxes involved will be very small and will accommodate only a few people. The federal ADAAG standards are in the process of being revised to exempt state and local government buildings that are not open to the general public from providing elevator access to floor levels that are less than 500 square feet and accommodate less than 5 persons.

The Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on March 31, 1998 to receive public comments on the rules in chapter Comm 69 that requires vertical access to press box facilities. On May 6, 1998, the JCRAR held an executive session to consider this issue and has requested the agency to promulgate an emergency rule adopting the federal exemption for certain publicly controlled facilities, such as press boxes, from vertical access for people with disabilities. The emergency rule is to be promulgated no later than May 15, 1998.

The proposed rule eliminates the requirement that in government owned or operated buildings an elevator must be used to provide access to certain small areas with low capacity. The emergency rule benefits not only school districts, but other small state and local government buildings as well.

**Publication Date:** May 15, 1998  
**Effective Date:** May 15, 1998  
**Expiration Date:** October 12, 1998

## EMERGENCY RULES NOW IN EFFECT

### Department of Corrections

Rule adopted amending **s. DOC 328.22 (5)**, relating to custody and detention of felony probationers and parolees.

### Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the

public safety. A statement of the facts constituting the emergency is: the Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff have worked cooperatively to alleviate the crowded conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court rule in *Sullivan v. Kliesmet*, that the Sheriff of Milwaukee may refuse to accept Department of Corrections detainees when severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

Under the authority vested in the Department of Corrections by ss. 227.11 (2), and 973.10, Stats., the Department of Corrections hereby amends s. DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

**Publication Date:** March 23, 1998  
**Effective Date:** March 23, 1998  
**Expiration Date:** August 20, 1998  
**Hearing Date:** June 26, 1998  
**Extension Through:** October 18, 1998

---

## EMERGENCY RULES NOW IN EFFECT

### *Financial Institutions* (Division of Securities)

Rules adopted revising **chs. DFI–Sec 1 to 9**, relating to federal covered securities, federal covered advisers and investment adviser representatives.

### Finding of Emergency

The Department of Financial Institutions, Division of Securities, 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.

Recently enacted legislation in 1997 Wis. Act 316 that is scheduled for publication on July 8, 1998 to become effective the following day on July 9, 1998 made a number of changes to the Wisconsin Uniform Securities Law, principally to conform to changes required under federal legislation in the National Securities Markets Improvement Act of 1996 (“NSMIA”).

NSMIA preempted state securities law regulation in two principal areas: (1) prohibiting state securities registration and exemption requirements from being applicable to categories of so-called “federal covered securities,” but permitting states to establish certain notice filing requirements (including fees) for such “federal covered securities;” and (2) prohibiting state securities licensing requirements from being applicable to certain investment advisers meeting criteria to qualify as a “federal covered adviser,” but permitting states to establish certain notice filing requirements (including fees) for those federal covered advisers that have a place of business in Wisconsin and more than 5 Wisconsin clients.

The legislation in 1997 Wis. Act 316 established notice filing requirements for “federal covered securities” and “federal covered advisers,” and in addition, established statutory requirements for the licensing of “investment adviser representatives” (who previously were subject only to a qualification” process in Wisconsin). Comprehensive administrative rules are needed immediately to

implement the statutory changes contained in 1997 Wisconsin Act 316, particularly relating to the filing requirements for federal covered securities, federal covered advisers and investment adviser representatives. In order to have such rules in place contemporaneously with the effectiveness of 1997 Wis. Act 316, these emergency rules are adopted on an interim basis until identical permanent rules can be promulgated using the standard rule-making procedures.

**Publication Date:** July 7, 1998  
**Effective Date:** July 9, 1998  
**Expiration Date:** December 6, 1998  
**Hearing Date:** September 24, 1998  
 [See Notice this Register]

---

## EMERGENCY RULES NOW IN EFFECT (4)

### *Health and Family Services* (Health, Chs. HSS/HFS 110—)

1. Rules adopted revising **s. HFS 196.03 (22)**, relating to an exemption from regulation as a restaurant.

### Finding of Emergency

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

The current Budget Act, 1997 Wisconsin Act 27, effective October 14, 1997, created s. 254.61 (5) (g), Stats., to exempt a concession stand at a “locally sponsored sporting event” from being regulated under ch. HFS 196 as a restaurant. Following enactment of the State Budget, the Department received several inquiries from its own region-based inspectors and local health departments serving as the Department’s agents for enforcement of the Department’s environmental sanitation rules, including rules for restaurants, about the meaning of “locally sponsored sporting event.” What did the term cover? Did it cover food stands at facilities of locally-owned sports franchises? Were these now to be exempt from regulation under the restaurant rules?

This rulemaking order adds the new exemption to the Department’s rules for restaurants and, in this connection, defines both “locally sponsored sporting event” and “concession stand.” The order makes clear that the exemption refers only to concession stands at sporting events for youth, that is, for persons under 18 years of age. That interpretation is supported by the statutory phrase, “such as a little league game,” that follows the term, “locally sponsored sporting event,” in s. 254.61 (5) (g), Stats. The order further narrows the applicability of the exemption by building into the definitions the Department’s understanding of who organizes or sponsors an exempt sporting event and on whose behalf a concession stand at the event is operated.

Although the Department’s understanding of what “locally sponsored sporting event” should be taken to mean has been communicated to its field-based inspectors and agent local health departments, this is no more than an interpretive guideline, lacking the force of law, until the Department has set out that understanding in its rules for restaurants. Because the process for making the permanent rule change will take several months, the Department is publishing the rule change now by emergency order in the interests of protecting the public’s health. The emergency rule order will ensure that, pending promulgation of the permanent rule change, there will be uniform statewide enforcement of the statute change that will prevent any local inspector from exempting from

regulation food stands at locally sponsored sporting events for adults.

**Publication Date:** March 14, 1998  
**Effective Date:** March 14, 1998  
**Expiration Date:** August 11, 1998  
**Hearing Date:** May 11, 1998  
**Extension Through:** October 9, 1998

- Rules were adopted revising **ch. HSS 138**, relating to subsidized health insurance premiums for certain persons with HIV.

## Finding of Emergency

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

Sections 252.16 and 252.17, Stats., direct the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, must take an unpaid leave from their jobs or are unable to continue working or must reduce their hours of work. The Department has been operating this program since November 1990 under ch. HSS 138 rules.

This order revises ch. HSS 138 to incorporate changes made in the program by the current Budget Act, 1997 Wisconsin Act 27. Act 27 amended s. 252.16, Stats., to change the program in the following ways for individuals who are unable to continue working or who must reduce their hours of work:

The Department is directed to pay the premium costs for any health insurance coverage for an eligible individual, whether group coverage or an individual policy, and not only, as formerly, for continuation coverage under a group health plan if available to the individual.

Program participation is expanded from individuals in families with incomes up to 200% of the federal poverty line to individuals in families with incomes up to 300% of the poverty line, but individuals in families with incomes between 201% and 300% of the federal poverty line are expected to contribute toward payment of the insurance premium.

The Department is directed to pay an individual's premiums for as long as the individual remains eligible for the program and not only, as formerly, for a maximum of 29 months.

The rule changes add rule definitions for dependent, individual health policy, Medicare, subsidy under s. 252.16, Stats., and subsidy under s. 252.17, Stats., and modify rule definitions for employee and group health plan; raise the maximum family income for eligibility for the program to 300% of the federal poverty line; permit an individual to be eligible if covered or eligible for coverage under either a group health plan or an individual health policy; delete the provision that prohibits Medicare-eligible individuals from participating in the program since a Medicare supplement policy is now considered a type of individual health policy; require eligible individuals whose family income exceeds 200% of the federal poverty line to contribute 3% of the annual policy premium toward payment of the premium; and delete the time limit of 29 months after which the Department's payments are to end.

All of the rule changes, except the changes to the definitions, apply only in the case of subsidies under s. 252.16, Stats., that is, for individuals who because of a medical condition related to HIV infection are unable to continue working or must reduce their hours of work.

The rule changes are being published by emergency order so that the program changes made by Act 27 can be implemented quickly for the benefit of persons with HIV infection who are newly eligible for the subsidy or for continuation of the subsidy. Act 27 was effective on October 14, 1997. Implementation of the statutory changes, which is expected to increase the caseload from 50 to about

300, depends upon rule changes. Following determination of what changes were needed in the rules, a statement of scope of proposed rules was published on November 15, 1997. After that the rulemaking order was drafted and decisions were made about language and the expected contribution of some eligible individuals toward payment of the annual premium. The proposed permanent rule changes were sent to the Legislative Council's Rules Clearinghouse for review on March 3, 1998, but because of the length of the permanent rulemaking process will not take effect until August 1, 1998 at the earliest. Earlier implementation of the statutory changes will allow some prospective program clients to maintain health insurance policies they otherwise could not afford. Not having the coverage could result in deterioration of their health.

**Publication Date:** March 28, 1998  
**Effective Date:** March 28, 1998  
**Expiration Date:** August 25, 1998  
**Hearing Dates:** April 22 & 23, 1998  
**Extension Through:** August 31, 1998

- Rules adopted revising **chs. HFS 172, 175, 178, 195, 196, 197 & 198**, relating to permit and related fees for regulated entities.

## Finding of Emergency

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

The Department and agent local health departments regulate all campgrounds, camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations in the state under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with the Department's health, sanitation and safety standards set out in administrative rules. The Department's rules for these facilities are found in chs. HFS 172, 175, 178, 195, 196, 197 and 198 of the Wisconsin Administrative Code. None of the facilities may operate without having a permit issued by the Department or an agent local health department. A permit is evidence that the facility complies with the Department's rules. Under the Department's rules, facilities are charged permit and related fees. Fee revenue supports the regulatory program.

This rulemaking order amends the Department's rules for operation of these facilities effective July 1, 1998 to increase, for Department-regulated facilities only, permit fees by 18%, the penalty for late payment of a permit fee from \$50 to \$75 and the pre-inspection fee for a new facility (applies only to hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and vending machine commissaries), and to impose on Department-regulated facilities only a one-time technology improvement surcharge of \$15 to \$25 payable on July 1, 1998.

These rule changes are being promulgated by emergency order to protect public health and safety. Current revenues from permit fees are not sufficient to fully support the Department's existing regulatory staff and to finance necessary upgrading of computer systems. The fee increases and the one-time technology improvement surcharge will enable the Department to maintain the regulatory program at its current levels for frequency of routine inspections, responding promptly to complaints from the public and undertaking necessary enforcement action, and to modernize its permit issuance and information system.

This rulemaking order also amends the definition of "incidental food service" in ch. HFS 196, the Department's rules for restaurants. The significance of that definition is that s. HFS 196.04 (1) (b) exempts an incidental food service from the requirement to have a restaurant license. An incidental food service is currently defined as meals offered to the general public by a retail food establishment, such as a grocery store, a convenience store or a bakery, licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP), which are not a primary activity of the retail food establishment, comprise no more than 25% of the gross annual food

sales of the business and do not involve full service food preparation. This order modifies the definition, mainly to increase the percentage of the gross annual food sales of a retail food establishment that may be derived from the sale of meals from at most 25% to less than 50%. The effect of the change is to exclude more food service operations in retail food establishments from being regulated separately as restaurants, as one measure being taken jointly by the Department and DATCP to eliminate “double licensing” that is, regulation (inspections, approvals and fees, enforcement) of an establishment by both the Department and DATCP for the same purpose of protecting the public’s health.

The modification of the definition of “incidental food service” will be effective for permits issued by the Department starting with the permit period beginning July 1, 1998, but as a mandated change will be delayed for one year, by amendment of the agent agreements, for permits issued by agent local health departments.

This rule change is being promulgated by emergency order for preservation of the public welfare. Retail food establishments licensed by DATCP that serve meals on the premises to the public will be required to have only a license issued by DATCP and not also a permit issued by the Department. It has become possible at this time, at the beginning of a new restaurant permit period and regulatory cycle and in view of changes occurring lately in the retail food industry, to eliminate duplicative and at times conflicting regulation that does not serve a public purpose, and therefore it should be eliminated promptly.

**Publication Date:** June 24, 1998  
**Effective Date:** July 1, 1998  
**Expiration Date:** November 28, 1998  
**Hearing Date:** August 5, 1998

#### 4. Rules adopted revising **ch. HFS 119**, relating to the Health Insurance Risk–Sharing Plan.

### Finding of Emergency

The Legislature in s. 9123 (4) of 1997 Wis. Act 27 permitted the Department to promulgate any rules that the Department is authorized or required to promulgate under ch. 149, Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department was specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

### Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state.

HIRSP provides a major medical type of coverage for persons not eligible for Medicare (Plan 1) and a Medicare supplemental type of coverage for persons eligible for Medicare (Plan 2). Plan 1 has a \$1,000 deductible. Plan 2 has a \$500 deductible. On December 31, 1997 there were 7,318 HIRSP policies in effect, 83 % of them Plan 1 policies and 17% Plan 2 policies. HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out-of-pocket maximum of \$2,000 (which includes the \$1,000 deductible) per individual and \$4,000 per family for major medical and \$500 per individual for Medicare supplement. There is a lifetime limit of \$1,000,000 per covered individual that HIRSP will pay for all illnesses.

There is provision under HIRSP for graduated premiums and reduced deductibles. Plan participants may be eligible for graduated premiums and reduced deductibles if their household income for the prior calendar year, based on standards for computation of the Wisconsin Homestead Credit, was less than \$20,000.

The current Budget Act, 1997 Wis. Act 27, transferred responsibility for the Health Insurance Risk–Sharing Plan (HIRSP) from the Office of Commissioner of Insurance to the Department of

Health and Family Services effective January 1, 1998. The transfer included the administrative rules that the Office of Commissioner of Insurance had promulgated for the administration of HIRSP. These were numbered ch. Ins 18, Wis. Adm. Code. The Department arranged for the rules to be renumbered ch. HFS 119, Wis. Adm. Code, effective April 1, 1998, and, at the same time, because the program statutes had been renumbered by Act 27, for statutory references in ch. HFS 119 to be changed from subch. II of ch. 619, Stats., to ch. 149, Stats.

Act 27 made several other changes in the operation of the Health Insurance RiskSharing Plan. The Department through this rulemaking order is amending ch. HFS 119 by repeal and re-creation mainly to make the related changes to the rules, but also to update annual premiums for HIRSP participants in accordance with authority set out in s. 149.143 (3)(a), Stats., under which the Department may increase premium rates during a plan year for the remainder of the plan year.

Major changes made in the rules to reflect changes made by Act 27 in the HIRSP program statute are the following:

- Transfer of plan administration responsibility from an “administering carrier” selected by the Board of Governors through a competitive negotiation process to Electronic Data Systems (EDS), the Department’s fiscal agent for the Medical Assistance Program, called in the revised statute the “plan administrator”;

- Deletion of a physician certification requirement in connection with applications of some persons for coverage;

- Addition of alternatives to when eligibility may begin, namely, 60 days after a complete application is received, if requested by the applicant, or on the date of termination of Medical Assistance coverage;

- Addition of a reference to how creditable coverage is aggregated, in relation to eligibility determination;

- Modification of the respective roles of the state agency, now the Department, and the Board of Governors;

- Clarification that the alternative plan for Medicare recipients reduces the benefits payable by the amounts paid by Medicare;

- Modification of cost containment provisions to add that for coverage services must be medically necessary, appropriate and cost-effective as determined by the plan administrator, and that HIRSP is permitted to use common and current methods employed by managed care programs and the Medical Assistance program to contain costs, such as prior authorization;

- Continuation of an alternative plan of health insurance that has a \$2500 deductible (this was added by emergency order effective January 1, 1998);

- Addition of timelines to the grievance procedure for plan applicants and participants, and a provision to permit the Department Secretary to change a decision of the Board’s Grievance Committee if in the best interests of the State; and

- Establishment of total insurer assessments and the total provider payment rate for the period July 1, 1998 to December 31, 1998.

**Publication Date:** July 1, 1998  
**Effective Date:** July 1, 1998  
**Expiration Date:** November 28, 1998

---

## EMERGENCY RULES NOW IN EFFECT (2)

### Insurance

1. Rules were adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998, to limit fund fee refund requests to the current and immediate prior year only, and to establish standards for the application of the aggregate underlying liability limits upon the termination of a claims-made policy.

## Finding of Emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 98–48, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1998.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 1, 1998. Because the provisions of this rule first apply on July 1, 1998, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 8, 1998.

**Publication Date:** May 28, 1998  
**Effective Date:** June 1, 1998  
**Expiration Date:** October 29, 1998

2. A rule was adopted amending **s. Ins 17.01 (3) (intro.), (a) and (b)**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998.

## Finding of Emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This emergency rule relating to mediation fees corresponds to the emergency rule relating to fund fees published in the Wisconsin State Journal on May 28, 1998. As the permanent rulemaking process takes a minimum of nine months to complete, and the fund's actuaries' recommendations are made in February each year, the commissioner was unable to promulgate the permanent rule, clearinghouse rule no. 98–048, in time for the patients compensation fund (fund) to notify and bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1998.

This emergency rule is necessary to establish mediation fees applicable to the fiscal year 1998–99 in a timely manner. A germane amendment to the permanent rule was made on June 12, 1998 to include the reduced mediation fees. The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 1, 1998. Because the provisions of this rule first apply on July 1, 1998, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 8, 1998.

**Publication Date:** June 19, 1998  
**Effective Date:** June 19, 1998  
**Expiration Date:** November 16, 1998

---

## EMERGENCY RULES NOW IN EFFECT (5)

### Natural Resources

(Fish, Game, etc., Chs. NR 1—)

1. A rule was adopted revising **s. NR 45.10 (3) and (4)**, relating to reservations on state parks, forests and other

public lands and waters under the Department's jurisdiction.

## Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.
2. Establishes time frame for making reservations.

**Publication Date:** December 15, 1997  
**Effective Date:** April 1, 1998  
**Expiration Date:** April 1, 1999  
**Hearing Date:** January 12, 1998

2. Rule was adopted amending **s. NR 20.037 (2)**, relating to readjustment of daily bag limits for walleye in response to tribal harvest.

## Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rule is necessary for the immediate preservation of the public health, safety or welfare. A statement of facts constituting the emergency is:

The Chippewa bands set harvest goals for walleye on several waters each year prior to the spring spearing season. The Department then reduces daily bag limits on individual waters for anglers in response to these harvest goals. Frequently, the Chippewa harvest goals are not met on many waters and notification that harvesting is complete is not given to the Department. The unused tribal harvest results in unnecessarily low walleye bag limits for anglers. On waters where Chippewa harvest goals are established but not met, the resulting reduced bag limits are not needed to protect walleye populations. Walleye bag limits lower than 3 per day result in reduced fishing opportunities and have led to tensions between anglers and the Chippewa tribes. The reduced daily bag limits also result in hardships on businesses dependent upon tourism and sportfishing in the ceded territory. The foregoing rule will allow the Department of Natural Resources to increase the walleye daily bag limits for anglers on waters where the Chippewa harvest goals are not met.

**Publication Date:** May 30, 1998  
**Effective Date:** May 30, 1998  
**Expiration Date:** October 27, 1998  
**Hearing Date:** July 16, 1998

3. Rules adopted revising **chs. NR 10 and 11**, relating to deer hunting in Deer Management Unit 67A.

## Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

**Publication Date:** June 24, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999

4. Rules were adopted revising **ch. NR 19**, relating to wildlife damage abatement and claims program.

## Exemption From Finding of Emergency

Pursuant to s. 9137(11s)(b), 1997, Wis. Act 27 the department is not required to make a finding of emergency for this rule promulgated under s. 227.24, Stats.

**Publication Date:** July 1, 1998  
**Effective Date:** July 1, 1998  
**Expiration Date:** November 28, 1998

5. Rules adopted revising s. **NR 20.03 (1)(k)**, relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

## Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

**Publication Date:** June 27, 1998  
**Effective Date:** June 27, 1998  
**Expiration Date:** November 24, 1998  
**Hearing Date:** July 24, 1998

---

## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

**(Environmental Protection–Water Regulation,  
Chs. NR 300––)**

Rules adopted revising **ch. NR 300**, relating to fees for waterway and wetland permit decisions.

## Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Land development and public infrastructure projects that affect water resources are being delayed as a result of extreme workload and high staff vacancy rate in southeastern Wisconsin and elsewhere. Fee revenue must be generated immediately in order to support positions authorized in the recent budget to address the delays.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on March 25, 1998.

The rules contained herein shall take effect on April 1, 1998, following publication in the official state newspaper pursuant to authority granted by s. 227.24(1)(c), Stats.

**Publication Date:** April 1, 1998  
**Effective Date:** April 1, 1998  
**Expiration Date:** August 29, 1998  
**Hearing Dates:** May 27 and 28, 1998  
**Extension Through:** October 27, 1998

---

## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

**(Environmental Protection–Air Pollution Control,  
Chs. NR 400–)**

Rules adopted revising s. **NR 485.04**, relating to emission limitations for motor vehicles.

## Finding of Emergency

The Department of Natural Resources finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Many 1980 to 1986 model year vehicles cannot reasonably maintain a level of emissions that would comply with the emission limitations scheduled to go into effect on December 1, 1997, under the current rule. In addition, the number of 1990 and older model year vehicles that would need to be repaired in order to comply with these limitations may exceed the number of vehicles the repair industry could effectively repair. Finally, after December 1, 1997, no fast-pass emission limitations will apply to some 1994 and newer model year vehicles. (Fast-pass limitations enable very clean vehicles to pass the I/M program's emission test in less time than the typical test.) Preservation of the public welfare necessitates the adoption of an emergency rule since: (1) the repairs that would need to be done on some 1990 and older model year vehicles attempting to comply with the emission limitations scheduled to go into effect on December 1, 1997, are likely to be costly and ineffective in keeping emissions low, and (2) the absence of fast-pass emission limitations for some newer vehicles would unnecessarily increase the time motorists would need to wait in line at the I/M test stations prior to having their vehicles tested.

**Publication Date:** December 29, 1997  
**Effective Date:** January 1, 1998  
**Expiration Date:** May 31, 1998  
**Hearing Date:** January 14, 1998  
**Extension Through:** July 29, 1998

---

## EMERGENCY RULES NOW IN EFFECT (2)

### *Public Service Commission*

1. Rules adopted amending **ss. PSC 160.05, 160.11 (6) and 160.17**, relating to the provision of universal telecommunications service and administration of the universal service fund and creating **ch. PSC 161**, establishing the Education Telecommunication Access Program.

## ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION OF WISCONSIN

The Technology for Educational Achievement in Wisconsin (TEACH) initiative culminated in comprehensive legislation in

1997 Wis. Act 27 (Act 27). Newly enacted s. 196.2 18(4r)(b), Stats., mandates that the Public Service Commission (Commission), in consultation with the Department of Administration (Department) and Technology for Educational Achievement (TEACH) in Wisconsin Board (Board), promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program. Section 9141 of Act 27 mandates that the Commission promulgate emergency rules establishing the Educational Telecommunications Access Program, to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links, for the period before the effective date of permanent rules promulgated under s. 196.218(4r)(b), Stats., but not to exceed the period authorized under s. 227.24(1)(c) and (2), Stats.

These emergency rules establish the Educational Telecommunications Access Program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards at low monthly prices. These rules implement the TEACH legislation by:

- ◆ Defining the entities which may be eligible under this program, i.e., “private college,” “private school,” “public library board,” “school district” and “technical college district.”

- ◆ Defining a “data line” as a data circuit which provides direct access to the internet.

- ◆ Defining a “video link” as a 2–way interactive video circuit and associated services.

- ◆ Establishing technical specifications for a data line, including that such a line shall terminate at an internet service provider, unless the Board determines that an alternative is acceptable.

- ◆ Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.

- ◆ Including privacy protections as required by s. 196.218 (4r)(c)5., Stats.

- ◆ Providing an application procedure which (1) allows a school district that operates more than one high school to apply for access to a data line and video link or access to more than one data line or video link, but not to more than the number of high schools in that district, (2) prohibits a school district from applying if it has received an annual grant from the Board in the current state fiscal year under an existing contract with the Department, (3) prohibits a technical college district from applying before April 1, 1998, and (4) prohibits a school district, private school, technical college district, private college or public library board from applying if it is receiving partial support funding through rate discounts under s. PSC 160.11.

- ◆ Requiring that the Board determine eligibility by applying criteria, including availability of funds and impact of the requested access on available funds, reasonableness of the requested access, readiness of the applicant to utilize the requested access and proposed uses of the requested access.

- ◆ Requiring the Board to determine by April 1, 1998, whether there are sufficient monies in the appropriation to include technical college districts in the program on or after that date.

- ◆ Establishing criteria for the Board to consider in prioritizing applications if monies in the universal service fund are insufficient to approve all pending applications.

- ◆ Providing for “alternative access,” defined as a service architecture or technology not available through the Department at the time of the application.

- ◆ Requiring monthly payments from the applicant to the Department for each data line or video link, not to exceed \$250 per month, except that the payment may not exceed \$100 per month for each line or link which relies upon a transport medium operating at a speed of 1.544 megabits per second.

- ◆ Providing that assessments for this program shall be made by the Commission under ch. PSC 160.

## Exemption From Finding of Emergency

In Section 9141 of 1997 Wis. Act 27, the legislature specifically exempted the Commission from the finding of emergency required by ss. 227.24, Stats.

**Publication Date:** February 27, 1998

**Effective Date:** February 27, 1998

**Expiration Date:** July 26, 1998

**Hearing Date:** May 5, 1998

**Extension Through:** September 23, 1998

2. Rules were adopted amending s. PSC 4.30 (4) (a) and (5) (a) and (b), relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

## Finding of Emergency

The Commission’s review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission’s review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

**Publication Date:** July 17, 1998

**Effective Date:** July 17, 1998

**Expiration Date:** December 14, 1998

---

## EMERGENCY RULES NOW IN EFFECT

### Technical College System Board

Rules adopted creating **ch. TCS 15**, relating to Faculty Development Grants.

## Finding of Emergency

The Wisconsin Technical College System Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

1997 Wis. Act 27 (the 1997–99 biennial budget bill) took effect on October 14, 1997, which was three and a half months into fiscal year 1997–98. That act created ss. 20.292(1)(eg) and 38.33, Stats. An annual appropriation of \$832,000 in each of the state fiscal years of the 1997–99 biennium was established. These funds are to be awarded by the technical college system board as grants to technical college district boards to establish faculty development programs.

The Act requires the technical college system board to promulgate rules establishing specific criteria for awarding these grants. The technical college system board has just begun the permanent rule making process for establishing administrative rules for the faculty development grants program. However, there is insufficient time to have the permanent rules in place before the local technical college districts must submit their proposals for faculty development grants under s. 38.33, Stats. It is imperative that the program be implemented and the funds be distributed before the end of the fiscal year or else the appropriated funds will lapse to the general fund. The loss of funds, including local matching funds, will

have a detrimental effect on the ability of district boards to establish faculty development programs.

**Publication Date:** April 1, 1998  
**Effective Date:** April 1, 1998  
**Expiration Date:** August 29, 1998  
**Hearing Date:** June 30, 1998

---

## EMERGENCY RULES NOW IN EFFECT

### *Workforce Development*

#### **(Economic Support, Chs. DWD 11 to 59)**

Rules were adopted revising **s. DWD 12.25**, relating to amendments to the learnfare program.

### **Exemption From Finding of Emergency**

The Department of Workforce Development promulgates a rule under the “emergency rule” procedure of s. 227.24, Stats., as authorized by section 9126 (5qh) of 1997 Wis. Act 27, which provides:

“Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate rules required under section 49.26 of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 49.26 of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the department of workforce development need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this subsection.”

### **Analysis**

Statutory authority for rule: s. 49.26 (1) (gm) 2 and (h) 1

Statute interpreted by the rule: s. 49.26

This rule implements changes to the learnfare program made by 1997 Wis. Act 27 by amending the existing rules on the learnfare program, s. DWD 12.25, Wis. Adm. Code, as follows:

Application of the school attendance requirement is changed from children aged 6 to 19 to children aged 6 to 17.

A child will not meet the learnfare attendance requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.

Participation in case management is required for a child who does not meet the attendance requirements or who is a minor parent, a dropout, a returning dropout, or a habitual truant. If a child fails to meet the attendance requirements, or if the child and the child’s parent fail to attend or reschedule a case management appointment or activity after two written advance notices have been given by the W–2 agency, the W–2 agency is required to impose a financial penalty unless an exemption reason or a good cause reason is verified.

The exemption reasons are the same criteria that have in the past been treated as good cause under learnfare. In addition, good cause for failing to participate in learnfare case management includes any of the following:

- Child care is needed and not available.
- Transportation to and from child care is needed and not available on either a public or private basis.
- There is a court–ordered appearance or temporary incarceration.

- Observance of a religious holiday.
- Death of a relative.
- Family emergency.
- Illness, injury or incapacity of the child or a family member living with the child.
- Medical or dental appointment for the minor parent or the minor parent’s child.
- Breakdown in transportation.
- A review or fair hearing decision identifies good cause circumstances.
- Other circumstances beyond the control of the child or the child’s parent, as determined by the W–2 agency.

The financial penalty will be imposed as a reduction of the benefit amount paid to a W–2 participant who is in a community service job (CSJ) or transitional placement and will be imposed as a liability against a W–2 participant who is in a trial job. The amount of the penalty will be \$50 per month per child, not to exceed \$150 per W–2 group per month. The financial penalty will be imposed each month until the child meets the school attendance or case management requirements or until exemption or good cause reason is verified.

**Publication Date:** January 2, 1998  
**Effective Date:** January 2, 1998  
**Expiration Date:** June 1, 1998  
**Hearing Date:** March 16, 1998  
**Extension Through:** September 28, 1998

---

## EMERGENCY RULES NOW IN EFFECT

### *Workforce Development*

#### **(Wage Rates, chs. DWD 290–294)**

Rule adopted revising **ch. DWD 290**, relating to prevailing wage rates for state or local public works projects.

### **Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

As explained in more detail in the analysis below, the Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between April 1996 and November 1997 requires that the threshold limits for prevailing wage rate determinations be raised from \$30,000 to \$32,000 for single–trade projects and from \$150,000 to \$160,000 for multi–trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/98, a single–trade project costing more than \$30,000 but less than \$32,000, or a multi–trade project costing more than \$150,000 but less than \$160,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added cost and difficulty of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is

proceeding with this emergency rule to avoid imposing this potential added cost on local governments and state agencies.

**Publication Date:** February 13, 1998

**Effective Date:** February 13, 1998

**Expiration Date:** July 12, 1998

**Hearing Date:** March 27, 1998

**Extension Through:** September 9, 1998

---

## STATEMENTS OF SCOPE OF PROPOSED RULES

---

### ***Chiropractic Examining Board***

#### **Subject:**

S. Chir 4.05 (2) (f), (g) and (h) – Relating to prohibited techniques, procedures, practice systems, analyses, methods or protocols that are unsafe, ineffective, or outside the scope of the practice of chiropractic.

#### **Description of policy issues:**

##### *Objective of the rule:*

The objective of the intended rulemaking is to repeal, amend and recreate s. Chir 4.05 (2) (f), (g) and (h), relating to prohibited techniques, procedures, practice systems, analyses, methods or protocols that are unsafe, or ineffective, or outside the scope of the practice of chiropractic.

##### *Policy analysis:*

Section Chir 4.05 (2) (f), (g) and (h), prohibited as unsafe or ineffective any practice system, analyses, method or protocol, including “Network Chiropractic,” which does not include the competent assessment, evaluation or diagnosis of the condition to be treated before beginning treatment of the patient, or which relies upon diagnostic method(s) that are not generally recognized or accepted within the profession or which do not have scientific validity, or which is represented as a means of attaining spiritual growth, spiritual comfort or spiritual well-being.

In a ruling on a petition for declaratory judgment, the Circuit Court for Dane County determined that use of the term “Network Chiropractic” in the rules was unconstitutionally vague. The Court considered the remaining language of the rules acceptable and within the statutory authority of the Board. In this rulemaking, the Board intends to repeal, amend or recreate s. Chir 4.05 (2) (f), (g) and (h) to eliminate the vague terminology and clarify as appropriate the conduct and practices intended to be addressed by the rules.

#### **Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 455.08, Stats.

#### **Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:**

100 hours.

### ***Health & Family Services*** ***(Health, Chs. HFS/HSS 110—)***

#### **Subject:**

Ch. HFS 120 – Relating to the Office of Health Care Information.

#### **Description of policy issues:**

##### *Description of objective(s):*

To implement changes made by 1997 Wis. Act 231 in ch. 153, Stats., which relates to the collection, analysis and dissemination of health care information by the Department’s Office of Health Care Information.

#### *Description of policies — relevant existing policies, proposed new policies and policy alternatives considered:*

The Office of Health Care Information (OHCI) was established in the Department of Health and Social Services in July 1987, following the enactment of 1987 Wis. Act 399 which created ch. 153, Stats., to provide for an office to collect, analyze and disseminate health care information, at first mainly hospital-related information, while maintaining the confidentiality of personal information about patients. The 1993–1995 Budget Act transferred OHCI to the Office of Commissioner of Insurance effective October 1, 1993. The current Budget Act transferred it back to what is now called the Department of Health and Family Services in October 1997. The Department then arranged for the rules for operation of OHCI to be renumbered, effective March 1, 1998, from ch. Ins 120 to ch. HFS 120.

The main change that will be made in ch. HFS 120 to implement the statutory changes included in 1997 Wis. Act 231 will be for the Department to collect claims data and other health care information from health care providers besides hospitals and freestanding ambulatory surgery centers, including from physicians in their offices and clinics. The rules will specify the other providers from whom data will be collected, the data elements to be collected and the manner in which data will be disseminated, and will extend to these other providers instructions for data verification and review and comment that apply now only to hospitals and freestanding ambulatory service centers. The rules will also provide for assessing the other providers from whom data are collected for the costs of collection, database development and maintenance, generation of data files and standard reports, orientation and training and the expenses of the Board.

Other changes that will be made in ch. HFS 120 to implement the 1997 Wis. Act 231 changes to ch. 153, Stats., are the following:

○ A waiver process and standards will be added by which a health care provider could, upon request, obtain an exemption from data submission requirements that are burdensome.

○ A manner of assessing health care plans which voluntarily supply health care data to OHCI will be set out in the rules. This will cover the costs of collection, database development and maintenance and generation of public data files and standard reports for the health care plans.

○ Rules will be added to govern the release of all health care provider-specific and employer-specific information collected. The current rules have only a procedure for releasing physician-specific data.

○ Methods will be specified for adjusting health care information for case mix and severity.

○ Several provisions will be repealed, including:

- Definitions of uniform patient billing form, charge element and uncompensated health care services;
- The requirement that hospitals and free standing ambulatory surgery centers use uniform patient billing forms;
- The requirement that hospitals submit financial data;
- Board responsibility to determine whether to contract for provision of data processing services for OHCI;
- The requirement that a hospital hold a public hearing before raising its rates;
- The production by OHCI of quarterly and annual reports for the public;
- Certain procedures for data review and verification; and

- Assessment language specific to free standing ambulatory surgery centers.

**Statutory authority:**

Section 153.75, Stats.

**Estimates of staff time and other resources needed to develop the rules:**

Significant staff time will be necessary to draft the administrative rules, staff technical advisory committees and incorporate committee suggestions, and consider the views of OHCI's current constituents. In addition, the Board on Health Care Information has approval authority for rules promulgated by the Department to implement ch. 153, Stats. Staff time will be necessary to prepare materials for, schedule and hold Board meetings. Estimates of OHCI staff time are as follows:

<u>Position</u>	<u>Hours</u>
Director	56
Staff Director	56
Prog & Plan Analyst	160
Act 231 Project Mgr	120
Act 231 Rules Contractor	<u>500</u>
	<b>892 total hours</b>

**Natural Resources**

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

**Subject:**

Ch. NR 23 – Relating to authorization to draft a rule and conduct a public hearing to add a small area of the Bay of Green Bay to the definition of the Wisconsin–Michigan Boundary waters.

**Description of policy issues:**

*Description of the policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

The proposed rule change will add a small area of the Bay of Green Bay to the definition of the Wisconsin–Michigan boundary waters regulated by ch. NR 23, Wis. Adm. Code. This will be the area of Green Bay located at the mouth of the Menominee River between the breakwaters at Marinette/Menominee. For several years, DNR Law Enforcement staff have advised the public that this area was part of the boundary waters. This interpretation was successfully challenged this past spring (1998). As a result, this heavily fished stretch of water is now divided, with different fishing regulations and license requirements, depending upon which side of the state line an angler is on. The proposed change will simplify the required regulations for all people fishing these waters.

This action does not represent a change from past policy.

*Explain the facts that necessitate the proposed change:*

The proposal will codify what has been the enforcement policy and general understanding of the angling public using the waters between the Marinette/Menominee breakwaters.

**Statutory authority for the rule:**

Sections 29.174, 29.085, 29.16 and 227.11 (2) (a), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 22 hours. One public hearing is proposed to be held in late October or early November, 1998 at Marinette.

**Natural Resources**

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

**Subject:**

Ch. NR 47 – Relating to revisions dealing with forestry grants and state aid administration.

**Description of policy issues:**

*Description of the policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

Subchapter I – General Provisions:

Revisions are primarily editorial for clarity and consistency with other SubChapters and other state and federal requirements.

Subchapter II – Forest Stewardship Grant Program:

Revisions to clarify eligibility, open competition, correct errors and re-establish preferences. The Forest Stewardship Advisory Committee is charged with the responsibility for reviewing and awarding grants. Natural resource agencies, organizations and others interested in promoting the stewardship management of private non-industrial forest lands will have an easier time qualifying for grants

Subchapter III – Stewardship Incentive Program:

Revisions to conform with changes at the federal level.

Subchapter V – Urban Forestry Grants:

Revisions are primarily editorial for clarification, compliance with state or federal requirements, or correction of omissions. Policy issues include increasing flexibility of reporting requirements and allowing grant advances to non-profits. Local governments, tribes and nonprofits applying for urban forestry grants will be interested/affected.

Subchapter VI – County Forest Administrator Grant:

Revision to conform with statute revision. Needed prior to April 1999, in order to spend authorized funds.

*Does the rule/board action represent a change from past policy?*

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Subchapter II – Forest Stewardship Program:

Grant applications have become too similar and repetitive. In order to use grant dollars more effectively and efficiently, the Forest Stewardship Advisory Committee proposed modifying the rules. Application dates, grant calculations, applicant eligibility and project preference subsections need to be modified to reflect the changing views of the Committee. There is also a need to remove some misleading information and clarify other sections.

Subchapter III – Stewardship Incentive Program:

The USDA Forest Service has amended their rules and it is necessary to reflect these changes in the rules. There are no major policy changes to be made.

Subchapter V – Urban Forestry Grants:

Reporting requirements are too stringent for small projects. Greater flexibility is needed to respond to project differences. Small nonprofits have difficulty completing projects because of cash flow problems. Partial advances will help alleviate this problem. Editorial revisions are generally not policy changes, but clarifications necessary as a result of grant project administration and audits identifying ambiguous language.

Subchapter VI – County Forest Administrator Grant:

The policy of this grant remains unchanged: only the amount is modified.

*Does the rule/board action represent an opportunity for pollution prevention and/or waste minimization?*

The rule changes do not change the grant policies in regard to pollution control. The rules already allow grants for tree planting that reduces air and nonpoint source water pollution.

**Statutory authority for the rule:**

Subs. I, II and III – 16 USC 2101 et seq.; Sub. V – 16 USC 2101 et seq. and s. 23.097, Stats.; Sub. VI – s. 28.11 (5m), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 163 hours. Three public hearings are proposed to be held in December, 1998 at Madison, Eau Claire and Green Bay.

## ***Natural Resources***

### ***(Environmental Protection–General, Chs. NR 100––)***

### ***(Environmental Protection–WPDES, Chs. NR 200––)***

#### **Subject:**

Chs. NR 108, 110, 113, 116, 200 and 206 – Relating to modifications to existing administrative codes addressing DNR's regulation of large-scale soil absorption systems.

#### **Description of policy issues:**

*Description of the policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

The Department of Commerce is currently revising ch. Comm 83, Wis. Adm. Code, concerning their review of privately-owned onsite wastewater treatment systems, including septic systems, mound systems, holding tanks and alternative systems. Commerce staff have agreed to revise their code to resolve concerns raised by the DNR regarding each agency's jurisdiction over onsite systems. The DNR will regulate large-scale systems and Commerce will regulate small-scale systems, independent of system ownership. In order to resolve agency jurisdictional concerns on a timely basis, rule revisions by the DNR to implement an agreement are proposed in two phases.

Phase 1 of the changes, which are both agencies' highest priority, will resolve jurisdictional issues by establishing a working definition of the minimum design flow for which the DNR will have permitting and plan review jurisdiction.

Phase 2 of the rule revisions will involve the development of detailed design and management requirements (including floodplain) and discharge permitting revisions for large-scale systems that are not present in existing DNR codes. It is anticipated that the Phase 2 changes will require additional time and more extensive input from the general public, partners, environmental groups and regulated entities. The proposed code changes (both Phase 1 and 2) will affect owners of large-scale soil absorption systems.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Under existing statutes and rules, the DNR has permitting authority for large-scale systems, but through an interagency memorandum of understanding between DNR and Commerce, the DNR has only issued permits for municipally-owned systems. Rules are needed to determine what constitutes a large-scale soil absorption system and resolve plan review requirements for non-municipal large-scale systems, which are not identified in existing codes.

#### **Statutory authority for the rule:**

Sections 281.41, 283.31 and 283.37, Stats.

#### **Anticipated time commitment:**

The anticipated time commitment is 636 hours. For Phase 1, two public hearings are proposed to be held in October, 1998 at Madison and Wausau. For Phase 2, four public hearings are proposed to be held in March, 1999 at Madison, Green Bay, Rice Lake and Milwaukee.

## ***Public Instruction***

#### **Subject:**

PI Code – Relating to establishing application requirements and criteria for awarding grants under the peer review and mentoring program.

#### **Description of policy issues:**

1997 Wis. Act 237 created s. 115.405, Stats., which establishes a grant for peer review and mentoring. Under s. 115.405 (2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participating CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under

ss. 115.28 (7) and 115.192, Stats., to implement peer review and mentoring programs. The state superintendent may not award more than \$25,000 to an applicant each year.

The Department, by statute, is required to promulgate rules relating to the program.

*Describe the objective(s) of the proposed rule:*

The rules establish application requirements and criteria for awarding grants under the peer review and mentoring program.

*Describe any existing relevant policies to be included in the administrative rule:*

None. This is a new grant program.

*Describe any new policies to be included in the proposed rule:*

Since this is a new grant program, all the policies in the rule relating to grant applications are new.

*Describe policy alternatives:*

None. The Department is required to promulgate rules.

#### **Statutory authority:**

Section 115.42 (4), Stats.

#### **Estimate the amount of time/staff resources necessary to develop rule:**

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

## ***Transportation***

#### **Subject:**

Ch. Trans 300 – Relating to school bus equipment standards.

#### **Description of policy issues:**

*Description of the objective of the rule:*

This proposed rule-making amending ch. Trans 300, relating to school bus equipment standards, will address the installation, operation and light output brilliance of the white strobe light which will be required on all school buses first registered in WI after October 1, 1998 as provided by 1997 Wis. Act 117.

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

Currently, s. Trans 300.54 (4) advises that the strobe light is an optional piece of equipment for use on school buses. 1997 Wis. Act 117 requires the strobe light as mandatory equipment for all buses first registered on or after October 1, 1998.

#### **Statutory authority for the rule:**

Section 347.25 (2), Stats.

#### **Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

It is estimated that approximately 20 hours will be spent in the development of the rule.

## ***Workforce Development***

#### **Subject:**

Ch. DWD 43 – Relating to child support enforcement.

#### **Description of policy issues:**

*Description of the objective of the rule:*

In compliance with the child support enforcement requirements in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Legislature enacted 1997 Wis. Act 191. 1997 Wis. Act 191 expands the authority of the Department of Workforce Development and county child support agencies to use administrative processes to enforce child support orders. These administrative enforcement processes include license suspension,

account seizure, real and personal property seizure, lump–sum pension intercept, and judgment and settlement intercept.

In accordance with 1997 Wis. Act 191, the Department is required to promulgate administrative rules to specify the following:

- ☐ The guidelines for appropriate payment plans or alternative payment arrangements which may be negotiated to halt the execution of an administrative enforcement action;
- ☐ The level of support that must be overdue before an individual is considered to be delinquent for the purpose of initiating administrative enforcement actions;
- ☐ The definition of ownership interest in property;
- ☐ The amount that the value of a property subject to a lien must exceed before a child support worker may initiate seizure of that property;
- ☐ The circumstances in which the payee in a court case will be notified that an administrative enforcement action has been initiated against the payer in the case;
- ☐ The diligent efforts that the Department will take to ascertain the location of a respondent who is subject to the enforcement of a child support order;
- ☐ The fines for noncompliance with an administrative subpoena and requests for information;
- ☐ The conditions that must be met in order for a payer to be placed on the child support lien docket; and
- ☐ The procedure for entering into agreements with financial institutions for performing data exchanges with the Department.

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

The rules will include definitions for terms such as administrative enforcement action, alternative payment plans, diligent effort, ownership interest, and support.

Under 1997 Wis. Act 191, child support payers have an opportunity to negotiate payment plans to halt the execution of administrative enforcement actions. In accordance with s. 49.858 (2) (a), the rules will specify the process for negotiating payment plans, the factors that must be considered when establishing payment plans, and the possible terms and conditions payment plans. The rules will also identify the process for monitoring payment plans, and define noncompliance with a payment plan.

According to s. 49.858 (2) (c) in 1997 Wis. Act 191, the Department or county child support agency may initiate administrative enforcement actions if arrears owed by a payer in a court case equal or exceed a delinquency threshold. The rules will specify how the arrearage in a court case is determined. For each administrative enforcement action, the rule will also specify the threshold that an arrearage must equal or exceed before the Department or county child support agency may initiate that action.

Before seizing real and personal property, including financial accounts, the Department or county child support agency will need to determine whether the property identified for seizure has sufficient value to be seized. In accordance with s. 49.854 (17), the rule will specify the factors that must be considered when determining the value of the property, and the amount that the property value must equal or exceed before seizure may be initiated.

In s. 49.858 (2) (b) of 1997 Wis. Act 191, the Department may provide the payee in a court case with notice that an administrative enforcement action has been initiated against the payer in the case. The rules will specify the circumstances in which a payee will be notified that an administrative enforcement action has been initiated in his or her case.

In s. 49.854 (9) of 1997 Wis. Act 191, notices for administrative enforcement actions may be provided by regular mail to the

last-known address of the child support payer. Due process requirements, related to notice and service of process in an administrative enforcement action, are met if a court finds that a diligent effort is made to ascertain the location of the payer. The rules will specify the process for determining the current address of the payer, and will identify the sources of information that will be used to ascertain the payer's location.

In s. 49.22 (2m) (d) of 1997 Wis. Act 191, a person may be fined for failure to comply with or respond to an administrative subpoena or a request for information. The rule will specify the amount of the fine that may be imposed for failure to comply with or respond to an administrative subpoena or a request for information.

In s. 49.854 (2) of 1997 Wis. Act 191, liens arise by operation of law against the real and personal property of payers who fail to pay court-ordered amounts of support. This administrative lien is effective when the arrearage owed by a payer in a court case equals or exceeds a delinquency threshold, and the lien is entered on the child support lien docket and that docket is delivered to the register of deeds in the county where the payer's property is located. The administrative rule will define the threshold that an arrearage must equal or exceed in a court case before a payer is placed on the child support lien docket, and will specify how the lien amount will be determined.

In s. 49.853 (2) of 1997 Wis. Act 191, the Department and financial institutions operating in the state are required to enter into agreements to perform quarterly data matching, using automation to the extent feasible, to locate the financial accounts of delinquent child support payers. The rules will specify the procedures the Department will use for entering into agreements with financial institutions, and the amount it will reimburse institutions for participating in the data match. Financial institutions may be reimbursed for an amount not to exceed their actual costs.

The rules must be in effect before the administrative lien, child support lien docket, and the administrative enforcement actions can be implemented. The Department would like to begin implementation of these provisions in October 1998.

#### **Statutory authority for the rule:**

The statutory provisions for each topic that will be covered in the administrative rules are as follows:

- Payment plan guidelines [s. 49.858 (2) (a), Stats.]
- Delinquency thresholds for administrative enforcement actions [s. 49.858 (2) (c), Stats.]
- Definition of ownership interest [s. 49.853 (1) (dm), Stats.]
- Amount that property value must exceed before seizure is initiated [s. 49.854 (17), Stats.]
- Payee notice of administrative enforcement actions [s. 49.858 (2) (b), Stats.]
- Diligent efforts to locate [s. 767.027 (2), Stats.]
- Fines for noncompliance with administrative subpoenas and requests for information [s. 49.22 (2m) (d), Stats.]
- Procedures the Department will use to enter into agreements with financial institutions to operate a data exchange [s. 49.853 (2), Stats.]

Although not specifically required by statute, the Department may also promulgate rules specifying the conditions that must be met in order for a payer to be placed on the child support lien docket.

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

The development of the administrative rule will require 2.0 FTE's (2 Full–Time Equivalents = 1.5 Program and Planning Analysts and 0.5 support staff) for a three month period.

---

---

## SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

---

---

### Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

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

#### Commerce

##### Rule Submittal Date

On July 17, 1998, the Wisconsin Department of Commerce referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule affects chs. Comm/ILHR 50–64, Wis. Adm. Code, relating to the adopted NFPA Standards in the Building Code.

##### Agency Procedure for Promulgation

A public hearing is required, and is scheduled for September 9, 1998. The Division of Safety and Buildings is the agency unit responsible for promulgation of this rule.

##### Contact Person

If you have questions regarding this rule, you may contact:

Ron Acker  
Dept. of Commerce  
Telephone (608) 267–7907

#### Commerce

##### Rule Submittal Date

On July 30, 1998, the Wisconsin Department of Commerce referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule affects ch. Comm 69, Wis. Adm. Code, relating to the exemption of elevator access in certain government–owned or operated buildings.

##### Agency Procedure for Promulgation

A public hearing is required, and is scheduled for August 31, 1998.

##### Contact Person

If you have questions regarding this rule, you may contact:

Diane Meredith  
Dept. of Commerce  
Telephone (608) 266–8982

#### Regulation & Licensing

##### Rule Submittal Date

On August 3, 1998, the Wisconsin Department of Regulation and Licensing referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### Analysis

##### Statutory authority:

Section 227.11 (2), Stats., and s. 440.205, Stats., as created by 1997 Wis. Act 139.

The proposed rule–making order relates to the issuance and use of administrative warnings.

##### Agency Procedure for Promulgation

A public hearing is required, and will be scheduled.

##### Contact Person

Pamela Haack  
Administrative Rules Coordinator  
Telephone (608) 266–0495

#### Transportation

##### Rule Submittal Date

On July 17, 1998, the Wisconsin Department of Transportation referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule affects ch. Trans 157, Wis. Adm. Code, relating to the titling of vehicles held by trusts.

##### Agency Procedure for Promulgation

A public hearing is not required. The Division of Motor Vehicles, Bureau of Vehicle Services is the organizational unit primarily responsible for promulgation of this rule.

##### Contact Person

If you have questions regarding this rule, you may contact:

Julie A. Johnson, Paralegal  
Dept. of Transportation  
Telephone (608) 266–8810

#### Transportation

##### Rule Submittal Date

On July 30, 1998, the Wisconsin Department of Transportation referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### Analysis

The proposed rule affects chs. Trans 325, 326 and 328, Wis. Adm. Code, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

##### Agency Procedure for Promulgation

A public hearing is not required. The Division of State Patrol, Bureau of Field Services and Training is the organizational unit primarily responsible for promulgation of this rule.

##### Contact Person

If you have questions regarding this rule, you may contact:

Julie A. Johnson, Paralegal  
Dept. of Transportation  
Telephone (608) 266–8810

---

---

# NOTICE SECTION

---

---

## Notice of Hearings

*Agriculture, Trade &  
Consumer Protection*

► Reprinted from July 31, 1998 *Wis. Adm. Register*.

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to chs. ATPC 102 and 105, Wis. Adm. Code, relating to sales below cost and s. 100.30, Stats., "The Unfair Sales Act."

### Written Comments

The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **September 30, 1998** for additional written comments.

### Copies of Rule

A copy of this rule may be obtained, free of charge, from;

Trade Practices Bureau  
Telephone (608) 224-4928  
Wis. Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
P.O. Box 8911  
Madison, WI 53708-8911

### Informal Discussion Sessions

In conjunction with the public hearings, the Department will also hold informal discussion sessions. These sessions will take place on each of the dates below, beginning at **5:30 p.m.** at each of the locations listed below. These informal discussion sessions are a chance for petroleum dealers and distributors (and the general public) to discuss issues such as compliance, notice requirements, and cost calculations with Department staff.

### Hearing Information

Four hearings are scheduled:

Date & Times	Location
August 20, 1998 Thursday Official public hearing: 1:30 p.m. to 4:30 p.m. Informal discussion session: 5:30 p.m. to 7:00 p.m.	Conference Room DATCP Consumer Protection Regional Office 3610 Oakwood Hills Pkwy. EAU CLAIRE, WI

September 1, 1998  
Tuesday  
Official public  
hearing: 1:30 p.m.  
to 4:30 p.m.  
Informal discussion  
session: 5:30 p.m.  
to 7:00 p.m.

East 240—Union  
UW—Milwaukee  
2200 E. Kenwood Blvd.  
MILWAUKEE, WI

September 2, 1998  
Wednesday  
Official public  
hearing: 1:30 p.m.  
to 4:30 p.m.  
Informal discussion  
session: 5:30 p.m.  
to 7:00 p.m.

Appleton Public Library  
225 N. Oneida St.  
APPLETON, WI

September 8, 1998  
Tuesday  
Official public  
hearing: 1:30 p.m.  
to 4:30 p.m.  
Informal discussion  
session: 5:30 p.m.  
to 7:00 p.m.

Board Room (SR – 106)  
DATCP Headquarters  
2811 Agriculture Dr.  
MADISON, WI

*An interpreter for the hearing-impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by August 5, 1998 either by writing to Kevin LeRoy, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708, (608)224-4928) or by contacting the message relay system (TTY) at (608) 224-5058. Handicap access is available at the hearings.*

## **Analysis Prepared by the Dept. of Agriculture, Trade & Consumer Protection**

*Statutory authority:* s. 93.07 (1), Stats. (Chs. ATCP 102 and 105), s. 100.20 (2), Stats, (Ch. ATCP 102), and s. 100.30 (7), Stats. (Ch. ATCP 105)

*Statutes interpreted:* s. 100.20, Stats. (Ch. ATCP 102) and s. 100.30, Stats. (Ch. ATCP 105)

This rule implements legislation enacted as 1997 Wis. Act 55, related to the pricing of motor fuel. The legislation modified s. 100.30, Stats., which prohibits sales of motor fuel and other commodities below cost.

### **Background**

The Department administers s. 100.30, Stats., known as the “Unfair Sales Act.” The Unfair Sales Act prohibits sales below “cost” as defined in the law. The Unfair Sales Act applies to sales of motor fuel and other commodities. The Department has adopted rules, under ch. ATCP 105; Wis. Adm. Code, to interpret the Unfair Sales Act.

1997 Wis. Act 55 made several changes to the Unfair Sales Act as it applies to sales of motor fuel. These changes take effect on **August 1, 1998**:

- **“Cost” of motor fuel.** The Unfair Sales Act previously defined the “cost” of motor fuel to mean the seller’s invoice cost, less trade discounts, plus excise taxes and a presumptive 3% wholesale and 6% retail markup. Under 1997 Wis. Act 55, the “cost” of motor vehicle fuel is redefined to mean the greater of the following:
  - \* “Cost” as previously defined (with minor changes).
  - \* The “average posted terminal price” for the motor fuel terminal located nearest to the retail location, plus a markup of 9.18%. The “average posted terminal price” is defined in the statute as the arithmetic mean of all the prices reported by a nationally recognized “petroleum price reporting service,” plus any taxes, transportation and any other charges.
  - **“Meeting competition” notice.** The Unfair Sales Act prohibits sales of motor fuel below “cost” as defined in the act. However, a seller may claim, as a defense, that the seller sold motor fuel below cost in order to meet the existing price of a competitor. Under 1997 Wis. Act 55, a seller of motor fuel who wishes to establish a presumptive “meeting competition” defense must notify the department on the same day that the seller initiates the below-cost selling price in response to a competitor’s price. The seller must give the notice in the “form and manner required by the department.”
  - **Private remedy.** The Department may prosecute violations of the Unfair Sales Act. 1997 Wis. Act 55 also creates a private remedy for competing sellers of motor vehicle fuel who are injured by illegal sales below cost.

## **Rule Contents**

### **Definitions**

This rule clarifies terms used in 1997 Wis. Act 55 including “close of business on the determination date,” “retail station,” “terminal” and “terminal closest to the retail station.”

### **“Meeting Competition” Notice**

This rule prescribes the form and content of the notice which a motor fuel seller must file with the Department in order to claim the “meeting competition” defense under the Unfair Sales Act.

Under 1997 Wis. Act 55 and this rule, a person who files a “meeting competition” notice with the Department to justify a below–cost selling price must send that notice before the “close of business” on the day that the person begins selling at the price. This rule clarifies that the “close of business” means the seller’s actual close of business or, if the business is open for 24 hours a day, the time at which the business day ends for accounting purposes.

Under this rule, a person must give a “meeting competition” notice in writing, by one of the following methods:

- By telefax. A seller is rebuttably presumed to have sent a telefax notice “before the close of business” if the Department receives it by midnight on the same day.
- By electronic mail. A seller is rebuttably presumed to have sent an e–mail notice “before the close of business” if the Department receives it by midnight on the same day.
- By United States mail. A seller is rebuttably presumed to have sent a mail notice “before the close of business” if the notice is postmarked by midnight of the same day.
- By commercial courier. A seller is rebuttably presumed to have sent a notice “before the close of business” if the commercial courier takes custody of the notice by midnight of the same day.
- By personal delivery. A seller is rebuttably presumed to have sent notice “before the close of business” if the notice is personally delivered to the Department by 4:30 PM of the same day.

Under this rule, a person giving a “meeting competition” notice must include all of the following in the notice:

- ☐ The person’s name, including any trade name under which the person sells motor fuel at the price which the notice purports to justify.
- ☐ The address and telephone number of each business location at which the person is offering motor fuel at the price which the notice purports to justify.
- ☐ The motor fuel selling price which the notice purports to justify, the effective date of that selling price, and the identity and grade of motor fuel to which that selling price applies.
- ☐ The name of the competitor whose price the person is purporting to meet, and the address at which that competitor is offering that price.
- ☐ The competitor’s price which the person is purporting to meet, the relevant dates on which the competitor offered that price, and the identity and grade of motor fuel to which that price applies.

A person giving a “meeting competition” notice may not falsify any of the information contained in that notice. The person may not claim that a competitor offered a motor fuel selling price on a specified date at a specified address if the competitor was not open for business on that date at that address.

### **Technical and Editorial Changes**

This rule makes other technical and editorial changes to make the Department’s current rules consistent with the Unfair Sales Act as amended by 1997 Wis. Act 55.

## ***Fiscal Estimate***

(See July 31, 1998 *Wis. Adm. Register*, page 35.)

## ***Initial Regulatory Flexibility Analysis***

(See July 31, 1998 *Wis. Adm. Register*, page 35.)

## **Notice of Hearing**

### ***Commerce***

***(Building, etc., Chs. 50–64)***

Notice is hereby given that pursuant to ss. 101.02 (1) and (15) and 101.14 (4), Stats., the Department of Commerce announces that it will hold a public hearing on proposed rules relating to Adopted NFPA Standards in the Building Code, chs. Comm/ILHR 50–64.

## ***Hearing Information***

September 9, 1998  
Wednesday  
10:00 a.m.

WHEDA Building  
Room 3B  
201 W. Washington Ave.  
Madison, WI 53703

## ***Analysis***

Statutory Authority: ss. 101.02 (1), (15), & 101.14 (4)

Statutes Interpreted: ss. 101.02 (1), (15), & 101.14 (4), (4m)

Under ss. 101.02 and 101.14, Stats., the Department has the responsibility to supervise every public building and place of employment, including the fire detection, prevention or suppression devices, in order to protect the life, health, safety and welfare of every employee, every frequenter and every tenant. Updating currently adopted standards related to building construction, building equipment, commodity storage, and fire detection, prevention and suppression is one part of that responsibility.

The proposed rule change updates the currently adopted National Fire Protection Association (NFPA) standards in the Building and Heating, Ventilating and Air Conditioning Code, chapters ILHR 50–64. No additional standards are adopted at this time, except for NFPA 72, which replaces four previously adopted standards, NFPA 71, 72A, 72E, and 74 are repealed under this proposed change. Minor wording changes had to be made to the text to accommodate the scope of NFPA 72 and to correct the new designations or titles of the standards.

Some of the more important changes in these new editions include: 1) From NFPA 13, a single sprinkler may now cover up to 400 square feet, up from 225 square feet in previous editions.

2) Also from NFPA 13, light hazard occupancies now require quick-response type sprinklers.

3) From NFPA 72, smoke detectors in residential occupancies require battery backup in addition to the household current primary source. Although the NFPA 72 standard requires a smoke detector in each individual sleeping room of a new residential occupancy, this requirement is not adopted into the code at this time because of statutory language specifying the detector location.

### **Written Comments**

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 **September 11, 1998**, 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.

The 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) 261–6546 or TTY at (608) 264–8777 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 persons with a disability.

A copy of the proposed rules may be obtained without cost from Margaret Slusser, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701, telephone (608) 261–6546 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

### **Environmental Assessment**

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Margaret Slusser  
Division of Safety and Buildings  
Department of Commerce  
P.O. Box 2689  
Madison, WI 53701  
Telephone (608) 261–6546  
or TTY (608) 264–8777

Written comments will be accepted until September 11, 1998

### **Initial Regulatory Flexibility Analysis**

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

These rules could affect any business that has fire safety devices or heat producing appliances in a building. The fire safety devices may include fire extinguishers, fire sprinkler systems, fire or smoke alarm systems, fire pumps, water tanks, etc. Most of the changes in these standards will apply to new construction only; however, there are some provisions in these standards that apply to inspection or maintenance of existing fire safety devices or systems.

There are also standards that affect the installation and operation of heating systems and their vents or chimneys. The changes in these standards are minor and apply mainly to new construction.

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

There are record keeping requirements for documenting the required inspections of fire extinguishers, sprinkler systems and water tanks. The changes from the current rules are very minor in the area of record keeping.

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

There are no additional skills needed for small businesses to comply with these rules.

### **Fiscal Estimate**

Earlier editions of these NFPA standards have been adopted by reference in the commercial building code for many years. There are no new regulatory requirements in these updated standards that will affect revenues.

# Notice of Hearing

## Commerce

*(Barrier-Free Design, Ch. 69)*

Notice is hereby given that pursuant to ss. 101.02 (15) and 101.13, Stats., the Department of Commerce announces that it will hold public hearings on proposed rules relating to exemption of elevator access in certain government-owned or operated buildings.

## Hearing Information

August 31, 1998      Room 371, GEF-I  
Monday              201 West Washington Ave.  
10:00 a.m.          Madison, Wisconsin

## Analysis of Proposed Rules

Statutory Authority: ss. 101.02 and 101.13

Statute Interpreted: s. 101.13

The proposed rule will exempt in government-owned or operated buildings elevator access to floor levels above or below the accessible ground floor providing these floor levels are less than 500 square feet, are not open to the general public and house no more than 5 people. Examples of these type of floor levels are drawbridge towers and boat traffic towers, lock and dam control stations, train dispatching towers and press box facilities. The reason for the proposed rule change is to make the emergency rule issued on May 15, 1998 a permanent rule. This rule benefits not only school districts, but other small state and local government buildings as well.

## Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary environmental assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Diane Meredith  
Division of Safety & Buildings  
Department of Commerce  
P.O. Box 2689  
Madison, WI 53701  
Telephone (608) 266-8982  
or TTY (608) 264-8777

## Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.  
All state and local governments constructing new buildings or remodeling existing buildings must comply with the proposed rules.
2. Reporting, bookkeeping and other procedures required for compliance with the rules.  
Plans for buildings constructed new or undergoing remodeling must be reviewed for compliance with the proposed rules.
3. Types of professional skills necessary for compliance with the rules.  
None known

## Fiscal Estimate

### Assumptions Used in Arriving at Fiscal Estimate

The Department currently enforces requirements for accessibility in government owned or operated buildings. The emergency rule modifies that elevator access is not required to floor levels above or below the accessible ground floor that are less than 500 square feet, are not open to the general public and houses no more than 5 people.

## Written Comments

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 **September 9, 1998**, 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.

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) 261–6546 or TTY at (608) 264–8777 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.

A copy of the proposed rules may be obtained without cost from Margaret Slusser, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 261–6546 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

## **Notice of Hearing**

### ***Financial Institutions***

### ***(Division of Securities)***

Notice is hereby given that, pursuant to ss. 551.63 (1) and (2); 551.02 (7m) (a) and (b); 551.29 (1) to (4); 551.31, 551.32, 551.33 and 551.52, Stats., the Division of Securities of the Department of Financial Institutions will hold a public hearing at the time and place indicated below to consider the adoption of permanent rules to be in place upon expiration of identical emergency rules adopted effective **July 9, 1998**, relating to federal covered securities, federal covered advisers and investment adviser representatives.

### **Hearing Information**

September 24, 1998      5th Floor  
Thursday      Tommy G. Thompson Conf. Ctr.  
at 10:00 A.M.      345 West Washington Ave.  
MADISON, WI

### **Written Comments**

Written comments in lieu of public hearing testimony may be submitted, which must be received not later than the public hearing date, and should be addressed to:

Administrator  
Division of Securities  
345 West Washington Ave.  
P.O. Box 1768  
Madison, WI 53701–1768

### **Analysis Prepared by the Division of Securities**

*Statutory authority:* ss. 551.63 (1) and (2); 551.02 (7m) (a) and (b); 551.29 (1) to (4); 551.31 (4) (c); 551.32 (1) (a) and (b), (1m) (a), (4), (5), (6), (8) (a) 3 and (9) (a); 551.33 (1), (2) and (8); 551.52 (1) (b) 1. and 2.  
*Statutes interpreted:* ss. 551.02 (7m) (a) and (b), 551.29 (1) to (4), 551.32 (4) (c), 551.32 (1) (a) and (b), (1m) (a), (4), (5), (6), (8) (a) 3 and (9) (a); 551.33 (1), (2) and (8); 551.52 (1) (b) 1. and 2.

Permanent rules are being promulgated to be in place upon the expiration of identical emergency rules that were issued by the Division of Securities and became effective **July 9, 1998** for the purpose of implementing statutory changes to the Wisconsin Uniform Securities Law contained in recently-enacted legislation. The legislation, 1997 Wis. Act 316 which became effective **July 9, 1998**, made a number of changes to the Wisconsin Securities Law, principally to conform to changes required under federal legislation in the National Securities Markets Improvement Act of 1996 (“NSMIA”).

NSMIA preempted state securities law regulation in two principal areas:

- ❑ Prohibiting state securities registration and exemption requirements from being applicable to categories of so-called “federal covered securities,” but permitting states to establish certain notice filing requirements (including fees) for such “federal covered securities;” and
- ❑ Prohibiting state securities licensing requirements from being applicable to certain investment advisers meeting criteria to qualify as a “federal covered adviser;” but permitting states to establish certain notice filing requirements (including fees) for those federal covered advisers that have a place of business in Wisconsin and more than 5 Wisconsin clients.

The legislation in 1997 Wis. Act 316 established notice filing requirements for the various categories of “federal covered securities” as well as for “federal covered advisers,” and in addition, established statutory requirements for the licensing of “investment adviser representatives” (who previously were subject only to a qualification process in Wisconsin).

The proposed permanent rules will replace the emergency rules that, in the following respects, implemented the statutory changes contained in 1997 Wis. Act 316:

- 1) Defined all substantive terms contained in the definition of “investment adviser representative.”
- 2) Set forth the Wisconsin filing requirements for the various categories of “federal covered securities” in s. 551.29, Stats., including for investment company securities offerings, offerings under Rule 506 of Regulation D of the Securities Act of 1933, and certain types of securities offerings by non–Wisconsin state or municipal governmental issuers.

- 3) Repealed several rules that either prescribed securities registration procedures or provided registration exemptions for investment company securities because they are a category of “federal covered securities” under NSMIA, thus preempting state securities registration and exemption requirements.
- 4) Amended various licensing procedural rules to have them apply to license applications filed on behalf of investment adviser representatives as a new category of licensee in Wisconsin.
- 5) Amended various prohibited business practice rules to have them apply to investment adviser representatives as a new category of licensee in Wisconsin.
- 6) Created rules particularizing the Wisconsin notice filing procedure for “federal covered advisers” whose primary regulator is the U.S. Securities and Exchange Commission.
- 7) Created and amended certain licensing procedural and operational rules applicable to Wisconsin state-only licensed investment advisers whose principal office is in Wisconsin.
- 8) Amended several broker-dealer licensing and operational requirements — relating to such areas as net capital, bonding and certain record-keeping provisions — to make them subject to the preemptive limitations imposed under NSMIA on state regulation in those areas.

Each section that adopts, amends or repeals a rule is followed by a separate analysis which discusses the nature of the revision as well as the reason for it.

## **Copies of Rules**

A copy of the entirety of the proposed rule revisions to be considered may be obtained upon request to:

Division of Securities, 4th Floor  
 Dept. of Financial Institutions  
 345 West Washington Ave.  
 P.O. Box 1768  
 Madison, WI 53701

## **Fiscal Estimate**

The proposed rules do not have any fiscal effect in that there is no increase or decrease in state revenues or costs, and no local government costs. That is because the legislation in 1997 Wis. Act 316 (which these proposed rules implement) did not have any fiscal effect inasmuch as the legislation made conforming amendments to various provisions of the Wisconsin Securities Law to reflect preemptive changes to the Law that already were in force and effect as a result of the federal NSMIA.

## **Initial Regulatory Flexibility Analysis**

1. *Types of small businesses that could be affected by certain of the rule revisions are:*
  - (i) Any small business looking to raise capital can seek to utilize the new rules for securities offerings qualifying as “federal covered securities” as being offered pursuant to Rule 506 of Regulation D under the federal Securities Act of 1933;
  - (ii) Investment adviser licensees under the Wisconsin Uniform Securities law with fewer than 25 full-time employees who meet the other criteria of s. 227.114 (1) (a), Stats.

The proposed revisions to the securities investment adviser licensing or notice filing provisions are applicable equally to all investment advisers because the requirements involved are for the protection and benefit of Wisconsin customers of those licensees. All Wisconsin customers of securities investment advisers are entitled to the public investor protection benefits of the licensing or filing requirements, irrespective of the size of the firm providing the securities services. Under the rule revision procedure of the Division of Securities, a copy of the proposed revisions is mailed to each investment adviser licensed in Wisconsin notifying them of the proposed revisions and soliciting written comments or attendance at the public hearing regarding the proposed rules.

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

No new or additional reporting/bookkeeping, etc. procedures were added beyond those already present under the Rules of the Division of Securities applicable to securities licensees.

## **Contact Person**

A copy of the full text of the proposed rule revisions and fiscal estimate may be obtained from:

Randall E. Schumann, (608) 266-3414  
 Legal Counsel for the Division of Securities  
 Department of Financial Institutions  
 345 West Washington Ave., 4th Floor  
 P.O. Box 1768  
 Madison, WI 53701

# Notice of Proposed Rule Transportation

Notice is hereby given that pursuant to the authority of s. 85.15 (1), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending ch. Trans 157 without public hearing unless, within 30 days after publication of this notice on **August 15, 1998**, the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

## Contact Person

Questions about this rule and any petition for public hearing may be addressed to:

Dan Wassink, telephone (608) 266–0993  
Bureau of Vehicle Services, Room 201  
Division of Motor Vehicles  
P. O. Box 7909  
Madison, WI 53707–7909

## Analysis Prepared by the Wis. Dept. of Transportation

*Statutory authority:* s. 85.15 (1)

*Statutes interpreted:* ss. 340.01 (42), 341.08, 341.10, 342.05, 342.06, 342.09, 342.10, 342.11, 342.15 and 342.18

General Summary of Proposed Rule. The Trustee’s Statement for Certificate of Title (MV 2790) was created for customers titling a vehicle in the name of a Trust. The form requires the Trustee to affirm that the Trust is valid, and it has also saved DMV staff a significant amount of time which used to be spent reviewing the actual trust papers for authenticity.

Based on experience to date, DMV has decided that the Trustee’s signature is sufficient proof that the Trust does exist, and there is no need for a Notary Public to sign the MV 2790 as a witness to the Trustee’s signature. Notarization does not give the Department any added protection in the case of a legal dispute since a notary is unlikely to remember a specific case many months after the fact. Eliminating the notarization requirement will also save processing time for DMV, as DMV often receives trust documents and MV 2790 forms without a Notary’s signature, and must delay processing while waiting for a notarized form to be mailed.

Amendments to ch. Trans 157 replace references to “affidavit” with the term “application” and repeal the provision requiring that the signatures of trustees be notarized or witnessed by a Department employee.

## Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally–recognized American Indian tribes or bands.

## Initial Regulatory Flexibility Analysis

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

## Copies of Rule

Copies of this proposed rule can be obtained upon request, without cost, by writing to:

Dan Wassink, (608) 266–0993  
Bureau of Vehicle Services, Room 201  
Division of Motor Vehicles  
P. O. Box 7909  
Madison, WI 53707–7909

## Text of Proposed Rule

Under the authority vested in the state of Wisconsin Department of Transportation by s. 85.15(1), Stats., the Department of Transportation hereby proposes an order to amend a rule interpreting ss. 340.01 (42), 341.08, 341.10, 342.05, 342.06, 342.09, 342.10, 342.11, 342.15 and 342.18, Stats., relating to titling of vehicles held by trusts.

**SECTION 1.** Trans 157.05 (1), (note) and (2) (intro.) are amended as follows:

Trans 157.05 (1) An application for a certificate of title for a vehicle being transferred to or from a trust shall be made on forms specified by the department, shall include all information required by s. 342.06 (1), Stats., and shall include a trustee’s ~~affidavit~~ application for certificate of title.

**Note:** Forms MV1, Application for Title/Registration, Odometer Disclosure Statement, and MV2790, Trustee's Affidavit Application for Certificate of Title, can be ordered from Document Sales, 202 S. Thornton Ave., Madison, WI 53704 or (608) 266-3358 or obtained at a motor vehicle services center. In cases involving the sale of titled vehicles, the Odometer Disclosure Statement on the reverse side of the certificate of title should be used.

(2) A trustee's affidavit application for certificate of title shall contain the following information:

**SECTION 2.** Trans 157.05 (2) (i) is repealed.

## **Notice of Proposed Rule Transportation**

Notice is hereby given that pursuant to the authority of ss. 110.075 (6), 194.38 (2), 194.43 and 346.45 (4), and 227.11, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending chs. Trans 325, 326 and 328 without public hearing unless, within 30 days after publication of this notice on **August 15, 1998**, the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

### **Contact Person**

Questions about this rule and any petition for public hearing may be addressed to:

Lyle Walheim, telephone (608) 266-0305  
Division of State Patrol, Room 551  
P. O. Box 7912  
Madison, WI 53707-7912

## **Analysis Prepared by the Wis. Dept. of Transportation**

*Statutory authority:* ss. 110.075 (6), 194.38 (2), 194.43 and 346.45 (4)

*Statutes interpreted:* ss. 110.07, 110.075, 194.38 and 194.43

General Summary of Proposed Rule. This proposed rule making will amend three existing rules to bring them into compliance with changes to the federal regulations which have gone into effect as of **January 1, 1998**. These changes are as follows:

► **Chapter Trans 325** adopted motor carrier safety regulations of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent motor carrier safety regulations. All vehicles operating in interstate commerce are already subject, under federal law, to any changes that have been adopted between November 1, 1996 and August 1, 1998.

► **Chapter Trans 326** adopted motor carrier safety requirements for transportation of hazardous materials of the United States Department of Transportation in effect on January 1, 1998. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for transportation of hazardous materials. All vehicles operating in interstate commerce are already subject under federal law to any changes that have been adopted between November 1, 1996 and August 1, 1998.

The Department proposes to incorporate changes to federal hazardous material regulations that have been expanded to include intrastate transportation and provides for some agricultural exceptions for farmers, allows for the use of some non-specification packages for intrastate transportation only, and provides exceptions for "materials or trades."

► **Chapter Trans 328** adopted motor carrier safety requirements for intrastate transportation of hazardous materials of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for intrastate transportation of hazardous materials and will include exceptions provided in revised federal rules.

### **Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally-recognized tribes or bands.

### **Initial Regulatory Flexibility Analysis**

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

### **Copies of Rule**

This proposed rule was prepared by Lyle Walheim, Division of State Patrol. Copies of the rule may be obtained upon request, free of charge, from the Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53707-7912, or by calling (608) 266-6936. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

## Text of Proposed Rule

Under the authority vested in the state of Wisconsin Department of Transportation by ss. 110.075 (6), 194.38 (2), 194.43 and 346.45 (4), Stats., the Department of Transportation hereby proposes an order to amend a rule interpreting ss. 110.07, 110.075, 194.38 and 194.43, Stats., relating to motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

**SECTION 1.** Trans 325.02 (intro.) is amended to read:

**Trans 325.02 Federal rules adopted.** The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November August~~ 1, 1996 1998 are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these rules apply in the same manner as though the regulations were set out in full in this chapter:

**SECTION 2.** Trans 325.02 (8) is created to read:

(8) Every traffic officer and state patrol inspector as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the North American standard out of service criteria.

**SECTION 3.** Trans 325.05 (1) and (2) are amended to read:

Trans 325.05 (1) The provisions of s. Trans ~~325.04(4)~~ 325.02 (4) and (6) (title 49, Code of Federal Regulations, parts 393 and 396) shall be enforced under the provisions of s. 110.075, Stats.

(2) The provisions of s. Trans ~~325.01(2)~~ 325.02 (2), (3), (5) and (7), (Title 49, Code of Federal Regulations, parts 391, 392, 395 and 397) shall be enforced under the provisions of ch. 194, Stats.

**SECTION 4.** Trans 326.01 (intro.) is amended to read:

**Trans 326.01 Federal rules adopted.** The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November August~~ 1, 1996 1998, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

**SECTION 5.** Trans 326.01 (8) is created to read:

Trans 326.01 (8) Every traffic officer and state patrol inspector, as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out of service in accordance with the North American standard out-of-service criteria.

**SECTION 6.** Trans 326.07 is renumbered Trans 326.07 (1).

**SECTION 7.** Trans 326.07 (2) and (3) are created to read:

Trans 326.07 (2) The provisions of s. Trans 326.01 (4), (6) and (7) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(3) (a) The provisions of s. Trans 326.01 (3), (4), (6) and (7) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases, over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements in s. Trans 326.01 (3), 49 CFR parts 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1 PG III in a bulk packaging.
2. 502 gallons for liquid or gases.
3. 5,070 pounds for solids of any other agricultural product.

**SECTION 8.** Trans 328.03 (intro.) and (1) are amended to read:

**Trans 328.03 Federal rules adopted.** The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November August~~ 1, 1996 1998, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these rules apply in the same manner as though the regulations were set out in full in this chapter:

(1) Title 49, Code of Federal Regulations, part 171, hazardous materials regulations, ~~except 171.1-(a)-(1), 171.4, 171.5, 171.10, 171.12 and 171.12a; and 171.2-(a) and (b) for cargo and portable tanks used in intrastate commerce and placed in operation prior to November 1, 1994.~~ general information, regulations and definitions.

**SECTION 9.** Trans 328.03 (6) is created to read:

Trans 328.03 (6) Every traffic officer and state patrol inspector, as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out of service in accordance with the North American standard out-of-service criteria.

**SECTION 10.** Trans 328.04 is created to read:

**Trans 328.04 Exclusions and exceptions.** (1) The provisions of s. Trans 328.03 (3), (4) and (5) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(2) (a) The provisions of s. Trans 328.03 (2), (3), (5) and (6) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements s. Trans 328.03 (2), 49 CFR parts 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1 PG III in a bulk packaging.
2. 502 gallons for liquid or gases.
3. 5,070 pounds for solids of any other agricultural product.

---

---

**NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,**  
**UNDER S. 227.19, STATS.**

---

---

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

**Agriculture, Trade & Consumer Protection (CR 98-1):**

Ch. ATCP 134 – Relating to residential rental practices.

**Controlled Substances Board (CR 98-54):**

S. CSB 2.24 – Relating to adding butorphanol to the classification of controlled substances in schedule IV of ch. 961, Stats., the Uniform Controlled Substances Act.

**Corrections (CR 98-70):**

S. DOC 328.22 (5) – Relating to the custody and detention of felony probationers and parolees.

**Public Defender (CR 98-89):**

S. PD 3.02 (1) – Relating to the cost of retained counsel.

**Revenue (CR 97-97):**

Ch. Tax 19 – Relating to tax rate disparity payments.

**Technical College System Board (CR 98-59):**

Ch. TCS 15 – Relating to faculty development grants.

**Transportation (CR 98-82):**

Ch. Trans 132 – Relating to temporary license plate and permits.

**Workforce Development (CR 98-88):**

S. DWD 80.60 – Relating to employer self-insurance under the worker's compensation program.

---

## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

---

*The following administrative rules 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 of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266–7275 for updated information on the effective dates for the listed rules.*

**Corrections (CR 97–79):**

An order affecting ch. DOC 309, relating to inmate mail, property, telephone calls, and general provisions of ch. DOC 309.

Effective 10–01–98.

**Health and Family Services (CR 98–35):**

An order affecting ss. HFS 172.04, 175.04, 178.05, 195.04, 196.04, 197.04 and 198.04, relating to permit fees and related fees, including a one–time technology improvement surcharge, for the operation of public swimming pools, recreational and educational camps, campgrounds, hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and food and beverage vending operations and commissaries.

Effective 09–01–98.

**Natural Resources (CR 98–18):**

An order affecting chs. NR 500, 502, 507, 512, 520 and 680 and ss. NR 504.09, 509.07, 514.04 and 620.15, relating to solid and hazardous waste management activities.

Effective 10–01–98.

**Natural Resources (CR 98–21):**

An order affecting ss. NR 487.03, 487.05, 487.07, 487.09 and 487.10, relating to the Clean Fuel Fleet Program to reduce volatile organic compound (VOC) and oxides of nitrogen emissions from fleet vehicles.

Effective 10–01–98.

**Natural Resources (CR 98–22):**

An order affecting ss. NR 10.02, 10.09, 10.25, 11.10, 15.02, 19.30 and 27.03, relating to wildlife management housekeeping changes to the hunting and trapping regulations.

Effective 10–01–98.

**Natural Resources (CR 98–24):**

An order affecting chs. NR 10 and 11 and s. NR 15.02, relating to the 1998 spring fish and game hearing on hunting and trapping regulations.

Part effective 10–01–98.

Part effective 03–01–99.

**Workforce Development (CR 98–32):**

An order amending s. DWD 290.155 and repealing and recreating s. DWD 290.15 and repealing ch. DWD 292, relating to the adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects and the repeal of obsolete rules.

Effective 09–01–98.

THE STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
DOCUMENT SALES UNIT  
P.O. BOX 7840  
MADISON, WISCONSIN 53707-7840

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

**First Class Mail**

*Wisconsin  
Administrative  
Register*

*DATED MATERIAL. PLEASE DO NOT DELAY!*